SEPTEMBER 1987

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LI SEPTEMBER 1987 NUMBER 3

This Issue in Brief

In this issue, the editors are pleased to feature three articles authored by United States probation officers. In that the manuscripts were sent unsolicited, we believe that they offer good indication of issues that are of real interest and concern to persons working in the Federal Probation System. The articles, the first three presented in this issue, discuss counseling offenders, preventing job burnout, and employing community service as a sentencing alternative—information valuable not only to probation officers but to professionals in all phases of criminal justice and corrections.

Counseling in Federal Probation: The Introduction of a Flowchart into the Counseling Process.—In many probation officer-probationer/parolee relationships, the potential problems facing clients are not addressed, often because the client does not understand or consciously accept the problem or focus area. To assist Federal probation officers and other change agents in using counseling methods and problem-definition skills, author John S. Dierna introduces a systematic framework. The tool is a flowchart—which defines a variety of processes and decisions which may be pertinent in addressing issues such as, "What is the problem?" The flowchart—which the author applies to an actual probation case—offers a flexible yet structured approach to defining problem areas and defusing the resistive barriers which initially inhibit steps toward problem resolution.

Probation Officer Burnout: An Organizational Disease/An Organizational Cure, Part II.—Paul W. Brown authors his second article for *Federal Probation* on the topic of burnout. While the first article (March 1986) discussed the influence of the bureaucracy on probation officer burnout, this second part emphasizes some specific approaches that management can take to reduce organizationally induced burnout. Noting that organizational behavior can influence staff burnout, Brown points out that the role of the supervisor is vital in reducing the stress which can lead to burnout. Much can be done to provide a work environment which is healthier for the employee and more productive for the organization.

Experimenting with Community Service: A Punitive Alternative to Imprisonment.—For the past

CONTENTS

Sentencing Problems: A Pragmatic View

BY ALEXANDER B. SMITH, HARRIET POLLACK, AND E. WARREN BENTON*

IN THE late 1960's, shortly after the President's Crime Commission Report was issued, expressions of dissatisfaction with sentencing practices and parole were heard from a variety of sources. Different groups which were interested in sentencing and the handling of offenders met, conducted surveys, held hearings, conducted investigations, and issued reports which were critical of sentencing practices and the institution of parole. Within the next decade a number of states responded by drastically changing their sentencing practices and/or by curtailing or eliminating parole.

In the 1980's, the United States Congress grappled with the problems of sentencing and parole. In October 1984, with strong bipartisan support, Congress enacted the Comprehensive Crime Control Act. Among other things, it established a Sentencing Commission to devise, for every Federal Crime, a fixed range of sentences to which all Federal judges would have to adhere. The law also abolished the Federal Parole Commission. The stated purpose of the new law was to reduce sentencing disparity, i.e., an unjustified lack of uniformity in sentencing which by implication from the remedy suggested, was due to excessive discretion in sentencing authority in the hands of judges, exacerbated by the unregulated exercise of the power of the parole board to release the inmate before the expiration of his sentence.

This law is but the most recent manifestation of profound unhappiness with sentencing, at state and Federal levels, by both practitioners and academics in the field of criminal justice. Since about 1971, several widely read books on sentencing have appeared, suggesting various kinds of reforms, some of which were subsequently incorporated in revised state sentencing laws. In 1971, the American Friends Service Committee issued one of the more important reports in which not only was the goal of rehabilitation criticized, but the discretionary power of the parole boards to release prisoners before the maximum expiration of their sentences (American Friends Service Committee, 1971). This was followed 1 year later by Marvin E. Frankel's *Criminal Sentences* (Frankel, 1972). Judge Frankel, who was then a sitting judge in the U.S. District Court, Southern District of New York, made a number of suggestions about abolishing indeterminate sentences, the right to appeal from the severity of a sentence, and establishing a sentencing institute.

Almost all of the state reforms have, in effect, turned their backs on the indeterminate sentence. One reform, most widely advocated by Andrew von Hirsch in *Doing Justice* (von Hirsch, 1976), is to revert to the old classical sentencing philosophy of designing the punishment to fit the crime, not the criminal, by assigning a fixed punishment to every crime regardless of the circumstances of the perpetrator or the context in which the crime was committed. A modified version of von Hirsch's "just deserts" philosophy was adopted in the Twentieth Century Fund's study, *Fair and Certain Punishment*, edited by Alan Dershowitz (Dershowitz, 1976), which proposed that legislatures enact, rather than one flat sentence for each offense, a "presumptive sentence" flanked by a narrow range of sentences which the judge could utilize after stating his reasons in writing. This approach is very similar to the portions of the Crime Control Law relating to judicial discretion in sentencing.

Between 1975 and 1982, 10 states, beginning with Maine, abolished their parole boards; several states established guidelines for parole release; and more than 35 states enacted minimum sentence provisions. By 1983, at least 37 states had adopted some form of mandatory sentencing, and only 22 states still adhered generally to an indeterminate sentencing scheme (*Report to the Nation on Crime and Justice*, pp. 71-75). In particular, Florida, Minnesota, and Maryland put into effect sweeping sentencing changes which have already been at least partially evaluated (*Judicature*, 1984). Despite the variety of changes enacted, there appears to be, in all jurisdictions, a consensus on the goals to be achieved. There is widespread agreement that: (1) the old style totally indeterminate (1 year to life) sentence is un-

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acceptable largely because the old assumptions regarding the success of rehabilitative programs are no longer considered valid; (2) incapacitation and deterrence have now become the primary goals of sentencing; (3) personal crime is more important than property crime; (4) violent crime is more important than non-violent crime; and (5) sentences should be proportional to the offense. There is also fairly wide agreement, though not total consensus, that mandatory sentences are probably unworkable; that the characteristics of the offender as well as the offense should be considered; and that some kind of appellate review of sentencing is desirable (*Judicature*, October/November 1984).

The dimensions of the sentencing reform problem are far from clear, inasmuch as there is no widely accepted definition of disparity. Is disparity simply non-uniformity, i.e., different sentences for the same crime, or is disparity different sentences for the same crime committed by similar criminals in similar circumstances? If the latter, we know of no sentencing study which controls for all three factors: crime, criminal, and circumstances, and indeed the methodological difficulties faced by such a study would be very great indeed. No one, therefore, knows the true extent and pattern of sentencing disparity. Nevertheless, the feeling persists, and probably rightly, that there is at least some unfairness in our sentencing system.

The net result of all the ferment and discussion in regard to sentencing is that reform is being approached in a haphazard way. New sentencing structures are being built in much the same way as medieval cathedrals. If they don't come crashing down on the hads of the community, then the designers must have known what they were doing. The recent reforms have been enacted by legislators who consulted with a wide range of practitioners and academics who were involved in the criminal justice system. As far as we know, no attempt was made systematically to obtain input from practitioners in the criminal justice system (trial judges in the felony courts, parole commissioners, prosecutors, and superintendents of correctional institutions). The reforms enacted seem to reflect the philosophy and influence of the academic experts in the field. Certainly, academic research and writing are legitimate resources for legislatures to use. Without a detailed analysis of any legislative hearing, we cannot weigh the input of any particular group, but the responses we obtained from a survey of practitioners seem somewhat at variance with the reforms enacted. Lawmakers ignore at their own peril the dreaded law of unintended consequences, to which some of the sentencing reforms may fall prey, if those on the firing line were not sufficiently consulted and heeded.

Procedure

To determine practitioner reactions to various types of sentencing changes, we surveyed a fairly large representative group of judges, prosecutors, parole commissioners, and wardens in New York State and the Federal government. Although the response rate varied from group to group, the overall rate of response was excellent—about 75 percent. We received approximately 300 responses. Questionnaires were sent to the U.S. Attorneys in each Federal judicial district. On specific orders from the Department of Justice, the Attorneys were forbidden to participate in the survey and therefore did not return the questionnaires.)

The questionnaires consisted of eight questions, and respondents were asked to indicate whether they strongly agreed, mildly agreed, were neutral, mildly disagreed, or strongly disagreed. Respondents were also encouraged to comment on their responses since the statements were deliberately broadly worded. In setting forth our findings, we have reproduced only those portions of our computerized data which are applicable to this article.

Results

In analyzing the results of the survey, we found that three questions produced answers indicating a strong degree of consensus. Question 3 in the survey read: *"The main purpose of sentencing a criminal is to punish and/or incapacitate him."*

Almost everyone agreed with the statement indicating that the ideal of rehabilitation has become secondary, if not tertiary, for most criminal justice practitioners. Some clues as to the pattern of thought underlying the responses can be gleaned from the comments made by the respondents. A New York City judge (who one suspects is not overly gentle in his court) said, "Prison should be a community of violent persons permanently isolated from society for the entire term of their sentences to protect the public. Violent offenders should be punished, and incapacitated to the extent commensurate with the crime adjudicated." Another New York City judge said, "Prison is the last resort, an admission of failure by all concerned, insuring that a given defendant will cease hurting others. Incapacitation to prevent injury to innocent victims is the only justification for our prisons." A comment from one Federal judge: "...most of the other purposes [i.e., other than incapacitation] are fiction." And from another Federal

judge: "...[I believe in imprisonment for purposes of incapacitation] only because the efforts at rehabilitation have not been successful." Finally, a poignant question from an upstate judge, "How can PRISON rehabilitate someone that society couldn't *habilitate* in many years?" Even the parole responses were positive, though one Federal parole commissioner wrote, "Some criminal justice authorities have given up on rehabilitation and this is a shame. My 22 years in this field leave me to conclude that people do change. . . .The problem is that we do not have a formula that will work for every prisoner."

Question 4 stated that *"Sentencing a defendant to prison acts as a deterrent to crime by others in the community."*

TABLE 1—RESPONSES TO QUESTION 3 (IN PERCENT)

Group	No Resp.	Strong Agree	Mild Agree	Neu- tral	Mild Dis.	Strong Dis.	Total	N
NYC Judges	2.1	30.5	35.8	5.3	13.7	12.6	32.1	95
NYS Judges	3.6	47.3	29.1	1.8	12.7	5.5	18.6	55
NYS Wardens	0.0	20.6	50.0	5.9	17.6	5.9	11.5	34
NYS Parole	50.0	0.0	25.0	0.0	0.0	25.0	1.4	4
NYS DAs	6.5	35.5	51.6	0.0	3.2	3.2	10.5	31
US Judges	8.8	23.5	47.1	0.0	8.8	11.8	11.5	34
US Wardens	0.0	56.8	35.1	2.7	2.7	2.7	12.5	37
US Parole	0.0	50.0	50.0	0.0	0.0	0.0	2.0	6
Total	3.7	35.5	39.2	3.0	10.5	8.1	100.0	296

Chi sq = 67.91293 with 35 d/f P = 0.0007

TABLE 2—RESPONSES TO QUESTION 4 (IN PERCENT)

Group	No Resp.	Strong Agree	Mild Agree	Neu- tral	Mild Dis.	Strong Dis.	Total	N
NYC Judges	1.1	20.0	50.5	5.3	17.9	5.3	32.1	95
NYS Judges	3.6	16.4	58.2	7.3	10.9	3.6	18.6	55
NYS Wardens	0.0	14.7	50.0	17.6	2.9	14.7	11.5	34
NYS Parole	25.0	0.0	0.0	25.0	25.0	25.0	1.4	4
NYS DAs	6.5	19.4	48.4	3.2	9.7	12.9	10.5	31
US Judges	5.9	17.6	61.8	2.9	11.8	0.0	11.5	34
US Wardens	0.0	21.6	64.9	0.0	5.4	8.1	12.5	37
US Parole	0.0	16.7	33.3	16.7	33.3	0.0	2.0	6
Total	2.7	18.2	53.7	6.4	12.2	6.0	100.0	296

Chi sq = 53.15910 with 35 d/f P = 0.0252

This question also elicited a heavily positive response, though more in terms of mild than strong agreement. Many judges were troubled by the fact that in the absence of valid empirical research, we don't know whether imprisonment is really an effective large-scale deterrent. "This is an intriguing matter. Every criminal justice system is premised on deterrence as a primary goal, yet the extent to which our system does in fact deter criminal behavior [of others] is not measurable." Another judge commented, "As noted, I subscribe to this view but I recognize that the perpetrators of violent crimes of passion give deterrence or other sentencing goals little or no thought at all." A district attorney who mildly agreed wrote, "If implemented properly without the incredible game of chance that the criminal justice system has become, I believe it could be a deterrent, but as practiced it is too much of a crap-shoot for someone to even get caught, let alone sentenced to prison—so I don't strongly believe any deterrent exists." Despite all the caveats, however, most respondents seemed to think that imprisonment is necessary if only because, as a New York City judge put it, "When criminals are not appropriately punished disillusionment with our system of criminal justice results."

The strongest degree of consensus, however, was in response to Question 6: *"Prison sentences should be changed to flat sentences without parole, i.e., without supervision backed by the threat of reincarceration after release."*

TABLE 3—RESPONSES TO QUESTION 6 (IN PERCENT)

Group	No Resp.	Strong Agree	Mild Agree	Neu- tral	Mild Dis.	Strong Dis.	Total	N
NYC Judges	2.1	7.4	9.5	1.1	17.8	62.1	32.1	5
NYS Judges	1.8	7.3	10.9	9.1	9.1	61.8	18.6	55
NYS Wardens	2.9	8.8	8.8	2.9	23.5	52.9	11.5	34
NYS Parole	25.0	0.0	0.0	0.0	0.0	75.0	1.4	4
NYS DAs	9.7	6.5	22.6	3.2	12.9	45.2	10.5	31
US Judges	11.8	2.9	2.9	8.8	11.8	61.8	11.5	34
US Wardens	0.0	13.5	29.7	2.7	24.3	29.7	12.5	37
US Parole	0.0	0.0	0.0	0.0	0.0	100.0	2.0	6
Total	4.1	7.4	12.5	4.1	15.9	56.1	100.0	296

Chi sq = 58.82318 with 35 d/f P = 0.0071

The response to this question was overwhelmingly negative from all groups. The negative comments seemed to fall into three categories. One group consisted of those who objected to the flat sentence mainly because it eliminated the possibility of parole: i.e., post-release supervision supported by the threat of being returned to prison. The objection to the abolition of parole was on two grounds: first, because the hope of parole helps to keep prisoners in line in the institution. A Federal judge commented: "I believe that there should be an incentive for good behavior in the institution and a form of penalty for failing to behave and to perform adequately"; and secondly because parole helps to reintegrate the released prisoner into society. An upstate New York judge echoed his sentiments: "The public deserves more than this [unconditional release]. Prisoners cannot be

simply released back into society. Parole adjustment is a necessary and integral key to rehabilitation and protection of society." A Federal warden said: "Probation (parole) supervision is a must. Without that support there is no way for them to cope with the adjustment problem and change upon return to the community. It's difficult even with support." A Federal parole commissioner wrote, "Doing away with supervision after release is an idea that was sold to legislators a few years ago by certain academicians. It is counterproductive and should be rejected."

A second group objected to the flat sentence because of the unfairness of the lack of individualization of sentences. A Federal parole commissioner commented,

> Determinate sentences have done nothing to solve the crime problem. Instead they have helped to build many states' prison populations to excessively expensive and unmanageable heights. Flat time sentences ignore the differences that exist between offenders. Should the 18-year-old novice accomplice be treated to the same time in prison as his 40-year-old rape partner who has made a life of crime? Flat time sentences destroy the ability of judges and parole commissions to consider both mitigating and aggravating circumstances. Supervision is essential for many street criminals who need both guidance and surveillance. Criminals who need alcohol or drug treatment programs would frequently fail to go, were they not obliged by the conditions of their parole to be so involved.

Many respondents wrote comments in this vein which were perhaps the most serious of the criticisms voiced. The general feeling was perhaps expressed by the upstate New York judge who wrote: "This would be a return to the Devil's Island mentality for all sentenced prisoners."

A third objection was made by an upstate New York judge who said, "I would go along with determinate sentences only if there was no disparity in prosecution for the same crime in the City of New York and suburban communities." The judge was referring to what is obvious to those on the inside of the criminal justice system—though not at all plain to those outside the system—that prosecutorial discretion in deciding whether to prosecute at all, and if so, on what charge, has at least as much impact as the parole board in determining what the actual punishment inflicted will be.

To sum up, it is clear that not only were most of the respondents opposed to the notion of flat sentences and the abolition of parole, but they were vehement in their opposition. This is particularly important since the abolition of parole or restriction of the powers of the parole board is an essential part of most of the legislative reforms which have been recently enacted.

The remaining five questions of the questionnaire (see appendix, page 74) dealt mainly with attitudes toward presumptive sentencing and with a hypothetical scheme which we proposed which would eliminate the power of the parole board to release an inmate before the expiration of his minimum sentence but which would provide for post-release supevision backed by the threat of incarceration.

The responses to these questions were ambiguous and do not lend themselves to easy analysis. For one thing, the statistical results are hard to explain. We know, for example, that some, but not all, of our respondents want to change indeterminate sentencing, but we do not know why or what form such changes should assume. Secondly, the responses to the questions about presumptive sentencing and the reform of parole indicated that those answering the questionnaires had very different notions of what, in fact, presumptive sentencing was, and what the implications of the proposed reforms of parole practice were. For that reason, we feel it is more useful to consider the impact of the clearly expressed opinions of criminal justice practitioners on the reforms that have recently been enacted at both the state and Federal levels. If practitioners had been consulted and their opinions considered, would these reforms have taken the form they have, or would they be different and, if different, in what ways?

The Pattern of Reforms

While each sentencing reform scheme is unique to its own jurisdiction, many of the reform proposals that have been enacted have a very similar structure. The most important and sweeping changes have resulted in a type of presumptive sentencing. Some jurisdictions also employ sentencing grids. Presumptive sentencing means that the "normal" sentence for a particular offense is specified, along with a relatively narrow range of acceptable alternates, usually justified by aggravating or mitigating circumstances. If the judge departs from these guidelines, he must specify his reasons. For example, the presumptive sentence for Robbery I might be 10 years, with a permissible range of 8-12 years. Sentencing grids, on the other hand, are simply charts, similar to mileage charts, where one axis represents the offense and the other axis represents certain characteristics of the offender. Scores are assigned to various factors relating to the offense and the offender, e.g., offenders are given "points" for factors such as recidivism or drug addiction, and "points" are similarly assigned for the seriousness of the offense, the degree of harm to the victim, unnecessary

cruelty or violence, etc. The points are then converted into scores which are plotted along the two axes of a graph to form the sentencing grid. Grids are frequently used as an adjunct to a presumptive scheme.

Within this general framework there can be many variations. Presumptive sentences can be enacted by legislatures; by judicial commissions, either on their own initiative or at the request of the governor or the legislature; by mixed commissions composed of practitioners, legislators, citizens groups, and others; or by other groups such as parole commissions. The permissible range of sentences may be broad or narrow. In North Carolina, for example, sentences for Felonious Larceny have a permissible range of 0-10 years, with a presumptive sentence of 3 years. In Minnesota, on the other hand, Aggravated Robbery has a presumptive sentence of 24 months with a permissible range of 23 to 25 months. Some systems are very specific as to what constitutes aggravating and mitigating circumstances and the weights to be accorded to each. Others leave such determination entirely to the judge.

Sentencing grids and/or presumptive sentences can be constructed on the basis of a number of theoretical considerations. Wilkins' original sentencing guidelines were constructed using data from past experience in the jurisdiction involved and were in effect a graphic recapitulation of the performance of the courts in that jurisdiction (Wilkins, et al., 1978). The presumptive sentences constructed by the Dershowitz group, on the other hand, were constructed *de novo* on the basis of the sentencing philosophies of the members of the group. The sentencing reforms introduced recently in the states and in the Federal government represent variations on both these approaches. Both grids and guidelines can be based on past performance of a court or courts; scores which emphasize the nature of the offense; scores which emphasize the nature of the offender; or any combination of the three. Sentencing systems which emphasize the nature of the offense would largely disregard factors such as recidivism, youth, sex, race, and other personal attributes of the offender. Systems which emphasize the nature of the offender would tend to view the offense in the context of the offender's circumstances: whether he was the leader or follower, whether he was a first offender or not, whether he was an addict, an alcoholic, etc. Obviously, the first system reflects the "just deserts" theory advocated by present day classical criminological theorists, while the second conforms to the more traditional positivist school of criminological theory.

Finally, sentencing guidelines may or may not be tied to prison capacity. Experience has shown that the enactment of either presumptive sentencing or sentencing guidelines tends to lengthen time actually served in the penal institution, largely because political pressures on the legislators enacting these changes leads them to advocate harsher penalties. (An interesting historical footnote is that at about the turn of the century, when indeterminate sentences were being widely adopted, the actual length of sentence also increased. It would appear that any change in sentencing practice leads to increased time served.) (Gault, 1915). One jurisdiction, Minnesota, has chosen to recognize this reality by linking time served to prison capacity (Knapp, p. 188). When the projection of prison needs under their sentencing guidelines indicates that more prison space will be needed, prisoners already serving sentences are released in a prearranged order to make room for the newcomers. No other jurisdiction has coped with the problem presented by lengthening time served, and most are struggling with various degrees of overcrowding in their institutions.

One feature that many presumptive schemes and sentencing guidelines have in common is that discretionary release by the parole board is either abolished or substantially circumscribed. While some provision is usually made for post-release supervision by a parole board or similar entity, all such supervisory arrangements lack the teeth provided by the old-style threat of parole revocation. In the traditional system inmates were released after a portion of their sentences was served, and the parole board had the power to remand them to prison for the remainder of their sentences as punishment for violation of the terms of their release. The new Federal system attempts to give the probation office leverage by providing for the possibility of trials for contempt of court for violating the conditions laid down by the court at the time of the prisoner's release on the completion of his or her sentence. Conviction would carry a penalty of an additional prison term.

To return to the question of whether the practitioners' opinions as indicated by their responses to our questionnaires would have affected the structure of sentencing reform (assuming they had been accepted), it is clear that the major impact on sentencing reform would have been to preserve some kind of post-release supervision with effective sanctions for violation of the conditions of release. It is true, of course, that under any system a released inmate who commits another crime can be tried and sentenced, but the problem comes with release condi-

tions such as a requirement that the releasee attend an alcohol or drug program, enroll in a job training program, etc. Without the threat of recommitment to the institution, it is hard for supervising parole officers to motivate individuals who probably are socially inept to begin with. The benefits achieved by presumptive sentencing and effective parole supervision are not mutually exclusive. It is possible, for example, to remove the discretionary power of the parole board to release the inmate before the expiration of the presumptive sentence, but to preserve in some form a portion of the sentence to be served should the inmate violate his parole. This would, in effect, require that sentences be divided in two parts: one to be served initially and one to be served should parole be violated, thus retaining the effective supervisory power of the parole board without overloading the calendars of the courts.

Because of the statistical ambiguity of the responses relating to presumptive sentencing schemes, it is impossible to say whether practitioners would or would not have supported presumptive sentences and/or sentencing grids. However, judging from the fact that most practitioners have placed incapacitation and deterrence above rehabilitation as a goal of sentencing, one can fairly assume that they would agree that there is no longer a need for the very wide discretion of judges and parole boards that was needed when rehabilitation was an important expressed goal. Many of the judicial comments, however, indicate that judges would not be happy with too restrictive a set of guidelines that allows very little latitude for judicial discretion. Certainly no one is arguing for the return of 1-year to life sentences. Whether a discretionary range of 10 months in a 5-1/2-year sentence is adequate may be open to question. None of the questions related to sentencing grids, so it is impossible to speculate on practitioners' reactions, but if grids are viewed purely as a graphic device for depicting either past sentencing practice or the sentencing scheme mandated by a particular jurisdiction, it is hard to see why they should be objectionable. The content of the sentencing grid rather than its form may, of course, be controversial, but the form itself is simply a convenient way of depicting necessary information.

Conclusion

Most sentencing reforms have been enacted within the last 10 years, and several of the most comprehensive ones have gone into effect only since 1980. Evaluations of these programs are just beginning to appear so that the last word on their effectiveness has hardly been said. Nevertheless, there are certain results that are becoming increasingly apparent:

1) Score sheets, sentencing grids, and computerized information systems are all very useful devices for giving judges and prosecutors information relevant to the sentencing process. Presumptive sentences are useful for eliminating unwarranted discretion on the part of judges, and probably to some degree they rationalize the plea bargaining process by informing all parties of the probable sentences that might be imposed.

2) The level of sentences, the nature of the aggravating and mitigating circumstances to be considered, and the weight to be given to the offender's status and past criminal record are all very difficult decisions to be made. Who should make them—judges, legislators, or mixed commissions—is also problematical.

3) A very important consideration is the impact of sentencing changes on the correctional system. Experience has made it quite clear that there is a tendency for new sentencing schemes to increase the length of time served by offenders and create severe overcrowding in the prisons. The Minnesota scheme which ties sentencing practice to prison capacity has a great deal to recommend it. Not only does it prevent overcrowding, but it forces elected officials to make the necessary hard choices. It also protects those officials from waves of irrational public sentiment. If a rash of chain-snatching causes the public to demand 10-year terms for chain-snatchers, the legislator who proposes such a sentencing change is forced either to indicate what category of sentence he would reduce to compensate for the increased chain-snatching penalty, or how much money he would vote for to provide increased prison capacity. Tying sentencing to prison capacity is an excellent way of forcing public policy-making to be explicit and up-front.

4) None of these sentencing reform schemes has really grappled with the problem of post-release supervision. Most of the state schemes make no provision for sanctions for violation of any post-release conditions. Their parole systems have not yet been dismantled simply because they are still serving inmates who were sentenced under the old laws. On the other hand, relatively few prisoners have been released under the new rules because the new sentencing schemes have, for the most part,

been in effect for only a short time. Thus, the impact of sentencing reform on post-release supervision has not yet been felt. Certainly, the Federal system which has attempted to put teeth in its post-release supervision by providing for trials for contempt of court boggles the mind of anyone familiar with the overloaded Federal dockets in the large cities. If this provision of the new Federal law is ever fully implemented, the consequences are frightening in their implications. Released inmates need some penalty for violation of release conditions, and the sanction must be more flexible than a trial for contempt. Further, for the modal inmate, unconditional release under parole supervision without sanctions is not as effective as parole supervision with sanctions. Sentencing reform has to cope with the need of releasees for supervision backed by the threat of punishment.[1]

5) The goals of reducing disparity and promoting uniformity in sentencing through the use of sentencing guidelines or presumptive sentencing are largely illusory because none of these schemes addresses the distorting effect of plea bargaining which is the mode of disposition for almost all state cases. An evaluation of the Minnesota, Florida, and Maryland systems (*Judicature*, 1984) shows that after an initial improvement, most systems revert to the pattern prevalent before sentencing reform, i.e., defendants bargaining with prosecutors, not only in relation to the charge, but even for the score to be assigned to the offense or the offender's past record. Even aggravating and mitigating circumstances become part of the plea bargaining process. Sentencing reform so far has been directed at curbing the discretion of the judge and the parole board. None of the reforms has come to terms with the real world of sentencing in which the prosecutor through his control of the ultimate charge exercises at least as much discretion, and possibly more, than either the judge or the parole board. It is hard to see how uniformity can be achieved in a plea bargained system; it is even harder to see how prosecutorial discretion can be curbed.

Another reason why uniformity has not been achieved is because many of the sentencing grids and/or presumptive sentencing schemes provide for a rather wide range of sentences available to the judge. This may be desirable. Indeed, most judges are insistent that considerable judicial discretion be available to them. Nevertheless, the net effect of such judicial discretion is to reduce uniformity in sentencing.

6) Further changes in sentencing, or for that matter, any aspect of criminal procedure, should not be made without systematic input from practitioners in the entire criminal justice system. The contributions of prestigious academics and informed lay persons quite properly have been given due consideration in the past. Practitioners, particularly on the lower levels where the real action is, have been given much shorter shrift. Schemes that are wonderful in theory frequently run into the stone walls of lack of funding, inadequately trained personnel, shortage of physical plant, etc. Academics and informed laymen are agents for change and are essential if government is to remain relevant to the needs of changing times, but practitioners represent the real world, and their input is absolutely vital in formulating significant changes in the system. However, when representatives of practitioners appear at legislative hearings, they do not always reflect the sentiments of their constituents in the same way that a survey would, particularly if the group is large and scattered, as are the judges, wardens, and prosecutors.

To sum up, presumptive sentencing and sentencing guidelines are useful, modest improvements of the sentencing process. Certainly, these schemes are a vast improvement over mandatory sentences or flat sentences. They are hardly a panacea, however, and do not substantially address major criticisms of sentencing. Further, it is important that they do not become counterproductive by eliminating effective post-release supervision. They are a beginning, not an end, to sentencing reform. In addition, as soon as is conveniently possible, the changes which have already been made by the states and the Federal government in sentencing reforms and curtailment or abolition of parole should be evaluated to learn whether the changes have helped or hurt the criminal justice system.

[1] Since this writing, the Comprehensive Crime Control Act of 1984 has been amended to allow for revocation of supervised release, authorizing a possible sanction upon revocation of requiring the releasee to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision (Title 18, U.S.C. section 3583(e)(4), as amended by Public Law 99-570, October 27, 1986).

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Appendix

Of the eight questions in our questionnaire, Questions 3, 4, and 6 were set forth in the text of this article. The remaining five questions were referred to but not reproduced in the text:

Question 1—Indeterminate sentencing, as it is currently practiced in New York State (the Federal government) should be continued without change.

Question 2—Current practices and programs in New York State (the Federal government) are successful in rehabilitating most prisoners.

Question 5—Sentencing power in New York State (the Federal government) is currently shared between the judge and the parole board because the parole board is free to release the defendant (inmate) after the minimum sentence imposed by the judge has been served. This sharing of power is preferable to sentencing controlled solely by the judge.

Question 7—Prison sentences in New York State (the Federal government) should be changed to presumptive sentences (flat sentences with provision for the judge to raise or lower a sentence around the statutory midpoint on giving reasons for mitigating or aggravating the punishment).

Question 8—Sentencing practice should be restructured as follows:

a. Judges, as they do now, would sentence a defendant to a specific minimum and maximum term, e.g., 5-10 years. Unlike the present system, however, the defendant would be mandatorily released on parole (without action of the parole board) at the expiration of his minimum sentence less good time.

b. If the defendant violated parole he would be handled, as he is now, by the parole board.

Thus:

(1) the judge would have complete control over the sentencing process;

(2) the parole board would function as it does now but only after the defendant's initial release from prison on parole;

(3) good time would be deducted from the minimum sentence and would serve as an incentive for conforming behavior in the institution.