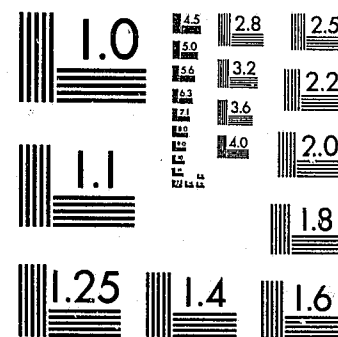




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United States Department of Justice  
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FINAL REPORT  
1982 UPR/NPR SEMINAR  
MARCH 1, 2, 3, 1982  
ATLANTA, GEORGIA

NATIONAL REPORTING IN THE 1980's

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NATIONAL COUNCIL ON CRIME AND DELINQUENCY • RESEARCH CENTER  
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**FINAL REPORT**  
**1982 UPR/NPR SEMINAR**  
**MARCH 1, 2, 3, 1982**  
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**NATIONAL REPORTING IN THE 1980's**

U.S. Department of Justice  
National Institute of Justice

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INTRODUCTION

The 1982 UPR/NPR Seminar was held on March 1, 2, and 3 in Atlanta, Georgia. The Seminar was attended by 114 participants from parole, probation, institutional corrections, and other public and private agencies. The theme was "National Reporting in the 1980's."

The Seminar opened with a keynote address by Milton G. Rector, President Emeritus of the National Council on Crime and Delinquency. Mr. Rector's address, "Probation and Parole: Followers or Leaders," set the framework for the remaining two days of the Seminar.

The second day opened with a keynote panel on "National Criminal Justice Data." Richard Sparks, Ph.D., of Rutgers University, gave a talk entitled "Using National Data." James A. McCafferty of the Administrative Office of the U.S. Courts presented his paper, "Some Thoughts About National Data Collection." Allan Lammers of SEARCH Group, Inc. spoke on "Reporting in an Era of Reaganomics."

The afternoon of the second day was devoted to workshops in three general areas — UPR/NPR data systems input, UPR/NPR research findings, and policy issues in corrections. One of the latter workshops addressed an issue of great concern to the field, that of prison crowding. Included in that workshop were "Prison Crowding Overview" by Bradford Smith, Ph.D., of NCCD; "The Minnesota Example" by Kay Knapp of the Minnesota Sentencing Guidelines Commission; and "The California Example" by Brian Taugher of California's Youth and Adult Correctional Agency.

The third and last day of the Seminar concluded with a panel on "Setting Priorities for National Reporting." The presentations were designed to reflect three key views. David Brierton of the Florida Department of Corrections presented the systems and operation view. The Honorable Charles Carnes, Chief Judge of the Georgia State Court of Fulton County, presented the judicial and sentencing view. Finally, Brian Taugher presented the legislative and legal view.

These presentations have been reproduced in this report along with lists of the staff, speakers, and participants, and a full agenda.

KEYNOTE SPEECH

Probation and Parole:  
Followers or Leaders

by Milton G. Rector  
President Emeritus  
National Council on Crime and Delinquency

Presented at the UPR/NPR Seminar, Atlanta, Georgia on March 1, 1982

At this time one must wonder what will be new in the 1980's for corrections — especially for probation and parole. Dean Roscoe Pound of Harvard Law School, who was President of the National Council on Crime and Delinquency (then the National Probation Association when I joined the staff in 1946), had recommended a formal system of pre-trial release on recognizance from the jails in a study report in Cleveland, Ohio in 1922. Sanford Bates in Prisons and Beyond, published in 1936 suggested that fines, probation, private restitution to victims and community service work as a form of public restitution would become accepted in time as alternatives to imprisonment, and that parole would increase in use and effectiveness to reduce the excessive length of prison terms. In Bates' estimation such community alternatives would diminish the position of world leadership for the United States in the rate of use of incarceration. Some forty-five years later we must admit that little is new in corrections, sentences are even more excessive, and institutions are even more overcrowded.

At the outset of the 1980's release on recognizance is still but a tiny crack in the jail detention rate. The use of the jail for the incarceration of alcoholics, drug addicts, the mentally ill, and for children is still commonplace. Pretrial diversion has served primarily those who would not have been jailed. In fact, time in jail as well as in prison has become widely used as a part of a probation sentence.

Historian David Rothman published in 1980 his book, Conscience and Convenience: The Asylum and Its Alternatives in Progressive America. He tells us that even probation has never really been used as an alternative to incarceration. It has served primarily over the years to extend the coercive reach of the criminal justice system and to serve the convenience of those employed by that system. Rothman's earlier book, Discovery of The Asylum, suggests why the alternatives to incarceration movement has had such a slow pace: we in the United States have had since our colonial beginning a societal love affair with institutions. They have never worked. Indeed, they have worsened the human problems we housed in them, whether they were the aged, the indigent, the mentally ill, the retarded, the orphaned, the runaway or truant, or the criminal. Still we persist in using them — even at the expense of experimentation and adoption of programs and services which would make institutions less needed and less attractive to us. In the past few years with new federal leadership from the National Institute on Corrections alternatives to incarceration have been given another boost — only to be the first programs cut in reduced budgets.

Rates of incarceration have dropped in the United States only at times of war. That fact alone says a lot about societal concerns for the poor and minorities who disproportionately are included in the clientele of the criminal justice system and the population of our jails and prisons. Let's put aside the broader question of why our nation can't demonstrate in times of peace such need and involvement of people in the lower socio-economic strata of our society. The

leadership in this seminar simply must address the need to break the bonds of our nation's overreliance on incarceration and especially in times of high unemployment. The present state of the economy should favor your assertive leadership. The myth that prisons reduce crime should be dispelled at least in your minds by the multitude of data to the contrary.

That's why I've chosen as the topic to keynote this seminar dealing with uniform reporting of parole and probation data: Probation and Parole: Followers or Leaders. We realistically can't expect much change in the way of alternatives to incarceration and systematic release from incarceration without a better informed public. The public has a right to expect accurate information from those officials paid to deal directly and professionally with crime and criminals. On the other hand, the data must be sufficiently accurate to stand the test of public debate at this time when crime reducing strategies are viewed from a political context of either "conservative" or "liberal," rather than "rational" or "irrational." This in a nutshell, to use an appropriate Georgia phrase, should be a principal reason for uniform probation and parole reporting: to enable probation and parole systems to provide accurate and convincing information to both the political officials who establish public policy and to the public whose support is essential to the endurance of public policy.

An essential part of your leadership must be more than information. There must be a belief that you can play a key role in reducing both jail and prison populations. You must believe and you must help the public believe that probation and parole can be a far more efficient and effective response to crime than jails and prisons. Hopefully, you will accept as one criterion for success the extent to which probation and parole reduce incarceration. With that positive an attitude it will then become a realistic goal to strive for a reallocation of institution funds to probation and parole and to a wide expanse of community sanctions.

Reallocation of institution fiscal and personnel resources to noninstitutional services will be necessary if probation and parole are going to progress in a period of scarce resources. This will require service to offenders who would otherwise be incarcerated and earlier release of those who are. This will require capacity building to enable centralized operations to work with decentralized networks of lay citizens and volunteers in local neighborhoods. We know only too well how diversions and alternatives have always been used for offenders in the higher socio-economic levels of society. We should be addressing here the use of probation and parole data to reinforce efforts to build the support systems and levels of tolerance in low socio-economic level communities to enable public confidence in alternative sanctions for those offenders.

When the NCCD did the study of corrections in the United States for the corrections report of President Johnson's crime commission we found that 80 percent of correctional budgets and 88 percent of correctional personnel were allocated to institutions although two-thirds of the offender population were on probation and parole. I doubt that the ratios of resource allocation have changed much between now and then. If anything, the billions of dollars expended over the past decade for new institutions most likely have skewed the ratios even more toward institution costs.

A recent meeting in Massachusetts commemorated the past ten years experience since the closing of the state's correctional institutions for juvenile offenders. The fact that the state funds for those institutions had been

reallocated to community service systems came through as only one of the principal reasons the institutions stand empty today. True, the rates for official delinquency including violent offenses are down from ten years ago. It was pointed out at the conference, however, as the recent Abt Associates study documented, the compulsion to fill available institution beds undoubtedly still could have prevailed, except for the fact that reallocation of institution funds also created a strong community service bureaucracy with a supporting constituency. As one speaker commented, "Let the state now try to take the funds away from Catholic charities," — one of the several community youth service systems.

There is an object lesson in this Massachusetts experience for probation and parole nationally. Constituency building may well be more important than capacity building to your future in the decade of the eighties. And constituency building in the present climate of fear and frustration will not be easy. Here again, we must rely upon accurate information and ways of presenting it to help change public attitude which too often regard probation and parole as little more than leniency. With a supportive public attitude and constituency probation and parole officials can not only accelerate development and support for community dispute settlement and other social functions which have moved from the neighborhoods into the courts and police stations.

Through this screen of optimism I know that some of you must think I'm whistling in the dark. Public attitudes you think are laden with fear of crime and violence that there is little room for tolerance of ideas for expanding probation, parole or other forms of community sanctions.

In my opinion, however, the American public cares more about the criminal justice system than it has at any time in my forty-years-plus of experience. True, the public is not as informed as it should be. It does not understand the complexities of the crime problems. It gets most of its information from officials who choose to follow, rather than to lead, the public opinion. It is, therefore, badly confused about the extent to which the criminal justice system appropriately should be held accountable for reducing crime and violence. But, the public is frightened and it does care. Even though its expectations are wrong or are too high, it wants the criminal justice system to succeed.

Let's look back a few years. As we do, some of you who would rather be leaders of public opinion may want to examine your own attitudes and whether they, like the public's, are based more on emotion than on sound data.

By the mid 1960's in the United States most restrictions and statutory exclusions for the use of probation and parole had been removed. Today, those exclusions are back in the form of mandatory sentences in most states — reenacted on the promises of public officials that such sentences will reduce crime. The penalty of death had fallen into disuse by the mid-sixties because the public didn't consider it a deterrent to violent crime. Today nearly every state and our federal government have public officials assuring the public that public executions are essential to the reduction of violent crime. Long forgotten also are the gross injustices which led to the abolition and disuse of habitual criminal laws. Also forgotten are the inequities and corruption in the administration of good behavior time which accelerated the demand for full-time and trained parole boards.

If the public had cared and had been sufficiently informed to see through the isolation of the justice system I doubt that we would have suffered the era of the child savers and lack of due process in our juvenile courts. I doubt that criminal justice policy-makers could have tossed aside so lightly the concept of rehabilitation and esteem building in favor of retribution and incapacitation. On the other hand, in programming to influence change in offender attitudes and behavior we would not have been allowed to make the medical treatment model the umbrella for offender rehabilitation.

If the public's base of information could match its expressed concerns about crime and criminal justice I doubt that a national task force would have recommended as late as September, 1981 that some of the solutions to violent crime could be found in still more repressive criminal justice policies. We also might have expected the Chief Justice of the United States who heads the United States Judicial Conference to lead the federal judiciary in championing more rational sentencing provisions in the proposed federal criminal code rather than proposing ways of making our prisons more attractive for every larger prisoner population. The judicial conference has remained silent on the excessively long sentences and exclusions for probation in the proposed code.

Whenever I hear or read the Chief Justice's statements of his admiration of the late James V. Bennett and of Sweden's Torsten Eriksson, I wish that he would reread Jim's writings and revisit Sweden. Jim Bennett was a champion for more equal and less severe sentences. Through Bennett's leadership the first criminal justice legislation President Nixon signed into law abolished mandatory sentences for federal drug offenders. Sweden's newer policies have reduced the length of sentences with a consequence of reduced prison population. Torsten Eriksson's prisons are being dismantled because Sweden's economy, like ours, can't afford their high costs and low benefits in reducing crime and violence. The same has happened in Denmark and Holland.

Even in England today we find the conservative government of Prime Minister Margaret Thatcher admonishing the courts to reduce both the length of sentences and the use of prisons in favor of community sanctions. Ironically, Mrs. Thatcher's Home Secretary, William Whitelaw, draws heavily on research information from the United States in efforts to convince the courts and the public of the soundness of their recommendations.

In my reference to the Chief Justice's speeches about providing prisoners the opportunities to learn and to earn their way out of prison I am not being critical of the need for institutions to offer such assistance. Learning and earning opportunities are basic to any system that would enhance, rather than diminish, one's sense of self-esteem and capacity to stay out of jail or prison.

On the other hand, the large majority of offenders are now in community corrections programs and a greater number should be. Priority to structuring learning and skill training opportunities in concert with probation and parole would avoid making incarceration an attractive sentence for people who could make it in the free community.

The fact that most public policy for criminal justice is based on uniformed public opinion is due to another problem for which accurate reporting data will be essential if this is to be changed. For almost all of the past fifteen years crime has been regarded as a political issue. Solutions have been proposed in the context

of a war on crime, and of political rhetoric without follow-up and accountability on whether the promises adopted as public policy produced the promised results. To suggest that the criminal justice system, as effective as it might become, could not reduce crime and should not be our principal response to crime has been fraught with political risks. To suggest to public policy and opinion leaders that there should be major resource reallocation from institutions to community corrections will require information that can stand the test of political debate.

Accurate parole and probation data will be critical for another concept which is new to criminal justice policy making. We can safely predict that social and economic impact studies and forecasts of the consequences of new criminal justice legislation and policies prior to adoption will become commonplace within the decade. North Carolina in 1981 reduced the length of sentences in its new criminal code by 25 percent following such an impact study and forecast soon after its enactment. Despite the horrendous length of sentences in the proposed federal criminal code the senate bill would require an impact evaluation of new federal sentencing guidelines before congressional approval. It also requires, similar to Minnesota, that federal prison capacity not be exceeded. It would be unfortunate and costly if the federal code abolishes the U.S. Board of Parole before the impact evaluation is completed. With sentencing guidelines initially fixed in relation to the current average length of sentences, and a span of indeterminacy retained for judicial discretion for aggravating and mitigating circumstances sentencing disparity and excessive length will still be with us. Some systematic form of conditional release will have to be returned to if we are not to have more prisons than we have colleges and universities in the United States.

Ironically, sentencing guidelines evolved from the collaboration, leadership and data base pioneered by the Uniform Parole Reports and the decision making grids to improve the ability to predict the optimum time for parole release. It is ironic because the trend toward sentencing guidelines, while partially successful in diminishing the stampede toward determinate sentences for all crimes, also threatens the elimination of parole boards which were first served by the Uniform Parole Reports. I am confident we in the United States will someday, beyond my lifetime, place incarceration in a rational and human rights perspective and use our prisons for days, weeks and months instead of years for most prisoners, as do the Netherlands and Scandinavian nations, and as is the trend in other nations of Western Europe. Until that time parole release mechanisms will be with us possibly under many new names and possibly as new discoveries not dissimilar from the way the Vera Institute's Manhattan Bail Bond Project discovered Roscoe Pound's 1922 recommendation for release on recognizance.

One other matter in closing, and this is to point up what is possibly the most important need for national offender data base you are developing. The principal focus and therefore greatest weakness in sentencing guidelines to date is with sentences to incarceration. If you are to be leaders rather than followers, you must provide the data and the confidence for the least restrictive sanction — for a presumption against the use of incarceration including jail, as a condition of probation. Coupled with this task is one on which there is even greater controversy. Your data, in addition to guiding policy setting, legislation and service effectiveness, must encourage expanded research on the characteristics of offenders who should be classified as dangerous. I'm aware that our present ability to predict dangerousness in terms of future violence is notoriously weak. I doubt that any other organization has been so appropriately criticized as we in the NCCD for recommending legal criteria for extended sentences for persons classified as dangerous offenders in our 1967 Model Sentencing Act.

On the other hand, despite the inherent problems of defining and identifying the dangerous offender our research efforts must continue. Despite the lack of universally accepted criteria every judge, every parole board, every sentencing commissioner, and every probation and parole officer are daily and routinely deciding for themselves which offenders are truly dangerous. In most instances without the widest and most accurate data base of offender characteristics and the impact of criminal justice experiences those decisions will continue to be made on the basis of individual biases and emotional reactions either of self or others, often as reflected through the public media. I'm also personally of the opinion that when the public understands we in criminal justice are as fearful as they and are hard at work on that issue from a nationwide data base as you are developing here our public policymakers and public opinion leaders will support a far more selective use of incarceration and a major concentration of resources on community corrections.

I finish where I started — let's be leaders — not followers. But let's be certain our leadership is based on accurate information.

KEYNOTE PANEL  
NATIONAL CRIMINAL JUSTICE DATA

Using National Data

by Richard Sparks, Ph.D  
Professor, School of Criminal Justice  
Rutgers University

Presented at the UPR/NPR Seminar, Atlanta, Georgia on March 2, 1982

I think I ought, perhaps, to begin by saying a little more about some of the uses that I have made of different sorts of statistics, to give you some idea of my perception of the problems of using national criminal justice data, because I'm going to take the particular view of national criminal justice with which some may not agree.

As Cheryl Ruby mentioned, I have some experience in the line of victimization surveys, and I'm associated in a very small way with the consortium headed by the Bureau of Social Science Research, which is at the present time trying to re-design some aspects of the National Crime Survey. I have done some research in recent years on determinate sentencing in California and Oregon, which gave me the opportunity to use the, if I may say so, very excellent data from the Bureau of Criminal Statistics in California, and also the California Department of Corrections. It also gave me the opportunity to use some data from the Oregon Corrections Division, which were not so useful. But it finally gave me the opportunity to work with some data collected by Ira Blalock, and his colleagues at the Oregon Parole Board, which were more useful.

I've also been involved in some studies of sentencing guidelines. Oddly enough, this is one of those issues at the judicial level, as was said earlier, in which national reporting is not as strong as it might be. And, finally, I'm working at the present time with Jim Garafolo, at the Eastern NCCD research center, on a project on how to measure the use of imprisonment — how to calculate the rate of imprisonment, what's the most appropriate way of measuring the use of imprisonment across different jurisdictions. That report will be finished in about another two months. That particular project has led Jim and me to review the data on imprisonment in the fifty states; and, as you might imagine, in some states there are very good correctional data on all aspects of the use of imprisonment, from courts, prisons, parole, and so forth; and, in other states, of course, the data are not so good. Contrast this with my previous work in prison systems and correctional systems in England, which is a small country with a unified system: it's to me very striking, because the heterogeneity of types of correctional systems in this country is really quite staggering. I'll come back to that in a minute.

I think we ought to start by distinguishing a couple of different senses of the expression "national data." If we talk about "national" data, we may mean data that are nationally collected — that is, by a central agency, for example, the Census Bureau, who, as you know, carry out the victimization surveys for BJS. That's not the sense I mean, because, though the Census collects a lot of data in the correctional area, or criminal justice area, that could as well be done in general for this or that particular state and still be national.

Or by national data, we may mean aggregated data for the nation as a whole. That is, data which are published and presented for the fifty states —

forty-eight, or fifty of the states — as a lump. I think that national data, in this sense of data for the country as a whole, all lumped together, are by-and-large useless. There can be no sillier number than the total number of victimizations in the United States as a whole, which was published in some of the earlier, less informative, publications of the National Crime Survey. What was it? 14,372,000 thefts, or something like that, as I recall. What can you do with a number like that? Nothing. You may think that time series data for the country as a whole would be useful. I'm not even convinced of that; because another project that some colleagues of mine are engaged in now is looking at what we call "crime for gain," which we use to mean serious stealing by grown-ups; and if you look at time series data on theft, whether they be coming from UCR, or victimization data, or whatever, for the country as a whole, you find you can't do very much with them, because you don't have any similar measure of the changes in opportunities to steal over a time.

Some colleagues of mine — Jake Gibbs and Peggy Shelly — have been looking at cargo thefts at the various airports and ports in the New York area. Of course, if you look just at the total numbers, J.F. Kennedy Airport has an enormous problem — has about 70 percent of all the thefts of cargo reported in the Port Authority of New York and New Jersey. That doesn't tell you very much, until you take into account how much cargo goes through the various ports; and when you do that, the rate of theft is really very little different, in the different ports and airports.

Now, the point is that it took my colleagues the better part of a year to get information on the volume of cargo, so that they could standardize the theft figures, so they could make some sense of them. We have no such data for the country as a whole. We have only crude proxies for them. When Cohen and Felson studied this a few years ago, they showed that you can get some rough handle on the stock of durable consumer goods; and if you want to measure portability of property, you can use the weight of the lightest television set in the Sears Roebuck catalog, or something of that sort, which works very well, as a matter of fact. But merely to present for the country as a whole some figure on crime — anything to do with crime, or criminal justice — is apt to be not only misleading, but downright pernicious; because, inevitably, the conclusion is going to be reached that the moral health of the nation is deteriorating, or that Reaganomics works, or something of that sort. If it's around long enough, the age structure of the population is going to be such that the crime rate is going to fall.

What are useful are data that are collected and organized nationally, but are presented and analyzed and disseminated on a jurisdiction-by-jurisdiction basis. I say that because not only decision-making in this area, but also most of the important research questions, are relatively localized. It doesn't seem to me there are very many interesting questions about the U.S. as a whole, without looking at regional variation — without looking at the changes and differences between the different states, and that sort of thing. Now, it's not to say that patterns are not useful. They are. And sometimes those patterns can only be drawn out by data that are organized and collected in a centralized fashion. Bureaucracies of one state, BJS, NCCD, whatever.

In the victimization survey area, the Census Bureau now publish data for, I think, the eighteen largest states. (There are statistical reasons why they can't publish data for every state.) Inevitably, of course, when one talks to police chiefs, they say, "I want data on my city." Well, in a national sample, even one

which contains 136,000 warm bodies, if their city has 200,000 such bodies in it, they've probably got two people in the sample, which isn't very useful. It's a difficult job to persuade people — not just police chiefs — who have a legitimate need to know what their crime patterns really are like, when they are insisting on data for their city, that they should settle for data on cities like theirs. So the concept of "generic areas" — of kinds of places that are roughly similar, is important in victimization studies; and, I daresay, also in the case of the police statistics like those that are published in UCR.

Now, when you get further on in the system, of course, the problems are a little bit different; because, as I said earlier, the fifty systems are so different. Some, for example, have integrated jail and prison systems, so that you don't have a state prison system versus local jails. But I think it's — six states, is it? Five or six, that have this. On the other hand, you may have one big lump or system, rather like the English system, which I referred to earlier. You don't have any jail overcrowding that way; you just have prison overcrowding.

The age cut-offs are different, in different states. The powers of the courts for different kinds of offenders obviously differ enormously; we even take into account differences in this use made by the courts of imprisonment. In order to make any sense out of that, you have to take into account differences in crime rates, differences in patterns of crime — which, again, vary enormously, as you know, between states, and generally between regions; and ultimately you have to take into account the demographic facts of life in particular states. While the age structures of states don't vary all that much, obviously their racial and ethnic compositions do; and unless you have all those data put together in a consistent, coherent fashion, you can't make any sense out of that state's rate, let alone make sense out of comparisons; and it is in comparison that the value of nationally collected and organized data must lie.

Now, I think it's very important here to consider the role of BJS, NCCD, and others, in organizing, and attempting to put on a uniform basis, data from state and local correctional systems. I mentioned earlier the consortium that I'm involved with slightly. Looking at modifications of the crime surveys, Jim Galvin this morning mentioned the contracts which are shortly to go out to reevaluate the Uniform Crime Reports. What he didn't say is that the contract is going to be for two million dollars. They're going to buy a million dollars worth of wooden stakes and a million dollars worth of garlic, and then they're going to drive the stakes through the late director's grave — J. Edgar — and they're going to sprinkle the garlic on top; and while they do that, Paul Zolbe back there is going to tear the "Crime Clock" out of the front of the Uniform Crime Reports. Can there be a more misleading device than the Crime Clock? No. (Paul knew something like that was going to come me about this.)

Now, I want to play devil's advocate for a moment, and ask, especially in light of Allan Lammers' very useful remarks on the present climate of opinion here concerning research and statistics, and particularly in this area — we are, I believe, confronted with an administration which knows what criminals and other undesirables are like — welfare cheats, unwed mothers — they think they don't really need "social research" to tell them that. When Mr. Stockman first made the point that social research would not have high priority any more (he has backed down on that somewhat), but when he first made the point, I thought he didn't really mean it; he just wanted to save some money. An even more horrifying prospect, I would think, would be that they did mean it; that they really didn't think that social research is capable of benefiting public administration.

One can certainly think of cases in which data on some aspect of the operation of the criminal justice system has been harmful. It has been argued — I'm not certain it's correct, but it's been argued — that when in Pennsylvania they attempted to implement statewide sentencing guidelines, it wasn't until they found out how much variation between the different courts in the state there was in the use of incarceration that the guidelines were effectively scuttled in the legislature. They found that the rural judges of that state were incarcerating about half the people that they convicted, whereas in Philadelphia and Harrisburg and Pittsburg, they were, of course, imprisoning fewer, with a much higher crime rate. They were using jail and prison much, much less.

Well, if you're going to try to impose statewide sentencing guidelines on that kind of a pattern of variability, the best thing you can do, one might argue, is to keep quiet about the variability so nobody knows about it; because they will take unkindly to the idea, which is what happened. Good data can always be misused. I don't really believe that that's an argument for not collecting data. If I believed that, I wouldn't be in the business I am in. I do think, however, that there is a need for two things that have not been sufficiently considered when we're talking about data, which are intended to permit intelligent comparisons between different jurisdictions, as well as providing people within a single jurisdiction with a sensible picture of what their part of the world is like.

First, I think that, even with the data that are now collected, a great deal more could be done by way of improving presentation of this data. I think Mr. McCafferty is going to be putting on — I asked him this, so I wouldn't have to bring them — some transparencies showing some set of court statistics or parole statistics. You all know the kinds of dreary pages of numbers — the telephone directory has a much nicer cast of characters, although the plots are — they're just boring, and they're not appropriate for most users. (I'm leaving aside researchers, whose job it is to let themselves be bored by going through tables of numbers of that sort.) But people in the real world, administrators, it's the last thing they need.

In recent years there has been a — well, I want to give you some examples. One: BJS has recently been persuaded, I think, that the prevalence of victimization is a much more useful notion than the incidence of victimization. That is to say, it tells you more about patterns of crime and risks of harm and so forth, if you tell people what percentages of the population have been victims in a different period of time, than if you just give a victimization rate. (This is so for technical reasons, having to do with multiple victimization.)

Well, now, going from that, it's been suggested that that, we should present what Al Biderman calls "cheery indicators" of victimization. In other words, instead of reporting that 30 percent of the population had some kind of incident of victimization in the past year, you report that 70 percent didn't, which is a "cheery" indicator; and either of them deserves consideration, because, of course, the emphasis, for not only the layman but the politician and the administrator, is on what a dreadful thing it is that, let's say, 20 or 30 percent or whatever had some kind of incident of victimization. What they should be reflecting on is that, after all, two out of three, or seven out of ten, did not; and that difference in emphasis, which is what you can get by simply subtracting from 1.0. can be important.



More ambitious kinds of improvements in presentation are possible. In recent years there have been a number of advances in what are now called graphic data analysis methods. Computer routines now exist to take great wedges of numbers and display them graphically, visually, in ways that can bring it not merely to the ninth grader or the senate administrative assistant, assuming you can tell the two apart, but to someone who really wants to know what is going on. To give you an example invented by a friend of mine, Howard Wainer, a device known as a "Chernoff face." It consists of a little drawing of a face, e.g. you have fat faces and thin faces; you can have faces with smiles and faces with frowns; you have big ears and small ears, and so forth and so on. With a combination of features on a little drawing of a face, you can represent as many as eight or ten — I think now he's got one that will do twelve — different kinds of characteristics. So one of the uses that Howard Wainer put this to was to reproduce what he called a "Facing the Nation" map. He had a map of the United States, and each state had a face on it, and by the features of the face, in that case, taking into account such things as temperature, unemployment rate, mean education of the population, etc., he was illustrating graphically the thing that H.D. Mencken did a few years ago about the "worst" American state, which then, as now, according to those criteria, was Mississippi.

But the point is that the device could be used, and many similar devices do now exist; and the computer software exists; and it's coming to be realized that there are many instances in which one picture really is worth several thousand words. One could do this for sentencing reform, for example. New Jersey could have a slightly insane look; for those in which nothing has happened, the face could be asleep; and California could look furious; and so forth and so on. But it's easy to disseminate information of that kind — and in that kind of national comparison, of course, I'm being a little facetious there. There are many better ways to present the information on which so much money is now spent in the collection stage, and it is very important to give, I think, careful consideration to that.

Now, the other thing that is needed is some sort of explanation of criminal justice system data, from, let us say, arrest onward, but particularly courts and corrections and probation and parole, which we're directly concerned with here. There is some sort of an explanation, or an analysis, of the variety of structures to which the data relate. You need not merely tell people which state, or that their state, has a relatively high prison population; you need, however, to make it clear why this is so. Prison populations may be high because conviction rates are high; because the probability of imprisonment, given conviction, is high; because terms are long, and that can come about either because terms are set long by courts, or they are set long by parole boards, or there is a heavy recommittal parole violation rate. There's an infinity of different reasons. In each case, this has to be made clear. I think the UPR and NPR are two systems that illustrate this in a very important way; because it is true, from both probation and parole, that, while they carry with them some soft social control in the form of normal supervision, they also carry with them the contingent liability to go back to the "slammer," where they went the first time. There is, of course, a considerable variation between jurisdictions, even within the same state, in the use of this contingent liability; and it's very important to bring that kind of contextual information out, rather than just reporting the total numbers.

So I conclude by suggesting that there is a need for — conceptual structure, I suppose you could call it, that will let users (and I mean here policy-makers, decision-makers, administrators, and the enlightened general public) not only to

know what their data are, but also what their data, and others' data with which they may be compared, mean. Researchers' needs are to be put last on the list. I think that's where they should go, Reaganomics or not. In part this is because if we ever succeed in getting especially good, nationally collected and organized, data we'll put a lot of researchers out of business; and I certainly wouldn't want that to happen.

KEYNOTE PANEL:  
NATIONAL CRIMINAL JUSTICE DATA

Some Thoughts About  
National Data Collection

by James A. McCafferty  
Chief, Statistical Analysis and Reports  
Administrative Office of the U.S. Courts

Presented at the UPR/NPR Seminar, Atlanta, GA, March 2, 1982

This seminar provides me with a deja vu experience. A few years ago, I attended several of these seminars, not anticipating that I would ever be on the agenda as one of the keynote speakers. My thoughts then probably were no different than yours are now. Your thoughts, however, must be tempered by the new economic policies and shrinking budget effecting the fate of your programs. Before these economic concerns, the sky was the limit, although a few of us with historical perspective attempted to control excesses in data collection.

In one instance, we spent several hours determining how to count alcoholics; later it was drug offenders. Several of us determined that the data provided by the client was useless unless a medical diagnosis was provided. This is something I learned at Ohio Penitentiary when we asked prisoners about their criminal record or even their age. We had to depend on an objective report rather than the prisoner's information.

Now we are at another fork in the road. Not only do our statistical programs have to be justified to our agency but also to those who determine the amounts to be appropriated. From my vantage point as President of the Association for Correctional Research and Information Management, an affiliate of the American Correctional Association, I know of at least four states that have reduced, if not outright disbanded, statistical programs for collecting data on prisoners. The question is how soon the same budget cutting process will reach probation and programs that maintain statistical inventories of their clients.

I share the responsibility with some fifty colleagues for the collection and analysis of statistics for the Federal Judicial System. Our Division, as a part of the Administrative Office of the United States Courts, publishes reports on a routine basis and responds to Congressional inquiries, as well as those from the Federal Judiciary and the public at large. We perform our duties without fear or favor because we sincerely believe that to take sides with any issue would diminish our reputation for objectivity.

(Attached at Exhibit A, a discussion of Federal Judicial Statistics.)

What sort of data do we collect? Our Division handles data reflecting all criminal, civil, appeals, and bankruptcy cases and other programs such as trials, juror usage, judges' workloads, public defenders' workloads, wiretap, Right to Financial Privacy Act cases, and Equal Access to Justice cases. In addition to reporting on all defendants tried in Federal courts, we record defendants placed on Federal probation, or imprisoned and later placed on parole or mandatory release. We also receive reports on defendants placed on supervision through a pretrial process, those who serve additional Special Parole terms in connection with drug convictions, and military paroles.

As a part of our entire responsibility, the program referred to as "Persons Under Supervision" amounts to about 120,000 separate computer records at the close of business each year or about 10 percent of the Division's computer workload. Of the 120,000, those placed on some type of probation supervision amount to 68 percent. The balance is composed of persons on parole, special parole, and mandatory release supervision.

(See Exhibit B.)

I would like to report that we are inundated with requests about our supervision reporting program. Such is not the case. Actually, most of the requests are front-end type. For example, we are constantly asked what were the sentences for this or that offense. The response includes how many were placed on probation, how many were imprisoned, how many were fined, and combinations of the three. We can provide ranges of sentences as well as averages.

Most of this service is provided to the courts, principally the probation officers who are charged by regulation to obtain sentences nationally, as well as in their particular district. We do receive Congressional requests, especially after some incident of national importance has occurred, such as an airplane hostage situation or weapons crime.

A **Sentences Imposed Chart Book** is provided to the probation officers in the district courts in connection with their requirement to have national sentencing data. In 1982, we plan to go public with this publication. For each statutory offense, the book will show the type and length of sentence and, if fined, the dollar amount of the fine. We do not collect data on restitution, nor do we obtain data on the conditions of probations.

The **Sentences Imposed Chart Book** will reduce the number of requests for national data considerably because, heretofore, the only information we could provide was from a statistical table which groups offenses by common names such as burglary, weapon laws, immigration laws, and the like. Now it will be possible for users to identify the actual statute and the resulting sentence. (See Exhibit C)

Offenses on Federal enclaves, such as national parks, are generally prosecuted under the catch-all Title 18 U.S.C § 13. To identify the general crime, we must use the four-digit statistical offense code that is used to create our statistical table. For example, a larceny committed on a Federal Indian reservation would be coded 3700 if a felony or 3800 if a misdemeanor.

This is my first axiom. If you receive many requests that have an "I need it yesterday" priority, then it is wise to develop a published response which will help you to take your limited resources and answer special requests with one overall project.

The second axiom is that if someone asks a question there is a good possibility that someone else wondered about the same matter before. For example, in the early 1970's we received many questions on sentences imposed for violations of the Selective Service Act. Our solution was to provide a response to a larger audience. This information was placed in a routine report. We also could have considered an "add-on," which may or may not need to be updated and repeated. If dropped after a period of time, you can determine just how useful an "add-on" is by the number of irate letters or calls asking for the data. An absence of requests

provides an indication as well. If you don't hear from anyone, it shows that the data is no longer a matter of concern. This is what happened when we stopped publishing data on Selective Service Act violations.

A third axiom is to make the statistical tables and exhibits understandable to the person who doesn't gather data and who often cannot balance his or her check book. However, don't underestimate the requestor's ability to understand your subject matter. Be certain that the requestor has all of the necessary tools, such as code books or statements describing the data collection, to decipher the tables and exhibits. This can eliminate follow-up letters or requests for additional information. If there is no follow-up, the requestor presumably has been fully informed and needs no more information.

The other side of the coin is the fourth axiom. Do not commit to do more than you can provide. Younger colleagues often agree to provide a universe of data, not recognizing that they will be the provider. A brief discussion among staff members might produce a more reasonable response not requiring long hours of research.

A fifth axiom is to show relationships using simple percentages. You must be careful to emphasize the fallibility of certain comparisons. Since statistics are not an exact science, the probability that our findings are wrong lurks on the horizon at all times. Coupled with this is the occasion when we don't have the data, or what we do have is not adequate to respond to an inquiry.

Some parole and probation inquiries that my office receives often lead to specifications of our own. For instance, we are asked how long individuals serve under supervision. But to answer this, we have to fine tune our system and talk about "first time" probationers or parolees. To add in the violators who are back on supervision after a previous interruption can result in contamination of data and defeat the purpose of providing good data.

You have to look also at the types of probation supervision. In the Federal system, we have probation direct from court, indirect probation, magistrate probation, and pretrial probation.

Indirect probation can follow a short jail term, sometimes referred to as a split sentence, or it can follow imprisonment and parole. The latter is a little bit mind-boggling, but it does happen when a judge in a distant district imposes probation on a defendant who is or will be serving a prison term followed by parole. Pretrial diversion probation clients are placed on supervision two ways... one directly from the U.S. Attorney without a court case, and the other from the court after a court case has commenced.

So, when someone says "tell me about probation," we have to ask some questions. This brings us to the sixth axiom. We must often ask our own questions before we can zero in on the request. Most of us have heard the story about the youngster who wanted to know where he came from. The adult responded, giving a discourse on the entire birth process, when all the youngster wanted to know was the place of birth. Thus, it is a good practice to restate the question and then proceed to answer it. When doing this we usually ask what the data will be used for and who the person represents.

The seventh axiom is to treat all requests with equal respect, whether they are from a Senator's administrative assistant or a high school student. And students do call asking for information. I recently received a telephone call from a student who, coincidentally, lives in this state, asking about the latest information on capital punishment. I learned that not only was I the fourth or fifth person she had talked to, but also that she was calling from Georgia at day rates! She was almost frantic and, after determining what she wanted and learning she had to have it in a few days, the information was copied from a Bureau of Justice Statistics Bulletin, and sent to her. Here is her response:

Feb. 2, 1982

Mr. McCafferty,

I would like to thank you very much for the information that you sent to me on capital punishment. The material is very informative and will be of great emphasis for my debate. It was very kind of you to take the time to send it to me, and I am very grateful.

Sincerely,

Considering her efforts to obtain the information and the fact that we could respond with some alacrity, she was one citizen who met the bureaucratic monster and got a response.

This brings up my eighth axiom. We all deal with large aggregates of data which are extremely crude measures of what is really happening. There is a tendency to make observations that the data are not meant to support. For example, there are many questions on how probationers and parolees did on supervision. The Federal experience is rather good, but again we have no measure of what lies behind these statistics, whether success or failure. For those involved in serious research, there are appropriate support structures such as the District court, the Probation Division, or the Federal Judicial Center (our sister agency which handles training, research, and innovations). For researchers not in the government circle, we provide complete lists of all persons received for supervision and terminated from supervision, if they are working on a tax supported research grant.

Think of us, then, as direction finders. We can specify the type of supervision, but to give a full response to the improvement of a client or the full extent of misbehavior, it would be necessary to carry out a comprehensive study. (See Exhibit D.)

We are also asked about demographic characteristics of probationers and parolees. All are surprised when we say our probation service supervises males, females, and corporation. We provide information on educational levels, rather than grades as we did in prior years. Our prior criminal record information is limited to non-juvenile, probation, prison less than a year and prison more than a year. We don't provide combinations or number of incidences. Age and marital status are also available but more requests are for age data.

The characteristic of age provides a good example for my ninth, and final axiom. Provide background knowledge when it might effect statements made about your data. Some years ago, the defendants in the federal system generally were somewhat younger, but since auto theft cases were referred back to the states (except organized crime offenders) and juveniles were diverted to the local communities, the defendants in federal court and the probationers have become older. If you were comparing our data to offenders in a state system, this would be crucial information.

To sum up, look over what you are doing. Improve you publication and response image. Cultivate serious requestors, giving appropriate time to their requests. Encourage your staff to obtain advanced degrees in statistics, the social sciences, or law. Allow for and support their participation in seminars like this one, and press for funding for them just as some of your mentors have done for you.

Determine who else has information that can be helpful. The answer to a question is not, "No, we don't have that!" It should be, "No, we don't, but we know someone who might," or "We don't have that, but we have this." Get the question straight and provide a quick, suscinct, and understandable response. In the years ahead, we will need support from those we have helped because, indeed, they are our true constituency.

## FEDERAL JUDICIAL STATISTICS

### I. EARLY HISTORY

The first comprehensive judicial statistics compiled on the work of the United States Courts appeared in the published report of the Attorney General of the United States for the calendar year 1871. In order to compile information for this publication, summaries were manually prepared by the U.S. Attorney and the clerk of each district court and submitted to the Department of Justice. Clerks of the Circuit Court of Appeals provided summary data direct to the Department of Justice.

In 1934 a special committee, appointed by the National Commission on Law Observance and Enforcement (Wickersham Commission) to study the business of the Federal Courts, recommended abolishing the summary or special report system and instituting case card reporting. This was done in 1935. The transition to an individual case card reporting system was a fundamental change designed to insure consistency and reliability both in reporting and in classification. It eliminated the anomaly of having classifications made by more than 80 different Clerks of the Court.

With the enactment of the Administrative Office Act of 1939 (53 STAT 1223), the well-developed case card reporting system for judicial statistics was easily transferred and continued in operation as authorized by the statistical duties of the Director.

The civil and bankruptcy programs were transferred from the Department of Justice to the Administrative Office in 1940. In 1942 the data system on criminal cases in the U.S. District Courts was transferred. An individual case card reporting system was initiated by the Administrative Office for persons received for supervision by the Federal probation offices in late 1945. The authorization for statistical data to be submitted by the courts is found in Title 28 U.S.C 604 (a)(2); 604(b); 604(d)(2)(3); Title 18 U.S.C. Sections 3635, 3167, and 3155; and Title 11 U.S.C. Section 81.

### II. The Division of Procedural Studies and Statistics

A review of the Annual reports of the Director will show the continuity of data collection and analysis for almost four decades. This operation was directed by Mr. Will Shafroth from 1940 to 1960. Then Mr. Ronald H. Beattie, who was with the Administrative Office from 1941 to 1943 returned as the Chief of the Division in 1961. It was under his leadership that statistics of Federal Offenders and Persons Under Supervision of the Federal Probation System were connected.

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Prepared by James A. McCafferty, Chief, Statistical Analysis and Reports Division, Administrative Office of the United States Courts, Washington, D.C. 20544 for the American Society of Criminology meeting at the Capital Hilton, November 13, 1981, ASC Panel #84. Susan E. Martin, Organizer and Chairperson.

During Mr. Beattie's tenure statistics on weighted caseloads were published in the Annual Report of the Director. Mr. Beattie took advantage of the findings obtained from six time studies carried out in the 1940's and 1950's. In these time studies, judges meticulously recorded all of their work on the bench and in chambers.

In 1965 Mr. Beattie returned to California as Chief of the Bureau of Criminal Statistics. Mr. Joseph F. Spaniol, Jr. who worked in the Division as an attorney since 1951 became the new Chief. Mr. Spaniol helped stabilize the reporting program in an era of reduced budgets. Further, he developed a computer operation which replaced the accounting machines first used in World War II. He also prepared the first **Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications**.

Ernest Friesen, Director, selected Mr. Robert Halloran in 1969 to serve as Acting Chief of the Division. In this capacity, Mr. Halloran produced new forms and improved reporting methods. His hallmarks were **Juror Utilization Report** and the **Court Management Statistics** annual profile statement. During this period a revised court of appeals reporting system was also established. All of these efforts were approved by the appropriate Judicial Conference Committee.

Mr. Rowland F. Kirks, the Director since 1970, selected Mr. Paul Bender as Chief of the Division in September 1971. Mr. Bender changed the name of the Division to Information Systems and reorganized the staffing and priorities in connection with processing of data. He further obtained the assistance of outside consultants in order to improve computer equipment use. On September 19, 1972, Mr. William E. Davis succeeded Mr. Bender as Chief. The Statistical Analysis and Reports Branch, which had been a part of the Division of Information Systems, was designated as a new division by Director Kirks on July 18, 1977. The Chief of the new division is Mr. James A. McCafferty, who has been with the Administrative Office since January 1963.

### III. The Statistical Analysis and Reports Division

This Division was first established with two branches, Statistical Processing and Analysis and Reports. The Statistical Processing Branch handled all statistical forms that were entered into mini-computer terminals. These forms were received for each filing and termination reported by the court to the Administrative Office. Thus, each criminal, civil, probation, and bankruptcy form, as well as reports from the Clerks of the Courts of Appeal and reports from judges on trials were completed by this Branch. The Analysis and Reports Branch handled all manual reporting systems, such as juror utilization and wiretap, and prepared all of the analytical and statistical reports.

On October 9, 1979, the Division reorganized into three branches — Criminal, Non-Criminal and Judicial Information, with technical support services provided by the Office of the Chief. This placed Branch Chiefs and Program Analysts, directly responsible for all instructions for carrying out the day to day tasks. These instructions are required by court personnel to complete the records and the data entry of statistics obtained from the program.

The Office of the Chief provides overall program guidance as well as editorial services, statistical control, and overview of Volume XI, **Statistical Manual of the Guide to Judiciary Policies and Procedures**.

### IV. Description of Case Reporting Systems

**A. Civil statistics (JS-5,6 and 9).** For each civil case docketed in the U.S. District Courts, the Clerk of the Court completes a civil docket package (D.C.111) which identifies the case, the parties in the case, and the date filed. The clerk also describes the suit, statute under which it is brought, the amount of the demand claimed, etc. Also indicated is how the case was filed (original action, removed from state court, remanded from an appellate court, reopened, or transferred from another U.S. district court) and the basis of jurisdiction (U.S. a party, Federal Question, local or diversity of citizenship). Beginning in October 1980, the county of residence of the plaintiff in private cases and the defendant in U.S. cases were required for all civil filings. Most of this information is obtained from a civil cover sheet completed by the plaintiff's attorney.

Once the civil case is terminated, another card form is completed showing the manner in which the case was closed and the outcome of the litigation. The case cards for filings and dispositions are mailed to the Administrative Office by the clerks of the court, together with a monthly control form on the fifth working day of the succeeding month.

**B. Trials (JS-10).** This is a monthly report submitted by individual district judges listing each civil or criminal trial heard before a judge or jury. Also other proceedings conducted by a judge are reported, such as, number of arraignments and pretrial conferences.

**Visiting Judges (JS-10A).** These statistics are obtained from regular trial reports, however, each visiting judge is asked to verify trial service so that the final table which appears in the printed **Annual Report of the Director** will be accurate.

**Places of holding court.** Obtained manually from the trial reports, it is account for days of trial and the number of trials occurring in the various places of holding court as provided under Title 28, U.S.C.

**C. Bankruptcy Statistics (BC-100, 100A and 100B).** The statistical reports concerned with the filing and disposition of a bankruptcy case are part of an interleaf "snap out" set. When the Clerk of the Court prepares the docket sheet opening a bankruptcy case, the pertinent statistical data (name and occupation of the debtor, date petition filed, and type of bankruptcy) appear on the carbon copy attached to the docket sheet.

The docket sheet set also includes a form for the reporting of the closing of no asset and asset cases. If there are assets in a bankruptcy proceeding, a schedule must be prepared by the Clerk of the Court showing the distribution of the assets of the bankrupt.

The Bankruptcy Reform Act of 1978, which established the U.S. Bankruptcy Court, required in addition to reports on debtors, reports on adversary proceedings rising out of bankruptcy cases (BC-11, BC-5, BC-6, BC-104 and BC-109) and the reports of trial activity (BC-102) and a petit jury report (BC-103). It is similar to the civil reports

required of the district courts. Except for the trial reports, which are provided by the U.S. Bankruptcy Judges, all of the forms are sent to the Administrative Office by the Bankruptcy Clerk of the Court.

- D. Statistics for Courts of Appeals - (JS-34).** For each case filed in one of the U.S. Courts of Appeals, an interleaf "snap out" case card is prepared identifying the case (the names of the appellant and appellee) and the docket number of the case in the district court. The appellate data can be tied in with the district court statistical data. The case card is completed when the appeal is terminated showing the procedural progress of the case together with the type of disposition.
- E. Criminal statistics (JS-1, 2 and 3).** The statistics on criminal cases are also reported on cards prepared from a "snap out docket set (A.O. 256). The Clerk of the Court records the district and office number where the case was filed, the docket number, how the case was commenced (by indictment, or information or other proceeding) and the name of each defendant. The offense charged (all counts) including the statutory offense citations are fully described. Further, pursuant to the Speedy Trial Act of 1974, data for speedy trial recording are supplied.

At the time of disposition for each defendant, the clerk prepares a card showing the initial plea and for those convicted the last plea, together with the pertinent dates required for the Speedy Trial Act. When a defendant goes to trial, the outcome of a court or jury trial is likewise reported. The offense and type of sentence imposed is reported for defendants who were convicted. For all defendants disposed of, information concerning representation by counsel including an appointment made under the provisions of the Criminal Justice Act of 1964 is obtained. The JS-2 and JS-3 cards and a control sheet for cases filed and disposed of are submitted monthly.

For convicted defendants, the following additional data are entered: sex, race, age, education level, marital status, prior criminal record and whether or not there was a presentence investigation. This demographic information is forwarded to the A.O. by the Federal probation office where the conviction occurred.

Statistics obtained from this program are published in **Federal Offenders**.

- F. Probation statistics (Forms 3 and 3a and Form 9).** The probation statistical reporting program covers all persons placed under the supervision of Federal Probation System. This includes those placed on probation by U.S. district judges or by U.S. magistrates. It also includes a growing group of persons who are referred by U.S. attorneys to the probation office for supervision. These pretrial diversion cases involve young persons who have had no prior contact with law enforcement or the courts. Also included in the program, are those persons released by the U.S. Parole Commission from Federal institutions for parole or mandatory release supervision by probation officers, as well as persons placed on special parole under provisions of the Drug Abuse and Prevention Act of 1970.

Reports on persons received for supervision are provided by each probation office to the Statistical Analysis and Reports Division. The type of data recorded on these reports includes the district and office number, the docket or institution register number, the type of case, the date received from supervision and demographic data (sex, race, age, marital status and education). Also, the prior criminal record if there was a presentence investigation are reported.

When supervision ends, the probation officer reports the conditions under which the person was removed from supervision. If a violation of the rules or conditions of probation should be the reason for the removal, the type of sentences or sanctions connected with these violations are shown on the reports. If there is no violation or the person under supervision is removed from supervision before his term is completed because of satisfactory behavior, this is also documented.

The data compiled in the criminal and probation statistical reporting programs form the basis for two special reports, **Federal Offenders and Persons Under Supervision**.

- G. Wiretap reports.** Under provisions of Title II of the Omnibus Crime Control and Safe Streets Act of 1968, the Director has the responsibility of submitting annually to the Congress a calendar year report on all applications for orders authorizing or approving the interception of wire or oral communications. These are filed with the Administrative Office of the U.S. Courts by Federal and State Judges and by prosecuting officials of Federal, state, and local governments.
- H. Juror Utilization.** Full-scale reporting commenced again in 1971 after the old JS-11 was dropped in 1962 because of the faulty statistics it provided. The new form essentially tells all jury utilization on the petit jury side. In January 1974, statistical reporting was developed for grand jurors (JS)11G). Statistics from this program provide the basis for the annual **Juror Utilization** reports.
- I. Cases under submission - Court of Appeals and Court of Claims and Cases and matters under advisement-District Courts.** Since 1940, we have maintained liaison with the judges on cases which for all purposes of judicial administration have been tried and the final decision rests with the judges. For the courts of appeals and the court of claims any cases under submission more than three months become a part of a special quarterly report sent to the Chief Justice and to the Chief Justice of each circuit. For the district judges, motions or cases under advisement 60 days or more are recorded. These reports are distributed to the Chief Justice and the Chief Judges of the circuits and districts.

The purpose of these reports is to assist the Chief Judge in managing the circuit's workload. It is to be noted that with the increase in overall workload and a corresponding increase in judges, the number of these cases either in the courts of appeals or in the district courts have not shown a marked rise in cases under submission or advisement. This entire reporting process is handled by correspondence

with the judges and the reports are limited to distribution within the judiciary.

## V. The Judicial Statistical Process Cycle

- A. About 2,000 court personnel in the Federal Judiciary assist in the completion of the statistical reports. These reports are required either by statute or by the Judicial Conference. The Statistical Analysis and Reports Division operates with the advice and recommendation of the Subcommittee on Judicial Statistics which reports to the Committee on Court Administration of the Judicial Conference.

The usual pathway for change is for the division to provide the Subcommittee with a staff paper on a particular statistical problem or the effect of a change in a statute and recommends alternative solutions. Upon approval of a recommendation the division prepares manuals or other types of instructions to inform court personnel. The Subcommittee meets twice a year and makes its report to the parent Committee on Court Administration which then reports to the Judicial Conference.

- B. Statistical forms are mailed by court personnel to Washington, D.C. and processed by a small group of data analysts under the supervision of a professional staff. Two methods are used to capture data. One method is key stations which utilize cathode ray terminals (CRT) which are on line to a large computer. We use the CRT's for entering our appeals, civil trials, bankruptcy, criminal and probation statistical case cards. The second method is manual which covers the jury, public defender, wiretap and cases under supervision and advisement programs.
- C. Quality control is practiced by providing court officials with listings of cases. Internally, one full time position is donated to monitoring our data entry phase. Also, by resolution of the Judicial Conference we provide lists of three year old civil cases on an annual basis. Lists of defendants pending in criminal cases or persons under the supervision of the Federal Probation System are provided as requested.
- D. The Federal judicial statistics system has undergone many dramatic changes in terms of computerization and programming. Every effort has been made to provide complete continuity in reporting the events in the courts. Thus, one can be certain that a term used in the 1940's has the same meaning in the 1980's.
- E. We first used the case cards furnished by the clerks of court statistical data and reduced the data to punch cards and then to key tape, and then sent to the computer. Now all of our statistical programs are entered directly into the data base which is stored in the computer. The division now uses copies of records printed out from the criminal Courtran docket developed by the Federal Judicial Center. Further, headway has been made in providing Court of Appeals statistics using an Appeals Information Management System, also under development by the Federal Judicial Center.

For many large courts, the possibility of direct telephone contact from the court to the main computer operated in Washington, D.C. is a reality. In the middle 1980's with the present momentum of technology we should see direct data entry from most of the large courts which could account for about 60 percent of the Federal judicial statistics. For other Federal courts, the monthly mailing of documents and current processing procedures will need to continue until they can enter data on their own computer.

## VI. Adaptive Judicial Statistics

### A. Providing for change

Significant changes have been possible by adding to the statistical base and coding system. A recent example is civil social security filings which, at one time was assigned only one nature of suit code. Now this nature of suit has been re-classified into five categories. This change was suggested by a Federal district judge. In consultation with the Social Security Administration we adopted a new coding scheme whereby the clerks of court could advise us about the main issue of the Social Security claim. Thus, instead of reporting the filing of Social Security cases we can classify them as Health Insurance Benefit Claims, black lung claims, disability insurance claims, etc.

Recently, due to a Congressional request, we broadened our statistical collection to include the county location data on civil and criminal case filing reports. Also, as new procedures arise for handling civil, criminal or appeals cases we have modified the data collection.

For civil, following the passage of the Magistrates Act of 1978, we added to our civil statistical data on the judicial work of magistrates. For criminal, we have added the various requirements for reporting the implementation of the Speedy Trial Act. For appeals, we have more detailed information on how three-judge panels dispose of cases.

### B. Providing publications

We increased the visibility of our statistics by publishing several reports for the use of the judiciary, as well as the Congress and other Federal agencies. The list of ongoing reports and the year they commenced appear below. All reports are for the years ended June 30, unless otherwise noted.

**Annual Report of the Director, 1940**

**Quarterly reports, 1940-1971, (Revitalized as Federal Judicial Work-load Statistics, 1977)**

**Federal Offenders, 1963**

**Persons Under the Supervision of the Federal Probation Systems, 1962-1963**

**Court Management Statistics, 1970**

**Juror Utilization, 1971**

**Pictorial Summary, 1973**

- Speedy Trial Report, 1976
- Report on Wiretaps (Calendar year report), 1968
- The Right to Financial Privacy Act (Calendar year report), 1979
- Equal Access to Justice Act, 1982

In addition, because Annual Reports of the Director are almost out of print the appendix tables for three areas have been reprinted in a single volume for the years 1970 through 1979. The volumes are:

- United States Courts of Appeals -  
Workload Statistics for the Decade of the 1970's
- United States District Courts -  
Civil and Trials
- United States District Courts -  
Criminal Cases and Defendants.

For the most part, these publications meet the need of a vast audience. But there are always some questions for which no report or statistical table has been prepared. We accept these challenges from the Congress, the General Accounting Office, and other Federal agencies. Resources prevent us from making special studies or reports for law schools, other state or private judicial agencies, law firms, or research groups unless they have a tax supported grant to their study.

**C. Providing Computer Tapes**

For those with such grants, we provide computer tapes plus copies of our statistical codes. For the most part, our computer files go back to the late 1960's when we converted our key punch files to computer tape. We are confident that our historical tapes since 1970 are the best record of case filings and terminations in the Federal courts. These tapes are the property of the Administrative Office and must be returned and handled according to conditions we have established. Under no circumstances can our computer tapes be used for other research or be used as a data base at future time.

For example, for example, our statistical collection amounts to almost 1.3 million as follows:

Court Statistical Program	Number of Statistical Records Processed
Court of Appeals	48,000
U.S. District Courts	
Civil (Includes trials)	300,000
Criminal	80,000
Probation	140,000
Bankruptcy Courts	
Bankruptcy Cases	600,000
Bankruptcy Adversary Proceedings	100,000
Total computerized records	<u>1,268,000</u>
Non-computerized records	<u>15,000</u>
Total records	<u>1,283,000</u>

Exclusive of data processing staff, 51 authorized positions in the Administrative Office handle this statistical workload. The information is received from some 2,000 court personnel in the Federal Judiciary. Processing each record at an average cost of ten dollars, the Federal judicial statistical cost is about 13 million dollars per annum or 2.2 percent of the 600 million dollar appropriation estimated for the Courts of Appeals, District Courts, Bankruptcy courts, other judicial services, and the administrative office.

In summary, judicial statistics are no longer being regarded as spillover from the business of the courts. Statistics are an important task. They are regarded as important for budgetary programs, determining judicial workload and providing the public a record card on the health of the Federal judiciary.



Exhibit B

TABLE B 1. FEDERAL PROBATION SYSTEM PERSONS RECEIVED FOR AND REMOVED FROM SUPERVISION DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1981

Table with 12 columns: CIRCUIT AND DISTRICT, PERSONS UNDER SUPERVISION JULY 1 1980, RECEIVED FOR SUPERVISION (TOTAL RECEIVED, TOTAL LESS TRANSFERS, COURT PROBATION, PRE-TRIAL DIVERSION, U.S. MAGISTRATE PROBATION, PAROLE, MANDATORY RELEASE, MILITARY PAROLE, SPECIAL PAROLE), and RECEIVED BY TRANSFER.

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Table with 12 columns: PERSONS UNDER SUPERVISION JUNE 30 1981, REMOVED FROM SUPERVISION (TOTAL REMOVED, TOTAL LESS TRANSFERS, COURT PROBATION, PRE-TRIAL DIVERSION, U.S. MAGISTRATE PROBATION, PAROLE, MANDATORY RELEASE, MILITARY PAROLE, SPECIAL PAROLE), and CIRCUIT AND DISTRICT.



**DEFENDANTS SENTENCED IN UNITED STATES DISTRICT COURTS  
BY MAJOR OFFENSES FOR THE TWELVE MONTH PERIOD ENDED JUNE 30, 1980**

MAJOR OFFENSE		IMPRISONMENT		PROBATION		COMBINATION SENTENCES				FINE ONLY		OTHER SENTENCES	(THIS SPACE MAY BE USED FOR NOTATIONS)
TITLE/SECTION AND LEVEL	A.O. CODE	DEFTS.	MOS.	DEFTS.	MOS.	DEFTS.	PRISON MOS.	PROB. MOS.	FINE	DEFTS.	AMOUNT		
AVERAGE SENTENCE DEFTS. SUBTOTAL		1	24										Continued from previous page.
18 541 9931 OVERALL AVERAGE ALL DEFENDANTS		1	24										
18 542 FELONY 9931		1	1	1	11	1		12	3,000	2	1,500		
18 542 FELONY 9931		1	24	1	24	1		24	500	1	2,000		
18 542 FELONY 9931				3	36	1		24	2,000	6	5,000		
18 542 FELONY 9931						1		24	2,500	1	20,000		
18 542 FELONY 9931						1		24	3,000	1	65,000		
18 542 FELONY 9931						1		36	500				
18 542 FELONY 9931						1		36	1,500				
18 542 FELONY 9931						1		36	4,000				
18 542 FELONY 9931						1		36	5,000				
18 542 FELONY 9931						1		60	1,000				
18 542 FELONY 9931						1		60	2,000				
18 542 FELONY 9931						2	1	60					
18 542 FELONY 9931						1	2	24					
18 542 FELONY 9931						1	3		1,000				
18 542 FELONY 9931						1	4	12					
18 542 FELONY 9931						2	14	36					
18 542 FELONY 9931						1	18	50					
AVERAGE SENTENCE DEFTS. SUBTOTAL	37	2	13	5	29	19	7	36	2,167	11	10,909		
18 542 9931 OVERALL AVERAGE ALL DEFENDANTS	37	2	13	5	29	19	7	36	2,167	11	10,909		
18 545 FELONY 8700		1	24	1	12	1		60	10,000				
18 545 FELONY 8700				1	24	1	2	36					
18 545 FELONY 8700				1	36	2	3	36					
18 545 FELONY 8700				1	60	1	6	36					
18 545 FELONY 8700						1	6	60	2,000				
AVERAGE SENTENCE DEFTS. SUBTOTAL	11	1	24	4	33	6	4	44	6,000	2			

*Offense is entry of goods by means of false statements. Maximum penalty for each convicted offense is \$5,000 or imprisonment not more than two years, or both. Forfeiture of imported merchandise is provided.*

*Smuggling goods into U.S. Maximum penalty: \$10,000 fine or imprisonment not more than five years, or both. Forfeiture provided. This offense is applied to drug smuggling.*

Exhibit C

**Table E-7**  
**Persons Removed from Supervision Showing Type of Supervision and Violation**  
**During the Twelve Month Period Ended June 30, 1981 (Excludes Reinstatements, Re-Releases, and Transfers)**

TYPE OF SUPERVISION	TOTAL REMOVED	NO VIOLATION		WITH VIOLATION		TYPE OF VIOLATION					
						TECHNICAL <sup>1</sup>		MINOR <sup>2</sup>		MAJOR <sup>3</sup>	
		TOTAL	PER-CENT	TOTAL	PER-CENT	TOTAL	PER-CENT	TOTAL	PER-CENT	TOTAL	PER-CENT
TOTAL.....	30,230	24,589	81.3	5,641	18.7	3,595	11.9	537	1.8	1,509	5.0
PROBATION U.S. DISTRICT COURTS.....	13,128	10,990	83.7	2,138	16.3	1,450	11.0	187	1.4	501	3.8
PRETRIAL DIVERSION.....	2,021	1,974	97.7	47	2.3	40	2.0	5	0.2	2	0.1
FEDERAL PAROLE.....	6,230	4,231	67.9	1,999	32.1	1,155	18.5	192	3.1	652	10.5
MANDATORY RELEASE.....	2,142	1,778	83.0	364	17.0	206	9.6	39	1.8	119	5.6
MILITARY PAROLE FROM MILITARY INSTITUTION.....	221	215	97.3	6	2.7	4	1.8	0	0.0	2	0.9
PROBATION U.S. MAGISTRATES.....	4,790	4,023	84.0	767	16.0	534	11.1	87	1.8	146	3.0
MILITARY PAROLE FROM FEDERAL INSTITUTION.....	1	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0
SPECIAL PAROLE TERM.....	1,697	1,377	81.1	320	18.9	206	12.1	27	1.6	87	5.1

<sup>1</sup> VIOLATION OF THE CONDITIONS OF SUPERVISION OTHER THAN CONVICTION FOR A NEW OFFENSE.

<sup>2</sup> CONVICTION FOR MINOR OFFENSES SUCH AS DRUNK, DISORDERLY, PETTY THEFT, TRAFFIC VIOLATION, ETC. WHEN SENTENCE IS 90 DAYS OR LESS IMPRISONMENT, OR ONE YEAR OR LESS PROBATION, OR A FINE.

<sup>3</sup> INVOLVEMENT IN OR CONVICTION OF A NEW MAJOR OFFENSE, INCLUDING ABSCONDED FROM CUSTODY, ARRESTED ON ANOTHER CHARGE, OR CONVICTED AND SENTENCED TO MORE THAN 90 DAYS IMPRISONMENT, OR MORE THAN ONE YEAR PROBATION.

Exhibit D

KEYNOTE PANEL:  
NATIONAL CRIMINAL JUSTICE DATA

National Reporting in  
an Era of Reaganomics

by Allan Lammers  
Deputy Director  
SEARCH Group, Inc.

Presented at the UPR/NPR Seminar Atlanta, Georgia on March 2, 1982

**Diminishing Budgets and  
Changing Priorities**

We are living in a time that is different from any that most of us here have experienced before. Our nation is experiencing rampant inflation, a serious recession, and massive joblessness.

What we have grown use to in the public sector during the past two decades has suddenly been taken away: block grants are gone; revenue sharing is gone; and surplus budgets seem to be a thing of the past. Federal aid to local governments and state governments has diminished. With rising joblessness, less taxes are being collected to cover government expenditures, funds for human services are nearly depleted, and staffs are being decreased at all levels of government. There is no longer any doubt that we are in fiscally very hard times.

Since the passage of Proposition 13 in California and subsequent similar actions throughout the nation, government has cut waste, trimmed the fat and generally reduced what could be considered frills. Since much of this has already been done, the timing of the present economic slowdown has a particularly profound impact on all of us.

Administrators know they have no choice but to make budget cuts. It's never easy to say "no," but when you don't have the money, you have to say "no." This is what confronts government and what faces every administrator involved with budget decisions today.

This atmosphere forces administrators to look at all aspects of the budget — there are few sacred cows. Each line item must be analyzed in terms of its usefulness to an agency facing spending cuts. The possibilities for priorities to be changed is obvious. Where it's unclear to administrators how the agency benefits from a particular budgeted activity, that item is in clear danger of elimination.

**The Response by Corrections  
and Parole Administrators**

Administrators at all levels of corrections and parole are no different than others. They no longer ask their staffs how much budget support they want. Rather, they ask how the items can be justified or what happens if the item is erased from the budget.

One area that is being scrutinized in many states by corrections administrators is the area of research and statistics. A major reason for this is that, too often, researchers and statisticians, over the years, have inadequately supported

the needs of administrators. When an administrator realizes questionable benefits from such activities, or he has received little useful information, then he has limited ammunition upon which to defend the continuation for such activities. This is particularly true when people from the budget area ask, "What activities are most important?"

When such a scenario happens, clearly, the state agency's data gathering is in trouble; and if this occurs on more than just a few occasions, national reporting is in trouble, very real trouble.

**Arguments for Abolishing  
National Reporting**

A pattern begins to emerge that plays into the hands of those who would argue for the abolishment of national reporting. Typically, the arguments have come from states, claiming that national reporting is too time-consuming, that national reporting has questionable practical uses, that national reporting provides little more than a comparison of apples and oranges, and that national reporting is just one more federal demand upon the states.

This latter point may become a more important criticism in the upcoming months and years. National reporting agencies should be conscious of the political arena in which they find themselves. Based on the National Governors' Conference a couple of weeks ago, I think there was clear and strong rejection from many governors regarding the rejection of many of the demands being placed on the states by the administration's new Federalism proposals. If such a negative attitude gains strength, any demands upon states by the federal government may be suspect, or grouped together as items to be fought by the states. Thus, even voluntary and long established programs that depend on state cooperation, such as UPR and NPS, could get caught up in the turmoil and find themselves in serious jeopardy.

**Taking the Offense Now**

So, what does all this mean to state and national reporting agencies in terms of their immediate and long-term directions and subsequent actions to be taken? My suggestion is to take the offensive now, and not wait for budget time when you have to be put on the defensive.

To take the offensive, one might begin by considering some of the positive arguments that support national reporting activities. Certainly there are a variety of good justifications. Permit me to offer two arguments for national reporting.

1. As a public service agency, corrections and parole should provide a full accounting of their activities.

Whether from programmatic or budgetary standpoint, full accounting from the agency director to both his administration or governmental branch and to the public should be made as to the status of their activities under their jurisdiction. Reporting such items nationally is merely an extension of what every agency should already be producing for general dissemination.

2. Just as the 50-year-old UCR (Uniform Crime Reporting) provides a nationwide view of crime, UPR/NPR and NPS can begin to provide a national perspective on parole, probation, and institutionalism.

My wording here is "begin to provide", because until national reporting in the corrections and parole area is actually required, as in the case of UCR, we really can only assume that we're dealing with a sampling of agencies and descriptors.

In any event, I think there are good reasons for national reporting and these reasons must be communicated. Continuing to take the offensive, here are some examples of actions that states should consider:

- o Enhance recordkeeping methods/system. A good record-keeping system makes a systematic accumulation of data readily available for national reporting.
- o Tackle problems related to supplying data to national reporting agencies and categorize into two groups: quick-fix and long-term. Some long-term problems may have to be temporarily ignored — but not forgotten.
- o Launch an aggressive program to identify uses of national reporting data. If this can't be done, you're going to be in real trouble.
- o Emphasize national reporting data that have become institutionalized in your state. Since people are typically resistant to change, take advantage of this trait because items that are truly institutionalized are much more likely to be safe from budget cuts.
- o Educate your department's decision-makers. Adopt approaches that permit department administrators to understand the value of the data not only for them but for their department as well.

Agency representatives can take the offense and develop their strategy for supporting national reporting, but there is an added advantage if the national reporting agencies themselves can assist in this effort. Examples of strategies for national reporting agencies to consider for adoption include the following:

- o Support in an active way the strategies for states. Technical assistance support on-site or by phone could help states in implementing their strategies. Increased written communication offering suggestions and techniques for implementing strategies in states might be helpful. Also, the development of models for use as tools by the states could be quite beneficial.
- o Strictly control any changes in data definitions. Avoid making states change their data collection methods or (in the case of automated systems) forcing states to reprogram in order to supply national reporting data.

- o Stress feedback to states. Whenever and wherever possible, provide states with the tools and mechanisms to "show off" the usefulness of being involved in the national reporting program. When feedback benefits can be shown by states, there is less of a problem for states in justifying the time and effort in continuing to support data dissemination to national reporting agencies.
- o Consider streamlining data needs. Some data is better than none at all — and by all means recognize that today it may be politically inappropriate to push for an expanded data base — even though it may be quite rational in terms of attempting to understand the system and interpreting trends.

### Conclusion

These examples of strategies for consideration by representatives of both the states and the national reporting agencies are offered to initiate a conscious effort at taking the offensive in matters related to national reporting. Following such action might avoid being put into a defensive position at some later time.

In this era of post-Proposition 13, Reaganomics, and diminishing government revenues, requirements for justification of activities is being emphasized to a much greater degree at all levels of government. As individuals involved in national reporting, you must be willing to accept the challenges not only to do homework related to your job, but you must also take on the added responsibility of public relations (internal or external). Successful P.R. work will allow administrators to realize the value of national reporting. If offensive action is not taken and public relations not performed, people will not have the opportunity to gather ten years from now. They will not meet to discuss national reporting in the 1990's because during the 1980's national reporting activities will have become defunct.

WORKSHOP:

STATE RESPONSES TO PRISON CROWDING

Prison Crowding Overview

by Bradford Smith, Ph.D.

Manager, Offender-Based Reporting System  
National Council on Crime and Delinquency

Presented at the UPR/NPR Seminar, Atlanta, Georgia on March 2, 1982

My name is Brad Smith. I'd like to welcome you to the State Responses to Prison Crowding seminar. I began working for the National Council on Crime and Delinquency yesterday. Last week I worked for Abt Associates, as I have for the last five or six years, in large measure on the study of American prisons and jails.

With me today I have Kay Knapp with the Minnesota Sentencing Commission, and Brian Taugher, the Deputy Secretary for California's Youth and Adult Correctional Agency.

As most of you know, there are three broad responses to the problem of prison crowding. Actually, I should say, there are three broad responses in addition to the death penalty.

The first response is to decrease the number of individuals going into a correctional system. Typically, that particular approach is discussed in terms of alternatives. Today Kay Knapp will discuss a unique approach to adjusting the input into the prison system. It is the use of the sentencing guidelines that have specifically taken into account the capacity of the prison system.

The second approach for dealing with problems of crowding is to adjust the capacity of the system. The study that I've been associated with at Abt has probably been most widely publicized for the finding that, if you increase the capacity of prison systems, it will have the effect of filling those prison systems. That finding was determined by doing regression analysis, where population and capacity figures were each lagged — populations were lagged one, two, three, four, five and six years after the capacity figures, and vice versa. It was found that after two years there was one inmate for every bed space of capacity; and that after five years there would be 1.3 inmates, or 130 percent.

These results are probably incorrect. They apparently had an enormous impact on the debate about the construction of capacity and its impact on future population sizes. However, Al Blumstein, Jacqueline Cohen, and Bill Gooding have reanalyzed the data, and have not been able to produce the same results. I reviewed the report. I believe that their criticism is valid one. The thing that will probably be the most interesting is the sociology of science of this particular event. There has been a sense, primarily on an anecdotal basis, that increases in capacity lead to increases in the size of the prison population. In many instances this has been true over the last five to seven years, but not in terms of any kind of law of nature beyond what's been going on in some specific jurisdictions.

It will be fascinating for me to watch how this reanalysis becomes integrated into the debate about how states should respond to prison crowding. My own guess is that taking descriptions of the world and couching them in terms of statistical conclusions increases the confidence that we have in those results,

probably by an order of magnitude. I think it will be fascinating to watch how, when those results that have been supported by a statistical analysis disappear, we change our beliefs or how we attempt to choose among the number of alternatives that are facing us in dealing with prison crowding.

As I said, there are three basic responses to prison crowding. The first is to make some kind of an adjustment to the input, which is typically discussed in terms of alternatives. The second approach is to increase the level of capacity. Brian Taugher is going to discuss the situation in California, which, as many of you know, has a half a billion dollar bond issue for prison construction on the ballot.

The last option is to do something with the back door of corrections, to release individuals. There is a long history of releasing people on an ad hoc basis as prison populations exceed the available capacity. At least half the states, either now or at some time in the past, have had to respond to federal court orders to do something about the sizes of their prison population; and a number of states, including Oklahoma, Michigan, and Connecticut, have legislative mandates to release individuals when a particular population within those states begins to exceed available capacity.

I'd like to discuss for a few moments the Abt recommendation, which calls for adjusting the back door of corrections as the appropriate way to handle the problems of crowding. It's our belief that state legislators have been only too willing to lay down the sanctions for criminal behavior, but have been unwilling to be the bottom line with regard to the conditions of confinement. The time has come for state legislators to take responsibility for the conditions of confinement by adopting standards of confinements that, de facto, establish the capacity of that particular state system to hold individuals.

We really don't imagine that there is going to be discussion about the appropriate number of square feet on the floor of the legislature. However, the responsibility could be turned over to the Executive Branch to determine the capacity of that particular state to hold individuals at both the state and local level. It's not only square footage that should be used to establish capacity. For a particular state system you create a list for every bed that you believe will hold an inmate, and you make a decision on, let's say, a weekly basis of whether the bed is now part of the state capacity (i.e., meets legislatively mandated standards); and you make a decision of whether that bed is a part of the state capacity at a minimum, on the basis of how many square feet are available, whether the ventilation is working, whether the lock works, whether it's safe for inmates as well as staff, whether the plumbing works, and whatever else. So you don't fix the capacity; the capacity within the institution is going to vary.

The same piece of legislation also enacts automatic release of inmates from that system, once the population exceeds that capacity. The presumption here is that the legislature has mandated the minimum conditions of confinement for incarceration, and has also mandated that if, those minimum conditions of confinements, are not being met, that individuals will be released. Instead of the situation that now exists, which is to assume virtually infinite elasticity of prison walls; if we have too many people for the available capacity, we'll just simply take it out of the lives of the inmates and staff, the assumption is made that the legislature establishes what the conditions of confinement are, and if they are not met, that we take up the slack in the community, as opposed to the closed prison system.

The third part of our proposal recognizes that there is virtually no systematic connection between the release of inmates and the decision to incarcerate. There are many judges making decisions about incarceration. We propose that the agency responsible for releasing inmates back into the community also have the responsibility for collecting and formulating information about who will be released back into the community. At a minimum, the expectation is that the presumptive release date, as well as the actual release date of the next group going out and the difference, and some kind of historical trend of how that gap is changing over time, be provided to the judges, perhaps on a weekly basis. The judges in that state, in addition to taking into consideration the particular offender and his offense history, and the particular offense, must now also take into consideration the impact of their sentencing decision on who is going to be in prison and who's not going to be in prison. Our recommendation is that that information about who it is that is being released be communicated to judges so that they can then, based upon their own intelligence, good sense and self-interest, decide what kind of response they want to make to the releasing decisions that are being made.

Obviously, they have a number of choices at their disposal. They can certainly lobby the legislature for additional capacity. They can as a group recommend developing a sentencing guidelines commission. They may, in fact, ask the legislature to develop a sentencing guideline commission made up of representatives of the legislature, the judiciary and the executive branch, that would format a sentencing guideline policy that would reflect the amount of capacity that's available in that particular state.

When we were preparing the report, we believed that this may not be politically the most viable solution, in that we find it unlikely that legislators are going to be particularly excited about bringing home the responsibility for the conditions of confinement in their prisons to the legislature. It is much easier to let that slip into the area of executive or judicial responsibility. But as a starting point in the debate about what to do about crowding in state facilities, we have found, in presenting the idea, that it's enormously difficult to disagree with it on logical grounds. In other words, apart from the political reality of actually trying to bring this about, it provides a useful starting point for seriously wrestling with the problems of crowding within state facilities.

That concludes my remarks. Returning to the first solution I mentioned to deal with crowding in the state facilities — change the number of persons going into prison — I'll turn it over to Kay Knapp.

WORKSHOP:  
STATE RESPONSES TO PRISON CROWDING

The Minnesota Example

by Kay Knapp  
Research Director  
Minnesota Sentencing Guidelines Commission

Presented at the UPR/NPR Seminar, Atlanta, Georgia on March 2, 1982

I'm going to be coming to the defense of legislators and legislatures here, because I think, at least in the case of Minnesota, the legislature has acted very responsibly indeed. In 1978 the Minnesota legislature created the Minnesota Sentencing Guidelines Commission, and directed the Commission to promulgate sentencing guidelines that would be presumptive both with respect to who should go to prison and for those who go to prison, how long they should stay.

The Commission that was established was made up of nine members, two of whom were district court judges appointed by the Supreme Court Chief Justice, the Chief Justice, or his designee, the Commissioner of Corrections, the Chairperson of the Parole Board, a prosecutor, a defense attorney, and two citizen members. Other than law enforcement, every aspect of criminal justice was represented, and is represented, on the Commission.

In developing the sentencing guidelines, the legislature mandated that the Commission take into substantial consideration two things: One was past sentencing and releasing practices in the system; and, most importantly, the legislature directed the Commission to take into substantial consideration correctional resources, including but not limited to state and local correctional facilities — jails, workhouses, and prisons. That was a crucial feature in the development of the sentencing guidelines. The legislature in Minnesota has had a long-standing interest in controlling prison populations, so it wasn't surprising of the blue that this occurred. They had been addressing that issue for a number of years.

From 1974 through 1978 the legislature in Minnesota had, like many other states, been debating the merits of determinate sentencing. Minnesota had a very highly indeterminate sentencing system, and the legislature had been attempting to pass a determinate sentencing bill; the issue basically deadlocked in the House of Representatives, although support for determinate sentencing was almost unanimous in the State Senate. After a number of years of struggle, the legislature created the Sentencing Guidelines Commission. Every determinate sentencing bill that was seriously considered by the legislature during that time had a prison population constraint attached to it, such that the penalties that were established would not mean a massive increase in prison population. So the legislature, I think, had consistently seen the connection between how many people you send to prison and how long they stay and resource constraints.

A couple of other things the legislature had been doing during the decade: they had passed a Community Corrections Act dealing with the question of alternatives to prison within the community. They provided money to the counties to develop those alternatives, again, to keep prison populations down. They also allocated funds to build a new prison, and were, in fact, in the process of building a new maximum-security prison, even when the Sentencing Commission was established, but those new beds were deemed to be replacement beds, not addi-



tional beds. So even in constructing, the legislature had determined that they were not necessarily interested in massively increasing the bed space. That is a little bit of the background in terms of the legislative concern with prison population constraint and how that got into the guidelines legislation.

What is important about that prison population constraint in the guidelines is that for the first time, it became quite feasible to develop an overall sentencing policy that would fit within the constraints. The determinate sentencing legislation primarily directed itself to durations of confinement; and if you consider that the populations are made up of the numbers who go in and how long they stay, the determinate sentencing legislation was really only dealing with half of the issue. So they could control, perhaps, durations in that manner; but they were not in any way addressing the decision about how many to send. The sentencing guidelines legislation really dealt with all major components of prison populations, which is both who goes in and how long they stay. It became quite feasible to do extensive impact analysis of the possible sentencing policies on prison populations, and as a methodological approach in developing sentencing guidelines, therefore, we put most of our effort into collecting data for impact analysis and developing a prison population projection model that would be able to take any number of sentencing policy options the Commission might consider and determine the impact of those options on prison populations; that constantly kept the Commission involved and informed about the impact of their decisions upon prison populations. So it was clearly a coordinated policy between sentencing and corrections.

I would like to very briefly describe the basics of the Minnesota Sentencing Guidelines, and then talk a little bit about the impact that they have had upon corrections and on sentencing in the state. The Minnesota Sentencing Guidelines are summarized in a two-dimensional grid. There is a good bit of policy and principle written in the guidelines and commentary as well, which is crucial to the overall policy; but, basically, it's a two-dimensional grid, made up of the severity of the current conviction and the criminal history of the offender. The vertical dimension is the severity dimension and all offenses in the criminal code are categorized into ten severity levels that were normatively ranked and classified by the Commission. The Commission discussed the relative severity of various offenses and came up with an aggregated rating, and then categorized them into ten severity levels, with Severity Level 1 being the least severe of offenses — and that includes offenses like joyriding, unauthorized use, possession of small amounts of marijuana, and some forgeries. The first four levels are essentially property offenses. Levels five and six contain both property and some person offenses — simple robbery or second degree assault; and then Severity Levels 7 through 10 are the most serious person offenses, including second degree murder. First degree murder is excluded from the sentencing guidelines, but all the other offenses are covered.

The labels shown are merely the most frequently occurring offense in each severity level. The second dimension is a criminal history score. The Commission determined that these would be the two dimensions. The criminal history score is made up of four elements of criminal history. Prior felony sentences is a dominant element, and one point is given for each prior felony sentence. There is a limited measure of juvenile adjudication for very young adult felony offenders — those who are eighteen, nineteen, or twenty. An offender can get up to one point added on if they have two juvenile adjudications that occurred when the person was sixteen or seventeen. So it's a very limited measure of juvenile records.

There's a measure of misdemeanor record. Basically, one point is assigned four misdemeanors. And there is a one point limitation. One point is given for whether a person was on some sort of release status at the time the offense occurred, such as probation or parole. By finding out the criminal history score and the severity level of the conviction offense — and I will stress that it is the conviction offense and not alleged behavior that determines the severity level — a person has a location in a particular cell on the grid; and depending on their cell, their presumptive sentence will be determined.

As I indicated, the guideline are presumptive with respect to both who goes to prison and, if they do go to prison, how long they stay; and the dark line is what we refer to as the dispositional line. For almost all of these cells above the dispositional line, the presumption is that the person will not go to prison, but rather will receive a sanction within the community; and that, if the person is below the dispositional line, the presumption is a prison sentence.

In each cell below the line, there is a single number — for example, in this cell forty-one months. That is the presumptive duration should they go to prison. And there is a small range, thirty-eight to forty-four, within which a judge could sentence without departing from the sentencing guideline. Judges are expected to submit reasons for departure from the guideline range.

VOICE: You said expected, but not required?

MS. KNAPP: The guidelines are advisory to the district court. Therefore, the judge must consider the presumptive sentence, but the judge has the authority to depart. The language in the guidelines is that they say they should only depart for circumstances that are substantial and compelling; and that has been interpreted both by the district court and the Supreme Court as a fairly high standard for departure, and therefore, is not to be taken lightly, and it's not to occur very frequently.

Every case is appealable, also, whether it's a guideline sentence, a departure from the guidelines, or whether it's a state appeal or a defense appeal. We have probably now somewhere around twenty-five decisions from the Supreme Court on sentence appeals, so there is quite a body of developing case law on sentence appeal. We did not have sentence appeals prior to sentencing guidelines. It's new to the system.

I would like to read through some of the other principles that are embodied in the sentencing guidelines; because the Minnesota Sentencing Guidelines are much more than a grid with numbers on it. The guidelines provide a philosophy for sentencing and principles that are supposed to be carried out in sentencing. I think it's a very important distinction from perhaps some other sentencing guidelines approaches. The principles applied in the Minnesota Sentencing Guidelines include the following:

Sentencing should be neutral with respect to the race, gender, social or economic status of the convicted felons. While commitment to the Commission of Corrections is the most severe sanction that could follow conviction of a felony, it is not the only significant sanction available to the sentencing judge. The development of a rational and consistent sentencing policy requires that the severity of the sanctions increase with direct proportion to increases in the severity of criminal offenses and the severity of criminal histories of convicted felons. And

here is, again, one of the more important principles embodied in the sentencing guidelines; and that is, because the capacities of state and local facilities are finite, use of incarcerative sentencing should be limited to those who have been convicted of more serious offenses or have longer criminal histories. To ensure such uses of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence; and while the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist.

So there is good deal of philosophy and principles embodied here as well.

VOICE: Do they have to document their reasons for going outside the guidelines?

MS. KNAPP: Yes. With every departure, they're required to submit their reasons in writing to the Sentencing Guidelines Commission, and we monitor all departures.

VOICE: Are they doing that? Is it enforced, or do they sort of do what they want to do?

MS. KNAPP: Yes. We monitor every case under the sentencing guidelines, and we follow through until we do get reasons. So we have complete data on departures. We will correspond with the judge until we get a reason, or reasons.

VOICE: Then what do you do?

MS. KNAPP: We report to the legislature. We study it. The Commission is informed. It is a help in modifying the guidelines and modifying legislation and knowing where problems lie.

VOICE: Can't the judge still do whatever he wants to?

MS. KNAPP: That's right. The dispositional departure rate is 6.2 percent. Half are above and half are below the guidelines. They follow the guidelines in about 94 percent of the cases.

VOICE: To whom does the state appeal?

MS. KNAPP: The Supreme Court.

VOICE: Is good time included, and if so, how much?

MS. KNAPP: The good time is written right into the legislation, and it's one day for every two days served.

I should mention that, in developing the sentencing guidelines, and in the use of the prison population constraint, a lot of different dispositional policies were considered by the Commission. For example, they would consider lines that emphasized criminality as the primary determinate; a flatter line, which would emphasize the severity of the occurring offense more; and various combinations; and at each stage they would be informed as to not only how large the prison population would be, but the nature of the population in terms of composi-

tion, by gender and race, and various other kinds of attributes of the offender. The same holds true with durations. They looked at a lot of different durational configurations and, again, were always given the forecasted impact on the size of the prison population.

VOICE: What is the process for evaluating that?

MS. KNAPP: The commission can modify the guidelines without any review by the legislature. When they first developed them, they went to the legislature, and the legislature, by not taking action, allowed them to go into effect on May 1 of 1980 for offenses committed on or after May 1 of 1980.

I would like to now show you some of the impact, since now we've got about a year and a half experience with it, although guidelines cases were not really being sentenced in the court until the fall of 1980 in any numbers, and it wasn't really until January or February of 1981 that the vast majority of the sentences were being sentenced presumptively, although there's quite a bit of evidence that the courts were considering that policy in indeterminate cases as well.

MR. TAUGHER: What does the Parole Board do now?

MS. KNAPP: They set conditions of supervised release and make decisions as to revocations of supervised release.

MR. TAUGHER: But they can't let these people out earlier?

MS. KNAPP: No. There's no discretionary release. Only good time. And the good time period is served on supervised release. It's not taken off the sentence. It's merely taken off the period of incarceration. Whatever they earn in good time is spent on supervised release when they leave the institution.

VOICE: Then who takes the good time? Is that just according to the Wolf proceeding, or who reviews that?

MS. KNAPP: It's an administrative function of the Department of Corrections, and it results from the disciplinary process, which is fairly well articulated, and it's fairly well monitored, I believe.

VOICE: By who?

MS. KNAPP: Well, there are a lot of watchdogs in Minnesota. We have L.A.M.P.; we have a lot of groups that have been very active in the institutions; and I think it has probably resulted in a clean system in terms of disciplinary infractions and loss of good time.

VOICE: What you're saying is that, with sentencing guidelines, you have no parole for anyone that the sentencing guidelines have been applied to; and the only offense you consider for parole in Minnesota is life sentences? Is this what you're saying?

MS. KNAPP: Yes. That's correct. It's determinate sentencing, in that the sentence is known at the time the judge pronounces it. There is no other discretion in releasing authority.

VOICE: Is there any kind of study being done to show how plea bargaining would affect moving into one side of the grid before they plead?

MS. KNAPP: Yes. We are doing an extensive preliminary evaluation of sentencing guidelines, both in terms of how sentencing practices have changed, the impact on the practices, and the impact on plea negotiations. We're at the very initial stages of the study. In the last two weeks we began presenting information to the legislature and the Commission; and you get to see as much of it as they've seen.

VOICE: What do you do with consecutive sentences?

MS. KNAPP: The guidelines do address consecutive sentencing; it's mostly presumptively concurrent sentences. Consecutive sentences are permissive in a few instances. Again, that's appealable. In a sense, it's handled exactly the same way as any other departure, but there is an aggregation procedure to be applied.

VOICE: How do you handle the concurrent sentence that was prior to May 1st of 1980?

Say he was on probation on a five-year sentence, and then he falls on another number that takes in this, and they also revoke probation on the original one.

MS. KNAPP: In that case, he'd be serving both an indeterminate sentence and a presumptive sentence.

VOICE: And the Parole Board would release on the indeterminate sentence?

MS. KNAPP: That's right; although, increasingly, inmates are going back to the courts for post-conviction release from their indeterminate sentences and getting resentenced presumptively. The legislature modified that, hopefully, so that there are increasing numbers of people who are not serving indeterminate sentences any more.

VOICE: Where did you come up with the timeframes in the grid?

MS. KNAPP: We looked at different models that would either reflect more of a just deserts perspective, or systematic incapacitation. We looked at sentencing models, and then the Commission responded to what they liked, and adjusted it various ways. It was an iterative process.

VOICE: Was there any analysis of real time?

MS. KNAPP: Yes. We did do analyses of both the past real time and also past judicial practices; but the development of everything was normative. It was not in any way tied to past practices. It was just a normative assessment of different philosophies.

VOICE: Now that the guidelines are in effect, what is the use of the Commission? Why not just disband it?

MS. KNAPP: Every year the legislature creates new crimes and modifies crimes; the Commission then integrates these changes into the whole sentencing structure. They monitor and report back to the legislature, and they do modify the guidelines. They've done that twice now, and they will continue to modify them in response to criticisms and as they get more experienced with the way they work.

I would like to briefly show you what happened to the commitments when the sentencing guidelines went into effect. This figure shows the number of commitments to state prisons from about 1975 to 1981. It's not hard to find the point when the guidelines went into effect. There's an immediate, precipitous drop in commitments when the sentencing guidelines went into effect in May of 1980. That maintained itself for about a seven or eight-month period, and then became a little more normal. There was about a 25 percent drop in commitments. We were quite concerned. It was not what we had anticipated. It was not what we intended, and the sentences being given weren't presumptive sentences, they were still indeterminate sentences. So we didn't even get information on the cases, and couldn't tell what was happening. Commitments did go back up and level off, and we're beginning to understand what was going on then, as we get more information. This figure displays monthly commitments broken down by offense type; these are drug and homicides, which really didn't change very much in terms of numbers of monthly commitments. But here are the other person offenses, the aggravated robberies, etcetera; and these are the property offenses. What the guideline policy did was to dramatically change the policy concerning who was appropriate to send to prison and who it was not appropriate to send to prison. The Commission found that a lot of serious person offenders had not been going to prison, and they thought they should go. In order to be able to maintain some balance in the system, they had to recommend that many property offenders who previously had been sent to prison stay out of prison. In May of 1980, the court adopted the guideline recommendations for keeping property offenders out of prison, even though they were indeterminate cases, but didn't start sending the personal offenders, which was the other half of the guideline policy, until later, when the presumptive sentences did reach sentencing. Courts were willing to adopt half of the guideline policy immediately in terms of keeping people out of prison on the basis of recommendations by the defense attorneys; but they were not willing to start committing as serious person offenders until later.

I would like to show you a little bit about past practices and current practices under the sentencing guidelines. On this table the bottom number here would be the 474 offenders who happen to have that combination of criminal history and severity. The top number of one point three is the percentage of people who went to prison in the past; and the major changes the Commission made can be seen when you look at certain kinds of offenses. Less than a majority of the serious person offenders with low criminal histories were going to prison. The Commission did change the system, and the sentencing pattern in the first 5,500 cases under those sentencing guidelines, which is probably equivalent to about a year's worth of sentences, shows some of the dramatic changes in sentencing practices of judges. A fairly radical shift in the kinds of people going to prison has been made. The Department of Corrections is at about 93 percent capacity. We were aiming for 95 percent of capacity in terms of the sentencing policy; and at this point we have maintained slightly below that. In the next month or two, we'll be doing some more long-term projections based on our new data in order to determine if we think that's going to maintain.

VOICE: It would seem to me that the property offenders with a history of, say, three, four, five, and a crime severity of two or three are not going to prison and are a very high-risk group.

Where are they going to jail?

MS. KNAPP: Local jail, local workhouse.

VOICE: What's the jail population.

MS. KNAPP: We don't have a very good handle on what the jail population looks like. Nobody does. The reporting system is very bad. We do know that throughout the 1970's jail use for felons has increased consistently, and it continues to. The subcommittee that we've been working with just passed a resolution that would have the Guidelines Commission develop jail guidelines.

VOICE: It seems to me those people are probably getting split sentences. You're likely to get them back as probation violators.

MS. KNAPP: We monitor when they get revoked for a technical violation and end up going to prison.

VOICE: If you get a split sentence, a year in jail, probation, and a year's violation, do they then get put into prison?

MS. KNAPP: That can occur without departing from the guidelines. That's why we monitor it so closely. There's language in the guidelines to temper that occurrence.

VOICE: You should have gotten those yet?

MS. KNAPP: They're coming. There's not a large pool yet, but we are monitoring it constantly. I think that we're about out of time; and perhaps, later, if anybody wants to ask additional questions, I'll be around. Thank you.

#### IV. SENTENCING GUIDELINES GRID

##### Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

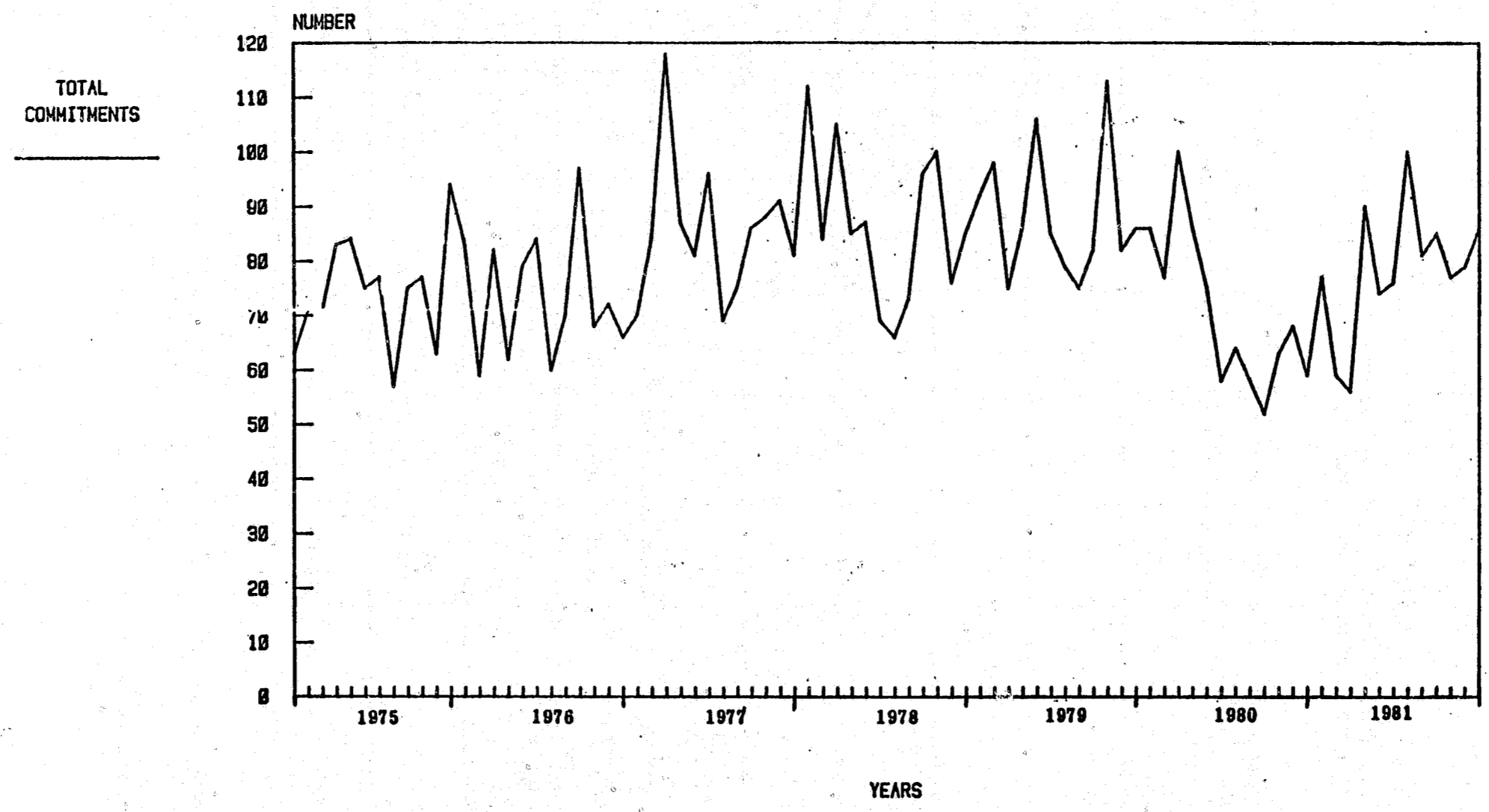
SEVERITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle	I	12*	12*	12*	15	18	21	24
Possession of Marijuana								23-25
Theft Related Crimes (\$150-\$2500)	II	12*	12*	14	17	20	23	27
Sale of Marijuana								25-29
Theft Crimes (\$150-\$2500)	III	12*	13	16	19	22	27	32
						21-23	25-29	30-34
Burglary - Felony Intent Receiving Stolen Goods (\$150-\$2500)	IV	12*	15	18	21	25	32	41
						24-26	30-34	37-45
Simple Robbery	V	18	23	27	30	38	46	54
					29-31	36-40	43-49	50-58
Assault, 2nd Degree	VI	21	26	30	34	44	54	65
					33-35	42-46	50-58	60-70
Aggravated Robbery	VII	24	32	41	49	65	81	97
		23-25	30-34	38-44	45-53	60-70	75-87	90-104
Assault, 1st Degree Criminal Sexual Conduct, 1st Degree	VIII	43	54	65	76	95	113	132
		41-45	50-58	60-70	71-81	89-101	106-120	124-140
Murder, 3rd Degree	IX	97	119	127	149	176	205	230
		94-100	116-122	124-130	143-155	168-184	195-215	218-240
Murder, 2nd Degree	X	116	140	162	203	243	284	324
		111-121	133-147	153-171	192-214	231-255	270-298	309-330

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

\*one year and one day

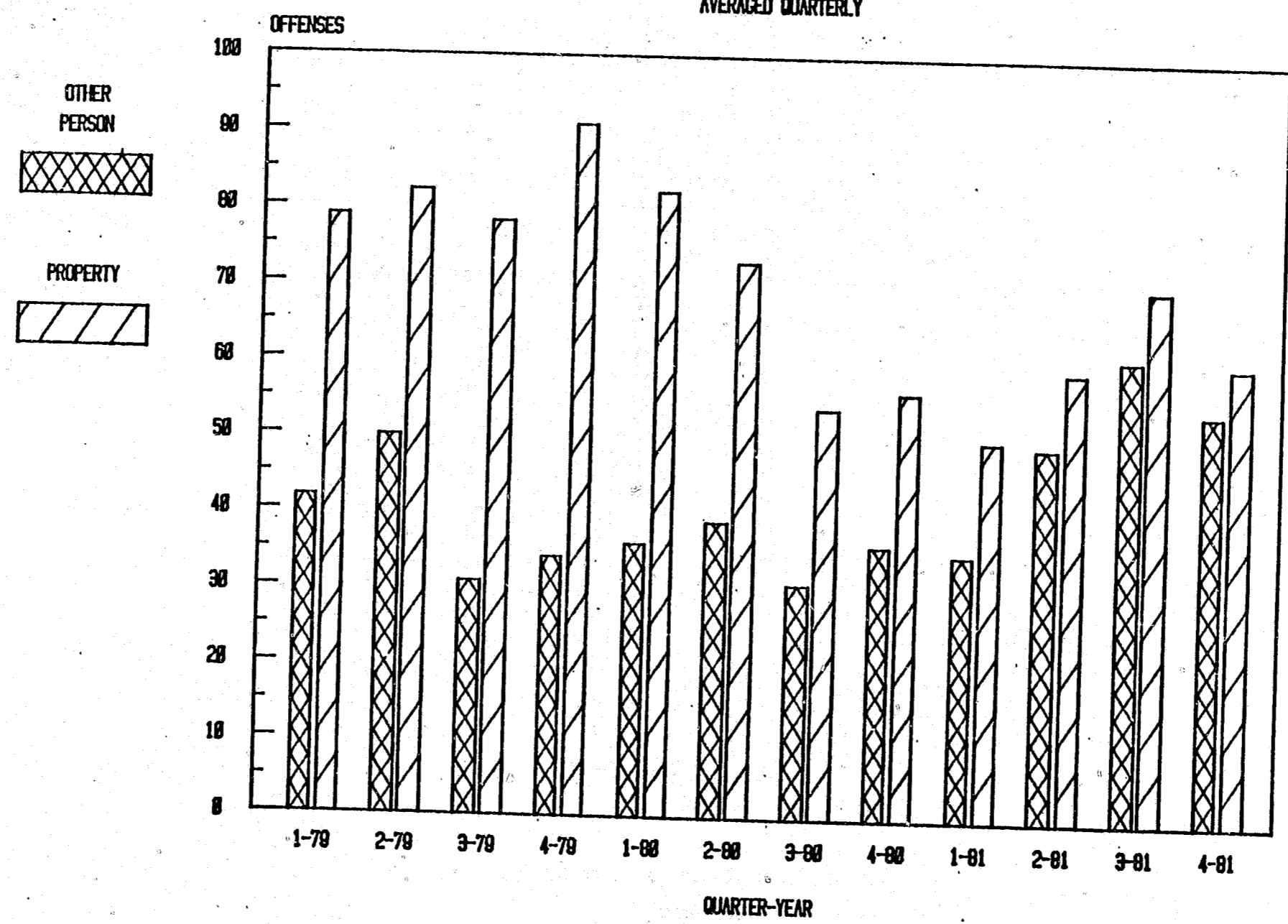
# TOTAL NEW COMMITMENTS

MALES AND FEMALES



# COMMITMENT SENTENCES BY OFFENSE TYPE

AVERAGED QUARTERLY



**FIGURE 1**  
**Fiscal Year 1978 Percent Imprisonment**

SEVERITY LEVEL	PERCENT I N CASES I	Criminal History Score										TOTAL
		0	1	2	3	4	5	6				
SEV1 DUMV-POSS MARIJ	I 1.3 I I( 474)	I 10.1 I I( 126)	I 37.5 I I( 69)	I 47.1 I I( 32)	I 56.2 I I( 23)	I 26.0 I I( 8)	I 74.0 I I( 16)	I 11.6 I I( 748)				
SEV2 THFT REL- S MA	I 2.9 I I( 477)	I 13.8 I I( 90)	I 24.5 I I( 82)	I 56.1 I I( 24)	I 85.3 I I( 14)	I 47.5 I I( 18)	I 100.0 I I( 11)	I 12.6 I I( 716)				
SEV3 THEFT < 2500	I 4.0 I I( 534)	I 12.9 I I( 171)	I 30.4 I I( 100)	I 54.6 I I( 79)	I 66.5 I I( 35)	I 58.5 I I( 16)	I 56.8 I I( 21)	I 16.9 I I( 956)				
SEV4 BURG-REC ST PROP	I 5.2 I I( 563)	I 16.3 I I( 185)	I 40.4 I I( 139)	I 43.8 I I( 34)	I 85.6 I I( 30)	I 62.3 I I( 23)	I 77.2 I I( 11)	I 18.2 I I( 986)				
SEV5 ROBBERY-CSC 3	I 14.2 I I( 119)	I 39.3 I I( 34)	I 78.2 I I( 14)	I 82.7 I I( 13)	I 79.9 I I( 10)	I 100.0 I I( 2)	I 50.8 I I( 4)	I 32.8 I I( 197)				
SEV6 ASSAULT 2-CSC 2	I 9.4 I I( 231)	I 20.4 I I( 78)	I 41.1 I I( 58)	I 72.0 I I( 15)	I 66.2 I I( 13)	I 61.1 I I( 14)	I 100.0 I I( 2)	I 22.3 I I( 412)				
SEV7 AGG ROBBERY	I 39.1 I I( 97)	I 64.7 I I( 57)	I 77.8 I I( 28)	I 85.1 I I( 15)	I 100.0 I I( 11)	I 100.0 I I( 4)	I 100.0 I I( 7)	I 60.1 I I( 219)				
SEV8 ASSAULT 1-CSC 1	I 41.9 I I( 46)	I 29.1 I I( 26)	I 86.8 I I( 16)	I 100.0 I I( 6)	I 100.0 I I( 10)	I 100.0 I I( 2)	I 0 I I( 0)	I 55.8 I I( 106)				
SEV9 MURDER 3	I 34.6 I I( 6)	I 0 I I( 0)	I 0 I I( 0)	I 100.0 I I( 4)	I 100.0 I I( 2)	I 0 I I( 0)	I 0 I I( 0)	I 67.7 I I( 13)				
SEV10 MURDER 2	I 100.0 I I( 7)	I 100.0 I I( 5)	I 100.0 I I( 4)	I 0 I I( 0)	I 0 I I( 0)	I 0 I I( 0)	I 0 I I( 0)	I 100.0 I I( 17)				
TOTAL	6.9 ( 2554)	20.2 ( 772)	40.6 ( 511)	59.0 ( 222)	76.7 ( 149)	58.8 ( 88)	75.3 ( 72)	20.4 ( 4369)				

**FIGURE 2**  
1980-1981 Percent Imprisonment

SEVERITY LEVEL	Percent N Cases	Criminal History Score										ROW TOTAL
		0	1	2	3	4	5	6				
UUMV												
Poss of Marijuana	1	.162 616	.943 106	5.263 114	8.824 68	31.034 29	7.143 14	35.714 28				3.487 975
Theft Rel (\$150-2500) Sale of Marijuana	2	.678 590	2.439 82	6.173 81	6.250 32	20.690 29	26.667 15	89.474 19				4.717 848
Theft (\$150-2500)	3	.489 614	.877 114	11.215 107	19.737 76	72.222 36	63.636 22	83.333 30				9.610 999
Burg-Fel Intent Recvg Stolen Goods	4	.919 979	4.630 216	11.163 215	24.779 113	82.353 68	86.207 29	93.333 45				11.652 1665
Simple Robbery	5	3.846 130	5.000 20	25.806 31	90.909 11	80.000 5	100.000 3	100.000 5				17.561 205
Assault 2nd Degree	6	10.274 292	30.233 43	30.233 43	83.333 30	100.000 14	85.714 7	90.000 10				25.057 439
Agg Robbery	7	71.795 117	90.000 30	94.118 51	100.000 21	100.000 14	100.000 11	100.000 7				84.462 251
Assault 1st Crim Sex Cond, 1st	8	85.417 48	75.000 16	93.333 15	100.000 4	100.000 6	0 0	100.000 3				86.957 92
Murder 3rd Degree	9	87.500 8	100.000 3	100.000 1	100.000 2	0 0	0 0	0 0				92.857 14
Murder 2nd Degree	10	100.000 5	100.000 2	100.000 1	100.000 2	100.000 1	0 0	100.000 1				100.000 12
<b>TOTAL COLUMN</b>		5.560 3399	11.392 632	20.030 659	32.033 359	67.327 202	63.366 101	80.405 148				15.036 5500



WORKSHOP:  
STATE RESPONSES TO PRISON CROWDING

The California Example

by Brian Taugher, J.D.  
Deputy Secretary  
Legislative and Legal Affairs  
California Youth and Adult Correctional  
Agency

Presented at the UPR/NPR Seminar, Atlanta, Georgia on March 2, 1982

I'm Brian Taugher. I'm Deputy Secretary for California's Youth and Adult Correctional Agency. That's the cabinet agency which has responsibility for the Department of Corrections, the Parole Board.

This morning, when Dick Sparks was talking about the "turn-out face," the happy kind of thing, we drew one that was descriptive of California's prison situation. It would be a very fat one, and it would have a very big frown. The situation in California is approaching the desperate stage. We have 23,500 beds; 5,000 of those are in two prisons, each of which are 125 to 150 years old. The cells are four feet wide by ten feet long. They include two bunks, with an inmate in each, and almost all the cells are double cells. Those are, of course, at Folsom and San Quentin Prisons.

Two years ago our Department of Corrections was projecting that we would have thirty thousand prisoners in 1986. Last year the Department had to revise those. They said we're going to have thirty thousand prisoners by 1984. We actually hit thirty thousand prisoners last Christmas. We are now about eight thousand over our design capacity, and we're growing very rapidly. We now expect to reach thirty-five thousand prisoners this year. Last fall we did projections which showed that we would have forty-five thousand prisoners by 1986. That is almost certainly wrong. The rate per 100 thousand right now is 50 percent higher than it's ever been in the history of people coming into prison; the high risk group, young men between the ages of 18 and 40 is 50 percent higher than it's ever been in the history of California; and as we have projected it for this year, our current budget is based upon the number being about 100 per 100 thousand of this specialized group. In fact, we're now running at 120 per 100 thousand, so you can see that the projections of hitting forty-five thousand prisoners in 1986 is probably grossly conservative. We will probably hit forty-five thousand prisoners as early as 1983. That's a pretty large system.

The net growth in California's prison system has been one hundred per week every week of 1981, and every week of 1982. We are embarking upon a construction program. They are going to be in units of five hundred. We could fill a new five hundred-bed prison every month, and those prisons are going to cost \$50 million each just to build, let alone staff and run. So you can see that California's situation is getting serious.

It reminds me about the old saying about alligators in the swamp. When you're up to your earlobes in alligators, you better call somebody to drain the swamp. That's what we're trying to do.

The most widely-publicized thing that we have done is in the area of building, but we have actually taken a number of other steps as well. Surprisingly, there are a lot of things that you can do about a mushrooming population. I would like to touch briefly upon most of those.

It's easiest to think of this as a hotel; and the size of the hotel you need is going to be determined by the number of people you have coming in the front door, times the amount of time they're going to stay. Imagine that you are managing the hotel. The first thing you have to do is to do some internal management things. It's absolutely essential that you do that. And oddly enough, most of these things are not done in most departments of correction.

First of all, you have to decide what kind of guests you're going to have, because some guests are going to need more space, and other guests are going to need less space. Some guests are going to need certain kinds of facilities, and so on. California has adopted, after the Federal Bureau of Prisons, with some aid from the National Institute of Corrections, a computerized classification system; and we discovered shocking things with it. Before, we had the traditional classification system, which is a highly subjective one, in which the institution — usually a diagnostic or reception center — screens the people coming in and classifies them according to well-established criteria: prior record, kind of offense, prior experience in prisons and jails, and things like that. But it was always done on a subjective basis.

California adopted a computerized one, where you get a certain score for each of the same factors that have always been considered. After doing that, it was discovered that, instead of having zero people who go to minimum custody, we actually had about one-third of the population who were perfectly suited for minimum custody. We found out that Folsom Prison, which was staffed with a lot of guns and a lot of guards and a lot of expensive equipment, was about half minimum. We found out that the wardens were all fighting for the good guys, so that they could leaven their population. The wardens who were running the real heavy joints didn't want to have to actually use those guns. They didn't want to have to use catwalks. So they were all kind of scrambling around among each other, trying to get some good guys into everybody's institution; and as a result, we had evil guys spread out throughout the whole system. Those evil guys were keeping most of the prisons in almost a perpetual state of lock-down. With the new classification system, we were able to undo that.

First of all, we could project what kinds of prisons we were going to have in the future. Secondly, we could see exactly what we had now and where they were. Thirdly, we could start transferring people, and we've been doing just that for quite a while. And fourthly, we were able to run the prisons as they were originally designed. We took a lot of people out of Soledad and DVI who were the young troublemakers and sent them to Folsom and San Quentin, where we had enough guys to keep an eye on them. And we were able to take a lot of those older guys — that's over thirty in the prison business — and send them down to DVI and Soledad and some of these other prisons and run them as programming institutions. I believe that DVI has been locked down two days in the last year and a half. Soledad's hardly been locked down at all. It is true that we've had the number of stabbings increase at Folsom and San Quentin by a moderate amount. On the other hand, the total number of stabbings in the system, the total number of inmates injured, has dropped dramatically; and most interestingly, the number of escapes from our minimum security facilities has dropped dramatically.

You must have a classification system that's halfway scientific. You can't rely on a counselor or a warden to do it for you.

Number two, you have to develop the ability to project population. Most of us look at what the change was last year, it went like this; therefore, it's going to continue going like that. That is, you're always behind when you're trying to do that. You're always wrong if you try and do that. You're just repeating what happened previously.

We have adopted a very sophisticated system, which takes into account the change in the number of crime-prone young men. It takes into account changes in the laws, how many more people are going to be coming in, how much longer they're going to be coming in for; and it takes into account a large number of other factors, so that our projections have been getting a lot more accurate, except that, of course, we haven't stabilized the intake yet.

Now, a third thing that you have to do is to come up with someone who can cost out legislative bills. You have got to be able to go back over to the legislature and say, "If you pass that, turkey, it's going to cost you 20 million next year, 50 million the following year, and 100 million the year after that; and it's going to bring in so-and-so many people, and they're going to stay in so-and-so long." Very few states have the ability to do that. It is possible to do that, remarkably enough, with some degree of precision, and California now has developed that ability.

The fourth thing is: You must come up with a definition of what your capacity is. People will look at books and say, "Gee, ten years ago you had thirty thousand people. Why don't you have thirty thousand now?" Well, the answer is that some of those facilities are falling down. Some of them have been transferred over to other agencies. We don't have them around. You need to come up with a clear definition of what's a usable cell and how many of those you can have on line on a given day, assuming that the locks all work and the plumbing is operable and so on.

Now, given those basic things, what can you do? Well, one of the first things we decided to do was to build. Unlike many other states, California has spent two decades kicking people out of the prison, screening people out of prison. First was the Probation Subsidy Program that was enacted under Reagan's administration, and that program resulted in the dropping of commitments to state prison from 40 percent of convicted felons down to about 10 or 15 percent of convicted felons. In the late sixties Governor Reagan had started a massive building program; in fact, got to actually pouring concrete on some of the sites. He didn't realize what it was going to cost. He took another look at it, passed a law, and suddenly counties were being paid to keep probationers in the county, and it had a dramatic effect. The prison population fell to an all-time low.

The second thing that happened was that the penal code was revised to classify most crimes as what we call wobblers, felonies or misdemeanors, and to set up a procedure which would screen a lot of what used to be prosecuted as misdemeanors. So we changed, in effect, a bunch of felonies into misdemeanors. That was most effective in Los Angeles County, which produces a third to half of our crooks. And as you can see, if you take one county and make a big effect there, it's going to have a big change on your prison system.

A third thing that we did was something that we didn't do. That is, we have not built prisons in about twenty years. We have virtually no new capacity, and the plant that we have is quite old. All right. What are we up to now? Well, we are going to build some traditional prisons. We're to build in units of five hundred beds each, and each one of those is going to cost, by the time we finish it, close to \$50 million. That's \$100 thousand a bed, roughly. We're going to build two maximum units at Tehachapi, three maximum at Folsom, two maximum at Adelanto, out in the Mojave Desert. We're going to build three medium ones in San Diego. That's what we already have on the books, authorized by the legislature. In addition to that, we have five or ten more we're going to ask for this year, most of which will probably be located in Los Angeles or its environs, assuming we can get the legislature to do that.

Cost? Anywhere from \$60 to \$100 thousand per bed, in 1982 dollars. That's not really what it's going to cost. It's going to cost considerably more by the time we get through building those.

The total effect of this program: \$2 billion worth of buildings. That is a lot of money to spend on capital outlay in times of rapidly diminishing resources for the state government.

All right. What are some other things, though, besides building traditional prisons? Well, you can expand your lesser kinds of security facilities. A big advantage in doing that, if you can, is you've got minimum security prisoners in your prison system, and everybody does. Don't let your wardens or superintendents kid you. They're there. All you've got to do is find them. The big advantage to that is, you can do it right now. You don't have to wait five years to build a prison. You can do it immediately. They're much cheaper to operate. Even building new fancy plants only costs you about half as much as the traditional prison, and if you're expanding existing plants, it might cost you very, very little to do it in capital outlay.

We are going to triple the number of camps, expanding from ten to about thirty, and I'm sure that that's going to continue to grow. We have opened a large number of community correction centers, most of which are operated by private enterprise. We will contract with a group in the community who will identify a site — purchase an old convalescent home, for example — and then we will put people into those facilities. Yes?

VOICE: How are you going to accommodate the community opposition to the siting by this facility?

MR. TAUGHER: The question is: how do you overcome community opposition to siting? The answer is: with great difficulty, and probably not. Under traditional prisons, we have acquired two or three new sites. Camps are relatively easy, because they're up in the sticks somewhere. They're up in the hills somewhere. Community correction centers are a lot more difficult, and we developed a special unit, which is increasingly successful, to be nice about it, in getting these things opened up. One of the ways it has worked very well in Los Angeles County is to have private groups do it. A private group opens it up, and they want to make money; so they're out there, running their tails off; and usually the private groups are a lot more effective at that than bureaucrats. We're behind schedule. For example, our community beds have expanded from 100 two years ago to two thousand. What you're looking at is a cataclysmic explosion of beds,

here, and you're going to make mistakes along the way. But our escapes have been kept down, and we've had good luck.

What do people do in those community correction centers? Well, I just visited one here in Atlanta that's called a diversion center, or restitution center; and it's identical to what we do in most of them. They're work furlough programs. That is where you're sent to this, and you go out during the day to a job, and you come back at night to the residential center. They are urban camps, where you take, perhaps, younger offenders, and you'll contract with the city or the county to clean canals, to pick up the streets, to do work that perhaps other employees might be doing if the local jurisdiction was rich enough to afford it. Work that's gone undone in our cities.

You can have restitution or diversion kinds of centers, or you can have work centers. We hope to, in the next year or two, open up a 300-bed work center, where the unit will contract with private enterprise and actually perform work in the center, and the inmates will never leave the center. It will be like a mini-prison inside the city, but it'll be completely work-oriented.

Okay. Those are the lesser-security kinds of facilities. Another category is temporary facilities. That, of course, is double-celling. One thing you have to do, right after you finish your design capacity — ours is rated at 23,500 — is, you have to then establish the double-celling capacity. Not all 23,500 can be double-celled. There are some that are simply unsuitable for it. You cannot do it physically, and you need to establish how many of those you can go to in a crisis, if you have to. That, of course, doesn't take into account what happens when it gets so overcrowded that, even though you have a couple of beds left that you could stick a body into, the place blows up because the people can't stand the crowding any more.

You can crowd dorms. We've taken most of our dormitories and expanded them from sixty to eighty, from 100 to 120. You can put people in warehouses. We've taken a number of vocational warehouses, thrown mattresses on the floor, and put them there. That has happened in a couple of our facilities. We have been forced to convert day rooms and stick people in day rooms; so that we take the TV out and put a couple of mattresses in there. You can sleep people in hallways, which is going on in all of our reception centers, both juvenile and adult, in California. You can use the gymnasium temporarily for those kinds of overflows.

Another major solution is one that's relatively new to corrections, something called RCF's: Relocatable Correctional Facilities. An RCF is a steel box. Imagine a freight car, except with a little thicker metal. They take steel sheets, they weld them together, and they make nice cells out of them. You can put several beds to a cell. You can have single cells. You can put two beds to a cell. There are two firms in the East Bay of the San Francisco Bay Area, in the Oakland area, who manufacture these things, and I understand there's one opening up right now in Colorado. They can be manufactured in six months, much faster than building a prison. They can be trucked to a site — any site — very simple to pour. You can put them on concrete piers or lay a real quickie foundation, and then run your sewage and electricity in. They are called temporary, but the expected life is seventy-five years, and you can stick them in the middle of a yard. It's nice to call them temporary. You can go to the legislature and say, "We just need some funds for this temporary housing, here. We've got this crisis," and

then you don't have to worry about everybody yelling and screaming about building prisons for 150 years from now. They are temporary. Yet they're like mobile homes. You can move them around. You can put them in a prison yard temporarily; then, when you get a new fence or a new perimeter or a new site, move them there; or if you want to move them up to the mountains for a camp, you can do that. You can drop them with helicopters; you can float them on boats.

VOICE: What is the cost per bed?

MR. TAUGHER: The cost of the ones they've built so far has been under \$20,000 per bed. Now, I know that sounds expensive down here in the South, because recently the beds that have been bought down here in Georgia have been running about \$20, \$25, \$30 thousand. But there's no way it could be done now. If you start building those now, when they're completed five years from now, they'll run a lot more than that.

VOICE: Georgia figures about \$40,000 a bed on a four-bed unit.

MR. TAUGHER: Right. And that's going up — that's escalating very rapidly. These RCF's, though, the cost can be controlled, and they can be produced quite rapidly. And there's a big booming industry. If you want to go into private enterprise — leave corrections and go into private enterprise — that's a great place for you to go right now.

One last winner in the category of what I call outrageous, and I expect to hit what you call saturation — that is, where we've used about everything we can, and we're going to have to go to the outrageous solution. Texas has already done this. Texas is sleeping its inmates in tents now. They hire a couple of extra guns to put on the fence, and they're sleeping their inmates in tents — in World War II tents, yet. That's one example. You can buy old hotels and stick people in there; and there's an alternative that we are loosely considering in California, and that is, you can buy Navy surplus ships and stick them on boats and send them to go catch shrimp, or something. So we may come full cycle in California. The first prison in California was an abandoned ship in San Francisco Bay; and some time during 1983 or 1984 we may make that full cycle.

VOICE: Have you considered a representative group of citizens who would release people in the community for supervision?

MR. TAUGHER: Well, I'm only talking about one solution so far: the building solution. Let's talk about several others.

One of them is to control the number of prisoners coming in. Now, in our hotel, we're talking about expanding our hotel. Well, if we're still getting crowded, let's see if we can stop some of the guests at the front door. Just control the number of people who are coming in.

The last few years we've doubled the number who are coming in. In the last five years we've tripled the number who are coming in the front door. We used to have about five thousand a year coming in. We're approaching fifteen thousand. What can we do about this? Well, until last year the legislature never ... a penalty-increase bill to a fiscal committee. It went to a policy committee, the legislators all voted on it 100 percent, and they sent it to the governor for signature. That was because, under indeterminate sentencing, increasing the maximum

from fifteen years to life, or from 1,000 years to 2,000 years, never had an effect, because the parole board controlled things. Now if you increase the penalty in California, it's going to increase the population under the determinate sentencing system; and so we are having these bills -- not only sentence length, but also ones which require more people to come in -- go to fiscal committees; and for the first time, we have killed significant numbers of bills in a fiscal committee, apart from philosophical grounds, just purely on fiscal grounds, in the Assembly Ways and Means Committee and in the Senate Finance Committee. There is a pretty significant number of bills being held up there.

A second thing you can do is to publish data. This is a very indirect way of dealing with the problem. The press love score cards. That's why the sports page takes up so much space in the newspaper. They love score cards; they love report cards. That's why the Uniform Crime Report and the Time Clock are so popular with the press. A very simplistic way of communicating what is happening; and if you're in a rapidly expanding situation, if you can start publishing the scores, the press will print that, and judges begin to get the message, citizens begin to get the message; and they understand that something has got to be done about it. You can't scream about sending more people to prison without paying for it at some point. That's the essential connection that you have to make, in the public and the judge's mind.

A third thing you can do is to perhaps take a look at your criminal justice prevention program. We had the probation subsidy program, and now it's criminal justice prevention. That is state money that's funnelled to the local agencies, primarily probation departments. Unfortunately, most of the money goes to the general operations of probation departments. It's non-specific money. Or a large part of it goes to locally popular programs, such as juvenile delinquency prevention. It's nice to spend money on Big Brothers and Boy Scouts, but those kids don't come to prison. We should take some of the money and target it in on the critical group for us. If we can target the money for every person who's on the line between going to prison or probation, and get some of them to stay in the county, we can do something about it, and we have a research project going now to see if we can better identify that swing group. Yes?

VOICE: The probation subsidy program, you say, brought your prison population to an all-time low. Why was it discontinued?

MR. TAUGHER: Because it was criticized by law enforcement as blood money. You are paying our local counties to keep vicious criminals on the streets. Therefore, the money is stained with the blood of their victims, and it was criticized that way. There were a number of other political reasons for it. Most of the money went to probation officers, and the cops wanted it; and the cops got it.

VOICE: It was primarily political, then, in the mixture of feelings? Not that it didn't work, or wasn't working.

MR. TAUGHER: Oh, no. It worked too effectively. The real reason is that we got to the bottom of the barrel. We used to have 40 percent of convicted felons going to prison. We made those felons a lot worse by taking a lot out as misdemeanors; and then we dropped it down to 10 percent. We were just getting terrible cases that were getting probation. It was that simple. We hadn't expanded the system to take of the truly hard-core offenders. That is not true in

most other states. Most other states could go quite-a-ways before they begin to hit that real hard core. Yes?

VOICE: Following that same line of reason, what did it do to your crime rate?

MR. TAUGHER: It didn't have anything to do with the crime rate. The crime rate is pretty independent of what happens with the prison incarceration rate.

VOICE: If you put them in prison and incapacitate them, they can't be out committing crimes.

MR. TAUGHER: That makes a lot of sense, but no one's proved it yet. At least we haven't been able to prove it in California.

VOICE: One other question: with your population exploding like it is, how do you keep the federal government off your backs?

MR. TAUGHER: I'm going to get to that in just a minute. Another thing you can do to control the number of people coming in is to have sentencing guidelines similar to the ones that Kay was talking about here. We let the judges do it in California. That was a big mistake. Don't ever let somebody who makes a decision write their own guidelines, because they will write guidelines that let them do whatever they want to, and California's judicial council adopted guidelines that are so general and vague as to exert no real influence over the decisions of judges.

We have a special research project going on right now, which we hope will point out some of the things that could be done further along those lines, but I don't hold a lot of hope out for judges in that area. Besides, that most of these things are dickered out by the lawyers, anyway. Yes?

VOICE: Is there any information about the impact that determinate sentencing played in this explosion?

MR. TAUGHER: Yes. In order to control the length of the stay up front, the first thing, contrary to popular belief, that we did was to enact determinate sentencing. After determinate sentencing went into effect, the sentence length dropped by half, went down from 36 months to just below 19 months and level off at about 30 months. So we cut the length of sentences in half. In other words, we had a lot more people going to prison, but for a lot less time on the average. It has climbed back up now. It's at about twenty-four months. I expect that it will end up being cut in sentence length of about one-third. So determinate sentencing allowed us to do what happened in Minnesota, and that is that it focused on locking property offenders up for a time, and it allowed us to lock up the more serious cases for longer periods of time, with significantly shorter sentences for the less serious offenders. So that was one of the first things. We could not have survived until 1982 without that kind of a break.

The legislators are now increasing sentence lengths. Rape has gone up; murder first and murder second, to where we now have a very long-term population. We have over four thousand people who must serve at least ten years, and we have hundreds of life-without-possibility-of-parole, resulting from an initiative

that was passed by conservative groups a few years ago. These increased sentences affect a minority of the population, but will definitely continue to cause that average population to climb for some time.

The other thing that's been considered, but not yet even introduced in as a bill is a sentencing commission. I'm not going to go over that anymore. Each Chairman of the Assembly Criminal Justice Committee, as he leaves that committee forever, says, "I think we need a sentencing commission. This is bad to have the legislature do this." But each new one coming in says, "I can solve this problem of crime," and they all come in on a platform of, "I'm going to be the crime-fighter." They all want to go on to higher office, and they think that's the vehicle for doing that. One of these days, I think, California is going to seriously look at a Minnesota model, which is easily the most rational way of dealing with the problem.

You can also control prison releases. The Busbee plan in Georgia is going to pass. This is the Michigan Plan, where you have a fixed population, or a certain percentage of population. We proposed it to be 115 percent of capacity. Once you reach that point, then certain groups of inmates are automatically released. That is, property offenders within their last 30 days, or 60 days, or 90 days. Those kinds of offenders would be released when you hit that ceiling.

A number of states have tried this, most of them unsuccessfully, because they put some kind of a discretionary tool in there. That is, they have their parole boards screen these cases, and for other political reasons nobody ever gets out.

You can do it through the parole and pardon power of the Clemency Board or of the governor, and those have generally not worked real well, either.

The last one, and in my opinion the absolute worst method of all, is through a federal court order. I've just finished a tour of the Georgia state prison here. I thought we were liberal in California. Hell, these federal judges out here, they're doing things like ordering free telephone calls for the inmates, that the prison officials can't monitor in any way whatsoever. A number of things that have been ordered which we would be real upset about in California. Once you get a federal master or referee into your system, they go overboard. It's theoretically not a bad idea, but generally they go 'way overboard' and lose a great deal of control. Costs skyrocket, and that is absolutely the worst situation.

What's the net effect for California? Well, we cannot possibly build enough cells fast enough to deal with the problem. There is no way the taxpayer is going to pay for this. This is true, I suspect, elsewhere. At the cost that I cited to you earlier, we will easily have a billion dollar department of corrections budget during the 1980's, and the taxpayer is going to have to come to some kind of a solution, and that's ultimately who will have to make the decision. It's up to us to suggest them.

I know that because of the pressure created by this, that solutions will arise. I believe we're going to be coming up with new programs, new variations on old themes. I think new programs are going to be highly work-oriented, and they are going to be community service kinds of programs, which will allow us to say, "We are punishing this person, but without having to lock him up in a traditional cell at these extravagant costs." We are punishing him by exiling him, by showing our abhorrence, by setting him aside from the rest of us, which, in fact, is the true

function of punishment. It's not really to stop crime, I think most of us think of it that way. But if you look at what humans have historically done with criminals, they are exiling them, want to cut them off from the group; and what we need to do is to find a way to cut people off from the group after they have committed crimes, but allow them to continue to do things that are productive at a much lower cost. Thank you.

BRAD SMITH: Does anyone have any comments or additional questions?

VOICE: What's happened to your prison administrator? What's happening to them now, with all your increased high-risk, violent people going in? How are they reacting to this sort of thing?

KAY KNAPP: Well, first of all, high-risk and violent offenders, are not the same thing. Prison administrators have consistently said they didn't think it would be any problem, and they aren't experiencing any problem. A lot of those people were kept in local workhouses prior to that. They were kept in the community, and, in fact, may be easier to hand in that kind of situation than some of those repetitive. There haven't been any problems, and the corrections administrator assured the legislature they don't anticipate any.

VOICE: Kay, what's happened to your county subsidy program?

MS. KNAPP: It's still there. There's no charge-back provision as of the time the sentencing guidelines went into effect. When the sentencing guidelines went into effect, it came to be argued that every sentence was, in fact, appropriate if it was a departure, and it was either not appealed or upheld that it was an appropriate departure; or if it was a presumptive sentence, it was deemed again to be an appropriate sentence; and, therefore, the provision that would have counties charged for sending property kinds of offenders to prison was dropped out of the legislation and just became a straight-out subsidy for participating counties. That's still there. I don't know what the legislature is going to do about it, if they're going to maintain the subsidy or expand it to all counties, or what. I don't know at this point.

VOICE: Kay, your good time inside the joint, it sounded like there was a fixed length of time. Is that true? What can you use to adjust the good time inside?

MS. KNAPP: Disciplinary infractions of a fairly significant nature. You know, attempted escape, or assault, or something like that. Good time is vested. The punishment would be that you wouldn't earn any good time for a month.

VOICE: Is it kind of an extraordinary thing to adjust it?

MS. KNAPP: We don't really know -- There have not been that many people going through the system. We don't really know how much good time is going to be lost and that's what we'll be finding out. I hope, over the next six or seven months, to get a better idea of what they're doing. I've got requests in to the Department of Corrections now to share with us some data on that, but there won't be enough cases for a while.

MR. TAUGHER: Incidentally, that good time is another way of dealing with the problem of crowding. We had a leading conservative republican legislator

the other day remark in a committee that, "Gee, we need to increase this good time to about 60 percent. Then we could really make sentences long," which, I thought, showed the legislative attitude toward punishment as well.

VOICE: Apparently, public policy has now shifted, supporting \$2 billion's worth of construction.

MR. TAUGHER: I doubt that. And the reason I say that is: We've got a half billion dollar bond issue coming up in June, and I think it's going to go down by 1 percent of the vote. If it goes down, that's going to send a loud and clear signal to the legislature that people don't want to put their money where their mouth is, so they're going to get the crooks back out on the street.

VOICE: So you don't think public policy will support that construction?

MR. TAUGHER: It's going to support at least half a billion. We will fund the ones that we have on the drawing boards now through the general fund. But I don't see them spending \$2 billion on a bunch of prisons. I just don't see it.

VOICE: I had a question for Kay. Is the abolishment of the Minnesota Parole Board tied to the sentencing commission?

MS. KNAPP: Not exactly. The commission was supposed to study the future role functions of the corrections board, if any, and report back to the legislature. Before the commission could do this — that's what they were going to do last fall — last session, an appropriations committee in the Senate cut off all funding for the parole board as of this coming June and appropriate \$100 thousand to the Department of Corrections to take over those functions with Hearing Officers. So the legislature sort of stepped in before the commission could recommend it; and there is a very substantial lobbying effort on the part of the Parole Board to get themselves reinstated. I don't know what the outcome is going to be. As of now, though, they are gone as of this summer. I don't what's going to happen.

VOICE: Brian mentioned a reference to projection model that they're using in California. It's rather sophisticated. A month or so ago, we had in cooperation with Charles Friel at Sam Houston State University's center, a workshop on prison population forecasting. There will be a document coming out soon that will summarize some of the forecasting techniques. So if anyone is interested, let me know, or contact Charles Friel at Sam Houston.

MR. TAUGHER: Well, I have to put in a plug for NCCD, here. I went up and heard them make a presentation to the Nevada legislature, which was using a straight-line projection technique, and which is very, very unsatisfactory for a lot of reasons; and Barry Krisberg laid out very neatly a variety of different ways that you can do without spending a lot of money, a much better population projection; and the NCCD can probably help you out with something like that too.

DR. SMITH: Any additional questions? Thank you very much.

PANEL:  
SETTING PRIORITIES FOR NATIONAL REPORTING

Systems and Operation View by David Brierton  
Inspector General  
Florida Department of Corrections

Presented at the UPR/NPR Seminar, Atlanta, Georgia on March 3, 1982

There is a move, for some reason, to begin to blame the parole board for letting all the criminals out on the streets. People are being torn between discretionary process of parole release and some more mechanical form, which, of course, is flat time and some variation of the determinate types of sentencing. What we'd like to do this morning, if possible, is give some perspective to that, and, hopefully, some suggestions.

One of our problems in corrections in general is the historical lack of recognition given to correctional workers. There exists the view today that of the Hollywood School of Criminology: if you work in a prison, you have to be my size, carrying a club, and you look like some type of an atavistic throwback to Paleolithic man. The popularized version of the researcher walking around researching the wrong thing, and, of course, the parole agent, who is corrupted by the offender. Unfortunately, we haven't done much to be able to dent that perspective. Part of the reason, I would admit to you, is that you have an unclear management mission. We need to, in the 1980's, it would seem to me, from an operational point of view, decide what we're going to do as professionals in the field.

We have run the gamut in the seventies from rehabilitation to reintegration, reform and restraint; and every couple of years we have a couple of new buzzwords. But we really need to get down to the business of deciding what it is we're going to do; because what happens to us is, we're trying to find out, and we go around telling everybody what we think ought to happen; and there is a divergence in that view. We have become victims of the budget cut, like everybody else; but we have become victims to a variety of things, and people do not have faith in what we're doing.

I come from the prison system, and I've worked in excess of twenty years in the prison system, but it is obvious that no one has faith in the prison system. The fact is that we need to take a stand at some point and decide what it is we're going to do.

Parole ambiguity of the worker, I would submit to you, is a direct result of the lack of management. We talk about management, and we have been resistant to developmental process in public management, because we didn't want to get like private sectors. It's too inhumane. The fact is, that's what's made us vulnerable. We need to begin to train managers and divorce that concept from the treatment of programmatic areas. I'll discuss that in a minute.

Training problems, the lack of management mission, the presence of ambiguity in terms of role, makes it almost impossible to train. When we start to train corrections officers or corrections professionals in the field, what we're attempting to do is — we have a divergence of views on how they should be trained. Very, very few people are trained to skill orientation. It's almost as if we're looking for

the Renaissance man to get along with the people in prisons; and it's the same thing in the field.

The assignment patterns: we need to carefully examine how we're utilizing people in corrections. I would submit to you that in the eighties we're going to have to look at some creative options. We're going to have to bring some forms of technology. Now, reporting technology is moving ahead. Some of the other security technology, for example, we're still looking at the early 1900's at best. We still don't know — we don't use flow calendars, for example. We can't even tell how many inmates are in the large prisons — we can't even decide what kind of prisons to build. We need to begin to do these things; because, as we continue to remain in some turmoil over these things, what's happening to us is, they're just chopping us one way and the other.

For example, we had a recent argument in Florida about the parole board. We wanted to abolish the parole board. So I went before the Governor's Committee, and I said, "Why?" "Well, because they have too much discretion. They're letting people out too soon." I said, "What do you have that will supplant it?" "Well, flat time sentencing will." I said, "Do you believe that people change?" "Yes." I said, "Well, then, how will flat time sentencing accomodate that?" You see, that's part of the problem. It's a chronological process. It's circular. We need to begin to take a stand on these issues.

In terms of public scrutiny, public scrutiny has, as I earlier mentioned, begun to evolve. Prisons are no longer hide-outs. We have to account for many, many things in prisons today that we didn't have to when I began in the business. Certainly, all areas are like this. We need to take a stand in terms of parole process. We need to take a stand in terms of what supervision does. We need to collect that type of data. We need to have operational data, and we need to have managers that can use it. Part of the problem has been: you can produce great data, and if you have a dummy running the prison, how is he going to use it? That's part of the problem. And we have to address that problem head-on. We can no longer accept the old, intuitive warden. The wardens I worked for early on — and some of them were considered to be great wardens — were not wardens; they were monarchs. They told you how to do everything. You can't do that today. It's a much more complex world today. We have to start using management theory.

The whole treatment model, the positive assumptions, the crimogenic theories, now, we can continue in that vein. My problem is that social scientific endeavor is being pushed out. Now, I would submit to you one of the reasons that social scientific endeavors are being pushed out because there's no management system to insulate it from the larger process. For example, most of the private sectors have R&D sections. They have research and development sections that are protected by the larger organizations. We need to begin to integrate and have management systems so this will happen, so that we have real research.

After being here for the last day, too, I'm happy to still believe that we still have some professionals in the business. I've seen much of our "research" is very amateuristic research; and, unfortunately, it isn't done by people in the business, like the people here. It's done — everybody picks up, who wants to write an article writes an article about capital punishment or what's wrong with the prison system and what the crime rate is; and because it's in print, it's obviously true.

We have to also realize that the medical model is dead. Except for that percentage of people who are going to be psychiatrically oriented, let's bury it once and for all. Now, you ask, what do we supplant it with? More rhetoric. I would submit to you that we supplant it with a process that's much more business-oriented, and, in the long run, may be more humane for the inmate, for the offender. We have brutalized a hell of a lot of inmates with labels over the past few years. We've gone out and tried to give people the impression that we knew how to cure criminals. Let's put that to rest right now. We do have some trend analysis that would suggest that we are very close to at least describing what it is and what type of person responds to what program. The days of one program being all things to all people is over. The money isn't there, the data isn't there; and, certainly, the management process can't support it any longer. We need to become realists about what we're doing with people. There is even some suggestion: Why are we counting recidivists? We're counting recidivists because we've always counted recidivists. It may well be that we may just be able to start with a hypothesis and say people should be treated humanely. We don't know if they're going to get better or not. I'm not even sure being a non-criminal is getting better. We have accepted certain hypotheses over the years, and we keep putting more money and more time and more brainpower into something that, basically, may not matter anyway.

We train prison wardens in social scientific views. I would submit to you we should train him in business methods. It would be a lot better for the professional staff to walk into the warden's office and say, "I have a social scientific view," and be able to explain it than have an amateur there who thinks he knows how to research it and can't explain it because there are pre-conceived ideas.

So I would submit to you that we need to formulate what it is we're going to do in the eighties. I certainly hope it's better, and I am including myself in this group, than what we did in the seventies.

Now, we have made some strides, obviously, but little by little, there are elements of the criminal justice system, because people perceive it that way, that are making victims out of the correctional professional. We need to stand up and say we're not going to be victimized any longer. We also need to stand up and put more time and energy into our staff. We've been talking about inmates for so long and the clients' for so long, we forgot that we have people working out there. Look at Francis Kitstein and stress—whether you agree with her or not. Obviously, the correctional professional is under a great deal of stress. We expect a great deal from him, and it's not going to get better. It's going to get more complicated, and we need to start thinking of these people.

The present problems: of course, the personal property versus the rights of the group. This has become the number one issue. It's almost like the end of the Mazzola Scale in prisons. How do you make a more natural environment in the prisons and protect the people? I've been wrestling with that for twenty-some years, and it's getting worse. It's getting worse because there are more victims in prison right now than there have been, I believe, at least from my observation. I have no study to support that. I could probably put one together, though, by the end of the day.

Violent inmates are getting younger. We don't have to argue that. Everybody here, I believe knows that. Now, whether there's more violence because the birth cohort of the war baby is finally upon us, I don't know. I can say to you that

the violence is becoming more random in the community. There is some data to suggest that. We need to deal with that. We need to define that. I would hope that our people would put that in perspective. The problem, of course, with the whole crime situation is, everybody has their interpretation, and I'm delighted to hear about the Crime Clocks the other day. I'm tired of seeing Crime Clocks. I don't know how bad the situation is in Miami. The problem is, if you talk to people down there, they're so panicked, even if they have no crime, the perception is that crime is running rampant in the streets. It may be. But we have no data that suggests that the crime rate there is any different than it is anywhere else in a large urban area. I wouldn't go down to Miami and say that.

And that has also put a new group into perspective, the law enforcement group is getting much more money now, so they're certainly not going to say it.

The societal status of corrections, of course, in Florida we're moving toward making correctional officers law enforcement. We've given up trying to make them therapists. I'm at a point that I could care less what category anybody falls in, just so they fall into a clear-cut category. Now, the fact is, you'll be doing many things. Anybody in the probation area, obviously, there are many demands. But we need to do something in terms of categorization; because hierarchy in society relies to a large degree on how people view your job. And I think it's very important — Now, we were able to get more money for correctional officers. We were able to professionalize. We're in the process of professionalizing because of that.

Development of the administrative process: We have to get rid of the intuitive thinkers. No more reaction. Let's have at least a plan; and I don't want to plan like we did in the early seventies, where everybody planned to plan something, and we did nothing. The problem is we need to do something, and we need to have people who can make decisions based on cost benefits, cost experience, history — and I know it sounds like I'm proposing a very cold system. But as I developed earlier, I think it would be much more humane for everybody if we knew where we were going, and whether or not our data would support what we're doing.

The corporate legal model would be what I would at least throw out to be an alternative to the old medical model. Corporate, based on the fact that most corrections agencies are growing. For example, in Florida we have about ninety-eight hundred employees. We have in excess of twenty-three thousand people in prison. We have in excess of forty thousand people on parole, and probation — and I know you're going to say, "Boy, those are bad southern states." The point is, those people are there. The point is, we have to have a way to conduct business. Now, if we go to a more corporate model, I would submit to you several things would happen. One would be, we would hire managers that know what they're doing. I'm not suggesting that everybody who's on the job now doesn't know what they are doing. But we have to have a concerted effort to train people for the future to handle future problems. We need conceptual people who are managers, and we definitely need a system that doesn't support one treatment philosophy. A manager should be able to develop a management system that will incorporate or support or be a friend to several perspectives of the program. Our problems in the seventies seemed to be we were running from one grand panacea to another. Every year we had a new philosophy. We were going to do it with groups; we were going to do it with behavior mod; we were going to do it with a variety of things. We really need to differentiate the concept of management from the concept of program.

The legal aspect, of course, is that the legal influence is to — the rate of change in the legal influences on corrections today and the last ten years have just been enormous; and we have to be able to incorporate those processes on a more pragmatic basis. Instead of worrying and arguing about whether or not the process is right, we need to put the people to work, saying, "This is what the case law is. This is what the process is. Let's get on with it. What can we do to maximize the efficiency?"

Physical threat to both professionals and the clients, I believe, is becoming an issue. The concept of the Inspector General is popping up in some of these states. It's really to be able to point out those aspects when people are brutalized or kicked around or pick out those aspects or whatever your perspective is. The personal organization stressors, I'm sure most of you have been through stress programs lately. In the past couple of years they've become fashionable in our business, and probably some have something to say. The future trends, I would hope that, if we get busy in the eighties and make some definite, definitive statements about what we are, what we expect, future trends will be influenced by us, instead of other people; and I think we really need that.



PANEL:  
SETTING PRIORITIES FOR NATIONAL REPORTING

Judicial and Sentencing  
View

by The Honorable Charles Carnes  
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Presented at the UPR/NPR Seminar, Atlanta, GA on March 3, 1982

I just want to mention a few things, which probably are elementary to you, that help the judge in determining what type of sentence to give an individual defendant. First, let me say that I have read some of the publications that you put out, and they are is very helpful; but when you really get down to a single individual that's before the court, there are certain things which at least I look to, and I'm sure other judges do, too. Of course, one of those would be the defendant's educational background. Whether or not he has an education, he can find a job, he can be gainfully employed, or whatever. Of course, another would be his employment background, whether or not, in fact, he has a job; whether or not he's capable of getting a job and supporting himself and his family; and of course, in regard to all of these things I mentioned, the nature of the crime, of course, too, would be taken into consideration. If he committed armed robbery, a lot of these things we would not worry about. Of course, his family background is very important, whether he had a good, close family unit. His past criminal record or lack of criminal record, if any, would be very important to a judge. Some of us even look to his religious background to a small degree. We don't want to get religion mixed up with the sentence, and so forth; but if a fellow can show that he is a pretty good churchgoer, of course, we think that's in his favor.

One thing that I particularly look for in a defendant's background is his community service record, if any, whether or not he's been active in PTA's in the past, or Civitan, or Kiwanis, or Lions, or whatever; whether he has contributed something to the community. I think that is important if he has done those things. Everybody is subject to go wrong one time, you know. Some more than once.

I remember when a friend of mine was a chaplain out at the federal prison here in Atlanta. He said, this fellow came in, and he was counseling with him, and he said, "Why did you get in trouble like this?" And this prisoner said, "Well, ever since I was a baby, I've just felt unwanted." The chaplain said, "Well, you ought to feel good. Because I see Illinois, Missouri, Arkansas, and Tennessee want you now."

Another important thing that we're looking for is whether or not the defendant has any kind of drug or alcohol problem; because, in particular if he has a drug problem, he'll need some type of treatment or something, or else he'll be right back before the court. I always kind of distinguish between the drug addicts and alcoholics. We have a lot of winos, as most major cities do, I guess. I've never seen a wino mug anybody, you know. They'll panhandle and ask you for money or something, but I've never seen a wino, though, who would mug anybody to get money. But our experience here — and I'm sure it's true everywhere — is that a drug addict will do almost anything to get the money to buy the drugs or whatever to feed his habit, whether it's burglary or robbery or whatever.

One thing I want to talk about, I think it'll be of interest to you, we're starting a new program here in Fulton County — Atlanta being the county seat of Fulton County — that will begin operation this Friday. It's being used to some extent down in Albany, Georgia, and to my knowledge that's the only place in the country that this type of program has been used. We have given it a name: Fulton-Atlanta Diagnostic Socialization Program. I don't particularly care for the socialization part, but I guess we did that so, like most governments, we have an abbreviation and a fancy name. We call it FADAS, for Fulton-Atlanta Diagnostic Socialization Program, and we're going to start this program on Friday.

As Mr. Brierton was pointing out, we here in Georgia are very short of space to put folks that we incarcerate. As a matter of fact, Georgia, I believe, leads the nation in the percentage of incarcerations per capita. I think we have the largest of any state; and when I was in the legislature, I served on the Judiciary Committee for twelve years, and we probably have more ways of violating the law in Georgia than in any other state. I'm sure, when I drove down from Sandy Springs over here this morning, I probably violated eight or ten state laws; but we get laws on the books in Georgia — like we have a young fellow from Gwinnett County up here, a fine young fellow, but he would come before the Judiciary Committee with some bill, you know, he would want to make it a violation of the law to do something. I said, "Vinson, where did you get this idea for such a law?" He said, "Well, I was in church on Sunday, and this fellow came up and said he saw somebody do something, and it ought to be against the law." And as a result, in Georgia, we still have that mentality in a lot of instances, where if one person can come up and say, "You ought to make that a violation of the law to do so-and-so." As a result, we probably have more ways for folks to commit crimes in Georgia than in any other state, I guess. We're constantly arguing with our prosecutors that half of these accusations or indictments they have should be thrown out into the street, because it's not really worth taking up the court's time.

But the way this program will work — and as I get on over a little bit, they're going to have to waive the Fourth and Fifth Amendment rights if they participate in that program, but it'll be on a voluntary basis. It'll be selected folks who have been charged and have been convicted of a crime. We would give them a series of psychological profile tests. The probation department would do this to each individual prior to his sentencing, but after his conviction.

Number two, the tests would be analyzed by two professionals within the field of psychology and a report written by them would be given to the sentencing judge. The report would contain the prediction of future behavior for the individual tested. Three, if the convicted individual is put on probation, they must agree to and sign special conditions of probation; and I'll give you some of those conditions in just a moment.

Four, at random times, of our choosing, FADAS probationers will be given urinalyses and/or breath, spittle, and blood tests. If an individual fails these tests, the recommendation will be made for various periods of confinement.

Number five, various probation aid groups will be formed to assist in carrying out probation, such as church groups or other volunteer probationers. Individuals from these groups will be matched with FADAS probationers, whenever and wherever possible. The information that an individual is involved in our program and is under special conditional probation would be made available to the GCIC, which is the Georgia Crime Information Center, for accessibility to law enforcement agencies statewide.

Finally, this data will be kept and monitored to measured recidivism and arrest dates, of FADAS probationers in order to measure the success or failure of the program.

One additional thing that we're going to do for parents, if they wish to, and if they will pay the cost for performing a urinalysis, we will let them bring their children in to have them tested to see whether or not they're on drugs, and this would be done in a confidential manner. They would be given a number, and they'll be referred to by the number all the way through, without the name being used. That would be, of course, for children who had not reached adult status yet.

Now, some of the tests which we will give these folks — and some of you, I'm sure, are familiar with them — the Schlossen Oral Reading Test, SORT for short. This is a word recognition test. If the subject appears to read below a sixth grade level, he will not be given the MMPI, which — I'll tell you what that is in just a minute, if you're not familiar with it. Another test will be the WFPT, Welch Figure Preference Test. This is a non-verbal personality test which measures similar traits as the MMPI, which I'll give you in a moment. Another one is VPD, Visual Preference Development. This validates the WFPT. If results are similar, then the MMPI, the Minnesota Multi-Phasic Personality Inventory, it measures pathology in the personality, will be given. It's recorded in terms of psychological disorders, yields a clinical profile, and with Dr. Raymond D. Fowler's computerized program, based on criminal population, yields suggestions for treatment.

There are two or three other tests which I will not bore you with, but you would want to keep in mind that personality tests and risk scales yield ethics of behavior. That is, that groups of people having similar scores tended to behave in certain ways, and will not be predictive of every individual in a group.

Then there will be a general purpose formed of the defendant's need for a particular type of treatment. That is, conditions of the sentence, which provides space to record his estimated progress over a period of time. This is a summary report which the judge will receive as part of pre-sentence information.

Now, some of the conditions that the probationer, if he elects — and this is a voluntary program, where he can sign an agreement that'll be notarized and in legal form. He is not being forced to, although it's an offer that he can hardly resist, in that it's either this or a prison term. But we let him make the decision. Let me say this: it would not be available to folks who commit rape or armed robbery or those kinds of things. This would be for a first-time drug offense, or something of that nature, you know. We're not talking about capital felonies or anything of that nature.

But some of the things he would have to agree to if he wants this program in lieu of prison: he would agree, from time to time, upon oral or written request of any probational supervisor, or by any city, county, or state law enforcement officer, to produce a breath, spittle, urine and/or blood specimen for analysis for the possible presence of substances prohibited or controlled by any law of the state of Georgia or the United States.

Number two, the probationer shall not take into his or her body any substance prohibited or controlled by any law of the state of Georgia or the United States, except pursuant to a physician's prescription, which shall be submitted to the probation supervisor for inspection and copying as soon as practical, but not

later than seven days of the date of the prescription, unless physically unable to do so.

Third, he will agree that, should any substance prohibited by the state of Georgia or the United States be detected with Special Condition Number One, unless such detected substance is ingested pursuant to the physician's prescription which has been submitted to the probationer's probation supervisor, as set forth in Special Condition Number Two, or should any alcoholic beverage be consumed in violation of Special Condition Number Seven, the probationer shall immediately be incarcerated as a probation violator.

Number four, the probationer shall submit to a search of his person, house, papers, and/or effects, as these terms of the Fourth Amendment of the United States Constitution are defined by the Courts, any time of the day or the night, with or without a search warrant, whenever requested to do so by a probation supervisor or any law enforcement officer, and specific consent is given for the use of anything seized as evidence in a proceeding for revocation.

The ACLU has challenged the program in Albany, Georgia. The U.S. District Judge in Macon, Georgia, has upheld that program. It's in the 11th U.S. Circuit Court of Appeals; but down in Albany they were doing one thing that we are not doing. They required church attendance, and we think that they might be in trouble because of that. So we have deleted any reference to making the probationer attend church, or anything of that nature; and we feel confident that the mood of this country supports doing something about the drug pushers.

Probationer shall submit to and cooperate with a lie detector test, psychological stress evaluation, and/or psychometric tests, at any time, and from time to time, whenever so directed by the probationer's supervisor concerning any inquiry relative to compliance with the terms of his or her probation.

Additionally, probationer shall submit to and cooperate with a lie detector test and/or psychological stress evaluations inquiring into his or her knowledge of criminal activity, as may be directed by the probation supervisor, upon request of any law enforcement officer.

What we think will happen with these folks, why many of them will take this, of course, is that they like the freedom, rather than being incarcerated. And then we think the other side of story is that they can be a source of information for catching drug pushers and so forth; because if they've gotten in to trouble, particularly if it involves drugs of any kind, very likely they will have some information from time to time. They tell me the way they use this, the lie detector test, for example, they're not going to ask one of these folks to be an absolute snitch; and, quite frankly, I've never thought much of snitching myself. As a matter of fact, I kind of detest the snitcher when he comes into court, with one exception: when it comes to drugs. That seems to be about the only way you're going to catch folks that are dealing in drugs.

They tell me the way they would approach this, say, on a lie detector test, if they suspect that drugs were being pushed in the 2600 block of Peachtree Road, they would simply ask of this person on the lie detector test if he was aware of any drugs being sold on Peachtree Road. He would say yes, if he was. They'd ask him if he was aware of any in the 2600 block of Peachtree Road; and if he was, he would say yes. They would ask him if it was being sold at a restaurant, and he

could say yes, if he knew. They could ask him if that restaurant was on the south side of Peachtree Road; if he said no, they'd say, was it on the north side; and he'd say yes; and they would say, "Is it brick or is it a white frame type restaurant?" And they'd narrow it down; and then what they'd do, they'd go out and put this place under surveillance. And we here in Georgia and Florida have some right strict laws now dealing with drugs. Probably the worst two states in the union for bringing in drugs. We have such a lengthy coastline, and they can fly from Bogota up here and land on an island somewhere and refuel and come into Florida and Georgia. We have a terrible problem. As a matter of fact, you may or may not have kept up with it, in the last six or eight months, we've had, oh, I'd say fifteen or twenty sheriffs and law enforcement people being tried here in federal court for providing protection for these folks to fly in and land, and it's just a terrible problem. My own personal opinion of drugs is that it's a far greater threat to this country than is communism; and of course, the two may be linked in some instances. But I think the drug problem is, of course, the worst that we have.

Now, we feel sure that the ACLU will probably jump on our program, which is fine. We want to have a constitutional program; but by the time it gets into the Supreme Court, we may have caught a lot of drug pushers, even if it's not. But we have done this, we hope, in due legal form, where the probationer would sign; it's notarized, the probationer's supervisor signs it, and everything else. This is not something we just thought up overnight. We've had folks working on this for more than a year; and, of course, we have the benefit of Albany, Georgia's experience; and what we're trying to do is keep some folks out of prison because we are absolutely overloaded. We're going to open three new facilities very shortly, but here in Fulton County you have a prison that's designed to hold slightly less than 900 people, and almost any given day — I would say this morning they probably have over 1400 folks out there. They're sleeping on the floor. And, of course, that's just a bad situation.

I've advocated, down through the years, that we ought to build for misdemeanor prisoners some hut-type facilities, like I lived in when I was in the Navy. I was stationed on Guam. Eighteen of us lived in a hut, very comfortable. At least, if it's good enough for Navy folks, it ought to be good enough for the prisoners.

And we can scatter these, for a small cost, all over the state, so you could keep these folks close to home. For some reason, our folks here in Georgia think that you've got to go out and build a big glass-walled prison. As a matter of fact, the cost now is something, I think, fifty — I believe it's \$55,000 per bed in Georgia to build prisons. When you are talking about a four hundred-bed prison, you're talking about \$22 million to build that facility and the bad thing about it is that taxpayers just get up in arms about this. They just don't understand why it takes so much of their money to build these types of facilities, or build prisons, period, if you want to know the truth. And we have a hard time shaking the legislature loose for money to do things that we need to do.

We've had a terrible time here in Fulton County being able to sentence a guy charged driving under the influence, to forty-eight hours, just to teach him a lesson. When we send him out to jail for weekends there; the jail is so crowded they let him sign in on Friday night at six and then come back on Sunday and sign out. So they never stay.

The judges are in a dilemma about what to do with folks. But some of the things that I would be particularly interested in, that you might look into in the

future would be the success of restitution centers. I think if you can keep a guy working, supporting his family, if he has to stay at this place at night, as you know, and after he's been there a couple of months, he doesn't violate any rules, of course, we let him go home on the weekends; and I have found that, in many, many instances that saves the taxpayers a tremendous amount of money. It costs Georgia to keep a person in prison between \$13 and \$14 thousand per prisoner per year; and that's right expensive.

I have been particularly interested in what's going on around the country, whether or not folks who do go to restitution centers, repeat violating the law as often as folks who are incarcerated. I've always been interested in the early release program which we have here in Georgia; and I'd be interested in other results of other states as to repeaters, those folks who are given a break and it's plain they're letting them out early, whether or not they are apt to repeat and go back to prison, as often as those who are not let out on an early release program.

We have alternative sentencing programs (FACES), here in Fulton County. I'd be particularly interested in experience around the country in regard to that. We sometime for folks, say, twenty-five and under, on minor offenses and even sometimes first-time burglary offenses, give them anywhere from fifty to three or four hundred hours of public work. Our program here is financed by the county government. These folks will assign them to the Parks Department; they may assign them to Grady Hospital; they'll rent them out to the churches, or whatever, just to do this type of work. We've had pretty good experience with that. I remember one instance just recently, as a matter of fact, where a defendant was sent to the Parks and Recreation Department. He had 500 hours, which is a long time. He had done about 250, and he was such a good employee for them that they were going to hire him and had, in fact, hired him full-time to work, and he was working five days a week and then doing his extra hours on the weekend. That was kind of a success story, right here. We suspended the balance of his time. We've had numerous experiences where people would go out like that and do public work for Grady Hospital or some church, or whatever, and they'd wind up getting a job with these folks; and, of course, that makes the program very successful.

One thing I'd be particularly interested in, is comparing restitution centers and probation versus prison and probation, whether or not the experience on repeaters that are serving restitution and the balance on probation, or one who's serving in prison and the balance of the term on probation. This information would be very helpful to those of us who have to go before governments which appropriate money. We get money two ways here in Fulton County. We get it from the state and we get it from the county government. That is, to construct prison facilities and so forth. If we have good information, we can sell them on the idea of appropriating the money. If we don't have good information, then, of course, we're not going to get the appropriation. So you folks can be helpful, not only to us, but to the entire country by giving this type of information.

We've utilized here in Fulton County the Neighborhood Justice Center, I find that, in a time when the economy is bad like this, a lot of folks are not working. I guess they have a short temper; and a lot of folks, it seems like, just have their neighbor arrested for using abusive language, or for criminal trespass or something. It gives them some way to get out of this crisis. They just love to come into court for some reason. It gives them a feeling of power, I guess, if they can take out a warrant against their neighbor and come in to court. We have a lot of that here in Fulton County. In general, we refer those initially to the

Neighborhood Justice Center; and, I'd say 90 percent of them are resolved at that level, because it's just a misunderstanding; or we'll have folks in a bar that'll start pushing each other around about the Georgia-Georgia Tech football game of that nature, you know, and which, if they hadn't been drinking or something, it would never have happened. And, of course, we don't put folks like that in jail. At least, I don't. But we do need your help in giving us this information, so that we can persuade the folks who have the authority to appropriate the money to let us have the necessary funds to build the necessary facilities to keep the real criminals off the street and give those who look to be a good risk a second chance.

PANEL:  
SETTING PRIORITIES FOR NATIONAL REPORTING

Legislative and Legal View

by Brian Taugher, J.D.  
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Presented at the UPR/NPR Seminar, Atlanta, Georgia, on March 3, 1982

The thing I want to talk about this morning is legislation and what we can do to gather information for legislation. I would like to take a little more general view. I'd like to take advantage of the fact that I'm the last speaker this morning and maybe take the opportunity to use the conference to draw back from the daily pressures that we're all under and to look at some of the issues that might be affecting us over the next few years. There are a number of forces that have been bubbling up to the surface over the last couple of years that are coming into play that are going to change what we're doing, and these forces that are there are going to be affecting us, as we will either deal with them or somebody else will deal with them. Some of them have already been mentioned in the conference.

One of them is the most obvious one, and that is that there is going to be less money for us to do what we have been doing. We're in an age of diminishing resources. We're being told by our budget people that we've got to think small, and we are being told that we have to cut staff positions, we have to cut operational expenses, we can't have the kind of capital funds that we'd like to to expand the operation or improve the operation we're involved in.

Now, that's a fairly obvious point, and it's going to continue for a while. In California we have Proposition 13, which has substantially reduced property taxes. We have also indexed our income taxes in California, which means that there will not be the general fund revenues that we have had in the past to fuel budget surpluses. In fact, it looks like we might be engaging in some real reductions of state government for quite some time to come.

Another pressure which severely compounds this one is that all of us are facing expanding populations, sometimes dramatic growth of population. We are having to deal in the corrections area with a lot more convicts running around. If we're working in parole, we have a lot more people on parole. We have larger case loads. The same is true of probation. We have programs being cut back; and at the same time we have mushrooming case loads. There are some people in Los Angeles County who are carrying case loads of six and seven hundred, which is obviously, for a probation officer, a hopeless task.

Even in some of our rural counties, though, we have case loads of three and four hundred.

The fact that we have an expanding population, despite the fact that we have less money, that we're still a growth industry, is also going to result in a third pressure. The third pressure is that we are going to be subjected to greatly increased scrutiny by the public, by the press. I don't know if — I've heard a

number of the NCCD people mention in the last few days that they have had a great increase in the number of requests for data. The number of newspaper articles that are running in California newspapers, and, I suspect in other areas of the country as well, has greatly increased. We have a lot more newspaper reporters calling up. Somehow they never used to get through whatever bureaucracy they called, and now they're getting there and getting hold of the people on the parole board, and they're getting hold of people in the Department of Corrections, and they're filtering their way through to people who have done research on particular projects. There is a greatly increased interest in this area, so we're going to be subjected to a great deal more attention than we're used to in the past, and a great deal more criticism than we've been used to in the past.

A third thing is that — It kind of contradicts these other two, perhaps. They're entering what I call the Age of Empiricism. We are entering an era in which people want more numbers. They want more data. Now, I don't know if I can explain why that's happening. Perhaps it's just the technology. Maybe it's the fact that we invented the micro-chip, and that we have computers that look like the typewriters of a few years ago, that sit right there in your office and yet can store tremendous amounts of information. There are home computer stores opening up everywhere. I was just down on Peachtree Street the other day, and I see where there's an IBM store going up there on Peachtree Street and 10th, I believe it is, and you go a little further out to North Atlanta and there is a Xerox store opening up there in which they're selling personal computers. Everybody loves these new — not everybody; I have to admit a few reservations myself — but people love these new computers. People want that kind of information. They're getting used to looking at those funny-looking printouts, that funny type, and I believe this is going to feed the demand for more information.

That's especially interesting in the area of criminal justice. The area of criminal justice is one of essentially a moral area. If the folks down in Albany, I think the Judge said, want these parolees or convicts to go to church, it's because, essentially, the decision to punish somebody is a moral one. It's not a scientific decision. What's the right amount of time in prison for an armed robber? Does two years do it? Does three years do it? Does ten years do it? There's no particular amount of time. It's whatever the society wants to do with it. And so the whole area of criminal justice has been fraught with moral ideas and stereotypes and myths and general symbolic acts that bear no relationship to achieving any particular purpose. It's more an expression of moral outrage than it is doing something with a particular individual.

Now, by bringing numbers into this area, we are going to be able to indicate, I think, what happens when you try a particular program. And so bringing more hard factual data into this area is going to, I think, have some good results in the long run. Well, what is the result of all these forces coming together during the early part of the eighties here? I think the obvious result is that we have some big changes coming. We have a lot of change coming in each of our individual operations. Change is frightening. It raises a lot of anxiety. We may lose jobs over this, our own individual job may be threatened. Some of you are associated with parole boards. I've been working with parole boards for a number of years. I've talked to a lot of parole board people who become very anxious when the legislature proposes to lop their jobs off or cut their staff or diminish their functions to essentially ministerial or very minor duties. The same is true for probation. People are saying you can't cure a felon while he's out on probation, so you might just as well cut these probation staffs back, let them carry case loads

of six or seven hundred. They're not doing — If you let them carry thirty or forty, they don't do a much better job anyway.

People are saying that, in prisons, we're obviously not going to lose jobs in prison. But why not just double-cell everybody? Why not just put tents up? Why don't we just have big arcades with canvas tops to house these prisoners? Why spend the additional money on staff?

So this change that's coming is frightening. It means increased competition from the outside, and it means that our own particular jobs are threatened.

Now, there's a good side to this, too. The good side is: change provides a real opportunity for — a real opportunity. Now, one of the major areas, given some of the pressures that are on us, in which I think we're going to see some new opportunity is increased efficiency of the operations that we are running right now. Less money and expanded populations obviously mean we're going to have to do what we have been doing better, more efficiently, more cost-effectively, than we have in the past.

I have a few thoughts that I might bring to your attention that I would like you to think about a little bit. Number one, one thing we have to do, and something we've started doing with our management information servicing sections in California, is to review the data that we're collecting right now, or that we're reporting. Your probably put out a number of routine reports that go to the parole board or go to the governor's office or go to a legislative committee, that you've been doing for years and years and years. And, in fact, the concentration of the last ten years or fifteen years has probably been more in the area of what new reports can we have, what kinds of new information should we be reporting? Well, I think it's time for us to set up some kind of a systematic, some kind of a regular, method for screening out routine reports — sunsetting the reports. If you start a new report, run it for a year, run it for two years, and then drop it. See if anybody cares. See if anybody notices that it's gone. And you're going to find, surprisingly, that a lot of those reports are geared to a particular issue which is important for a year or two years, and then the issue is just simply no longer that important. You can continue to gather the information. You can continue to store it away on a computer tape somewhere, or keep the basic data, should you ever have to go back and dig that up; but why continue to generate those reports? This is important, not just to save yourself the time that is lost in producing something that nobody is looking at, but it's also important for your own credibility. If you are producing reams of paper that nobody wants to look at, they don't look at anything you put out. If you're producing a lot of reports that have columns that are meaningless, people have a tendency to just look away from that and find somebody who can give them the information they want readily, somebody who can highlight the information quickly.

Okay. A second thing that I think you should do is to go to a prose description of what's in the information, and that is, go ahead and produce the table, go ahead and produce the chart, but always, always include a paragraph or two paragraphs which say two things: What's really interesting about this report? What is it about this particular month that's important over last month, or this year over last year?

Now, I know people who are involved in the research area tend not to like to do that. They tend to say, "Well, there's the data. Interpret it for yourself."

That's not your job. Your job is to provide a service to the people who need that information to make decisions, and if you can't highlight that, if you can't read through that table, if you can't read that chart and say, "Here's what's so interesting about this," it's probably not interesting, and it ought to be thrown out.

And then the second thing you need to put into this prose description, the little paragraph at the beginning, is: What's the defect in this report? What doesn't it say? What can't you use it for? What warning should be put in there to prevent it from being handed to the local reporter, or your local legislator, or whoever, who's going to misuse that information? Put your qualifiers in there in nice, simple, clear English.

So that's a second thing that I would strongly urge you to do.

Now a third thing — and this is probably the single biggest area. The National Institute of Corrections has spent a lot of time and effort in this area, and that is to produce systems which will aid the internal management of your operation. That sounds real fancy, but there are, in fact, a number of things that can take routine duties performed by your Department of Corrections, your parole board, or your probation department, and make them much easier and much more effective.

Some of you heard me yesterday describing the classification system that we set up in California in the last two years. Every prison system has a classification. The courts require it. It's the minimal constitutional requirement that you have a classification system.

Now, every classification system looks at essentially the same information. You look at what kind of prison the person has been in before, what kind of prior criminal record the person has, what kind of previous experience in different kinds of facilities. You look at whether the prisoner assaults other prisoners, whether he assaults people on the outside. You look at his prior escape history. Everybody looks at the same kind of information, and yet most of us turn it over to our accounts clerk, or turn it over to a correctional officer, or turn it over to someone in the diagnostic center to come up with a classification. "Well, this guy looks like he's probably a medium; this guy looks like maybe he ought to go to max. He looks a little heavy." You read through all this data, and you make sort of a subjective, instinctive classification of the person. Now, that's generally what happens in our prisons.

In California we followed — We took the example of the Federal Bureau of Prisons and computerized that. It doesn't make it a mechanical system. What it does is to speed it up tremendously, and to provide a lot more information a lot more accurately, and to do a much better job. What we did was to take all the factors that everybody's been looking at for the last hundred years in corrections and put a number on each one of them: this one looks like it's important; this guy's got a ten-year sentence, so he's more likely to run than the guy with the two-year sentence. So we give more points to the guy with the ten-year sentence.

We assign all these scores, and we come up with a total. If you're under 20 points, you're a minimum. If you're between 20 and 30, you're a medium. If you're between 30 and 50, you're a close, and if you're over 50, you're a maximum-security prisoner.

Now that we have that score, which is done by the computer, we can look at whether there are some unusual things not taken into account by the computer: Well, this guy's a member of a gang, or this guy has snitched off somebody. He's got a jacket, and he's going to be killed. So we've got to put him into a special protective custody category. You can allow those unusual exceptions by systematizing. Our classification system in California, we have dropped escapes to an all-time low. We have discovered that, instead of virtually no minimum security prisoners, that we, in fact, have about one-third of the people in our prisons were minimum security. We discovered that a third to a half of the prisoners in our two max facilities at Folsom and San Quentin were not maximum prisoners. In fact, they were older gentlemen that had a long history in corrections who were very good minimum security prisoners, who would be much better and much more cheaply housed elsewhere.

We've had a tremendous number of benefits simply from going through systematically, and with the use of empirical data, organizing our classification system.

Another area is in the classification of probationers. A variety of counties now in California are looking at a program that originated in Wisconsin, in which you go through and you classify the people who are to be placed on probation prior to the judge's imposing sentence; and you say, "Well, using this kind of data, using this person's criminal background, using the existing information that we have," you say, "this person could fall into an intensive supervision category; this person would fall into a medium supervision; or this person would fall into a virtually no supervision category," and then you tell the judge that at the time of sentencing. If a person is on the margin between going to state prison or staying in the local community, the fact that he's going to be under intensive supervision may encourage the judge to place him on probation.

Now, I won't go into any more details on that, but the National Institute of Corrections has the full details on it. There's a great deal more detail to it than I've described, and it looks like it's going to be a very interesting project in the future. You can reduce case loads of population through the use of computers. Why should we keep people on for two and three and four and five years if we can cut some of them off, or cut them back to minimal supervision, and then take those parole agents and probation officers and focus their attention on the people just coming out, when we know the highest risk is there?

One of the pet peeves that I have is that we're in a criminal justice system which originated in England, and it's controlled, at least initially, by the lawyers, whether the lawyers are there as lawyers or as judges. Basically, the lawyers are controlling the system up front. And we have accepted the legal definitions of how to categorize crooks. The legal definitions were developed for very, very different purposes. They were developed for purposes of convicting somebody in a court hundreds of years ago. They were not developed with the view in the mind of categorizing people according to what we ought to do with them.

Now, I don't know if I'm being very clear about this, but one of our major problems is that you can take an assault — and an assault can be a bar fight over a Georgia-Georgia Tech ballgame, or it can be, as we had occasion in San Francisco, a couple of young kids who kicked an elderly man to death to take his wallet on the streets of San Francisco. But he didn't die for a little over a year, and so he was not chargeable with murder, and he was convicted of assault. And yet both

those cases are going to enter the computer system as an assault. What we need to do is to just simply perhaps drop altogether, or modify, the crimes that the legal system uses, and come up with a much more coherent and rational classification of crimes. That is the single biggest need that we have in the legislative area. If we're going to increase penalties for those who assault the elderly, or those who assault people in wheelchairs, as we have done in California, we need to know how many wheelchair victims do we have, how big a problem is this? Well, it turns out we probably have three or four a year in California; yet there is a statement behind that, so we now have a law that punishes that much more severely.

I would downgrade aggregate data. I wouldn't say eliminate the aggregate data that we're collecting, but I would say that we do, in fact, need to get much more refined, much more specific. We need to know relatively — Aggregate data doesn't tell you too much in a big lump. But if we can look at how it changed from last year, or if we can look how it changes from jurisdiction to jurisdiction, we get a lot more interesting information.

Some of the things that we need in the area of legislation are: much more effective bill estimates, bill analyses. In California this year we started a new program where we estimate not only how many people are going to be affected next year, but we take how many people are going to be coming in as a result of this penalty increase for each of the next five years, and what will be the proper population? That is, once enough people come in, times the length of time they stay, what will be the net effect in the peak year of population? And then we break down what the cost will be of that population in terms of increased operating costs in each of the years, and then how much the ongoing costs will be after that population stabilizes, and then what will the capital outlay be. In the past we've never had even a bill analysis that put cost estimates on bills. It's kind of interesting that this has had a big effect, in that a number of bills have been stopped in our fiscal committees because of the cost; but a lot more bills are being enacted, I suspect, because they have no cost, and yet they're making a fine moral statement.

For example, we just had our habitual offender, our three-time loser, law, that was passed in California. We repealed it in 1977, because the people who came in under it appeared to be over forty and were at the lower end of — at the end of their criminal careers and were not particularly dangerous people. Yet there was such popular outcry to have this kind of a law that we brought it back in; and the bill analysis pointed out that people convicted under this law would probably serve less time than if they went under the normal system; but the legislature passed it anyway. They had no fiscal risks involved. It was a very popular program.

Well, I'd like to end my talk here by paraphrasing Franklin Roosevelt, who was approached by a constituent, or someone in the country, who thought, "Now, at last, I've got to speak to the President and I can have my program enacted." He described the program, and Roosevelt said, "You've convinced me. I think it's an outstanding program. What you need to do now is to create the pressure that will make me do that." And I think that we need to understand that that is exactly the way most politicians look at it. They can agree with you all day long that this is the best thing since sliced bread, but they won't do it until it gets on the front pages of the newspaper. Once it gets on the front pages of the newspaper, you can get effective change, and the only way to get it on the front pages of the

newspaper is to become more aggressive in interpreting the information that you're collecting, and then become more aggressive in communicating that to the public, to the policy-makers, and to the internal management people in your organization.

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