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This Issue in Brief

Probation Officer Burnout: An Organizational Disease/An Organizational Cure.—In recent years, considerable attention has been given to burnout of public service personnel; however, little has been published on burnout of probation officers. Author Paul W. Brown looks at organizationally caused burnout and some approaches to moderate it. According to the author, most correctional agencies are based on a military-like structure, and probation departments seem to be no exception. This traditional structure may be responsible for burnout, and there is little a probation officer can do about it. Changes will have to be made by managers who are willing to accept and implement more democratic management styles.

The Privatization of Treatment: Prison Reform in the 1980's.—According to author Francis T. Cullen, a contributing factor to the swing in criminal justice policy to the right has been the failure of progressives to provide plausible policy alternatives. He argues that a viable avenue of prison reform is the privatization of correctional treatment programs—a reform that is politically feasible because it capitalizes upon both the continuing legitimacy of the rehabilitative ideal and the emerging popularity of private sector involvement in corrections. While a number of concerns about profit-making in prisons must be addressed, the author contends, the major advantage of privatizing treatment is that it severs the potentially corrupting link between custody and treatment and thus helps to structure interests within the prison in favor of effective correctional rehabilitation.

A Theoretical Examination of Home Incarceration.—Developing a theoretical rationale for the use of home incarceration as an alternative sentence, authors Richard A. Ball and J. Robert Lilly argue, based on a previously developed theoretical position as to the goals of sentencing generally, that "punishment" is ultimately directed at the restricted reprobation of an act in such a way as to provide for the reparation of that particular conception of social reality agreed upon in a given society. According to the authors, home incarceration has advantages in that it is of easy communicability in terms of present conceptions of social reality, of limited complexity and fairly obvious potential impact, and of reasonable cost. Since it is also characterized by reversibility, divisibility, compatibility, and perceived relevance to organizational goals, it is considered to possess the theoretical advantages necessary to adoption.

Probation Supervision: Mission Impossible.—According to author John Rosecrance, there is a consensus that probation has failed to reduce recidivism and has lost credibility with the public and other criminal justice

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agencies. Probation supervision has proven ineffective, he contends, because of bureaucratic dynamics and the conflicting nature of officer-client relationships. Although there are calls for drastically overhauling probation services and revitalizing its mission, the prevailing alternatives—(1) service orientation, (2) differential supervision, and (3) intensive supervision—are incremental and fail to address fundamental problems. The author advocates eliminating probation supervision and allowing other agencies to assume these responsibilities. Probation would be left with a feasible and unambiguous mission—providing objective investigation services to the court.

The Dimensions of Crime.—Author Manuel Lopez-Rey discusses a subject addressed at the seventh United Nations Congress on the Prevention of Crime, Milan, 1985: What are the dimensions of crime? Contending that criminal justice policy is formulated without knowledge of the true scope of crime worldwide, the author holds that what is thought of as constituting crime is only common, conventional crime, and what is not taken into account is unconventional crime—such as terrorism, torture, and summary execution—prevalent in dictatorial regimes where crime often goes unreported. The author addresses how malfunctions in the criminal justice system affect the dimensions of crime, stressing the need to define what is crime by law and to broaden conceptions of crime to include less conventional crime. Influencing factors such as economic crime and criminal negligence are also discussed.

Security and Custody: Monitoring the Federal Bureau of Prisons' Classification System.—Authors Michael Janus, Jerome Mabli, and J. D. Williams report on the Federal Bureau of Prisons' system—implemented in 1979—for assigning inmates to institutions (Security Designation) and to various levels of supervision (Custody Classification) within institutions based on background and behavioral variables. This security and custody system replaced an informal one which relied heavily on individual discretion. The new method quantified the factors involved in decisionmaking and shifted the focus of classification procedures from the diagnostic-medical model to the humane control model. Since 1981, the Bureau of Prisons has monitored the system by recording monthly security and custody breakdowns as well as inmate misconduct and escape information for each of its approximately 50 institutions. This study will report analysis of these data both cross-sectionally and longitudinally at the institution level.

Repeating the Cycle of Hard Living and Crime: Wives' Accommodations to Husbands' Parole Performance.—Author Laura T. Fishman examines the social accommodations made by prisoners' wives to their husbands' post-prison performance. To construct an ethnographic account of the social worlds of 30 women married to men incarcerated in two prisons, the author employed a combination of methods—indepth interviews with wives, examination of prison records, summaries of women's "rap sessions," and a variety of other sources of data. She found that of the 30 women, 15 welcomed their husbands home from prison, and the wives used a variety of accommodative strategies to support their husbands' settling down and to deter them from resuming hard living patterns and criminal activities. The author concluded that none of these strategies were as effective as wives anticipated; wives do not appear to have much influence on whether or not their paroled husbands resume criminal activities, get rearrested, and return to jail.

Community Service Sentencing in New Zealand: A Survey of Users.—Beginning in 1981, New Zealand law authorized sentencing offenders to perform from 8 to 200 hours of unpaid service to a charitable or governmental organization. Authors Julie Leibrich, Burt Galaway, and Yvonne Underhill conducted structured interviews with samples of probation officers, community service sponsors, offenders sentenced to community service, and judges to determine the extent of agreement on the purpose of the sentence, ways in which the sentence was being implemented, benefits thought to flow from the sentence, and the extent of satisfaction with the sentence. According to the authors, the New Zealand experience suggests that community service is a feasible and practical sentencing option. They caution, however, that consistency of administration requires reaching agreement as to the purpose of the sentence and its relationship with other sentences. A number of implementation decisions also need to be resolved, including the role of the offender in selecting a community service sponsor, the role of the judge and probation officer in determining a specific placement, development of working relationships between probation officer and community service sponsor, and the need for a backup sanction.

Assessment Centers as a Management Promotion Tool.—An assessment center or the multiple assessment approach is the careful analysis and programmed assessment of management ability using a variety of job-related criteria. This approach has been used for decades in companies such as IBM, General Electric, American Telephone and Telegraph, and numerous government agencies. The variables or dimensions used to test an applicant's attributes vary from organization to organization, as do the techniques used to test these dimensions. Author William V. Pelfrey reviews the typical techniques

Sentencing Guidelines: To Be Or Not To Be

BY CHRIS W. ESKRIDGE, PH.D.[1]

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Introduction

IN THE fall of 1981, Paul Sutton of the National Center for State Courts filed a report that called attention to the existence of sentencing variation in the State of Nebraska (Sutton, 1981). While concerns have been raised relative to the accuracy of the report, Sutton's original evaluation and a subsequent reanalysis undertaken by Horney (1982) substantiate the existence of some degree of sentencing variation in Nebraska. The amount of the variation that exists in Nebraska, however, appears to be rather small and the range somewhat narrow by national standards. Furthermore, some argue that in a state as geographically large and diverse as Nebraska, local variations in attitudes and perspectives as to the seriousness of a particular crime are to be expected. Consequently, some variation in sentencing could be considered both justifiable and desirable in that it reflects valid variations in perspectives of different communities. Nonetheless, an official committee was established to examine the situation, and the legislature considered several bills.[2]

The case of Nebraska is not unique. Allegations of disparate sentencing practices have caused numerous states and the Federal government to investigate the matter. Those investigations have documented the existence of widespread sentencing *variation* in this country, variation in sentences from state to state, from court to court within a state, from judge to judge within the same court, and even variation in sentencing practices by one judge over time (Court Watch Project, 1975; Diamond and Zeisel, 1975; Diamond, 1981; Partridge and Eldridge, 1974; U.S. Department of Justice, 1973). The question, of course, is whether that variation, which unarguably exists, is justified or not. The question is whether that variation is truly disparity. Exactly what is and what is not justifiable variation in sentencing patterns is not easily answered, if it is answerable at all given the heterogenic makeup of our society. Neubauer (1984: 337) gives us a definition of sentence disparity, "...the lack of similar sentences for similar offenders committing similar offenses." But this is a generic definition and fails to take into account the vast social, cultural, and political differences that coexist in this country. What are and what are not similar offenses? Who are and who are not similar offenders? What are and what are not similar sentences? The latter may be answerable in some quantitative sense, but the former two are clearly a matter of perspective.

While an absolute consensus will likely never be reached, some persons suggest that existing sentencing variations are generally disparate and are calling for a reduction in the level of that sentencing disparity, while others classify present practices as acceptable and within the realm of justifiable differences. At present, the former group seems to have the center stage, and the great hue and cry on the political forefront is to reduce the disparate nature of sentences. Presumptive sentencing guidelines have been proposed as a means of achieving that end.

Sentencing Guidelines

Presumptive sentencing guideline models include four elements:

1. A standard sentencing range established by law.
2. A statutory presumption that sentences, as established by sentencing judges, will fall within the legally defined range.
3. A legal proviso allowing sentencing judges to move sentences outside the guidelines in light of aggravating or mitigating circumstances unique to each individual case.
4. A requirement that sentencing judges make formal written justification in the event a sentence falls outside the guidelines.

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[1] This article is largely taken from a report prepared by Chris Eskridge who served as a member of the Nebraska Supreme Court Committee on Sentencing Guidelines. While Dr. Eskridge prepared the bulk of the final report, the entire Committee provided input and feedback. Members of the Nebraska Supreme Court Committee on Sentencing Guidelines were as follows:

Mr. Charles L. Benson	Ms. Jean Lovell
Judge Jeffre P. Cheuvront	Judge Robert R. Moran
Judge James J. Duggan	Judge Bernard Sprague
Judge Janice L. Gradwohl	Mr. John D. Cariotto, Secretary
Judge John T. Grant	Dr. Chris W. Eskridge, Reporter
Mr. Ivory Griggs	Judge D. Nick Caporale, Chairman

Chris Eskridge accepts full responsibility for the content of this particular article. An earlier version of it was presented at the Annual Meetings of the American Society of Criminology, November 1984, and was published in *The Champion*, May 1985 (Volume IX, Number 4).

[2] L.B. 489, L.B. 455, 88th Nebraska Legislature.

Under this definition, four states, Minnesota,[3] Pennsylvania,[4] Rhode Island,[5] and Washington,[6] now use guidelines virtually as the sole procedural form of sentencing statewide. A number of states, including Alaska, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kansas, Louisiana, New Jersey, New Mexico, North Carolina, and Wisconsin now use or in the recent past have used such models for certain offenses (Cooper et al., 1982; Galvin, 1983; *Overview,* 1980). Specific courts in Arizona,[7] California,[8] Colorado,[9] Illinois,[10] Maryland,[11] North Carolina,[12] and Wisconsin[13] use some type of a presumptive sentencing guideline model (*Overview,* 1980). At least six states have established sentencing guidelines commissions, including Florida, Illinois, Minnesota, Pennsylvania, South Carolina, and Washington.

At least five states (Maryland,[14] Michigan,[15] Ohio,[16] Utah,[17] and Vermont[18] have developed nonstatutory, voluntary, statewide guidelines. The guidelines in these states have been developed by the judiciary and/or various committees and are not mandated, but serve only as suggested guides. No justification for departure from the model is required.

Numerous attempts have been made to adopt Federal sentencing guidelines. Senate Bill 1437, which included a sentencing guidelines provision, first passed the Senate in 1978 but died in the House. The bill was reintroduced in S.1722 in 1979, but the Senate adjourned without voting on it. The bill was reintroduced in 1981 as S.1555 and in 1982 as S.2572, but the measure failed each time. Finally in October 1984, sentencing guidelines were mandated at the Federal level. The notion was included as a provision of the Comprehensive Crime Control Act of 1984. The Federal guidelines are still being devised at this writing and are obviously yet to be implemented.

While many documents, monographs, papers, reports, and journal articles extol the virtue of sentencing guidelines, few offer any sound quantitative evaluation of impact. Indeed, the procedure is so new that a complete and clear analysis of impact is not yet available. Perhaps the most complete evaluation to date is that of the Minnesota project, *Preliminary Report on the Development and Impact of Minnesota Sentencing Guidelines* (1982). The results are somewhat encouraging as to the reduction of sentencing disparity. Of the 5,500 cases processed after the guidelines were in effect, only 6.2 percent departed from the grid. Furthermore, only 15 percent of those with crime severity levels of I or II and criminal history scores of 0 to 1 are currently being imprisoned, whereas 54 percent of similar offenders were imprisoned prior to use of the guidelines. However, some substantial negative impacts are evident. The decrease in the rate of admissions to state prisons has been accompanied by an increase in the rate of convicted offenders serving time in local jails. There is some evidence of continued racial disparity in sentencing patterns. Controlling for the severity levels and criminal history scores, minority offenders still received more severe sanctions than did whites, despite the fact that the guidelines were used. Finally, this 1982 report noted that uniformity in sentencing, the crux of the issue, had been limited. A more recent study by Knapp (1984) concludes that the Minnesota model has been "less successful in achieving sentence uniformity." This is not surprising in light of Carrow's (1984) review of voluntary sentencing guidelines in general, where Carrow found that they offer "little assurance of uniformity in sentencing."

At least one other state that has adopted mandatory presumptive sentencing has been able to restrict sentences and bring them within a preestablished grid. In a preliminary analysis of the impact of the standards adopted by Pennsylvania, Kramer (1983) found that 94.3 percent of all sentences were falling within the guidelines. The proportion of felony I offenders that were being sentenced within what are now the sentencing guidelines before the guidelines were created was found to be 44.8 percent. Subsequent to the development of the guidelines, Kramer found that 84.6 percent of the felony I offenders were being sentenced within the guidelines. Thirty and nine-tenths of felony II offenders sentenced before the guidelines were created were being sentenced within what are now the guidelines. Subsequent to the development

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[3] 1978 Minnesota Laws, Ch. 723. This law went into effect in May 1980.

[4] Legislative Act 319 which passed in November 1978. Authorized the establishment of the Pennsylvania Commission on Sentencing. This Commission developed a set of guidelines which were approved by the state legislature in July 1982.

[5] Rhode Island has developed what it calls benchmark sentences, sentences based upon a matrix that only considers present offense characteristics. These nonvoluntary sentencing standards were adopted by the Rhode Island Supreme Court as of January 1, 1982.

[6] *Laws of Washington* 1981-1982, Ch. 192: Sentencing Reform Act of 1981.

[7] Arizona Rev. Stat. Ann. S 13-701, 702 (1978).

[8] Penal Code of California, Sec. 1170(a)(1).

[9] Denver Demonstration Model.

[10] Illinois Am. Stat. Ch. 38, S 1005-8-1 (1980-81 Supp.).

[11] Sentencing Guidelines Project of the Administrative Office of the Courts; September 30, 1979.

[12] N.C. Gen. Stat. SS14-1.1., 15A-1021, 15A-1340.1 through 1340.7, 15A-1380.1, 15A-1380.2, 15A-1414, 15A-1415, 15A-1442, 148-13.

[13] Wisconsin Felony Sentencing Guidelines have been used in eight counties since December 1982.

[14] Guidelines were developed by the Administrative Office of the Courts and were implemented in four jurisdictions in June 1981. They await statewide approval.

[15] Guidelines were implemented in March 1981 culminating a 3-year effort by Michigan Felony Sentencing Project staff, Michigan State Court Administrators staff, and representatives from the judiciary and the state bar. They await statewide approval.

[16] The Ohio State Bar Foundation developed a set of voluntary guidelines in 1977.

[17] A committee representing a number of governmental agencies developed a set of voluntary guidelines in 1978. Sentencing and parole decisions were placed within one matrix.

[18] Voluntary guidelines were developed by the judiciary and became effective February 1, 1982.

of the guidelines, Kramer found that 89.0 percent of the felony II sentences were falling within the guidelines. The proportion of the felony III offenders that were being sentenced within what are now the sentencing guidelines before the guidelines were created was found to be 58.4 percent. Subsequent to the development of the guidelines, Kramer found that 85.9 percent of the felony III sentences were falling within the guidelines. An analysis of the variations within the guidelines and of the cases that fell outside the grid has not been undertaken. Recall that when such an analysis was undertaken in Minnesota, minority offenders were still found to receive more severe sanctions than whites, controlling for relevant factors.

In a review of the impact of voluntary sentencing guidelines in four urban courts (Denver, Philadelphia, Chicago, and Newark, New Jersey), Rich et al. (1982) found guidelines had no measurable impact on judicial sentencing behavior. In short, they found that sentence disparity was not reduced and that a significant degree of noncompliance with the standards occurred. Total noncompliance, defined as noncompliance on the decision whether to incarcerate as well as on the minimum and maximum terms of imprisonment, occurred in 54 percent of the cases in Denver and in 48 percent in Philadelphia. Furthermore, judges in Denver provided written reasons for departing from the guidelines in only 12 percent of the cases. While on the surface these findings seem to contradict those of Minnesota, a *major* substantive difference must be noted. The Minnesota model is statutory and has the force of law, while the guidelines developed in the four urban courts are strictly voluntary. Consequently, Rich et al. concluded that in order for sentencing guidelines to structure sentencing discretion successfully, they must be given the force and effect of law. Rich et al. also suggested that the type of conviction (i.e., guilty plea, guilty plea flowing from a plea bargain, or trial conviction) be incorporated as one of the salient factors within the guidelines.

The State of Florida was the site of a National Institute of Justice pilot project designed to develop and test the feasibility of multicounty/regional sentencing guidelines. A 1982 evaluation (Florida State Court Administrator's Office, 1982) found that approximately 20 percent of the sentences given in the four judicial circuits under study fell outside the guidelines. On the basis of this, as well as a number of subjective observations, the authors concluded that sentencing guidelines were both feasible and desirable.[19] They also suggested that the development of regional guidelines would allow for the inclusion of local values in the mathematically derived guidelines. Due in large part to the apparent success of this project, Florida implemented statewide sentencing guidelines in 1983.[20] While no empirical evaluation of impact of the Florida guidelines is available, Griswold's (1985) preliminary review states that Florida's guidelines may not be promoting justice or fairness.

Drawing upon the conclusions reached from the initial Florida project, Rich et al. (1982) suggested the need for more than just pure statistical quantitative methodology in the development of sentencing guidelines, noting that local values and attitudes should also be included. Both studies further concluded that the technical expertise is available to enable a marriage between the statistical representation of sentencing practices and the normative element.

Such suggestions and conclusions are disturbing from at least two perspectives. Sentencing guidelines are ostensibly to be used to reduce disparity, yet the development of multicounty/regional guidelines would seem to perpetuate disparity. Movement in this direction would result in extreme variation in sentences in a state from region to region, precisely one of the problems guidelines are supposed to address. Secondly, attempts on the part of a sentencing guidelines commission to incorporate values and attitudes in a mathematical grid would turn the commission into a miniature legislature and place it in the midst of the political arena. Minnesota "suffered" from this problem (Minnesota, State Court Administrator's Office, 1982). Yet, in a realistic assessment the dynamics of sentencing are such that such problems probably cannot be avoided, unless a pure statistical model is developed solely on the basis of past sentencing practices.

Shane-DuBow (1985) found that nonstatutory, judicially developed guidelines were not capable of eliminating sentencing disparity in Wisconsin and Michigan, despite the adoption of the judicially developed guidelines model. The presumptive sentencing guidelines model was likewise not found to be without fault. Shane-DuBow found evidence of adjustments in prosecutorial charging and bargaining practices in jurisdictions where such a model has been developed. The development of a sentencing guidelines model of any type, she concluded, is merely "tinkering with the tail." The largest measure of discretionary abuse lies with the police and the prosecutor, and little or nothing can be done at a sentencing hearing to balance the scales of justice. Shane-DuBow also observed that legislative involvement in actual grid development has generally resulted in increases in sentence severity. This in turn has created intolerable situations with respect to prison populations. Martin (1981) observed and commented on the same phe-

[19] Only 3.379 of the 6,826 cases originally selected for analysis could be used. This data loss calls into question the validity of the empirical portion of this analysis.

[20] S.D.410; April 7, 1982.

nomenon. As a result, Shane-DuBow recommends that legislatures stay out of the mechanics of actual sentencing grid development and that this responsibility be turned over to some type of commission. The commission charged with developing such a grid should determine the actual average time served for each offense and establish a matrix-derived sentence that is no longer and perhaps even slightly shorter than the current norm. This will serve to alleviate pressure on prison populations.

The State of California did not heed this counsel. The California legislature became intimately involved in establishing very narrow and very specific sentencing options. Since it implemented the Determinate Sentencing Bill on July 1, 1977, the proportion of convicted individuals who receive an incarceration sentence has risen precipitously. As a result, the state correctional facilities are now functioning at 135 percent of capacity with no relief in sight. In fact, the legislature recently dabbled once again and increased the severity of the sentences (Kramer, 1983).

Massachusetts Superior Courts used sentencing guidelines on an experimental basis from May 1980 until May 1981. A study of the Massachusetts project was undertaken by Stecker and Sparks (1982). The authors found evidence of continued racial disparity in sentencing practices despite the existence of the guidelines. Judges were also uncomfortable with the guidelines, finding them to be too mechanical and complicated (Shane-DuBow, 1985: 152). As a result, Massachusetts has abandoned the use of sentencing guidelines.

Clarke (1984) uncovered a more positive impact of sentencing guidelines in his study of the North Carolina model. Specifically, he found that guidelines yielded a decrease in racially disparate sentencing patterns and more predictability in sentencing practices in general. In sum, he concluded that the guidelines brought about "change in the direction desired by its proponents" (1984: 152). He does note however, that this was only a 1-year study. Historically, highly visible criminal justice system reforms have often suffered from a Hawthorne effect. They fare well in their initial application, yet ways of circumventing the reforms soon arise, and the system reverts to its slightly modified, but still very traditional, patterns and practices, yielding a slightly modified but still very customary impact. A possible Hawthorne effect notwithstanding, some attention must be directed to the North Carolina model, given the apparent preliminary success of this effort.

A guidelines model, similar in nature to the sentencing guidelines model, has been used in at least one related criminal justice area. Several years ago, concerns over parole release decision disparity in the Federal system caused the United States Parole Commission to develop parole decisionmaking guidelines. But a General Accounting Office (GAO, 1982) review of the actual impact of those guidelines was quite critical. Among other observations, GAO found a lack of consistency in the parole release decisions despite the existence of the guidelines. Lack of information necessary to apply the guideline matrix model was especially problematic. Approximately 42 percent of the case files did not contain sufficient information needed to even apply the parole guidelines. And even in situations where information was available, outright errors were made in 53 percent of the cases. At times, the GAO study noted, Parole Commissioners seemed to simply establish their own rules—some offenders, not even eligible by law for parole, were nonetheless given parole hearings and were released. As is often the case with judges, the GAO study found that Parole Commissioners tended to operate autonomously. They made little effort to coordinate general operations and decisionmaking activities between themselves. From all available evidence, it appears that the parole release guidelines were circumvented, ignored, and misapplied, and had little if any of their planned or desired impacts. There is reason to believe that similar problems would be experienced if a judicial sentencing guidelines model were to be implemented.

Conclusions and Recommendations

In sum, presumptive sentencing guidelines as implemented to date have not had the impacts anticipated by guideline proponents. There is some evidence, in fact, that sentencing guidelines may only be making the problem worse. In other words, the cure may be worse than the ailment. Presumptive sentencing guidelines, therefore, should not be adopted.

Rather than trying to force judges to conform by establishing sentencing standards (and we are not sure that judges in actual practice can actually be forced anyway, for there will always be ways for judges to get around any sentencing standards), it is proposed that a more subtle, peer group socialization approach be used. Rather than using the hammer, rather than a frontal assault on their turf, rather than challenging their bailiwick, the velvet glove should be utilized to change judges. Sentencing consensus should be reached through nonthreatening means. For example, statewide sentencing reporting systems should be developed and a simplified report disseminated regularly so that judges will know what sentences are being imposed for various crimes across their states. It is hypothesized that many if not most of the judges will keep abreast of the general sentencing practices of their peers and will make the ad-

justments necessary so as to be in line, or at least not too far out of line, with the rest of their reference group.

Sentencing conferences or seminars should be held regularly. Among other activities, such seminars should include mock case sentencing exercises. In such exercises participants would sentence on the basis of the information found within fictitious case files and subsequently share the sentence decision and reasoning with fellow participants. Such discussions should focus upon general principles and issues and should examine the specifics and rationale of sentences imposed both in the role playing and on the bench. Again, the thought is that peer group pressures will both consciously and unconsciously cause a basic settling toward the mean. In a way, this notion is similar to a Delphi project. Typically the experts are rather far apart as to their predictions on the first round of a Delphi experiment. But as each learns of the others' perceptions, responses are modified, and there tends to be a very definitive reduction in the range of the responses, i.e., a general shifting toward the mean. The same is expected to occur in a mock case sentencing exercise.

Court watch programs could be started, though they are somewhat more threatening to judges than the previous two proposals. Court watch programs, often staffed by citizen volunteers, openly monitor court sentencing decisions and through some measure of public presence and pressure, tend to move judges toward a standard of community desired conformity. There is some evidence that court watch programs can yield some degree of sentence uniformity, particularly in situations where significant sentencing variation had existed (Court Watch Project, 1975). There is another aspect to consider as well. Recall that one major criticism of sentencing guidelines is the fact that they tend to force the true sentencing decision into prosecutors' private chambers. Sentencing decisions should be open. But they should be more than just open, they should be monitored to insure at least some degree of fairness. Of course, just because a decision is made in an open, formal setting, does not insure fairness. Disparities will still exist, but they will pale in comparison to the inequities that would be perpetrated were sentencing decisions regularly made in the informal settings behind the closed doors of the prosecutors' offices. Open, monitored proceedings are not a panacea, just the less objectionable option of the two. There is, however, at least one nagging dimension haunting the actual establishment of court watch programs. The nation as a whole has become quite conservative in its perspectives on crime and justice. While court watch programs are being proposed in this article as a means to distribute more equitable justice by tightening sentencing practice, they may surface as tools for community vigilante groups. With a court watch program circulating information regarding sentencing practices, judges, fearful of raising a community's ire, may begin issuing sentences that are uniform but harsh, unjustifiably harsh. Consequently they would be fulfilling the mandate of uniform sentencing, but defeating the underlying premise of a court watch program as suggested in this article, that of distributing justice more equitably. Again, issuing uniformly harsh sentences fulfills the lesser principle of uniformity, but violates the greater principle of fundamental fairness and justice. Court watch programs should be put into place so as to openly monitor court sentences and, through some small measure of public presence and pressure, move judges toward a greater degree of sentence uniformity, but care must be taken not to allow the court watch program to have a vigilante effect.

A strong recommendation is made that state and local legislation be sought to enable sentencing judges to review and modify their own sentences under certain limited conditions, such as within 90 days. This would allow judges the opportunity to bring their sentences more in line with the prevailing standard when and if they, for various reasons, failed to do so at the original sentencing hearing. They should probably only be able to moderate the original sentence at the resentence hearing.[21]

Summary

1. Some evidence of sentencing variation does exist in the State of Nebraska and in most, if not all, other states.
2. Some level of sentencing variation is not unexpected and is acceptable, insofar as it is a reflection of valid variations in perspectives of different communities as to the seriousness of different crimes. Just when that acceptable variation becomes unacceptable, however, is unclear.
3. While there is no consensus (and probably never will be) as to just what does not constitute sentencing disparity, the sentencing disparity issue has reached the political agenda, and many groups are now calling for change.
4. The adoption of a presumptive sentencing guidelines model has been proposed as a means of yielding that change—more specifically of reducing the level of sentencing variation/disparity that exists. Several states are now in the process of experimenting with various forms of sentencing guidelines. The procedure is so new, however, that a complete and clear analysis of its effects is not yet available. According to the

[21] The original report of the Nebraska Supreme Court Committee on Sentencing Guidelines stated that legislation should be sought to permit judges to enhance or moderate sentences. The present author feels that an enhancement provision would be a prime facie violation of the Eighth Amendment protection against double jeopardy and would thus suggest that judges be allowed the opportunity to moderate only.

available literature, sentencing guidelines do not seem to effect a significant reduction in sentencing variation/disparity. Judges are able to easily sidestep the standards if they are so inclined. Furthermore, considerable evidence exists which suggests that sentencing guidelines do little more than increase the exercise of the discretionary powers granted to the police, parole boards, and prosecutors—particularly that of prosecutors, who through the plea bargaining practice, would in essence become the sentencing body. Would justice be better served if prosecutors were making decisions in closed offices or if judges were making decisions in open court? Sentencing guidelines provide little or no control over prosecutors' offices, agencies which already have a large measure of relatively unchecked discretion within the criminal justice system. Sentencing guidelines grant prosecutors even more unchecked power. Of additional concern, several states which have adopted sentencing guidelines have experienced significant increases in their jail and/or prison populations and have not reduced the severity of sentences for minorities. In sum, the author believes that the use of presumptive sentencing guidelines as a response to sentencing disparity may actually cause more problems than it cures. Consequently, the recommendation is made that presumptive sentencing guidelines not be adopted.

5. As an alternative to the adoption of presumptive sentencing guidelines, the recommendation is made that a statewide sentencing reporting system be developed and that sentencing information be regularly disseminated to all Nebraska judges. Secondly, sentencing conferences and seminars should be held on a regular basis. Thirdly, court watch programs should be implemented specifically to monitor judicial sentencing practices. Lastly, legislation should be sought that would grant sentencing judges the power to review and modify their own sentences within a specific time period subsequent to imposition.
6. In sum, rather than trying to force judicial conformity, a more gentle, peer group socialization approach should be utilized. The courts can be moved, but not with a hammer, not with a show of force. Sentencing guidelines probably only make matters worse from the overall view and should be avoided.

Judicial reform is political reform, and judicial reform is slow because political reform is slow. Sentencing guidelines were a "hot" topic several years ago, but the available literature now seems ready to pronounce a benediction. Yet there is Congress passing the Crime Control Act of 1984 which mandates the development of sentencing guidelines on the Federal level. While the justice system has shucked the lockstep, it is still plagued with the out-of-step, and as long as justice and politics are married, the practice of justice will continue to suffer.

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