

U.S. Department of Justice  
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# Rethinking the Criminal Justice System: Toward a New Paradigm

139670

Paper from the BJS - Princeton Project



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# **Rethinking the Criminal Justice System: Toward a New Paradigm**

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**December 1992, NCJ-139670**

**U.S. Department of Justice  
Office of Justice Programs  
Bureau of Justice Statistics**

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This project is supported by BJS grant number 92-BJ-CX-0002 to Princeton University. The contents of this document do not necessarily reflect the views or policies of the Bureau of Justice Statistics or the U.S. Department of Justice.

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## Foreword

This is the first paper in a series prepared by the BJS-Princeton University Study Group, under the direction of Professor John J. DiIulio, Jr. We established the Study Group to re-examine both the concepts and the methodologies involved in conceptualizing, measuring, and evaluating the performance of those agencies and actors comprising the American criminal justice system.

In this paper, Dr. DiIulio describes the need for operational goals, objectives, and performance measures to replace or supplement the traditional criteria applied to controlling crime and reducing recidivism. The paper summarizes the purposes of a new paradigm aimed at enhancing our general understanding of the workings of the justice system and appealing "for new concepts and categories of thinking." By sketching the framework of American attitudes toward criminal justice and calling upon the American public to assume a more meaningful role in crime prevention and control, the author lays a foundation for more specific objectives and measures to come. Those objectives and measures will derive from the four civic ideals identified for criminal justice practices.

BJS looks forward to future discussion papers from the BJS-Princeton Study Group as the series fulfills its valuable mission of suggesting new analyses and ideas related to understanding and evaluating the performance of the justice system. Ultimately, this endeavor will assist practitioners and researchers in discovering new operational uses of future research findings and statistical analyses.

Steven D. Dillingham, Ph.D., LL.M.  
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## **About the author**

John J. DiIulio, Jr., is Professor of Politics and Public Affairs at Princeton University and nonresident Senior Fellow in Governmental Studies at the Brookings Institution. He served as founding director of Princeton's Center of Domestic and Comparative Policy Studies. He is a member of the National Commission on State and Local Public Service.

# **Rethinking the Criminal Justice System: Toward a New Paradigm**

## **I. Overview: Beyond crime rates and recidivism rates**

Rates of crime and recidivism have long served as critical measures for the performance of the Nation's criminal justice system. These measures represent the basic goals of public safety to which all components of the criminal justice system contribute. At the same time, however, rates of crime and recidivism are not the only, or necessarily the best, measures of what criminal justice institutions do.

Few police officers believe that their work solely determines crime rates in their jurisdiction. Few corrections officials believe that what they do chiefly determines recidivism rates. Likewise, most criminal court judges, prosecutors, public defenders, and other justice practitioners know from experience that the prevalence and severity of crime depend mainly on factors affecting

individuals long before most are taken into custody. Most justice practitioners understand they can rarely do for their clients what parents, teachers, friends, neighbors, clergy, bio-genetic inheritances, or economic opportunities may have failed to do.<sup>1</sup>

Still, crime rates and recidivism rates are meaningful overall measures of the system's performance in protecting public safety, and what justice practitioners do undoubtedly affects crime and recidivism rates. For example, a National Academy of Sciences panel concluded that rising imprisonment rates may have reduced crime rates in the nation by 10% to 20%.<sup>2</sup> Furthermore, numerous studies refute the once-fashionable idea that "nothing works" in the rehabilitation of criminals, showing that other things being equal, offenders who participate in certain types of institutional or community-based treatment programs are less likely to be repeat offenders than the nonparticipants.<sup>3</sup> While no evidence indicates that mere increases in police on auto patrol cut crime rates, a growing body of evidence establishes that crime and disorder are less common

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<sup>1</sup>As James Q. Wilson and Richard J. Herrnstein have observed, a keen knowledge of the constitutional and social factors that have been found to be associated with criminal behavior "rivet(s) our attention on the earliest stages of the life cycle," and reveals that "after all is said and done, the most serious offenders are boys who begin their delinquent careers at a very early age;" see Wilson and Herrnstein, *Crime and Human Nature* (New York: Simon and Schuster, 1985), pp. 508-509.

<sup>2</sup>Alfred Blumstein, et al., eds., *Criminal Careers and "Career Criminals"* (Washington, D.C.: National Academy Press, 1986), p. 6.

<sup>3</sup>For an overview, see John J. DiIulio, Jr., *No Escape: The Future of American Corrections* (New York: Basic Books, 1991), chapter 3.

in neighborhoods where police get out of their cars and into regular contact with citizens. <sup>4</sup>

Unquestionably, the justice system affects crime and recidivism rates. As James Q. Wilson has commented, given "the elasticity of crime or recidivism rates to feasible changes in police or correctional practices, how much of a change in these rates can be obtained at a given cost in money, liberty, etc? Surely the answer is some number greater than zero. If it were zero, then we could abolish arrests and prisons with no adverse effects on society. Clearly, that is not something we would not be inclined to try. It is true that the prevalence and severity of crime in society [do] not depend mainly on what justice practitioners do. But the real question is: What feasible changes in what institutions and practices will make the largest marginal changes in crime rates? Judged that way, it may turn out that arrest or imprisonment rates have bigger effects on marginal rates than any feasible change in family or school practices, because what one can feasibly change in family or school practices turns out to be pretty trivial."<sup>5</sup>

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<sup>4</sup>For an overview, see Robert C. Trajanowicz and Bonnie Bucqueroux, *Community Policing: A Contemporary Perspective* (Cincinnati, Ohio: Anderson Publishing Company, 1990), and the monographs produced by Mark H. Moore of Harvard University's John F. Kennedy School of Government, Program in Criminal Justice, *Perspectives on Policing* (Washington, D.C.: National Institute of Justice, June and November 1988), especially nos. 2,3,4,5, and 9.

<sup>5</sup>James Q. Wilson, commentary on the draft of the first BJS-Princeton University discussion paper.



## II. Toward a new paradigm

To evaluate the performance of police departments, correctional agencies, and other key components of the justice system exclusively in terms of crime rates and recidivism rates may cause observers to overlook other important contributions of the system's day-to-day performance and can obscure the role that average citizens play in promoting secure communities. A wide gap often exists between the general public's expectations for the justice system and what most justice practitioners recognize as the system's actual capacity to protect public well-being. This paper sketches an outline of a new paradigm encompassing the criminal justice system's history, vision, purposes, and measures. Four points of qualification, however, are in order.<sup>6</sup>

First, this call for a new paradigm is not motivated by a desire to design performance measures which guarantee justice agency success. Rather, it represents an attempt

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<sup>6</sup>The preliminary ideas for these sections were presented by several members of the Study Group at the BJS/Justice Research Statistics Association (JSRA) 1992 National Conference held in New Orleans, Louisiana, September 23-25, 1992. The Study Group wishes to thank those BJS/JSRA conference participants who identified the need for the points of clarification and qualification that follow, especially Dr. Timothy Carr of the Georgia Department of Corrections; Professor George Cole of the University of Connecticut; Professor Robert Friedmann of Georgia State University; Professor Graeme Newman of the State University of New York at Albany; Dr. Sally Hillsman of the National Center for State Courts; and Professor Charles W. Thomas of the University of Florida. The Study Group's formal advisor, Professor James Q. Wilson of the University of California at Los Angeles, provided invaluable criticism of an earlier draft of this paper.

to develop realistic intermediate and long-range measures. Realistic measures account for the daily activities of justice agencies and for the constraints under which they normally operate. Realistic, however, does not mean easy to achieve. Indeed, the alternate measures presented in subsequent papers in the series are measures according to which many justice institutions, programs, and practices now fail.

Second, better performance measures do not act like magnets for better ways of meeting goals. All performance measures have their limitations and may invite perverse and unintended administrative consequences. Still, justice practitioners probably can learn something about how to fashion and implement effective performance measures from the experiences of other organizations, public and private.

Third, a paradigm is broader than a theory. A theory is a statement about the relationship between two or more variables that is supposed to hold under specified conditions.<sup>7</sup> A new paradigm orients general understanding to historical, empirical, or normative realities that a prevailing paradigm has arguably deemphasized, devalued, or simply ignored. In essence, to call for a new paradigm is to appeal for new concepts and categories of thinking about a given subject.

Fourth, crime rates and recidivism rates are indeed important measures of the system's performance, which ought to be continually used and refined. Even so, all citizens in a democracy are responsible to some degree for the the way in which society addresses the problem of

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<sup>7</sup>For a brief discussion of theory, see DiIulio, *No Escape*, pp. 213-225.

crime. In addition, justice agencies serve the public in myriad ways that are indirectly related to crime control goals, and society should devise and implement performance measures that respect this reality.

### **III. History: Multiple, vague, and contradictory purposes**

The history of the American criminal justice system is a history of swings in public mood. Americans have long been ambivalent about the purposes of criminal justice.<sup>8</sup> Among other things, they have wanted a criminal justice system that apprehends and visits harm upon the guilty (*punishment*); makes offenders more virtuous or at least more law-abiding (*rehabilitation*); dissuades would-be offenders from criminal pursuits (*deterrence*); protects innocent citizens from being victimized by convicted criminals (*incapacitation*); and enables most criminals to return as productive citizens to the bosom of the free community (*reintegration*). They have wanted the system to achieve these contradictory goals without violating the public conscience (*humane treatment*), jeopardizing the public law (*constitutional rights*), emptying the public purse (*cost containment*), or weakening the tradition of State and local public administration (*federalism*).

Because the competing public expectations cannot be easily met all at once, first one and then another dominate public attention. Justice policymakers and practitioners have

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<sup>8</sup>Portions of this section are drawn from John J. DiIulio, Jr., "Crime," in Henry J. Aaron and Charles Schultze, eds., *Setting Domestic Priorities: What Can Government Do?* (Washington, DC: Brookings Institution, 1992), chapter 4.

generally allowed the institutional and programmatic pendulum to swing with the public mood between different approaches to crime prevention and control.<sup>9</sup>

For example, between 1967 and 1992, the Federal Government fought two very different wars on crime. The first war (1967-80) was against poverty; the second (1980-92) was against criminals. In the first war the social and economic "root causes" of crime were attacked; in the second war the likelihood that criminals would be detected, arrested, prosecuted, convicted, and incarcerated was increased. The chief strategists in the first war were persons who believed that the Federal Government should play a central role in crime control. They emphasized the goals of offender rehabilitation, reintegration, humane treatment, and constitutional rights. The chief strategists in the second war were persons who believed that law enforcement was primarily a State and local responsibility. They emphasized the goals of punishment, deterrence, cost containment, and federalism.

Some justice practitioners have coped fairly successfully with such shifts in public sentiment, but many have not.

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<sup>9</sup>As William G. Mayer has shown, between 1960 and 1965, public opinion on crime and punishment became more liberal, and between 1965 and 1988 it became increasingly conservative; see Mayer, "Shifting Sands of Public Opinion: Is Liberalism Back?," *The Public Interest*, no. 107 (spring 1992), pp. 3-17. Mayer's analysis concurs well with trends in criminal justice program administration such as the rise, decline, and, in many jurisdictions, official or de facto abolition of paroling authorities. On parole, see Edward E. Rhine, William R. Smith, and Ronald W. Jackson, *Paroling Authorities: Recent History and Current Practice* (Laurel, MD: American Correctional Association, 1991).

Despite the conflicting and changeful public demands on them, some police commissioners have been able to "make themselves accountable to the public by defining their purposes in broad terms and then by trying to keep their own actions, and the actions of their organizations, consistent with these broad purposes."<sup>10</sup> Similarly, some corrections commissioners have coped well by means of "a creative capacity to translate broad societal expectations and policy decrees into administrative action."<sup>11</sup> Yet, the fact remains that these swings in public mood and policy have fostered administrative instability, frustrated long-term planning, and bred bureaucratic norms that insulate practitioners from what they sometimes view as a fickle, generally unappreciative, and often hostile public.

#### **IV. Democratic vision: Citizens as co-producers of justice**

In the light of this history, a moderating, democratic vision of the justice system's public purposes and limitations is both necessary and desirable. Such a vision emerges from the realization that all citizens have the right and responsibility to participate in the system. Citizens are co-producers of justice.<sup>12</sup> The ability of justice practitioners

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<sup>10</sup>Mark H. Moore, "Police Leadership: The Impossible Dream," in Erwin C. Hargrove and John C. Glidewell, eds., *Impossible Jobs in Public Management* (Lawrence, KS: University Press of Kansas, 1990), p. 98.

<sup>11</sup>John J. DiIulio, Jr., "Managing a Barbed-Wire Bureaucracy: The Impossible Job of the Corrections Commissioner," in Hargrove and Glidewell, *Impossible Jobs*, p. 67.

<sup>12</sup>The phrase was suggested by the Study Group's Professor Mark H. Moore of the Kennedy School of Government, Harvard University.

to do their daily work depends on the cooperation and support of citizens who are formally "outside" the system — a citizen willing to testify against a violent drug dealer; a community group that trusts and assists the police; relatives, friends, and employers who help to keep a community-based offender on the straight-and-narrow. Citizens, not judges, prosecutors, law enforcement officers, or corrections officials, are primarily responsible for the quality of life in their communities, including the prevalence and severity of crime within them.

As many honest friends of democracy have argued down through the ages, democratic citizens are wont to hold everyone but themselves accountable for public problems, and to become impatient when facile solutions do not produce immediate results.<sup>13</sup> Citizens in a democracy must begin by holding themselves and their neighbors accountable for public affairs. A democratic vision of the justice system, therefore, is anything but a sop to public frustrations with crime and disorder. Citizens who expect judges, police, and other justice officials to solve society's crime problems are unrealistic; citizens should not expect the officials to succeed without the active cooperation and support of the community.

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<sup>13</sup>For example, see Alexis de Tocqueville, *Democracy in America*, ed. Phillips Bradley, vol. 2. (New York: Vintage Books, 1945), and Walter Lippmann, *Essays on The Public Philosophy* (Boston: Little, Brown and Company, 1955).

## V. Criminal-justice purposes: Four civic ideals

This democratic vision supplies a rationale for identifying the major purposes of the system in terms of four civic ideals or purposes:

- (1) Doing justice,
- (2) Promoting secure communities,
- (3) Restoring crime victims, and
- (4) Promoting noncriminal options.

Justice can be defined as the quality of treating individuals according to their civic rights and in ways that they deserve to be treated by virtue of relevant conduct. Criminal justice is rights-respecting treatment that is deserved by virtue of criminal conduct as judged by the rule of law.<sup>14</sup> Thus, *doing justice* implies at least four things: hold offenders fully accountable for their offenses, protect offenders' constitutional and legal rights, treat like offenses alike, and take into account relevant differences among offenders and offenses.

*Promoting secure communities* means more than to achieve low crime rates. Rather, it means providing the security to life, liberty, and property that is necessary for communities to flourish. It means enabling citizens to pursue their collective life as they see fit without undue fear of having that life disrupted or destroyed. It means securing communities against criminals who assault, rape, rob, defraud, deal drugs, burglarize, extort, and murder, but it also means securing them against the community-sapping

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<sup>14</sup>This definition of criminal justice was suggested by the Study Group's Professor Charles H. Logan of the University of Connecticut.

disorders that are commonly associated with crime and the fear of crime — disorders such as petty crime, public drunkenness, aggressive panhandling, loitering, graffiti, abandoned cars, broken windows, and abandoned buildings.<sup>15</sup>

*Restoring victims* means to honor the community's obligation to make victims of crime and disorder whole again. The victims' rights organizations, manifestos, and laws that have proliferated over the last decade or so generally reflect and embody this long-overlooked goal.<sup>16</sup> Victims of crime have a special claim upon the criminal justice system's human and financial resources. Whatever else it may achieve, no system that dishonors that claim can be considered legitimate.

Finally, *promoting noncriminal options* means that punishment for criminal behavior should interfere as little as possible with the pursuit of noncriminal behavior. Even

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<sup>15</sup>A fine treatment of the relationship between disorder, crime, and the fear of crime can be found in Wesley G. Skogan, *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods* (Berkeley and Los Angeles: University of California Press, 1990). Also see the following: George L. Kelling, "Measuring What Matters"; James Q. Wilson and Kelling, "Police and Neighborhood Safety: Broken Windows," *Atlantic Monthly*, March 1982, pp. 29-38; and James Q. Wilson and John J. DiIulio, Jr., "Crackdown: Saving the Next Generation From the Drug-and-Crime Epidemic," *New Republic*, July 10, 1989, pp. 21-25.

<sup>16</sup>Knowledge about the physical pains, psychological traumas, and economic losses suffered by victims of crime, their families and friends, and the public remains shallow but is increasing. For a serviceable overview, see Albert R. Roberts, ed., *Helping Crime Victims: Research, Policy, and Practice* (Newbury Park, Calif.: Sage Publications, 1990).



in prison, offenders need at least some opportunity to engage in meaningful, constructive, and legitimate activities. Nor should government impose arbitrary restrictions on employment or other legitimate activities by convicted offenders except where justified as a form of punishment or where public safety is at risk. This is not to say that society has any greater obligation toward the betterment of offenders than it owes to nonoffenders. It is not even to say that government has an obligation toward the betterment of offenders and nonoffenders alike. But one function of government is to promote (not necessarily to provide) legitimate opportunities and to facilitate (not necessarily to require or directly to reward) their pursuit.

## **VI. Realistic performance measures**

These four civic purposes point beyond crime rates and recidivism rates and toward more realistic ways of measuring the performance of justice institutions, programs, and practices. By no means is this the first call for such measures. During both of the Federal wars on crime from the 1960's through the 1980's, a number of well-intentioned efforts were made to rethink the measures commonly used to evaluate the system's performance. (See *Appendix A*.) Few of these efforts moved much beyond a rehashing of such concepts as crime rates and recidivism rates, and none had a wide or lasting impact on the field. In conjunction with his work on the Study Group, Charles H. Logan has developed a set of performance measures for secure correctional institutions. His discussion of those measures will appear in a future paper in this series.

To foreshadow, the measures Logan proposes for prisons and jails have the virtue of not asking criminal justice institutions to do what other social institutions are more responsible for doing and in many cases what other social institutions have failed to do. They do not, for example, ask our corrections officials to somehow "correct the incorrigible, rehabilitate the wicked, or deter the determined."<sup>17</sup> But they do demand that, with the human and financial resources that society has provided, and with the requisite support of other social institutions, the officials must "keep prisoners — keep them in, keep them safe, keep them in line, keep them healthy, and keep them busy — and do so with fairness, without undue suffering, and as efficiently as possible."<sup>18</sup> That alone is asking a great deal, but it is not asking too much.

By the same token, it makes little sense to measure police performance exclusively in terms of crime or arrest rates. Geoffrey P. Alpert and Mark H. Moore are developing an expanded range of policing measures. In anticipation of their contribution to the discussion series, it is worth highlighting George L. Kelling's recent article "Measuring What Matters: A New Way of Thinking About Crime and Public Order." After documenting that the New York City Police Department has been doing quite well in relation to such conventional measures as crime rates, arrest rates, emergency response times, and incidence of corruption, Kelling keenly observes:

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<sup>17</sup>Charles H. Logan, *Criminal Justice Performance Measures For Prisons*, BJS-Princeton University Discussion Series, forthcoming, draft.

<sup>18</sup>Logan, *Criminal Justice Performance Measures*, draft.

But New Yorkers are not the least bit reassured by these statistical and relative achievements.... These formal measures of police work have little to do with community needs.... [A] significant reason disorder has been ignored is that professional criminal justice ideology narrowly defines the appropriate business of police and criminal justice agencies as dealing with serious crime — that is, index crimes. Crime response, and arrest statistics, form a pillar of that ideology. Disorder does not appear in any FBI index; therefore, it has not been a priority.<sup>19</sup>

## VII. Conclusion: Toward a new paradigm?

Is it possible for justice officials to develop, implement, and organize themselves around performance measures that expand and complement the conventional measures such as rates of crime and recidivism? And can this be done for all components of the system — courts, prosecutors' offices, police departments, institutional corrections, and community-based corrections?

Future papers in the series will tackle these questions and offer specific, detailed proposals for new measures consistent with the historical understanding, democratic vision, and civic purposes outlined above. In addition, the papers will spell out the practical and policy implications of adopting the new paradigm, and spotlight its implications for how agencies allocate resources, conduct program evaluations, and so on.

For now, it is worth noting that many of the most successful major corporations use multiple performance measures that give tremendous weight to "soft" indicators

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<sup>19</sup>Kelling, "Measuring What Matters," pp. 21-22.

along with sales reports, inventory records, and other "hard" financial data. For example, McDonald's Corporation has measured performance not simply by the conventional bottom line of profits, but by a dozen or so measures that roving teams of inspectors apply — Are the floors clean? Are the salt shakers full? Are the cashiers greeting customers and wearing their uniforms correctly? and so on. McDonald's recognized that the profits made by their stores were conditioned by economic and other factors over which their franchisees had little or no direct control. But the store owners, managers, and staff could be and are held strictly accountable for other factors that might affect business.<sup>20</sup>

Likewise, over the last decade, the United States military has made great strides in developing reasonable and realistic measures of combat readiness and combat effectiveness. Prodded by government and private studies that found a need for improvements in military planning, and in the areas of weapons acquisition, combat training, and force deployment, each branch of the military responded by revamping certain of its strategic doctrines and practices, and by getting away from simple "bean-counting" measures. While many improvements have yet to be made, the military has begun to think about new and better ways of linking its national security mission to meaningful performance standards and objectives.<sup>21</sup>

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<sup>20</sup>David C. Rickert, *McDonald's Corporation* (condensed), Harvard Business School, revised February 1982.

<sup>21</sup>For interesting examples that relate to defense acquisition programs, see Glenn A. Kent, *A Framework for Defense Planning* (Santa Monica, Calif.: RAND, August 1989), and Glen A. Kent and William E. Simons, *A Framework for Enhancing Operational Capabilities* (Santa Monica, Calif.: RAND, 1991).

The performance measurement lesson that much of corporate America and the American military have learned is one that the American justice system can also apply. Crime rates, recidivism rates, and other conventional bottom-line measures must have better grounding in community needs and must be joined to a realistic set of performance standards. The Study Group hopes to provide a gentle, democratic shove in that direction, and to get policymakers, practitioners, analysts, activists, and interested citizens thinking and debating toward a new paradigm of the American justice system.

## Appendix A

### Selected sources of measurement topics

Gordon P. Whitaker, Stephen Mastrofski, Elinor Ostrom, Roger B. Parks, and Stephen L. Percy, *Basic Issues in Police Performance*, National Institute of Justice (NIJ), July 1982.

Joan E. Jacoby, *Basic Issues in Prosecution and Public Defender Performance*, NIJ, July 1982.

Thomas J. Cook and Ronald W. Johnson, with Ellen Fried, John Gross, Mary Wagner, and James Eisenstein, *Basic Issues in Courts Performance*, NIJ, July 1982.

Gloria Grizzle, Jeffrey S. Bass, J. Thomas McEwen, Deborah M. Galvin, Ann G. Jones, Harriet D. Mowitt, and Ann D. Witte, *Basic Issues in Corrections Performance*, NIJ, July 1982.

Martha R. Burt, *Measuring Prison Results: Ways to Monitor and Evaluate Corrections Performance*, NIJ, June 1981.

Sorrel Wildhorn, Marvin Lavin, and Anthony Pascal, *Indicators of Justice: Measuring the Performance of Prosecution, Defense, and Court Agencies Involved in Felony Proceedings; A Guide to Practitioners*, NILECJ, LEAA, May 1977.

Sorrel Wildhorn, Marvin Lavin, Anthony Pascal, Sandra Berry, and Stephen Klein, *Indicators of Justice: Measuring the Performance of Prosecution, Defense, and Court Agencies Involved in Felony Proceedings; Analysis and Demonstration*, NILECJ, LEAA, May 1977.

Jack D. Reynolds, *Performance Measurement in Probation and Parole*, Washington, D.C.: University Research Corporation, 1979.

Benjamin H. Renshaw, *A Recommended Set of Indicators for Evaluating the Performance of the Philadelphia Criminal Justice System*. Philadelphia: Government Studies & Systems, Inc., 1971.