

Federal Probation



Probation Officers' Role Perceptions and Attitudes
Toward Firearms *Richard D. Sluder*
Robert A. Shearer
Dennis W. Potts

Family Violence: Challenging Cases for
Probation Officers *Meredith Hofford*

Role Negotiation: Sorting Out the Nuts
and Bolts of Day-to-Day Staff
Supervision *Jud Watkins*
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Polysubstance Abuse: The Interaction of
Alcohol and Other Drugs *Daniel J. Capodanno*
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Now: The Fruits of Late 20th Century
Form *Alexis M. Durham III*

Retribution vs. Rehabilitation: A Proposal
for Changing Sentencing Practices *H.R. De Luca*
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The Design and Implementation of
Court-Assisted Sentencing *Eric Simon*
Gerry Gaes
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Prisoners and Their Families *George C. Kiser*

Single-Cell Occupancy in America's
Prisons *Steven T. Adewell*

SEPTEMBER 1991

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This Issue in Brief

Probation Officers' Role Perceptions and Attitudes Toward Firearms.—The issue of whether probation officers should carry firearms has tremendous implications for the future of probation. Despite the importance of the issue, however, there has been little empirical investigation to determine whether probation officers' opinions about firearms are related to their role perceptions, individual characteristics, or other work-related factors. Using data collected from a population of probation officers attending a state-wide probation training academy, authors Richard D. Sluder, Robert A. Shearer, and Dennis W. Potts explore relationships between those variables and officers' opinions as to whether they should be permitted or required to carry firearms in the performance of their duties. The authors discuss findings from the study, as well as implications for the delivery of probation services.

Family Violence: Challenging Cases for Probation Officers.—Author Meredith Hofford presents data on the frequency and seriousness of domestic violence and offers suggestions and guidance as to how the courts and probation officials can improve their supervision of the perpetrators of domestic violence. The article presents the proposition that domestic violence is much more widespread—and its consequences much more serious—than has been generally accepted. The author points out that with adequate and effective probationary supervision, the recurrence of domestic violence, the frequency of violent crime stemming from domestic violence, and the intergenerational effects of spousal abuse on children can all be significantly decreased.

Role Negotiation: Sorting Out the Nuts and Bolts of Day-to-Day Staff Supervision.—As organizations become larger and more complex, the need for cooperation and coordination between managers and staff increases significantly. Authors Jud Watkins and Robert A. Luke, Jr., describe a structured way for people who work together to sort out their day-to-day needs and arrive at an interpersonal contract, or agreement, that promotes the mutual efficiency and job satisfaction of both negotiators. The authors detail

the procedure of role negotiation, cite examples of its application in the probation and pretrial services setting, and suggest alternative uses such as group nego-

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Then and Now: The Fruits of Late 20th Century Penal Reform

BY ALEXIS M. DURHAM III

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IN A nationally televised speech in the fall of 1989 President George Bush announced a \$7.9 billion drug control plan. The announcement came after an extended study of the drug problem conducted by then-Attorney General Edwin Meese. Plans for subsequent years currently include even higher funding levels. Despite the enormity of these budget allocations the funding plans were criticized by both liberals and conservatives. Conservatives argued that the resources simply were not adequate to meet the ever-escalating problems associated with illegal drug use (e.g., *USA Today*, March 28, 1990, 6A). In addition, they wanted more money allocated for aggressive law enforcement and drug interdiction efforts. Liberals, who were generally unwilling to assume the political risks of challenging the war itself, complained that too little money had been earmarked for the educational and rehabilitative component of the strategy. For both conservatives and liberals, however, the terms of the debate were generally confined to the means by which the drug problem might be remedied, rather than extending to consideration of the nature of the problem itself.

The significance of this latest social problem war is that it is yet another instance in the decade-and-a-half-long string of initiatives that represent "toughening up" in the war on crime. Beginning in the late 1970's a significant number of penal reforms were adopted to counter the perceived increase in the seriousness of the crime problem. The primary objective of this article is to address the question of whether the Nation is better off now than it was prior to the enactment of these reforms. To achieve this goal we first consider the kinds of claims that have energized the "get tough" movement, then briefly describe the reforms that the movement has produced. The pertinent data regarding the character of the crime problem from the mid-1970's through the end of the 1980's is examined, followed by discussion of some of the apparent consequences of the reforms. Such consequences include increases in the use of incarceration, problems associated with the incarcerative sanction, and the impact of the reforms on the fear of crime. Finally, the article concludes with observations on why the reforms have not been successful and what this failure suggests for future policy initiatives.

The Crime Problem: Definitions, Descriptions, and Prescriptions

Crime was defined as a major issue during the 1968 Presidential election (Conklin, 1975, p. 27). Although by contrast somewhat less important during the 1972 campaign, Presidential candidates sporting a variety of ideologies nonetheless still rated crime as among the most significant problems facing the nation. Senator George McGovern pledged that "the No. 1 domestic priority of my administration" would be the crime and drug problem (*New York Times*, October 4, 1972, p. 32). George Wallace continually emphasized "law and order" during his campaign (*New York Times*, January 14, 1972, p. 1). Even Richard Nixon, while attempting to make political hay by pointing to an overall decline in crime statistics in 1972, publicly pressured Congress to adopt significant crime control measures, including expansion of the use of the death penalty, increased punishment for heroin dealers, and revision of the Federal criminal code (*New York Times*, September 10, 1972, p. 1). After Nixon's resignation President Ford continued the Presidential emphasis on crime control. Crime rates had increased for 1973, and Ford responded with his own anticrime program. In a speech given in the fall of 1974 Ford declared of crime that "It can no longer be ignored. It can no longer be rationalized away. The time has come to act." (*New York Times*, September 25, 1974, p. 20).

Politicians were not the only folks committed to the belief that the crime problem in the United States in the 1970's was becoming increasingly more severe. They were accompanied in their pronouncements by many academicians. For instance, in the mid-seventies James Q. Wilson of Harvard pointed out that the current crime problem got its start in the 1960's.

Crime soared. It did not just increase a little; it rose at a faster rate and to higher levels than at any time since the 1930's, and in some categories, to higher levels than any experienced in this century (Wilson, 1975, p. 4).

Charles E. Goodell, in his 1976 preface to Andrew von Hirsch's influential *Doing Justice* (1976, p. xix), noted the existence of "rampant crime" and then asserted that "it is an understatement that there is too much crime in this society and that crime causes terrible suffering" (p. xviii).

There was thus significant support in the political and academic spheres for the view that crime was escalating rapidly. Furthermore, there was no shortage of proposed solutions to cope with the menace. Although different groups chose to label the solutions about which they were enthusiastic in different ways, in general these solutions represented a retreat from the kinds of remedies that had been accorded discussion during the 1960's. The war on poverty of the 1960's had, in its rhetoric and in at least some of its programs, been committed to the view that a wide variety of social problems had social conditions at their base and that human beings did not merely elect to be poor, deviant, unproductive, or criminal. Conditions such as inadequate employment opportunities were regarded as the source of many social problems, and it was argued that amelioration of such "root causes" would ultimately resolve social problems such as crime.

This general view was vigorously challenged in the mid-1970's. Wilson was perhaps the best known soldier in the attack on root-cause-based solutions.

I have yet to see a root cause or to encounter a government problem that has successfully attacked it (1975, p. xv).

Beyond the fact that crime had not disappeared, despite the efforts made in the late 1960's and early 1970's, two other occurrences provided a basis for abandonment of root-cause-oriented strategies. First, the American Friends Service Committee published *Struggle for Justice* in 1971. The volume presented a persuasive argument that rehabilitation-based punitive intervention was morally bankrupt. The report detailed what it called "the crime of treatment" and argued for punitive policies based on fitting the punishment to the crime, not to the characteristics or needs of the offender (American Friends Service Committee, 1971, p. 147).¹ Second, the widely cited Martinson Report emerged in 1974 and proclaimed that virtually nothing was effective in rehabilitating criminals (Martinson, 1974). This report formed a significant part of the basis for reforms that featured a tough, rather than a rehabilitative, response to crime. It was especially significant to liberals, whose support of new sentencing models rested largely upon the rejection of rehabilitation as a rationale for sentencing. Without this liberal support the reforms of the seventies and eighties would not have been possible (Plattner, 1976).²

Thus by the mid-1970's there existed a fair amount of sentiment supportive of adopting "practical" solutions to the crime problem, solutions that might not be focused on root causes but that would nonetheless stand a good chance of being effective. (The initiatives associated with the Law Enforcement Assistance Administration represent good examples of "practical"

solutions to the crime problem.) Both liberals and conservatives embraced the just-deserts, or justice, model of punishment, and the late 1970's and early 1980's saw a wave of reforms put into action to provide a public policy articulation of this new approach.

Perhaps the most significant reform was the adoption of determinate-type sentencing systems.³ California, Indiana, and Illinois went to determinate-type sentencing in the mid to late 1970's. Sentencing guidelines systems were first adopted by Minnesota, Washington, Connecticut, Florida, and Pennsylvania in the first half of the 1980's (Knapp, 1989). By the mid-eighties the Federal Government had also adopted a determinate sentencing system. The apparent interest in parole declined as enthusiasm for determinate sentencing increased. Beginning with Maine, between 1975 and 1982 parole boards were abolished in 10 states (Bureau of Justice Statistics, 1983, p. 71). By the late 1980's about 20 states had eliminated parole (Allen & Simonsen, 1989, p. 76)⁴ and the percentage of prison inmates released under parole fell from 72 percent in 1977 to 43 percent in 1985 (Bureau of Justice Statistics, 1989c, p. 105). More than half of the states restricted parole eligibility criteria (Shane-Dubow, et al., 1985). Mandatory sentences have also been adopted for certain crimes and now exist in 46 states (Bureau of Justice Statistics, 1989c, p. 91).

By the late 1970's and early 1980's, therefore, the crime problem was still viewed as serious, and a variety of reforms had begun to be discussed and enacted. With the election of Ronald Reagan a Republican administration possessing the party's traditionally "tough" attitude toward crime assumed power, and there was optimism that many of the crime-related difficulties of the sixties and seventies might soon be under control.

Crime Rates

Perhaps the most important objective of the reforms hatched in the late seventies and early eighties was the reduction of crime. However, the pronouncements and actions of public leaders in the early days of the 1990's appear to indicate the relative ineffectiveness of the reforms of the 1970's and 1980's. George Bush's remarks in 1990 strongly resemble Gerald Ford's "the time to act is now" speech in 1974. In pushing his current crime initiative, President George Bush remarked that "It's time for Congress to act quickly and responsibly because the war on drugs and crime won't wait" (*Criminal Justice Newsletter*, 1990, 21(3), p. 6). The urgency in Bush's statement is further reflected by U.S. Senator Phil Gramm's call for legislation declaring a "National Drug and Crime Emergency" (*Criminal Justice Newsletter*, 1990, 21(3), p. 6). This urgency has also appeared in the activities of state

politicians. In Michigan, for instance, concern with crime prompted a bipartisan committee of state legislators to call for crime control measures that include authorization of new wiretapping capabilities and a "no knock" search warrant policy (*Criminal Justice Newsletter*, 1990, 21(7), p. 2).

Thus it is evident from both the words and actions of those in positions of political power and leadership that the many reforms spawned by the dissatisfactions of the early and mid-seventies have not been successful in resolving satisfactorily the crime problem. The concern with crime has not abated among citizens either. According to data provided by the National Opinion Research Center, 50 percent of citizens polled in 1975 thought that crime had risen from its level the previous year. The figure for 1988 was an almost identical 47 percent (Jamieson & Flanagan, 1989, p. 200). In 1976 respondents were asked about levels of spending to halt crime rate increases. Two thirds (66 percent) thought that spending levels were too low. In 1988, despite enormous increases in crime-related spending, the figure was 68 percent (Jamieson & Flanagan, 1989, p. 202). Citizens therefore appear to share the view of politicians that crime remains a serious, and an increasingly serious, problem.

Careful examination of crime data does not uniformly support this popular view. First, official national crime statistics published by the Federal Bureau of Investigation suggest that crime was headed downward at the very time when the reforms began to be enacted. At the beginning of the 1980's the crime rate stood at 5,950 Index offenses per 100,000 inhabitants. The rate declined until the middle of the 1980's, reaching a low of 5,031 offenses per 100,000 (Jamieson & Flanagan, 1989, p. 427). However, at the point in the 1980's when it might be expected that gains produced by the reforms would finally begin to be realized, crime began to move upward once again. For each year from 1985 through 1989 the Index crime rate has increased, with overall annual increases ranging from 2 to 6 percent (Federal Bureau of Investigation, 1986-1989). This was not only an aggregate national trend, but was also characteristic of states implementing determinate-type sentencing systems. In fact, virtually all of the states to first adopt either determinate sentencing or guidelines systems have experienced essentially the same crime rate pattern. California, Indiana, Minnesota, Washington, Florida, and Pennsylvania all had crime rates that were higher in 1980 than in 1975, lower in 1985 than in 1980, and higher in 1988 than in 1985.

It would appear from official crime data, therefore, that the reforms of the late 1970's and early 1980's have not had a clear unambiguous positive impact on crime rates. Although there is, of course, no way to

determine how much crime rates might have varied, or in what direction, in the absence of such reforms, the expected bounty in crime reduction anticipated by advocates of reform has simply not materialized.

The failure of the reforms to have an important effect on crime rates is further illustrated by the victimization data collected through the National Crime Survey. Victimization data began to be collected in the 1960's, and are now collected annually to provide useful information about a variety of crime-related issues, including changes in criminal activity over time.⁵ These victimization data indicate that the increase in crime had begun to level off *before* the reforms were put into practice in most states. The percentage of households touched by crime stood at 32 percent in 1973 and thereafter decreased to 24 percent in 1988 (Bureau of Justice Statistics, 1989b). Individual victimization rates also declined, although beginning their decline somewhat later. Nonetheless, the decline began in 1981, prior to the full operationalization of the sentencing reforms that would largely be in place by mid-decade (Bureau of Justice Statistics, 1989a). In addition, such decreases have occurred in states both with and without the new determinate sentencing systems. Thus the downward trend in victimization data and the undulation in officially measured crime during the eighties do not seem to be well accounted for by the sentencing reform movement.

Of course, political rhetoric tends to focus on the kinds of evidence most likely to signify the existence of a serious social problem, in this case official crime statistics. The recent rises in officially measured crime have formed the basis for numerous crime control debates in the political arena. The heated debate between George Bush and Michael Dukakis is perhaps the most well-known recent instance of such rhetoric (e.g., "Bush and Dukakis Trade Accusations Over Crime," *New York Times*, October 21, 1988, p. 1). Such debates exist at the state level as well. The 1990 Democratic gubernatorial primary campaign in Texas was distinguished by vigorous efforts by the main contestants to establish which candidate was toughest on crime. For instance, Texas State Attorney General Jim Mattox and former Texas Governor Mark White appeared in TV advertisements boasting of their enthusiasm for the death penalty as a response to crime. One White television spot showed him with photographs of the offenders executed during his term as Governor (*Fort Worth Star-Telegram*, March 1, 1990, p. 19). It is evident that at both the national and state levels the political battle over who is toughest on crime is still being waged.

Explaining the movement of crime rates is no simple matter, and this article makes no attempt to provide an explanation. The major point of this section is that

there is little evidence that the reforms enacted in the early 1980's had the intended significant impact on crime rates. After a brief decline in the early 1980's official rates continued their upward climb, even though various states had by mid-decade enacted determinate-type sentencing systems. Victimization rates have declined during the eighties but this decline began before the reforms were in full operation in most states. The failure to achieve significant reductions in crime is especially important in light of the numerous problems associated with the reforms. It is to some of these other difficulties that we now turn our attention. We begin with the increased use of the incarcerative sanction.

Incarcerating Criminals

The contents of a 1988 internal Justice Department memo illustrates the popular political view that increasing the use of incarceration is absolutely necessary if the war on crime is ever to be won. The departmental memo contains the strategy for the final months of the Reagan administration with regard to crime and justice (*Washington Post*, February 28, 1988, p. A3). In referring to prisons the memo states that

The inmate population is growing at an average rate of 15 percent a year. The Department estimates that given current capacity and only with the additions envisioned by the administration's current plan, overcrowding will increase to at least 72 percent by 1997. The demand for prison space thus will rise, but so will the voices of those who say we need fewer prisons and more "alternatives" to incarceration. We must take the side of more prisons, and to polarize the issue we must attack those by name (such as Sen. Paul Simon) who take the other approach. We must stress why prisons are necessary by discussing retribution, deterrence, and incapacitation. Overall, of course, we must make the case that public safety demands more prisons. (Office of the Attorney General, Memorandum for Heads of Department Components, February 22, 1988)

As this memo exemplifies, justice-related government agencies have generally been willing to support creation of incarcerative space. Although citizens are not always inclined to be as supportive of facility construction and expansion when they understand the costs of such space increases (e.g., Thomson & Ragona, 1987), government-sponsored researchers have produced research that suggests that the overall costs of incarceration are more than offset by reductions in the costs of crime. Staff economist Edwin W. Zedlewski of the National Institute of Justice, for instance, found that such confinement costs could be significantly exceeded by cost-of-crime savings (Zedlewski, 1987, p. 4). Although not all analysts have been satisfied with the statistical assumptions made to arrive at this conclusion (e.g., *The Sentencing Project*, 1988), current sentiments among both citizens and policymakers may now be somewhat more receptive to the notion

that incarceration is an economically efficient strategy for crime control.

The current enthusiasm for incarceration is quite interesting in light of the fact that imprisonment has been an increasingly well-utilized sanction during the 1980's. In 1970 there were 23 prison commitments for every 1,000 reported Crime Index offenses. By 1988 the figure had risen to 48 per 1,000, a leap of more than 100 percent in less than 20 years (Senna and Siegel, 1990, p. 545). The number of inmates held in American prisons was about 300,000 in 1980. By the end of 1988 the number had doubled to 627,402 (Bureau of Justice Statistics, 1989c). One year later a single-year record 76,000 new inmates had been added to the system, bringing the total to more than 700,000 inmates (*Corrections Today*, July 1990, p. 12).

These figures make clear that far from being a neglected sanction, incarceration has been fully utilized during the 1980's. So well utilized, in fact, that despite significant building programs, 41 states remain under court order regarding overcrowding or crowding-related conditions (National Prison Project, 1990). Sixty-seven thousand new beds are currently under construction nationwide, at an estimated cost of almost \$3 billion. In addition, another 90,000 beds are in the planning stages (Camp & Camp, 1989, pp. 25-27). Some states have committed to enormous capacity enlargement programs. In 1989-90, California allocated \$1.29 billion to build 15,030 prison beds. Florida anticipates adding 6,000 new beds per year between 1990 and 1994 (*Criminal Justice Newsletter*, 21(2), p. 2). Nationally, 128,000 new prison beds were planned for 1989-90 (*Criminal Justice Newsletter*, 21(5), p. 6). It is apparent that this trend will continue well into the 1990's.

The increase in the national prison population is the result of a variety of factors. Among the more important factors identified by Byrne and Kelly (1989) in their report to the National Institute of Justice are changes in sentencing statutes and practices as well as increases in the return to prison of released inmates. That these influences were cited as important contributors to overcrowding is significant to our interests for a couple of reasons. First, changes in sentencing statutes and practices are the result of the "get tough" reforms initiated in the seventies and fully implemented in the eighties. Second, increases in returns to prison, in recidivism in other words, suggest that the much touted goal of specific deterrence has not been achieved as a result of the toughening of the system.

Despite claims to the contrary from both politicians and citizens, punishment in the United States has in fact gotten tougher. More offenders are doing time than ever before; crime rate increases have been well

outdistanced by the movement in the incarceration rate. But increases in the severity of punishment have not produced the desired effects. Penal overcrowding, and its associated court-mandated expensive remedies, has clearly been one of the undesirable consequences of the penal reform movement. As we shall see, there have been others.

Crowding-Related Problems

Current penal conditions resulting from the increased severity of sentences have led to a variety of important difficulties. First, crowded institutions have been beset by riots and disturbances. Although the evidence seems to suggest that overcrowding alone does not explain the outbreak of riots and disturbances, it is clear that in conjunction with other problems it plays an important role in prison disruptions (Farrington & Nuttall, 1980; Barak-Glantz, 1985, p. 61). This is a somewhat unexpected result because it had been anticipated that determinate sentencing would have a positive effect on inmate behavior. However, "Certainty and truth in sentencing did not result in better behaved inmates, as had been hoped" (Knapp, 1989). Beyond identifiable routine-threatening disturbances, numerous institutions have experienced increasing difficulty maintaining a secure environment for day-to-day prison activities. In many institutions various kinds of assaults are commonplace. In 1988 there were 18,944 serious prison assaults reported by 45 states (Camp & Camp, 1989, p. 17). Of course, the reported number of assaults is clearly an underestimate of the actual assault incidence (Hewitt et al., 1984). In view of the fact that almost all inmates eventually return to society, one can reasonably wonder what might be the effects of long-term exposure to such a dangerous environment on post-release behavior.

Although American penal institutions have never been altogether free from riots, insurrections, and disturbances (South Carolina Department of Corrections, 1973; Barak-Glantz, 1985, p. 49; Duffee, 1989, p. 373), some analysts are persuaded that the problem will get worse (Hawkins & Alpert, 1989, p. 263). This is especially troubling in light of earlier disturbances, such as those at Attica and Sante Fe, which presumably provided lessons to make it possible to decrease the incidence of these disturbances. As is evidenced by the troubles experienced in American institutions in the 1980's, in states as diverse as Pennsylvania, Texas, Georgia, and Illinois, these lessons have apparently not been well learned.

In addition to institutional problems in the Nation's prisons, local jails confront similar difficulties. Some of these problems stem directly from prison crowding. At the outset of 1989 there were close to 20,000 in-

mates in local jails awaiting transfer to prisons too crowded to accept them (Camp & Camp, 1989, pp. 2-3). These inmates place a severe strain on local facilities and interfere with the ability of local jails to accomplish their dual mission of holding pretrial detainees and providing short terms of incarceration for relatively minor offenders. The strain has manifested itself in some extraordinary efforts to focus attention on the problem. For instance, a Massachusetts sheriff suddenly moved 15 inmates from his overcrowded jail to the local National Guard armory. The National Guard reacted to the takeover of the armory with outrage, but the sheriff felt he had no alternative. He relied upon a 17th century law authorizing the seizure of property when serious danger to public peace exists (*Criminal Justice Newsletter*, 21(5), pp. 5-6).

The inability of existing institutions to handle the influx of inmates has produced other kinds of less dramatic, though no less significant, kinds of responses. Florida enacted an emergency release mechanism that provided for the automatic release of inmates when the prison population approached the court-mandated population cap (*Law Enforcement News*, March 31, 1990, p. 8). The release of several of these inmates resulted in immediate recidivism, thereby stirring up a wave of popular opposition to early release in particular, and to justice system operations in general. Alabama's efforts to "get tough" by lengthening sentences and increasing the minimum percentage of sentence that must be served before parole led to escalating institutional crowding. However, the Alabama Department of Corrections sought to handle this crowding by developing new back-door release mechanisms, therefore defeating the original intent behind the toughening-up initiative (McCarthy, 1988).

Increases in facility crowding have thus resulted in a variety of problems affecting both inmates and free citizens. The justice system has struggled to devise stop-gap solutions, such as early release, that have contributed little to the ultimate resolution of institutional crowding and related difficulties.

Fearing Crime

Although it is clear that a major objective of the many measures adopted during the last decade has been the reduction of crime, another important goal has been improvement in the quality of life through a reduction of the fear of crime. Has the adoption of these reform measures reduced the fear of crime? The evidence does not indicate that it has. In 1975, at the outset of the reform movement under consideration, 45 percent of surveyed citizens indicated that they would be afraid to walk at night in a 1-mile area around their neighborhood. The percentage of respon-

dents expressing the same fears in 1989 was 43 percent (Jamieson & Flanagan, 1989, p. 210). The percentage of citizens fearful in their homes did decline 10 percent, but this decline may be attributable to the target-hardening measures which have become increasingly prevalent during the past 15 years. Citizens currently invest millions of dollars annually on home security-related measures and devices, such as alarm services and sophisticated locks, thereby creating feelings of security that may or may not reflect accurately the probability of being victimized at home.

It appears therefore that the initiatives spawned in the late seventies and early eighties have not resulted in citizens who are more confident of their personal safety when in public in their own neighborhoods. Whether crime-related conditions are actually better or worse than they were at the beginning of the reform period, the public apparently is still seriously concerned about personal safety. Political concern with such public safety offenses is hardly new. In a 1975 op-ed article Democratic Senator Edward Kennedy wrote about personal safety-related offenses.

What can be done? We can start by promoting certainty of punishment for the violent offender. We can require courts to impose a minimum mandatory sentence of two years, without the possibility of probation or parole, in such street crimes as murder, rape, aggravated assault, and burglary; robbery when the victim suffers serious bodily injury. . . . A minimum mandatory sentence . . . arises out of the belief that the certainty of punishment is the most effective deterrent to criminal conduct (*New York Times*, December 6, 1975, p. 29).

Fifteen years later, despite the adoption of a wide range of mandatory sentencing structures, reductions in the use of parole, and enactment of determinate sentencing systems, the Bush Administration's 1989 crime plan was based upon the same notion. A Bush spokesperson noted that

The only thing that deters crime is the certainty of punishment. You want to be able to get to the problem of criminal behavior in terms of deterring it with the certainty of punishment, with stepping up the ability to prosecute, with refusing to plea bargain certain offenses (*New York Times*, May 14, 1989, p. 20).

Despite the passage of a decade and a half committed to pursuit and enactment of a variety of deterrence-related reforms it is evident that public fear of crime remains largely unallayed.

Concluding Observations

The reform movement of the late 1970's and early 1980's is associated with a number of effects. On the positive side, enhancements of justice seem to have been achieved as a result of the new determinate-type sentencing systems. Determinate and guidelines systems have increased the certainty of particular punishments offenders receive for their offenses. With regard to equity, these systems seem to have reduced

at least a portion of the sentencing disparity that was a target of many of the reformers of the 1970's. A recent Rand study in California, for instance, suggests that race no longer plays an important role in sentencing in that State ("Sentencing Criminals: Formulas and Fairness," *New York Times*, February 17, 1990, p. 4). Thus, at least in some jurisdictions concerns about the fairness of sentencing have been addressed.

There is, however, another component to justice in sentencing beyond equity and certainty. One of the objectives of the reformers was to develop a system that would provide offenders with sentences commensurate with the seriousness of crime. Whether this has occurred is and will likely continue to be a matter of dispute. There is no clear public consensus regarding what kinds of sentences are appropriate for what kinds of crimes (e.g., Blumstein & Cohen, 1980; Durham, 1988). What we do know is that the public continues to believe that sentences are not satisfactory. More specifically, citizens tend to regard sentences as too lenient (e.g., *Public Opinion*, 1987; Zimmerman et al., 1988; Brillon, 1988). Furthermore, as we have seen, pressures such as those experienced in Alabama and Florida have led to practices that have compromised the determinate sentences administered by the courts (McCarthy, 1988). Thus even with a sentencing schedule that accords with the public view of fairness, practical considerations and bureaucratic resistance may be likely to debilitate the extent to which such sentences can be fully imposed.

Of perhaps greater public concern is the fact that the hoped-for significant reductions in the crime rate have not materialized. As noted earlier, official data suggest that, after an initial decline, crime rates have increased somewhat during the 1980's. Victimization data do reveal something of a decline, although nothing on the order of a dramatic decrease. Furthermore, the decrease had already begun by the time the reforms had been fully implemented in most states. Other less publicly visible objectives, such as facilitating inmate adjustment to prison and improving institutional climate, have also gone unachieved (Goodstein & Hepburn, 1985).

Beyond issues of equity, commensurate punishment, inmate adjustment, institutional climate, and crime rates, it is important to note that the advent of determinate-type sentencing systems has been associated with increases in prison population well beyond what might be expected from the movement of crime rates. Although the advent of such systems alone cannot explain overcrowding, in states that have not developed prison population monitoring mechanisms crowding has indeed been an effect of the new systems (Knapp, 1989). Of course, these population increases have been associated with significant economic costs.

The average cost of confining the increasing number of inmates now held in state and Federal penal facilities has now topped \$15,000 per inmate (Senna & Siegel, 1990, p. 11). The apparent shortfall in prison space has inspired ambitious building programs at both the state and Federal level. As noted earlier, many states plan to spend significant resources to increase prison space. The Federal system alone plans to spend \$1.8 billion on system expansion to create space for 64,400 additional inmates (General Accounting Office, 1989, p. 3).

Beyond economic costs, the fundamental goals of sentencing have been seriously compromised by institutional crowding. In referring to the reform movement experience Kay Knapp notes that

Redistribution of sentencing discretion, just deserts and deterrence, and certainty and truth in sentencing were impossible to achieve in an overcrowded setting. Invariably, overcrowding resulted in the establishment of back-door mechanisms (e.g., good time, meritorious credits, program credits, administrative leave, emergency release) that effectively transferred sentencing discretion from the "front door" judges and prosecutors to the "back door" corrections and parole administrators . . . Thus certainty and truth in sentencing, deterrence, and desert are sacrificed for the more immediate goal of population control (1989, p. 119).

Other unanticipated consequences have emerged as a result of increasing penal populations and costs. The rush to create space and the concern over the costs associated with creating this new capacity has led to heightened interest in correctional privatization and in the adoption of private initiatives in several states. Although it is not yet clear whether the correctional privatization movement will founder after the fashion of the similar 19th century movement (Sellin, 1976; Lewis, 1965) the evidence on the effectiveness of such initiatives is at best mixed to this point (*Criminal Justice Newsletter*, 20(21), p. 6; "State: Shut Down South Texas Prison," *San Antonio Express-News*, March 29, 1990, p. 1; "The Problems of Private Prisons," *Fort Worth Star-Telegram*, July 1, 1990, section 1, p. 23). Of course, whether the private or public sector is assigned the job of running American prisons, nobody at either the state or Federal level expects current building plans to handle the anticipated influx of new inmates.

What has prevented achievement of the goals of the reformers? A case could be made for several important factors. First, the heightened concern over drug-related crime has led to increasingly energetic efforts to control drug use and distribution. Significant percentages of new inmates in incarcerative environments have been sentenced to prison as a result of involvement in drug-related offenses. For instance, recent data for the Federal system from 1986 through 1988 indicate that "79% of the total increase among those sentenced to prison over that 2-year period" were drug

law offenders (General Accounting Office, 1989, pp. 1-2). Previously many of these offenders might have received other kinds of sanctions. The same process appears to have occurred at the state level. Pennsylvania's prison population, according to demographic forecasts, was expected to peak in 1990 at 12,500 inmates. That level had been reached in 1983, largely as a result of the harsher sentences associated with drug offenses (Blumstein, 1989). As evidenced by President Bush's most recent increase in his budget for the war on drugs, this vigorous concern with drugs and drug-related crime continues unabated despite evidence that drug use has not been on the increase (e.g., Institute for Social Research, February 24, 1989 - press release), and despite the admission of the Drug Enforcement Administration that costly law enforcement-oriented efforts to stem the drug trade have not been successful ("DEA: Drug War Failing to Cut Supply," *USA Today*, March 28, 1990, p. 1).

Another possible explanation for the apparent failure of the reforms of the seventies and eighties is simply that not enough time has elapsed to have given the reforms a full opportunity to be successful. The same argument was made by some defenders of rehabilitation during the 1970's. They reasoned that although there had been numerous attempts to design strategies that might effectively rehabilitate criminals, and that most of these had been unsuccessful, insufficient time had been provided to further develop those approaches that did seem to be effective. With additional time, so the argument ran, significant progress could be made.

Similarly, it could be argued that a decade is simply not enough time to evaluate the full capability of the new reforms. A lengthier trial period is required to provide time for the system to adjust to the reforms, for public perceptions of the system to alter, and for unanticipated and latent effects to be identified and addressed.

Whatever may be the causes for the failure of the reform movement, if it is asked whether the Nation is better off now regarding crime and justice than in 1971 when the American Friends Service Committee argued against indeterminate sentencing, or than in 1974 when the Martinson Report first appeared, or than in 1975 when Wilson questioned the search for the root causes of crime, it would be difficult to offer an affirmative response. Officially measured crime currently stands well above its levels in the mid-1970's. American prisons and jails are packed. The cost of operating the correctional system has skyrocketed and continues to drain public coffers. Whether we are nonetheless better off now than we would have been in the absence of such reforms is, of course, speculation. What can be said is that the vision of the reform-

ers has been neither met nor even reasonably approximated.

As some of the political rhetoric cited in this discussion indicates, with regard to crime the language of American politicians in the 1990's is largely indistinguishable from that of their counterparts 15 to 20 years ago. Mere examination of this rhetoric would provide no indication of the massive reform initiative that has swept through the justice system. Although the realities of political life always seem to make focusing on crime an attractive pastime, Senator Gramm's call for a national "Drug and Crime Emergency" reflects a continuing concern with crime as a crisis of undiminished proportions. If Senator Gramm's alarm is not misplaced, then perhaps it is time to begin to consider alternative approaches to resolving ongoing crime and justice-related problems. In many respects the penal initiatives of the last 15 years seem to have left the Nation worse off now than 15 years ago. In light of current proposals to commit even more resources to such initiatives now appears to be an excellent time to rethink the national strategy for reducing crime.

Henry Pontell argues that there exists only a limited capacity to punish. More specifically he observed

that our legal system was never designed to take on the entire task of social control. This seems true today, as the increased use of punishment has been revived as the "solution" to the crime problem (1984, p.3).

What is striking about Pontell's observations is that the "today" to which he referred was 1984, when penal conditions were nowhere near as dismal or costly as they are today. Matters are considerably worse as we enter the final decade of the century, thus there is good reason to re-evaluate the national commitment to the reforms of the late seventies and early eighties.

NOTES

¹Jessica Mitford's *Kind and Usual Punishment* also appeared in 1971 and provided detailed examples of the kinds of abuses noted in *Struggle for Justice*.

²Cullen and Gendreau (1989) argue that the reception received by the report was as much a function of ideology as it was a consequence of cold, objective reading of the evaluation data. They cite as evidence of this the fact that previous studies which failed to find evidence of rehabilitative effectiveness had received little attention (e.g., Gold 1974; Robison & Smith, 1971), the neglect of subsequent work showing that some rehabilitative initiatives have been effective (e.g., Gendreau, 1981; Gendreau & Ross, 1979, 1981), and Martinson's own recantation of his "nothing works" claim (1979).

³Such systems assumed various forms. Some were simple legislatively based determinate sentencing systems, while other systems used guidelines and presumptive sentences.

⁴States such as North Carolina, while eliminating parole release, have retained various forms of post-release supervision (McCarthy & McCarthy, 1984, p. 273).

⁵For a discussion of the comparability of official crime statistics and victimization statistics see Menard and Covey, 1988.

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