

Probation Supervision: Where Do We Go from Here?

- 111953
- [The Failure of Correctional Management—The Potential for Reversal Alvin W. Cohn
- 111954
- [Probation: A System in Change..... Vincent O'Leary
- 111955
- [Observations of a "Friend of the Court" on the Future of Probation and Parole M. Kay Harris
- 111956
- [Return to John Augustus John P. Conrad
- 111957
- [Something Works in Community Supervision Michael Eisenberg
Gregory Markley
- 111958
- [Sentencing Theory and Intensive Supervision Probation Alan T. Harland
Cathryn J. Rosen
- 111958
- [The Investigative Role of the United States Probation Officers under Sentencing Guidelines Susan Krup Grunin
Jud Watkins

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DECEMBER 1987

U.S. Department of Justice
National Institute of Justice

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Return to John Augustus

BY JOHN P. CONRAD*

ABOUT 10 years ago I was invited to sit in on an impromptu session of chief probation officers and academics considering the preparation of candidates for careers in probation and parole. It was the kind of occasion of which there should be more. No prepared papers, but everyone present was loaded with ideas and anxieties that they'd lived with for a long time. We were deeply concerned professionals thinking together about our frustrations and the future of correctional field services.

One of us, a chief probation officer who had administered a well established department in a northeastern state for many years, was poignantly candid. His confession was sad but honest, and I recall it vividly to this day:

When I started out as a probation officer twenty-five years ago, I thought I knew what my job was all about and how it ought to be done. I was eager to get to work, and I think I was a good officer, as officers were judged in those days. Now I'm at the top in my department, and I don't know what to tell new men and women when I meet with them to do my bit for their indoctrination. I'm not at all sure what I can tell them about our objectives, how to do their jobs, or what I consider a good performance to be. I used to be positive about all these things.

I don't recall that anyone had any encouraging suggestions to raise his spirits. The ideas with which we had come to this session, the ideas which we had all entertained throughout our careers in this enterprise of field penology, didn't seem to be applicable. Our anxieties took over without leading to new thoughts. The baleful influence of Martinson's report on the effectiveness of correctional treatment pervaded the room. We uneasily recalled that the "nothing works" message particularly applied to probation and parole. No one was ready to give up on the traditions of probation or on its practice, but confidence in its usefulness as it was practiced at that time was at a low ebb. The fundamental question lingers in my mind. What should judges, practitioners, probationers, and the public expect of probation in the administration of justice?

Until very recently there was a simple answer, even if its application was deceptively difficult. Pro-

bation officers were to investigate the personal circumstances of convicted offenders and report them to the court as an aid to fair but safe sentencing. Then, if the offenders were granted probation, they were to be supervised. The object was to assist the probationer to complete his probation without violation of its terms. Supervision included social services to assist the probationer to lead a lawful life and surveillance to make sure that he did. It was all so reasonable in criminology and social work seminars in graduate school, but all of us in that field seminar knew that what's reasonable in a classroom gets lost in the unreason of the streets.

What distressed the doleful chief at this think-session was the accumulation of evidence showing that what he and his staff were doing didn't make much difference. It was no secret. Support for probation was declining. Budgets were cut, and there was talk in some hard-pressed counties of doing away with it altogether. We might argue that probation was a good idea that wasn't getting a fair trial. After all, common sense should tell any layman that a probation officer responsible for upward of a hundred probationers could not be responsible for any. I don't think that message ever got through to the budget analysts or the public at large. After all, the public had also heard from Dr. Martinson that "nothing works."

Ten years later, the prospects look more hopeful. We know that we have to use probation more effectively, and there are signs that we are learning how to do it right. High time, too. Any state persisting in the hard line that demands the incarceration of all or most felons invites eventual bankruptcy. Long before reaching this improbable catastrophe, correctional budgets would consume an alarming share, maybe the largest share of state revenues. Once a relatively minor item in the general budget of most states, correctional priorities begin to threaten universities, schools, and highways in some metropolitan states. At the present rate of commitment to state prisons, some states face the necessity of building a new 500-man prison every year—or discovering radically new ways of imposing meaningful sanctions on the less dangerous criminals.

The only relief in sight is the vastly increased use of probation and parole. That is an unpromising alternative if it means probation as usual, administered by overworked and often under-trained officers

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carrying unmanageably large caseloads and able to see only those probationers who have fallen into dire new trouble.

We can do better than that—how much better remains to be seen. This is the place to propose a return to the fundamentals. The bureaucracies we have created to manage field services do an impressive job of paper-shuffling, urine collecting, and report filing. The idea of help to people in trouble seems to be fading in the gloom of purely retributive justice. We have gone a long way from the original concepts of that Boston cobbler, John Augustus,¹ who originated the practice and conferred on it the name by which it is still known. I don't think he would recognize the bureaucratic house of cards that has been built on the simple foundation he laid. I contend that he had a better idea in the first place.

What's Wrong?

Before we peer into the future, let's consider the present. Martinson's simple, if also simplistic lesson—*nothing works*—survives in the minds of criminal justice hard-liners. A doctrine that can be summed up in two words has irresistible advantages over complex prescriptions that call for one treatment for some offenders, another treatment for others, and still others for still others, while conceding that there are indeed offenders for whom nothing works. The finding that "nothing works" has a special appeal to conservative pundits who equate correctional treatment with muddle-headed leniency, an equation that was not quite Martinson's interpretation of his data.² He used to tell colleagues who would listen to him beyond those fateful two words that what he was trying to do was to provoke people into thought about the dilemmas of criminal justice. To his way of thinking, if nothing we are doing now works, what is to be done about the structure of corrections in particular and criminal justice in general?

We've come some distance from the morass of wishful thinking that prevailed in his time, but there's a lot more thinking and experimentation that

has to be done. We are not doing enough of either, but on the horizon there are signs of movement. We still don't have certain and confident answers for that perplexed chief.

We can now confirm his doubts about the usefulness of the standard, nominal probation over which he presided. It is ineffective, and we have the data to demonstrate that it's a make-believe service, not a reality on which criminal justice should rely. The testimony of that troubled chief has been statistically confirmed. His impressions and those of his contemporaries eventually alerted thinking correctional professionals that changes had to be made.

Petersilia and her colleagues should have set to rest any lingering hopes that there might be some value in preserving the practices required by the 100+ caseload.³ The gist of their seminal research was the finding of a Rand study of probation in the California metropolitan counties of Alameda and Los Angeles. This study showed that in a 40-month followup of 1,672 felons on probation only 35 percent managed to stay out of further trouble, the preponderant majority having been arrested for serious offenses. Fifty-one percent were convicted of new crimes. Eighteen percent of the sample were guilty of homicide, rape, weapons offenses, assault, or robbery. This is not the place to summarize again these alarming findings. The point is that we professionals in criminal justice should not be surprised and most of us are not. Petersilia and her colleagues argue forcefully for fundamental changes in the way we administer field services in corrections. The good news is that we'd already been changing rapidly and significantly. The bad news is that the changes in the management of probation haven't been formalized as yet by the changes of legislation and policy that innovation has clearly indicated.

Quite the reverse. The new Federal sentencing guidelines shy away from innovations other than longer incarceration for more felons, with alarming consequences predictable for the Bureau of Prisons. If these guidelines are emulated by the states, desperate overcrowding of the prison systems in which they are applied can be confidently predicted.⁴

¹The literature of probation is strangely deficient in historical materials on Augustus' life and contributions. The standard textbooks all refer to a 1939 publication of the National Probation Association, *John Augustus, First Probation Officer*, which is usually summarized in no more than two paragraphs. The original book is not catalogued in the well-stocked university library to which I have access. I have had to rely on the rather cursory summaries in the textbooks, hoping that these secondhand sources have not seriously misrepresented this apparently remarkable man.

²At the time of his death, Martinson was working on a review of a decade of later treatment evaluations, for which he had collected an enormous amount of material. I understand that his preliminary impressions were radically different from the first survey. Unfortunately the analysis has never been completed. Even at this late date, it would be a valuable contribution to complete the study and issue an authoritative report.

³Joan Petersilia, Susan Turner, James Kahan, and Joyce Peterson, *Granting Felons Probation: Public Risks and Alternatives*. (Santa Monica: The Rand Corporation, 1985). See Petersilia's summary article, "Probation and Felony Offenders," (*Federal Probation*, XLIX:2:4-9, June 1985). See also my review and comment in "News of the Future," (*Federal Probation*, same issue, pp. 69-71).

⁴See "News of the Future," (*Federal Probation*, LI:1:71-74, March 1987) in which I reported on the preliminary draft of the sentencing guidelines. See also the General Accounting Office Report to the Congress, *Sentencing Guidelines: Potential Impact on the Criminal Justice System*. The prospect for a population explosion for the Bureau is practically guaranteed. According to the GAO analysis, in 1997, the Bureau's population will range between 92,000 and 118,000, requiring 57,500 to 83,500 additional beds at a cost of at least \$3.8 billion.

Long before this state of affairs is reached, alternatives to the traditional sanctions for non-violent offenders must be adopted—not as experimental options but integrated in the law of sentencing.

In Plain Sight on the Streets

In the first place, I refer to Intensive Probation Supervision (IPS) which, in various forms, is in use in at least eight states.⁵ I will argue here that IPS is an essential element of the complete pattern of a restructuring of criminal justice. The design of this new structure depends on more experience than we now have. At this stage in the development of IPS, the most impressive model has been put into effect in Georgia. From its inception, systematic data have been compiled by the Office of Research and Evaluation of the Georgia Department of Offender Rehabilitation.⁶ IPS in that state is based on 25-person caseloads managed by a probation officer and a surveillance officer.⁷ Only felons are admitted, and only those who would be sentenced to prison if IPS were not an option to incarceration. Commitment to IPS is voluntary. In principle, the offender may choose prison instead of the fairly strict IPS regime—an option that has been very seldom chosen. Employment and community service are requirements, and a monthly fee (from \$10 to \$50), based on ability to pay, must be paid by participants. Probationers must also agree to daily visitations by probation or surveillance staff.

IPS outcomes have been promising. Of the 2,322 offenders placed with IPS from 1982 to January 1985, 15 percent completed their sentences, and probation has been revoked for only 16 percent. A firm figure on savings depends on the method of computing costs of incarceration. Disregarding the cost of prison construction (a legitimate factor in the calculation of incarcerative costs), the savings are estimated at \$6,775 for each case diverted from prison, a saving to the state of about \$13 million, assuming that each IPS participant would have been sent to prison if the program did not exist.⁸

On the 5 years of experience so far compiled, we can declare a success of the Georgia version of IPS

in its present form. I contend that it is a foundation on which criminal justice can build. This model, or a reasonable variant, should be legislated into the system throughout the country, not only in the interest of humane treatment of prisoners but also for the substantial savings to taxpayers that could be realized by reducing prison intake to a manageable flow of humanity. There are offenders for whom nothing but the hard line will do, but less expensive rigors for most will do much better. Can we discern the outlines of a common-sense system of criminal justice?

Common Sense and Muddle-Heads

Let's begin with the recognition that there are some offenders who belong in prison. At the head of the list are the truly dangerous offenders. There are many ways of distinguishing them, ranging from arbitrary commitment to prison for certain classes of offenders, to clinical decisions about dangerousness, and on to the statistical calculation of probabilities; but this is not the place to decide on the most appropriate method. Opinions vary as to how many truly dangerous offenders there are, but even by the most sweeping estimate the numbers are far less than the present prison population. Dangerous offenders have in common the commission of a violent crime: homicide, rape, assault, and robbery, and a prediction that at liberty they would commit more violence. In the present climate of public opinion, a lot of them get heavy sentences, at least 5 years in prison before eligibility for release, and sometimes 20 years or more. There is an accumulating and indigestible mass of men and women serving life without possibility of parole—a sentence that can only be justified because it is the one alternative to the death penalty that satisfies hard-line advocates who prefer the electric chair or the lethal injection.

It takes a truly muddled head to believe that these long sentences make any other sense. The undeniably vicious hoodlum of 25 may spend 40 or 50 years in prison, but it is certain that although at 65 or 70 the spirit of vice may survive, the flesh will be too weak to present a danger to anybody. The claims of senility can be viewed in the old men's ward in any state prison system. Continued confinement of offenders past the climacteric of physical and emotional decline in a needless burden on the public revenues.

In addition to the obviously dangerous, there are others who should do some time to preserve the integrity of the system. Wholesale illegal drug distributors, scandalous violators of public trust, persistent major property crime recidivists, and flagrant probation violators fall into this category. With few

⁵ See Petersilia, et al. (note 3 above), pp. 64-77. The eight states are North Carolina, Texas, Florida, California, Georgia, New York, Ohio, and New Jersey. IPS in California is limited to local experimentation in one county.

⁶ The Office of Research and Evaluation has prepared annual reports of its studies of IPS since its inception in 1982. To the best of my knowledge they are the most comprehensive account of IPS now available.

⁷ There is a variant. Some caseloads are a maximum 40 in size, with two surveillance officers working with one probation officer. This arrangement seems to work as well as the original standard 25-person caseload.

⁸ See Billie S. Erwin and Lawrence A. Bennett, "New Dimensions in Probation: Georgia's Experience With Intensive Probation Supervision (IPS)" (*Research in Brief*, National Institute of Justice, January 1987).

exceptions sentences should be brief but exemplary, and some form of supervision should follow.

For the remainder of the offender population now clustered in the nation's prisons, field supervision should be the sanction of choice. IPS is more expensive than traditional probation, hard to administer and hard to conduct. For the offender it represents a sanction with irksome requirements, a considerable sacrifice of freedom, but some hope of restoration to the community as a productive citizen. For the community itself, IPS is a substantial saving when compared with incarceration and, if conscientiously administered, much better protection in the long run and probably in the short run, too.

Fuzzy thinking, whether on the soft or the hard line, is dangerous for public confidence in the system. As of these times, the fuzziness of hard-line thinking threatens the integrity of the public purse without affording the public protection it promises. The softer line, whether fuzzy or not, is getting little attention in these days of pervasive alarm about crime.

The Message of Surveillance

What does the nightly visit of the surveillance officer mean to the probationer in the Georgia version of IPS? No matter how we disguise the requirement as a reassurance to the community that all is well at the probationer's address, the contact is coercive, an implicit statement that the probationer is not trusted. The coercion inherent in corrections is mitigated by the companion role of the probation officer, who is supposed to offer counsel, assist with finding employment, help with family and neighborhood problems, and generally support the probationer in making peace with the community he or she has offended. To borrow from Charles Murray's succinct encapsulation of the two messages, surveillance tells the offender, "you can't do that any more because some very unpleasant things will happen if you do," while the service offered by the probation officer is positive: "you shouldn't do that any more because you have better options."⁹ And to be even more succinct, surveillance is punishment, whereas service is reformative, at least in intent.

What good is punishment? Leaving aside the possibility of general deterrence and the affirmation of values that are derived from the imposition of a sentence, there is pretty good reason to suppose that punishment can do little for the offender himself or

herself. B. F. Skinner, the prophet of behaviorist psychology, has consistently denounced negative reinforcement as unproductive. I am no Skinnerian, but it seems like common sense to me that punishment and the threat of further punishment if misconduct is repeated will accomplish nothing with a man or woman who does not see any other choice to obtain necessities, pleasure, or the relief of the ennui of impoverished idleness. Incentives have to be realistic. For a product of the inner city under-class, the admonition that he will be punished even more severely if he repeats an offense is open to the response: "what else can I do?" If we can't tell him honestly, punishment won't make much difference. Education in prison and job opportunities on probation will fail with some, but if we stop trying we have no reason to suppose that we will succeed with any.

The Sooner the Better

Intensive probation is conservatively administered, and properly so. No violent offenders, no persons presenting "unacceptable risks" to the community are admitted. All recruits to IPS know what they are getting into and must sign on of their own free will. At the same time, nearly all have been sentenced to prison as felons before they are considered for assignment to IPS. In the early years of such a seemingly radical program the risks of scandalous failure are real. To compromise it by accepting an offender whose record suggests even the possibility of a spectacular crime would be a disaster from which there might be no recovery.

Even as now administered the Georgia version of IPS has had a significant impact on the prison population. According to Erwin and Bennett, between 1982 and 1985 there was a 10 percent decrease in the number of prison commitments with a reciprocal increase of 10 percent in the number of persons placed on probation. In the jurisdictions with IPS teams (IPS does not cover the entire state), the percentage of offenders on probation ranged between 15 and 27 percent.¹⁰

At the front end of the flow of felons into social control we can divert a significant 10 to 25 percent from prison, and with confidence born of experience, probably a good many more could make it on the streets without any cell time at all.

At the other end, where felons trickle out of the joints, the flow could be commenced at an earlier point. Alabama cannot be considered a state where criminals are offered an easy go, but faced with an

⁹ Charles A. Murry and Louis A. Cox, Jr. *Beyond Probation: Juvenile Corrections and the Chronic Delinquent*. (Beverly Hills: Sage, 1979), pp. 176-184.

¹⁰ Erwin and Bennett, op. cit., note 7, page 2.

intolerable overcrowding situation a conservative administration opened the Supervised Intensive Restitution program, an inaccurate designation chosen to obtain SIR as its acronym for easy reference. Under SIR, prisoners with 6 months or less to go before their release dates and who have non-violent records, free of narcotics arrests, are eligible for release under much the same terms as IPS in Georgia, from which SIR was obviously derived. The program contains between 600 and 700 individuals at any one time and has drastically cut back the waiting list of felons awaiting movement to prison but held in a county jail. As with IPS, there have been recidivists and new commitments to prison, together with occasional complaints from Alabama's unreconstructed devotees of the hardest possible line. But like IPS in Georgia, SIR is enough of a success to deserve extension and emulation.

We need these models for the reconstruction of corrections. The drift is in the opposite direction. Probation is not a respected service in many communities despite the obvious need for credible supervision of offenders in the community. Parole in some states is degenerating into a cat-and-mouse game, in which the parolee may be trapped by a dirty flask of urine, a curfew violation, or a failure to report on time. Parole agents win no prizes for finding jobs for their charges, nor do they spend much time on the streets. Paper work and the collection of urine are too time-consuming to allow for the building of positive relationships with parolees. When surveillance is the object, service will fall by the wayside.

Can IPS and SIR make a difference? The idea of teamwork between a service officer and a surveillance officer is plausible and attractive. At this point we don't know how far it can be pushed, but of all the possible ventures into the future of criminal justice, these surely deserve the most attention. There's not much time to spare. The expansion of prison populations cannot go on indefinitely without serious damage to the social fabric. That such damage is needless adds to the absurdity of our present system of sanctions.¹¹

The Spirit of John Augustus

I don't know what John Augustus would make of the Boston courtrooms that he frequented in the middle of the 19th century if he were to revisit them today. The generous concern that he extended to the

thieves and whores of those days might be misplaced with the inner city mugger of today. Still, we have to bring back his spirit, and there are some scattered signs that altruism still has a place in corrections.

Volunteer prison visitors can still be mobilized to make links between the prisoner and the community to which he must return. The fact that a few hundred such people can be brought into the prisons of Minnesota by organized concern for men and women in the worst kind of trouble deserves thoughtful consideration by prison administrators who see the impracticality of the hard "nothing-works" line. The work of the Pennsylvania Prison Society in providing privately supported services for prisoners and parolees has long demonstrated the special value of this kind of altruism. In New York the unique Fortune Society has for many years helped offenders and ex-offenders to help each other. Surely Minnesota, Pennsylvania, and New York are not uniquely blessed with magnanimous citizens.

There is a new kind of professionalism available to offenders in a few fortunate communities. The program of advocacy and assistance that Jerry Miller has put together under the aegis of the National Center for Institutions and Alternatives is based on the assumption that altruism and professionalism can be successfully combined. Miller contends that offenders can be best assisted if plans for them are presented to the court with the same concern that one would have if the convicted offender were a family member and with the same appreciation of the offender's needs that can only come with appropriate professional training. So far this kind of service comes from a very few private agencies, staffed by unusual people. Nobody knows how successful they could be if multiplied to the extent needed or, for that matter, how many people can be found who are capable of this kind of service.

Assistance to offenders under private auspices is the good fortune of a few communities, and lucky are the offenders who have access to such services. But in the present and certain future structure of criminal justice, he cannot escape the civil servant. Too often the offender encounters a dreary fellow, earnestly but vaguely assuring his caseload that he's here to help if he can, or, in contrast, just as earnestly assuring them that he'll catch them if they make a wrong move.

But I think John Augustus must have been shaped in a different mold. Those hundreds of wayward men and women whom he helped into employment, security, and decent living at considerable cost to himself had the benefit of his deep concern for people in trouble. I like to think that he

¹¹ For a brief and alarming account of the dangers and costs of the present situation in state corrections, see John Irwin and James Austin, *It's About Time: Solving America's Prison Crowding Crisis*. (San Francisco: National Council on Crime and Delinquency, 1987).

enjoyed what he was doing. I base that speculation on my acquaintance with many probation and parole officers who truly liked the sense that they were making life more endurable for people who otherwise got little satisfaction from one day to the next night.

I think of my old friend, Allen Moore, for many years a parole officer in Oakland. Without an M.S.W. or even a college diploma, he was by any criterion a success in a calling in which success is not easily distinguished. His parole violation rate was lower than any of his colleagues, and to know him was to know why. He was the irresistible salesman of unpromising ex-cons to Oakland employers. His field visits to the men on his caseload were lively and pleasant occasions—he made friends with people who hardly knew what friendship meant. At the district office he held open house day and most nights for any parolees who wanted to stop in to shoot the bull. He

enjoyed his job, and I suspect that his violation rate was conspicuously low partly because his parolees wouldn't let him down. There are many more like him in corrections, but not nearly enough. The skill of the most discerning personnel analyst will not be enough to write the specifications for their recruitment, nor is there a training program for their creation. I don't think Moore could have been induced to do the remorseless surveillance that is so much in vogue now, but he would find some way of making himself useful to any caseloads to which he might be assigned. With more men like him on duty in probation and parole offices, we might make corrections an attractive occupation for John Augustus, if he somehow could return to the vocation that he founded. His generous spirit is needed as never before.