

Federal Probation

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Caused by Probationers and Parolees? *Richard D. Sluder*
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The Influence of Probation Recommendations on
Sentencing Decisions and Their Predictive Accuracy *Curtis Campbell*
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"Working the Program" *Edward M. Read*

African-American Organized Crime, An Ignored
phenomenon *Frederick T. Martens*

Primary Development of the Probation
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Recent Error in Official Statistics:
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The Irish Prisoner in Ireland, 1855-1878 *Beverly A. Smith*

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This Issue in Brief

ACQUISITIONS

Are Probation and Parole Officers Liable for Injuries Caused by Probationers and Parolees?—The number of offenders on probation and parole has risen; inevitably some offenders will commit other crimes during their terms of supervision. A growing concern for probation and parole officers is whether they can be held civilly liable for injuries caused by probationers and parolees under their supervision. While case law in this area is still developing, there are enough cases to indicate when an officer might be held liable. Authors Richard D. Sluder and Rolando V. del Carmen provide a categorization of decided cases and sketch a broad outline of when officer liability might ensue.

The Influence of Probation Recommendations on Sentencing Decisions and Their Predictive Accuracy.—Using data on all serious cases concluded in 1 year in an Iowa judicial district, authors Curtis Campbell, Candace McCoy, and Chimezie A.B. Osigweh, Yg. explore the disjuncture between sentencing recommendations made by the probation department and sentences actually imposed by judges. While probation personnel and the judiciary usually agreed on appropriate dispositions for first-time offenders, they strongly disagreed on recidivists' sentences. Probation officers recommended incarceration for recidivists almost twice as often as judges imposed it.

Home Confinement and the Use of Electronic Monitoring With Federal Parolees.—Authors James L. Beck, Jody Klein-Saffran, and Harold B. Wooten evaluate a recent Federal initiative examining the feasibility of electronically monitoring Federal parolees. Although technical problems were experienced with the equipment, the authors conclude that the project was an effective way of enforcing a curfew and supervising the offender in the community. The success of the project has served as a foundation for expansion of home confinement with electronic monitor-

ing in 12 Federal districts.

Twelve Steps to Sobriety: Probation Officers "Working the Program."—Working with chemically dependent offenders is indisputably a challenge of the new decade. Addiction treatment is complex and, by its very nature, engenders phi-

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News of the Future

RESEARCH AND DEVELOPMENT IN CORRECTIONS

BY JOHN P. CONRAD

Davis, California

Which Way to the Transition?

“WE ARE in transition—anything I tell you today may be incorrect tomorrow.” The speaker was a ranking police official in Moscow, a jovial fellow who didn’t seem apprehensive about the course of the transition through which his country is plodding. His audience consisted of 32 “citizen ambassadors,” of which I was one, assembled by the People to People organization of Spokane, Washington and transported to the Soviet Union for a fortnight of observation. We all had roles in criminal justice. The object of our expedition was to share ideas and experiences with counterparts in the U.S.S.R. Two weeks in any foreign country is just long enough to learn a smattering, but not nearly long enough to qualify as an expert. Still, we learned more than any of us really needed to know about justice as it is administered in this strange nation struggling through an ill-defined liberating process. I’ll use my space in this issue to tell what saw, keeping in mind the caution that “tomorrow it may well be incorrect”—and also that expertise on the Soviet future is hard to come by, even for life-long scholars.

The Policeman’s Lot Is Not a Happy One

Gilbert and Sullivan made that plain many years ago. On another day, we were engaged in a seminar with the deputy chief of the Kalinin District in Leningrad. We had already engaged in sessions with various officials in Moscow and Tashkent. All of them had been refreshingly and surprisingly candid. They had problems, and most of their problems were familiar to us. The crime rates are rising. The system is overloaded with work. There are increasingly sophisticated and well-armed organized gangs preying on honest comrades. Too much to do and not enough people to do it. It was all so familiar.

The Kalinin District, with a population of 530,000, is the largest in Leningrad. It is organized into eight police stations, with 70 officers assigned to each station. With the present crime rate, this level of staffing is dangerously insufficient. “We should have at least 180 officers per

100,000 population. With the present level, the quality of our work is very low.”

What were his major problems in carrying out the mission of the police? First, the personnel problem. Not enough people, and those that we have are not of the caliber needed to do the work. We pay street patrolmen 250 rubles a month. Investigators get 300 rubles a month. *(It is hard to get a handle on the dollar equivalent of these salaries. At the official rate the ruble is worth \$1.10. It was worth much less at the hospitality rate extended to foreign guests. What it’s worth to an honest cop on a beat was not made known to us. At whatever rate his or her wage is calculated, a policeman will have trouble getting by.)* For these salaries well-educated young men and women won’t choose police work as a career. At 300 rubles a month you won’t get a university graduate as a beginning investigator. The second problem is the law. The statutes are too rigid, and many of them don’t make any sense. For example, there is the law of residence. According to that law, it is an offense to be severely punished if a citizen occupies a domicile to which he has not been assigned by the city authorities. This is a law that should be scrapped, but in principle it is supposed to be enforced. *(I asked if it is actually enforced. The chief smiled and asked what I meant by enforcement. Well, are arrests actually made of folks who are living where they shouldn’t? Not often, not often...)* Then there is the law on illegal monetary transactions . . . the black market in rubles for “convertible” currency. There is so much of that going on that the police cannot possibly enforce it. *(I had noted that taxi drivers would ask me if I’d like to buy rubles for dollars at a very good rate. When I pointed out that such transactions are illegal and might get us both into a lot of trouble, I was told that there was no need to worry. But the law prescribed a sentence of not less than 3 and not more than 10 years in prison for this offense. I gathered that the risk was minimal. In the old days, 25 years ago, many dealers did time for this offense, and sometimes tourists were arrested and jailed. . . . Anyway, we found that in 1990 an American dollar was quite acceptable for most purchases.)*

Then there was the law on illegal parking. A police officer who finds a car illegally parked must initiate a "protocol" documenting the violation. Two witnesses must be found to attest to their observation of this offense and sign documents to that effect. The protocol must then be sent through channels to the office in charge of assessing fines; the fine might be as much as 100 rubles, though usually much less. What a waste of time and effort! The chief was explicit in his scorn for this nonsense. Obviously he expected that the transition would lead to more sensible laws, policies, and procedures.

The Times, They've Been A-Changing

Our interlocutors in each of the three cities we visited—Moscow and Tashkent as well as Leningrad—were equally forthcoming. The contrast with my experiences in the U.S.S.R. in 1960 and 1965 was dramatic. In those days a straight answer to an innocent question was not to be expected. I recalled a prison official telling me that the crime rate in Moscow was five percent less in 1960 than it was in the previous year. I asked what the rate was in 1959. "I know, but I am not going to tell you." In 1990, the rules have changed. Anatoly Ivanov, the procurator¹ of the Kuibyshev District of Moscow (population 365,000),² reported to us that in the first 8 months of 1990 in his district there were eight homicides, as compared with nine in the first 8 months of 1989. Burglary has gone up; 38 in his district this year, but only 22 last year. So far he has prosecuted 591 cases, as compared with 539 last year. To deal with this caseload he has two deputies and six investigators. Hardly enough staff, I thought, but Mr. Ivanov was not complaining.

The system favors the procurator. He can keep a suspect in custody for as long as 18 months before filing charges. No plea bargaining; "the laws and regulations must be strictly observed." With 18 months to decide the charge, the procurator hardly needs to make concessions, especially when there is no defense attorney to make them to.³ No jury trials, although the commission working on a new criminal code is thinking about it. At present, the trial court is presided over by a professional judge with two lay assistant judges, designated by the local Communist party officials. Although the procurator submits a report of his investigation to the court, the three judges will conduct their own interrogation of witnesses and the accused. Guilt and sentencing are decided by majority vote and may be appealed by either

side to a higher court.

There are special provisions for juvenile offenders, who are all persons under the age of 18. A special judge is assigned, and expected to consider all possibilities for rehabilitation, including the "special colonies" established for their care and detention. Juveniles may not be sentenced to death, and the maximum term that may be imposed is 10 years. Mr. Ivanov noted that his district is the only one in Moscow to show a decline in juvenile delinquency but did not speculate on the reasons.

At the other end of the spectrum of offenders are those defined by the court as career criminals. Longer sentences for them. When and if they are released from incarceration they must register with the police twice daily.

Overcrowded and Understaffed

The Central Jail of Leningrad is an exceptionally ugly building in a city that is otherwise renowned for its architectural beauty. It was first occupied in 1892 and shows the effects of a century of heavy wear and tear and deferred maintenance. It was designed on the Pennsylvania plan with a central rotunda from which cell-blocks project like the spokes on a wheel. The original capacity was 1,156 prisoners, with one man to a cell. There are now 5,000 inmates; two to five men (no women) to a cell. Some are under investigation or awaiting trial; the rest are serving short sentences, an average of 5 or 6 months.

We had a brief tour. The cells were somewhat larger than a one-man cell in the U.S., but uncomfortable for the four or five men who lived in them. I've seen worse, but the Leningrad jail would certainly qualify in this country for intervention by a Federal court and the appointment of a special master. I was impressed that the food ration was budgeted for 55 kopecks (100 kopecks=1 ruble) a day. Whatever the ruble is really worth, 55 kopecks won't buy more than a barely minimum diet, if that.

The warden is a cheerful young man bearing his responsibilities without evident anxiety. Noting that there were many uniformed women to be seen, I asked about the policy as to female guards. About 40 percent of the guards are women, I was told. "We have to take any able-bodied person who applies. The work of a prison guard in this country is a low prestige occupation; there is always a shortage of applicants." The jail is authorized to employ 400 guards. Keeping them motivated for work is a familiar problem for prison officials nearly everywhere.

In most of the offices we visited, a large portrait of Lenin was displayed over the official's desk. Only at the Leningrad Central Jail did we see a picture of Mr. Gorbachev, along with an apt quotation: "We must translate the discipline of the prison into life in the community." I know what he meant—the offender arrives in prison as an undisciplined outlaw and should leave it as a self-controlled citizen—but at first sight another interpretation comes to mind. There are too many nations that discipline their citizens like prisoners. The U.S.S.R. is aiming for a transition out of the prison-state.

Research and Development in Criminal Justice

When I visited the Soviet Union in 1960 and 1965, the party line on crime was clear: (1) Crime is not a serious problem in the U.S.S.R., and (2) there are two, and only two, causes of crime in a socialist state, to-wit, brain damage and the residual effects of capitalism. The notions that there might be psychological or social causes of crime were dismissed as not worth discussion. When I was allowed to observe a criminal trial involving an assault on a citizen by two young thugs, my interpreter lamented this opportunity: "We are creating a New Soviet Man, and you should not have seen these dregs of our society."

All that has been changed. It is openly acknowledged that crime is a very serious and growing problem, that the causes of crime are many and poorly understood. Throughout the tour I heard nothing at all about a New Soviet Man. Regardless of the ultimate destination of the transition, the standard criminal types still flourish in the great Soviet cities. What is to be done about them perplexes the authorities, and public anxieties compel them to search for remedies.

In 1963, when the Institute for Research on Crime was founded, the party line still prevailed: *Crime is not a serious problem*. It was not explained to me then or during this later tour why, if crime was no problem, an Institute for Research was considered necessary. Whatever the reasons may have been, with *perestroika* the Institute's name and apparent objectives have been changed; it is now the All-Union Research Institute of Problems of Strengthening Legality. This designation may make more sense in Russian; I am still not sure of the intended meaning. Our session with the Institute staff was illuminating.

The Director, Dr. Igor I. Karpetz, met with us along with most of his senior staff, consisting of

the heads of 14 research sections. The stress of the Institute's research is on crime prevention. Commendable, but the research methodology at this stage of the Institute's development appears to be mostly descriptive. For example, Dr. A.I. Mikhailov is working on a project to determine how many violations of citizens' rights may occur during a procurator's investigations of his caseload. To what extent are these violations justified? What steps should be taken to prevent "inadmissible" violations? In undertaking this study, Dr. Mikhailov has followed the Institute policy of collaborating with practitioners, in this case, the procurators and their most experienced investigators. It does not appear that the views of accused persons are sought.

The Institute commenced the publication of an annual report of its research this year. Translated into English and French, it will appear every April. I signed up for a place on the mailing list and will keep you informed.

Transition or Collapse?

Almost every day we can read in the Western press that the Soviet Union is in the throes of crisis, if not heading for total collapse. In the insulated conditions of a fortnight on a carefully conducted tour, and without command of the language, it is impossible to arrive at an independent judgment of the prospect ahead. The men and women with whom we were in contact were officials with good jobs and some reason to welcome change. If the laws don't make sense, they say so. If the crime rates are going up, this is acknowledged and the data are supplied, so far as the data are known. I heard no complaint about the nature of changes in the criminal code, drafts of which they had seen.

All this candor was in dramatic contrast with my experiences in 1960 and 1965. Then it was doctrine that the Soviet way of conducting criminal justice was the right way, as we unfortunate capitalists would eventually discover. It was not for a foreigner to ask why it was right, or whether there might be improvements. After all, I came from a country with serious crime problems. In the Soviet Union crime was the least of the regime's worries.

With all the immense questions about the survival of the U.S.S.R. confronting the Kremlin, it can hardly be said that criminal justice is the first or even a major concern, except to the men and women on the street. I left Moscow with the tentative view that Communist doctrine no longer smothers the realities of crime and criminal

justice. Whether the establishment can cope with these realities remains to be seen. I think that responsible officials are at least trying. The extent to which they succeed or fail will bear significantly on the future of the present regime.

NOTES

¹In the Soviet Union, the procurator occupies a role some-

what similar to a district attorney but with powers that also include the decision to hold the accused for trial and the nature of the charge to be preferred.

²Moscow, a city of about 9½ million, is divided into 33 procuracies. Mr. Ivanov thought the Kuibyshev district was about average with respect to crime and social problems.

³With the new criminal code in prospect, defense attorneys will become more important players in criminal litigation.