

Federal Probation

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Margaret R. Savarese

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Condition of Success: A Case Study in the Infiltration of the Intimate Business *Frederick T. Martens*

Sexual Aggression in Federal Prisons: Prevalence, Involvement and Employee Impact *Peter L. Nacci*
Thomas R. Kane

Programs That Worked For Us *David R. Busby*

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MARCH 1984

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This Issue in Brief

The Evolution of Probation: Early Salaries, Qualifications, and Hiring Practices.—Charles Lindner and Margaret R. Savarese review probation practices at the turn of the century and find that many concerns facing probation today, such as high caseloads and inadequate salaries, also existed in the past. The authors further explore early conditions of employment, including qualifications, compensation, and hiring practices. A 1910 civil service examination is included to allow the reader to test himself against the probation officer of the past.

Focus for the Future: Accountability in Sentencing.—Author Thomas J. Quinn argues for a new dialogue, replacing the “in” versus “out” decision with assignment to 1 of 10 “Accountability Levels.” In this broad range of increasingly restrictive options offenders would be adequately monitored at whatever level they are placed, with logical progression down the scale toward freedom over time and retrogression further up the scale for noncompliance. The private sector can be used to help fill the gaps in the middle levels and policy structured to offer decisionmakers the desired mix of offender slots in a jurisdiction.

The Need for a New International-National Criminal Justice Order.—Crime is increasing everywhere, particularly under dictatorial regimes, and in democratic countries the penal systems are becoming more and more unable to cope with it, asserts Manuel López-Rey. The abuse of power plays a primordial role in the growth of contemporary crime, the main reason being that the penal systems are still, in spite of frequent reforms, rooted in the 19th century. The author stresses the need for a new international-national criminal justice order.

Politically Appointed Administrators: An Empirical Perspective.—In the wake of prison riots, serious doubts about the effectiveness of the correctional system have been raised by professionals and concerned citizens alike, according to Salvatore Cer-

rato. His article presents the position that unqualified administrators, by virtue of institutional inexperience and lack of correctional expertise, have become an unstabilizing force within the correctional milieu.

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Radical Nonintervention: The Myth of Doing No Harm.—Authors Travis and Cullen offer three reasons why the call for liberals to withdraw from the policymaking process in the criminal justice system will cause more harm than an interventionist strategy: First, reform efforts have been one of the few humanizing forces in our correctional past. Second, nonintervention by progressives only serves to facilitate the get tough movement now sweeping the Nation. And third, nonintervention is a philosophy of despair, not of hope, and thus risks attenuating the will of practitioners to continue to do good in the face of daily obstacles.

Alabama Prison Option: Supervised Intensive Restitution Program.—Alabama Commissioner of Corrections Freddie V. Smith discusses an innovative restitution program which uses close face-to-face supervision, enforced curfews, required workloads in public service or contracted employment, offender family involvement, supervisory fees, and other freedom restrictions. Incorporated provisions also require program officers to coordinate closely with law enforcement and judicial agencies.

The Future Jail: A Professionally Managed Corrections Center That Controls Its Population.—Antiquated methods of jail administration are no longer acceptable either to the criminal justice agencies they serve or the political officials responsible for their oversight. Nicholas Demos presents some basic principles for jail management, emphasizing a proactive role for social trial judges. He also summarizes the Washington State comprehensive strategy that transformed the jails of that State.

The Illusion of Success: A Case Study in the Infiltration of Legitimate Business.—Frederick

Martens examines and analyzes the systemic nature of organized crime with institutional structures within a lower socioeconomic community. Through the use of ethnographic collection and analysis techniques, the author delineates the structural arrangements between finance institutions, liquor wholesalers, vending companies and professionals (e.g., accountants and lawyers) and the "bar" or tavern. Employing a sophisticated pyramid scheme in which the tavern is the commodity, "unsuspecting" entrepreneurs are enlisted into this scam, only to be disillusioned by the ultimate death of their dream. The illusion of success is a classic case study in the convergence of organized crime with white-collar crime.

Sex and Sexual Aggression in Federal Prisons: Inmate Involvement and Employee Impact.—In the December 1983 issue of *Federal Probation*, Nacci and Kane focused on the incidence of homosexual activity and sexual aggression in Federal prisons. Analyses and discussions in the present report concern: profiles of inmates who have participated in consensual homosexual activity or have been targets of sex pressure; correctional officers' attitudes toward the protection of inmates, the prevention of homosexual activity, the danger of sexual assault in prisons, and job satisfaction; and factors that influence inmate participation in consensual homosexual activity.

A Combination That Worked for Us.—U.S. Probation Officer David R. Busby describes a drug after-care program which has proven successful in the Northern District of Alabama. The program combines intensive urine surveillance with intensive counseling, a wilderness experience (camping, rappelling, hiking), and a work detail experience.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought but their publication is not to be taken as an endorsement by the editors or the Federal probation office of the views set forth. The editors may or may not agree with the articles appearing in the magazine, but believe them in any case to be deserving of consideration.

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93945 Focus for the Future: Accountability in Sentencing

BY THOMAS J. QUINN

Executive Director, Delaware Criminal Justice Planning Commission

1. Introduction

This paper was conceived from a state of frustration, a state shared by thoughtful criminal justice professionals. This frustration borne of the knowledge that the current system for sentencing criminal defendants in the United States just does not make sense. It fails the test of logic on an individual basis, as countless examples can be found of lives wasted in human warehouses. Countless more transgressors walk scot-free, unpunished in any real or perceived way by the society offended. It also fails on a policy level, as an increasing proportion of public revenue is expended on a system with no common philosophy that cannot adequately target its resources. We seem to be frozen in the inertia of centuries of tradition and decades of entrenched bureaucracy. With three branches of government playing key roles in senten-

cing, is there any hope of managing this complex, emotional and political problem?

A cautiously optimistic answer is "yes." It can be managed, giving due authority to the proper constitutional roles, building on recent research and innovations, and recognizing the inherent limitations of our ability to control human behavior. This paper attempts to advance the effort toward achieving a common sense system of sentencing. It will not review in any detail the many improvements achieved in the last 5 years; the reader may turn elsewhere for the background. It will offer a model which is designed to enable decisionmakers to gain control of their correctional resources, ensure an adequate degree of public safety, and focus the philosophy and direction of sentencing. The model argues for a new dialogue,

replacing the "in" versus "out" decision with assignment to 1 of 10 "Accountability Levels."

Let us begin this discussion with several premises. It is an unfortunate fact that crime has always existed, and it always will. It is also apparent that current public resources are being sorely taxed in an attempt to deal with the problem of crime. The criminal justice budget is escalating rapidly, with an increasing proportion for the corrections system, the terminal point of the process. As larger portions of the budget are allotted to corrections, less is available for police, mental health, and education. In this environment we must strive for a reasonable response to the problem of crime, one that takes into account the constraints of resource and knowledge limitations.

To develop our common sense system, we must determine the proper purpose and role of sentencing. While many goals of sentencing have been presented (chiefly among them deterrence, incapacitation, retribution, and rehabilitation),¹ deciding among the various goals becomes a difficult and confusing exercise. However, a common purpose of all these goals is to enforce the limits of acceptable behavior defined by society.

The task then becomes establishment of a system that effectively deals with those who would transgress society's norms. To do too little leaves indistinct the lines between acceptable and unacceptable behavior. To overreact in the name of justice risks wasting the taxpayers' money or violating another of our fundamental truths—individual freedom. To achieve a proper balance, we must rely on research and common sense. The following principles form the foundation of this effort to properly focus sentencing:

- (1) The *certainty* of punishment is more important than the severity of a sanction.
- (2) The *victim* should be a primary consideration in determining a sentence.
- (3) A *wide range* of sanctions should be available, with the offender sentenced to the least restrictive (and least costly) sanction consistent with public safety.
- (4) *Rehabilitation* should be considered in assigning sanctions. These principles are discussed in

greater detail below.

II. Principles of Sentencing

A. Certainty

Deterrence theorists generally accept that timely and certain punishments more effectively deter criminal behavior than do long sentences.² Lengthy mandatory sentences are difficult to justify by a deterrence philosophy. For example, in Delaware during the period July 1, 1977, through June 30, 1980, there was a 42 in 1,000 chance of being arrested for a burglary committed, and 17 chances in 1,000 of going to jail for that burglary. If a jail sentence became mandatory, the chances of a jail sentence would be 30 in 1,000.³ It is unlikely that a potential offender who is willing to risk a 17/1,000 chance of jail would be unwilling to risk a 30/1,000 chance. By instituting a mandatory sentence in this case, the effect on crime would be very limited but on prison population substantial. Resources would be better spent on enforcement and detection, increasing the arrest probability and the certainty of punishment.

This "certainty" principle applies to offenders complying with conditions of the court or correctional officials as well. It can be achieved by increased monitoring of offenders at various sanction levels, and increased consistency in applying those sanctions. A framework for standardizing this monitoring is described later.

B. Victim Orientation

Until recently, the victim has been forgotten in our scheme of sentencing. To be sure, the loss by or injury to the victim was a part of the process, but restoring the victim to his precrime status was secondary to other factors. This is changing,⁴ but still more emphasis on the victim is necessary.

In determining severity, crimes with individual victims should be deemed more severe than victimless (e.g., prostitution, drug abuse) or institutional (e.g., shoplifting) crimes.

Further, the extent to which the victim carries some responsibility for the crime should reduce the severity of the sanction. A U.S. Department of Justice publication noted that "research on crime indicates that 'victim precipitation' is a common phenomenon in violent crime and in incidents where the victim knows the offender. In those incidents it is the eventual victim, rather than the apparent offender, who first initiated the event."⁵

C. Sanctions

A wide range of sanctions should be available, with the offender sentenced to the least restrictive (and

¹Kress, Jack M. *Prescription for Justice: The Theory and Practice of Sentencing Guidelines*, (pp 230-232). Cambridge, Mass.: Ballinger Publishing Company (1980).

²Greenwood, P.W., *Selective Incapacitation*. Santa Monica, Calif.: Rand Corporation, 8/82.

³"Probability of Incarceration for Burglary," Statistical Analysis Center (Dover, DE, 4/82).

⁴Delaware Restitution Law, 11 DEL. C. 4106, in effect October 1981;

⁵"Attorney General Violent Crimes Task Force Report," Recommendation #62 (restitution should be ordered), August 1981; U.S. Department of Justice, Washington, D.C.;

"New York State Proposed Victims Bill of Rights," 1981;

"Delaware Sentencing Reform Commission Alternatives Committee Report," December 1981; Wilmington, Delaware.

⁶Wesley G. Skogan, "Issues in the Measurement of Victimization," Northwestern University, June 1981.

least costly) sanction available, consistent with public safety.

This principle has widespread and long-standing support.⁶ The U.S. Attorney General's Violent Crime Task Force Report noted that the average cost/bed for construction was over \$70,000 in 1981, with an operational cost of \$10-20,000 per bed. Despite this, 70 percent of our Nation's prison facilities are maximum security while only 15-20 percent of state prison inmates require that level of supervision.⁷ Due to the high cost of maximum security incarceration, this sanction should be reserved for those violent offenders who must be confined to assure public safety.

A recent study in Delaware found that "reliance on incarceration as the only appropriate sanction for deviant behavior places increasing political and organizational pressure on correctional and parole authorities."⁸ The National Institute of Correction (NIC) finds that "the principle of least restrictive custody within responsible requirements of public safety is sound — jurisdictions must develop a graded series of options where incarceration becomes the last resort and can be clearly justified when used."⁹ The model presented here refers to this as "Sequential Sanctioning," a logical set of increasingly restrictive sanctions and controls to maximize system efficiency and cost effectiveness. It requires:

— An adequate and coordinated diagnostic/classification system to properly assign offenders as early as possible — presentence as well as correctional.

— Adequate monitoring of the offender for the conditions of the sanction level, and accountability for failure to comply with those conditions.

— Logical progression, with consistently applied criteria, into further stages of sanction/control for subsequent offenses or failure to comply with conditions of a given sanction level; and logical retrogression away from heavier levels of sanction toward freedom over time.

This concept might be displayed as a triangle of control over an offender's freedom (see figure 1). If total freedom were displayed as a box, the triangle of control (moving left to right) would be increasingly restrictive, from a minimum of a small fine through to incarceration in a maximum security facility.

⁶Standards Relating to Sentencing Alternatives and Procedures, American Bar Association, Approved Draft, p 14, New York, 1968; ABA Standard 18-2.2, pp 18-57 through 18-63, *Sentencing Alternatives and Procedures*;
⁷*Sentencing Reform Commission Alternatives Committee*, December 1981, Wilmington, DE.

⁸Attorney General VCTF Report, Ibid, Recommendation #57, August 1981.

⁹Yanich/Vanderveen, "Parole Rehearing Guidelines," p 2, 1981.

¹⁰National Institute of Correction FY 1982, "Request for Proposals," p 14.

D. Rehabilitation

We have learned that we cannot coerce an offender into being rehabilitated by locking him up in a prison, or by enticing him into various programs while he is there. We have also learned that we rarely know whether someone has been rehabilitated. Therefore, while we should make available social and educational programs to those in the system, the sentences we impose should primarily reflect the need for protecting the safety of the public, the need to make the offender directly and meaningfully accountable for his crime, and the need to make the victim as whole as possible.

At the same time, through proper classification and diagnosis, we should assign offenders to programs which have the best chance of helping them to be productive members of society.

III. Focus for the Future: Levels of Accountability

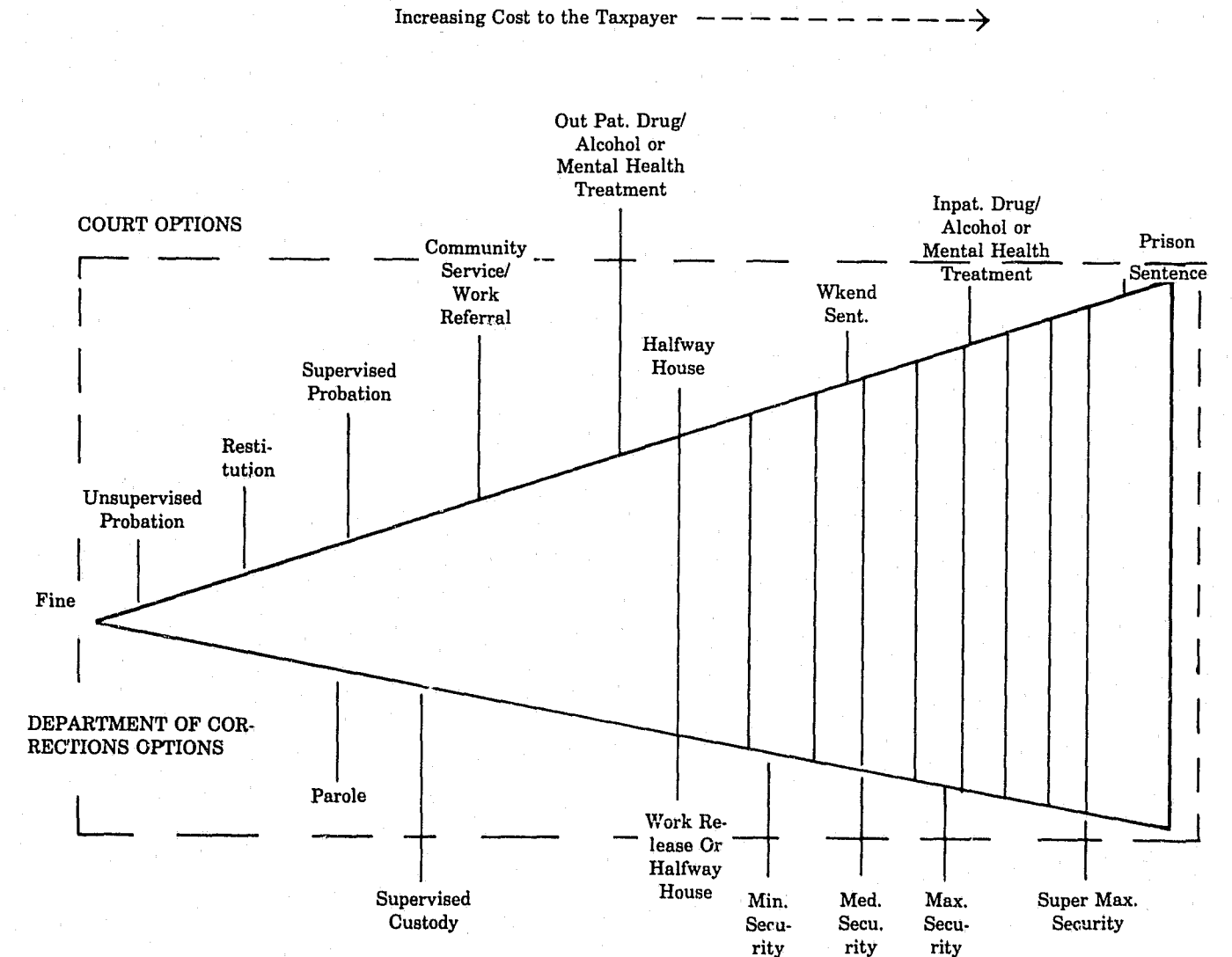
The criminal justice system doesn't really operate all that badly, as it's structured. Dedicated professionals in all agencies do their best given the information and resources available. Their managers then seek legitimately to increase their resources, so they can do a better job. We can continue in this vein. This would be the easiest way to proceed, since we know how to bid for architects' fees, build prisons, and hire correctional officers. It is a legitimate policy choice. It's the one most governmental officials have selected over the past two decades. It is, however, probably the most expensive course to follow, and not necessarily the most effective.

We can instead create a logical way of reducing the number of prisoners we house, as Michigan's Emergency Powers Release Act (once capacity is approached, authority is provided to release all those with 90 days remaining on their sentence; then 120 days remaining; until appropriate level is reached); the Minnesota Sentencing Guidelines (a presumptive sentence of a certain period on probation or in prison, with the "in/out" decision affected if prison population nears capacity); or an expansion of Delaware's supervised custody program (inmates are placed with host families under close supervision). These are also legitimate policy choices.

Finally, we could embark upon a new direction of accountability, making fundamental changes in our system of sentencing. This can be accomplished by establishing a logical sequence of sanctions, consistently applied and adequately monitored, which would hold the offender accountable to the victim and to the state. It would also hold the system accountable, to the public and to other justice agencies. To

FIGURE 1

As the level of control increases, so does the cost. A maximum security bed costs more to construct and staff than does a minimum security bed, which costs more than probation.



embark upon this direction will require a significant effort, a rejection of the decision dichotomy of "in" versus "out." We simply must acknowledge that there are (or could be) more effective ways to hold an offender accountable. As Austin and Krisberg state, "A new political consensus must emerge outside the

criminal justice system in which the values of punishment and public safety are rationally balanced with fiscal constraints and competing claims for public revenue."¹⁰

In essence, we must put into practice the concept of "least restrictive sanction." In so doing, we must assure ourselves and the public that those truly incorrigible and violent felons who need to be separated from society are incapacitated. The capability to accomplish that is improving," though it is far from

¹⁰"The Unmet Promise of Alternatives to Incarceration," James Austin and Barry Krisberg, *Crime and Delinquency Volume 28*, #3, July 1982.

¹¹Early Identification of the Chronic Offenders, State of California Youth Authority, October 1982.

precise. Our new structure must create conceptual levels of restrictiveness (or accountability); fit existing sentencing options into that scheme; determine the number that can be safely placed in less costly levels (existing or proposed); develop guidelines to assign offenders to the proper level; and put in place a system of monitoring and standard movement between levels.

A. *Creating the Concept—Levels of Accountability*

The options which now exist in most jurisdictions are more or less restrictive based on undefined criteria. Most observers would agree that prison is more restrictive than an outpatient treatment program, which is more restrictive than unsupervised probation. Most would also agree that the greater the restrictions, the more punitive the sanction. However, currently there is no definition of "restrictiveness," no way of ranking one sanction compared to another.

Among the deficiencies caused by this absence is a great disparity in the way offenders are dealt with by the system. A judge is faced with conflicting goals of rehabilitation, incapacitation, deterrence and retribution, but no standard from which to select. If an offender fails to comply with conditions of a less-restrictive sanction (e.g., probation), a given judge may merely continue that sanction, or jump to a very restrictive punishment (e.g., prison). Should there not be intermediary steps? This would also have the effect of letting the offender know that additional sanctions will surely be applied for noncompliance, and serve as an incentive to move from greater levels of restriction to lesser over time.

This can be achieved by adopting 10 "Levels of Accountability," with increasing restrictiveness at each level (see figure 2). There is a range of 100 within each level to provide for relatively minor adjustments, and enable refinement of the concept. The categories used to define restrictiveness can be applied to a punitive sanction, or a rehabilitative setting.

Tied into the escalating sequence of sanctions is the probation-fee concept. Successfully used in Georgia, Florida, and elsewhere, the \$10 to \$50/month fee is charged probationers to offset the cost of supervision. In the context of the proposed escalating sanctions, the fee can also be escalating. At Level II, a \$10/month fee might apply, with the fee \$20/month at Level III. This would serve two purposes. First, the increased supervision or programs required at higher levels cost more, and the offender requiring it should help offset the cost. Second, a double incentive would

exist for the offender — if he complied with the regulations of his assigned level, over time he would move to a lower level with fewer restrictions, and with a lower fee.

Once these levels are reviewed and accepted by the criminal justice system, standards for supervision should be established to insure the monitoring is appropriate for the offender and consistent across agencies and between personnel.

Though the 10 levels clearly display the possible range of categories of sanction, it may be difficult to implement in some jurisdictions. A condensed range of accountability levels may be found on figure 3. Further merging of levels could occur, as long as the concept of a continuum of restrictiveness is maintained.

B. *Assign Existing Options Into Conceptual Scheme*

The next step is to take the current sentencing options in a given jurisdiction and fit them within the accountability levels. It is recognized that a combination of penalties is often assigned,¹⁴ and this could be accommodated. An estimate of the number of clients for each current alternative could be derived, with the total and per capita current cost of that alternative. It is likely that some gaps will exist between the conceptual levels and reality. For example, there may be no residential programs between probation and prison.

In Delaware, an attempt was made in October 1983 to fit offenders into the conceptual accountability levels, based on the conditions of their sentence on the last day of August 1983. The results of that effort are displayed on figure 4. As was suspected, there are great gaps in the middle range of levels. Further, it becomes clear that a disproportionate portion of the resources available to the Delaware Department of Correction are expended on those at the higher levels (see figure 5).

C. *Determine How Many Offenders Can Safely Be Placed in Less Costly Accountability Levels*

Once the gaps are identified, programs must be developed to meet the need. This can be done within state government, or bid out to the private sector. The latter has the advantage of rapid start up, perhaps greater creativity, greater flexibility and easier elimination as the offender population falls (as it is projected to do in 7-10 years). Requests for proposal would be drafted requiring bids to meet the specifications and supervision standards for given accountability levels. A condition could be included that the cost would not exceed the estimated cost for developing a state program for that level. While care would have to be taken to screen out charlatans, there

¹⁴"A Provisional Scale for Measuring the Severity of Criminal Penalties," Joan E. Jacoby and Edward C. Ratledge, March 1982 — LEAA Grant — 1980 — NJ-CX-0032, Jefferson Institute for Justice Studies.

FIGURE 2. Accountability Level

Restrictions	I 0-100	II 101-200	III 201-300	IV 301-400	V 401-500	VI 501-600	VII 601-700	VIII 701-800	IX 801-900	X 901-1,000
Mobility in the Community	100% (unrestricted)	100% (unrestricted)	90% (10% of time restricted)	80% (20% of time restricted)	60% (40% of time restricted)	30% (70% of time restricted)	20% (80% of time restricted)	10% (90% of time restricted)	0%	0%
Choice of Residence	100% (unrestricted)	100% (unrestricted)	90% (clearance required)	90% (clearance required)	90% (clearance required)	30% (limited options)	10% (limited options)	0 (Incarcerated)	0%	0%
Mobility/Interaction within the Setting	100% (no setting)	100% (no setting)	100% (no setting)	100% (no setting)	100% (no setting)	85% (1-2 constraints)	80% (3-4 constraints)	60% (5-7 constraints)	30% (8-10 constraints)	5-10 (more than 10 constraints)
Amount of Supervision	0:0	Written report/month	1-2 Face-to-face/month 1-2 Weekly phone contact	3-6 Face-to-face/month Weekly phone contacts	2-6 Face-to-face/week Daily phone Written reports/weekly	Daily phone Daily face-to-face Weekly written reports	Daily on site supervision 8-16 hrs/day	Daily on site supervision 16-24 hrs/day	Daily on site supervision 24 hrs/day	Daily on site supervision 24 hours/day
Privileges (Driving, drinking, out of state trips, mail, phone calls)	(100%) Same as prior to offense conviction	(100%) Same as before conviction	1-2 privileges withheld	1-4 privileges withheld	1-7 privileges withheld	1-10 withheld	1-12 withheld	5-15 withheld	15-19 withheld	20 or more withheld
Financial Obligations	Fine/costs may be applied	Fine/costs/rest./probation super fee may be applied	Same (increase probation fee by \$5-10/month)	Same (increase probation fee by \$5-10/month)	Same (pay partial cost of food/lodging/supervision fee)	Same	Same	N/A	N/A	N/A
Examples (These are examples only—many other scenarios could be constructed meeting the requirements of each level)	\$50 fine/court costs; 6 months unsupervised probation	\$50 fine, restitution, court costs; 6 months supervised probation; \$10/month fee; written report monthly	Fine/costs/restitution; 1 year probation; weekend community service; no drinking	Weekend community service Or mandatory treatment 5 hrs/day; \$30/month probation fee; no drinking; no out-of-state trips	Mandatory rehab. skills program 8 hours/day; restitution; probation fee of \$40/month; no drinking curfew	Work Release; pay portion of room/ board/ restitution; no kitchen privileges outside meal times; no drinking; no sex; weekends home	Residential treatment program; pay portion of program costs; limited privileges	Minimum security prison	Medium security prison	Maximum security prison

ACCOUNTABILITY IN SENTENCING

FIGURE 4

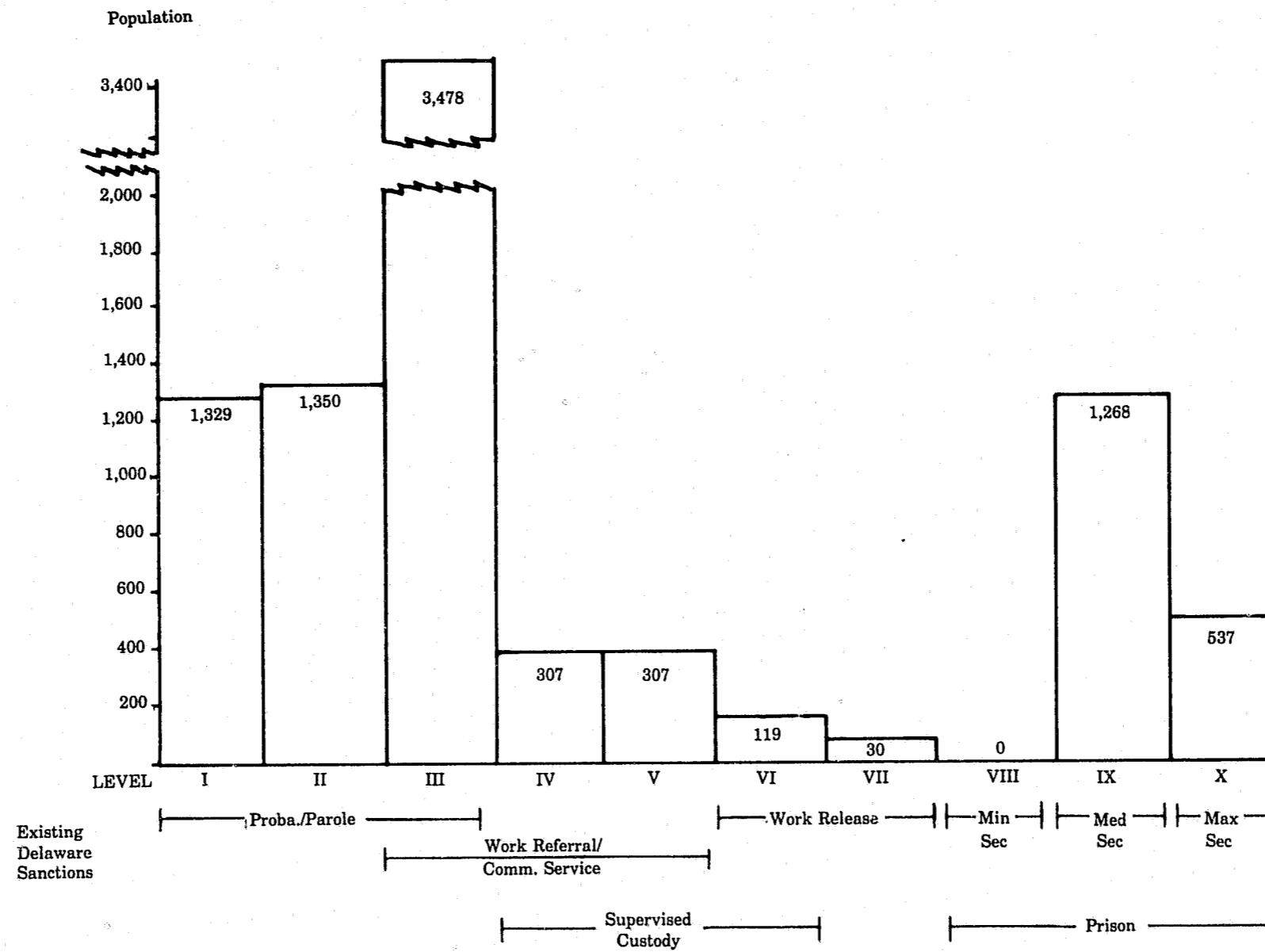


FIGURE 3. Accountability Levels—Condensed

	I ^B	II	III	IV	V ^C
Restrictions on freedom in the community ^A	None—Unrestricted to 5 hrs/week	5-42 hrs/wk	42-72 hrs/wk	72-168 hrs/wk	168 hrs-wk Under supervision—No community contact
Amount of Supervision	0-1 Face/Face month 0-2 Weekly phone	2-4 Face/Face mo. Weekly phone	Face/Face wk. 1-3 Phone/wk	Daily	24 hours under supervision
Privileges withheld/special conditions imposed ^D	0-5	2-6	4-8	6-10	10-up
Financial obligations ^E	0-4 Day fine; possible restitution, costs	5-7 Day fine; possible restitution, costs	8-10 Day fine; possible restitution, costs	11-12 Day fine; possible restitution, costs	13-15 Day fine; possible restitution, costs

^ARestrictions on freedom essentially structure an offender's time, controlling his schedule, whereabouts, and activities for the designated amount of time. To the extent monitoring is not standard or consistent or to the extent that no sanctions for accountability accrue for failure on the part of the offender, the time is *not* structured. It could consist of residential, part-time residential, community service, or other specific methods for meeting the designated hours. The judge could order the hours be met daily (e.g., 2 hrs/day) or in one period (e.g., weekend in jail).

^BLevel I essentially equates to traditional probation or parole supervision. There are differing levels of supervision within this category; it is also likely that some individuals in Levels II-IV would be on probation or parole in addition to the other constraints of their sentence.

^CLevel V essentially equates to traditional incarceration. There are differing levels of supervision within this category.

^DPrivileges/Conditions: choice of job; choice of residence; mobility within setting; driving; drinking (possible use of Antabuse; out-of-state trips; phone calls; curfew; mail; urinalysis; associates; areas off limits.

^EAs a more equitable guide to appropriate fine, the amount would be measured in units of equivalent daily income, such as 1 day's salary = 1 "day fine".

FIGURE 5

	Custody Status	Percentage of Population	Cost (Millions)	Percentage of Cost
Incarcerated*	1,805	21	21.3	88
Not Incarcerated**	6,668	79	2.8	12
TOTAL	8,573	100	24.1	100

*Incarceration = Sentencing Reform Commission accountability levels VIII, IX and X

**Not Incarcerated = Sentencing Reform Commission accountability levels I through VII

should be sufficient inducement involved to generate interest from qualified groups. Provision would be made for adequate monitoring of the contract by state officials, and for carrying out "sequential sanctioning" between levels.

D. Develop Guidelines to Assign Offenders

Once the levels are in place, guidelines must be developed to insure consistent assignment of offenders to the proper accountability level. As with other guideline matrices, an offender's background and factors related to his current offense (perhaps a measure of severity on the Sellin-Wolfgang Scale)¹¹ would be combined to place an offender at a given accountability level. This matrix could be voluntary, or established by statute, with provision for a judge to go outside the guidelines for delineated mitigating or aggravating circumstances. If statutorily established, consistency would be greater. However, a clear role would still exist for the judge in selecting the most appropriate option (e.g., inpatient treatment versus halfway house) within the guideline level, depending on the offender's background, the victim's needs and other relevant variables.¹² The length of time under supervision would be a range statutorily included on the guideline but judicially imposed.

¹¹"Crime Seriousness Weighting Systems," Timothy J. Flanagan, December 1976 — SUNY, Albany, p 7.

¹²A similar argument is made for prosecutorial decisionmaking by Jacoby and Ratledge, *Ibid.*, p 3.

¹³"Iowa Offender Risk Assessment Scoring System," Vol 1, p IV, (Statistical Analysis Center, Des Moines, Iowa), October 1980.

A clear policy choice for the decisionmakers would exist. If they adopt criteria which result in movement of offenders from levels I-III into levels IV or higher (see figure 2), then the cost to the system would likely increase, as would the control over the offender. Conversely, if the criteria placed offenders from levels VIII, IX and X into lower levels, the cost to the system, prison overcrowding (and to a degree, control over the offender) would be decreased.

IV. Conclusion

Out of crisis sometimes comes opportunity. The prison overcrowding crisis we are now facing presents an opportunity to restore common sense to criminal justice, to bring consistency and accountability to the system of sentencing, and to consolidate the intent and aims of the various agencies of justice.

The accountability level concept is one potential solution, one that offers something to each of the different philosophical camps. At the higher levels, prison itself is punitive, deterrent and incapacitative, and a better chance for rehabilitation exists in prison if we can reduce overcrowding. At the lower levels, the constraints, limitations, and accountability have a punitive aspect; the increased monitoring offered would have increased deterrent value; an adequate degree of incapacitation is built in; and the judge can order a rehabilitative program if conditions warrant.

To be certain, better scaling and additional quantification can be developed to refine these levels and the monitoring standards. Acceptance of the approach need not await that quantification, however. After all, no logical scaling or quantification process preceded the establishment of the current system with which most of us live and work daily. In any jurisdiction, through education and compromise, the principles espoused above can become a reality. We can develop a logical continuum of punishment and make it work at an acceptable risk level. We can create a system that treats offenders firmly but humanely and expends the tax dollar more efficiently. We can distinguish,¹³ to a degree, the violent predator from the thief or social misfit. Armed with this information in a policy-sensitive structure, we can sanction each offender to a just degree without simultaneously punishing the public. As administrators of justice, it is our responsibility to move in this direction.

END