If you have issues viewing or accessing this file contact us at NCJRS.gov.

National Institute of Justice
and
Office of Justice Programs' Corrections Programs

Sentencing & Corrections Workshop

Prepared Papers

February 14-15, 1996
Washington, DC

163785

THE UNINTENDED CONSEQUENCES OF INCARCERATION*

by

Todd R. Clear
Rutgers University
NIJ Research Fellow

Paper presented to the NIJ Workshop on Corrections Research
February 14-15, 1996

*I would like to thank Dina Rose for contributing thoughts and narrative to this paper in its earlier drafts.

The **intended consequences** of a prison sentence are twofold:

- Moral Education--A "message" is sent to the offender and to the public-at-large confirming that the offender's conduct was wrong and will not be tolerated by society;
- Crime prevention--Through the mechanisms of specific deterrence (e.g., rehabilitation) and incapacitation, the offender is made less prone/capable of committing additional crimes.

In general, then, the object of incarceration is to promote a more socially cohesive society, one in which members are inclined to conform their conduct to accepted standards of legal behavior. Conformity is induced by the lesson of the prison, experienced directly or indirectly. One way we measure moral social cohesion is by counting the incidence of crimes.

Unintended consequences of incarceration occur when the use of the prison undermines the objective of moral social cohesion. We would study unintended consequences by investigating ways in which the use of the prison might (1) send messages, either to offenders or to the public, that are garbled as to right and wrong; or (2) tend to increase the potential for criminality. The purpose of this paper is to identify a number of ways in which imprisonment may lead to unintended consequences.

An artifactual case for unintended consequences

Through the first three-quarters of this century, America's incarceration rate varied around a semi-stable level of about 100 prisoners per 100,000 citizens. Beginning in 1973, the nation's

prison practice changed from stability to growth, and a quarter-century later incarceration rates are now over 400 per 100,000 citizens.

From the point of view of **intended** consequences, such an increase should translate into a crime control boon. Conservative estimates are that the average active offender commits about 20 non-drug felonies a year (Spelman 1994). Swelling incarceration rates should have reduced crime in the community by large numbers. For instance, the increase in prisoners by about 700,000 between 1973 and 1992 should have reduced the incidence of crime by up to 14 million offenses, adjusting for population increases. But in 1973, the National Crime Survey estimated about 36 million crimes were committed; in 1992[1] the total had only dropped to 34 million.[2]

To put this anomaly in perspective, let us hold general deterrence constant, and assume that every incarcerated offender, if released, would commit 20 crimes a year, some portion of which would be violent. The nation's "underlying" rate of criminality could then be calculated as the actual crimes committed *plus* the crimes averted by incarceration. In 1973, when we locked up 200,000 offenders, we were dealing with an "underlying" level of about 40 million crimes a year. In 1992, with almost 900,000 prisoners, the "underlying" crime rate had grown to over 51 million crimes per

---

[1] The National Crime Survey revised the way it collected crime data in 1993, making cross-year comparisons past 1992 inadvisable.

[2] Most of the drop was due to declines in personal theft and burglary. After rising then falling since 1973, the violent crime rate in 1992 was almost identical to 1973.

year (even though actual crimes experienced had declined due to much higher incarceration).

The numbers are more dramatic for violent crime. In 1973, we would estimate an "underlying" violence level of 6.2 million crimes per year. By 1992, that number had become 10.1 million. Accounting for population growth, the rate of "underlying" violent crime had increased by 33%--so much that probability of *actually experiencing* a violent street crime was almost exactly the same 20 years later, even though an additional 700,000 offenders had been removed from the streets.[3]

Thus, the enormous increase in imprisonment seems to have masked a growing social propensity for violence. What accounts for our growing criminal potential? Many observers would respond that social problems such as inequality, family breakdown, economic alienation and social disorganization have become worse in the last 20 years, thus spawning more violence. The picture is sufficiently grim that we now hear frank discussion that it has helped produce a generation of so-called "superpredators."

The thesis of this paper is that high incarceration rates may also be one of those forces that has contributed to higher rates of underlying criminal violence. It is argued that incarceration has **unintended** consequences in two ways.

---

[3] The probability of being a victim of any type of crime has dropped about 30%, according to the NCS. Adding the "averted crimes" of the incarcerated offenders to that figure results in an "underlying" crime rate in 1992 about equal to that in 1973.

- First, locking a person up disrupts a number of systems and these disruptions might plausibly contribute to higher levels of crime; and
- Second, the extraordinary growth in incarceration, has damaged human and social capital within already disrupted and disadvantaged communities.

Thus, this paper argues that incarceration, intended as a way to produce moral social cohesion, also contains the seeds of the exact opposite outcome.

I. Crime and systems

Though the accumulation of additional prisoners has been gradual, the net impact of this profound shift in the collective experience of incarceration is important to understand. Growth in imprisonment has disproportionately affected the poor and people of color. Approximately 7% of all African-American males aged 20-50 are currently in prison (BJS 1995)[4]. This statistic represents a drastic loss in male membership in these communities. African-American communities have suffered war-level casualties in parenting-age males during the increase in imprisonment since 1973, when only 1% of this group was incarcerated.

One way to see the potential for unintended consequences of imprisonment is to view crime and punishment from the perspective of a "systems" model, in which crime is seen as embedded in various interpersonal, family, economic, and political systems. This approach helps explain how removing large numbers of young males from the community seriously disrupts the systems on which

neighborhoods rely. The result is an increase in the underlying level of crime.

The systems model makes the argument that crime is a social event occurring within a social context. Large numbers of individuals cannot be removed from communities without affecting the structural conditions which are conducive to crime. While communities may be able to sustain small losses in residents (due to both "natural" events such as residential mobility and "unnatural" events such as incarceration) without significant fallout, removing residents past a certain threshold may begin to have impact on larger social relations. Below are listed ways in which these effects might be expected to occur. While one or another of these factors by itself may seem trivial in its relationship to crime, their combined effects may potentially be devastating. The purpose of this paper is not to build a theory of such relationships. Rather it is to show how disrupting a large number of systems through incarcerating consequential portions of a community's population can promote, rather than reduce, crime.

Interpersonal criminal systems

Crime is often a group phenomenon (see Reiss 1988). Young males commit much of their street-level acquisitional crime in groups--muggings, burglaries, robberies and so forth. Nearly all of drug crime, from sales to consumption, is also a group activity.[4] This raises the question of what happens when the criminal justice

[4] While most citizens stand in fear of solitary offenders such as serial murderers or rapists, these crimes are comparatively rare.

system removes one member of a criminal group. It may often be that the group continues its criminal activity as before. The group may even recruit a replacement member in order to carry out criminal functions at continuing levels. For every group that replaces removed members, little or no crime prevention is achieved by the incarceration of the initial member.

This is almost certainly the case with drug-related crime. Drug demand remains unaffected by removal of drug offenders, and the criminal actions of the group go on largely uninterrupted. This may be worse than a mere wash, however. Implicit within the replacement idea is "recruitment:" that a young man otherwise at the margin of criminal groups becomes more intimately associated with them. In the case of drug crime, for example, a young male who otherwise might have been in school or in search of legal work is instead recruited into the drug trade. This male, who might have left young adulthood without close association with crime groups, instead becomes initiated into criminal enterprise--with lifelong implications. The results of criminal replacement may sometimes include augmentation of a criminal career.

Familial systems

It is well established that children suffer when parents are removed from the home. What is less clear is the nature and extent of disruption that follows an incarceration. Studies of this problem have tended to focus on mothers (Gabel 1972), but there have also been a few attempts to document the impacts of imprisonment of fathers (King 1993; Lowstein 1986). If the latter

effects are potent, the ripple effects of a father's incarceration could be significant.

It might be argued that removal of a criminally active father improves the environment of the remaining sons. This is not clear from the data. One study (Smith and Clear 1995) of a male, jail intake sample finds preliminary evidence for the existence of substantial positive parenting prior to incarceration. After the male's imprisonment, the responses of the jailed inmate's family to his incarceration include: address changes in which the remaining family moved into more cramped quarters and new school districts, family disruption including the arrival of new male roles into the family replacing the inmate, reduced time for maternal parenting due to taking secondary employment, and so on.

Children's internalization of social norms may also be disrupted by high levels of incarceration. Changes in parental working conditions and family circumstances are known to affect children's social adjustment and norm transmission across generations (Parcel and Menaghan 1993). Adult crime is also connected both to childhood experience and to changes in adult social bonds (Laub and Sampson 1993). School success is also linked to family structure, which has effect independent of social class in impoverished families and parenting style (Vacha and McLaughlin 1992). None of these changes will by itself "cause" delinquency, but each is a family disruption, and such disruptions are associated with earlier and more active delinquent careers.

The incarceration of large numbers of parent-age males also restricts the number of male partners available within the community. This means that mothers find more competition for partners and parents for their children. In the context of more competitive parental situations, mothers may feel reluctant to end relationships that are unsuitable for children partly because prospects for a suitable replacement are perceived as dim. It is known that abusing relationships with parents contribute to later delinquency among the children suffering such abuse (Widom 1994).

Therefore, while the common assumption is that removing criminally-active men from the home fosters a safer environment, it may have counter-intuitive effects due to an increased risk of delinquency among the fatherless children. For example, let us say that a father's imprisonment increases his son's delinquency by 25%. A father of four boys will, through his incarceration, produce the equivalent of one new delinquent. The greater probabilities of apprehension and resulting crime amplification of the "new delinquent's" children illustrate the kind of generational pattern that may occur.

Economic systems

Family members earning illegal money still contribute to the welfare of their families. Prior to incarceration, most prisoners are an economic resource to their neighborhoods and immediate families. Sullivan (1989) estimates that in impoverished neighborhoods, a work-age male might generate about $12,000 in economic activity in a given year--money that translates into

purchases at the local deli, child support, and so forth. This economic value is generated in a variety of endeavors, including off-the-books work, intermittent illicit drug trade, welfare, and part-time employment. Once arrested and incarcerated, this economic value is transformed and transferred. It is transformed into penal capital--the demand for a salaried correctional employee to provide security. It also is transferred to the locality of the prison, where the penal system's employees reside and live. Thus, in the case of New York, a resident of Bedford-Stuyvesant, arrested and convicted, is transformed from a $12,000 resource in his community to a $30,000 resource in a sleepy, upstate village. This type of transfer of wealth applies to as many as 70% of New York State's 69,000 inmates (Clines 1992).

What happens to a community that experiences a steady growth in these transfers of wealth? Economic hardship is one of the strongest geographic predictors of crime rates. The socially imbedded nature of crime and unemployment suggests that those communities suffering deprivation experience greater criminal involvement among residents (Hagan 1993). Therefore, it is reasonable to assume that a community experiencing economic loss as a result of incarceration will experience an increase in crime (Wilson 1987).

Imprisonment not only has an economic effect on the community that was home to the prisoner, it also affects the prisoner directly. Grogger (1995) demonstrated that merely being arrested has a short-term, negative impact on earnings, while Freeman (1992)

has shown that suffering a conviction and imprisonment has a permanent impact on earning potential. Experience with the criminal justice system contributes to the very inequality in economic means that promotes street crime in the first place (Braithwaite 1979). Thus the criminal justice system leaves economic scars on its clients long after its formal involvement in their lives has ended.

Political systems

Every minority child can tell stories of racism in the criminal justice system, and the validation of these tales is apparent to the eye. One-third of African-American males in their twenties are under some form of formal justice system control; in many cities, half of this group are subjects of the system (Mauer 1995). The overwhelming presence of American criminal justice in these communities goes a long way to defining the meaning of the state for this segment of society. The state is most likely to be encountered as a coercive agent of control rather than a "fair" agent of justice, and when this is true people are less likely to conform their behavior to the requirements of the law (Tyler 1994).

In communities with high rates of incarceration, beliefs about the state may be contentious. In Philadelphia, for example, a small cadre of police was found to have been planting evidence and falsifying testimony to achieve convictions. In an analysis of 100 arrests by this small crew, 55 were determined to be obtained by false means. Dozens of incarcerated offenders had their convictions overturned and were released from prison, including a grandmother whose conviction was obtained through planted drugs as a way to

teach her drug-dealing grandson "a lesson." In the last few years, this crew has been responsible for over 10,000 arrests. One can imagine the collective impression of victims of the perhaps 5,000 falsified arrests, and the impressions of their children, siblings, spouses, and in-laws. The effect of a malfeasance of the law within these communities is geometric. This is one of the reasons why it would surprise few of us to learn that many inner-city young people define the power of the state as a nemesis to be avoided rather than an ally to be cultivated.

There is another level at which this negative political impact may operate: it may reduce deterrence. Finckenauer's (1982) study of Rahway prison's "Scared Straight" program found that those exposed to the harsh, accusatory taunting by the lifers actually had more delinquency than a comparison group not exposed to the program. This suggests that the brutalizing effects of prison experiences may not only fail to deter, they may actually inure the person from fear of prison's consequences.

Stated in another way, part of the deterrent power of the prison may be the mystery that surrounds it. Once experienced, prison, no matter how harsh, is transformed from an awful mystery to a real-life experience that can be suffered and survived. High recidivism rates throughout the years are consistent with the idea that prison experiences fail to deter. Fear of prison (especially among the middle class who have not experienced it) may be a real deterrent only when it is an unacquainted fear.

In minority communities, prison is a part of life. A black 10 year-old is likely to have at least one (and likely more) ex-cons among his fathers, uncles, brothers, and neighbors. The lesson is that prison is not awesome, but is survivable. Widespread use of the prison is tantamount to a widespread reassurance that prison is "normal." Thus, the politics of imprisonment may be a combination of increasing resentment and decreasing marginal gain.

II. Human and social capital

Effective social organization relies upon sufficient supplies of human and social capital. Thus, what criminologists think of as moral social cohesion is also reliant upon human/social capital. These constructs, seen as essential to viable community, can also be seen as affected by rates of incarceration.

Human capital refers to the human skills and resources individuals need to function effectively, such as reading, writing, and reasoning ability. Social capital refers to the social skills and resources needed to affect positive change in community life. Social capital is the essence of social control for it is the very force collectives draw upon to enforce order. Social capital, however, requires sufficient amounts of human capital, so the two concepts are inextricably linked. For instance, any type of collective action requires a certain amount of knowledge with regard to organizing tactics and sufficient education to deal with outsiders. Communities deficient in human capital are unable to organize effectively, and are unable to take advantage of resources available from society at large.

The place of residence is a source of informal networks of people who (1) provide important products and services (such as child care), and (2) can alter life chances with job referrals, political connections (or, of course, criminal contacts). While sometimes this informal marketplace operates through monetary exchange, more often it operates through barter where reciprocity is the currency of exchange (Logan and Molotch, 1987). This system is especially important for the poor who rely more upon each other for these types of resources since poor people are less mobile than the well-to-do (Wellman, 1979). Interpersonal support among poor people is particularly damaged when their neighborhood is disrupted (Logan and Molotch, 1987).

Strong neighborhoods are those which are able to meet the needs of residents. Not only are they the focal point in which daily needs are met, they are environments in which there is an availability of informal support networks. Strong neighborhoods provide a sense of physical and psychic security, in addition to a sense of identity, and they provide benefits to residents based upon a concentration of demand which often is unique to that area (Logan and Molotch, 1987; Stoecker, 1994).

By contrast, disrupted neighborhoods have difficulty identifying and claiming their needs. The most disorganized communities need the most outside assistance, yet often they are not the communities which are the recipients of this assistance. For instance, Milofsky (1988) shows that resource allocation occurs from the state to the community as a function of a variety of

factors. Because the government is not equipped for actual distribution of funds to individuals, a primary factor is the ability of the state to identify a group who can distribute the money to individuals in the community. The distribution of resources requires an established and identifiable organization representing the community. The most severely disorganized communities often suffer from a paucity of organizations and in their struggle to receive government assistance, do not have the sufficient human capital or social capital to create organization needed to obtain and distribute money. In this way, the most disadvantaged communities remain the most disadvantaged.

It is clear that crime is a disrupting force in neighborhoods, and the absence of crime helps make neighborhoods stronger. Yet it is also clear that a high level of incarceration may affect all the aspects of community that prevent crime and strengthen communities.

First and foremost, extreme imprisonment removes a portion of residents. In disadvantaged communities already straining from the effects of poverty and other destabilizing conditions, the absence of able-bodied males influences the social organization of the community. Incarceration removes wage earners, day care providers, elder care-givers. Their tasks, however, remain. There are fewer people to watch the children in terms of care and guardianship, and there are fewer parental resources for various forms of family social capital useful in facilitating positive child outcomes (Parcel and Menaghan, 1994). Filling these voids creates a strain.

Incarceration disrupts personal networks of associations that are the basis for social organization. Individuals are differently affected by this disruption, depending upon their place in the network relative to the incarcerated individual. Immediate family members are more heavily affected by a member going to prison than are cousins who in turn are affected differently than friends. The spiralling of affects is important to recognize because it is only through examining the multiplicative impact of incarceration that we can obtain a accurate picture of its effect on community life.

High rates of incarceration may also increase a community's sense of alienation from society-at-large. Skogan's (1990) research indicates that individuals who are unable to leave an undesirable neighborhood often withdraw. The implications of this research are that this kind of anonymity decreases integration and increases social disorganization. When the community as a whole becomes more alienated, there is less incentive to strive for mainstream goals, there is greater malaise and depression, and reduced feelings of empowerment. People need to have the skills to come together, but just as important, they need to feel that they are capable of affecting some type of control. This requires a feeling of community and empowerment which alienation (internally and from external world) ravages.

Social capital is, the force behind social control, is thus a potential victim of high concentrations of incarceration. Removing so many people from a community can disrupts networks and remove vital resources from the community.

III. Conclusion

This paper argues that the unprecedented increases in incarceration since 1973 may have contained the seeds of increases in crime. This has happened because high levels of incarceration, concentrated within certain communities, interact with socio-political and economic systems in ways that promote crime and damage human and social capital. The result is a conceivable reduction in moral social cohesion.

The level of counter-productiveness may actually be high enough that it largely cancels out the gain in crime prevention associated with imprisonment. If this is so, current policy-making can only exacerbate the very forces it is designed to eradicate. Perhaps these effects are so strong that the growing evidence (Blumstein, 1995) young people today are more violent and more criminal--the so-called "superpredators"--can be partly explained by the thesis that high incarceration rates have contributed to a quality of life for many of them that promotes greater anti-social responses.

Bibliography

Blumstein, Alfred. (1995) "Violence by Young People: Why the Deadly Nexus?" NIJ Journal. August, 1995., issue no. 229, pp. 2-9.

Braithwaite, John (1979) Inequality, Crime and Public Policy. London: Routledge and Kegan Paul.

Bureau of Justice Statistics Reports. (1995) Prisoners in 1994. Washington, D.C.: U.S. Department of Justice.

Clines, Francis X. (1992) "Ex-inmates Urge Return to Areas of Crime to Help," New York Times (December 23) 1FF.

Finckenauer, James O. (1982) Scared Straight: the Panacea Phenomenon. Englewood Cliffs, NJ: Prentice-Hall.

Freeman, Richard B. (1992) "Crime and Unemployment of Disadvantaged Youth," in Adele Harrell and George Peterson, eds., Drugs, Crime and Social Isolation: Barriers to Urban Opportunity. Washington, D.C.: Urban Institute.

Gabel, Stewart (1992) "Children of Incarcerated and Criminal Parents: Adjustment, Behavior and Prognosis," Bulletin of American Academic Psychiatry Law, 20: 33-45.

Grogger, Jeffrey (1995) "The Effect of Arrests on the Employment and Earnings of Young Men," Quarterly Journal of Economics.

Hagan, John (1993) "The Social Embeddedness of Crime and Unemployment," Criminology, 31: 465-492.

King, Anthony E.O. (1993) "The Impact of Incarceration on African American Families: Implications for Practice," Journal of Contemporary Human Service, 73(3), 145-153.

Laub, John H., and Robert J. Sampson (1993) "Turning Points in the Life Course: Why Change Matters to the Study of Crime," Criminology, vol. 31., no. 3 (August) pp. 301-325.

Logan, John R. and Harvey L. Molotch (1987) Urban Fortunes: The Political Economy of Place. Berkeley, CA: University of California Press.

Lowstein, A. (1986) "Temporary Single Parenthood--the Case of Prisoner's Families," Family Relations, 35, 79-85.

Mauer, Mark (1995) African American Males and the Criminal Justice System, 1995. Washington, D.C.: The Sentencing Project.

Milofsky, Carl (1988) Community Organizations: Studies in Resource Mobilization and Exchange. NY: Oxford Univ. Press.

Parcel, Toby L., and Elizabeth G. Menaghan (1994) "Early Parental Work, Family Social Capital, and Early Childhood Outcomes," American Journal of Sociology, vol. 99, no. 4 (January) pp. 972-1009.

Parcel, Toby L., and Elizabeth G. Menaghan (1993) "Family Social Capital and Children's Behavior Problems," Social Psychology Quarterly, vol. 56, no. 2 (June) pp. 120-135.

Reiss, Albert J. (1988) "Co-offending and Criminal Careers," in Michael Tonry and Norval Morris (eds.) Crime and Justice: An Annual Review of Research, Vol 10. Chicago: Univ. of Chicago.

Skogan, Wesley (1990) Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods. NY: The Free Press.

Smith, Margaret and Todd R. Clear (1995) Fathers in Prison: Interim Report. Report to the Edna McConnel Clark Foundation by the Rutgers University School of Criminal Justice.

Spelman, William (1994) Criminal Incapacitation. NY: Plenum.

Stoecker, Randy (1994) Defending Community: The Struggle for Alternative Redevelopment in Cedar-Riverside. Philadelphia: Temple Univ. Press.

Sullivan, Mercer (1989) Getting Paid: Youth, Crime and Work in the Inner City. Ithaca: Cornell University Press.

Tyler, Tom (1990) Why People Obey the Law. New Haven: Yale Univ. Press.

Vacha, Edward F., and T. F. McLaughlin (1992) "The Social Structural, Family, School and Personal Characteristics of At-Risk Students: Policy Recommendations for School Personnel," Journal of Education, vol. 174, no. 3 (Fall) pp. 9-25.

Wellman, Barry (1979) "The Community Question: The Intimate Networks of East Yorkers," American Journal of Sociology, vol 84; pp. 1201-1231.

Widom, Kathy Spatz (1994) "Childhood Victimization and Risk for Adolescent Problem Behaviors," in M.E. Lamb and R. Ketterlinus, eds. Adolescent Problem Behaviors. NY: Earlbaum, pp. 127-164.

Wilson, William Julius (1987) The Truly Disadvantaged. Chicago: University of Chicago.

143786

Walter J. Dickey
2-6-96

Managing Change in Correctional Institutions

We can reasonably take for granted a few things about the future of imprisonment in the United States. We are going to have a lot of prisoners and we are going to have them for a long time. Some of those prisoners will serve long sentences; a larger number will serve short and intermediate sentences. A disproportionate number will be men and members of minority groups. The cost of imprisonment will be great; we can realistically expect only marginal reductions in cost (or slower growth in cost) from efforts for greater efficiency, through inmate labor, privatization and use of technology.

Who comes into prison and how long they stay is not within the control of the people who manage prisons. While correctional officials have some influence over these decisions (through the information they provide at sentencing and in the parole process), who is subject to imprisonment and its duration are decisions left to others,with increasing domination by legislatures and prosecutors and a still significant role for judges. Sentencing policy and practice have become more political at least in high visibility situations. Sometimes this results in a long sentence for an individual, but its greater social significance lies in the new sentencing laws (such as sexual predator and three strikes laws) which can significantly influence correctional management. A more subtle consequence of the increased political attention to sentencing is its influence on discretionary decisions by judges

and parole boards, the creation and reinforcement of a culture of sentencing.

Correctional management is directly influenced by sentencing changes (bigger numbers of offenders, for example) and also by the attendant culture. Whether the "message" of politicians is intended for correctional managers or not, they receive and heed it. I have long thought that if one wants to understand prisons and predict their future, one should look to the larger social environment, for prisons reflect it.

Correctional managers are given little in the way of clear direction about the products they are to produce. The statutes of most states have a pious statement of mission for corrections' departments, but little more in the way of specific expectations and evaluation. Some clues about direction and expectation can be found in budgets, but the messages are often mixed and confusing. For example, correctional industries programs are characterized by great expectations about outcomes (profitability and inmate jobs), limited resources to achieve them, and, often, legal limits on what types of industries a correctional system may engage and ignorance of the external labor market for which prison industries is to prepare its employees.

Correctional managers themselves suggest what products they should produce by providing information about "recidivism rates," usually anticipating demand for such information. They provide information on escape rates, assaults of staff, inmate deaths, inmate grievances, union grievances, the costs of imprisonment, the

number of inmates at work or in school, the number double celled, and the like. Much of this information is developed now as management tools, at the request of legislative oversight committees and because this is what we have come to expect from prison managers, whether it is related to desired products or not.

Given the way policy is made and the daily pressures of prison management, most correctional management is devoted to "getting through the day." Because correctional administrators have become, at least in the political sense, more savvy, "the day" may be extended to "the year," "the biennium," and "the governor's term." But as anyone who has worked in corrections knows, planning too far into the future is a dangerous endeavor. Events, usually unexpected ones over which managers have no control, have a way of shaping policy choices. Many would argue it is smarter to be opportunistic than to place much faith in planning. Many have tried to be "proactive," in the current lingo, but the results, with few exceptions, are stop gap.

This sketch suggests many avenues of possible future inquiry to observers of the correctional scene. Questions related to prison crowding; aging and health care; privatization; technology; race and gender; the use of force; prison discipline; parole; recidivism; and the like. Unfortunately, this research is likely to be reactive to the ad hoc developments that attend growth in any institution. It assumes no essential change in the prison environment other than change associated with growth. If, on the other hand, the prison environment has any chance of changing and

improving, we must think about the enterprise differently. This is the moment to do so.

My goal, then is to provoke thought about how we might understand the prison enterprise differently. The organizing principle for this understanding is that we need attention to the "products" of prisons; the feasibility of various products prisons might produce; and how to decide which products to produce and by what methods. Focus on these issues helps organize the management questions. Clarity about these matters will also sharpen our understanding of release decisions, which are bound to become more important as the numbers of prisoners increase.

The Products

Today we ask prisons to produce everything, but expect them to produce nothing

What products might prison produce?

- a punished person, punished by the prison regimen designed for this purpose;
- a person less apt to commit further crimes;
- an incapacitated person unable to commit crimes on the public (and/or on prisoners or staff), while imprisoned;
- a person with a basic education and work habits;
- a person with a strong connection to community, family, and friends outside of prison (or a person cut off from their potentially corrupting influence);
- an old person;

- a healthy person;
- an angry person.

To carry this metaphor a bit further, if there are one million people in prison, we have one billion, 820 million man hours of idle capacity. At the minimum wage, this untapped resource is worth 12 billion dollars. What could we produce with it--of economic value or of any value?

Perhaps we should expect prisons to produce particular kinds of environments, such as orderly ones inside the prison and safe ones in the community upon prisoners return to it. I mention the community because this is where greater safety is delivered--if it is to be a product of prisons. The community takes over or co-manages corrections production of safety--suggesting a set of management challenges for the correctional member of the production system. There are still others who "co-manage" the production process including judges, prosecutors, and, of course, parole agents--more sets of relationships to manage, now for the production of safety, not merely for peaceful co-existence.

How should we decide what to produce?

Currently, what we try to produce in prisons is treated like many other discretionary, low visibility decisions in the criminal justice system. We basically leave it to the administrators to decide, subject of course, to some limitations, what--if anything--they will produce and how they will go about it. There are broad legislative mandates; at the margin, constitutional limits on correctional practices (with increasing deference paid to

correctional managers); budget limits and, occasionally mandates; implicit goals like, for example, escapes and riots be kept to a minimum. Judges may direct or suggest what should happen to a sentenced offender (drug treatment, sex offenders counseling, incapacitation) and the influence of the judge over the product in an individual case varies.

On the whole, however, there is not much systematic, detailed attention to how to decide what to produce. Put another way, we have not applied the principle of legality to the question. Prison policies, for example, are often exempt from state administrative procedure acts which require state agencies to promulgate through rules all matters of policy and procedure. Again, this mirrors the experience of police and prosecutors, who make similar important and discretionary decisions without guidance or reference points for the decisions.

Should this principle of legality apply in corrections? If it did, the formal process might yield the answer that we want all the products I have mentioned here, and more. On the other hand, if we sharpen our thinking about products and how we arrive at decisions about them, it might sharpen individual decisions as well as provide a rationale when inquiry is made about whether prisons are producing what we expect. It might lead us to think much more carefully about what we want from prisons, as opposed to what we are offered by them, what we expect to receive, and what we actually get (everything and nothing).

Managing Prisons to Produce Products

What prison "stuff" advances or impedes the development of the products we want? I wish I were more familiar with the literature on the sociology of prisons so as to inform my experience, which is basically this.

Prisons (and prison systems) are complex social organizations. From the outside, they may appear to consist of inmates and staff. The inmates may have their own groupings along a variety of lines including race, gangs, ethnicity, age, sentence length. They have different interests and their understanding of their interests often changes. An often cited example are the changes in interests of long term inmates over time.

The staff can be as complex. There has been some work done on prison unions, but a division of staff into management and union is simplistic. The unions are complex and their influence shifts with changes in leadership and events. The uniformed supervisory staff can have complex relations with other staff groups. All come up through the ranks (and union). Their pay and benefits often are not commensurate with their responsibility and their opportunity for overtime may be reduced by promotion. They are in uniform, but management, though their status and pay may not reflect this, nor their allegiances. Social workers, teachers, business and clerical staff all have their own interests and loyalties, as does the warden and the executive staff.

The interactions of all these people produce the environment and products of prisons. But the whole is greater than the sum of

the parts. Prisons also have individual cultures and these are complicated by the location of prisons, in prison towns or in prison areas of individual states, which have a larger and often significant culture of their own that influences management practices.

I have said nothing of the fact that prisons are parts of systems; that new prisons are added to these systems; that prisons are influenced by departmental actions, themselves taken in a state governmental culture.

My basic point is that it would be very useful to understand better the interplay of people, organization and forces which influence the prison product, if we want to manage them to produce a specific set of products.

Getting Prisoners Out

There will be, I believe, continued efforts to identify ways to get prisoners out of prison, if only to make room for the newcomers. While we need to understand how present release mechanisms work (parole, pardon, modification of sentence for example) it would be useful to explore these mechanisms in the light of the products we might produce. Put another way, if we can be more clear about what we seek to achieve, the decision as to whom and when to release shall become easier.

One development that I foresee is the "redefinition of the prison." We can call this a new release mechanism, or simply note that there are ways to blur the distinction between prison and parole, to create new custody arrangements that are as

incapacitating as prison but less expensive and less distant from community. If this is correct, we need to understand the potential, the risks, and the "architecture" of prisons which are extended into the community. I have been involved with and observed such a redefinition effort in Wisconsin, called Intensive Sanctions, and there are undoubtedly similar efforts in other states.

This is quite consistent with greater community involvement in prison product development. If communities are the recipients and co-managers of the products, there are ways to invoke the community's help in "delivering the product," ways that are quite different from present forms of, say, parole supervision.

Research Methods

Rather than try to be comprehensive, I will make two suggestions about research methods.

We have had a great deal of experience with prisons. What have we learned from it? What, for example, do we know about prison crowding and its effect on what we produce? Many new prisons have opened in the past decade. What have we learned about how to open new prisons to create cultures consistent with our objectives. What do we know about how to change a prison culture? We have had many prisoners who have served long sentences. How does this affect the maturation and aging process? Mental development and health? Their role in the mix of people who are and produce the products of prisons?

A place to begin the development of "action" knowledge,

knowledge of use, is to inquire of professionals with experience in these matters. People who work in prisons have knowledge that we need to surface, sift through, test and use to manage change.

Finally, we need to try to imagine a prison world that is different if we want one which is different. Can we try to do this, develop "models" so to speak, and then work back from there to understand how to manage the complex interplay to get us whatever it is we want?

163787

MEASURING SENTENCING IMPACTS USING EXTANT DATA:

by Peter Greenwood

SUMMARY OF DISCUSSION POINTS

1. Two Basic Audiences for Sentencing Research

- Policy makers and practitioners interested in describing or comparing sentencing policies of particular states.
- Researchers interested in exploring or testing specific relationships (deterrence, incapacitation, bias, etc.).

2. The Sentencing Policy Environment

- Past 25 years have seen tremendous changes in policies and practice.
- Much is known about the operation of current sentencing systems, and their impacts on crime.
- Sentencing commissions have been the most successful and durable reform.
- New wave of sentencing reform activity appears to be driven by naive ideology and partisan politics.
- Sentencing policy is becoming an increasingly important influence on state and local budgets.
- Many correctional and court systems are severely overloaded.

3. Data Currently Available For Most States

- Annual aggregate corrections population and admission data
- Periodic surveys of facilities and individual inmates
- Usually include current offense and personal characteristics but not prior record

4. Four types of Studies

- Descriptive: Sentencing laws, disposition and sentencing patterns, prison population characteristics, etc.
- Projections and Evaluations: Future prison population size and characteristics, impacts of specific laws on caseloads, crime and costs
- Hypothesis testing: Deterrence and incapacitation effects, impacts of specific reforms, etc.
- Cost-Benefit Studies: Comparing investments in sanctions to other crime prevention strategies.

5. Problems

- Most data sets do not contain much detail on prior record
- Appropriate analysis and modeling methods require some sophistication
- Wide diversity in purported results
- Hard to create audience for sentencing research

MEASURING SENTENCING IMPACTS USING EXTANT DATA: WHAT WOULD PEOPLE LIKE TO KNOW AND WHAT WOULD THEY DO WITH THE INFORMATION IF THEY HAD IT?

Concept Paper Prepared for NIJ Workshop
on
Sentencing and Corrections Research
by
Peter Greenwood
February 1996

1. THE MARKET FOR SENTENCING RESEARCH

There are two basic markets for sentencing research: 1) the policy making and practitioner community that is interested in descriptive and outcome data for particular states; and 2) the research community that is interested in testing relationships or exploring the impacts of specific sentencing policies.

The information desired by the first group is largely descriptive, comparative, or projections of future trends.

- How do we compare to other states in terms of sentence severity or how we treat drug users?
- How fast is our prison population growing compared to other states?
- How much does the new mandatory sentencing law X add to our prison population and court costs, and how much crime does it prevent?

The information required by researchers is usually more detailed, involving trends over time, with much more concern about variable definitions and measurement accuracy, since measurement errors tend to obscure or distort the relationships being investigated.

There has been tremendous change and upheaval in sentencing policies and practice over the past 25 years, and the accumulation of a great deal of information on the impacts of specific policy reforms (Tonry, `996). Unfortunately, much of the current reform activity appears to be driven by uninformed ideology or partisan politics rather than any real appreciation of what we know about how these reforms will work. The strongest interest in descriptive sentencing data can be found in those states that have some form of sentencing commission and guideline structure, particularly those that are required to keep their prison population within specified limits.

Because current policy debates focus primarily on the issue of sentence severity, most of the comparisons people make between states deal with this issue in terms like the incarceration rate (per capita or per crime) or the expected sentence per arrest or crime. But it would seem that state-by-state comparisons can also be used to assess the allocation of prison capacity to: violent offenders, as opposed to property or drug offenders; repeat offenders or parole violators as opposed to first-timers; or other breakdowns by race, sex or age. Comparisons between appropriate states can clearly help to inform policy debates about how long sentences need to be, how much correctional capacity is required, and how it should be allocated. Unfortunately, there is not much research on how sentencing data actually gets used by policy makers (Tonry, 1996).

In addition to tracking sentence severity, researchers use sentencing data in attempting to assess the impacts of specific reforms on such outcomes as disparity (variation in sentences for similar cases) and proportionality (relative sentence severity for different crimes), and to assess the impacts of sharp changes in policy (natural experiments) and inter-state variations on crime through the mechanisms of deterrence and incapacitation. Since concerns about

"public safety" appear to be a strong driving force behind the recent wave of mandatory sentences, it is somewhat surprising that we know so little about how various types of sentences affect crime; and what little information we have is not widely shared or accepted.

The remainder of this paper examines the potential benefits to be obtained from conducting these types of studies, with the kinds of data that are now routinely collected, the limitations of the current data, and ways in which it might be augmented. I would like to thank Daniel Nagin and Jon Caulkins of Carnegie-Mellon University for their helpful suggestions, Larry Greenfeld for summarizing the BJS data, and Michael Tonry, Franklin Zimring, and David Hawkins for publishing recent books on this topic that are very helpful in understanding the research issues.

2. WHAT DATA IS GENERALLY AVAILABLE

The Bureau of Justice Statistics (BJS) manages an ambitious program of systematic data collection regarding the size and characteristics of correctional programs and populations, by state, as well as summary statistics on the movement and disposition of criminal cases in court. The remainder of this section describes the major BJS data collection efforts related to sentencing, and their limitations. Further documentation is readily available from BJS or their Archive at the University of Michigan (http://icpsr.umich.edu/NACJD).

National Prisoner Statistics (NPS) produces annual and semiannual national and state-level data on the numbers of prisoners in state and federal facilities (see U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 1992, 1994,* U.S. Department of Justice, or Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics, 1993).*

National Corrections Reporting Program (NCRP) collects data nearly every year on all prison admissions and releases and on all parole entries and discharges in participating jurisdictions Also includes movements between jail and prison and entries, exits, and total population by sex, race, and sentence length. (see BJS, *Correctional Populations in the United States,,* 1993).

Annual Jail Sample Survey collects annual national estimates of the number of inmates in local jails.

Census of Local Jails is conducted every five years and describes facilities, programs, number of inmates, rated capacity, percent of capacity occupied, number of jails, number of staff, number of inmates per employee, annual operating expenditure (see BJS, *Census of Jails (1983, 1988, 1993) and Annual Survey of Jails (1994)).*

Survey of Jail Inmates is periodically administered to collect data on the demographic characteristics of jail inmates, prior drug and alcohol use, history of physical abuse, and prior contacts with CJ system.

Census of State Prisoners is conducted approximately every five years and provides detailed information on characteristics of facilities.

Survey of State Prison Inmates is conducted every five years, providing data on inmates' criminal histories, commitment offense(s), drug and alcohol use, and demographic characteristics (see BJS, *Violent Offenders in State Prison: Sentences and Time Served*, 1995) which contains a number of violent new court commitments to state prison by state, mean total maximum sentence length, mean minimum time to be served, and number of violent first releases.

National Probation and Parole Reporting Program gathers annual data on state and federal probation and parole counts and movements and the characteristics of persons under supervision. Published data include admissions and releases by method of entry and discharge.

National Survey of Adults on Probation criminal history, prior alcohol and drug use, participation in treatment, firearm use, and conditions of supervision for a representative sample of the 2.5 million adults on probation.

National Judicial Reporting System national probability sample of county court systems provides data on characteristics of felons, conviction offense, type of sentence, sentence length, court processing time.

Survey of State Court Organizations provides information on use of sentencing commissions, guidelines, type of sentencing and role of juries in sentencing (1980, 87, 92).

National Pretrial Reporting Program (NPRP) provides data on processing of felons from 40 jurisdictions selected to provide a representative sample of the 75 largest counties in the nation, including for 12 months after entry into the system or until case disposition and includes: arrest offense, prior record, pretrial release, pretrial arrests and failures to appear, disposition and sentence.

NIBERS/UCR provides quarterly data on the number of reported crimes and arrests in most American cities and counties (see U.S. Department of Justice, Federal Bureau of Investigation, *FBI Uniform Crime Reports).*

Offender-Based Transaction Statistics OBTS) provides data on arrest through disposition for reporting jurisdictions.

The most glaring deficiency in all these data sets is the absence of detailed prior record information or standardized offense classification schemes. Just about every state that has attempted to examine its use of scarce corrections capacity has found it necessary and helpful to display sentencing data in a two dimensional grid where current offense categories are listed in decreasing or increasing order of severity on one axis, and some measure of prior record is listed on the other. Yet most of the data systems described above fail to collect systematic information on individual prior records. At a time when many states are considering a variety of repeat offender mandatory sentencing laws, it makes it very difficult to estimate the impacts of such laws without knowing what fraction of inmates would be affected by them, and how those offenders are currently treated.

The problem that arises in attempting to make cross-state comparisons is that most states that do collect data according to the offense categories spelled out in their own laws (i.e. five levels of felonies), and not according to some standardized categories like say the UCR. The Edna McConnell Clark Foundation's State Centered Sentencing Program is attempting to overcome this problem by having participating states (North Carolina, South Carolina, Oklahoma, and Oregon) report their sentencing data using standardized offense and prior record categories.

3. DESCRIPTIVE STUDIES

There are several different types of descriptive studies that might inform discussions of potential sentencing reforms in a particular state. Some examples are listed below.

Characteristics of sentencing laws and recent or planned reforms -- One of the first things people need to know when they want to compare themselves to other states, or start thinking about changes to their own sentencing structure, is what other states are doing: which states have sentencing guidelines; which have passed Three Strike laws; which have mandatory sentences for gun use (for an example, see Frase, 1995).

Sentencing patterns by offense, prior record and other characteristics of interest -- Any attempt to address the deterrent, incapacitation or just deserts focus of current sentencing laws requires the development of a sentencing grid depicting how current offense and prior record interact to determine sentence type (prison versus probation or intermediate sanction) and severity. For policy purposes it will often be helpful to have further breakdowns by sex, race, and age, and to know the distribution of sentences within an individual cell as well as the median, average, or range. This type of study is often appropriate for assessing the impact of a specific sentencing reform (new mandatory sentencing laws). We need to know more about practitioners' use of and reactions to such data when it is introduced in specific contexts.

Time served -- In this day of suspended sentences and 1-for-1 good time, it is essential to know the actual times served as opposed to that imposed, for particular types of offenders and sentences. In some states, some prison inmates are getting 50 percent off their sentences for good time while others are

restricted by "truth in sentencing laws" to only 5 or 10 percent off. Some sentenced to one year jail sentences will serve less than a month, and satisfactory participation in drug treatment can reduce 2 year probation sentences to 6 months. Time served rather than time imposed is the input parameter required for any modeling of deterrent or incapacitation effects. Comparative data on time served could be introduced into the descriptive sentencing studies described above.

Characteristics of offender population by conviction offense, prior record, race and age -- Given the current size and characteristics of a state's prison population, and its crime rate and sentencing policy, it is a fairly straightforward task to predict how the prison population will change. Likewise, descriptive data about how the prison population has been changing over time, along with the crime rate, can be used to infer what sentencing policy has been in place, if good sentencing data is not available. Analysis of the characteristics of particular correctional populations (prison, jail, parole, etc.) is also a good method of understanding where correctional funds are being spent, and which types of offenders are most affected.

For those interested in the deterrent or incapacitation effects of a sentencing policy data on the percentage sent to prison and average prison sentence imposed, as a function of reported crimes, is far more important than similar data on a conviction basis, since there is so much possibility of systematic differences in the probability of arrest and conviction between states.

These kind of direct comparisons are probably the most valuable or informative kind of analysis for the majority of practitioners and policy makers. The principal difficulty in conducting them is standardizing the data across reporting

jurisdictions and accounting for known differences in sentencing structure (age of transfer from juvenile to criminal court, availability of intermediate sanctions, etc.). This task of standardizing and cleaning data sets is a time consuming effort that many analysts now do on their own, but could easily be done as a single effort, to develop and provide a standardized data file that many analysts could use. Since this type of data is now only rarely used by policy makers, we need to develop more information about how to get others interested and used to working with it. The Edna McConnell Clark Foundation's State Centered Sentencing Program mentioned above is an example of such an effort.

4. PROJECTIONS AND EVALUATIONS

Descriptive studies are useful for identifying potential problems (Are drug users really taking up 20 percent of our prison beds, compared to a 12 percent national average?) and potential solutions (In five years state x reduced the fraction of their prison beds devoted to drug users from 15 percent to 8 percent by implementing a Drug Court). However, models that predict future correctional populations and caseloads are required to estimate the potential impacts of proposed sentencing reforms.

This is the kind of model RAND developed for its analysis of the California Three Strikes Law (Greenwood et al, 1994). There are not many such models around and few have been validated in one or more jurisdictions. Most such models have been developed by correctional planners and used to forecast future facility and program capacity needs. But they can also be used to predict the impact of sentencing reforms on crime rates, and workloads and costs for other parts of the criminal justice system than just corrections (prosecution and defense caseloads,

number of jury trials, etc. We need more development and testing of such models, and efforts to get them used in sentencing reform debates.

Projection models are also required to measure the impacts of actual sentencing changes. If you want to know how effective some new intermediate sanction law has been at diverting less serious offenders from prison, you need to have some way of projecting what would have happened if the new law were not passed.

5. HYPOTHESIS TESTING

In addition to providing descriptive data and projections to help policy makers and planners, aggregate crime and sentencing data can be used to test a variety of hypotheses regarding the impacts of sentencing on criminals and crime. The most controversial issues in this area concern the magnitude of the marginal deterrent and incapacitation effects that can be attributed to new mandatory sentence laws.

Assertions about the number of crimes averted by an additional year in prison, for one offender, range from over 100 (Zedlewski, 1985; DiIulio and Piehl, 1991) to less than 3 or 4 (Zimring and Hawkins, 1995; Greenwood et. al., 1994). Proponents of mandatory sentencing laws predict (and cite anecdotal evidence that suggests) large deterrence effects but academics are much more skeptical. The general consensus within the research community is that such effects are fairly small and difficult to detect.

Deterrence -- A cluster of studies during the 1970's and early 1980's pushed the state-of-the-art in cross-sectional econometric analyses without providing clear evidence as to the magnitude of deterrence effects. Although most of the

studies found an inverse relationship between crime rates and sanctions, the methodological problem they could not resolve was that of "simultaneity"; determining to what degree higher sanctions caused lower crime rates, or high crime rates resulted in lower sanctions, because of limited resources (Blumstein et al, 1978).

In the intervening years, a number of analyses have proposed new strategies for solving these problems, such as using the abrupt changes in incarceration levels that can be attributed to prison overcrowding litigation (Levitt, forthcoming). Moreover, the rapid increase in sanction severity experienced in many jurisdictions over the last decade presents an opportunity for a new wave of "natural experiment" deterrence studies which use interrupted time series as the primary method of analysis.

Incapacitation -- Researchers are more certain about the magnitude and characteristics of incapacitation effects, at least at the individual level, but are not much farther along than deterrence researchers in detecting them at the community level. A recently published book by Franklin Zimring and Gordon Hawkins (1995) shows how differences in prison population growth rates between states can be used to assess combined incapacitation and deterrent effects. The authors use four different methods to estimate what California crime rates would have been during the 1980s, without that state's rapid increase in incarceration, concluding that the marginal impact is somewhere around three or four felonies a year prevented by each additional inmate. Similar analyses could be done for other states to see if they produced similar results. Furthermore, since many new mandatory sentencing or waiver laws are quite specific as to the type of offender they target, age specific offense (only found in NIBRS) or arrest data can be used to isolate the incapacitation and deterrent impacts of such laws.

Of course, we need to know more about the crime generation process in order to better understand how sentencing works. The narrow statement is: "What's lambda?" The broader statement includes things like: What fraction of crimes are committed by professional criminals well-described by a lambda model? What fraction are "demand-pull" crimes and thus subject to replacement, no matter who is locked up (e.g. how many murders are basically a consequence of our spending $30 billion a year on a black market for cocaine and not really a function of the fact that some people have a positive lambda)? And, the last category would be something like: fraction of crimes committed by people who basically are not criminals (or weren't before that crime). Those are crimes that sentencing could never really hope to affect (unless one believes in deterrence, and that deterrence works even on people who do not think of themselves as criminals, including people who suddenly get swept up in drunken brawls, etc.).

Impacts of guidelines or other controls on discretion -- Changes in crime rates are not the only outcome people may be interested in that can result from sentencing reforms. Consider the example of new mandatory sentences, or restrictions on plea bargaining. The first question of interest in the overburdened and discretionary environment of most urban courts today is how the new policy is being implemented? In what kinds of cases is it being applied and where is it not? What is the reaction of the defense bar?. What has happened to plea rates and the number of jury trials. Are acquittal rates up? These questions should be answered with OBTS or aggregate crime and sentencing data, before it is appropriate to start looking for impacts on crime rates.

6. COST-BENEFIT STUDIES

There are at least two valuable kinds of cost-effectiveness work that need to be done One compares different sentencing laws (different kinds of apples) to

identify differences in costs and benefits. If we are going to have a Three Strikes law, how does it affect the outcomes if burglary is included as a strike, or if strikes are removed or ignored after some period with no new convictions?

The second compares apples and oranges. Does a dollar spent on sentencing do more or less to reduce crime than a dollar spent on drug treatment, parent training, or hiring more police? Both types of analysis are necessary if we are going to move beyond the point of considering each proposed sentencing law in a vacuum; as if it were the only alternative to not doing anything about crime at all.

An analysis of California's Three Strike law estimated it would cost the Criminal Justice system about $16,000 for each serious crime prevented by the law (Greenwood et. al, 1994). A subsequent study concluded that an appropriately designed and targeted parent training program might be several orders of magnitude more cost effective (Greenwood, Model, Rydell, and Chiesa, 1996). There needs to be more experimentation with different methods of presenting this information to policy makers and the general public. The Deliberative Polling efforts of Dr. James Fishkin (1995) at the University of Texas are a good example of this kind of work.

7. IN SUMMARY: THE BIG IDEAS

Implementation and Impacts of Sentencing Commissions: These have proved to be most durable and reliable structure for reform. Experiences and lessons from leading states should be made available to others.

Implementation and Impacts of Mandatory Sentencing and Waiver Laws: Which cases are affected;? How? Impact on courts, corrections, and crime? Comparative case studies would be informative.

Marginal Incapacitation and Deterrent Effects: What are the net effects on crime of changing penalties?

Estimating the costs and benefits of alternative sentencing laws compared to other crime-control options.

Intermediate Sanctions Implementation and Impacts: Process and outcome evaluations; Lessons for other jurisdictions.

Comparisons of Relative Sentencing Severity, Allocation and Efficiency across States: Multiple measures, consistently constructed over time; big question is how to get people to pay attention.

REFERENCES

Blumstein, Alfred, Jacqueline Cohen, and Daniel Nagin, (eds), *Deterrence and Incapacitation : Estimating the Effects of Criminal Sanctions on Crime Rates,* National Academy of Sciences, Washington, D.C., 1978.

DiIulio, John J., and Anne M. Piehl, "Does Prison Pay?" Unpublished manuscript. Princeton, NJ.: Princeton University, Center of Domestic and Comparative Policy Studies. 1991.

Fishkin, James, *The Voice of the People,* Yale University Press, 1995.

Frase, Richard, "State Sentencing Guidelines: Still Going Strong," *Judicature*, Vol 78, NO. 4, 1995, pp. 173-179.

Greenwood, Peter W., Karyn E. Model, C. Peter Rydell, and James Chiesa, *The Cost-Effectiveness of Early Intervention as a Strategy for Reducing Violent Crime*, forthcoming, 1996), RAND, Santa Monica, CA.

Greenwood, Peter W., C. Peter Rydell, Allan Abrahamse, Jonathan P. Caulkins, James Chiesa, Karyn E. Model, Stephen P. Klein, *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory Sentencing Law*, MR-509-RC, RAND. Santa Monica, CA. 1994.

Levitt, Steven D., "The Effect of Prison Population Size on Crime Rates: Evidence From Prison Overcrowding Litigation," *Quarterly Journal of Economics*, (forthcoming 1996).

Tonry, Michael, *Sentencing Matters,* Oxford University Press, New York. 1996

Zedlewski, Edwin, *Making Confinement Decisions.* Research in Brief, Washington D.C.. National Institute of Justice, 1987.

Zimring, Franklin and Gordon Hawkins, *Incapacitation: Penal Confinement and the Restraint of Crime*, Oxford University Press, New York, 1995.

163788

Managing Correctional Change in Community Corrections

Michael P. Jacobson, Commissioner
New York City Department of Correction
New York City Department of Probation

I Introduction

Perhaps the greatest change in store for community corrections over the next decade will come as a result of the Violent Crime Control and Law Enforcement Act of 1994 (hereinafter referred to as the Crime Bill). Specifically, the fact that the entire field of community corrections does not exist as far as the legislation and potential appropriations are concerned (regardless of the particular version of the Bill or level of appropriation) not only makes a huge symbolic statement but will also have very real consequences for that part of the criminal justice system which supervises over three-quarters of everyone under correctional supervision in this country.

This absence will have two important and paradoxical consequences. The first will be that significantly more people will be placed under community supervision as a result of the Crime Bill. There are a number of reasons for this. While additional police will, of course, generate more arrests, the primary reason for increases in community supervision will stem from the states' total inability to construct enough prison beds to deal with the Truth-in-Sentencing provision of the Bill. In an effort to secure prison building funds, many states (New York certainly included) are passing legislation which extend sentences significantly for a number of crimes while simultaneously severely restricting or eliminating parole. In a rational world, the future increases in prison population would be matched exactly by the planned prison growth. This will not happen.

It will not happen because even if most states make the analytical effort required to make an accurate projection of prior growth, the prevailing political sentiment on increasing the

amount and length of incarceration will result in the numbers of people requiring a prison bed outstripping the current and planned growth. It will also not happen because legislation at the state level increasing sentences and restricting or eliminating parole is happening now. The timing of the federal government appropriating the money, getting it to the states, followed by the design and construction of new prisons is years out. There then will be an immediate and growing demand for prisons over the next several years which states will not be able to accommodate. It will be accommodated through increased use of community supervision.

The second major consequence of the absence of community corrections from the Crime Bill is that, at the same time the numbers of people under community supervision will be increasing, the funding allotted for these services will be significantly decreasing due to two very significant economic or financial events. One is that the currently assumed funding for prison expansion will not materialize in the amounts or in the period of time which are currently planned.[1] Secondly, while federal funds will be increasing for state prison expansion, the balanced budget amendment (whichever one finally passes) will force states to dramatically cut other services as they seek to replace lost federal dollars. In addition, states will have to put up a match for the Crime Bill funds and will have to completely fund the operating costs of new prisons since the Crime Bill will not provide this money. One service where states will undoubtedly cut to offset federal funding cuts as well as to pay for prison staff is community corrections. It has almost no constituency; its importance is symbolically and politically

---

[1] There are a number of reasons why the amount of funds available will change, the most obvious being that these funds, like all others will be reduced through the term of the Bill due to budget cuts. Additionally, using the recent past as a guide to the timeliness of states receiving any funds from the Bill inspires little confidence that future appropriations will happen on schedule.

diminished by its exclusion from the Crime Bill; and the states provide most of the country's community corrections funding. Therefore, community supervision agencies will be subjected to significant, non-programmatic funding decreases as its numbers dramatically increase.

There, then, is the paradoxical and ultimately tautological situation in which community corrections will find itself. A combination of actions by the federal and state governments will cause the number of people under community supervision to grow, and a different combination of events by those same governments will result in drastically reduced funding causing community corrections agencies to be totally unprepared for the significant increases which will come over the next several years. For instance, in the most recent budget submitted to the State Legislature by New York's Governor Pataki -- a scenario I believe will be repeated in states across the country over the next several years -- he recommends increasing prison beds by 9,000. This would be financed by $490 million in Crime Bill funds. Simultaneously with this increase, the Governor is also proposing a 25% reduction in the funding New York State provides for probation. There is almost no chance the state will get this amount of funds from the Crime Bill and the funding for operating costs has not yet been appropriated by the state. Yet the prisons will be built and probation will be cut.

But the tautological consequences now become even more insidious. With the almost complete abandonment of support for community corrections at the federal level (executive as well as legislative) and the coming decrease in support at the state level, the future of the community corrections field is fairly clear and bleak. As caseloads grow and funding shrinks, the occasional evaluation will reveal -- not surprisingly -- that in terms of effectiveness, however defined, community corrections is likely to be found wanting. Those findings will then simply

be added to the arsenal of reasons which will be used to withdraw support from the field, so that the downward cycle will continue.

It is in this depressing, but I think fairly accurate context that any discussion of managing change in community corrections must take place. I am hopeful that recognizing the predicament of community corrections, as anticipated here, can lead to intelligent policy planning in advance of these problems. We will need the same sort of discussions to occur around community corrections as is now taking place among criminologists and criminal justice practitioners with regard to anticipated increases in the youth population most likely to commit crime.

Managing change in an environment of financial scarcity with even more scarcity on the horizon will require community corrections agencies to focus their resources as intelligently as possible with the goal of achieving measurable and understandable public safety benefits. If these agencies can show demonstrable success, then the field can begin to reverse the trend, and the self-fulfilling paradox, by which it is now being undermined.

There are several areas which show the promise of success that should be the focus of resources and research. Before I discuss these, it is important to define success in a field where success can be a fairly ephemeral concept.

II What is Success?

Measures of recidivism and especially violent recidivism should be the baseline measure of success for community corrections. There is currently a debate in the field about whether other measures which are currently not used to demonstrate "success" should be used as measures of success essentially replacing recidivism. They might include the number of days

drug or alcohol free, numbers enrolled in job training or employment programs, community service, etc. While all these are useful and demonstrate various levels of success (or efficiency or effectiveness) I do not believe that for either substantive or political reasons, these should be the primary measures of success for community corrections agencies. Rather, it is recidivism which should be the primary measure of success for community corrections agencies. Ultimately, it is crime, and especially violent crime, which the public is concerned about. The amount and types of crime which are committed by people under community correction supervision is a legitimate concern. The attempt to use a host of surrogate measures of success gives the impression that the field itself has abandoned the notion of crime prevention and public safety and is inventing other measures to ensure "success". It won't fly.

However, the use of recidivism as a baseline measure of success must be exacting. That is, there need not be an onus on community corrections that it has to have a lower rate of recidivism over time for a similarly incarcerated population. In some cases, it only has to have a similar rate to the population with which it is being compared as long as there are other associated benefits. For example, Mackenzie[2] has found that, in comparing New York's boot camp population against a similar parole population, there were no significant differences in terms of reincarceration. This finding (despite some small positive findings about the role of aftercare programming) has been widely interpreted as a program failure.

On the contrary, I view this finding quite positively. Why? Because since its inception in 1987, the state's boot camp program has saved New York State over $354 million while <u>not</u>

---

[2]MacKenzie, Doris Layton and Clair, Souryal - <u>Multisite Evaluation of Shock Incarceration</u>. National Institute of Justice Report. Washington D.C., 1994

increasing the risk to public safety by early release from prison.[3] Would it have been better for the program to demonstrate increased public safety benefits? Absolutely. Is it necessary, as long as a savings of this magnitude results from a program that is continuing to keep reincarceration rates constant? Absolutely not. In this case, recidivism can and does play an important role in showing how achieving

financial savings through early release and intensive parole programs had no increased public safety risk.

Similarly, community corrections agencies can and should compare their past and present recidivism rates in order to bolster public policy arguments on their behalf. If a community corrections program can demonstrate that some new way of doing business can in fact reduce recidivism rates (again, especially violent recidivism) for a population that has historically recidivated at a higher rate, two very important things can follow. The first is that the program can make a case for new funds based on increased public safety (a case which prisons are almost entirely incapable of making). Secondly, and related to the first, is the accompanying fiscal argument that less recidivism translates into very real and significant budget savings.

The case for increased use of and funding for community corrections must be made primarily in public safety terms and only secondarily in terms of financial savings or other measures of "success." Thus, community supervision programs must argue either: a) that they increase public safety compared to their own past performances; b) that they increase public safety compared to a similarly incarcerated population; or c) that their programs do not increase

---

[3]State of New York Department of Correctional Services and Division of Parole, The Seventh Annual Shock Legislative Report, 1995, pp 40

the risk to public safety, while saving funds elsewhere in the criminal justice system. Attempting to make a public case for community corrections which does not directly and forcibly address public safety and recidivism will contribute to the further marginalization of the field in an environment which is already negatively predisposed to community supervision.

I have thus far argued that: 1) a combination of governmental and fiscal policies, as well as current public attitudes toward community supervision, are creating an environment where community corrections will be further defunded while those under its supervision will increase dramatically and; 2) for community corrections to survive as a reasonable, responsible and effective alternative to incarceration, it must confront and employ measures of recidivism as the primary indicators of success.

III What is to be Done

There are several strategies that community corrections agencies can embrace in order to use their resources most productively. If these strategies prove effective, they can lay a foundation for preserving and expanding such programs.

The first involves identifying the population which receives the bulk of community supervision resources. Community corrections agencies should refocus their resources on those who are the most potentially violent. This may appear counter-intuitive since community supervision workers do not as a rule like working with this population for a variety of obvious reasons. However, it is this population which disproportionately causes the most harm in the community and also leads to higher costs once they are re-arrested. Furthermore, it is with this population that community corrections agencies have the greatest likelihood of succeeding.

Several meta-analyses[4] of the existing literature and data on offender treatment indicates that a young population with a high likelihood of committing future violent crimes can be receptive to structural and intensive interventions.

Several things must happen if this violence prone population is to become a priority population for community supervision. First, new risk instruments have to be developed as a way of predicting future violent crime. This has already been done in New York City and though it is a labor and relatively cost intensive proposition, it is crucial for careful targeting. This type of classification instrument should include far more than simply the instant arrest or conviction charge (research in New York City indicates that this variable alone does not particularly help to predict future violent criminality). Once the population is identified, policies and programs should be put in place to specifically address criminogenic need over the short and long term. In New York City's Probation Department this has consisted of small structured group work for this high risk population in cognitive-behavioral sessions. The sessions meet 8 - 9 times a month for two hours a session and last for 8 months. It is followed by relapse prevention work both on an individual as well as group basis. This is clearly not the only method by which this population could be handled. The most important thing is to prioritize, identify and work intensively with a high risk or violence prone population, keeping in mind the express goal of reducing recidivism and especially violent recidivism (and thus achieving a secondary goal of real court, jail and prison bed savings). New York's program which is slightly less than two years old has, though still in the preliminary stage, thus far reduced the

---

[4]Gendreau, Paul and D.A. Andrews. "Tertiary Prevention: What can the Meta-Analysis of the Offender Treatment Literature Tell Us About What Works." Canadian Journal of Criminology 32 (1990): 173-184

rate of violent recidivism among probationers by almost 50% compared to a matched historical sample.[5]

Making the decision to refocus resources, population and policy forces a range of very difficult decisions for community corrections organizations. With a greatly disproportionate amount of resources going to this high risk population, there will be far fewer resources remaining to deal with a lower risk (and possibly more "deserving") population. In effect, community corrections managers would be making a decision to essentially ignore or, at most, work minimally with other populations. It is a very painful decision to make and even more so for staff to accept. It can certainly create political and bureaucratic problems. It is, however, the right decision to make given present budgetary constraints. The attempt by community corrections agencies to do something for everyone under supervision (even if it is only a myth and not the reality) is totally misguided. The field is simply not now being funded in a way where this is even theoretically possible. The notion of spending relatively equal amounts of resources on everyone under supervision results in the fiction that community corrections tends to do everything for everybody and can result in the reality of achieving nothing for anybody.

The people who are not seen within such resource intensive programs should be handled either through technology or some combination of technology and minimal staff. In New York City, automated reporting Kiosks with hand geometry will be used to track and monitor tens of thousands of cases, so as to allow resources to be used on the violence prone population, This

---

[5]Preliminary Analysis of DOC Blue Group Intervention, New York City Department of Probation 1995

is not ideal; it is not the way it should be in a perfect world. Everyone under community supervision should have substantial resources devoted to them. This would make sense. However, this is not at present what is going to happen. No amount of simply comparing the costs of incarceration with the costs of community supervision is going to make it happen.[6]

IV In Sum

The case for identifying the most violent prone population and devoting to it the majority of available resources is as follows:

1) It clearly identifies a population that the community is most concerned about;

2) It focuses both community corrections agencies as well as the public on specific public safety goals which will have significant secondary cost benefits;

3) It will, if successful, decrease past rates of recidivism and will quite possibly show favorable results when compared to a similarly incarcerated population;

4) It will ultimately have the benefit of allowing community corrections agencies to make the most effective case possible to preserve and expand resources, especially over the next several years as governments begin to further defund community corrections; and

5) It will allow researchers to clearly measure success or failure.

The difficulty of this refocusing of target groups and resources ought not be underestimated. It will encounter tremendous resistance from a variety of actors and institutions,

---

[6]Again, the cost or budget savings argument will only work if coupled with a public safety case as well. The fact that probation or another alternative to incarceration is cheaper than jail or prison by itself is meaningless. If successful, a public safety/budget savings argument can result in funds being moved from institutional to community corrections.

both inside and outside community corrections. Indeed, it may not even work, although New York City's positive experience[7] thus far suggests excellent potential. It is an idea which must be tried. If the field of community corrections does not make significant efforts to change its focus, to put itself on the line for achieving clear and measurable public safety benefits, then the coming decade will almost surely see the systematic transfer of funds from community corrections to institutional corrections.

And that would be the biggest failure of all.

---

[7]The New York City Probation Department is attempting the most extensive reforms of any criminal justice agency that I know of. While there still remains a whole host of theoretical and practical issues regarding program development and implementation, initial results are very encouraging.

143789

A Sentencing and Corrections Research Agenda

MEASURING SENTENCING OUTCOMES THROUGH EXPERIMENTS

A Concept Paper for the

National Institute of Justice
U.S. Department of Justice

By

Doris Layton MacKenzie
Department of Criminology and Criminal Justice
University of Maryland

February, 1996

MEASURING SENTENCING OUTCOMES THROUGH EXPERIMENTS

Within the criminal justice research and policy communities debate continues about the effectiveness of various approaches to reducing crime and insuring public safety. Without credible scientific research and evaluation, a justice system that is so highly political necessarily responds to the ebb and flow of public pressure. Despite the fact that the National Institute of Justice and the Office of Justice Programs have fought valiantly to change this situation, obstacles still exist that limit the use of science to provide objective answers to the critical questions in corrections.

Consider the following contrast with the field of medicine. No one would consider releasing a new drug or using a new medical procedure unless carefully designed clinical trials had been completed to provide evidence of the effectiveness of the medicine or procedure. The same cannot be said of correctional research. Three-strikes sentencing laws, boot camps, and drug courts have spread throughout the nation. While all of these may be exciting, innovative and potentially effective methods of solving correctional problems that plague us, at this point there is little research evidence to support such rapid proliferation. Too often, we permit new correctional programs to proliferate based on anecdotal evidence, speculation, hunches, public attitudes (often naive), and sweeping political endorsements. When we compare research in corrections and in criminal justice in general, it becomes obvious that the respect for research, use of information from research and support for research falls well below that of other fields. The National Institute of Justice should continue to emphasize the need for strong research methodology to answer the questions that plaque our correctional systems.

1. Experimental and Quasi-Experimental Designs

Throughout the correctional system there is a critical need for research using rigorous research designs. Experimentation with random assignment of individuals to treatment and control groups permits the clearest interpretation of cause and effect relationships. Such designs enable researchers to rule out alternative explanations for the results. But random assignment of subjects is not the only design that permits researchers to examine cause and effect relationships.

In criminology, control group designs so dominate our thoughts that to many people they seem synonymous with experimentation. Researchers may give up attempting anything like an experiment in field settings where control groups are not available. As a result, they end up with more imprecision than is necessary. In many natural settings something like an experimental design can be used. Such situations

are referred to as quasi-experimental designs (Cook and Campbell, 1979; Campbell and Stanley, 1963). While these designs lack the full control over the scheduling of experimental conditions which makes a true experiment possible, they enable researchers to rule out some threats to validity, and even without random assignment it is possible to infer causes and effects.

Even with controlled studies we must caution people not to expect too much. Too often, we are disappointed in science because we have led others to believe in the once-and-for-all definitive experiment. We must increase our time perspective and recognize that continuous, multiple experimentation is more typical. The experiments we do today will need replication and cross-validation at other times and under other conditions before they can become an established part of science, before they can be interpreted with confidence. However there are steps that can be taken to maximize the information that we obtain from studies. Particularly important in facilitating our progress will be: (1) close cooperation between researchers and practitioners; (2) the coordination of demonstrations projects and research; and, (3) use of multi-site projects and consortiums of researchers.

2. Practice and Science: The Importance of Close Cooperation Between Researchers and Practitioners

Practice and science are not opposites. Both are the result of a gradual accumulation of possibilities that are selectively retained, the impossibilities are eliminated by experience (Cook and Campbell, 1979; Campbell and Stanley, 1963). This perspective leads to a respect for traditional correctional practices. Across time, many different approaches have been tried, some approaches have worked better than others. If those approaches which worked better have to some extent been persistently practiced by their designers or imitated by others then the practices which have emerged may represent valuable and tested subset of all possible practices. But this process of evolution is imprecise in the natural setting. The conditions of observations are far from optimal. What survives or is retained is determined to a large extent by pure chance. Experimentation enters at this point as a means of sharpening the relevance of the testing, probing, and selection process. Thus, experimentation is not necessarily contradictory to traditional wisdom. Instead, it is a refining process superimposed upon the valuable accumulations of intelligent practice. Advocacy of an experimental science of corrections thus does not imply adopting a position incompatible with traditional wisdom.

The scientific method is designed to provide a way to make observations and draw conclusions. Some ideas begin with practice. For example, drug courts have spread throughout the nation, not necessarily because researchers recommended the programs nor because they were politically popular. Rather these courts appear to address problems recognized by those who work in the system. Rapid processing of drug cases, moving drug abusers out of institutions, and coordinating the supervision and treatment for offenders are just some of the needs the courts were designed to address. The innovative idea for drug courts originated from those working in the field. Now it has reached a stage where there is a critical need to examine whether the goals are being achieved. Numerous experimental or quasi-experimental designs could be used to study the effectiveness of the drug courts.

However, there are factors within the system that reduce the chance that those involved in designing or administering a correctional program will enthusiastically embrace a rigorous evaluation. A new, innovative but costly method for managing felons may be an overwhelming success in reducing recidivism. But if it becomes a failure the agency, staff and administration will suffer greatly. Are they willing to take a chance and try the new technique? Failures could have serious consequences such as prison riots or heinous crimes for which they would have to take responsibility. Selecting the "model" offenders to participate, or eliminating training programs or treatment in order to reduce costs are just some of the techniques that might be used to solve problems that arise. Given the exigency of the situation a manager must make such decisions. The result is disastrous for research.

An evaluation can be a gamble for correctional managers. They must take a chance that an evaluation of their favored program will turn out to show that it is not successful. This becomes even more critical if a politician has supported the program as the latest "tough-on-crime" policy. An evaluation team from inside the agency will be hard put to be critical of the program. Few "in-house" researchers are protected enough by their agency to report negative findings on politically popular programs like drug courts, boot camps or three-strikes. An outsider who comes in to evaluate a program has little vested interest in developing the program or in helping agency personnel do their job better. Too often the end conclusion of the evaluation is critical. The researcher completes the report with some recommendations for change but the sound bite heard by the public and politicians is "It doesn't work."

It is little wonder that many agency personnel view evaluations as threatening and not particularly helpful to them. Neither party is satisfied with the relationship. The agency personnel may be threatened by the evaluation because so often the results are critical. On the other hand, the researcher does not often get the opportunity to

help develop a new and improved strategy for attacking the problem. Ideally, a close and continuing relationship would develop between the researcher and the practitioners. The relationship must be designed to protect the objectivity of the research. One way to promote such a relationship might be to tie funding for demonstration projects to research.

3. Coordinating Demonstration Projects and Research

A substantial amount of money in the "Crime Bill" has been allocated for demonstration projects. These programs will face close scrutiny and demand accountability. It will require close coordination among those distributing the funds to insure that the demonstration projects are rigorously evaluated. In my opinion, the use of demonstration projects without a corresponding objective evaluation can be likened to the old saying "Give a man a fish, he'll eat for a day; teach a man to fish, he'll eat for a lifetime." Without a carefully designed evaluation, any demonstration project is only useful while it exists -- while it is being fed money. This would be fine if the project addressed a short-term problem. We could solve the problem and move on to other issues of concern. However, corrections has few such problems.

We need to learn solutions for the long-term problems that we confront. A demonstration project that exists only as long as the money is available, but does not teach us what works to accomplish our goals, has extremely limited long-term value. The project may appear to be effective, but without hard scientific evidence we will not build our knowledge base. An environment that fosters the use of demonstrations as trials in research will require close coordination among those who fund the demonstrations projects and those who fund the grants for research.

4. Multi-Site Projects and Researcher Consortiums

A final method of maximizing the findings obtained from research is to increase the interaction among researchers. Multi-site projects have two major advantages. First, they maximize the external validity of the study by increasing the generalizability. Second, multi-site projects can be designed to increase the interaction among researchers. This provides them the opportunity to share theoretical ideas, data collection instruments, and analysis techniques. If encouraged by NIJ such sharing would be possible and enable the replication and cross-validation that is necessary if the results are to be interpreted with confidence.

I can imagine many different techniques for developing such researcher interactions. A project may have one principal investigator who works with local researchers (a model we used in the multi-site study of boot camp prisons). Or a series of grants may be awarded to different principal investigators who are required as a condition of the grant to attend Researcher Consortium meetings to discuss and share their progress (a model similar to Spouse Assault Replications experiments). The later requires strong supervision to insure coordination and progress. Such consortiums also require a method of insuring that the data can be combined for cross-site analysis.

A further advantage of such research collaboration is the design of data collection instruments. This is a time consuming and costly initial task confronting many investigators. In our boot camp work we shared the instruments with other jurisdictions. This has been advantageous because it has permitted cross-site comparisons. Once the data are archived researchers will be able to combine it to do an analysis with a larger data set, thus increasing the power to detect differences.

Consider the funding that appears to be planned for the development of Drug Courts, Boot Camps and possibly violent offender programs. They provide key examples of projects that can be used as models of the way research can progress. The necessary components are in place to combine controlled experiments, close interactions between practitioners and researchers, demonstration funding that requires evaluation, and cooperative multi-site projects. We need to develop new models for encouraging these interactions and the use of science to solve the problems we face (MacKenzie, 1996).

5. What Works, When, and For Whom?

The "Nothing Works" era in corrections is over (Andrews et al., 1990; Palmer, 1992; Cullen and Gilbert, 1983). The conclusion that there was no evidence of effective correctional programs was the result, in part, of the poor quality of the research that was done at the time. It is not that high quality programs were studied with rigorous designs. Rather, inadequate programs were often studied with substandard research designs. In most cases, the designs did not permit researchers to draw any conclusions about the effectiveness of the program under study. We must protect ourselves from repeating such a dismal record.

Today, correctional administrators and staff search for cost effective programs -- programs they can afford that will make a difference. Only the poor correctional

administrator sees their wards as "throw away" people. They want to make a difference in the lives of these people. Despite the tight budgets, crowded facilities, and rising supervision caseloads, they try to provide some type of treatment that may positively change the offenders and improve their chance for success in the community.

Yet, a constellation of factors have moved us away from the focus on individuals and the need to change offenders. As Simon and Feeley (1992) have so aptly written, the problems of crowding and "get tough" sentencing have forced us to be concerned with managing populations and moving aggregates through the system. Interest focuses on how to move large groups of individuals through the correctional system without threatening public safety. We can see this change in the focus on developing rapid assessments of the risks and needs of offenders.

Research has uncovered dozens of factors that are related to criminal activities. Individual factors include, among others, impulsivity, low self-control, risk-taking, rebellious attitudes, errors in thinking, beliefs favoring law violation, immaturity, retarded moral development and an inability to take the perspective of others. Correctional experts have designed programs to attempt to change some of these characteristics of offenders. The rationale is that once these factors are changed criminal activities and other antisocial behavior will be reduced. Some particularly popular programs are called cognitive skills programs. These programs attempt to change the values, morals, and attitudes of offenders as an intermediate step in changing their behavior. Numerous jurisdictions have initiated these programs in the hope they will have a positive impact. Anger management, drug treatment, parenting classes, and aftercare and job support programs are also popular. Such programs are perhaps the easiest to study with controlled experiments. Our knowledge about the effectiveness of these programs is severely limited.

What has become clear from investigations of intermediate sanctions is that offenders are not changed by increased control. Intermediate sanctions may be "Smart Sentencing" when consider part of a rational and just sentencing system. However, there is little evidence that the control aspects of sanctions that permit offenders to remain in the community actually reduce recidivism. It appears that if we expect the criminal activities of the offenders to be reduced, some type of treatment program will be required. (And, here I use "treatment" in a very broad sense to include such activities as employment, family contacts, coerced attendance at drug treatment.) Yet, we know little about what these programs should entail. Much more work needs to be done to examine what type of programs work for particular types of inmates and at what costs to correctional systems. We also need to know the specific impact of the

programs on the individuals involved.

Frequently, in today's tight budget environment, jurisdictions have eliminated treatment programs. Funding for demonstration programs might be particularly important here. Examining which of these programs are effective would be an ideal area to coordinate demonstration programs desired by practitioners with experimental research.

5.1 The Impact of Prison

While earlier research on prisons focused on the negative impact of prisons on the inmates, more recent research has indicated that this is not always the case (see for instance, Zamble and Porporino and Gendreau and his colleagues). We need more information about the experiences of those who are imprisoned particularly those who anticipate spending a long term in prison. Are there ways to enable them to be more socially productive while they are in prison so they are not such a drain on budgets while they are there. Since a majority of the offenders will be released into the community, what can be done to insure that they leave healthier in mind and body so that they will be less criminally active and more prosocial.

6. Performance Standards For Corrections

Quality management has been a driving force in recent years in the redesign of private organizations and corporations; only recently have these concepts begun to be applied to public agencies (Jablonski, 1991). Osborne and Gaebler's book Reinventing Government (1992) was key in describing how performance standards could be developed for public agencies. And in 1993, Congress passed the Government Performance and Results Act (GPRA) with the purpose of improving "the efficiency and effectiveness of Federal programs by establishing a system to set goals for program performance and to measure results" (Rand, 1995). The law attempts to improve program management through the process of operationalizing strategic plans, and specifying outcome measures and how they will be evaluated. Budget allocations can then be made using this performance information.

While the use of such performance standards in public agencies is relatively new, it has important implications for use in correctional agencies. Rather than depending upon reports of the success of some program, such performance standards would require clear evidence of the impact. There are several lines of research that have begun to move in the direction of quality management for corrections (e.g.,

Logan's quality of confinement indices; OJJDP's Conditions of Confinement Study; BJS/Princeton project reviewing papers on performance-based standards for justice agencies). These projects are attempts to quantify aspects of the environment that can be used as indices of the quality of the environment. The next step requires a clear definition and a way to measure the expected relationship between the aspects of confinement and the outcomes to be achieved. Frequently measures of success in corrections (e.g., recidivism) are dependent upon numerous factors (number of police officers, drug availability, social decay) that are not directly under the control of correctional administrators. Recognizing this, several criminologists have advocated that corrections be evaluated on intermediate outcomes as well as long-term outcomes.

For example, there are frequently questions about what exactly do the participants in a boot camp do and how these activities differ from traditional detention centers or training centers where these youth might otherwise be? From previous process evaluations and descriptions of programs, we know that the boot camps differ dramatically from each other. The assumption is also made that the boot camps differ from the more traditional facilities where the youth might be if the boot camps did not exist. Actually, there is little information to tell us how a boot camp in a particular jurisdiction differs from a detention center, training center, or other program where these juveniles might be detained. Furthermore, these statistical descriptions of the characteristics of the programs could be used in analyzing the impact of the program on the youth. The relationships among the conditions (or environment characteristics) and both the recidivism and positive activities of the youth during community supervision could be examined. If the therapy available during the boot camp were exactly the same as in the detention center than we might expect groups to be similar in drug use once they are returned to the community. On the other hand, if there are large differences between the environments, it would be important to identify what factors from the two environments have an impact on drug use during community supervision.

Four examples that will make appropriate models for measuring the environments of institutions and comparison facilities are: OJJDP's Conditions of Confinement Study completed by Parent (OJJDP, 1994), Quality of Confinement indices used by Logan (1992); The Correctional Program Inventory (CPI) developed by Gendreau and Andrews (1994); and, The Prison Environment Inventory (PEI) tested by Wright (1985). Each of these researchers have developed quantitative indices to measure aspects of the environment. These indices could be used to examine program outcomes. For example, OJJDP researchers assessed 46 assessment criteria that reflected existing national professional standards (from ACA, The National Commission on Correctional Health Care, ABA) in 12 areas that represented advisers'

perceptions of confined juveniles' most important needs in four broad areas (basic needs, order and safety, programming, juveniles' rights). They examined the association between these conditions and such factors as escapes, suicides and injuries.

In a similar manner, in his comparisons of private and public prisons, Logan developed indices to measure the quality of confinement. The Correctional Program Inventory (CPEI) was developed by Gendreau, Andrews and colleagues to measure the quality of therapeutic programs. Finally, Wright developed the PEI based on earlier work by Moos (1968) and Toch (1977) to measure institutional climate. In all of these cases the researchers developed quantitative indices or scales that could be used to measure aspects or components of the environment. They provide excellent models for the development of measures of the conditions of confinement, supervision experiences or even intermediate sanctions.

6.1 Conditions of Confinement

A substantial body of literature has begun to recommend the need to specify the components of programs and their relationships with outcomes. For example, a recent OJJDP publication on Conditions of Confinement examined the conditions of juvenile detention and corrections facilities (OJJDP, 1994). Using mailed surveys, the Children in Custody Census, and site visits, researchers measured conformance to national professional standards and other selected aspects of conditions. They recommended further study of why facilities vary so dramatically in such factors as exercise of control and safety. Furthermore they propose that more research be completed to examine the effects of these conditions on the juveniles both while they are in the facilities and upon release.

Similarly, after completing their evaluation of the juvenile VisionQuest Program, Greenwood and Turner (1987) also recommended that future evaluations describe and measure the "program inputs and processes" which can influence the effectiveness of a program. As I am arguing here, they propose that the general classification of a program as a boot camp or wilderness program (VisionQuest) does not give a detailed enough description to enable us to identify the components that will produce the desired impact. We need more detailed information about the conditions of confinement and we need to know how these conditions are associated with measures of performance and effectiveness.

6.2 Measures of Performance

Two other lines of work have sparked discussions within the criminal justice community about the need to measure the conditions or components of the environment. These are: (1) rethinking performance measures for criminal justice, and (2) performance based standards for corrections. Performance measures have been the topic of a recent Bureau of Justice Statistics-Princeton Project (DiIulio, 1993). The working group proposed that the use of traditional criminal justice performance measures should be rethought. In particular, DiIulio (1993) argues that while rates of crime and recidivism may represent basic goals of public safety, they are not the only, or necessarily the best, measures of what criminal justice institutions do. He advises criminal justice agencies to develop mission statements that include any activities that the agency can reasonably and realistically be expected to fulfill (DiIulio, 1991).

In line with this is Logan's (1992) emphasis on evaluating prisons on the day-to-day operations, not on ultimate, utilitarian goals of rehabilitation or crime reduction. Likewise, Petersilia (1993) argues that along with their public safety functions, community corrections should be evaluated on other activities such as the accuracy, completeness, and timeliness of presentence investigations, monitoring of court-ordered sanctions, and how well they do in assisting offenders to change in positive ways. Thus, not only are these researchers emphasizing the need to investigate components or conditions of the environments being studied but also the need to use a wider range of measures to examine effectiveness.

6.4 Performance-Based Standards for Corrections

Recently, attention in the corrections community has focused on the standards used for corrections. Traditionally, these standards have been based on the opinions of experts in the field who reach consensus about "best practices." However, there has been a push toward verifying the validity of these standards through the use of data on actual performance (performance-based standards). High rates of conformance with nationally recognized standards does not necessarily mean that all is well. Many of the existing standards specify procedures and processes to be followed, but not outcomes to be achieved (OJJDP, 1994). These performance-based standards would tie the standards to the performance or outcomes desired.

6.5 Intermediate Outcomes

Intermediate outcomes are proposed to be important for two reasons. First, because they are expected to indicate changes that will be associated with later long-term outcomes. That is, it is anticipated that for some individuals there is an association between their educational deficits and criminal behavior (Andrews et al., 1990). Increasing their educational achievement is then the first step in increasing their positive social activities and reducing their criminal activities. Second, these intermediate outcomes can be measured with less variance in comparison to later outcomes, and they are more directly relevant to factors that can be controlled and changed in the correctional environment. As argued by DiIulio (1993), Petersilia (1993) and others these are measures that are directly related to the day-to-day activities of corrections.

6.6 Management Tools

Information about the functioning of an institution can also be a valuable management tool. The Federal Bureau of Prisons has developed a system for periodically obtaining information on the conditions at its facilities and giving managers rapid feedback on the findings. Information comes from both documented institutional records (suicides, escapes, misconduct hearings) and also from surveys of inmates and staff. These "Social Climate Surveys" include questions on personal safety and security; quality of life; personal well-being and the work environment. The inmates questionnaires include similar questions and also additional questions on services and programs (medical care, counseling, education, recreation, work, and religious programs), staff (competence, attitudes and interactions), the discipline process, and aspects of living conditions. Such information provides a valuable bellwether against which managers can judge the impact of changes in the system, the inmates in the facility, or management practices. We need more information about how to design management tools and provide rapid feedback to correctional administrators, both at facilities and in the community.

7. System Planning

One of the largest challenges facing corrections is system planning. Too often correctional systems have attempted to develop a range of alternative sanctions that are not really a system. The alternatives all fight for the similar "model" cases and the

others are still sent to prison. System planning will be critical as states begin to address truth-in-sentencing issues. There is no reason why quasi-experiments could not be designed to examine the impact of such changes. An important part of system planning will be an examination of public attitudes. What do they want? How can we educate the public about the costs of many decisions. Are they really as punitive as they appear?

8. Exploring New Models

We need to explore new models of sentencing and corrections. The challenge is to determine how new and innovative ideas can be put into operation as short-term demonstration projects that are rigorously studied. We seldom develop programs or sentencing practices that are initiated on the basis of research and theory. We have come to a point where we need to critically evaluate some of our usual practices.

8.1 Alternative Responses to Criminal Acts

An excellent example of a potential new response to crime is the "Reintegration" paradigm that is being tested in Australia. While Braithwaite's Crime, Shame and Reintegration (1989) has created a paradigm shift in thinking about criminal sanctions, it has not been adequately discussed by those involved in corrections. The theory is to hate the sin but love the sinner. If the offender is apologetic to the victims and attempts to make good the harm done, s/he is accepted again. The evil deed is rejected, the evildoer is accepted back into the community. This emotional "reintegration" of the offender is a critically important departure from current criminal sanctioning. Instead of stigmatizing, labeling and rejecting the person as bad, the focus is on the offense. What an exciting new way to respond to criminal acts! It may particularly appropriate for some offenders (e.g., juveniles), or in some locations (e.g., rural districts), or with some populations (e.g., American Indian communities). However, few administrators today would be able to initiate such an imaginative program in their jurisdictions. The challenge is then to identify a procedure that will enable such innovative ideas to be put into practice and studied.

8.2 Impact Self-Control and Community Ties

Boot camps provide another example of how we need to critically evaluate our usual practices. These programs have spread across the nation in prison, jails and juvenile detention centers. Opinions about the programs vary and debates continue. In designing these programs little thought has been given to the theoretical rationale

for the program components. Yet, they could be designed to address problems of low self-control based on the theoretical perspective of Gottfredson and Hirschi (1990) or to increase the ties or bonds the offenders have to family, employment and the community as proposed by Sampson and Laub (1993).

8.3 The Impact of Major Changes in Sentencing Practices

We also need to explore new models for obtaining information about the impact of major sentencing practices. For example, one possibility is to do controlled experiments across jurisdictions by randomly selection states each with similar size cities to study the impact of some new policy on the incarceration rates.

At the end of this essay, I have introduced new models of sentencing and corrections because I think this is perhaps the most import aspect of meetings designed to address sentencing and corrections research. We need to explore new models. For far too long our main image of corrections has been the "big house" prison. We need to explore alternatives and we need to do so on the basis of informed decision making -- decision making that takes advantage of scientific knowledge obtained from controlled experimentation.

REFERENCES

Andrews, D.A., Zinger, I., Hoge R.D., Bonta, J., Gendreau, P., & Cullen, F.T. (1990). "Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-analysis." Criminology, 28, 369-404.

Braithwaite, J. 1989. Crime, Shame and Reintegration. Cambridge, UK: Cambridge University Press.

Campbell, D.T. and J.C. Stanley. 1963. Experimental and Quasi-experimental Designs for Research. Chicago: Rand McNally.

Cook, T.D. and Campbell, D.T. 1979. Quasi-Experimentation: Design and Analysis Issues for Field Settings. Chicago: Rand McNally.

Cullen, F. and K. Gilbert. 1983. Reaffriming Rehabilitation. Cincinnati, Ohio: Anderson Pub. Co.

DiIulio, J.J., Jr. 1993. Rethinking the criminal justice system: Toward a new paradigm. In U.S. Dept. of Justice, Performance Measures for the Criminal Justice System. (NCJ-143505)

Feeley, M.M. and Simon, J. 1992. The new penology: Notes on the emerging strategy of corrections and its implications. Criminology. 30:449-474.

Gottfredson, M.R. and T. Hirschi. 1990. A General Theory of Crime. Stanford: Stanford University Press.

Greenwood, P.W. and S. Turner (1987) The VisionQuest Program: An Evaluation. The RAND Corporation, California.

Logan, C.H. 1992. Well kept: Comparing quality of confinement in private and public prisons. The Journal of Criminal Law and Criminology. 83:577-613.

Logan, C.H. 1993. Criminal justice performance measures for prisons. In U.S. Dept. of Justice, Performance Measures for the Criminal Justice System. (NCJ-143505).

MacKenzie, D.L. 1996. Using science and the U.S. land-grant university system to attack this nation's crime problem. College Park, MD: Manuscript submitted for publication.

Moos, R. The assessment of social climates of correctional institutions. Journal of Research in Crime and Delinquency. 5:174-188.

Office of Juvenile Justice and Delinquency Prevention. 1994. Conditions of Confinement: Juvenile Detention and Corrections Facilities. OJJDP, U.S. Department of Justice.

Palmer, T. 1992. The Re-emergence of Correctional Intervention. Newbury Park, CA: Sage Pub.Co.

Petersilia, J. 1993. Measuring the performance of community corrections. In U.S. Dept. of Justice, Performance Measures for the Criminal Justice System. (NCJ-143505)

Sampson, R.J. and J.H. Laub. 1993. Crime in the Making: Pathways and Turning Points Through Life. Cambridge, MASS: Harvard University Press.

Saylor, W.G. 1984. Surveying Prison Environments. Office of Research, Federal Bureau of Prisons.

Toch, H. 1977. Living in Prison: The Ecology of Survival. New York: Macmillan.

Wright, K.N. 1985. Developing the Prison Environment Inventory. Journal of Research in Crime and Delinquency. 22:257-277.

I

163790

To: National Institute of Justice

Fr: Michael Tonry

Re: Sentencing and Corrections Research

Dt: February 5, 1995

I was asked to offer suggestions concerning research priorities relating to racial disparities in the justice system. Part II of this memo does that. Because, for reasons explained below, I think there are but a few high-priority topics within that subject that warrant consideration, Part I of this memo offers research suggestions concerning "structured sentencing" projects, a topic assigned to none of the background paper writers.

I. Structured Sentencing, Sentencing Guidelines.

The sentencing reform movement has been underway for nearly 25 years and, using substantive rather than political criteria, it is clear that presumptive sentencing guidelines have hands-down been the most successful of the major innovations tried: they have effectively been used as a tool to reduce sentencing disparities generally and particularly in reference to racial and gender differences, to establish and then implement jurisdiction-wide policies, and to link sentencing policies to corrections resources. Voluntary sentencing guidelines, parole guidelines, statutory determinate sentencing laws, and mandatory penalties have each in their turn been tried and found either ineffective or incomplete. (Some elected officials would disagree about mandatory

penalties; in private many officials will agree but profess themselves unable for political reasons to propose repeal or oppose enactment of mandatories). As a result, more than 25 states have, have had, or are in the process of creating sentencing commissions and sentencing guidelines (mostly presumptive but some voluntary). At the moment, for example, new commissions are at work in Massachusetts, Michigan, Oklahoma, Montana, and South Carolina, and legislation to create a commission has been introduced in Maryland.

For all that activity, however, and despite the earlier implementation of guidelines in Minnesota, Pennsylvania, Maryland, Michigan, Washington, Utah, Alaska, Florida, Wisconsin, Oregon, Virginia, Kansas, Arkansas, Missouri, and North Carolina, no significant evaluation research has been funded by the federal government for at least ten years. Given the private foundations' lack of interest in criminal justice research, federal inactivity has meant no activity. This is a pity since many of the new state commissions have been competently led and managed and have been handicapped by the absence of credible evidence on the likely effects of alternate policy choices they might make. Thus if NIJ has some flexibility in how it spends sentencing/corrections research dollars, a new round of evaluation research on structured sentencing should be a high priority.

Below, I discuss a number of subjects that warrant consideration. Many of these topics could be considered together, as happened in the late '70s when NIJ funded an omnibus evaluation of sentencing changes in California and Oregon, or piecemeal, which has been the NIJ approach

to funding evaluations of intermediate sanctions. Were the piecemeal approach adopted, some states might be the subjects of evaluations on more than one topic.

A. Building Intermediate Sanctions into Sentencing Guidelines. By most standards, the intermediate sanctions movement from 1985 to 1996 has not been much more effective, despite its different theoretical rationale, than was the alternatives movement ten years earlier: new programs have seldom demonstrably affected recidivism rates for new crimes, saved money, or reduced demand for prison beds. A principal reason for those findings is that judges have been loathe to use new programs as prison diversions. As a result, a number of jurisdictions have recast existing guidelines (Pennsylvania) or developed new ones (North Carolina) that include intermediate sanctions within structured sentencing systems. Other of the existing systems are considering doing so and most of the new ones aspire to do so.

There is no evaluation research on the effectiveness of sentencing guidelines as a device to structure judges' discretionary choices between confinement and intermediate sanctions, among intermediate sanctions, or between intermediate sanctions and community penalties. A number of projects might be considered. One might look at one of the existing cutting-edge systems (North Carolina and Pennsylvania) to determine whether the new guidelines alter prison-use or sentence-option-choice patterns and, if so, how. Another might trace the development, implementation, and effects on outcomes and justice system processes

of policies developed by one of the more promising new commissions (e.g., Massachusetts). Because prison crowding and policymakers' searches for ways to divert lower-risk offenders from confinement are likely to be with us for many years, an RFP soliciting proposals to evaluate the effects of different approaches to incorporating intermediate sanctions into guidelines could generate findings to guide or inform policymaking for many years to come.

B. Sentencing Guidelines and Community Corrections Acts. It looks as if sentencing guidelines are unlikely to be effective unless they are extended to include intermediate sanctions and as if intermediate sanctions are unlikely to achieve their goals unless means can be found to increase the chances that judges will generally use them for their target client populations. One difficulty in many jurisdictions has been that sentencing guidelines have state-wide scope while intermediate sanctions are organized and often paid for at county levels. No matter what guidelines provide, they cannot succeed if programs whose existence or availability they presume are unavailable. Since complete state takeover of operation and funding of local community-based programs is seldom an option, community corrections acts offer the likeliest strategy for integrating sentencing guidelines and intermediate sanctions policies. North Carolina expressly did this when the legislature simultaneously adopted sentencing guidelines and community corrections enabling legislation.

That combination is a likely path for many states to follow but as yet no systematic evidence is available on how the combination has worked. Moreover, as a recent literature review by Dale Parent suggests, there are good reasons to be skeptical that the (not very well-done) evaluations in the 1970s and 1980s of community corrections acts ("CCAs") provide very useful insights into how CCAs will work in the '90s and beyond. NIJ should consider supporting an evaluation of what has happened in states like North Carolina that have tried to combine guidelines with community corrections acts. These should include major qualitative components including case studies of the development and implementation of community corrections programs at the county level, as well as management studies of the operation of state offices charged to oversee statewide expansion of community corrections programming.

C. <u>The Effectiveness of Presumptive Guidelines.</u> Guidelines systems vary substantially from state-to-state and they have been variously successful at achieving their stated goals. Nonetheless, there is widespread belief, based on evaluations now 12 years old, and older, and on the ability of some guidelines states to control prison population growth for extended periods, that presumptive sentencing guidelines are an effective device for establishing and implementing statewide policies, reducing disparities, and regulating prison population growth. Perhaps surprisingly, the evidence on which those beliefs are based is slight. The last comprehensive sentencing system evaluations funded by NIJ were of statutory determinate sentencing systems in California and North

Carolina and voluntary sentencing guidelines in Maryland and Florida. NIJ funded no major evaluations of presumptive sentencing guidelines. (NIJ did fund a small secondary analysis of Minnesota data in the mid-'80s and Richard Frase and David Boerner have done small secondary analyses with Minnesota and Washington data, and that's the literature.) In addition, as with community corrections acts, there may have been so many changes in the social, political, and bureaucratic contexts of sentencing since the early 1980s that guidelines now will not work as they did in earlier times.

In light of the enormous scale of guidelines activity in recent years, NIJ should consider issuing an RFP for comprehensive evaluations, both qualitative and quantitative, of one or more of the presumptive guidelines systems adopted in the recent past or likely to be adopted in the near future. It would be comforting to learn that new systems can be as successful as the Minnesota, Washington, and Oregon systems are widely believed to have been. It would be just as useful, however, to learn that new systems, or substantially revised older systems like Pennsylvania's, have not achieved their goals, and why.

D. <u>The Effectiveness of Voluntary Guidelines.</u> For at least ten years, since the publication of NIJ-funded reports on the effectiveness of voluntary sentencing guidelines by the National Center for State Courts (Colorado, mostly) and Abt Associates (Maryland and Florida), the conventional wisdom has been that voluntary guidelines are not an effective way to structure sentencing discretion. (Delaware's experience

is sometimes said to be different, but there has never been a significant inside or outside evaluation and the statistical data that Delawareans cite as evidence of effectiveness is at best weak.) Because of their perceived ineffectiveness, voluntary guidelines have recently been repealed in Wisconsin, Tennessee, and Louisiana, and new (Michigan) and possible (Maryland) commissions would, if successful, replace fifteen-year-old voluntary systems with presumptive ones.

Nonetheless, a few states have recently adopted new voluntary guidelines (Arkansas, Virginia, Missouri, Ohio) and a few other states (Oklahoma, Montana, South Carolina) have commissions now at work on contemplated voluntary systems. The principal half-a-loaf reason for creation of such systems now is that judges in many states remain hostile to guidelines and voluntary guidelines are seen as potentially better than nothing and possibly as a first step toward presumptive guidelines.

It would be a worthwhile investment to fund an evaluation of one of the new or recent voluntary systems to learn whether the conventional wisdom remains accurate or whether the different political climate of the '90s and lesser judicial resistance than in earlier times may make voluntary guidelines more effective than past experience and research would predict. If not, negative findings might help future states' avoid going down dead-end roads.

E. <u>Prosecutorial Discretion under Guidelines Systems.</u> From the very beginning of discussion of guidelines people have been concerned that greater predictability of judicially-imposed sentences would shift power

to prosecutors. Many judges, especially in federal courts, believe this to be true. Except, however, for one NIJ-funded early '80s project concerning Minnesota and U.S. Sentencing Commission-sponsored research in the early '90s, there has been no serious research on whether, how, and to what extent charging and bargaining practices change, and with what effects on sentences. Most commissions have discussed the problem but ducked it. The federal commission took it so seriously that it adopted its most controversial policy--real offense sentencing--to counterbalance discretion shifts to prosecutors.

The issue is not going away and it would be helpful to policy-makers to have more than speculation to go on in predicting how alternate guideline approaches and formats will affect prosecutorial behavior and in deciding how, if at all, to take those predictions into account in making policy choices. An RFP that invited proposals to evaluate the effects of new guidelines systems on prosecutorial behavior could provide useful, otherwise not available information to state and federal sentencing policymakers. Although such projects should include quantitative components, the primary emphasis should be qualitative.

F. Mandatory Minimums and Guidelines. Defense lawyers and judges hate mandatory minimums. Prosecutors' views are more mixed; some like them, some dislike them, and many are ambivalent. Mandatory minimums are for the most part destructive of guidelines because they make it difficult or impossible to obtain reasonable proportionality among sentences for offenses subject to mandatories and for other

offenses. They also foster cynicism; lawyers and judges prepared to evade mandatories they believe unjust are more likely to evade guidelines with which they disagree. Massachusetts's commission is working under legislation under which guidelines if adopted would supplant mandatories so long as the guideline ranges for predicate offenses include the previously mandated minimum. However, the new guidelines would be presumptive which means that the formerly mandatory penalties would also become presumptive. Many mandatory minimums in Minnesota have long worked this way.

If the Massachusetts guidelines are implemented under the current enabling legislation, it would be a badly wasted opportunity were NIJ not to fund an evaluation of how the new system works. For the foreseeable future, most jurisdictions are likely to lack the political will to undertake wholesale repeals of current mandatories. The Massachusetts effort, if it works, may provide a model other states can emulate.

G. Mandatory Minimums. Strictly speaking, mandatory minimums have no necessary link to sentencing guidelines. And, honestly speaking, we are not likely to learn much from new studies of mandatory penalties that was not learned from the American Bar Foundation Survey directed by Frank Remington and Lloyd Ohlin in the 1950s and the small evaluation literature that accumulated in the 1970s. Nonetheless, there have been no serious process studies (except by the U.S. Sentencing Commission of the federal guidelines) of the implementation of mandatory penalties since the 1970s. There have been a few inconclusive statistical analyses

of the effects of mandatories on crime rates. The literatures could fairly be summarized as showing that mandatories have more undesirable side-effects than desirable direct effects, and that mandatories have no, or small and short-term, deterrent effects.

However, mandatory penalties continue nonetheless to win the favor of many elected officials. It would be useful, I believe, for NIJ to fund a rigorous evaluation of newly enacted mandatories in one or more jurisdictions to investigate both the existence and scale of any demonstrable crime-reduction effects and to investigate the effects of enactment of such laws on court processes, including charging and bargaining patterns and sentencing outcomes. It is essential that the research designs contain both strong quantitative and strong qualitative elements; most of the recent efforts to isolate deterrent effects have consisted only of quantitative analyses of official data retrospectively collected and as a result it is impossible sensibly to speculate about the meaning and process explanations of findings. It may be that the policy process is impervious to practitioners' and researchers' knowledge of the dysfunctional effects of mandatories, but a recent, sophisticated, federally-funded study documenting those effects (assuming it did) would make much clearer the gap between policy and practice. On the other hand, if my predictions about likely findings proved wrong, it would be better to know that there are plausible grounds for hoping mandatories work as their proponents predict and that their passage can accordingly be attributed to something other than political cynicism.

II. Racial Disparities in the Justice System.

The key to establishing a research program on racial disparities is the starting premise. If the starting point is the conservative premise that disparities per se are unobjectionable, then the focus of research should be to identify the scale and sources of invidious bias that produces disparities that cannot be justified in terms of offenders' crimes and criminal records. From this starting point, the federal disparities associated with the crack/powder distinction are unobjectionable because they result from the enforcement of content-neutral laws that blacks more often elect to violate. If this is the focus, there seems to me relatively little marginal benefit in an NIJ research initiative on this subject. There have already been so many case studies of police, prosecution, judicial, and correctional decision-making in relation to race that the learning increment from new NIJ-funded research seems likely to be slight. Likewise there seems little important to be learned from more of the aggregate NCVS/UCR/prison population analyses like those of Blumstein and Langan.

If the premise to the contrary is that racial (and ethnic) disparities are per se objectionable, there is a good bit of useful policy-relevant work NIJ could catalyze.

A. <u>Sentencing Case Studies.</u> Race and gender effects are much more nuanced and contingent than crude bias theories contemplate. For

example, while it seems true that, controlling for offense characteristics and criminal records, women typically are sentenced less harshly than men, the effects of sentences on defendants' children is a powerful explanatory variable that mitigates sentences both for men and women, but more and more often for women, and the patterns vary with race with the gender difference being greatest among black defendants. For another example, coincident with findings of aggregate statistical analyses that race has little or no predictive power concerning whether people go to prison or for how long, there is evidence that various "race-neutral" practices adversely affect black defendants. One is the higher rate of pretrial detention for blacks, coupled with the consistent finding that, other variables controlled, pretrial detention predicts imprisonment (over and above "time served"). Another is the lower level of early-stage guilty pleas for blacks, coupled with the consistent finding that earlier pleas result in larger "guilty plea discounts." A third is the higher proportion of alienated, defiant, non-cooperative minority defendants coupled with the common observation that less cooperative defendants receive harsher sentences. A fourth is the effects of the crack/powder sentencing laws.

NIJ could invigorate a now moribund body of research by establishing a small program of sentencing case studies on the existence, nature, and causes of racial and ethnic disparities of the sort described in the preceding paragraph. Any RFP should be the opposite of procrustean. Applicants should be asked to document the plausibility of a particular

disparate impact hypothesis, offer a plausible causal explanation, and devise a research design that will test the explanation.

B. Disaggregated Offending, Victimization, and Disparity Studies. Racial, ethnic, and gender differences in offending patterns are the primary cause of disproportions in prison and other corrections populations. Current knowledge of those behavioral differences is, however, rudimentary. A serious research program on disparities and discrimination would invest in research aimed at improving that knowledge base.

A visitor from a foreign land who saw America only through criminological (and welfare policy) research would think that all Americans were black or white and that each of those groups was monolithic and undifferentiated. Outside the United States (and England), "black" is not seen as a useful category. In Ontario, for example, long-term U.S.-origin black residents see themselves as different from recent Jamaican immigrants and both groups see themselves as different from recent Ethiopian immigrants; white Canadians also see these groups as fundamentally different and better characterized in ethnic or other terms. Inside the United States, most people do not think of "Hispanics" as one undifferentiated mass, or "Asians" as one group. All the same, most research uses categories of black and white or black, white, and other (occasionally, explicitly Hispanic).

We know from research in other countries that various groups falling within a single "racial group" often have very different

demographic and crime-participation characteristics (for examples, Yugoslavs and Poles in Germany, Jamaicans and Ethiopians in Canada, Bangladeshis and Indians in England, Finns and Estonians in Sweden). This is obviously true in the United States, even if that truth is seldom acknowledged or studied by researchers. Similarly, different minority groups have drastically different offending patterns in particular times at particular places, as German research has shown.

NIJ could significantly enrich criminological research, and provide policy-relevant knowledge that is not now available, if it were to establish a program of research on ethnic differences in offending, victimization, and system processing. For example, the experiences of various Hispanic subgroups are probably very different as probably are those of different Asian groups, and within different groups the experiences of successive migration waves (e.g., the primarily urban educated first group of Vietnamese migrants compared with the primarily rural peasant second group). For understanding the social threats posed by different groups, for anticipating and thereby having opportunity to ameliorate problems faced by different groups, and to reveal complexities and subgroup differences that can undermine negative stereotypes, such a research program could pay important benefits. Were such a program to be launched, it too should not be procrustean but should have as its defining characteristic that all research subjects must be disaggregated below the categories white, black, and Hispanic.