

Federal Probation

Are Probation and Parole Officers Liable for Injuries
Caused by Probationers and Parolees? *Richard D. Sluder*
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The Influence of Probation Recommendations on
Sentencing Decisions and Their Predictive Accuracy *Curtis Campbell*
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Female Prisoner in Ireland, 1855-1878 *Beverly A. Smith*

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This Issue in Brief

ACQUISITIONS

Are Probation and Parole Officers Liable for Injuries Caused by Probationers and Parolees?—The number of offenders on probation and parole has risen; inevitably some offenders will commit other crimes during their terms of supervision. A growing concern for probation and parole officers is whether they can be held civilly liable for injuries caused by probationers and parolees under their supervision. While case law in this area is still developing, there are enough cases to indicate when an officer might be held liable. Authors Richard D. Sluder and Rolando V. del Carmen provide a categorization of decided cases and sketch a broad outline of when officer liability might ensue.

The Influence of Probation Recommendations on Sentencing Decisions and Their Predictive Accuracy.—Using data on all serious cases concluded in 1 year in an Iowa judicial district, authors Curtis Campbell, Candace McCoy, and Chimezie A.B. Osigweh, Yg. explore the disjuncture between sentencing recommendations made by the probation department and sentences actually imposed by judges. While probation personnel and the judiciary usually agreed on appropriate dispositions for first-time offenders, they strongly disagreed on recidivists' sentences. Probation officers recommended incarceration for recidivists almost twice as often as judges imposed it.

Home Confinement and the Use of Electronic Monitoring With Federal Parolees.—Authors James L. Beck, Jody Klein-Saffran, and Harold B. Wooten evaluate a recent Federal initiative examining the feasibility of electronically monitoring Federal parolees. Although technical problems were experienced with the equipment, the authors conclude that the project was an effective way of enforcing a curfew and supervising the offender in the community. The success of the project has served as a foundation for expansion of home confinement with electronic monitor-

ing in 12 Federal districts.

Twelve Steps to Sobriety: Probation Officers "Working the Program."—Working with chemically dependent offenders is indisputably a challenge of the new decade. Addiction treatment is complex and, by its very nature, engenders phi-

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Measurement Error in Official Statistics: Prison Rule Infraction Data*

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CRIMINOLOGISTS HAVE been aware for some time of the potential for errors of measurement in officially gathered crime data (Nettler, 1978; Kitsuse & Cicourel, 1963). However, surprisingly little attention has been devoted to assessment of the quality of data from the prison setting, an omission that is especially critical given the appearance in recent years of dozens of empirical studies of prisoner rule violation behavior (Kratcoski, 1988; Martin, 1988; Goetting & Howsen, 1986; Gaes & McGuire, 1985).¹ The majority of these studies have utilized official data—reports submitted by correctional officers—to operationalize the extent of disruptive behavior by prison inmates. This strategy is only appropriate if the data are assumed to be valid and reliable indicators of prisoner behavior. Unfortunately, a growing body of evidence suggests that this assumption may not be justified. Before confidence in the results of these studies may be restored it is imperative that further research be conducted into the vagaries of the potentially problematic data on which they are based. It is the purpose of this article to identify certain of the sources of error in officially gathered prison rule infraction data and to outline one possible program of research.²

Sources of Measurement Error in Official Prison Data

A critical review of the literature on individual prison inmate rule violation behavior (encompassing acts ranging from failure to follow an order to assaulting an employee) reveals the existence of an immense array of potential threats to the validity and reliability of officially gathered data (Schafer, 1984).³ These threats are related to the following processes: correctional officer discretion, definition of events, detection of events, participant status characteristics, jurisdictional effects, temporality, and environmental/contextual influences. Each of these is discussed in turn below.

Correctional Officer Discretion

Perhaps the single greatest influence on the quality of prison rule infraction data is discretionary decision-making by line-level correctional officers (Lombardo, 1980; Poole & Regoli, 1980). Whether this process is viewed as corruption of officer authority (Sykes, 1958; Glaser & Fry, 1987) or of the intersection of prisoner and officer interests (Owen, 1988), the correctional officer is recognized as the primary agent of social control within the prison, possessing a large amount of discretion in deciding when to formally invoke official sanctions (Flanagan, 1980). Officers therefore play a key role in determining the validity and reliability of official prisoner rule infraction data.

An important aspect of discretion involves officers' decisions to process rule infractions formally or informally. Prison officers may choose to define behavioral events as violations of rules (both informal and formal) or they may choose to define them as falling within the bounds of permissible behavior. In the event they choose to define the event as proscribed they may then opt for the application of formal sanctions, informal sanctions, or no sanctions at all. Of greatest concern to researchers is the fact that this decision may rest on factors having little to do with the alleged infraction itself. This process was observed by Dauber and Shichor (1979, p. 31) in an Israeli prison:

Inmates contend (and the staff tends to verify it) that there are guards who "understand what it means to be an inmate" and know how to handle a situation informally. . . These guards rarely write disciplinary reports.

In a study by Atlas (1982), officers were found to base decisions to report an incident on the victim's post-incident demeanor and on the extent of resultant physical injury:

Many times, it was the victim's attitude after the assault or the presence of physical injury that determined official action or informal arbitration. When a victim (inmate or staff) was severely injured, interpretation was much stricter and reporting was more detailed. However, the tolerance of violence varied from prison to prison and from officer to officer (p. 196).

Other factors may influence officers' decisions in disciplinary matters. Respondents in Lombardo's

* A previous version of this article was presented at the annual meetings of the Eastern Sociological Society, Boston, Massachusetts, March 23-25, 1990.

(1980) sample avoided full enforcement of institutional rules because of fears that to do so would "bring the institution to a halt" (p. 5). In addition, officers perceived the existence of a contradictory set of administrative expectations regarding rule enforcement. Although they felt official pressure to report all rule violation incidents, officers were simultaneously influenced by a strong unofficial norm dictating that officers are expected to display personal competence by avoiding excessive use of formal sanctions. The existence of this norm was supported by an officer in Glaser and Fry's (1987, pp. 36-37) study who noted that he was ". . . told by the Asst. Supervisor that I have too many busts. I was also told that if I want to fight crime to join a police force." The use of informal sanctions (warning inmates, ignoring infractions) may be therefore perceived as carrying fewer costs than the use of formal means of control, and resultant official data may be systematically affected in unknown ways.

Results of Lombardo's (1981) study suggest that officers are often reluctant to apply formal written sanctions for fear that negative consequences might later arise as a result. An instructive example is provided in Hewitt, Poole, and Regoli's (1984) research where officers at a Federal correctional institution observed more than 200 instances of inmate fighting but not a single event surfaced in official rule infraction reports. The authors term this process "selective nonenforcement," which is utilized by prison staff who are often ". . . [l]ess concerned with reporting violations of prison rules as a whole than preventing infractions which might come to the attention of superiors" (Hewitt, Poole, & Regoli, 1984, p. 446). These results support the authors' earlier conclusion that "disciplinary reports may tell us as much about the reaction of guards as they do about the activity of inmates" (Poole & Regoli, 1980, p. 945).

Measurement problems resulting from correctional officer discretion are often compounded during reviews of rule infraction reports by senior correctional staff. Dauber and Shichor (1979) point out that supervisory officers may dismiss reports they consider to be without merit, which may be expected to widen the gap between actual and reported events. A senior correctional officer interviewed by DiIulio (1987) reiterated this notion in a more blunt fashion: "What officers report to their supervisors and what gets into official statistics may be two different things" (pp. 65, 68).

Definition

Official definitions of permissible and proscribed inmate behavior are found in prisoner rule books, staff handbooks, administrative policy directives, and legal statutes. In order for infraction data to be valid and reliable these official rules must be clearly applied to each event and to only those events that fall under the relevant rule. This of course assumes a close correspondence between prisoner behavior and official rules governing the permissibility or proscription of such behavior. However, results of several studies suggest that this apparent correspondence may in fact be illusory. Lombardo (1980) reports that when officers in his sample defined an event as reportable, they did not necessarily do so because a certain institutional rule had been violated. Rather, after a decision had been made to discipline a prisoner, a rule was found that could be applied to the incident. In addition, the definition of existing rules is often problematic and open to subjective individual interpretation. Rules such as those prohibiting "insolence," for example, are easily applied at the whim of individual officers (Flanagan, 1980).

Definitional errors may result when more than one prisoner is involved in the commission of a single event, or a single prisoner commits multiple events within a short period of time. If correctional officers write disciplinary reports for each inmate involved, or if multiple officers submit reports of the same event, the net effect will be an artificial inflation of the frequency count of incidents (Hewitt, Poole, & Regoli, 1984).

Detection

Much inmate behavior takes place beyond the view of official prison social control agents. This poses a serious problem since infraction data only include those incidents in which a perpetrator can be identified (Schafer, 1984). Therefore, depending on the type of rule infraction under consideration, the amount of behavior remaining undetected may be considerable. Poole and Regoli (1980) uncovered the existence of massive official underreporting in a study of inmates at a medium security state prison in the southern United States: "While only 16.5 percent of the inmates in our sample had official records of disciplinary infractions in the month preceding the study, fully 91.8 percent admitted to at least one major violation. . . for the same time period" (p. 940).

Problems of detection are perhaps greatest with inmate sexual victimization because the majority

of this type of behavior may occur beyond the range of staff observation. Most studies of prison sexual behavior therefore have relied primarily or exclusively on prisoner victimization data rather than officer reports. However, just as in the case of female rape in the wider society, male rape and other sexual victimization in prison may be underreported in both official measures and victimization surveys (Eigenberg, 1989).⁴

Participant Status Characteristics

Rule infraction data may vary systematically according to attributes of the alleged offenders and correctional officers involved. Hewitt, Poole, and Regoli (1984) compared officially gathered prison rule violation data with inmate self-reports and correctional officer estimates at a Federal correctional institution in Texas. They found little evidence of any disparity in the application of formal sanctions based on offenders' sex or race. These results appear to contradict an earlier study by Poole and Regoli (1980) which concluded that racial bias does exert an effect on the reporting of inmate infractions, both in a direct sense and indirectly through the creation of official records of rule violation behavior that may later be used against prisoners.

Held, Levine, and Swartz (1979) also uncovered evidence of racial bias in the application of formal sanctions. Although black state prisoners in their sample reported themselves to be no more aggressive than white inmates, correctional officers rated them as more aggressive and wrote them up for significantly more rule violation incidents. This process was most likely to occur, the authors conclude, for the most subjectively defined infractions which allow officers to apply the greatest amount of discretion in deciding whether to apply formal sanctions.

Racial bias may also operate in a more insidious manner. Officers may target minority prisoners for the application of extra-legal violence and then, if they choose to report the event, attribute the cause of the resulting incident to prisoner recalcitrance or resistance. Official prison rule infraction data may therefore include an unknown number of incidents that are officer-initiated rather than prisoner-initiated. The literature includes little information on this phenomenon, but suggestive information is provided by Marquart (1986) who spent a year as an officer participant-observer in a Texas institution where he observed an organized pattern of physical violence by officers directed at prisoners, most of whom were black. Marquart attributes many of these incidents to attempts by officers to utilize violence

as a means of exerting social control in instances where their definition of the situation is resisted by prisoners.

The state of prisoner's physical and emotional health may likewise influence the results of studies in unknown ways. Quinsey and Varney's (1977) research provides a case in point. Generalizability of their findings is rendered suspect by the fact that 98 percent of the inmates in their (maximum security mental hospital) sample were diagnosed as psychotic, personality disordered, or retarded. In addition, fully 80 percent were under the influence of major tranquilizers or antiepileptic medication at the time of the study. Failure to adequately take into account the presence of emotional or physical disorder among rule violators may be problematic in light of the results of studies such as Toch, Adams, and Greene (1987) which find prison disciplinary involvement to be higher for those suffering from schizophrenia or other mental disorders, especially for prisoners who are black.

Temporality

Unexpected historical events or processes may systematically influence the quality of prison data in a number of important ways. Within the same organization, policies and procedures may change so as to alter the manner in which prison inmate rule infraction data are recorded. Data may suffer from inaccuracies introduced by factors operating at the state political level. In a recent example related to the author (confidential communication), a high-ranking official of a U.S. state let it be known that the level of violence in the state's prisons was unacceptably high. As one might expect, the following year's prison statistics showed a marked decrease in disruptive incidents, due almost certainly to changes in reporting practices and a revised definition of assault rather than to an actual decrease in the frequency of assaultive events. Similarly, prisons and prison systems may feel effects resulting from legislative decisions, public pressure in reaction to disruptive and highly visible collective disturbances, or the outcomes of litigation (see, for example, Ekland-Olson, 1986).

Jurisdiction

Reporting methods and practices may vary within and across jurisdictions, with negative results for data reliability. For example officers' formal/informal sanctioning decisions are systematically influenced by general administrative policies and practices that vary by organizational unit (DiIulio, 1987). Certain state prison systems

may encourage formal use of sanctions while systems in other states may expect officers to use formal means of control only as a last resort. Even in the case of death statistics, which are commonly viewed as among the most valid and reliable of all criminal justice data, states may differ. A study by Cox, Paulus, and McCain (1984) found that some states remove seriously ill inmates from prisons and that these inmates therefore do not appear in institutional death counts. Other states report all deaths rather than only those cases of prisoner sudden deaths occurring among prisoners not removed from the facility's rolls. The authors conclude that the extent of reporting variation across state jurisdictions renders such comparisons "of questionable value" (p. 1149).

Jurisdictional variation creates fewer practical problems when organizational units within a jurisdiction are being compared, since each such unit is presumably subject to the same system-wide interference. The problem becomes quite serious, however, when levels of prison rule violation are compared across jurisdictions. Even when vigilant prison system administrators endeavor to increase the levels of standardization across facilities within their jurisdictions, the problem becomes intractable when data from widely scattered prisons are compared. We know that the organizational climates, traditions, and histories of prisons are different. Although all prisons likely share some similarities, no observer would propose that Angola, Atlanta, Dannemora, Lincoln, Parchman, and San Quentin are identical institutions. Unfortunately there presently exist little empirical data on the comparative reporting climates across prisons within a system, or from system to system. This issue may be especially critical when analyses are based on large nationwide prison data bases such as those now available through the Federal government and the Inter-University Consortium for Political and Social Research.

Measurement error in prison rule infraction data is further compounded when these data are incorrectly used. For example, a number of studies of prison rule infractions have failed to separate total or summary infraction data into component types. Not only does this ignore the fact that various rule infraction behaviors are surely subject to disparate varieties and levels of measurement error, but it implicitly assumes that rule infractions do not differ in terms of severity (Porporino & Marton, 1984; Schafer, 1984). Little research has been conducted on the severity of

prison rule infractions, but recent research by the author suggests that even within one type of infraction (prisoner assaults on staff) levels of severity in fact vary greatly and are correlated with prisoner age (Light, 1990).

Conclusions

The time is now right for a careful reassessment of prison rule infraction data within state correctional systems and nationwide, a strategy that will provide benefits for both social science and public policy. Social scientists must continually search for ways to protect and improve data quality in order that their analyses may be built upon stronger empirical foundations. Improved measurement is also crucial in the policy arena because of the myriad of official ways in which prison rule infraction data are used. At the inmate level, they are extensively employed for classification purposes—to categorize offenders by degree of security, program assignment, and furlough eligibility. Rule infraction data are also used in predicting the likelihood of future prisoner dangerousness and in the resultant granting or withholding of good time and parole. Likewise infraction data are often viewed as indicative of comparative differences in the environments of prison facilities in terms of their relative "dangerousness," and they are utilized by the courts as measures of the success of correctional administrators in providing minimally adequate living environments and in ensuring a satisfactory quality of working life for officers and other employees.

According to Wilkins (1965, p. 227), "Information has no value in itself, its value is only in terms of its purpose." The sources of error enumerated above are potentially so pervasive that the use of official prison data for any purpose save political posturing may be untenable until such time as more becomes known. We should remain strongly suspicious of officially gathered prison violence data since very little is known about the specific types of error present and their effects on our conclusions. Fundamentally these are empirical issues that must be addressed by empirical research. As Hindelang et al. have reminded us: "[The adequacy of a measurement] is in the end a question of reliability and validity, both of which are determined by *comparison* of the results produced by the device with those produced by subsequent applications or by alternative devices not subject to the difficulties alleged to invalidate the original" (Hindelang, Hirschi, & Weis, 1981, p. 21, emphasis in origi-

nal). Given the threats to validity and reliability discussed above, the use of multi-method strategies of data collection and comparison is absolutely critical.

An initial step toward this end might profitably involve comparison of multiple levels of prison-based *official* data. Rule infraction data are filtered through a series of steps before being submitted to state-level bureaucracies. Once an incident occurs, the individual correctional officer exercises his or her discretion in deciding whether a prisoner should receive official sanction. At the next stage in the process, supervisory personnel examine the officer's report to decide whether or not to forward it to higher channels. Incident reports are generally then reviewed during hearings of an institutional disciplinary committee whose case files represent a further source of potentially useful data. In addition, officers often keep written records of all non-routine incidents in a comprehensive "daily log." This first-line record may represent the best indicator of official response to rule violation activity that exists at the prison level (Lombardo, 1981). To evaluate the extent of data "loss" at various official levels, written records of disciplinary hearings may be compared to officer reports and daily log entries. Likewise, these indicators may be compared with state-level summary statistics collected from all facilities within the correctional system. Once more becomes known about the numerous levels of officially gathered infraction data, this information may then be evaluated by comparison with inmate and staff victimization and self-report data collected independently of official agencies.

The state of behavioral prison research is at a critical juncture. We simply do not know enough yet about official measures of prison rule infraction events or about the extent of error inherent in them to be able to use these data with confidence, and therefore the results of studies based on these indicators must be viewed with some skepticism. To restore confidence in prison rule infraction studies, a concerted program of multi-level comparisons must be conducted. This research should examine prison inmate self-reports, inmate victimization data, and officially gathered infraction measures at each stage of the prison disciplinary process. Research must likewise be conducted on samples of prisoners, officers, and administrators in prisons within one correctional system and across correctional systems in multiple jurisdictions. Most importantly, scholars must continue to develop theories that explain and predict social control-related behavior

of *both* guards and prisoners.⁵ Only in this manner will we begin to draw closer to an understanding of problematic interactions within the prison and their relation to similar phenomena beyond its walls.

NOTES

¹For purposes of this research an attempt was made to examine all American and Canadian scholarly articles on individual-level prisoner rule infractions appearing in the literature since 1970, including books, monographs, and doctoral dissertations. Since this article highlights some potential sources of error inherent in official prison data generally, it was not deemed necessary to cite each individual study. For reviews see Gaes and McGuire (1985) and Hayes (1985).

²Validity—the extent to which an indicator reflects the concept it is intended to measure, and reliability—the consistency of a measure over repeated applications, are affected to varying degrees by random and systematic error. Random measurement error will cause measurements to be both too high and too low over repeated applications, but the mean of repeated scores will closely approximate the true value. When errors are systematic, however, data will be subject to unknown and often undesirable influences.

³Concern among criminologists about data quality mirrors concerns within other subdisciplines of sociology over not only the quality of data but the quality of data analysis, theoretical reasoning, and the application of mathematical models to social phenomena. For a cogent (and somewhat controversial) discussion of these issues see Blalock (1989).

⁴Other prison rule infraction data, particularly assault-on-staff reports, may offer relatively more valid and reliable measures of inmate behavior since these events occur in the presence of officers and incentives exist for officers to report them accurately (i.e., documentation to combat prisoner lawsuits and to be used for future workmen's compensation claims). This is necessarily speculative, however, since no research has been conducted on the extent of error in assault-on-staff indicators.

⁵For a discussion of social control strategies that may be utilized by subordinates in power-dominance relations, see Baumgartner, 1984.

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