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# Federal Probation

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## This Issue in Brief ACQUISITIONS

**Systems Therapy: A Multimodality for Addictions Counseling.**—Chemical dependency is a growing problem which has increased at least tenfold over the past decade. Until recent years the phenomenon was not recognized as a disease, but rather a mental health problem, and current therapies still tend to address mental health aspects rather than the disease of chemical dependency. Alcohol, although a drug, is still considered to cause separate and distinct problems from other drugs. Author John D. Whalen maintains, however, that alcoholism and drug abuse can be treated as one common problem with a set of exhibiting symptomologies. This article describes Systems Therapy, a therapeutic approach developed by the author.

**Assessment of Drug and Alcohol Problems: A Probation Model.**—Authors Billy D. Haddock and Dan Richard Beto highlight the increased emphasis on assessment methods in drug and alcohol treatment programs and describe the assessment model used in a Texas probation department. Major theories of substance abuse and dependence are dis-

cussed as they relate to assessment. The objectives, components, and general functioning of the assessment model are described. A counselor/consultant is used in the assessment process to offer greater diagnostic specificity and make individualized treatment recommendations. According to the authors, the assessment process facilitates a harmonious relationship between probation officers and therapists, thus promoting continuity of care and quality services.

**Drug Offenses and the Probations System: A 17-Year Followup of Probationer Status.**—Authors Gordon A. Martin, Jr. and David C. Lewis provide the current status of 78 of 84 probationers previously studied in 1970. Of the original group, 14.1 percent are deceased and 18 percent have had constant problems with the law. Sixty eight percent have had varying degrees of success, with one-third essentially free of all criminal involvement. The study indicates that younger probationers who used heroin and barbiturates were the population at greatest long-term risk and merit the longest periods of probation

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and most intense supervision. For them, marijuana did not serve as a "gateway" drug, though alcohol may have. The authors note that the original group of probationers was supervised by a probation officer who was a specialist in drug offenders. While his probation load was sizeable, it was manageable. For probation to fulfill its crucial mandate—the authors conclude—more resources must be made available to it, and caseloads must be manageable.

**All-or-Nothing Thinking and Alcoholism: A Cognitive Approach.**—Self-destructive all-or-nothing thinking is both a correlate of alcoholic drinking and a likely area for cognitive intervention. Author Katherine van Wormer contends that it is not the alcoholic's personality but the alcoholic's thinking that is the source of the drinking. Specific cognitive strategies are offered—strategies that should be effective both in recovery from alcoholism as well as in its prevention.

**Lower Court Treatment of Jail and Prison Overcrowding Cases: A Second Look.**—In 1979 and 1981, the United States Supreme Court issued opinions in which it ruled that double-bunking of prison and jail cells designed for single occupancy was not unconstitutional *per se*. It also indicated that lower courts should demonstrate greater restraint in "second guessing" the decisions of correctional administrators. In 1983, *Federal Probation* published an article in which author Jack E. Call concluded that many lower courts were still quite willing to find overcrowded conditions of confinement unconstitutional. In this followup article, Call finds that after 4 more years of lower court decisions in overcrowding cases, this earlier conclusion is still valid.

**Rewarding Convicted Offenders.**—Offenders can be rewarded by deescalating punishments in response to behavior one wishes to encourage. This practice has distinguished origins, has been subjected to a variety of criticisms, but is regaining ascendancy. In his review of the controversy, author Hans Toch suggests that defensible reward systems for offenders can be instituted and can enhance the rationality, humaneness, and effectiveness of corrections.

**Current Perspectives in the Prisoner Self-Help Movement.**—Prison rehabilitation programs are usually designed to correct yesterday's problems in order to build a better tomorrow for criminal offenders. Yet the struggle for personal survival in prison often diverts inmates' attention away from these "official" treatment policies and toward more informal organizations as a means of coping with the

immediate "pains of imprisonment." Prisoner self-help groups promise to bridge the gap between immediate personal survival and official mandates for correctional treatment. Drawing on historical and interview data, author Mark S. Hamm offers a typology that endeavors to explain the promise explicit in prisoner self-help organizations.

**Consequences of the Habitual Offender Act on the Costs of Operating Alabama's Prisons.**—Habitual offender acts have been adopted by 43 states and are under consideration in the legislatures of others. According to authors Robert Sigler and Concetta Culliver, these acts have been adopted with relatively little evaluation of the costs involved in the implementation of this legislation. The data reported here indicate that one area of costs—costs to departments of corrections—will be prohibitive. The authors suggest that the funds needed to implement the habitual offender acts could be better used to develop and test community-based programs designed to divert offenders from a life of crime.

**Evaluating Privatized Correctional Institutions: Obstacles to Effective Assessment.**—Institutional populations in the American correctional system have increased dramatically during the last decade. This increase has produced serious concern about both overcrowding and the economic costs of imprisonment. One proposed solution to the current dilemma involves the engagement of the private sector in the correctional process. Although it is apparent that there are a number of potential benefits to be obtained from private sector participation in the administration of punishment, a variety of potential hazards have also been identified. In this article, author Alexis M. Durham III considers some of the hazards associated with the evaluation of privately operated correctional institutions. The discussion identifies some of these potential obstacles to effective evaluation and concludes that although evaluation impediments may well be surmountable, the costs of dealing with these problems may offset the economic advantages otherwise gained from private sector involvement.

**Negotiating Justice in the Juvenile System: A Comparison of Adult Plea Bargaining and Juvenile Intake.**—Plea bargaining and its concomitant problems have been of little concern to those who study the juvenile justice system. We hear little or nothing of "plea bargaining" for juveniles. However, in this article, author Joyce Dougherty argues that the juvenile system itself is based on the very same system of "negotiated justice" that lies at the

heart of adult plea bargaining. By placing society's interest in "caring for its young" (translated into the doctrine of *parens patriae*) over the individual rights of juveniles, the juvenile justice system has created a situation where the determination of a child's "treatability" has become more important than the

determination of his or her guilt or innocence. The author compares adult plea bargaining and juvenile intake in an effort to illustrate how, despite all theoretically good intentions, the "justice" in the juvenile system is no better than the "negotiated justice" that is the end result of adult plea bargaining.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought, but their publication is not to be taken as an endorsement by the editors or the Federal Probation System of the views set forth. The editors may or may not agree with the articles appearing in the magazine, but believe them in any case to be deserving of consideration.

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# Negotiating Justice in the Juvenile System: A Comparison of Adult Plea Bargaining and Juvenile Intake

BY JOYCE DOUGHERTY\*

## *Problems with a System of Discretionary Justice*

**I**N THE adult criminal justice system, plea bargaining is a widely accepted, if not controversial, practice. As Meeker and Pontell point out, these "quasi-official" negotiations of justice have "long been the 'normal state of affairs' in [adult] criminal courts" (Meeker and Pontell 1985: 119 and 121). When adults are accused of a crime and are processed through the system to the point where they may either exercise their right to a jury trial or enter a guilty plea, chances are they will opt for the latter. Seventy to 95 percent of all adult defendants in criminal cases will plead guilty; many will have negotiated those pleas (Whitebread et al. 1980: 407; Halberstam 1982: 2; Kaplan and Skolnick 1982: 444; Farr 1984: 291; LaFree 1985: 289). The process of adult plea bargaining has taken on several forms, but commonly it involves an agreement between the prosecutor and the defense attorney whereby the accused is "convinced" to plead guilty to a lesser or reduced charge than that which would have been pressed had the case gone to trial. These lesser or reduced charge bargains usually mean that the defendant will face a lower maximum sentence or will not have to face the possibility of having consecutive sentences imposed. There are other forms of plea agreements that do not involve negotiating over less serious or reduced charges, however. As Remington et al. note: "[a] defendant may plead guilty to a charge that accurately describes his [or her] conduct in return for the prosecutor's agreement to recommend leniency or for a specific recommendation of probation or of a lesser sentence than would probably be imposed if the defendant insisted on a trial" (Remington et al. 1982: 516). In this form of bargaining, the understanding is that the judge, either passively

or actively, becomes involved in the negotiation process.

As Newman points out, the "[p]ermutations and combinations of plea agreements are almost endless" (Newman 1981: 170), but whatever form the final agreement takes, the bargaining process itself occurs behind closed doors, within the context of what Rosett and Cressey call a "private system" of justice (Rosett and Cressey 1976: 3). Although Federal Rule 11(e)(2) requires that counsel disclose any agreement at the time it is entered in open court, the negotiating itself is still shrouded in secrecy. When adult defendants forego their right to a public jury trial and enter into this closed system of "private justice," they find themselves embroiled in the complexities of behind-the-scenes "discretionary justice":

The full courtroom trial is rigidly governed by rules of law stating what evidence may be received, how each of the officials shall act, and even specifying what the judge is permitted to say to the jury to help it determine the facts. In practice most official decisions are not strictly governed by a rule of law. Instead, the official is free to act as he sees fit. Less formal decisions are discretionary in the sense that the official who makes them can choose whether to act and often how to act in a given case. Such freedom of choice may arise from an explicit delegation of legal authority to the official—he is instructed to act as he thinks best, within broad limits. It also may exist because there is no rule concerning the action, or because the official asserts power to act despite a rule which should inhibit him.

The behind-the-scenes courthouse visitor will find that cases are not processed by rules he had learned to expect . . . Cases are not tried or even decided; they are settled or compromised. The system . . . is designed primarily to convince defendants to plead guilty (Rosett and Cressey 1976: 4-5).

The plea bargaining system of private, discretionary justice "convinces" adult defendants that if they wish to avoid the possibility of harsher treatment and stiffer penalties, then they should forfeit their right to a trial and accept the deal that has been negotiated. In what is supposed to be a system of law strictly bound by democratic principles of justice, many find this situation objectionable. In the last 15-20 years, an enormous effort has been mounted to discover factors that influence plea bargaining

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negotiations in order to achieve a clearer understanding of how they work and of their impact on our democratic system of justice. Much of this research has been done within the framework of an exchange theory which, at one level, explains the negotiations in terms of a "trading of benefits" between the prosecution and the defense, and, at another level, explains them in terms of a balancing and incorporating of the administrative needs of the system and principles of justice (Farr 1984). There are, however, those who reject the exchange approach to plea bargaining, preferring to frame the negotiations within the structure of discourse. They maintain that "plea bargaining outcomes, including decisions on charges, sentences, continuances, and trial, can be related to specific patterns [of discourse] by which they are achieved" (Maynard 1984: 76).

Whichever factors one chooses to regard as influential, and whatever theoretical framework one chooses to adopt, there is no escaping, or it would appear resolving, the issues raised by plea bargaining. When one examines the process at the philosophical level of democratic ideals of social and criminal justice, one finds those who argue that "plea bargaining disrupts the proportionality between criminal actions and punishments . . . [and] renders justice a market value" (Jordon 1985: 51). In a system where crime and punishment, where justice, are reduced to matters of "dealing and settling," an "aura of disrespect" for the law is bound to emanate (Newman 1981: 178). Beyond that, there will always be the potential for the "corruption of ideology" in a system which allows too much room for the exercise of discretion. As Newman points out, "[t]here is always a thin line between the proper exercise of discretion and discrimination or even corruption . . . extending such broad discretionary powers to the prosecutor and to trial courts not only usurps legislative prerogative, but offers the opportunity for concealing discriminatory or corrupt practices under the guise of administrative discretion" (Newman 1981: 178).

The "private" nature of plea bargaining negotiations also can help to promote the possible distortion and corruption of democratic ideals of justice, but on a less abstract level it is this same quality which lies at the heart of a more practical issue of providing equal opportunity to negotiate—the issue of equal protection and due process. In a system where established bargaining practices are common, but always informally arranged, never formally institutionalized, negotiating equity may be in danger (Newman 1981: 177). With the "customary practices," the routine normative structure of plea

bargaining remaining largely private—unrevealed—we find the potential for wide variations in practices among prosecutors and trial judges. As Remington et al. point out, this can "often cause bewilderment and a sense of injustice among defendants." More importantly, some actually "may be denied the opportunity to participate in the bargaining process and the benefits which may accrue because they or their counsel are unaware of the customary practices of plea negotiation" (Remington et al. 1982: 517); the point being they may be denied their equal protection and due process rights.

One of the most troublesome issues raised by plea bargaining negotiations is the question of voluntariness; "the possibility that an innocent defendant may plead guilty because of the fear that he will be sentenced more harshly if he is convicted after trial or that he will be subjected to damaging publicity because of a repugnant charge" (Remington et al. 1982: 517). The private nature of plea negotiations can make it difficult to distinguish between when a defendant has been gently persuaded into accepting a deal voluntarily and when he or she has been coercively convinced to agree to it. By law, all guilty pleas must be "voluntary and intelligent, and [they] must be supported by a factual basis developed on the record" (Whitebread 1980: 409), and there are some procedural safeguards theoretically designed to help prevent innocent defendants from pleading guilty involuntarily. For instance, most judges will not accept a guilty plea until they have assured themselves of a defendant's guilt by questioning the defendant personally, and/or by hearing evidence to determine for certain that a plea is voluntary and intelligent (Whitebread 1980: 409; Remington 1982: 518). Beyond that, Rule 11(c) of the Federal Rules of Criminal Procedure and Standard 14-1.4 of the A.B.A. Standards for guilty pleas both provide that a defendant must be informed of and understand the following before a plea of guilty is accepted:

- (1) the nature of the charge to which the plea is offered;
- (2) the maximum possible penalty for the offense to which the plea is offered and the mandatory minimum penalty provided by law, if any;
- (3) the fact that he has a right to plead not guilty, or to persist in that plea if it had already been made; and
- (4) the fact that by pleading guilty he waives the right to trial (Whitebread 1980: 409).

The theoretical nature of these official safeguards for the voluntariness of guilty pleas, however, is highlighted when one examines the procedures within the context of what Casper describes in the following excerpt as a "cop-out ceremony":

The peculiar and somewhat hypocritical nature of a system which is based upon the presumption of innocence, due process values, and the criminal trial, but which in practice is a game

of plea-bargaining, is reinforced by what is known as the cop-out ceremony. After a defendant has agreed to plead guilty, he appears before a judge to enter his plea. He is asked a series of questions about whether he is pleading guilty because he is in fact guilty, about coercion or inducements to plead, about his satisfaction with the representation afforded him by his attorney. . . . Ostensibly, the questions are designed to make sure that defendants are not pleading guilty (as a result of coercion, extravagant promises, and so forth) to things they did not do.

. . . [T]he questioning of the defendant entering a guilty plea serves other latent functions. Some have called it a "successful degradation ceremony" in which a defendant is forced to shed publicly his identity as innocent citizen and accept the identity of "criminal."

. . . Thus, the defendant must appear before the judge and go through a ritual. The judge asks him questions, and he responds with lies; the judge knows they are lies and accepts his answer as true. Once more the defendant is placed in a position in which he must play out a game. Some of them have a good idea what the game is about. . . . Others don't understand its purpose at all: when asked why they thought they had to answer the questions they responded with confusion; it was just something you had to do, and probably 'they' (the judges, the prosecutor, the state) had a reason for it, but the reason wasn't clear (Casper 1972: 81-82 & 85).

When one reflects upon the issues that are raised by plea bargaining, one begins to understand it more clearly as a process of negotiation that can transform the ideal of democratic justice into a market principle and breed contempt for the law and cynicism for a private system of discretionary justice that not only fails to guarantee equal protection and due process rights but also promotes ritualistic ceremonies to create the illusion of voluntariness. There are, however, those who defend these negotiations of justice by stressing how they can be used to serve the needs of all of the participants in the process (Heumann 1984: 153) or by arguing that they are the only way to "bring the individualization of justice into our [adult] court system" (Newman 1981: 178). Even the United States Supreme Court has defended plea bargaining by consistently rejecting challenges to its constitutionality in every case that has come before it (Halberstam 1982: 3). In the final analysis there is one unavoidable fact: plea bargaining in the adult criminal justice system is wrought with controversy.

There are those who are committed to the idea that plea bargaining undermines the very principles of justice upon which our democratic system of law is based. They argue that if it is not discontinued, then, at the very least, it ought to be practiced "reluctantly and with grave misgivings" (Jordan 1985: 51). These are serious warnings, not to be taken lightly, and yet the impact of these warnings reaches beyond the realm of the adult criminal justice system. At the heart of the juvenile justice system lie negotiations which, when examined closely, can be seen as the qualitative equivalent of adult plea bargaining negotiations.

### *Benevolent Protection or Discretionary Justice?*

At first one might be reluctant to accept the idea that any aspect of the juvenile justice system could be regarded as qualitatively equivalent to a process in the adult criminal justice system. After all, the two systems are, by design, very different. One tends not even to associate the term "plea bargaining" with any phase of the juvenile justice system; it is a process more readily associated with the adult system. There are those, including the juvenile litigants in *McKeiver v. Pennsylvania* (403 U.S. 528 (1971)), who argue "that counsel and the prosecution [in juvenile court] engage in plea bargaining," (McKeiver) and that "if a [juvenile] court does not have a prosecutor, plea bargaining can take place between defense counsel and the probation officer" (Simonsen and Gordon 1979: 178). However, those who acknowledge the possibility of "plea bargaining" in the juvenile system generally qualify themselves by noting that because of the unique character of the juvenile system either there is "little necessity for plea bargaining" (Simonsen and Gordon 1979: 178), or it "has less value for juveniles than adults" (Guggenheim and Sussman 1985: 41). The implication seems to be that "plea bargaining" *per se* does not play a significant part in the juvenile justice system because of its unique design, the design which distinguishes it from the adult criminal justice system. However, when one examines the juvenile justice system closely, one discovers that it is the very nature of this unique design that necessitates a reliance upon the same kinds of negotiations, the same kind of discretionary justice, that lie at the heart of adult plea bargaining.

Since its inception in the latter part of the 19th century, the juvenile justice system in the United States has been shaped by the principles underlying the doctrine of "parens patriae," basic principles which have served to distinguish it from the adult system. Under this doctrine, a delinquent juvenile is treated as a "ward of the state" (Simonsen and Gordon 1979: 30), and the juvenile court is seen as his or her "benevolent protector" (Bortner 1982: 1). The original idea was to create an individualized system of justice with a unique organizational structure that would ensure the humanitarian treatment of juveniles. In order to achieve this ideal, however, there would have to be a shift in emphasis away from the punishment and toward the treatment of children. The essence of this shift was articulated well by the Supreme Court of Pennsylvania in 1905. In *Commonwealth v. Fisher*, the Pennsylvania Court argued that "the state was 'legitimate guardian and protector of children,' [and] that the goal of juvenile processing was not the 'punishment of offenders but . . . the

salvation of children” (Binder 1984: 358). The attitudinal transition from “punishment” to “salvation” in the processing of juveniles meant that, unlike in unnegotiated adult criminal court proceedings, the determination of guilt or innocence would become secondary (Blumberg 1979; Simonsen and Gordon 1979; Bortner 1982; Marshall and Marshall 1983). The “paramount questions” raised by the juvenile system would “concern the character and background of the accused, his needs and problems—questions which in traditional due process were not supposed to be raised, at least until guilt had been determined” (Blumberg 1979: 292). By focusing on a child’s “needs” rather than on his or her “deeds,” the system implicitly would relieve children of all criminal responsibility (Bortner 1982: 4).

Under the auspices of the *parens patriae* doctrine, reformers essentially “de-criminalized” juvenile justice, transforming it into a nonadversarial system quite distinct in character from the adversarial adult criminal justice system. There would be no “sides” in the juvenile justice system; everyone involved in the process would be working toward an end which would, at least in theory, serve the best interest of the child. To this end, all proceedings would be closed to the public, and the extensive involvement of the state in the system would be characterized not by rigid formality, but rather by flexible informality. There would be a “paternalistic” attitude toward the rights of children. As the 1905 Pennsylvania Supreme Court argued, no constitutional rights could be violated by a process “designed to give protection, care, and training to children, as a needed substitute for parental authority and performance of parental duty.” (Binder 1984: 358) Ultimately, what all of this meant was the establishment of a private system of individualized justice for children based on the unbounded exercise of discretion by agents of the state with little or no regard for the constitutional rights of the children.

Beginning in the mid-1960’s, the United States Supreme Court handed down a series of decisions which “attempted to curb alleged abuse of discretion” in the juvenile justice system by establishing certain due process rights for children (Marshall and Marshall 1983: 197). The 1967 *Gault* decision (387 U.S. 1) had a “profound impact” on the juvenile justice system by mandating that certain traditionally adversarial procedures had to be followed when processing children who faced the loss of their liberty (i.e., right to counsel, privilege against self-incrimination, fair notice of allegations, and right to confront the cross-examine witnesses.) At the time, many believed that *Gault* represented a “new direction” in

attitudes toward the rights of juveniles and some held out the hope “that juvenile delinquency procedure was evolving into a new model of justice [with] juveniles . . . [as] legal actors who possessed increased power resources relative to those of the state” (Block 1985: 536). However, these hopes were short-lived. In 1971, the United States Supreme Court vehemently defended the traditional ideals underlying the doctrine of *parens patriae*. In *McKeiver v. Pennsylvania* (403 U.S. 528), the majority opinion of the Court held that there is no constitutional right to a trial by jury in juvenile court and went on to state the following:

The juvenile [court] concept held high promise. We are reluctant to say that, despite disappointments of grave dimensions, it still does not hold promise, and we are particularly reluctant to say . . . that the system cannot accomplish its rehabilitative goals. . . .

The arguments [in this case] necessarily equate the juvenile proceeding . . . with the [adult] criminal trial. Whether they should be so equated is our issue. Concern about the inapplicability of exclusionary and other rules of evidence, about the juvenile court judge’s possible awareness of the juvenile’s prior record and of the contents of the social file; about repeated appearances of the same familiar witnesses in persons of juvenile and probation officers and social workers—all to the effect that this will create the likelihood of prejudgment—chooses to ignore it seems to us, every aspect of fairness of concern, of sympathy, and of paternal attention that the juvenile court system contemplates.

If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it. (McKeiver)

Today, the juvenile justice system remains a system of individualized, discretionary justice controlled by agents of the state who, in theory if not always in practice, have only the best interest of the child in mind. It is a system which at its heart relies upon the same kinds of informal negotiations of justice which have generated so much criticism of adult plea bargaining.

### *Intake: The Negotiations of Juvenile Justice*

At no point in the juvenile system is the parallel between adult plea bargaining and the negotiation of juvenile justice more clear than it is at intake. In and of itself, this is a disturbing fact since “the decisions made at intake may be the most significant ones in the whole process for an allegedly delinquent youth” (Wadlington et al. 1983: 338). During intake, negotiations take place which will determine whether or not a juvenile will have a delinquency petition filed against him or her and, if the decision to file is made, for what offense the petition will be filed. Given the fact that some state legislatures are not

adopting sentencing guidelines which mandate that any record of delinquency adjudication be taken into account when sentencing an adult, the decision to file a delinquency petition at intake can carry with it serious implications that may follow a juvenile into his or her adult life. However, just as few adult cases ever make it to trial, few juvenile cases ever end up being formally adjudicated. In some jurisdictions, as high as 80 percent of juvenile cases never make it to a formal hearing (Miller et al. 1985: 243). It is the process which occurs at this critical intake stage of the juvenile justice system, a process of negotiation which ultimately determines the fate of the juveniles, that makes it so strikingly similar to adult plea bargaining.

In its most basic form, one might argue that juvenile intake appears to be quite distinct from adult plea bargaining. Most adult plea bargains involve private negotiations between the prosecutor and defense attorney. Occasionally one may find judges either passively or actively involved in the process. Traditionally defendants themselves rarely take an active part in the actual negotiations. On the other hand, intake negotiations, while not open to the public, can involve a much wider range of players. In most jurisdictions, the "hearings" (or, as they are often referred to in an effort to communicate the informality of the proceeding, interviews or conferences) are presided over by a probation officer who either has been permanently assigned the task of intake or assumes the responsibility on a rotating basis. In what are perceived by the intake probation officer to be less serious cases, the negotiations will usually only involve the child and his or her parent(s) or legal guardian(s). When the case is perceived to be more serious, for instance there are charges involving a violent offense, the "hearing" will tend to be more formal, in an effort to incorporate as much factual information into the negotiations as possible. In these more formal "hearings," along with the child and his or her parent(s) or legal guardian(s), police, victims or complaintants, and witnesses may all be asked to appear and give their sides of the story (Arnold and Brungardt 1983: 300). Even in these more formal "hearings," defense attorney participation is rare. As Rubin points out, "waivers of rights tend to be finessed and the norm is for the parents to encourage the child to discuss his or her participation in the alleged offense with the intake officer" (Rubin 1980: 304).

Unlike adult plea bargaining which is routinely based on informally structured private negotiations, the structure of the juvenile intake process tends to be defined quite specifically by statutes, official stan-

dards, and/or procedural manuals. When one examines the options open to those who negotiate adult plea bargains and those open to juvenile intake officers, once again, rather than "striking similarities" one is struck by the apparent differences. Adult plea bargaining agreements can involve "permutations and combinations" which seem "endless," and yet the options available at intake seem quite limited. There are only two categories of options or dispositional alternatives available to juvenile intake officers: informal or nonjudicial, and formal or judicial (Silberman 1978: 449-451; Arnold and Brungardt 1983: 300-302; Miller et al. 1985: 239-242). The informal or nonjudicial options include outright or unconditional dismissal of the case, when "the charges are not seen as being serious enough to warrant further court action" (Arnold and Brungardt 1983: 300), and what is referred to as CWR, or counseled and warned and then released (Silberman 1978: 449), which also may be referred to as "conditional dismissal of a complaint" (Miller et al. 1985: 240). Another nonjudicial disposition is informal (or nonjudicial) probation which involves "the supervision by juvenile intake or probation personnel of a juvenile who is the subject of a complaint, for a period of time during which the juvenile may be required to comply with certain restrictive conditions with respect to his or her conduct and activities" (Miller et al. 1985: 239). Similar to this is what is called the "provision of intake services" which involves "the direct provision of services by juvenile intake and probation personnel on a continuing basis" (Miller et al. 1985: 240). The final nonjudicial option is referral or "diversion" to "an agency or program in the community or to a court sponsored program" (Arnold and Brungardt 1983: 300). Conditional dismissals also can include these kinds of agency referrals. Formal or judicial dispositional options at intake include the filing of a petition for an adjudicatory hearing of the case and a consent decree which "is a court order authorizing supervision of a juvenile for a specified period of time during which the juvenile may be required to fulfill certain conditions or some other disposition of the complaint" (Miller et al. 1985: 241). The decree usually is accomplished after the filing of a petition but before the entry of an adjudication order. In most jurisdictions, if the conditions of the consent decree are not met by the juvenile, the court automatically proceeds to the adjudicatory hearing on the original petition as if the decree had never been entered (Commonwealth of Pennsylvania J.C.J.C. 1984: 43 and 45). One other formal, judicial alternative is the transferring, waiving, or certifying of a juvenile case to adult criminal court. Usually done after a petition

has been filed but before an adjudication hearing has been conducted, this alternative necessitates a special hearing and involves only youths suspected of having committed serious offenses who are over the minimum transfer age set by state law (Arnold and Brungardt 1983: 301; Commonwealth of PA J.C.J.C. 1984: 40).

One final area which seems to highlight the differences rather than the similarities between adult plea bargaining and juvenile intake is the perceived function of the two processes. As indicated previously, the function of adult plea bargaining is a subject open to a great deal of debate. In an effort to explain its function, many researchers have tried to determine which factors exert the most influence over the negotiations, and many theorists have tried to provide an appropriate conceptual framework within which the negotiations can be understood fully. There is little consensus among researchers or theorists who search for an answer to the question, "what is the function of plea bargaining?" On the other hand, pinpointing the function of juvenile intake seems to pose little difficulty. As the "Standards Relating to the Juvenile Probation Function" make clear, the central function of intake is to screen cases, legally and socially, for possible nonjudicial handling (Wadlington et al. 1983: 339). Intake negotiations do not function to assess or determine the guilt or innocence of a juvenile, but rather they serve to help provide understanding of the juvenile's situation and to select the most appropriate nonjudicial remedy whenever possible (Silberman 1978: 448). As the "Standards" point out, this strategy "allows the exercise of some control over the provision of services to a delinquent juvenile without the detrimental consequences of judicial processing, which labels the juvenile as a delinquent and by so doing stigmatizes the juvenile" (Wadlington et al. 1983: 339).

Thus far what is striking about the comparison between adult plea bargaining and juvenile intake is not how similar the two processes are, but rather how different they appear to be. One must look more closely at what actually occurs during juvenile intake if one is going to begin to appreciate fully the similarities between it and adult plea bargaining. When one compares the individuals involved in each process, one is left with the impression that there are very few active players in plea bargaining negotiations; they are private negotiations of justice between two adversarial parties. On the other hand, while they are not open to the public, intake negotiations seem to have the potential to involve a much wider range of people, and therefore they at least appear to be more open than the adult negotiations.

When one talks to intake probation officers, however, one quickly learns that the norm is to have only the child and one parent (or legal guardian) show up for the "hearing." Victims or complainants and witnesses, while they may be asked to attend, may not show up and the presence of the police tends to be determined by each separate police department's administrative attitude toward the importance of their attendance at such informal juvenile "hearings." In reality then, juvenile intake, like adult plea bargaining, routinely involves very few active players. Beyond that, while the theory underlying the juvenile justice system defines the relationships among these players as nonadversarial, it is not difficult to see how a child and his or her parent(s) or legal guardian(s) might see intake negotiations differently, as, for instance, a probation officer, without regard for the determination of the child's guilt or innocence, imposes an informal alternative to filing a petition of delinquency which for all intents and purposes places the child under conditions of formal probation for 3 to 6 months.

When one compares the structures of the two processes, the implication seems to be that there is a degree of formality and consistent consideration and/or protection of rights for juveniles at intake that one does not find in the noninstitutionalized, informal structure of adult plea bargaining. However, underlying the pretense of official standards and guidelines what one finds at intake is one very basic fact: "Almost no procedural due process protections are afforded juveniles at intake" (Wadlington 1983: 340). Intake is regarded as an informal process, and as such, the courts, including the United States Supreme Court, have not recognized the need to have due process rights consistently enforced or safeguarded by Federal law (Binder and Binder 1982: 17-20; Wadlington et al. 1983: 339-340). For instance, while it is mandatory in many states, there is no constitutional right to an intake interview prior to a formal adjudication hearing when a complaint is lodged against a juvenile (Guggenheim and Sussman 1985: 37). The right to remain silent (or not participate at all) has been extended to intake "hearing" (Guggenheim and Sussman 1985: 37), but the cost of exercising that right inevitably will result in the filing of a petition of delinquency. Statements made during intake usually are not used against a juvenile in adjudication proceedings, but "statements made during intake interviews are often used against a child at dispositional hearings" (Guggenheim and Sussman 1985: 37). And finally, because intake is considered to be more of an informal, personalized conference, and not a formal hearing to

determine guilt or innocence, "a child's request for counsel is almost always denied" (Guggenheim and Sussman 1985: 38), if not discouraged. Juveniles and their parent(s) or guardian(s) are told that they can have an attorney present, but then it is not unusual to find that they are told that the presence of a lawyer may jeopardize the chance for an informal (i.e., more lenient) resolution of the case. According to official standards, juveniles have certain rights at intake, but clearly there is a heavy price to pay if they choose to exercise those rights. So on the one hand we have an officially informal process for adults which, in theory at least, is structurally bound by constitutional provisions but not by official guidelines, and on the other hand we have an officially informal process for juveniles which, in theory at least, is structurally bound by official guidelines but not consistently by constitutional provisions. While their structures may appear to be different at one level, at another they are the same: both adult plea bargaining negotiations and juvenile intake negotiations are structured in ways which result in questionable equal protection and due process practices.

When one compares the alternatives available to the negotiators at juvenile intake and at adult plea bargaining, once again, the differences, not the similarities, are what stand out. Plea bargaining can involve an almost unlimited possibility of alternatives, while juvenile intake appears to be restricted to a few nonjudicial and judicial options. However, there is one factor which essentially negates this difference, and that is the factor of discretion. Whenever there are choices to be made, whenever there are decisions to be negotiated in an informal setting that is not bound by rigid guidelines, discretion will be exercised. One might think that because adult plea bargaining offers more alternatives than juvenile intake, the degree of discretion exercised must be greater. However, this is not necessarily the case. Few states or counties have adopted written guidelines for determining appropriate intake decisions (Guggenheim and Sussman 1985: 37), and as the "Standards Relating to the Juvenile Probation Function" point out, "intake officers generally have virtually unlimited discretion in making intake decisions" (Wadlington et al. 1983: 339). In any system where the boundaries of discretionary power are unclear, as they are in both adult plea bargaining negotiations and juvenile intake negotiations, the possibility of arbitrary, discriminatory, unequal treatment increases; problems which we have seen are only compounded by the mutual informality of their respective structures.

For years, researchers have been searching for

factors which influence adult plea bargaining negotiations in an effort to determine if discriminatory behavior really exists. However, only recently has a similar interest in juvenile intake negotiations emerged, and as C.R. Fenwick notes in his 1982 article, "Juvenile Court Intake Decision Making: The Importance of Family Affiliation," "much work remains to be done" (Fenwick 1982: 444). Beyond helping to pinpoint sources of possible discriminatory practices that have been routinized into the informal structure of both adult plea bargaining negotiations and juvenile intake negotiations, this kind of research also may be useful in deciphering the latent functions of these processes and developing theories to explain those functions. Such has been the case with research on plea bargaining, but, as yet, not with research on intake. This may help to explain why the functions of plea bargaining negotiations remain subject to debate, while those of juvenile intake negotiations are not. Beyond that, while descriptions of the function of juvenile intake appear to be clear-cut (i.e., screening cases legally and socially for possible nonjudicial handling), one of the rationales used to justify that manifest function hints at a latent function which directly links it to an exchange theory explanation of the functioning of plea bargaining. One rationale maintains that "non-judicial handling" is a better "way to provide social services and impose social controls without invoking the formal court process"; it is "more effective than judicial processing in 'rehabilitating' the juvenile" (Silberman 1978: 448; Wadlington et al. 1983: 339). This is clearly consistent with the conceptual framework provided by the doctrine of *parens patriae*. However, it is another rationale for the manifest screening function of juvenile intake which links it to plea bargaining: the handling of cases informally at intake, just as the bargaining of cases before trial, helps to keep court dockets at a manageable level (Silberman 1978: 448; Wadlington et al. 1983: 339).

The fact is that both adult plea bargaining and juvenile intake function to negotiate discretionary justice. They both create formal settings, where individuals who are, for all intents and purposes, presumed to be guilty are "convinced" to agree "voluntarily" to the officials' resolution of their cases or face the potentially harsher consequences of formal processing. Individual rights are at best ignored, or at worst denied. One might argue that the only true beneficiaries of these negotiations are the judges who are relieved of the burden of having to preside over the majority of cases that enter the adult and juvenile justice systems.

### *Parallel Dilemma*

More telling than the structural parallels between adult plea bargaining and juvenile intake are the similarities between the issues they raise. In both processes, questions over the degree to which equal protection and due process rights are violated are an ever-present concern. Any official process, whether it occurs within the context of the adult system or the juvenile system, which relies upon the informal negotiations of discretionary justice is bound to raise this issue. For sometime now, a great deal of attention has been focused on the problem of how far to extend the constitutional rights of adults accused of a crime and of juveniles in general. However, there are other issues raised by the two negotiating processes that are just as critical as the equal protection—due process issue, but which, for some reason, have failed to attract as much attention, especially within the realm of the juvenile justice system.

The question of the voluntariness of the two processes has inspired much debate among observers of adult plea bargaining, but little among observers of juvenile intake, and yet one easily can see how both are structurally compatible with the coercion of admissions of guilt. In both cases, there is a situation where an individual accused of an offense if being told, directly or indirectly, by an official of the state that he or she can either admit guilt and be treated with whatever degree of leniency that has been negotiated, or, if he or she does not cooperate (i.e., insists upon his or her innocence), face the wrath of a formal system of justice that will look upon him or her as uncooperative or untreatable. It seems absurd to argue that admission of guilt under these circumstances could be anything other than coerced. In adult plea bargaining, we have seen there are theoretical safeguards to ensure the voluntariness of guilty pleas, and yet we also have seen how these safeguards in practice have been reduced to the hypocrisy of the "cop-out ceremony." In juvenile intake, there are no such safeguards, and so one might ask hopefully, there must be no such hypocrisy? Unfortunately, the hypocrisy we find at juvenile intake reaches far beyond the boundaries of a single informal process. Hypocrisy is an attitude—a condition—which has become an inherent part of the entire system of juvenile justice. Juvenile justice has become a system which patronizes or "finesses" the waiving of the rights of juveniles, while it tells the juveniles it only wants to help them—it is only doing what is best for them. It is a system which pretends to be sympathetic to the juveniles' plight, and yet it is a system which does not seem to want to hear denials of guilt. It is a system which insists that it is there to re-

habilitate and not punish, and yet it is a system which forces juveniles into foster homes and institutions where they are abused, raped, and even murdered. Admissions of guilt at intake and the hypocrisy underlying the manner in which these admissions are accepted as voluntary are manifestations of an issue which impacts on the entire system of juvenile justice, and yet one which, when compared to adult plea bargaining, attracts relatively little attention.

Finally, the issue of corrupting the ideals of democracy impacts on both adult plea bargaining and juvenile intake. We have seen it pointed out in the study of adult plea bargaining that in a system where justice is reduced to matters of "dealing and settling" among officials of the state who are permitted to exercise their discretion indiscriminately, an "aura of disrespect" for the law is bound to emanate and the democratic ideals of fair and equal justice are bound to be corrupted. We have seen that a similar situation exists when we examine juvenile intake. During intake, discretionary justice is negotiated. Justice for all juveniles is reduced to matters of dealing and settling by officials of the state who are permitted to exercise their discretion indiscriminately. What is most disturbing about this is that it teaches our children a tainted, corrupted vision of what law and justice are in a democracy. It is a cynical lesson not easily learned, but one never forgotten, and yet it is a problem that has drawn little attention.

Much more research needs to be done in the area of juvenile intake. It is an empirically and theoretically fascinating process that reveals much about the realities of juvenile justice in this country, and these realities are what need to be understood if reform of the system is ever going to succeed.

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# News of the Future

## RESEARCH AND DEVELOPMENT IN CORRECTIONS

BY JOHN P. CONRAD

*Davis, California*

### *Communiqués from the Front in the Great Drug War*

S AID A California judge to a researcher,<sup>1</sup> "Turn off that tape recorder, and I'll tell you how to solve this state's prison overcrowding problem." The researcher complied. "It's this simple. All that we have to do is legalize narcotics."

So simple, so plausible. As I write (April 1988), the population of the California correctional system is about 69,500 men and women and rising. The present capacity of the system is 39,995 in 17 prisons. Conservative projections of the future population show that a population of 96,000 can be expected by 1995. The state is frantically building new prisons, but not fast enough to keep up with this rate of growth. Already \$2.2 billion have been spent on new cell-blocks, new quads, and new penal real estate on which to build still more new cell-blocks. Four new prisons, planned, paid for, and under construction, will add 6,396 beds to the present capacity. Another bond issue will be on next November's ballot, providing for six more prisons adding 12,750 beds. That makes a grand total of 19,146. When and if all this construction is completed, the state will have a prison capacity of 52,745, or 16,755 beds short of the April 1988 number of prisoners. More bond issues can be expected.

Maintenance of this enormous system cost California taxpayers \$1.2 billion in the 1987 fiscal year and will be \$1.6 billion in 1988. From a fairly modest item in the state budget in the old days, corrections has become one of the largest allocations of public funds, with the largest number of state employees. Already it is eating into budgets for the universities, education, public health, and public welfare. The erosion of these important state services will certainly continue. California is a rich state and can afford a huge budget. So far, I haven't heard any rumbles of a taxpayers' uprising. The feedback to the Department of Corrections is that there are still a lot of criminals out there on the streets, and they should all be locked up, no matter what the cost.

How did this progressive state get into such a predicament? The judge may have been partly right. Narcotics is a many-sided problem in California, and one facet of the problem is the amount of crime it generates. Another facet is the widespread fear of the crimes committed by addicts, individually and in the increasingly violent gangs. Still another is the determination to bring drug dealers, large and small—especially the large ones—under custodial control. The judge's hypothesis is widely shared—addicts commit many, if not most, of the crimes that cause the greatest fear in our cities—robbery, burglary, theft, and some assaults.

There has been a deluge of new commitments by the courts to California prisons. In 1986, the prisons received 21,559 new felons; the total for 1987 was 26,649. In 1976, there were 6,910 new felons; in 1977, that total was 7,558.<sup>2</sup> In addition to the swelling flood of new convicts, the Board of Prison Terms has contributed an increasing share of the Department's intake. Of the present population of 69,500 roughly 20,500 are parole violators. That number reflects a major change in parole policy. In 1975, about 5 percent of the parolees on the streets were returned by the Board of Prison Terms to prison as "technical violators." In 1985, technical violators were 31 percent of the total intake, and 34.5 percent in 1986, and 47 percent in 1987. There is no policy change in prospect that promises a slackening of this rate. To look at these figures from a different perspective, in 1975, 74 percent of the parolees had favorable outcomes after 1 year on parole; in 1985, only 47 percent lasted the year. All these data descend to a bottom line: a net increase in the population of California prisons of 140 men and women per week. Depending on how large a prison one can tolerate, a new one should be built and ready for occupancy every 6 to 8 months.

I haven't seen breakdowns of all these figures to indicate the numbers of men and women whose of-

<sup>1</sup>Let me make two things perfectly clear: I wasn't this researcher and I do not know the identity of the judge.

<sup>2</sup>These data are extracted from *The Impact of Incapacitation Policy on Crime Statistics*, a publication of the California Bureau of Criminal Statistics and Special Services (March 1988).

fenses and parole violations were drug-related. The percentages of prison commitments for such offenses has gone from 18 percent in 1973 to 22 percent in 1986—not a startling figure. The actual increase in annual volume of narcotics offenders went from 973 in 1973 to 4,921 in 1986, enough to fill at least two prisons. How many of the robberies, burglaries, and other offenses were committed by drug users and abusers are figures that are not available as I write. The credible opinion is that a substantial share of the new commitments and parole violations for street offenses were drug-related.

The change in parole policy is reflected in parole practice. The traditional service functions of the parole officer have become secondary, if, in fact they are carried out at all. Parole officers now are responsible for surveillance. In these times, surveillance means urinalysis for almost everybody. In the metropolitan parole districts as many as 90 percent of the men and women on parole must submit to regular, scheduled, and surprise urinalyses. Between arranging for these tests, reporting the results, and writing the other reports required of them, parole officers have precious little time for casework services or counseling.

The object of the dirty urine game is to make sure that the parolee has his drug problem under control, if not solved. The water soluble narcotics—heroin and cocaine—do not show up in a urinalysis after 3 or 4 days have elapsed since the last use.<sup>3</sup> Thus a parolee who is scheduled for a test next Tuesday will be unlikely to produce a dirty specimen if he abstains from Friday until the time of the test. Everybody recognizes that after his urine is sealed in its vial a user may go right out and shoot some heroin or snort some cocaine. Something has been achieved if he has enough control to refrain long enough to be clean on his test. It follows that the fellow who is dirty on a scheduled test is addicted—or almost certain to become so—and, if left on the streets, will be forced to commit crimes to maintain his supply.

With gangs in the major cities flourishing on the manufacture and sale of crack, with addiction to the hard drugs not perceptibly abating—if it's abating at all—and with public anxiety about narcotics reaching higher and higher peaks, the judge's hypothesis gains some credibility. I doubt that California, or any other state, is ready to put his surmise to a test. There are still other things that can be done to contain the population explosion.

To digress briefly, the great war on drugs is not

<sup>3</sup>Because cannabis is not water soluble, it lingers much longer in the body and therefore tests may pick up marijuana use as late as a month after the last joint.

the only influence increasing prison populations. More felons are being sentenced to prison for longer terms. In 1976, about 18 percent of California's felony convictions resulted in a prison sentence; by 1986, that percentage had increased to 35 percent, while at the same time the number of felony convictions had also increased—from 84,323 to 148,290.<sup>4</sup>

Penological statisticians have long reported the results of a simple arithmetical exercise: a reduction of  $d$  days served in prison will reduce prison populations by a factor of  $d/365 \times p$ , where  $p$  is the population in question. There have been numerous tests of this formula, beginning, I believe, with the old Special Intensive Parole Unit (SIPU) in California back in the mid-fifties. In that experiment—roughly controlled, it is true—the release dates of a substantial number of men paroled were advanced 90 to 180 days without noticeably increased criminal activity on their parts.<sup>5</sup> Years later, in 1967, Governor Ronald Reagan induced the Adult Authority to reduce the prison population. By shortening the indeterminate sentences, then still in force, the prison count went down from 28,000 to less than 18,000 in 1970.<sup>6</sup> (How unreal these numbers seem, only 17 years later!) Many other states have taken the same steps, never with damage to public safety.

I have presented these California data as those that are most readily available to me. The numbers are larger than in any other state, but the trends are not uniquely Californian. We are looking at a national crisis with social, political, and economic repercussions that have yet to be faced squarely. In criminal justice it is not mere necessity that is the mother of innovation—parturition requires a crisis.

The drug war alone is not causing the population explosion. But the argument is gaining ground that something must be done about the way we fight this war. At this point, victory is nowhere in sight, and the costs of the battles are enormous, both on the narrow terrain of corrections and in the wider national and international theaters of operations. The consequences for national morale, the preservation of personal liberties, and the prevention of official corruption are beyond calculation.

Something must be done, but aside from those who insist that the only thing that can be done is to con-

<sup>4</sup>John Irwin and James Austin, *It's About Time* (San Francisco: The National Council on Crime and Delinquency, 1987), pp. 8-9. See also *The Impact of Incapacitation*, note 2 above, p. 46.

<sup>5</sup>The justification for this novel act of grace was not to push back the frontiers of social science. The object was to pay for the SIPU experiment, which involved the administration of expensive 15-man caseloads. The finding that parole dates could be safely advanced by a few months was the only positive result of the SIPU research. A unique example of self-financing research, paid for as it went.

<sup>6</sup>Irwin and Austin, *op. cit.*, p. 19.

tinue the struggle with the same tactics, there is great uncertainty about what new strategy would be more effective and cause less damage.

### *Licensing or Legalization?*

*Drug legalization.* The middle brow press continues to report drugs as a plague, but the chorus of élites proposing legalization is growing. *The Economist*, *Washington Monthly*, and libertarian *Reason* all think that licensing is a useful idea. The post-Len Bias Drug Bubble of 1986 deflated in this same pattern. Indeed most social change stories move through the press along this route.<sup>7</sup>

*Zeitgeist*  
*The New Republic*  
2 May 1988

If social change is moving in this direction, the route is long and uncharted. But to the seemingly uncompromising *Zeitgeist* that calls for the unconditional surrender of the drug traffic, no matter what the cost of the drug war, there are some important challenges. Some are surely war-weariness—the war costs too much, victory seems an impossible dream. But some are principled, and it is the principles I want to consider in this space.

Let's begin with the *Economist*, a prestigious British news magazine with a wide following in this country. In a recent article, "Getting Gangsters Out of Drugs," this journal put its radical solutions to an international problem in this way:

A sensible policy might be to treat . . . alcohol, tobacco (and marijuana the same, with licensing, taxes and quality control. Since all are bad for you, it may be right to plaster them with larger health warnings than those that are at last helping to cut smoking. Wary governments might stop the pub culture spreading to the communal joint culture by restricting marijuana sales to boringly uncongenial premises like the glum state liquor stores of Sweden or New Hampshire; or give monopolies to state shops like the post-office, which has perfected the art of driving customers away. But a main weapon should be tax: high enough to deter consumption, and varied enough to move people from the worst drugs. Today's worst are possibly cocaine and certainly heroin . . . Cocaine most needs to be brought under the aegis of controlled and thus legal suppliers, either by treating it like alcohol, tobacco and marijuana, or like heroin, depending on how statistically awful it proves to be . . .

. . . [T]he best policy towards existing heroin users might be to bring them within the law, allowing them to register for the right to buy strictly limited doses. Taxes should be high enough to help deter consumption, but low enough to put illicit dealers out of business . . .<sup>8</sup>

These rather vague proposals drew immediate objections from the chairman and ranking minority member of the House Select Committee on Narcotics Abuse and control, Charles Rangel and Benjamin Gilman:

The world's problem with illicit drugs must be fought by increased long-term efforts at cutting supply and demand . . . As

you point out, substance abuse has been around for centuries. It may be impossible to eliminate drug trafficking totally. However, we must make every effort to reduce supply and demand and not surrender in the war against drugs by legalizing illicit narcotics.<sup>9</sup>

Neither legalization nor licensing will get through Congress as long as Mr. Rangel and Mr. Gilman are in charge of legislation on this subject. They have—and know that they have—widespread popular support for their position.

In a provocative article in *Foreign Policy*, Ethan A. Nadelmann, of the Wilson School of Public and International Affairs at Princeton University, presents the case for legalization with reference to the damage our present laws and their enforcement do to the stability of Latin American economies and political institutions.<sup>10</sup> Pointing out that the illegal export of cocaine from Bolivia is about equal to all legal exports, and that the same is probably true of the Peruvian economy, Nadelmann stresses that this country's drug problem has created enormous and virtually unmanageable problems for several friendly Latin American nations. The violent Shining Path terrorists in Peru have gained political support from their attacks on U.S.-sponsored anti-drug programs. Thousands of *campesinos* in coca growing countries depend on coca plantings for their livelihoods. Their anger at the loss that vigorous efforts by their governments to curtail coca production cause is all too understandable, and contributes to the instability of government in Latin America.

Nadelmann compares the familiar figures about the number of deaths attributable to alcohol and tobacco with the much smaller mortality that is caused by addictive drugs. The enormous costs of the drug war are assessed, so far as reliable data can be cited.

As computed by Nadelmann, the benefits of repeal would be enormous in this country. Not only would the costs of interdiction and enforcement be removed from the budget, but taxation of the sale of drugs would be a modest but perhaps significant gain to revenues. This is a cause that has attracted a surprising lot of élite interest. Support for repeal of the drug laws has been articulated by eminent conservative scholars, including the economists, Milton Friedman and Gary Becker, the public policy critic, Ernest van den Haag, and the ubiquitous pundit, William F. Buckley, Jr. As might be expected, their study of such figures as Nadelmann has compiled has led them to the conclusion that the free market will solve the narcotics problem just as it has various

<sup>7</sup> Charles Paul Freund, "The Zeitgeist Checklist" (*The New Republic*, 2 May 1988), p. 8.

<sup>8</sup> *The Economist*, 2 April 1988, pp. 11-12.

<sup>9</sup> *The Economist*, 23 April 1988, p. 4.

<sup>10</sup> "U.S. Drug Policy: A Bad Export" (*Foreign Policy*, Number 70, Spring 1988), pp. 83-108.

other national perplexities. None of these writers have given space in their essays on the impact of a free market in dope on life in the inner city.

Stout resistance to legalization comes from all bands on the political spectrum. A typical view was voiced by A.M. Rosenthal of the *New York Times*. After reviewing all the arguments for legalization, and agreeing that there is some truth in all of them, Rosenthal concludes:

... [T]he real ethical argument against legalization has nothing to do with law, finances, or taxes. It has to do with what we want for ourselves and our children.

It is insensitive almost to vulgarity to argue for the legalization of drugs that can rapidly damage or destroy self-respect, values, the very minds of human beings—those other human beings. I have received many letters arguing for legalization, but none from a person who ever loved a junkie and not one from the parent of a crack child.<sup>11</sup>

Who should have the last word? I don't know, but police officials should be heard as well as commentators far from the streets where everything is happening. I doubt that Chief George Hart of Oakland is alone in his frustration:

You won't find any people more frustrated by the drugs than the police. We grew up thinking that if there is a crime problem we can deal with it. Then all of a sudden we see something that doesn't react to that. What you have here is relatively few law enforcement agents trying to stop a multibillion dollar industry. And it is just not going to work.<sup>12</sup>

### A Middle Way?

It should be obvious to anyone with some exposure to political science that a radical shift from the prohibition of narcotics to their legalization is not to be accomplished overnight or in any bold swift stroke. Even if legalization is the rationally desirable objective to be sought, the majority's conviction that it is unacceptable makes it an impossible goal. The legalization of marijuana is opposed by the overwhelming majority of Americans, and the loosening of prohibitive controls on heroin and cocaine would provoke unanimous opposition among the segments of the public that go to the polls. The problem that troubles everyone whose work keeps them close to the action must be framed in measures that can be taken without conferring social approval on practices that are destructive of social order.

There may be a middle way. Arnold Trebach of the American University School of Justice has devoted many years to study of the problem and to our failures to solve it in spite of enormous efforts. His

eloquent plea to adopt the British strategy for the control of heroin appeared in 1982.<sup>13</sup> Courageous though it was, it called for changes of a magnitude that the American public could not accept. Now he has published a thoroughly researched review of the great drug war and the consequences of our tactics for fighting it.<sup>14</sup> From the outset, he rules out the extremes: "I am opposed both to the extremism of the drug warriors and to the extremism of those who advocate the repeal of all drug laws." [p. 5] The serious infringements of civil liberties, the outrageous practices of clinical charlatans, the corruption of police and prosecutors, and many other abuses are recounted in detail, often from Trebach's own observation and interviews. It is an impressive performance, whether or not one entirely agrees with his conclusions. Like so many writers on these subjects, his is a middle-class orientation, clearly removed from the terrible consequences for kids in the inner city, for cops patrolling the neighborhoods where crack houses proliferate, and for the swamped criminal justice system. For us in corrections, Trebach's proposals will solve few problems, but they are a beginning. He ends his book with 14 points, of which the most salient are:

- "Stop talking about winning drug wars . . . [T]here is no way to win because we cannot make drugs or their abusers go away . . . Our goal should be the fashioning of those methods of living peacefully with drugs that create the least possible harm for users and their non-using neighbors."
- "Start thinking about drugs and abusers in new ways . . . Think of them as potentially nice neighbors with a distressing problem instead of inherently evil criminals . . ."
- "Protect our sick from the ravages of the drug war . . . If they . . . are suffering from diseases such as cancer or glaucoma, then heroin and marijuana should be made available to them by prescription. If they are suffering from the disease of drug addiction and are dependent on heroin or cocaine, then those drugs should be made available to them by prescription . . ."
- "Making peace with drugs and drug users is not the same as surrendering. A peaceful drug scene does not require the abolition of all drug laws but the creation of more sensible, more effective ones."
- "... Place greater controls on the sale and

<sup>11</sup>"No Victory Through Surrender." *The New York Times*, 22 April 1988, p. A15.

<sup>12</sup>"Oakland Chief's Candid Comments: Gloomy View of 'Crack' War." *The San Francisco Chronicle*, 28 April 1988, p. A3.

<sup>13</sup>Arnold S. Trebach, *The Heroin Solution* (New Haven: The Yale University Press, 1982).

<sup>14</sup>Arnold S. Trebach, *The Great Drug War* (New York: Macmillan, 1987).

consumption of currently legal drugs, especially alcohol and tobacco. Place fewer controls on the currently illegal drugs . . . [M]ake marijuana use and cultivation legal for personal use by adults; medicalize heroin for addicts and pain patients by prescription but do not make them legal for casual recreational use."<sup>15</sup>

For adult middle-class users and some abusers, Dr. Trebach's peace plan would solve many anxieties. For their children and for the inhabitants of the inner cities the plan seems irrelevant. I doubt that the CEO's of that multibillion dollar industry of cocaine and heroin production will feel that their profits are in the least threatened. The kids who sell and buy crack have a "distressing problem," as we see it, but *they* are not distressed, and *they* don't see it as a problem. Neither do the proprietors of crack houses or their suppliers.

I have brought these recent accretions to the vast literature on this peculiarly 20th century perplexity to your attention not because I have a pat solution to offer, but rather because all of us in the criminal justice system—from the policeman on the beat to the parole officer collecting urine—must be thinking innovatively about a system that may be perpetuating itself but certainly isn't working to the general advantage. There has to be a better way. It won't be found by doubling or trebling the size of our police forces or by building new, state-of-the-art prisons every year.

In 1859, the English philosopher John Stuart Mill published his famous essay, *On Liberty*, an eloquent

statement that still resounds in the ears of democrats throughout the world. No paragraph is so memorable or so often quoted as "the very simple principle" that he wished to assert as "governing the dealings of society with the individual in the way of compulsion and control."

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinions of others, to do so would be wise or even right . . . The only part of conduct of anyone, for which he is amenable to society, is that which concerns others. In the part that merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."<sup>16</sup>

For libertarians and all defenders of civil liberties this statement has long been a basic text. I follow Mill, believing that men and women should be allowed to go to hell in their own way if that is the destination they choose—but there should be clearly marked exits along that fateful freeway.

For children and "young persons below the age which the law may fix as that of manhood or womanhood" (Mill's phrase), protection is needed, and the law must interfere to provide that protection if no other guardian can be found. How to provide that protection in the inner cities where so much else is not provided—there's the problem in its grim essence.

<sup>15</sup>*The Great Drug War*, pp. 383-385.

<sup>16</sup>*On Liberty*, Chapter I. Many editions are in print, and this paragraph can be readily found without further citation here.

## Looking at the Law

BY TOBY D. SLAWSKY  
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### Case Law Developments Under the Anti-Drug Abuse Act of 1986

ON OCTOBER 27, 1986, the Anti-Drug Abuse Act of 1986 was signed into law, greatly increasing penalties for drug offenses, imposing mandatory minimum sentences, and eliminating probation or parole for all but minor drug offenses. The legislation was drafted very quickly and, as a result, contains significant ambiguities that were expected to be resolved by case law. However, more than a year and a half after enactment, we are seeing only the first trickle of cases interpreting the Act. This underscores the time it takes to discover, investigate, and prosecute these cases and for them to be decided by the courts.

#### *Special Parole vs. Supervised Release*

The most confusing issues emerging from the Anti-Drug Abuse Act concern terms of supervised release. Post-imprisonment supervision (i.e., community supervision in addition to any parole term or mandatory release term) for major drug offenses has been unclear for some time. Effective October 12, 1984, Congress increased the penalties for the most serious drug offenses, designating these penalties under 21 U.S.C. § 841(b) (1) (A) and redesignating penalties for less serious offenses under section 841(b) (1) (B) and (C). Whether through inadvertence or design, Congress omitted any term of special parole for the most serious offenses. The District of Nevada in *United States v. Phungphiphadhana*, 640 F. Supp. 88 (1986), held that no special parole term could be imposed on a defendant convicted of a violation of 21 U.S.C. § 841(b) (1) (A).

On October 12, 1984, Congress also passed the Sentencing Reform Act of 1984, originally to be effective on November 1, 1986, but amended to be effective November 1, 1987. The Sentencing Reform Act eliminated parole and set up a comprehensive system of post-incarceration supervision entitled "supervised release" for all offenses (other than petty offenses) committed after October 31, 1987. See 18 U.S.C. § 3583 (as amended).

In October 1986, the Anti-Drug Abuse Act not only increased the prison terms and fines for drug offenses but also provided for mandatory minimum periods of supervised release for offenses under 21

U.S.C. §§ 841(b) (1) (A)-(C) and 960 (b) (1)-(3) (as redesignated). Special parole was retained for small offenses under §§ 841(b) (1) (D) and 960 (b) (4) and a few other sections. It was clear that the enhanced prison terms and fines became effective October 27, 1986. See § 1002 of the Anti-Drug Abuse Act. However, the procedures for imposing and revoking supervised release did not take effect until November 1, 1987. See 18 U.S.C. § 3583 (as amended). Further confusing the issue, § 1004 of the Anti-Drug Abuse Act provided that all special parole terms in title 21 would be replaced by supervised release terms when the Sentencing Reform Act went into effect. Thus, arguably there was a 12-month gap between the time supervised release was first created as a substitute for special parole terms (October 1986) and the time when supervised release could in fact be imposed (November 1987).

In an attempt to give meaning to each section of the Anti-Drug Abuse Act as passed, the General Counsel's Office, Administrative Office of the U.S. Courts, advised that periods of supervised release, rather than special parole, should be imposed for offenses under 21 U.S.C. §§ 841(b) (1) (A)-(C) and 960 (b) (1)-(3) committed after October 26, 1986. See *News and Views*, Volume XII, No. 20, October 5, 1987. We reasoned that, given the relatively long periods of incarceration required by these sections, by the time most of these defendants returned to the community, the supervised release provisions of the Sentencing Reform Act would be in effect, and further that by the time some of these defendants served their long mandatory minimum terms of imprisonment, the Parole Commission would no longer be in operation to supervise special parole terms.

Two courts of appeals disagree. In *United States v. Byrd*, 837 F.2d 179 (5th Cir. 1988), the court held that Byrd, who committed his offense after October 26, 1987, but before November 1, 1987, must serve a special parole term rather than a supervised release term. The court reasoned that § 1004 of the Anti-Drug Abuse Act controlled because it expressly tied the effective date of the replacement of special parole with supervised release to the effective date of the Sentencing Reform Act (i.e., November 1, 1987). According to the court, § 1002 of the Anti-Drug Abuse Act, which purported to add supervised release terms

along with the enhanced imprisonment and fine penalties, was not controlling because § 1002 did not contain its own effective date. The court noted:

... tying the effective date of the change to the effective date of the implementing statute [18 U.S.C. 3583] would seem the more logical arrangement . . . . In short, we are unconvinced that Congress intended to set section 841(b) apart from the comprehensive statutory framework developed to replace special parole terms with supervised release.

*United States v. Byrd*, *supra*, at 181, n. 8. The court vacated Byrd's sentence and remanded the case to the district court for resentencing.

In Byrd's case the court could have achieved the same result on far narrower ground. Byrd was convicted of violating 21 U.S.C. § 845a (distributing drugs within 1,000 feet of a school) which, unlike offenses under 21 U.S.C. §§ 841(b) (1) (A)-(C) and 960 (b) (1)-(3), explicitly retained a special parole term. The court could have held that a special parole term must be imposed because it was clearly required by § 845a and avoided the question of the effective date of the supervised release provisions.

The Eleventh Circuit in *United States v. Smith*, 840 F.2d 886 (1988), followed the Fifth Circuit's decision in *Byrd*. On October 31, 1986, Smith possessed with intent to distribute 5 grams of crack (cocaine base) in violation of 21 U.S.C. §§ 841(a) and 841 (b) (1) (B) (iii). The district court sentenced Smith to a term of imprisonment to be followed by 4 years "Supervised Release, Special Parole Term or Probation period which ever [sic] is determined to be the appropriate post confinement discription [sic]." *Id.* at 889. The Eleventh Circuit held that supervised release was tied to the effective date of the Sentencing Reform Act and that Smith's sentence should therefore include a 4-year special parole term. The court of appeals vacated the sentence and remanded to the district court for resentencing.

These cases leave open the question of whether there is any post-incarceration supervision for a defendant who committed an offense penalized under §§ 841(b) (1) (A) after October 12, 1984, but prior to November 1, 1987. As discussed above, special parole was omitted for these most serious drug offenses in 1984 and, thus, is unavailable for post-incarceration supervision; under the holding in *Byrd* and *Smith*, supervised release does not become effective for any drug offense until November 1, 1987, and similarly appears unavailable. In *United States v. Reyes*, 842 F.2d 755 (1988), the Fifth Circuit discussed this issue but declined to rule on it.

In those circuits which have held that special parole terms must be imposed for offenses prior to November 1, 1987, defendants who received supervised

release terms should be resentenced. Identifying these individuals may be difficult. Where no action is taken by the defendant to bring the issue to the court's attention, the court may wish to delay correcting these sentences until the defendant is released from confinement. Once the defendant returns to the community, resentencing can take place in the defendant's presence.

The presence of the defendant is required if the corrected sentence is more onerous. *See* Fed. R. Crim. P. 43 and *Caille v. United States*, 487 F.2d 614, 616-7 (5th Cir. 1973). The main impact of changing supervised release to special parole is changing jurisdiction for supervision from the court to the Parole Commission, a change that on its face is not more onerous. However, there are technical differences between 21 U.S.C. § 841(c) (revocation of special parole) and 18 U.S.C. § 3583 (e)(4) (revocation of supervised release) that may make it arguably more onerous to serve a period of special parole than supervised release. The special parole scheme provides that, when a special parole term is revoked, the original term of imprisonment is increased by the period of special parole, resulting in a "new term of imprisonment" from which the offender could be paroled; the supervised release provisions do not have such a procedure, and, thus, once supervised release is revoked, it is unclear whether the offender will be subject to any further community supervision. Since special parole may be more onerous than supervised release, it would seem better to have the defendant present at resentencing.

#### *Drug Amount: Offense Element or Sentence Enhancement*

Penalties under the Anti-Drug Abuse Act and prior drug laws are directly linked to the quantity of illegal drugs involved in the offense. Compare, for example, 21 U.S.C. § 841(b) (1) (A) (i) (penalty for one kilogram or more of heroin is 10 years to life and up to a \$4 million fine) with § 841(b) (1) (B) (i) (penalty for 100 grams or more of heroin is 5 years to 40 years and up to a \$2 million fine). If the amount of drugs is an element of the offense, it must be charged in the indictment and proven beyond a reasonable doubt. However, if the amount of drugs is merely a factor for enhancing the sentence, it need only be shown at the sentencing hearing under some lesser standard of proof, such as preponderance of the evidence. This issue is particularly important because prosecutors, in making plea agreements, may omit the amount of drugs from the indictment in an attempt to avoid the mandatory minimum sentences

that apply to offenses involving large amounts of drugs.<sup>1</sup>

The United States courts of appeals are split on the issue. The Third and Eighth Circuits, with one member of each panel dissenting, concluded that the amount of drugs is a sentence enhancement. *United States v. Gibbs*, 813 F.2d 596 (3d Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 108 S. Ct. 83 (1987); *United States v. Wood*, 834 F.2d 1382 (8th Cir. 1987). The Eleventh Circuit held that drug amount is an element of the offense. *United States v. Alvarez*, 735 F.2d 461 (11th Cir. 1984).

The majority opinion in *United States v. Wood*, supra, reasons that the language and structure of § 841 make clear that the quantity of drugs is merely a sentence enhancement. The court points out that § 841(a) sets forth all the elements of the offense, while § 841(b) sets forth the penalties. Finding that quantity of drugs was only a sentencing factor, the court found it unnecessary to rule on the defendant's claim that the information in the indictment was insufficient. Although the court declined to rule on the issue, the counts on which Wood was found guilty did list sufficient drug quantities to trigger the enhanced penalties. However, the jury instruction in Wood's case simply provided that a "measurable amount" of drugs would support the charge and therefore did not require the jury to find the amount of drugs beyond a reasonable doubt.

While the majority in *United States v. Gibbs* held that the quantity of drugs is a sentencing factor, *Gibbs*, like *United States v. Alvarez* which holds the other way, rests mainly on the sufficiency of the indictment. In *Gibbs* the court found the indictment sufficient because it listed the amount of drugs even though it did not recite the enhanced penalty provision.

In *United States v. Alvarez* no quantity of drugs was specifically alleged in the indictment. This appears to be the basis for the court's finding that the amount of drugs is a "critical" element of the offense.

For purposes of ascertaining what standard of proof applies to determining the quantity of drugs, this split in the circuits is important. However, all of these cases to varying degrees support the position that the defendant must be given some notice in the indictment by way of alleging that a sufficient quantity of drugs was involved to trigger a sentence enhancement.

<sup>1</sup>A similar issue concerning offense elements and sentence enhancement under the Armed Career Criminal Act involving firearms offenses was discussed in "Looking at the Law," 52 *Federal Probation* No. 1 (March 1988).

### *Application of the Victim and Witness Protection Act to Continuing Offenses*

In most circumstances, the penalties that apply to continuing offenses, such as conspiracy, are the penalties in effect at the completion of the offense. *United States v. Campanale*, 518 F.2d 352, 364-65 (9th Cir. 1975) (and cases cited therein), cert. denied, 423 U.S. 1050 (1976).<sup>2</sup> However, there is a split in the United States courts of appeals as to whether restitution can be ordered under the Victim and Witness Protection Act, 18 U.S.C. §§ 3663-3664 (previously codified at 18 U.S.C. §§ 3579-3580), for losses suffered prior to the Act's effective date (January 1, 1983) by a continuing offense that is completed after the effective date.

The Third Circuit in *United States v. Martin*, 788 F.2d 184 (1986), was the first to address this issue. Martin was charged with 34 counts of mail fraud and, as part of a plea bargain, agreed to plead guilty to two of these counts, one of which occurred prior to the effective date of the Victim and Witness Protection Act and one of which occurred after the effective date of the Act. The offense involved an ongoing scheme to steal health care products from his employer and resell them to hospitals. The district court ordered that Martin make restitution for the entire scheme. On appeal Martin argued that he should only be required to make restitution on the count on which he pled guilty which occurred after January 1, 1983. The court held that restitution could be ordered for losses caused by the entire fraudulent scheme in spite of the fact that the defendant pled guilty to an isolated count of mail fraud. However, the court allowed restitution for only those portions of the scheme that occurred after the effective date of the Victim and Witness Protection Act.<sup>3</sup>

Thus, while a scheme to defraud furthered by separate mailings may properly be viewed as one unitary offense, the losses which resulted therefrom must be separately identified as those which occurred after January 1, 1983 for purposes of restitution . . . .

*Id.* at 189.

In *United States v. Oldaker*, 823 F.2d 778, 781-82 (4th Cir. 1987), the Fourth Circuit acknowledged that "conspiracy is commonly viewed as an ongoing offense" and that the Victim and Witness Protection Act intended courts to have "broad powers to make victims whole." Nevertheless, for unstated reasons, the court agreed with the Third Circuit's decision in

<sup>2</sup>See "Looking at the Law," 51 *Federal Probation* No. 4 (December 1987), for a discussion of the applicability of sentencing guidelines to continuing offenses.

<sup>3</sup>The court recognized that restitution could be ordered under 18 U.S.C. § 3651 as a condition of probation for losses suffered as a result of criminal conduct that occurred prior to January 1, 1983.

*Martin* that restitution can be ordered only for the portion of an ongoing offense—in Oldaker's case a conspiracy to transport stolen vehicles in interstate commerce—which occurred after the effective date of the Victim and Witness Protection Act.

A majority of the panel in *United States v. Corn*, 836 F.2d 889, 895-61 (5th Cir. 1988), agreed with the decisions in *Oldaker* and *Martin*. The court reasoned that the Victim and Witness Protection Act increases the punishment annexed to the crime and, thus, the application of that Act to the part of Corn's ongoing criminal contempt that occurred prior to the Act's effective date would violate the *ex post facto* clause of the Constitution. The court held:

When the defendant's offense is a unitary conspiracy or scheme to defraud, the government must identify which losses resulted from acts committed before and which from acts committed after the effective date for the purposes of restitution under the Victim and Witness Protection Act.

*United States v. Corn*, *supra* at 896. Judge Davis dissented, citing Professors LaFave and Scott for the proposition that no *ex post facto* violation occurs in applying a statute with an increased penalty to a continuing offense so long as the offense continued after the enactment of the statute.

The Sixth and Eleventh Circuits have allowed restitution for ongoing offenses which began prior to the enactment of the Victim and Witness Protection Act if they continued after enactment. The court in

*United States v. Barrette*, 800 F.2d 1558, 1571 (11th Cir. 1986), *cert. denied*, \_\_\_\_\_ U.S. \_\_\_\_\_ 107 S. Ct. 1578 (1987), held that the defendant could be required to make restitution to all victims of a conspiracy which began in 1976 and which, evidence at trial showed, continued until 1983, even though the indictment listed the last act of the conspiracy as occurring in October 1982.

The Sixth Circuit in *United States v. Purther*, 823 F.2d 965 (1987), agreed with the holding in *Barrette*. Purther was charged with defrauding investors between 1978 and 1983 by inducing them to invest in a fictitious partnership. He pled guilty to a count of mail fraud occurring in August 1983. The district court ordered restitution to all victims; the court of appeals upheld the order, explaining that it would be impossible to determine when particular losses occurred in a continuing scheme like Purther's where "interest" or "returns" on investments were paid to investors at various times to encourage them to keep investing.

Since this line of cases has not been cited outside of the restitution context, it is unclear whether these cases will have any impact on continuing offenses and the increases in other criminal penalties. These cases do, however, show a troubling confusion in the decisional law as to what penalties apply to continuing offenses and why those penalties apply.

## Reviews of Professional Periodicals

### CRIME AND DELINQUENCY

*Reviewed by* CHARLES L. STEARNS

**"Driving Under the Influence: The Impact of Legislative Reform on Court Sentencing Practices,"** by Rodney Kingsnorth and Michael Jungsten (January 1988). As a result of revisions in the California Vehicle Code dealing with driving under the influence of alcohol, it was anticipated that there would be significant impact on court sentencing practices. This article assesses the impact of that legislation by examining a random sample of 2,091 cases from Sacramento County.

The new law introduced a number of measures designed to reduce reliance on plea bargaining in order to achieve a uniform and consistent allocation of more severe penalties. By comparing pre-1982 with post-1982 dispositions, the authors concluded that the driving under the influence reform legislation was grounded in false assumptions about court sentencing practices. It was found that the task force overestimated the prevalence of charge reduction bargaining, the .10 per se law failed to reduce rates of charge reduction bargaining, the .10 per se law failed to produce expected decline in trial rates and increase in conviction rates, court congestion has not been eased, the prohibition on striking prior convictions has had a substantial effect on this form of bargaining, and, finally, the new law has not been felt equally by all groups.

Although the California revision was an outstanding legislative success, it failed to satisfy the expectations of its proponents. The failure to satisfy cannot be attributed to a lack of willingness on the part of prosecutors and judges to implement reforms. Rather, it is more accurate to conclude that the selective use of data for purposes of problem magnification by the Task Force, the failure to anticipate the constitutional problems created by legislatively enacted presumptions, and a lack of awareness regarding actual court sentencing practices combined to create false

expectations as to what could actually be achieved in this area of court reform.

**"Effects of Criminal Sanctions on Drunk Drivers: Beyond Incarceration,"** by Gerald R. Wheeler and Rodney V. Hissong (January 1988). In this cogent article, Wheeler and Hissong show that the imposition of tougher penalties on drunk drivers is neither harsher nor necessarily more effective in combating drunk driving.

This report presents findings based on a 3-year followup study on the effects of sanctions on driving-while-intoxicated offenders processed through the courts in Houston, Texas. Also, it discusses the impact of mandatory jail provisions on the local criminal justice system. Most previous studies have revealed only a minimal relationship between sanction or treatment and outcome. Most did not support the argument that mandatory jail and more punitive sanctions deter drunk drivers.

The current study examined the effects of specific sanctions on driving-while-intoxicated offenders over a 3-year period utilizing survival time analysis on a randomly selected 20 percent of Harris County driving-while-intoxicated offenders arrested during January 1984 and subsequently convicted. By examining sentence outcomes, the role of pretrial sanctions, the impact of sentencing on driving-while-intoxicated recidivism and the relationship of sanctions to time to recidivism, the authors were able to present findings with significant public policy implications.

Attention also is given to four factors which should be taken into consideration when evaluating public policy options for driving-while-intoxicated offenders: (1) cost effectiveness, (2) general deterrence, (3) sentence equity, and (4) potential for education and rehabilitation.

Finally, it is urged that revisions in the present driving-while-intoxicated laws focus on creation of incentives for offenders to seek education and counseling services to combat problems related to alcohol abuse. Custodial sanctions have failed to curb recidivism, have exacerbated an already critical jail overcrowding problem, have led to sentence inequity, and have proven not to be cost effective. Thus, decision makers must honestly evaluate the consequences and

make such adjustments and policy determinations that will impact positively on the problem.

**"The Life-Without-Parole Sanction: Its Current Status and a Research Agenda,"** by Derral Cheatwood (January 1988). The life-without-parole sanction, an outgrowth of the conservative agenda and increasing public frustration with what is perceived as judicial leniency, is the subject of this article.

As of January 1, 1987, 29 states have life-without-parole statutes. In the vast majority of states with such statutes, they apply to a single serious crime such as murder and are referred to as capital offender statutes. The second form is focused on habitual offenders. Thus, it seems worthwhile to examine the nature of these sanctions and to consider the possible problems that an increase in their use may create for the criminal justice system.

While the capital offender statutes clearly reflect a just deserts model and a punitive stance, deterrence also appears to be a major emphasis. Career criminal laws suggest a progressive public dissatisfaction with increasing crime rates or perceptions of judicial or correctional leniency.

Some attention is given to the reality of commutation of sentence, but the impact upon corrections and prosecution is more noteworthy. These statutes will not only increase the number of inmates, but will lead to the geometric growth of life-without-release prisoners, impact on security concerns, and ultimately result in an increasingly elderly inmate population and the concomitant medical considerations that will be posed.

A research agenda is proposed to address the essential questions we need to ask. First, we need to understand the social and political processes by which statutes are enacted. Second, we must look to the effect the legislation and the confinement of such offenders have upon the crime rate. Third, we should continue our examination of the impact of life-without-parole laws on prosecutorial offices. Finally, we must examine the administrative and managerial problems the increase in a life-without-parole population will create for corrections. All of these questions and the answers they produce will enable us to handle these new problems as efficiently and responsibly as may be expected.

## JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY

*Reviewed by* EUGENE H. CZAJKOSKI

**"Justice in Sentencing: The Role of Prior Record of Criminal Involvement,"** by Alexis M. Durham III (Fall 1987). This is a fascinating and challenging article. Because it is not based on empirical data analysis, it does not fit the usual mold of articles which appear in the criminology section of the journal under review. It is a brilliant "think-piece" which utilizes logic, ethical analysis, and extensive references to prior scholarship in support of its arguments. It is a mark of the journal's wisdom and maturity that an article like this is featured. Journals less secure in their reputations tend to confine their articles to those which reflect the elaborate crunching of numbers using far-fetched proxies and strained operationalizations of concepts. The present article displays few numbers beyond those denoting footnotes.

The importance of this article turns on the recent vitality of the justice or "just deserts" model in sentencing and corrections. With the medical model of rehabilitation in eclipse (at least partially as a result of inefficacy), criminal justice systems throughout the country are converting from processes which set dispositions in accordance with offender characteristics and predicted future behavior, to processes which depend on assessments of offense seriousness and harm done. The keystone of the rehabilitation model, the indeterminate sentence, has virtually been abandoned, and more than half the states have adopted either determinate or mandatory sentences for various crimes. If the offender's personal experience, which weighs very heavily under the rehabilitation model, is considered irrelevant under the justice model, then there seems to exist an anomaly in the emphasis given to prior criminal record by the justice model. Modern sentencing guidelines, largely driven by the justice model (when rehabilitation was the main influence on sentencing we tended to have "model codes" instead of guidelines), often allow greater impact for prior record than for current offense. Construing prior record to be an element of personal experience puts the author in position to embark on a profound analysis of his central question: "How is it possible that a desert-based system is able to utilize already punished behavior as the

basis for increases in the severity of sentences for new convictions?"

Prior to addressing the question by philosophical analysis, the author gives a brief history of the use of previous record in sentencing. He starts with the biblical Book of Leviticus and ends with references to The National Advisory Commission on Criminal Justice Standards and Goals. He makes it clear that prior record influence on sentencing is a very old tradition and that fact becomes part of one of his ethical arguments. The arguments he reviews are sophisticated and well stated. This reviewer is chary of trying to summarize them in this small space for fear of mangling them by compressing them. At the risk of providing a synopsis that is too short to retain a sense of the author's rather elegant exploration, it can be said that he deals with the central question by examining four general classifications of arguments.

1. *Arguments of implicit attribute*—are those arguments which "assert that the very commission of repeated acts of criminality implies the existence of personal attributes or characteristics not available through more direct evidence." Inasmuch as this perspective is not much more than a focus on the character of the offender, it lies athwart the main tenet of the justice model which, in the extreme, would hold offender characteristics as irrelevant. Arguments within this classification also regard recidivism as a revelation of aggressive defiance which adds to the culpability of the offender.

2. *Arguments of elevated harm*—contend that harm produced by repeated acts of criminality exceeds the harm done by a single crime. Because the justice model aims at adjusting punishment in accordance with harm done, there is no inconsistency in placing a penalty premium on recidivism.

3. *Arguments of leniency*—stem from the premise that punitive traditions, again going as far back as biblical times, have always included provisions of leniency. Under this argument, prior record is seen as a legitimate basis for withholding leniency. Thus, it is not a matter for imposing punishment for prior criminal behavior, which would be contrary to the justice model, but a matter of having reason to withhold leniency in exacting penalty for the current offense.

4. *Arguments of emotional recompense*—maintain that victims have a right to experience pleasure at the defendant's suffering. It is part of the payment of the debt owed by the offender. The arguments here hold that "individuals seem to possess a powerful intuition that recidivistic involvement in crime merits an extra measure of punitive sanction." Inciden-

tally, this argument presents "a paradox in the coexistence of the impossibility of a reasonable defense of retributivism and the indisputable omnipresence of retributivism in moral thought."

The above arguments, woefully capsulized, variously make conflicting claims about justice, responsibility, and human nature. The author succeeds in showing "that a significant number of questions crucial to the justification of the use of prior record in sentencing remain unanswered." The questions are particularly important to proponents of the justice model for they would seem saddled with the incongruity of incorporating the "recidivism premium" into the operation of the model. As the impact of the justice model reverberates throughout the criminal justice system, the analyses and cautions offered by this article are very likely of greater consequence than effete quantitative studies.

"Contributions of Victimization to Delinquency in Inner Cities," by Jeffrey Fagan, Elizabeth S. Piper, and Yu-Teh Cheng (Fall 1987). Victimological inquiries have recently tended to focus on victim welfare and victim rights with little attention being given to the more comprehensive and, perhaps, more traditional considerations having to do with the interplay of victim and offender in crime production. This article is in keeping with the broader concept of victimology in that it examines the homogeneity of characteristics between victim and offender.

The relationship between victimization and criminality has been pursued for a long time with many authors writing on the subject. Research into the relationship has not been lacking over the years and, although there is probably not much which can be regarded as conclusive, there is to be found in the research a fair amount of agreement as to the significance of the relationship. Here, we are talking about shared characteristics of victim and offender rather than mutual contributions to specific episodes of crime. Unlike other victimological studies which analyze the precipitation of a crime as sometimes caused by the victim, the study reported in this article looks at, among other things, the possibility of criminalization and victimization arising from more or less the same factors. Furthermore, the question of whether delinquency in certain individuals can be causally traced to the same individuals having previously been victims is explored. It can readily be observed that in the case of many crimes, the victim is inextricable from the criminal. This is evident in the examples of gang wars and certain drug transactions. The important fact related to this research is that in the inner cities "victims and of-

fenders tend to have similar social, structural and demographic characteristics, including age, sex, race, and income level." From this, it can be hypothesized that similar social processes contribute to both becoming a victim and becoming a criminal especially in terms of the former status leading to the latter status. The authors review theories which might explain the relationship between victimization and subsequent offending including subcultural theory, theories of aggression and routine activities approaches. The routine activities model holds that the conducting of basic activities such as work, play, etc. in areas with high crime rates exposes offenders to the same risks of crime as non-offending victims. Subcultural theory and social learning theory contend that criminal behavior is learned from interaction with others sharing a particular environment. The characteristics of offenders and victims who are interacting in the same environment may be associated with specific shared behavior patterns like risk-taking, a proclivity to violence and alcohol or drug consumption. Thus, the victimization/offending relationship may be a reciprocal one in high crime neighborhoods wherein criminality becomes a protective measure.

Sociopsychological theories of violence suggest that violence may be learned through experiencing it as a victim. The authors regard the aforementioned theories—routine activities, subcultural and violence, as being complementary in supporting explanations of the relationship between victimization and criminality or delinquency. Their central hypothesis assumes that "the populations of victims and offenders are isomorphic and that the social and psychological correlates of victimization resemble the correlates of offending. . . . Accordingly, the restraints on offending will also appear as the restraints on victimization."

As part of a federally sponsored research program on violent delinquency, the authors drew a sample of youth from four inner city, high crime neighborhoods. Students were chosen from randomly selected classrooms and were subjected to a survey questionnaire which included demographic items, delinquency measures, victimization items, and attitudinal measures. The written survey was conducted in the spring of 1983 and the fall of 1984. Surveys were completed by 342 males and 324 females.

"The results indicate that even though the characteristics of victims and offenders overlap, the social processes which produce both events are not identical." It would seem that the "isomorphism between victims and offenders may be due to the aggregate characteristics of neighborhoods where each

group concentrates or to normative social processes among inner city youth." Subcultural and control theories offer only partial explanations of victimization rates and "strong bonds do not appear to reduce the risk of exposure to victimization." Severity of delinquent behavior, on the other hand, can, according to the data, be explained by subcultural and control theories. Commenting that victimization seems to be a significant factor in relation to severity of delinquency, the authors state that "future research should focus on the contextual aspects and situational factors which might explain the relationship between victimization and delinquency." Violent victimization seems to predispose to serious delinquency so that the authors believe that reducing such victimization and "responding to young victims" would lessen the severity of crime in the inner cities.

Except for what this reviewer sees as the chronic unreliability of pencil and paper instruments administered to inner city students having an almost universal propensity to give bravado answers when safely questioned on the subject of delinquency, the present study was done well enough with painstaking effort directed at overcoming some of the typical shortcomings of a survey requiring considerable projection and retrospection.

## CANADIAN JOURNAL OF CRIMINOLOGY

*Reviewed by* VERNON FOX

"News Media Use and Public Perceptions of Crime Seriousness," by Robert J. Gebotys, Julian V. Roberts, and Bikram DasGupta (January 1988). Two public opinion surveys examined the relationship between the media and perceptions of crime seriousness. To be empirically tested were two opposing hypotheses attempting to explain the effectiveness of the news media in judgment of the seriousness of crime. First was the *de-sensitization* hypothesis that predicts a negative correlation between frequency of media use and the seriousness ratings of offenses. Second was the *retributive justice* hypothesis based on the effects of "anchoring" in social psychology that would result in individuals overreacting to the seriousness of an offense "anchored" by all the high serious crime they encounter in the news media. A telephone survey was conducted of a

random sample of 227 individuals from the Kitchener-Waterloo area of Southern Ontario. An additional 152 individuals were interviewed in person as they visited the Ontario Science Centre in Toronto. Ratings of exposure to television, newspapers, and radio indicated a significantly high relationship between television viewing and newspaper use. Among the nine crimes presented, sexual assault received the highest average rating of seriousness, and vandalism was considered the least serious. There was a significant positive relationship between the index of news media use and seriousness ratings, which meant that the retributive justice hypothesis was supported. With regard to sex, ratings made by males and females differed on offenses involving violence or threat of violence, while no differences appeared on property crimes. With regard to persons who had been victimized and those who had not, differences emerged on the five most serious offenses. In summary, the three best predictors of seriousness ratings were (1) television news, (2) sex of the respondent, and (3) whether the respondent had been victimized within the last year. Opinion polls conducted in Canada, the United States, Great Britain, and Australia have consistently demonstrated dissatisfaction with sentencing trends and call for harsher penalties, which may be a function, in part, of media treatment of crime and punishment.

**"Criminal Liability of Children Under Twelve: A Problem for Child Welfare, Juvenile or Both?"** by Alan D. W. Leschied and Susan Kay Wilson (January 1988). The children's rights movement in North America began in the United States with the Gault case in 1967 that brought more due process into the juvenile court and continued in Canada with the Young Offenders Act (YOA) that raised the age of criminal responsibility from 7 to 12 years of age. The Juvenile Delinquency Act (JDA) became applicable when the child was seven, but there were questions about the ability of a child that young to form intentionality to meet the *mens rea* requirements for court action and questions about the negative label resulting from bringing a young, impressionable child into the justice system. This study examined the backgrounds of 42 young persons under 12 referred to the London, Ontario Family Court Clinic for assessment during the 1974-84 period, when 186 young persons under 12 appeared in the court. The average age of the 42 young persons referred to the court was 11.1 years. There were 36 boys and 6 girls. Data on previous court involvement indicated that 28 had not been in court before, 7 had appeared once before, and 6 had appeared on two or more occasions. Followup information indicated that 27 young persons had re-

turned to court and 25 had new charges. Slightly over half came from homes where the parents were separated or divorced and at least 27 had problems in school. Recommendations for intervention in the family situation were made in 39 cases, including one-third for placement outside the parental home. Intervention by child welfare agencies was made in 32 cases or 76 percent of the group. The findings from this study indicate that the degree of criminality in this group of children was extensive, with the majority having had considerable contact with the police and court system during their latency-age years (7 to 11) and after 12 years of age. A recent conference in Toronto in 1985 concluded that "present provincial (Ontario) policy constitutes a vague, inadequate and oversimplistic response to the problem of children under twelve in conflict with the law." The need for research and creative programs for this group needs to become a priority for both juvenile and child welfare personnel.

**"The Use of Firearms in Canadian Homicides 1972-1982: The Need for Gun Control,"** by Catherine F. Sproule and Deborah J. Kennett (January 1988). The Canadian Parliament in late 1976 abolished the death penalty and passed strict gun control laws, providing an interesting test of two opposing arguments. Proponents of the death penalty maintain that the threat of punishment by death serves to deter gun use, whereas others propose that gun control is the best defense against shooting homicides. Because the data necessary to study this problem, including age/sex standardized rates, are available for the years 1972-82, the present study compared the national rates for total homicides, homicides by firearms, and homicides by other methods for suspects and victims for the years 1972-76 to the years 1977-82, giving a time-block on either side of late 1976 when the death penalty and gun control legislation were changed. In the case of total homicides, there was no significant difference between time-blocks of 1972-76 and 1977-82. Significant decreases were found in the use of firearms after the gun control legislation was passed and the rate of victims dying from firearms decreased. The Canadian experience after the abolition of the death penalty has not supported the proponents of the death penalty, however. While firearm homicides decreased significantly, nonshooting homicides increased significantly. Gun control has encouraged murderers to use methods other than firearms to kill. The findings support the conclusion that gun control is beneficial, but the death penalty is ineffective. The nation needs more and not less gun control.

**"Characteristics of Protective Custody Offenders in a Provincial Correctional Centre,"** by J. S. Wormith, Marie-Claude Tellier, and Paul Gendreau (January 1988). Protective custody (PC) is the removal of an inmate from the general population (GP) of a penal institution for his own safety and/or for the maintenance of good order in the institution. PC has been increasing in Canada from 2.5 percent of the GP of the institution in 1972 to 9 percent in 1986 and, in the United States, from 2.3 percent in 1978 to 6.2 percent in 1982. The most frequent reasons cited by inmates for seeking PC are the nature of their past crimes, current relationships with other inmates in the prison, and having been labeled as an informer. This project was undertaken to assess whether PC inmates have specific characteristics differentiating them from the GP. It is a compilation of qualitative and quantitative profiles of PC and GP inmates. The sample was 80 of 175 residents of the Ottawa-Carlton Detention Center (OCDC) of the Ontario Ministry of Correctional Services that included 40 PC's and 40 GP's. They were subjected to personal interviews averaging 2½ hours in length, followed by a check of the files and administration of objective questionnaires to measure level of supervision needed, offense seriousness, socioeconomic status, anxiety in social situations, self-esteem, and attitudes toward the criminal justice system. The groups did not differ in physical stature, age, race, ethnicity, religion, language, physical disability, anxiety in social relations, or self-esteem. The PC group reported a greater amount of alcohol consumption and a higher incidence of mental health problems. PC inmates tended to be less antisocial or criminally oriented and made better use of their recreational and leisure time. Sex offenders were more common in the PC group, but the overall pattern of offenses was similar. The PC group tended to be "loners," were more frequently victims of aggression, had a higher level of fear, and complained more about living conditions and treatment by staff and expressed negative feelings about staff. The PC group tended to be from a higher socioeconomic level and had fewer juvenile court appearances. Staff development personnel should consider how front-line employees might insulate themselves from stereotyped prejudices against the PC population. While an inmate may be given PC status on the basis of a single incident, there is a tendency to keep him in that status, supported by the well-known inmate code that tends to overly categorize other inmates. A task of the correctional administrator is to determine how potential PC cases can be diverted from PC and how current PC cases can be safely reintegrated into the general inmate population.

## AMERICAN JOURNAL OF ORTHOPSYCHIATRY

*Reviewed by* CHARLES E. SMITH, M.D.

**"Characteristics of Female Adolescent Sexual Offenders,"** by Peter A. Fehrewbach and Caren Monastersky (January 1988). These authors report a study of 28 female adolescents seen between the years 1978 and 1985 at the Juvenile Sexual Offender Program at the University of Washington. The subjects, whose ages range from 10 to 18 years, were referred from a variety of sources including child protective services, the juvenile court, and the sexual assault center. All had been charged with sexual offenses involving victims, such as rape and indecent liberties. All but one of the victims were children 12 years of age or younger. Ten of the offenders had assaulted males; 16 had committed offenses against females, and 2 offenders had assaulted both a male and female. In no case were the victims strangers to the offenders. In several instances, the victims were siblings, step-siblings, and foster siblings, while over half of the victims were acquaintances of the offender. It is interesting that nearly 70 percent of the offenses took place while the subject was babysitting the victim. In no instance was the victim subjected to any other bodily offense.

Several of the offenders reported a history of having been physically abused, while half of them were reported to have been sexually abused. Only four of these offenders had committed other delinquent acts such as theft.

The study shows that these teenage female sexual offenders acted alone, in secrecy, with no indication that they were either coerced or accompanied by a male co-offender. The study also shows the strong likelihood that young female sexual offenders are likely to have been sexually abused themselves. The authors regard these findings as preliminary. They recommend further longitudinal studies of female adolescent offenders to explore the relevance of their sexual offenses to the commission of sexual offenses in adulthood.

**"Patterns of Behavior in Adolescent Rape,"** by Sophia Vinogradov, M.D., Norman I. Dishotsky, M.D., Ann K. Doty, and Jared R. Tinklenberg, M.D. (April 1988). This study of 67 rapes committed by 63 California adolescents was undertaken at the Northern California Youth Center near

Stockton, California during the period from June 1973 to March 1977. The study group was characterized as "the most seriously delinquent offenders within the state," including "severely psychiatrically disturbed youths." The study was intended to delineate various patterns of behavior encountered in adolescent rape.

In drawing a composite picture of these adolescent rape episodes, the authors describe the offense as having taken place in the victim's home or in a vehicle while the offender was committing another crime such as burglary or after he had verbally interacted with the victim. In about a third of the incidents, there was more than one assailant. The vast majority of these offenders reported that their victims had not been provocative in any way.

A majority of those offenders described regular use of alcohol and drugs such as marijuana. Nearly a third of these offenders were committing another offense, such as burglary, prior to the rape attack, while 21 percent of the rapists reported that their attack was premeditated.

In view of their findings, the authors conclude that care must be exercised in the management of rape victims to avoid undue intensification of fear and guilt through suggestions of provocation. Finally, the authors emphasize the need to distinguish between impulsive rapists and those who premeditate their attacks in the designing of rehabilitation programs.

### SOCIAL CASEWORK

*Reviewed by* KATHERINE VAN WORMER

"Cognitive Appraisal in Three Forms of Adolescent Maladjustment," by Martin Denoff (December 1987). Adolescent suicide, drug use, and runaway behavior have as their common ground maladaptive styles of coping with stress. Understanding the cognitive factors that underlie an adolescent's self appraisal and response to stressful situations aids in defining interventions best suited to these common disorders.

This article explores the role cognitive appraisal may play in an adolescent's decision to run away, use drugs, or commit suicide. Faulty belief systems have been associated with various emotional and behavioral disorders ranging from depression and anxiety to alcoholism. It is not the activating event—the loss, trauma, etc.—but rather an individual's

beliefs about the activating event that are important. An adolescent's irrational beliefs may predispose him or her to misappraise sensitive situations.

Perfectionism, the belief that one must be perfect or highly successful in order to be accepted, has been linked to suicidal behavior. Suicide rates are known to be highest among high-achievement families. Research on the thought processes of suicidal individuals indicates that these persons evidence cognitive deficiencies such as dichotomous thinking, constricted problem solving, and poor ego functioning.

Drug abuse is a commonly used attempt to alter the user's unpleasant emotional states. As distorted beliefs about a situation can lead to unbearable anxiety, the adolescent may turn to drugs to control the resultant anxiety.

Runaways, similarly, use adaptational strategies based on irrational beliefs that influence the adolescent's appraisal process. Effective treatment must be based upon awareness of the cognitive factors that shape an adolescent's appraisal of a situation and consequent selection of suicide, drugs, or running away as a coping strategy.

### JOURNAL ARTICLES ON ALCOHOLISM ISSUES

*Reviewed by* EDWARD M. READ

"The Efficacy of AA Attendance for Aftercare of Inpatient Alcoholics; Some Follow-up Data," *International Journal of the Addictions*, by Adrian H. Thurstin, Anthony M. Alfano, and Vincent J. Nerviano (November 1987). No surprises here, at least for those of us familiar with the use of Alcoholics Anonymous (AA) in our work with recovering alcoholics. Nevertheless, it is encouraging to have our lay opinion supported by empirical evidence. The question for researchers comes down to, "does AA work better in maintaining one's sobriety following an inpatient alcohol treatment experience than little or no AA meeting involvement?"

The authors begin with a review of the literature. They suggest that because AA is largely comprised of many autonomous groups, its efficacy as a treatment modality has received little research exploration or verification. What prior research has been conducted suffers from a variety of methodological problems due to lack of control groups and multimodal treatment programs.

Study participants were 145 consecutive admis-

sions to an inpatient Veterans Administration alcohol treatment program. Upon discharge, most after approximately 34 days, each subject was referred to an Alcoholics Anonymous group within his area. Attendance was voluntary and each individual was equally encouraged to attend meetings. Self-report data therefore formed the basis of "AA Attending" or "AA Non-Attending." The former group qualified for the identification if, during the preceding 6 months, at least 10 meetings had been attended. Phone and questionnaire followup procedures were conducted at 6-, 12-, and 18-month intervals following discharge.

The results provided "modest but highly consistent" evidence that AA attendance positively correlates with decreased drinking and longer sobriety than does non-attendance. Our researchers conclude that in-patient programs should possibly stress more staff training in areas such as AA "that have proven value in the treatment of alcoholism."

In this writer's opinion, researchers could benefit from a statistical analysis of sobriety length versus amount of AA meetings attended per week. Their qualification of 10 meetings in 6 months for the "AA Attending" group seems overly generous. Most active AA goers who are committed to the recovery process attend far more frequently; it is not uncommon for individuals to be attending a minimum of 3 to 5 meetings per week, or 72 to 120 meetings within a 6-month period of time. We wonder how much stronger the efficacy of AA would appear were the "AA Attenders" to fall within this grouping.

**"Public Attitudes to the Disease Concept of Alcoholism,"** *International Journal of the Addictions*, by John Crawford and Nick Heather (November 1987). There seems to be no limit to what can be subjected to empirical study these days. Crawford and Heather take a look at today's increasingly popular belief that alcoholism is a disease. The assumption is that proponents of this model of thought feel it has become a powerful tool or motivator in the promotion of humanitarian attitudes toward alcoholics. The authors wanted to put this assumption to a test.

The study was conducted in Scotland and involved 200 "general public" responses to a detailed questionnaire designed to come up with the data. Four specific areas were addressed: 1) WHAT was the current degree of acceptance of the disease model among the general public in Britain?; 2) IS there a relationship between endorsement of the disease model and the moral weakness conceptions of alcoholism?; 3) DOES the general public endorse the disease concept of alcoholism only because it tends to be the

most prestigious reply and consequently reply in a way that is less truly reflective of their own personal opinions?; 4) IS there a relationship between an endorsement of the disease concept and expression of humanitarian attitudes toward alcoholics?

We found it encouraging to note that 70 percent of the sample endorsed a disease conception of alcoholism. Although the sample of respondents came from Scotland, the authors mentioned comparable figures recently reported in the American attitudes literature.

Only 27.5 percent of the respondents held onto a moral weakness conception of alcoholism. The authors view this as a positive decline which refutes previous studies suggesting that advances of the disease model may have in fact increased moral conceptions regarding general etiology. However, they are reluctant to suggest the existence of a definite correlative relationship between the two.

There was no evidence to associate higher scores on the disease concept continuum with any measure of "social desirability."

And finally, the researchers suggest there seems to be little relationship between public acceptance of alcoholism as a disease and humanitarian attitudes in general. This is touted as a challenge to the widespread assumption that public willingness to spend money on programs would be directly related to an expansion of the disease concept. Accepting alcoholics as "ill" and not necessarily "bad" does not seem to bear much relationship to public humanitarianism. It is suggested that a general "humanitarian world view" rather than specific attitudes towards alcoholism would hold more predictive weight in determining public willingness to offer support and financial assistance.

Interesting? Well, certainly not earth-shattering, but perhaps information such as this would save a great deal of time and energy on the part of those determined to change public opinion solely via promotion of the disease concept of alcoholism.

**"The Relationship between Relapse and Involvement in Alcoholics Anonymous,"** *Journal of Studies on Alcohol*, by Mary Sheeren (January 1988). To date there has been a paucity of research devoted to Alcoholics Anonymous (AA) and why it has such a sturdy reputation for being a powerful source of recovery for the problem drinker or alcoholic. Mary Sheeren concentrates her study on a facet of alcoholism rapidly becoming accepted as most inevitable—relapse. Our researcher wanted to test her hypothesis that those AA members who relapse would rate themselves as "less involved" in the AA program than the non-relapsers.

A total of 59 subjects formed the basis of her study group. They voluntarily responded to a series of questions which touched upon the depth of their AA involvement as well as whether or not they had relapsed. The areas of AA involvement included sponsorship, working the steps, reaching out to other AA members, the studying of AA literature, amount of meetings attended, and the length of time in the fellowship.

The results were indeed encouraging for those of us committed to the use of AA in our work with recovering alcoholics. In every single area of involvement listed on the questionnaire, the relapse group scored significantly lower than the non-relapsers. The writer states, "there is a high correlation between weekly attendance at AA meetings and the maintenance of total abstinence among recovering alcoholics." She also indicated her findings were consistent with the studies which indicate that self-help in the form of AA appears to be more useful than clinical treatment in maintaining abstinence.

Finally, and this should not be overlooked, the study throws some light on what *type of involvement* in AA tends to evidence the most success. It may not simply be AA attendance per se but the "reaching out" which becomes of paramount importance in maintaining sobriety. The author writes, "those members of AA who used their sponsor more and reached out to fellow members fared better in the AA program than those who did not."

Perhaps professionals in the field, particularly probation officers monitoring their clients in recovery, should pay closer attention to the *quality* of AA program involvement and not necessarily just the frequency of meetings attended in any given week.

**"Delirium Tremens: A Prospective Long-Term Follow-up Study,"** *Journal of Studies on Alcohol*, by Goran Nordstrom, M.D., and Mats Berglund, M.D. (March 1988). Delirium tremens (the "horror") is the term used to identify late-stage alcoholism withdrawal in which the patient suffers auditory, visual, and tactile hallucinations ("there are bugs crawling all over me!"). Most of us naturally presume that anyone who has consumed this much alcohol (over time), enough to subject themselves to the ultimate state of physiological dependence, would have scant chance of recovery. We might also assume that the background characteristics and other personality variables would clearly differentiate this population from other less severely addicted alcoholics. Not so, according to Nordstrom and Berglund.

The authors commandeered a longitudinal study of 105 former in-patient (hospital-treated) alcohol-

ics over a 15-year observation period in Sweden. As is often characteristic of these studies (especially when controversial in nature), the researchers cautioned their readers that the absolute number of patients with delirium tremens was low. Nevertheless, they emerged with three rather startling discoveries.

First, the research indicated there was a tendency for a better long-term prognosis (for recovery) in patients who had been first admitted with delirium tremens. It is written, "the association was not a strong one," however the authors postulate that the severity of alcohol dependence itself may be of *limited* prognostic value for the "long-term course" of treatment.

This may bear some relationship to their second major finding, an equally curious and surprising outcome. Contrary to popular belief, the frequency of personality disturbance and social complications was noticeably lower in patients who had manifested delirium tremens at admission. This funny correlation between "generally acknowledged" indicators of favorable prognosis (less personality disturbance, i.e.) and heavy abuse (severe withdrawal) would certainly account for the first finding mentioned above. The authors suggest this may be so because alcoholics with more favorable background characteristics (and personalities in general) would presumably be more capable of sustaining heavy drinking for a long enough period of time so that severe alcohol withdrawal or delirium tremens could result. In the end, Nordstrom and Berglund concede that the prognosis for recovery is probably related more to psychosocial factors than to the "severity of abuse in a more strict medical sense."

The final discovery, and once again somewhat out of the ordinary, concerned six of their subjects with a history of delirium tremens who had, after initial periods of abstinence, been capable of returning to "safe drinking." These subjects tended to exhibit more favorable background characteristics than the other three who were complete abstainers. We should emphasize that there was no formal statistical significance.

So the controversy wages on between the strict "disease model" advocates and the "doubters" who feel more comfortable remaining within a behavioral foundation when it comes to understanding the etiology of alcoholism. Nordstrom and Berglund fall somewhere in between with what is generally known as a "multifactorial view." They seem to acknowledge the importance of the interrelationship between the physiological and the psychosocial.

## Your Bookshelf on Review

EDITED BY J. E. BAKER

*Federal and State Corrections Administrator, Retired*

### When Is the Bar a Bench?

*Friends of the Court: Lawyers as Supplemental Judicial Resources.* By Alexander B. Aikman, Mary E. Elsner, and Frederick G. Miller. Williamsburg, Virginia: National Center for State Courts, 1987. Pp. 227.

Although the litigious nature of American society is not a recent phenomenon—Alexis de Tocqueville observed in 1835 that “there is hardly a political question in the U.S. which does not sooner or later turn into a judicial one”—it is becoming increasingly more difficult for expenditures on judicial resources to keep pace with burgeoning caseloads. It is little wonder, then, that courts today experience backlogs and delay. Pressures of volume have resulted in the rise of “bureaucratic justice” denoted by its emphasis on plea bargaining and pushing more cases through the system. Expanding or supplementing judicial resources by the use of lawyers is another response and the subject of this book.

The mission of the 30-month joint effort of the National Center for State Courts and the Advisory Board on the Use of Volunteer Lawyers as Supplemental Judicial Resources was threefold. They were to examine existing judicial adjunct programs, develop guidelines for the use of judicial adjuncts, and evaluate several different uses of judicial adjuncts. This publication primarily focuses on the first and third tasks. The Advisory Board’s guidelines were published earlier but are reproduced in an abridged form in chapter five of this publication.

In their enthusiasm to discuss the specific details of the six judicial adjunct programs chosen for evaluation, the authors neglected to adequately address the scope of the subject: How widespread is the use of lawyers as supplemental judicial resources, what types of services do they provide, by what means are lawyers recruited into these programs, etc.? Additionally, it would be helpful if certain terms, such as judges pro tem, trial referees, and court-annexed arbitration were defined at the outset. Absent this survey-type introduction, the reason for the selection of the six particular programs is unclear. Are these six programs—the Tucson and Portland Pro Tem Programs, the Arizona Court of Appeals Judge Pro

Tem Program, the Connecticut Trial Referee Program, the Minneapolis Mandatory Court-Annexed Arbitration Program, and the Seattle Early Disposition Program—representative of all extant judicial adjunct programs, or, do they feature unique qualities worthy of emulation?

Chapter five, “Key Considerations in Designing a Program,” which already addresses many of the broader-sweeping issues necessary for an understanding of adjunct programs, should be used perhaps as a lead-in chapter. As the authors noted in chapter five, designing a judicial adjunct program should entail three phases: planning, initiation, and operation/adjustment. Several suggestions for the planning stage were offered, including identifying the real reason for the court problem. If the cause of court delay is found to be unprepared lawyers rather than insufficient judicial resources, for example, it would be far more economical to sanction lawyers at fault instead of establishing an adjunct program. Should the solution to the court problem be an adjunct program, obtaining judicial and bar support and estimating the cost and duration of the program are critical to the planning stage.

In the initiating stage the program should take into account time to announce the program, select adjuncts, and orient and train the litigating bar. Finally, to ensure the effective use of the judicial adjunct program, an evaluation procedure should be established, which among other things, provides caseload feedback to judges and adjuncts and performance information. One area not mentioned by the authors, but relevant to the development of a judicial adjunct program, is the legal environment. Local rule changes may have to be enacted to allow for the establishment of court-annexed arbitration or the use of quasi-judicial officers to handle certain cases.

Instead of its present placement, the chapter which deals with costs and administrative consequences should be included in the general discussion of the judicial adjunct concept. Although not cost-free, the authors cautioned that judicial adjunct programs are usually less expensive than creation of new judgeships. Courts may incur, for example, such cost items as judge time for preparation and administration, staff time, design and production of new forms, pos-

tage, copying files, facilities and accoutrements, and compensation of adjuncts (for the most part lawyers volunteer their services). Account should also be taken of the administrative consequences of operating an adjunct program, including setting up procedures for recruiting, selecting, training, and orienting adjuncts, and providing facilities and accoutrements.

Armed with this background information as well as guidelines for the use of lawyers as judicial adjuncts, the reader is now well prepared to ingest and digest information concerning specific programs. To evaluate the six programs the authors used qualitative and quantitative analysis techniques. Three evaluation designs were employed: controlled experiment (Seattle program), pre and post-test design (Phoenix, Connecticut, Tucson, and Minneapolis programs) and case study (Portland program). In their examination of the impact of the judicial adjunct program on the number of cases disposed by the court, the authors found positive changes in four of the sites with some exceeding expectations. The most demonstrable achievement across all sites was reducing case processing times for specific groups of cases.

The qualitative assessment of the judicial adjunct programs consisted of questioning, via interview and questionnaire, judges, adjuncts, litigating attorneys, and in some instances parties participating in the program. Most respondents were favorable toward adjunct programs generally and held positive views about the appearance of justice of adjuncts' decisions, the nature and quality of decisions, and the relationship between the courts and adjuncts. There was also agreement about the types of cases adjuncts should not hear, namely felony and child custody cases. Inexplicably, the chapter on adjuncts' perspectives, which involved issues such as permanent versus temporary programs, the number of hours adjuncts are willing to volunteer and functions adjuncts are willing to serve, and whether lawyers provide useful, complementary expertise, was placed after the costs and administrative consequences chapter instead of being woven into the qualitative assessment discussion.

By way of conclusion, the authors stated that judicial adjunct programs, particularly the pro tem and trial referee types, had a positive impact on the volume and timeliness of court dispositions. They also pointed to several benefits of the programs not as easily measured. These include providing a better understanding among adjuncts of the judicial role and improved court and bar relations.

Clearly two-thirds of the publication was devoted to evaluation reports of the six sites. Each site report used the scheme set forth in chapter five for assess-

ing the development of a judicial adjunct program to describe the preexisting conditions, the program as initiated, and any modifications made to improve the program's operation or effectiveness.

This publication provides a thorough, if somewhat limited view—covering six programs—of the phenomenon of using lawyers as supplemental judicial resources. As a descriptive and analytical vehicle for the six sites, it is particularly informative and effective. But, as a manual or guide for jurisdictions considering the establishment of a judicial adjunct program, this publication fares less well. For one thing, its presentation is confusing. In addition, rather than broaching the important subject of the legal environment, which may or may not be conducive to setting up such a program in the assessment chapter, the authors appended a few local rules and executive orders without discussion. However, with a little bit of flipping back and forth between the chapters and appendices, the publication is a valuable source of information on judicial adjunct programs and offers numerous suggestions for jurisdictions wishing to adopt such a program and for those interested in improving already existing programs.

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## Communism and Justice

*Criminal Justice in Post-Mao China: Analysis and Documents.* By Shao-Chuan Leng and Hungdah Chiu. Albany, New York: State University of New York Press, 1985. Pp. 330. \$49.50 (cloth), \$19.50 (paperback).

This book is a survey of the formal criminal justice system built by Mao Zedong after the Communist victory over Chiang Kai-shek's Nationalists in China in 1949 until his death in 1976 and the far-reaching reforms subsequently implemented in the 1977-83 period. Assistance and support for the study was provided by several prestigious scholarly organizations; three research trips to China, Hong Kong, and Taiwan; and published Chinese materials and documents translated into English. The last section of the book provides 16 governmental documents translated into English, ranging in time from the Act of the People's Republic of China for Punishment of Counterrevolutionaries in 1951 to the Constitution adopted December 4, 1982, by the Congress of the People's Republic of China.

The traditional law in China since ancient times has been known as Fa (positive law) and Li (moral or customary). Confucius (551-479 B.C.) thought that Li and moral persuasion was superior to Fa and its

rigidity. China has always stayed away from courts and has considered litigation to be the last resort to accomplish anything, including social order. Mao and his supporters in the 20th century accepted the traditional Chinese attitudes toward law. The law was subordinated in favor of the dominant political philosophy and the informal settling of disputes. The Communists stressed the class nature of law as being designed to promote the interests of the ruling class. The pre-1949 class-oriented legal experience provided a valuable basis for the "people's justice" under Mao. The 1949-53 period started with the breakdown of the "old, reactionary social order" by overthrowing the "landlord class and rich peasants" and other vestiges of capitalism. This was replaced with the People's Democratic Dictatorship, in which there was no differentiation between the Party and the government.

During the early period of Mao's rule in 1949-53, about 800,000 "class enemies" were executed and many more sent for long terms of "reform through labor" in penal colonies and camps. The 1954-57 period saw a clear ascendancy of the jural model based on the Soviet system when over 600 laws, decrees, regulations, and decisions were introduced, but Mao then warned against the isolation resulting from bureaucratization. Progress toward a stable legal order was abruptly halted toward the end of 1957 to avoid "bourgeois jurisprudence." The Soviet model, which had never gained much strength, was abandoned in favor of Mao's "Great Leap Forward." The emphasis was on the societal model and "politics in command." There was no criminal law or procedure. Police and administrative sanctions against anti-social behavior were based on Party directives and editorials from the *People's Daily*. The 1957-65 period emphasized control by Party committees and public security agencies, in which procedural guarantees and citizens' rights had no relevance. Accused persons were presumed guilty until proven innocent, which seldom occurred.

The 1966-76 period began with the Cultural Revolution to rectify the bureaucratic system and to impose Mao's values on society. Lawyers and courts were completely eliminated. The Red Guards were young militants brought in by Mao to enforce his views. Lin Biao and the "Gang of Four"—Jiang Qing (Mao's wife), Yao Wenyuan, Zhang Chungiao, and Wang Hongwen—during 1966-1976 "created" a state of lawlessness in which 729,511 people were framed and prosecuted and 34,800 were executed without court action. Class justice favored those loyal to Party principles and was against the "five black elements"—landlords, rich peasants, counterrevolu-

tionaries, rightists, and other bad elements. Reform through labor in penal colonies and camps constituted the primary disposition other than death. Since there were no time limits, many accused persons released after Mao's rule was over had been confined for 20 years or more. There had been no criminal code in China for about 30 years.

The death of Mao Zedong in September 1976, and the subsequent ouster of the Gang of Four, brought a new era of reform and liberalization. The post-Mao leadership, headed by Deng Xiaoping, was committed to a stable legal order and a regular criminal justice system. From early 1978 to 1983, the People's Republic of China twice revised the Constitution, codified important laws, restructured the judicial system, and restored an expanded legal education and research.

In August 1980, the Standing Committee of the National People's Congress reestablished lawyers. By 1981, there were 4,800 lawyers in China, and law schools were established in several universities. In 1982, there were 23,000 civil suits, 12,000 out-of-court settlements, and 90,000 criminal cases handled by lawyers. Post-Mao China had made long strides in restoring the respectability of law and jurisprudence, stressed rule by law over rule by man, and provided stability and predictability to the newly renovated legal system.

The trial of the Gang of Four from November 1980 to January 1981 received worldwide attention as the end of a lawless era, a successful beginning of a new legal system, and demonstration that all were equal before the law. The Gang of Four was accused of creating a state of lawlessness and "feudal-fascist" rule during the period of 1966-76. Beatings continued and tortured confessions remain, but a conscious effort is being made to educate, publicize, and fund the move back to an acceptable legal system. It takes time to set up the organization, train cadres, and make other legal preparations to restore a stable legal system and a regular criminal justice system.

After the promulgation of the new Constitution on December 4, 1982, a Justice Ministry publication praised the New Year of Rule by Law, in sharp contrast to the 1967 publication that praised lawlessness during the Cultural Revolution. Despite some problems and shortcomings, the new criminal justice system was seen as a vast improvement over the Maoist system. Despite some stumbling blocks, a significant and positive start has been made toward legality, though it would be hazardous to predict future development in view of the past turbulent history of this effort.

While the book is well written, the vast amount

of information condensed in it frequently requires re-reading of some sections for clarity. As indicated earlier, a section on "Documents" follows the text, in which 16 important governmental documents between 1951 and 1982 provide landmarks that reinforce understanding of the text. For an excellent portrayal of criminal justice in the People's Republic of China, where over one-fifth of the world's population lives, this reviewer recommends Shao-Chuan Leng and Hungdah Chiu's *Criminal Justice in Post-Mao China*.

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VERNON FOX

## The Enforcement of Regulatory Offenses

*Controlling Corporate Illegality: The Regulatory Justice System.* By Nancy Frank and Michael Lombness. Cincinnati: Anderson Publishing, 1988. Pp. 147, \$12.95.

*Trading Secrets: Seduction and Scandal at the Wall Street Journal.* By R. Foster Williams. New York: St. Martin's Press, 1987. Pp. 354, \$4.95.

Two recent books offer different approaches to the same problem: regulatory enforcement in the United States. *Controlling Corporate Illegality* offers an overview of the nature of the regulatory structure and why it works, or fails to work, in effectively controlling corporate behavior. *Trading Secrets* is the autobiographical account of a reporter for the *Wall Street Journal* who was caught violating regulatory offenses dealing with insider trading. Although these books differ in emphasis (corporate versus personal perspective), in approach (on general principles versus a single case study), and in intended audience (academic versus general), they each provide interesting insights for those seeking to understand justice in the corporate world.

Nancy Frank and Michael Lombness present an overview of regulatory justice in the United States in *Controlling Corporate Illegality*. Divided into six chapters of approximately 20 pages each, the authors present four different models of corporate regulation, functions of such regulation in society, how specific regulations are established, investigated, and prosecuted, and how regulatory agencies can be "captured" and then reformed.

The book is useful in that it is probably the only existing effort to explain systematically the corporate regulatory structure, in the same way that introductory criminal justice textbooks explain the criminal justice system. *Controlling Corporate Il-*

*legality* is designed for use as a basic text for courses on business regulation, white collar crime, administrative justice, and related topics.

The strengths of the book lie in its logical organization, clear prose, and non-ideological approach. The authors recognize that "regulation and regulatory agencies are here to stay," but that "regulatory action could be greatly improved" [p.4]. It is understood, for example, that criticisms of the corporate regulatory structure are diverse and often opposing. Some argue that corporations are over-regulated, while others believe they effectively avoid serious regulation. Likewise, it has been claimed that corporate regulation is largely the function of either power conflicts in the political arena, the result of economic cost-benefit analysis, an effort to solve social problems through rules, or else it acts as a system of social control. Frank and Lombness assess each of these positions and recognize that their validity "depends upon which agencies one is looking at and at what time in history" [p.3].

Such a non-ideological approach allows the authors to assess individual issues and cases objectively. Particularly interesting are the discussion and examples of "domination of the rule-making process" by the industries being regulated [p.38] and the "inelegant and inconsistent" application of the fourth amendment to regulatory searches [p.70]. The continuing problems of over-reliance on "voluntary compliance" [p.91], and other traditional enforcement remedies, are assessed in a concise way, as are "novel sanctions" for controlling corporate actions [p.123].

Although *Controlling Corporate Illegality* contains little new material, it gathers relevant information about the entire regulatory process in a form suitable for classroom use. Its clarity and balanced approach to the issues of corporate regulation make it a desirable text.

*Trading Secrets* provides a firsthand account of how a financial reporter for the *Wall Street Journal* became involved in a scheme where he divulged the topic of his influential financial column to a stockbroker the day before it appeared in the paper. The broker invested in the company mentioned in the column and shared any profits he made with the reporter. This case was the first in the recent series of "insider trading" scandals on Wall Street.

The book is written well and offers fascinating background into the world of stockbrokers, the stock market, and financial news reporting at the *Wall Street Journal*. Those interested in ethics in journalism, as well as the high-stakes gambling of the stock market, will enjoy this book.

*Trading Secrets* also holds great value as an example of the problems of regulatory enforcement.

The quasi-criminal nature of the conduct involved, the hit-or-miss enforcement of the Securities and Exchange Commission, and the prosecution issues posed in such cases vividly demonstrate the difficulties faced in the regulatory process. In addition, the conflicts and power imbalances created by inexperienced \$30,000 per year reporters, dependent upon a continuing information exchange with multi-million dollar stockbrokers, are remarkable, as are the professional and ethical issues faced by those whose published comments can change a company's worth by millions of dollars.

It appears from these two books that the regulatory process will not be effective unless compliance is generated from sources beyond the regulatory system itself. As Winans states, "As unethical as my behavior had been, I couldn't see what laws I had broken" [p.260]. The incredibly low certainty of detection for regulatory offenses, demonstrated in both these books, also will continue to promote an ineffective regulatory structure. As Frank and Lombness argue, "Fostering [a] sense of accountability appears to be the key to balancing the regulatory environment" [p.133].

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### Psychiatry's Anathema

*Insanity: The Idea and Its Consequences.* By Thomas Szasz. New York, New York: John Wiley and Sons, 1987. Pp. 414. \$17.95.

Our understanding of the cause and treatment of most major mental illness continues to be laden with uncertainty. This being the case, perhaps we should not be too surprised that the history of psychiatry is replete with controversy and argument. In a nation in which our best defense against mental illness appears to be denial, the antipsychiatric movement seems destined to prosper. When a psychiatrist of some repute becomes a leading proponent of the antipsychiatric movement, it lends credibility to the movement and a certain zest to the argumentation. Unfortunately, it also casts an aura of doubt on medicine's self-proclaimed concern for the relief of pain and suffering. Indeed, this is the legacy of Dr. Thomas Szasz, the author of this somewhat contentious book.

In this book, Dr. Szasz continues to advance his long-held view that there is no such thing as mental illness or disease. He explains that illness such as schizophrenia is not "real" illness, but rather a metaphor. He contends that psychiatrists contrived these spurious illnesses so that they could feel like real

doctors treating real illness while their non-psychiatric peers politely tolerate this questionable behavior. Dr. Szasz insists that what we call mental illness is really social deviancy. In this context, he claims that psychiatry serves to control and repress such socially deviant behavior in order to exercise power. Throughout this book, Dr. Szasz defends his views with fervor, often characterizing his critics as "absurd," thus, hardly encouraging a collegial exchange of views.

According to Dr. Szasz, the consequences of what he sees as psychiatry's misguided and deceptive actions have been quite formidable. In the long run, he believes that psychiatry's formulations "encourage people to be irresponsible and physicians to be paternalistic." He sees psychiatry as relentless in its war against responsibility. In addition, he says that psychiatry fosters self-deception, denies the depths of human depravity, seeks to excuse and exonerate criminal behavior, and tends to justify coercion, slavery, and loss of liberty. Dr. Szasz' theories about the pervasive ill effects of psychiatry are interesting, especially considering the marked decline in mental hospital populations and the concomitant rapid rise in jail and prison populations which have occurred during recent years.

Those with an antipsychiatry bent will find an abundance of ammunition for that fray in this book. Those who have experienced the torment of mental illness in one way or another may find Szasz' rantings against the reality of their ills to be at least a bit provocative, if not, indeed, cruel.

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### Reports Received

*Bulletin of the Criminological Research Department.* Research and Training Institute, Ministry of Justice, Japan, 1987. Pp. 25. This is a summary of the Institute's 1986 activities.

*Criminal Justice and Behavior*, Vol. 15, No. 1, March 1988. Sage Publications, Newberry Park, California. Pp. 136. This special issue of the official publication of the American Association for Correctional Psychology focuses on correctional classification based upon psychological characteristics.

*Journal of Drug Issues*, Vol. 18, No. 2, Spring 1988. This quarterly publication of Journal of Drug Issues, Inc. is concerned with the philosophies of drug giving and drug taking.

*The Prison Journal*, Vol. LXVII, No. 2, Fall-Winter 1987. The Pennsylvania Prison Society, Philadelphia. Pp. 96. The 13 articles in this publication look at the future of corrections in America.

*Ramsey County Community Corrections 1987 Annual Report.* Community Corrections Department, County of Ramsey (Minnesota). Pp. 60.

*Summary of the White Paper on Crime.* Research and Training Institute, Ministry of Justice, Japan, 1987. Pp. 178. Crime trends and activities concerning the treatment of offenders in 1986 and the perception of the people regarding such trends and activities are reported.

### Books Received

*The Adolescent Molester.* By William Breer, Springfield, Illinois: Charles C Thomas, Publisher, 1987. Pp. 228. \$34.75.

*Adolescents, Alcohol and Drugs: A Practical Guide for Those Who Work With Young People.* By Judith H. Jaynes and Cheryl A. Rugg. Springfield, Illinois: Charles C Thomas, Publisher, 1988. Pp. 193. \$28.75.

*American Criminal Justice: An Introduction.* By Clemens Bartollas with Loras A. Jaeger. New York: Macmillan Publishing Company, 1988. Pp. 554.

*Coping, Behavior, and Adaptation in Prison Inmates.* By Edward Zamble and Frank J. Porporino. New York: Springer-Verlag, 1988. Pp. 204. \$40.

*Forensic Psychiatry: A Practical Guide for Lawyers and Psychiatrists* (2nd edition). By Robert L. Sadoff, M.D. Springfield, Illinois: Charles C Thomas, Publisher, 1988. Pp. 244. \$39.75.

*Heavy Drinking: The Myth of Alcoholism as a Disease.* By Herbert Fingarette. Berkeley, California: University of California Press, 1988. Pp. 166. \$16.95.

*History of Criminal Justice.* By Herbert A. Johnson. Cincinnati, Ohio: Anderson Publishing Company, 1988. Pp. 338.

*Juvenile Delinquency: Historical, Cultural, Legal Perspectives.* By Arnold Binder, Gilbert Geis, and Dickson Bruce. New York: Macmillan Publishing Company, 1988. Pp. 566.

*Predicting Recidivism Using Survival Models.* By Peter Schmidt and Ann Dryden Witte. New York: Springer-Verlag, 1988. Pp. 174. \$39.

*Prison Crowding: A Psychological Perspective.* By Paul B. Paulus. New York: Springer-Verlag, 1988. Pp. 115. \$43.

*Sexual Homicide: Patterns and Motives.* By Robert K. Ressler, Ann W. Burgess, and John E. Douglas. Lexington, Massachusetts: D.C. Heath and Company, 1988. Pp. 234. \$32.95.

## It Has Come to Our Attention

The Federal Bureau of Investigation recently released figures indicating that 72 law enforcement officers were killed in the line of duty during 1987. Forty-two of the victims were city police, 17 were county officers, 12 were employed by state law enforcement agencies, and 1 was a Federal officer. Geographically, 28 officers were killed in southern states, 17 in midwestern states, 15 in western states, 11 in northeastern states, and 1 in Puerto Rico. Firearms were the weapons most used in these slayings, though three officers were killed with knives and two were intentionally struck with vehicles. Law enforcement agencies have cleared 65 of the 72 slayings.

The Federal Bureau of Investigation also released preliminary annual statistics which revealed that the number of serious crimes known to law enforcement agencies nationwide rose 2 percent overall from 1986-87. The trend marked the third consecutive annual increase in reported crime, following rises of 5 percent in 1985 and 6 percent in 1986.

The National Institute of Justice Construction Information Exchange provides information on construction methods and costs for jails and prisons built since 1978. Through the exchange, persons planning to build or expand facilities are put in touch with officials in other jurisdictions who have successfully used efficient building techniques. An automated data base contains a wide range of information on hundreds of completed programs. Publications offered include *Construction Bulletin*. For more information, or to submit information for inclusion in the exchange, contact Construction Information Exchange/NCJRS, Box 6000, Rockville, Maryland 20850, or call 800-851-3420 or 301-251-5500.

The National Institute of Justice also offers 32 study guides and videotapes on critical criminal justice issues. The programs run 28½ minutes. Three that have come to our attention are "Street People," "Probation," and "Families and Crime." For more information on costs and how to obtain these videotapes, contact Crime File, National Institute of Justice/NCJRS, Box 6000, Rockville, Maryland 20850, or call 800-851-3420 or 301-251-5500.

According to NIJ's videotape "Street People" (mentioned above), police officers are severely limited in what they can do about street people. Police power to arrest the homeless is limited by court rulings with nationwide force and may be further restricted by local statute or case law. Even when police have legal authority to detain the homeless, jail

crowding in most jurisdictions discourages arrests. Not enough shelter and treatment facilities will accept police referrals. As recently as 1986, 5 of the nation's 10 largest cities provided no public shelters for the homeless. Even with close working relationships developing between police and social service system workers, street people will very likely continue to present problems in that we do not know how to "cure" chronic public inebriates and most severely mentally ill persons.

The Department of Correctional Services at Eastern Kentucky University will be publishing a 1989 correctional conference calendar. The calendar will include notations on major national and regional correctional (adult and juvenile) conferences, workshops, institutes, and seminars to be held in the United States and Canada during 1989. Persons and organizations interested in being included in the 1989 calendar should complete an information form and return it to Eastern Kentucky University by August 31, 1988. To obtain an information form, or for more information, contact Department of Correctional Services, Eastern Kentucky University, 202 Perkins, Richmond, Kentucky 40475. The telephone number is (606) 622-1155.

The American Probation and Parole Association will present its 20-hour course, "Child Abuse Intervention and Prevention for Probation and Parole Officers," several times in the next few months. The course is especially recommended for persons working with adult offenders and gives specific direction to officers who are making recommendations to the court. The course also defines supervision strategies to use with various types of offenders. The course will be held July 24-27 in Grand Rapids, Michigan; September 11-14 in Anaheim, California; October 12-14 in Spokane, Washington; October 23-26 in Atlanta, Georgia; November 13-16 in Indianapolis, Indiana; and December 4-7 in South Padre Island, Texas. For a brochure and application, contact Norman Helber, Box 638, Woodbury, New Jersey 08096, or call (609) 853-3616.

The American Correctional Association will hold its 118th congress—"Corrections Overload: Turning Problems into Opportunities"—August 14-18, 1988, in Denver, Colorado. The congress will feature exhibits, a corrections film festival, and seminars on topics including the future of parole, crowding, special needs of the alienated adolescent, and AIDS. For further information, contact the American Correctional Association, 4321 Hartwick Road, Suite L-208, College Park, Maryland 20740.

## Contributors to this Issue

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1. Sheldon and Eleanor T. Glueck, *500 Criminal Careers*. New York: Knopf Publishing Company, 1930, p. (or pp. ).

2. Edwin Powers, "An Experiment in Prevention of Delinquency," *The Annals of the American Academy of Political and Social Science*, January 1949, pp. 77-78.