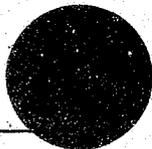


# THE SENTENCING PROJECT



## ANNOTATED BIBLIOGRAPHY:

### RECENT ARTICLES ON SENTENCING ISSUES

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## INTRODUCTION

This Bibliography lists articles, comments, and notes from law reviews, state bar journals and other professional publications which pertain to felony sentencing, sentencing advocacy, and corrections issues relevant to courtroom professionals. Articles listed date from 1978 through January 1988.

To use this Bibliography: The listings are in alphabetical order according to the last name of the first (alphabetically-listed) author. There are three indexes, a Subject Index begins on page 41, a State Index, on page 51, and a Second-Listed Author Index, on page 55. The State Index lists articles which discuss state issues under the names of those states.

Articles are referenced in each index according to the name of the author under which they are listed in the Bibliography, and the first several words of the article title.

Please note that the Bibliography is not completely comprehensive or inclusive. Articles listed are those which have been used by The Sentencing Project staff or which were identified through literature searches and deemed appropriate for entry. The Bibliography is intended to serve as an introduction to current literature which is or should be of interest to practitioners in felony sentencing courts, and particularly to lawyers who may be unfamiliar with published legal resources on sentencing advocacy and various sentencing options (such as restitution, the sentencing of alcoholics, the emergence of intensive probation supervision, sentencing for sex offenders, and a myriad of related issues.) However, the Bibliography is not a substitute for thorough independent research.

We hope this publication will prove useful to you. We will be glad to have any corrections, copies of additional articles, or comments concerning this Bibliography.

BIBLIOGRAPHIC ENTRIES BY AUTHOR

Austin, James and Krisberg, Barry, The Unmet Promise of Alternatives to Incarceration, 28 Crime & Delinq. 374-409 (July 1982).

The article describes a history of unmet goals among various alternative to incarceration program and models, including community service, restitution, and community corrections programs and acts. It analyzes how various actors and pressures within the criminal justice system work to distort the original goal of reducing incarceration; how alternatives programs became tools to supplement non-incarcerative sanctions; and, how "alternatives" were made available only for minor offenders whose dispositions rarely provoke controversy or conflict.

Ball, Richard A. and Lilly, J. Robert, A Theoretical Examination of Home Incarceration, 50 Fed. Probation 17 (Mar. 1986).

The authors outline the goals of sentencing and examine home incarceration in those terms. According to the authors, home incarceration combines moral retribution with practical deterrence. Some of the advantages claimed for home incarceration are its simplicity, potential impact, and reasonable cost.

Ball, Richard A. and Lilly, J. Robert, The Potential Use of Home Incarceration for Drunken Drivers, 32 Crime & Delinq. 224 (Apr. 1986).

The authors refute myths about the drunken driver with current research and then examine the advantages and disadvantages of home incarceration as an alternative to mandatory jail terms. The authors conclude that home incarceration offers major savings while increasing public involvement with the sanctioning system.

Balske, Dennis N., New Strategies for the Defense of Capital Cases, 13 Akron L. Rev. 331 (Fall 1979).

Outlines ideas, techniques and resources for defense lawyers in capital cases.

Bechtle, Louis C., Sentencing Guidelines, 31 Vill. L. Rev. 1299 (1986).

MSJ-0109464

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General overview of present sentencing procedures in Pennsylvania; sentencing changes imposed by the new Sentencing Act in Pennsylvania.

Bedau, Hugo Adam, Justice in Punishment and Assumption of Risks: Some Comments in Response to van den Haag, 33 Wayne L. Rev. 1423 (1987).

Response to Ernest van den Haag's "Can Any Legal Punishments of the Guilty Be Unjust to Them," 33 Wayne L. Rev. 1413 (1987). ✓

Berg Jr., Randall C. and Young, Malcolm C., Sentencing: The Forgotten Phase, 57 Fla. B. J. 239 (1983).

Role of the defense attorney at sentencing; negligence by attorneys handling this phase of representation. Analysis of the ABA Standards for Criminal Justice and the obligations of pretrial investigation and exploration of sentencing alternatives which defense counsel must meet. The authors recommend defense counsel's use of Client Specific Planning services and promulgation of sentencing advocacy education projects for attorneys.

Berman, Leonard N., Meeting the Goals of Sentencing: The Client Specific Plan, 9 New Eng. J. Crim. & Civ. Confinement 331 (1983).

Goals of sentencing and how prisons meet or fail in these goals. Suggestions are offered to defense attorneys regarding Client Specific Planning and the services provided by the National Center on Institutions and Alternatives.

Bowman, Addison M., New Criminal Sentences for Hawaii, 19 Hawaii B. J. 3 (Winter 1985). ✓

Structure and probable impact of the Hawaii Judicial Council's sentencing proposal on Hawaii's existing system, described as a patchwork of mandatory and indeterminate sentencing. Statistics compiled by the Council indicate that introducing presumptive sentencing, adding a fourth felony class and emphasizing punishment and proportionality will result in more people imprisoned, but for shorter terms.

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Bradley, Lisa Gayle, Proportionality in Capital and Non-Capital Sentencing: An Eighth Amendment Enigma, 23 Idaho L. Rev. 195 (1986-1987).

History of proportionality in sentencing. Similarities and differences between the application of the proportionality doctrine in capital and non-capital cases. The article considers whether it is wise policy or sound constitutional theory to maintain different standards of proportionality for capital and non-capital cases.

Brereton, David, Casper, Jonathan D. and Neal, David, The California Determinate Sentence Law, 19 Crim. L. Bull. 405 (1983).

Implementation of this 1977 California law in three counties: San Bernardino, San Francisco, and Santa Clara. Its effects on prison commitment rates and entering of guilty pleas. The authors speculate on future developments in the attitudes of judges and defendants towards entering guilty pleas to lesser offenses.

Carroll, John L., The Defense Lawyer's Role in the Sentencing Process: You've Got to Accentuate the Positive and Eliminate the Negative, 37 Mercer L. Rev. 981 (Spring 1986).

Techniques for vigorous representation of clients with specific emphasis on defense preparation of pre-sentencing investigation reports and use of alternative sentencing experts.

Carter, Robert M., Cocks, Jack and Glaser, Daniel, Community Service: A Review of the Basic Issues, 51 Fed. Probation 4 (Mar. 1987).

NCJ-0105789

Issues that need to be reviewed prior to implementation of community service as a sentencing alternative, including judicial and correctional philosophy, offender eligibility, criteria for selection, organizational models for community service, sentencing consideration, supervision and evaluation.

Casper, Jonathan D., Determinate Sentencing and Prison Overcrowding in Illinois, 1984 U. Ill. L. Rev. 231 (1984).

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Determinate sentencing policy as a contributor to overcrowding. Modifications suggested include reinstatement of parole, shorter prison terms and more prison facilities.

Casson, James William III, Restitution: An Economically and Socially Desirable Approach to Sentencing, 9 New. Eng. J. Crim. & Civ. Confinement 349 (1983).

Historical perspectives on punishment and restitution. Benefits of modern restitution to offenders and victims. Outline of seven restitution models, suggestions for implementation, and legal issues raised by each model. The article describes Georgia's successful restitution system.

Cavendar, Gray and Musheno, Michael, The Adoption and Implementation of Determinate-Based Sanctioning Policies: A Critical Perspective, 17 Georgia L. Rev. 425 (1983).

Historical context of sentencing reform movements; current trend towards determinate sentencing. Implementation of such laws by states which have adopted determinate sentencing. Barriers to effective implementation; comparisons and contrasts among various states' determinate sentencing laws.

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Cirillo, Vincent A., Windows for Discretion in the Pennsylvania Sentencing Guidelines, 31 Vill. L. Rev. 1309 (1986).

NCS-0109465

Comprehensive overview of Pennsylvania's discretionary sentencing law and of the new guidelines which have been superimposed on the system since 1982. How Pennsylvania's guidelines, by retaining sufficient "windows" for judicial discretion where needed, strike a balance between the standardization and the individualization required in a rational sentencing scheme. Virtues of maintaining discretion for the sentencing judge.

Clarke, Stevens H., North Carolina's Determinate Sentencing Legislation, 68 Judicature 141 (Oct./Nov. 1984).

North Carolina's Fair Sentencing Act: history, impact on sentencing dispositions and procedure, sentence severity and variation; its effects on prison population; its weaknesses. How the Act has made felony sentencing more predictable and

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decreased racial disparity without adversely affecting trial court efficiency or increasing the prison population.

✓ Clary, Robert J., Voting for Death: Lingerin<sup>g</sup> Doubts About the Constitutionality of Texas' Capital Sentencing Procedure, 19 St. Mary's L. J. 353 (1987). ✓

The jury's statutorily defined role in the punishment phase; how the Texas statute violates the Eighth and Fourteenth Amendments; how it misleads jurors by suggesting that the number of juror votes necessary to opt for a sentence of life imprisonment is greater than is required under state law; how it impresses jurors with a diminished sense of their individual responsibility for the decision to impose the death penalty; how jurors are encouraged to engage in consensus building based on irrelevant and artificial factors, thus increasing the risk that a death sentence will be imposed for reasons unrelated to the defendant's character and the nature of the crime.

Cohn, Yona, Recommended: No Recommendation, 48 Fed. Probation 70 (Sep. 1984).

Probation officers' tendencies to tailor recommendations in presentence investigation reports to judges' value systems. Cohn proposes replacing the probation officer's recommendation, now often statutorily mandated, with prognostic statements on consequences of the sanctions which the court may consider for a given offender.

Comment, Criminal Procedure - The North Carolina Fair Sentencing Act, 60 N. C. L. Rev. 631 (1982).

Effects of the North Carolina Fair Sentencing Act; outline of its legislative history. Correlation between specific offenses, maximum punishments and presumptive terms. Aggravating and mitigating factors specified in the statute and the effects on appeals and post-conviction reviews of sentences. The provisions of the Act are applied to hypothetical case.

✓ Comment, Insurin<sup>g</sup> the Accuracy of the Presentence Investigation, 1986 Wis. L. Rev. 613 (May/June 1986). ✓

Wisconsin's present practice of limiting disclosure of presentence investigation reports (PSI), to court officials,

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including the defense attorney, but not prison inmates. Policy and constitutional issues. Urges that defendants be given a copy of the PSI prior to sentencing, be allowed to retain it and that there be judicial fact-finding before sentencing should the defendant allege inaccuracies. Though focused on Wisconsin law, this article summarizes policy arguments relevant in jurisdictions which restrict defense access to presentence reports.

✓ Comment, Lights, Camera, Allocution: Contemporary Relevance or Director's Dream?, 62 Tul. L. Rev. 207 (1987).

Common law history of allocution; do circumstances surrounding criminal sentencing today support its continued use? Although allocution has been justified as a fairness requirement, it rarely affords the criminal the intended protection and often leads to a harsher sentence.

Comment, National Standards and Caselaw: Sentencing by the Book, VI, The Defender 15 (Jan./Feb. 1985).

A discussion of the ABA and National Advisory Commission Standards for sentencing. The article explores the defense attorney's role in sentencing.

✓ Comment, Pennsylvania's Mandatory Sentencing Act - Five Years With a Gun: Unconstitutional Delegation of Legislative Power or Proper Exercise of Prosecutorial Discretion?, 91 Dick. L. Rev. 633 (Winter 1986).

Pennsylvania's mandatory gun law allows prosecutor standardless discretion in pursuing a mandatory sentence. It is, therefore, an unconstitutional delegation of legislative power.

✓ Comment, Resentencing Defendants and the Protection Against Multiple Punishment, 133 U. Pa. L. Rev. 1409 (1985).

The comment discusses the double jeopardy clause and ban against multiple punishments, and claims that increasing sentences on the basis of surviving counts of a multi-count conviction presents a multiple punishment issue.

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✓ Comment, Sentence Modification by Wisconsin Trial Courts, 1985 Wis. L. Rev. 195 (1985).

An analysis of the two-part standard used in the application of Wisconsin's sentence modification statute which permits sentence modification by trial courts, parole boards, executive clemency or appellate courts based on post-sentencing investigations.

✓ Comment, Sexual Offenders and the Use of Depo-Provera, 22 San Diego L. Rev. 565 (1985).

This article examines use of the drug depo-provera with certain sex offenders instead of incarceration and concludes that in certain cases benefits outweigh the risks. Various legal and ethical concerns are analyzed. Additionally, the article offers criteria for candidate selection and guidelines for programs to follow in administering such a program.

✓ Comment, The Court-Ordered Predisposition Evaluation Under Washington's Juvenile Justice Act: A Violation of the privilege Against Self-Incrimination, 10 U. Puget Sound L. Rev. 105 (1986).

When submitting to a predisposition evaluation in this juvenile guideline sentencing state, the privilege against self-incrimination should protect the juvenile offender from unknowingly supplying the state with information which may be used to enhance the sentence beyond the standard range.

✓ Comment, The Effect of External Pressures on Sentencing Judges, 11 Fordham Urb. I. J. 263 (1982-3).

The effect on sentencing judges of pressure from public opinion, the press, and influential political figures. The impact of those pressures on due process, equal protection, double jeopardy, discretion, and the proscription against cruel and unusual punishment. Examples of public opinion causing judges to reconsider sentences; the "court observer movement" and the role of victims at sentencing.

✓ Comment, The Use of Depo-Provera for Treating Male Sex Offenders: A Review of the Constitutional and Medical Issues, 16 Toledo L. Rev. 181 (1984).

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Review of medical literature; a comparison of Depo-Provera treatment to castration. Issues of societal benefit as a compelling state interest, the individual's right to privacy vs. the state's police power. Depo-Provera as cruel and unusual punishment, equal protection issues, and the repeat sex offender's right to receive treatment. The Comment concludes that Depo-Provera is a constitutional and reasonable means of treatment when applied within the appropriate framework of adequate judicial review because it does not appear to violate the First, Fifth, Eighth or Fourteenth Amendments and because no health effect related to Depo-Provera has been shown to create an unreasonable risk.

Conrad, John P., The Penal Dilemma and Its Emerging Solution, 31 Crime & Delinq. 411 (July 1985).

According to the author, the deterioration of American corrections under the pressure of increased felony commitments may be remedied by using Intensive Probation Surveillance (IPS). He advocates IPS for both keeping offenders out of prison in the first place and for taking them out as soon as it can safely be done in the second place. Pilot programs now underway in Georgia and Alabama are discussed.

Corbett, Jr., Ronald P., and Fersch, Ellsworth A.L., Home as Prison: The Use of House Arrest, 49 Fed. Probation 13 (Mar. 1985).

House arrest as a suitable punishment for non-violent, mid-range offenders, and as a solution to prison overcrowding. How cost-effective random monitoring of offenders by special probation officers without the use of electronic devices insures public safety. Summaries of three sample cases demonstrate the technique and its effectiveness. Cites to several state programs.

Courlander, Michael, Alternative Sentencing: A Case Study (What a Paralegal Can Do to Improve the Criminal Justice Process), 3 Legal Assistant Today 17 (Winter 1987).

Paralegals as a valuable aid in alternative sentencing proposals. Description of a thoroughly researched and effective presentation of an alternative sentencing plan by a paralegal.

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Craven, James B. III, Random Thoughts on Criminal Sentencing in the United States District Court, 45 Fed. Probation 12 (Dec. 1981).

This article presents one defense attorney's strategy for effective sentencing advocacy, which he calls "a lost art." The author stresses the importance of speaking to probation and that the attorney must know the range of sentencing alternatives "cold."

Crown, Barry M., The Psychologist's Role in Sentencing, 11 Soc. Action & L. 51 (Summer 1985).

Reprinted from an article of the same title in The Champion (No. 4, May 1985). Encourages defense attorneys to use psychological pre-sentence investigation reports to maximize mitigating evidence in favor of defendants. Crown recognizes the psychologist's unique ability to humanize the defendant through scientifically measurable information.

Del Carmen, Rolando V. and Vaughn, Joseph B., Legal Issues in the Use of Electronic Surveillance in Probation, 50 Fed. Probation 60 (June 1986).

Examination of current monitoring systems. How Supreme Court cases on electronic surveillance will be applied to electronic monitoring. The right to privacy, and equal protection under the law; and against self-incrimination, cruel and unusual punishment, and illegal search and seizures. Del Carmen predicts that courts will probably uphold the constitutionality of electronic monitoring based on the concept of diminished rights.

Dickey, Walter, The Lawyer and the Accuracy of the Presentence Report, 43 Fed. Probation 28 (June 1979).

The article discusses the trend towards determinate sentencing and emphasizes the importance of defense counsel's independent investigation of the accuracy and adequacy of facts contained in presentence reports. The effects of the presentence report on decisions made by corrections and parole officials are examined, and a study of defendants' experiences with presentence reports is presented. The article emphasizes the attorney's responsibility to inform a client of such a report and to correct inaccuracies and omissions.

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Durham, Alexis M. III, Justice in Sentencing: The Role of Prior Record of Criminal Involvement, 78 J. Crim. L. & Criminology 614 (1987).

Questions the use of already punished behavior as a basis for increasing sentence severity for new convictions under desert-based sentencing systems. Arguments which support the use of prior convictions in sentencing as they relate to the justice model. The author contends that even the most viable rationales for use of prior record within the justice model tortures the fundamental retributive foundations of the model.

Eisenberg, Howard B., Multiple Punishments for the "Same Offense" in Illinois, 11 S. Ill. U. L. J. 217 (1987).

The article reviews how the United States and the Illinois Supreme Courts have resolved the question of when multiple punishments violate the double jeopardy clause of the Fifth Amendment, noting major areas of conflict between the two courts and principles that emerge from recent United States Supreme Court decisions. Finally, the article questions whether some of the problems arising in multiple punishment cases could be resolved by enhanced scrutiny of multiple indictments or informations.

Essig, Lawrence J. and Mainz, Verlin, Death Eligibility: Statutory Aggravation Under the Illinois Death Penalty Act, 74 Ill. B. J. 532 (July 1986).

The article examines the constitutional function of statutory aggravation, the Illinois procedure regarding aggravation, and the eight statutory factors specified in Illinois' death penalty act.

Fahringer, Herald Price, We Who Are About to Die Salute You: Sentencing in Criminal Cases, 19 Trial 72 (Oct. 1983).

Offers a general introduction to defense counsel's responsibility to prepare a sentencing memorandum. Areas of preparation are suggested and discussed: defendant's background, character references, statistics on comparative sentences for similar offenses, and alternative sentencing plans. Also several constitutional challenges to certain sentences are proposed.

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Fennell, Stephen A. and Hall, William N., Due Process at Sentencing: An Empirical and Legal Analysis of the Disclosure of Presentence Reports in Federal Courts, 93 Harv. L. Rev. 1613 (1980).

An empirical study of disclosure practices pursuant to Rule 32 in federal courts. Failure of many courts to ensure accuracy of information contained in presentence reports. Potential uses of the presentence report, and obstacles to effective defense attorney participation at sentencing.

Fino, Susan P., Microcomputers and Criminal Sentencing: Michigan as a Case Study, 12 Rutgers Computer & Tech. L. J. 407 (1987). ✓

NCS - 0107408

Based on a survey of the Detroit criminal court and 55 circuit courts, this article concludes that use of microcomputers remains untapped because of a lack of education in their use, mistaken belief about cost and adherence to traditional methods. The article then examines how the Detroit criminal court is using computers to implement the Michigan guidelines and illustrates creative computer use in plea bargaining and litigation strategy.

Frazier, Charles E., and Bock, E. Wilbur, Effects of Court Officials on Sentence Severity: Do Judges Make a Difference?, 20 Criminology 257 (1982).

The authors describe their conclusions from an empirical study of sentencing patterns. Their assertion is that no discernible differences in sentence severity result from the difference between judges, except to the extent that judges handle different defendants, are more significant as determinants of sentence severity.

Friel, Charles M. and Vaughn, Joseph B., A Consumer's Guide to the Electronic Monitoring of Probationers, 50 Fed. Probation 3 (Sep. 1986).

Based on a series of telephone interviews with probation administrators, users and manufacturers of electronic monitoring devices, the authors speculate on potential applications, abuses, and administrative and policy implications. The authors conclude that the technology will not solve overcrowding and may not be appropriate for all probation departments.

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Gitchoff, G. Thomas, Expert Testimony at Sentencing, 7 Nat'l J. Crim. Def. 101 (Spring 1981).

The article describes the benefits of assistance by experts or consultants at sentencing. Issues discussed include the selection of an expert and accuracy of data. A sample private presentence report is included, and sample testimony of a criminologist and a psychiatrist is presented, along with sample sentencing recommendations by each.

Glaser, Daniel, Six Principles and One Precaution for Efficient Sentencing and Correction, 48 Fed. Probation 22 (Dec. 1984).

Based on his research, the author propounds six principles to maximize crime prevention for a minimum of cost, including: maximize fines and minimize incarceration; interrupt crime sprees; selectively incarcerate while making the sentence fit the offender; minimize offenders unsupervised involvement with each other while maximizing their bonds with non-offenders; and provide intensive vocational education and realistic work experience with good post-release job possibilities.

Griswold, David B., Deviation from Sentencing Guidelines: The Issue of Unwarranted Disparity, 15 J. Crim. Just. 317 (1987).

This study evaluated whether several variables excluded from the Florida guidelines influenced the elimination of unwarranted sentencing disparity. Age seemed to have no influence, but whether there was a plea or trial, whether there was a probation or community control violation, and the sex of the offender all caused unwarranted sentencing disparity in varying degrees. Also discussed are the policy implications of these findings for developing sentencing guidelines.

Griswold, David B., Florida's Sentencing Guidelines: Progression or Regression?, 49 Fed. Probation 25 (Mar. 1985).

The author examines the development of Florida's sentencing guidelines and criticizes the current guidelines. Among the more prominent problems noted by the author are the absence of an explicit rationale, the lack of constraints or limiting principles placed on their development and their failure to consider the impact on prison populations in

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developing sentencing standards. He concludes that while primarily designed to reduce sentence disparity, the guidelines may promote neither justice nor fairness.

Gustaitis, Rasa, Juvenile Offenders: Is Locking Them Up the Only Answer?, 3 Cal. L. 24 (Mar. 1983).

This critical article focuses on California's system of training facilities for juvenile delinquents. The author presents statistics regarding California's high rate of incarceration of juveniles, analyzes the costs of incarceration, and examines specific shortcomings of the system. New alternative programs which have been developed in response to the problem are examined.

Haynes, Peter and Larsen, Clark R., Financial Consequences of Incarceration and Alternatives: Burglary, 30 Crime & Delinq. 529 (Oct. 1984).

This study tested the financial consequences, including costs of government services and other costs imposed on society, attributable to a sample of convicted burglars for a two-year period. The study found that the median monthly costs of incarceration and community corrections were approximately equal due to the costs of new crimes committed by those in community corrections. Similarly, the mean monthly cost of community corrections was more than twice that of incarceration. On this basis the study concluded that incarcerating all burglars presently in community corrections would either reduce crime at no additional cost or save money. The report also notes that a small portion (10%) of offenders commit a high (55%) portion of offenses for which the offender group is incarcerated, and that its conclusions are tentative and limited to the jurisdiction studied.

Heinzelmann, Fred, Mandatory Confinement as a Response to Community Concerns About Drunk Driving, 10 Just. Sys. J. 265 (1985).

This article relates the findings of a National Institute of Justice study of mandatory confinement in Washington, Tennessee, Ohio and Minnesota and discusses its effect on criminal justice operations and procedures, resources, and the level of agency coordination required. Recommendations

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are provided for criminal justice personnel who are implementing such policies in their jurisdictions.

Henderson, Joel H. and Gitchoff, G. Thomas, Using Experts and Victims in the Sentencing Process, 17 Crim. L. Bull. 226 (1981).

The authors advance the thesis that victims may approve of alternative sentences when they are informed of the nature of such alternatives. The article presents a case for the defense attorney involving the victim at sentencing.

Hengstler, Gary, Attorneys for the Damned, 73 A.B.A J. 56 (Jan. 1987).

In this article, defense lawyers discuss the hurdles they face in representing death row inmates, including the absence of standards and resources at the trial level and tactics and methods used to defeat ineffective assistance of counsel claims at the appellate level.

Hennings, James D., The Oregon Model of Sentencing Advocacy: Resourcing Public Defender Offices, VI, The Defender 13 (Jan./Feb. 1985).

The article outlines the role of the public defender assistant in the sentencing phase of a case. The article recommends that defense counsel propose community service programs as alternatives to incarceration and enumerates ways these programs may be helpful to the client.

Henry, Brian R., The Criminal Defense Counsel's Guide to Prejudicial Communication During Criminal Jury Trials, 23 Crim. L. Bull. 413 (Sep./Oct. 1987).

The purpose of this article is to familiarize defense counsel with both the law governing judicial trial conduct and with the types of judicial behavior that may and may not constitute reversible error. This article assesses various factors as well as both facial and verbal communications that may be relevant to the determination of potential prejudicial effect at sentencing. Finally the article discusses how to properly object and preserve the objection for appellate review.

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Heumann, Milton and Cassack, Lance, Not-So-Blissful Ignorance: Informing Jurors About Punishment in Mandatory Sentencing Cases, 20 Am. Crim. L. Rev. 343 (1983).

The authors present empirical evidence that jurors are less willing to return a verdict of guilty if they know a mandatory sentence will be imposed. The article suggests due process and equal protection arguments for informing jurors of the applicability of mandatory penalties.

Hoelter, Herbert J., Private Presentence Reports: Boon or Boondoggle?, 48 Fed. Probation 66 (Sep. 1984).

A reply to issues raised by Chester J. Kulis, U.S. probation officer, in "Profit in the Presentence Report," (47 Federal Probation 11, December 1983). Hoelter contends that several features argue in favor of private sector presentence reports including the value of offering additional information to the judges, of providing greater focus on the individual client, and of providing sentencing plans that are "accountable" to the court and the community.

Holton, Leonard, What Is to Be Done with Sentencing Guidelines?, 61 Fla. B. J. 19 (Feb. 1987).

The author, director of the Sentencing Guidelines Commission in Florida, outlines the goals of guideline sentencing and discusses the procedures implemented in Florida to achieve goals. He presents a historical review of pre-guideline sentencing and stresses the need for participation in revising the guidelines.

Howard, Don, Electric Handcuffs Are Here Now, 38 Juv. & Family Ct. 35 (Winter 1987).

A brief account of the use and availability of computer controlled monitoring devices to supervise prisoners confined to house arrest.

Howe, J. D., Thoughts on Mandatory Sentencing, 21 Ariz. B. J. 24 (June/July 1985).

Judge Howe criticizes Arizona's mandatory sentencing scheme. He asserts that eliminating judicial discretion concerning the criminal has not achieved its goal of uniformity but,

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has merely shifted discretion to prosecutors. He warns that sentencing decisions, once made publicly by judges, are now made privately by prosecutors.

Hurd, James L. and Miller, Kenneth D., Community Service: What, Why, and How, 45 Fed. Probation 29 (Dec. 1981).

This article outlines a model for community service as utilized by probation officers in the Western District of Kentucky.

Hussey, Frederick A. and Lagoy, Stephen P., The Determinate Sentence and Its Impact on Parole, 19 Crim. L. Bull. 101 (1983).

The article focuses on the impact on parole of the determinate sentence laws of seven states: Maine, California, Illinois, Indiana, Arizona, Colorado, and New Mexico.

Hussey, Frederick A. and Lagoy, Stephen P., The Impact of Determinate Sentencing Structures, 17 Crim. L. Bull. 197 (1981).

The origins and causes of the movement towards determinate sentencing are examined. The laws of five states are considered: Maine, California, Illinois, Indiana, and Arizona. The authors speculate on such laws' possible effects on terms of incarceration.

Jacobson, Samuel S., Sentencing Guidelines, 57 Fla. B. J. 234 (1983).

This article is a discussion of questions raised by mandatory/determinate sentencing in anticipation of Florida's 1983 Sentencing Guidelines. The author speculates on the Guidelines' effect on parole, plea bargaining, and prosecutorial discretion by analyzing their purposes and by comparisons to other states' mandatory sentencing laws.

Johnston, Janet B., Kennedy, Thomas D. and Shuman, Gayle I., Gender Differences in the Sentencing of Felony Offenders, 51 Fed. Probation 49 (Mar. 1987).

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This study examined the relationship between three variables (prior record, offense seriousness and characteristics surrounding the offense) known to be correlated with sentencing outcomes and to moderate differences in treatment for male and female felony offenders. The study found that women were accorded leniency in charge bargaining, prison confinement and sentence length, although women were treated no differently than men when length of prison terms was compared. The study concluded that the consistent but small differences found between the sexes are as readily explainable by differences between them as by preferential treatment by the criminal justice system.

Joyner, Irving, Legal Theories for Attacking Racial Disparity in Sentencing, 18 Crim. L. Bull. 101 (1982).

The article examines potential equal protection and due process arguments available to defense attorneys on appeals of sentences. The difficulties of raising such issues and remedies which might be available are discussed.

Kaye, Michael, Kansas Diversion: Will Courts Become More Involved?, 56 J. Kan. B. A. 8 (Jan. 1987).

This article highlights the developments in Kansas case law since the diversion statute was enacted. Diversion offers selected first time offenders a chance to avoid criminal prosecution and subsequent stigmatization. Issues of future concern are also discussed including admission to diversion, DUI diversion and diversion termination.

Klein, Andrew R., Punishing Probationers Who Skip Prescribed Treatment: What Judges Can Do, 25 Judges J. 10 (Fall 1986).

The author discusses two factors which support the revocation of non-culpable probationers who prove unamenable to treatment, especially if they pose an increased threat to public safety. First, he examines the courts' retreat from the notion of culpability as an essential condition of probation revocation. Second, he notes the increased pressure to expand the use of probation as an alternative for serious offenders who need treatment.

Knapp, Kay A., What Sentencing Reform in Minnesota Has and Has Not Accomplished, 68 Judicature 181 (Oct./Nov. 1984).

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This article discusses the structural features established by the Minnesota legislature that facilitated successful guidelines development and implementation including, legislative oversight, a broadly representative sentencing guidelines commission, appellate sentence review, coordination of sentencing and correctional policies, and sentence monitoring. However the article evaluates the guidelines' impact on sentence uniformity during the first three years of operation, and concludes that they have not been as successful in this area.

Kramer, John H. and Lubitz, Robin L., Pennsylvania's Sentencing Reform: The Impact of Commission-Established Guidelines, 31 *Crime & Delinq.* 481 (Oct. 1985).

Following a detailed description of Pennsylvania's Sentencing Guidelines, this article studies the guidelines' impact on sentences imposed for aggravated assault, burglary, rape and arson by comparing pre-guideline sentencing practices with post-guideline sentencing practices. The study finds that the guidelines significantly reduced sentencing disparity because race appears to play no role in the imposition of sentences and because the location of the offense (urban v. rural) has less impact.

Kramer, John H. and Scirica, Anthony J., Complex Policy Choices: The Pennsylvania Commission on Sentencing, 50 *Fed. Probation* 15 (Sep. 1986).

This article, by a Pennsylvania District Court judge and the executive director of the Pennsylvania Commission on sentencing, reviews the Commission's major decisions, including, whether to write prescriptive or descriptive guidelines, whether to limit current capacity, and how to rank criminal offenses and prior convictions.

Kroll, Michael A., Getting Another Chance, 6 *Cal. Law.* 27 (Sep. 1986).

This article outlines the impact of alternative sentencing programs which prepare reports for defense attorneys in California, highlights characteristics which make them an effective and necessary supplement to overworked probation departments, and details some of the objections to such programs.

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Krup, Susan D., A Retributive Justice Model of Sentencing, 45 Fed. Probation 24 (Dec. 1981).

This article lays some groundwork for sentencing guidelines proposals. Following Singer and Von Hirsch, the author argues for "just deserts" sentencing which focuses on a fair process, allocates punishment, makes use of alternatives, and punishes in proportion to the harm done. She outlines a sentencing scheme that includes consideration of alternatives and a national sentencing appeals court, but otherwise resembles the new federal guidelines.

Kuh, Richard H., Trial Techniques: Defense Counsel's Role in Sentencing, 14 Crim. L. Bull. 433 (1978).

The article emphasizes the importance of defense counsel's preparation for sentencing from early stages of representation and throughout trial preparation. Presentence reports and defense sentencing memoranda are discussed.

Kulis, Chester J., Profit in the Private Presentence Report, 47 Fed. Probation 11 (Dec. 1983).

The author, a probation officer, outlines reservations about private presentence reports. The author specifically argues that the private sector should not be allowed to perform a quasi-judicial role in sentencing, that private involvement threatens the probation system by separating presentence function from supervision function, and that private presentence reports are not cost effective. [Note: Herbert J. Hoelter responded to this article in "Private Presentence Reports: Boon or Boondoggle?" (48 Federal Probation 66, September 1984)].

Latessa, Edward J., The Cost Effectiveness of Intensive Supervision, 50 Fed. Probation 70 (June 1986).

This article illustrates the potential cost-effectiveness of intensive supervision programs designed for offenders diverted from prison. The writer reviews research which compares incarceration costs with intensive supervision costs in Georgia, New Jersey, Kentucky, Ohio, Wisconsin and Washington.

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Levin, Marshall A., Maryland's Sentencing Guidelines A System by and for Judges, 68 Judicature (Nos. 4-5) 172 (Oct./Nov. 1984).

The author, a judge for the Circuit Court for Baltimore City, describes Maryland's unique sentencing guidelines system which was initiated and designed by judges in 1983 to achieve consistency in sentencing. Although statistics are unavailable to measure the program's success, Judge Levin reports guidelines have been received enthusiastically by the public, the media, and judges.

Lizotte, Alan and Zatz, Marjorie S., The Use and Abuse of Sentence Enhancement for Firearms Offenses in California, 49 Law & Contemp. Probs. 199 (Winter 1986).

Report on the results of a study designed to test the effect of mandatory gun crime sentence enhancement statute. A longitudinal approach was employed to allow for a determination of whether these gun laws become more effective as time passes and whether the law is used to "throw the book" at serious repeat offenders. The authors found that sentence enhancements are not frequently used by the courts. Only the most serious repeat offenders were given additional sentences for gun crimes. Therefore, speculation that a longer observation period might show the law to be effective was not supported.

Marco, Corey H. and Marco, Joni Michel, Antabuse: Medication in Exchange for a Limited Freedom - Is it Legal?, 5 Am. J. L. & Med. 295 (1980).

This comprehensive article explores the legal and constitutional questions raised by a California program which offers defendants the choice of jail or of submitting to one year of treatment with Antabuse. The authors use case law to support their arguments that the defendants have not given legally informed consent and that their rights to privacy and protection from cruel and unusual punishment are violated. The authors include a brief review of non-medical alternatives as a more humane means of achieving punishment and deterrence.

Martin, Susan E., Interests and Politics in Sentencing Reform: The Development of Sentencing Guidelines in Minnesota and Pennsylvania, 29 Vill. L. Rev. 21 (1984).

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The article examines and compares the legislative history leading to the creation of sentencing guidelines commissions in Minnesota and Pennsylvania. The author determines that Minnesota's efforts to implement its guidelines were more successful because its commission emphasized the need to keep its prison population at a manageable level.

McCoy, Candace, Determinate Sentencing, Plea Bargaining Bans, and Hydraulic Discretion in California, 9 Just. Sys. J. 256 (1984).

The article explores the relationship of the California Sentencing Law and its restriction upon plea bargaining to prison overcrowding. The author concludes that sentencing and plea bargaining changes have led to more control over sentencing by the prosecution and harsher sentences. The author proposes that a mechanism be created to decrease the prison population.

Miethel, Terance D., Charging and Plea Bargaining Practices Under Determinate Sentencing: An Investigation of the Hydraulic Displacement of Discretion, 78 J. Crim. L. & Criminology 155 (1987).

The results of this study of the Minnesota sentencing guidelines indicate that the gains in sentencing neutrality and uniformity under determinate sentencing are not offset by greater disparities in the use of prosecutorial discretion in charging and plea bargaining practices. Moreover, various social control mechanisms still operate to limit the displacement of discretion and socioeconomic biases even when sentencing guidelines do not explicitly regulate prosecutorial discretion.

Moore, Charles A. and Miethel, Terance, Regulated and Unregulated Sentencing Decisions: An Analysis of First-Year Practices Under Minnesota's Felony Sentencing Guidelines, 20 Law & Soc'y Rev. 253 (1986).

This study reanalyzes and confirms the Minnesota Sentencing Guidelines Commission's reports that regulated sentencing practices are significantly more predictable and neutral than previous unregulated practices. The authors attribute the Guidelines success to their presumptive (i.e., legally mandated) nature.

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Nemerson, Steven S., Coercive Sentencing, 64 Minn. L. Rev. 669 (1980).

Examination of the use of plea bargaining to obtain information or to shorten the judicial process. Some attention is paid to the use of plea bargaining as an avenue to less restrictive alternatives.

Nichols, Gary R. and Caldwell, Harry M., Consecutive Misdemeanor Sentencing: Curing the Inequity, 13 Pepperdine L. Rev. 965 (1986).

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In contrast to its felony sentencing laws, California's sentencing laws for misdemeanor offenders permit virtually unrestricted consecutive sentences. As a result, offenders convicted of less serious crimes may receive in a sentence that is equal to the maximum sentence for more serious felony offenses. The article explores general policy and equal protection challenges to unlimited consecutive sentencing and then turns to the California and Model Penal code for solutions including a two year limit either imposed or served.

Note, A Proposal to Ensure Accuracy in Presentence Investigation Report, 91 Yale L. J. 1225 (1982).

This Note asserts that Rule 32 of the Federal Rules of Criminal Procedure fails to ensure that only accurate information is used in sentencing and parole decisions. The Note proposes amending Rule 32 to permit challenges to presentence reports beyond what is currently provided for. The possible uses of presentence reports beyond the sentencing hearing are discussed.

Note, Adequacy of Criminal Defense Lawyers' Preparation for Sentencing, 1981 Ariz. St. L. J. 585 (1981).

This Note emphasizes the importance of counsel at sentencing as it paints a picture of currently inadequate representation. Minimum requirements for effective assistance of counsel at sentencing are suggested, and model standards are urged. Planning objectives, early participation by counsel, investigation, cooperation with probation officers, and active participation at sentencing hearings are all emphasized. Included is a survey of the sentencing advocacy practices of defense attorneys as well

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as probation officers in Maricopa County, Arizona. Additionally the defendant's remedy of a claim of ineffective assistance of counsel is examined.

Note, Alternative Sentencing: A Proposed State Model, 12 J. Legis. 225 (1985).

This Note contends that present alternative sentencing legislation does not provide sentencing courts with enough direction, thereby leaving open the possibility for abuse and for disparate sentences for the same crime. After discussing two alternative sentencing approaches, court-ordered work and restitution, this note examines implementation problems of current alternative sentencing legislation. A Model State Sentencing Act is included in the appendix.

Note, An Examination of Issues in the Florida Sentencing Guidelines, 8 Nova L. J. 687 (1984).

This Note examines the Florida sentencing guidelines which took effect in 1983. The legislative history of the development of the guidelines is outlined, and the author speculates on the constitutionality of the guidelines. Additionally, the Note surveys case law interpreting the Minnesota Sentencing Guidelines on which the Florida Sentencing Guidelines are based. There is a brief discussion of the anti-rehabilitation philosophy behind the movement towards determinate sentencing.

Note, Authority of States to Define Crimes: Aggravating Circumstances and Mandatory Minimum Sentences. McMillan v. Pennsylvania, 106 S. Ct. 2411 (1986), 25 Duq. L. Rev. 1035 (1987).

Using McMillan, the author illustrates the due process questions that may arise when legislatures declare that certain facts related to the crime are not elements but aggravating circumstances that do not have to be proved beyond a reasonable doubt. Moreover, the author analyzes three United States Supreme Court cases involving challenges to state legislatures' definitions of crimes, (In Re Winship, Mullaney v. Wilbur, and Patterson v. New York), and shows that the Supreme Court has not yet provided legislatures with any recognizable boundaries that should be observed when enacting criminal laws. Finally, he argues

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that the Mullaney test was tailor-made for application to McMillan's facts; that resolution of McMillan would have been much simpler and considerably less controversial if the test had been applied; and that the Supreme Court could have corrected the error made in Mullaney and provided the courts and legislatures with a workable test and some reasonably well-defined boundaries in the cloudy area of States' authority to define crimes.

Note, Community Service as an Alternative Sentence for Juveniles, 12 Crim. & Civ. Confinement 123 (1986).

NCS-0101894  
Community service as an effective sanction, facilitating reintegration into the offender's home community. Brief history of juvenile detention reforms.

Note, Court-Ordered Criminal Restitution in Washington, 62 Wash. L. Rev. 357 (1987).

How courts have dealt with the complexity of the Washington statutory scheme. The article supports the Washington courts' approach in interpreting the statutes: to further the penal and rehabilitative purposes of restitution over victim compensation; to prevent abuse of discretion; and to protect the rights of defendants.

Note, Crime and Punishment: The Propriety and Effect of South Dakota's Victim Restitution Legislation, 31 S. D. L. Rev. 783 (Summer 1986).

This Note analyzes the propriety and potential effect of South Dakota's full use of restitution as a sentencing tool. Specifically, this note examines the policy and constitutional questions involved; outlines the practical problems of the legislation; and addresses implementation issues while making suggestions for future improvements in these three areas.

Note, Demographic Evidence in Capital Sentencing, 39 Stan. L. Rev. 499 (Jan. 1987).

This Note focuses on the danger of unrestricted admission of mitigating evidence, particularly statistics of recidivism rates, in capital sentencing decisions. Part I tracks recent Supreme Court decisions favoring greater admission of

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mitigating evidence and uses a recent New Jersey Supreme Court decision to illustrate the potential flaws inherent in a rule allowing free admission of evidence. Part II discusses the constitutional objections raised in admitting such evidence. Part III suggests that such general statistical evidence should be inadmissible, except where it relates to the defendant's past criminal record or his psychological profile.

Note, Fifth Amendment Due Process Rights at Sentencing: McMillan v. Pennsylvania 106 S. Ct. 2411 (1986)., 77 J. Crim. L. & Criminology 646 (1986).

This Note contends that McMillan reflects the Burger Court's effort to limit the application of the due process requirement of proof beyond a reasonable doubt in all aspects of the criminal law. First, this note reviews the various approaches used by the Supreme Court in determining what process is due under the fifth amendment. Then, McMillan is examined within the analytical framework provided by three recent due process cases, (In Re Winship, Mullaney v. Wilbur, and Patterson v. New York), to illustrate the Supreme Court's changing attitude toward fifth amendment criminal law analysis.

Note, Fourteenth Amendment Due Process Clause - Preponderance Standard Satisfies Due Process Where State Makes Visible Possession of Firearm Sentencing Factor Rather Than Component of Crime, 18 St. Mary's L. J. 543 (1986).

This casenote outlines the two analytical postures utilized by courts that have addressed process due under a particular statute. It then analyzes McMillan v. Pennsylvania under both the elements approach and the greater-includes-the-lesser approach. This casenote concludes that the Supreme Court's implicit adoption of the greater-includes-the-lesser doctrine in McMillan has resulted in the deterioration of defendants' procedural rights because conduct related to the issue presented at trial may be determined by a lesser standard of proof during sentencing.

Note, Ineffective Assistance of Counsel at Capital Sentencing, 39 Stan. L. Rev. 461 (Jan. 1987).

Part I of this Note discusses how the Supreme Court's development of procedural safeguards for capital sentencing

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has limited substantive appellate and collateral review of alleged violations of procedural rights and the appropriateness of the sentencing authority's decision. Part II illustrates the lower courts' dilemma in addressing capital defense counsel's behavior; courts are forced to choose between applying Strickland's two part test. Part III argues that failure to investigate and present mitigating evidence at sentencing denies defendants their Sixth Amendment right to effective assistance of counsel.

Note, Judicial Disobedience of the Mandate to Imprison Drunk Drivers, 21 Law & Soc'y Rev. 315 (1987).

This Note reports the results of two empirical studies of laws mandating a jail term of forty-eight consecutive hours for repeat offender drunk drivers. The studies found that in New Mexico fewer than half of sentenced offenders received the mandated sentence while in Indiana, a 70% compliance rate in part resulted from a community service sentencing option. A discussion of the divergence between prescriptions and outcomes follows. At the sentencing phase, judicial non-compliance is attributed to ignorance of prior offenses, interpretation of the mandate to exclude various kinds of cases and blatant disregard for statutory strictures.

Note, Michigan's Reform Toward a More Determinate Sentencing System, 62 U. Det. L. Rev. 499 (1985).

This Note outlines the historical background and the need for reform of Michigan's indeterminate sentencing system. The author contends that past legislative reform, such as the mandatory gun law, have failed due to judicial circumvention of the law. He further argues that current reforms, such as House Bill 4260 and Senate Bill 511, will also fail unless sentencing discretion is severely restricted and is subject to appellate review. This article discusses implications of federal constitutional law for various state sentencing reforms and frustration with Michigan courts' unwillingness to relinquish discretion.

Note, New York's System of Indeterminate Sentencing and Parole: Should it be Abolished?, 13 Fordham Urb. L. J. 395 (1985).

This Note reviews development of indeterminate sentencing and summarizes problems, such as disparate sentencing,

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encountered in most states. The author attributes failure of the rehabilitative idea in corrections to indeterminate sentencing and calls for replacement by presumptive sentencing schemes. The author argues in favor of sentencing reforms proposed by the Cuomo administration in New York, including implementation of determinate sentencing and abolition of parole, with the following modifications: establishment of presumptive sentences, maintenance of a permanent and independent sentencing guidelines committee; and strict limitations of good time allowances. The article contains references to other state sentencing schemes.

Note, Selective Incapacitation: A Note on Its Impact on Minorities, 15 J. Crim. Just. 287 (1987).

This article first discusses the Greenwood scale, which has been proposed as a device that can accurately predict which offenders are likely to be high rate offenders. The article then examines the impact of such a scale on sentencing recommendations for disadvantaged groups and finds that blacks, women, and the poor are more likely to be designated as high risk offenders, even when controls for prior offenses are included. Finally, the article considers the implications of these findings on the use of predictive devices in criminal sentencings.

Note, Sentencing Guidelines: The Search for Fairness, The Record of the Association of the Bar of the City of New York, 40 Rec. A. B. City N. Y. 94 (Mar. 1985).

Summary of the Association's Fourth Annual Retreat on Criminal Justice; proposed guidelines drafted by the Committee on Sentencing Guidelines for the New York State Legislature. How the Minnesota Sentencing Guidelines were formulated and their effectiveness. Concerns prosecutors, defense attorneys and judges about the impact of the proposed guidelines.

Note, Sentencing - New Jersey Criminal Justice Code Requires that Punishment Fit Crime, Not Criminal, State v. Hodge, 95 N. J. 369, 471 A. 2d 389 (1984); State v. Roth, 95 N. J. 334, 471 A. 2d 370 (1984), 15 Seton Hall L. Rev. 372 (1985).

The article discusses limitations upon trial judges' discretion in sentencing under the two cited cases.

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Note, The Mandatory Death Penalty for Murder by Lifers: Foregoing Procedural Safeguards on the Illusory Promise of Deterrence, 36 Syracuse L. Rev. 1303 (1986).

This Note reviews major capital punishment cases decided by the Supreme Court, focusing on the constitutional standards established for imposing the death penalty. New York's death penalty jurisprudence is also outlined with special attention given to People v. New York, which struck down the mandatory death penalty for murder committed by life-term prisoners. Then, this Note discusses the issues which would confront the Supreme Court if it were considering whether a mandatory death penalty could be constitutionally applied to life-term prisoners. Particular emphasis is on the procedural infirmities of such a scheme. Finally this Note considers and rejects the idea that a mandatory death penalty for murder by lifers could be justified as a necessary deterrent.

Note, Using the Fair Sentencing Act to Protect the Criminal Defendant, 9 Campbell L. Rev. 127 (1986).

A successful appeal under North Carolina's Fair Sentencing Act. Treatment of each aggravating and mitigating factor by appellate courts; what factors are most likely to result in remand for resentencing on appeal.

O'Leary, Vincent, Reshaping Community Corrections, 31 Crime & Delinq. 349 (July 1985).

The author states that community corrections desperately needs to articulate its goals and to adopt strategies consistent with those goals. He proposes a risk-control model which incorporates fair punishment and risk prediction. He further recommends supplementing his risk-control model with a case management system which articulates specific goals for each offender and the resources that will be used to attain these goals and records the degree to which the client achieves the stated objectives.

Ochi, Rose Matsui, Racial Discrimination in Sentencing, 25 Judges' J. 6 (Winter 1985).

Results of several studies which conclude that minorities receive harsher sentences than whites. Call upon judges to

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study their state's sentencing practice and to include courses on eliminating bias in sentencing in judicial education programs.

Pearson, Frank S., New Jersey's Intensive Supervision Program: A Progress Report, 31 Crime & Delinq. 393 (July 1985).

The author evaluates New Jersey's Intensive Supervision Program by providing a description of the program, discussing how local criminal justice participants view its implementation and presents some preliminary results concerning the program's effects. The author's preliminary results show that of the 226 persons who have participated in the program during a 14 month period, 29 have been returned to prison, only one for an indictable offense. Most of the violations have been curfew or drug-related.

Petersilia, Joan, Exploring the Option of House Arrest, 50 Fed. Probation 50 (June 1986).

The material presented in this article is extracted from a Rand survey entitled "Innovations in Probation" and relates only to responses collected from thirty states currently operating house arrest programs. The article summarizes the characteristics of these programs and discusses their advantages and several important unresolved issues. The author notes that probation's long-term survival may depend on whether it succeeds in implementing house arrest and other intensive surveillance programs.

Petersilia, Joan, Racial Disparities in the Criminal Justice System: A Summary, 31 Crime & Delinq. 15 (Jan. 1985).

A comprehensive study conducted in California, Michigan and Texas found that differential treatment of racial groups is most pronounced at the sentencing stage. Hispanics and blacks receive disparate sentences and sometimes serve more time than whites convicted of comparable felonies and carrying similar criminal records. The article offers possible explanations for this result, focusing on procedures adopted at various stages in the criminal courts system.

Petersilia, Joan, and Turner, Susan, Guideline-Based Justice: The Implications for Racial Minorities, Rand Corporation (1985). Findings and recommendations of a Rand Corporation study conducted for the National Institute of Corrections to

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examine effects of classification instruments including sentencing and parole guidelines on racial minorities, and to examine relationship between race-related factors and methods of predicting recidivism. The report attempts to distinguish racial discrimination and racial disparity and finds that guidelines may widen racial disparity in sentencing because factors which correlate with recidivism also correlate with race.

Petersilia, Joan, Turner, Susan, Kahan, James and Peterson, Joyce, Executive Summary of Rand's Study, "Granting Felons Probation: Public Risks and Alternatives", 31 Crime & Delinq. 379 (July 1985).

This article summarizes the major findings of a recent Rand study designed to discover whether felony probation presents unacceptable risks for public safety and, if so, what the system could do to overcome those risks. The study attempted to establish how effective probation has been for a sample of felony probationers, to identify the criteria courts used to decide whether convicted felons received a prison or probation sentence, and to see if the system could develop a felony sentencing alternative that poses less risks for public safety. The results show that two-thirds of those sentenced to probation in two California counties, were rearrested during a 40-month follow-up period. The authors argue that the criminal justice system needs an intermediate form of punishment that falls between prison and probation. The authors describe a program which combines intensive surveillance with substantial community service and restitution.

Pope, Peter B., How Unreliable Fact-finding Can Undermine Sentencing Guidelines, 95 Yale L. J. 258 (1986).

Using examples from the Guggenheim Sentencing Project, the author demonstrates that fact-finding procedures at each stage of the criminal process are often unreliable, erratic and can cause sentence disparity even in guidelines sentencing systems designed to make sentencing uniform. Because of the critical importance of facts at all plea bargaining and sentencing stages, the article details a fundamental, and ignored, problem for guidelines systems: "No matter ... how excellent the 'substantive' legal rules and the social policies they embody, specific decisions will go astray, absent competent fact-finding."

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Preate, Jr., Ernest D., and Suss, Stuart B., Mandatory Sentencing: A Different Perspective, 58 Pa. B. A. Q. 32 (Jan. 1987).

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Pennsylvania prosecutors reply to Judge Schaffner's article, "Mandatory Sentencing: An Assessment," by offering hypotheticals illustrating that mandatory sentencing is an effective deterrent. The authors cite the Pennsylvania Commission on Crime and Delinquency's comprehensive study in support of their thesis. A short, legally technical article.

Quinn, Thomas J., Focus for the Future: Accountability in Sentencing, 48 Fed. Probation 10 (Mar. 1984).

The author, Executive Director of the Delaware Criminal Planning Commission, proposes a model sentencing system based on ten "levels of accountability" with increasing restrictiveness at each level. Once the "levels of accountability" are established, then existing sentencing options are fit into that scheme; the number of offenders who can be placed in less costly levels (existing or proposed) are determined; guidelines are developed to assign offenders to the proper level; and a monitoring system is set up.

Ranish, Donald R., and Schichor, David, The Victim's Role in the Penal Process: Recent Developments in California, 49 Fed. Probation 50 (Mar. 1985).

This article discusses the victim's right to participate in both sentencing and parole decisions (California's Gann Initiative). The writer reviews studies of other experiences with victim participation, noting different outcomes for programs linked to courtroom proceedings and programs operated by prosecutors. The report finds little indication of major impact upon sentencing in California except in highly publicized cases. However, provisions restricting parole release for "dangerous" offenders has had a serious impact on prison overcrowding with no benefits to public safety. The Gann Initiative raises serious questions about the wisdom of administering criminal justice policy through an electoral process.

Rodgers, Thomas A., Gitchoff, G. Thomas and Paur, Ivar O., The Privately Commissioned Pre-Sentence Report: A Multi-disciplinary Approach, 2 Crim. Just. J. 271 (1979).

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This article encourages defense attorneys to use Criminological Case Evaluation and Sentencing Recommendations "CCE-SR" which are privately commissioned pre-sentencing reports authored by a multi-disciplinary team of human behavior and criminal justice experts.

Rodino, Jr., Peter W., Federal Criminal Sentencing Reform, 11 J. Legis. 218 (1984).

The author, a member of the U.S. House of Representatives, presents a history of efforts to recodify federal criminal laws as well as discusses H.R. 4554, the Sentencing Act of 1983. The goals of the bill and its potential and planned effects on sentencing discretion are described. The author urges passage of the bill in order to establish new penalty schedules for federal criminal offenses.

Rush, Christina and Robertson, Jeremy, Presentence Reports: The Utility of Information to the Sentencing Decision, 11 Law & Hum. Behav. 147 (1987).

This New Zealand study examined whether presentence reports actually influence judicial sentencing decisions. The study measured the extent of agreement between recommendations and final dispositions; surveyed judges as to which information is most useful in reaching their decisions; and it compared preliminary decisions of judges as they read the report with changes in dispositional intentions which arose from reading an intervening section of the report. This study found that judges do use the included information in sentencing and that it often results in modification to provisional sentencing intentions.

Russo, Anthony J., The Scope of Judicial Discretion in the Sentencing Process Under the Guidelines, 61 Fla. B. J. 57 (Jan. 1987).

This article reviews Florida's sentencing guidelines' effect on judicial discretion and criticizes the current practice of allowing departure for "clear and convincing reason(s)" without defining "clear and convincing". The author proposes allowing appellate courts to invalidate departure only if the reason given by the trial court is contrary to a statute or rule of criminal procedure.

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Samuel, William and Moulds, Elizabeth, The Effect of Crime Severity on Perceptions of Fair Punishment: A California Study, 77 J. Crim. L. & Criminology 931 (1986).

The author conducted a statewide survey in which California residents were asked to recommend fair punishments for six crimes from petty theft to robbery. Recommendations were then compared with sentences specified in the California penal code. Subjects also supplied standard demographic information including their political party affiliations and ideological beliefs. Both overall perceptions and intergroup consensus of fair punishments are examined.

Schaffner, Herbert A., Mandatory Sentencing: An Assessment, 58 Pa. B. A. Q. 26 (Jan. 1987). *J* *CBC-0031022*

The author, a judge for a Pennsylvania Common Pleas Court illustrates by hypotheticals that the incompatible existence of mandatory and discretionary sentencing schemes in Pennsylvania results in different treatment for similar defendants. He rejects mandatory minimum sentencing provisions, calling them indifferent to the defendants' rights. ✓

Schmidt, Annesley K., Electronic Monitors, 50 Fed. Probation 56 (June 1986).

This article points out programmatic and technological concerns which need to be examined by jurisdictions considering programs using electronic monitors.

Schmolesky, John M. and Thorson Timothy K., The Importance of the Presentence Investigation Report After Sentencing, 18 Crim. L. Bull. 406 (1982).

The authors explore the potential and actual uses of the presentence report for purposes of classification by corrections and parole personnel. Rule 32 of the Federal Rules of Criminal Procedure, which provides for disclosure of the report to the defendant, is critically examined. The availability of review of the report's contents by corrections inmates is discussed.

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Schuwerk, Robert, Illinois' Experience with Determinate Sentencing: A Critical Reappraisal, Part I: Efforts to Structure the Exercise of Discretion in Bargaining For, Imposing and Serving Criminal Sentences, 33 De Paul L. Rev. 631 (1984).

The article describes the development of determinate sentencing in Illinois, its effect on plea bargaining, and the roles of prosecution and correction officials. The author analyzes case law, concludes that Illinois courts have diminished the effectiveness of determinate sentencing, and urges judicial correction. Sentence alternatives and reforms are discussed as one means to alleviate prison overcrowding.

Sheldon, Steven, Arizona's Habitual Criminal Statute: It's Time for a Legislative Tune-Up, 23 Ariz. A. B. J. 26 (Oct./Nov. 1987).

The author proposes changes in Arizona's procedure for determining the existence of enhancement factors. In particular he argues that the sentencing court rather than the jury should make a determination of prior convictions and that Arizona should follow the procedures used in Pennsylvania or Montana.

Shookhoff, Andrew J., Providing Competent Counsel in Juvenile Delinquency Cases - Guidelines for Juvenile Court Practice, 19 Tenn. B. J. 5 (May 1983).

This article includes a concise description of a defense attorney's responsibilities at disposition in juvenile delinquent cases.

Singer, Richard G., Desert Sentencing and Prison Overcrowding: Some Doubts and Some Tentative Answers, 12 N. Y. U. Rev. L. & Soc. Change 85 (1983).

An essay which analyzes the relationship between desert sentencing and prison overcrowding. The author suggests that options other than imprisonment should be used to punish criminals. Although the writer is not convinced that desert sentencing results in overcrowding, he outlines ways to restructure the framework of desert sentencing to reduce prison populations.

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Smith, Charles E. and Felix, Richard Reid, Beyond Deterrence: A Study of Defenses (On Death Row, 50 Fed. Probation 55 (Sep. 1986).

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Thirty-four North Carolina death row inmates were interviewed in this study which tested the relationship between these inmates' psychological defense systems and their apparent failure to be deterred. The study revealed that these inmates frequently denied guilt and professed innocence. The article suggests that the results may indicate that death row inmates think of themselves as highly unlikely to commit murder. In consequence, the author questions how threat of execution could have deterred them the first place.

Smith, Freddie V., Alabama Prison Option: Supervised Intensive Restitution Program, 48 Fed. Probation 32 (Mar. 1984).

Former Corrections Commissioner Smith outlines Alabama's Supervised Intensive Restitution (SIR) program. The article discusses program aspects such as development and funding, inmate selection, intensive supervision, SIR's three phases and its success.

Smith, M. Dwayne, Patterns of Discrimination in Assessments of the Death Penalty : The Case of Louisiana, 15 J. Crim. Just. 279 (1987).

Results of this study confirm that patterns of discrimination and capriciousness in assessing capital punishment in Louisiana have continued to persist in the post-Furman era. Specific findings include that a pattern of discrimination by race of victim, but not by offender, even when a number of mitigating circumstances were controlled, and that those who murder females are more likely to receive the death penalty than those who murder males. The study concludes that the current practice of capital punishment retains some of the qualities that led to its temporary abolition.

Smith, Michael E., Will the Real Alternatives Please Stand Up?, 12 N.Y.U. Rev. L. Soc. Change 171 (1983).

An analysis of sentencing alternatives in the criminal justice system. The author explores various alternatives

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and whether they serve the goal of incapacitating offenders, and focuses on the Vera community service program model.

Stuart, John, and Trachy, Richard A., The Guidelines v. the Code: Do Crimes Fit Their Punishments?, 44 Bench & B. Minn. 10 (Apr. 1987).

Two assistant public defenders assert that felons engaging in similar conduct are receiving different punishments, depending on how offenders are charged. The authors support Minnesota's Sentencing Guidelines but argue for review of the Criminal Code, which fails to differentiate between degrees of crimes.

Tauro, Joseph L., Sentencing: A View From the Bench, 9 New Eng. J. Crim. & Civ. Confinement 323 (1983).

A United States District Court judge conveys his personal impressions on sentencing decision-making. The article includes the judge's viewpoints on imprisonment, the defendant's right to the least drastic alternative, and the criteria he considers when imposing a sentence. Suggestions on strategies are offered to defense attorneys.

Teton, Alfred B., Crime Without Conviction: Supervision Without Sentence, 19 J. Marshall L. Rev. 547 (1986).

A judge discusses the history and impact of an Illinois statute authorizing supervision as an alternative sanction for non-felony offenders.

Thomas, Eugene C., Judicial Independence in Juvenile and Criminal Justice, 73 A.B.A. J. 6 (Jan. 1987).

A message from ABA President Eugene C. Thomas opposing legislatively mandated minimum sentencing. Instead, he advocates judicial discretion in sentencing, and alternatives that emphasize rehabilitation.

Umbreit, Mark S., Victim/Offender Mediation: A National Survey, 50 Fed. Probation 53 (Dec. 1986).

Victim Offender Reconciliation Programs (VORPs), which give victims and offenders the opportunity to confront each other

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in the presence of a trained mediator, are discussed as an alternative sanction for criminal offenders. This article provides data from a nationwide survey conducted by the National Victim Offender Reconciliation Resource Center of the PACT Institute of Justice in northern Indiana, and includes highlights of four specific programs.

Uphoff, Rodney J., Depo-Provera for the Sex Offender: A Defense Attorney's Perspective, 22 Crim. L. Bull. 430 (Sep./Oct. 1986).

The author advocates a treatment program including the drug, depo-provera, and counseling for certain sex offenders in lieu of lengthy incarceration. The defense attorney's ethical responsibility to explore thoroughly this option with appropriate clients is stressed. A model for successful presentation of depo-provera as a viable alternative to incarceration is given.

van den Haag, Ernest, Can Any Legal Punishments of the Guilty Be Unjust to Them?, 33 Wayne L. Rev. 1413 (1987).

The author argues that although disproportionate punishment, whether excessive or insufficient, is unjust and unwise, it is never unjust to the offender because, by committing it, he volunteered to assume the risk of receiving that punishment. He then proposes two principles on which a rational scale of punishment must be based; it must reflect what society currently regards as deserved; and it must be based on the degree to which society prefers to bear the material and moral cost of punishing to the cost of the crimes the punishments deter.

van den Haag, Ernest, Rejoinder to Bedau's Comments, 33 Wayne L. Rev. 1435 (1987).

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Vito, Genaro F., Developments in Shock Probation, 48 Fed. Probation 22 (June 1984).

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von Hirsch, Andrew and Mueller, Julia M., California's Determinate Sentencing Law: An Analysis of Its Structure, 10 New Eng. J. Crim. & Civ. Confinement 253 (1984).

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NCS-0095928

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Walsh, Anthony, Placebo Justice: Victim Recommendations and Offender Sentences in Sexual Assault Cases, 77 J. Crim. L. & Criminology 1126 (1986).

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Webber, Daniel R., Success in Saginaw (An Alternative to Traditional Sentencing), 66 Mich. B. J. 904 (Sep. 1987).

Judge Webber briefly describes how the Saginaw Community Service Work Program has helped both the community and offenders who participate.

Weintraub, Benson B., The Role of Defense Counsel at Sentencing, 51 Fed. Probation 25 (Mar. 1987).

This article stresses that the sixth amendment right to effective counsel imposes additional obligations on defense attorneys at sentencing, including collaborating with probation officers on the presentence investigation and investigating dispositional alternatives where appropriate.

Weissman, James C., Sentencing Due Process: Evolving Constitutional Principles, 18 Wake Forest L. Rev. 523 (1982).

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Westerfield, Louis, A Study of the Louisiana Sentencing System and Its Relationship to Prison Overcrowding: Some Realistic Solutions, 30 Loy. L. Rev. 5 (1984).

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Wheeler, Gerald R. and Hissong, Rodney V., Effects of Criminal Sanctions on Drunk Drivers: Beyond Incarceration, 34 Crime & Delinq. 29 (Jan. 1988).

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