COPING WITH JUSTICE

In 1922, Roscoe Pound and Felix Frankfurter urged that the criminal justice system be judged not "by the occasional dramatic case but by its normal humdrum operations."

The American public has generally ignored this advice.

In their choice of television shows, tabloid newspapers, popular fiction, and political rhetoric, Americans are drawn to the most fanciful, gruesome, bizarre, or self-serving portrayals of criminal justice. Public attention goes to the Juan Coronas, the Gary Gilmores, the Patricia Hearsts. Parole becomes the subject of a TV network news item, it seems, only when someone like Charles Manson comes up for it. It took an attempted presidential assassination to get the "insanity defense" into the headlines. President Reagan himself appears to be partial to "horror stories." Complaining that felons too often escape punishment as a result of legal technicalities, he recently cited a bizarre Florida case where a drug conviction was thrown out because the search warrant authorizing police to inspect a couple's home did not extend to the baby's diapers, where the illicit cache was found.

Thus, the dramatic regularly elbows aside the routine. What actually happens between the time a typical criminal suspect is arrested by police and the time he or she enters prison or returns to the streets remains widely misunderstood. Justice can be as unpleasant in its gritty details as it is ennobling in its virtuous abstraction. But Americans avert their eyes from the criminal justice system at their own peril. If crime deserves punishment, if the public deserves protection, and if all citizens deserve due process, then what happens from arrest to incarceration (or release) deserves close attention.

"You have the right to remain silent." So begins the Miranda warning, read by arresting officers to criminal suspects. First required by Chief Justice Earl Warren's Supreme Court in 1966, the warning has become second nature to a generation of police officers. Contrary to what some critics of the Warren Court claim, the Miranda warning does nothing to protect criminals unduly. Ernesto Miranda himself, an Arizona drifter convicted of rape and kidnapping, won only the right to a new trial after the court ruled that police officers had failed to inform him of his rights. He did not go free. He was re-tried, convicted, and returned to jail.

For both law enforcement officials and the accused, bail is a

major concern soon after arrest. Originating in England more than a thousand years ago, the bail system attempted to guarantee appearance at trial by requiring a money deposit for release from jail until judgment had been handed down. Then, as now, bail also served as a means to keep crime-prone suspects in custody before trial. Under the current system, however, many of those who are jailed before trial should not be and many of those who are not, should be.

To the suspect, posting bail means freedom. Most of those arrested do manage to find the cash amount set by the court. The bail bondsman, a fixture in poor urban neighborhoods, will post bail quickly for suspects. His fee is a flat, nonrefundable 10 percent of the bail amount. (In New York City in 1973, 40 percent of defendants were required to post more than $1,000.) Contrary to public opinion, this system works, at least in getting suspects to appear for court proceedings. A 1976 survey of courts in 20 U.S. cities conducted by criminologist Wayne Thomas found that only five percent of the accused failed to show.

Two Reforms

Those suspects, however, who cannot post bail remain in custody regardless of the seriousness of their offenses. The U.S. Justice Department estimated in 1978 that 60,000 people—nearly 40 percent of all prisoners in local detention facilities—were simply awaiting trial. Studies show that these defendants face a triple disadvantage: more convictions, more prison terms, and longer prison terms than those who make bail. Confined in prison, they are not, as Steven R. Schlesinger, Acting Director of the U.S. Bureau of Justice Statistics, explains, "completely free to aid in the preparation of their own defense, to locate evidence, assist their attorneys, and hold a job (both to earn money to pay counsel and to prove reliability at their trials)." Bail, in short, discriminates against the poor.

As a crime *prevention* measure, moreover, bail is in large measure ineffective. One suspect in six out on bail, according to a recent study, returns, not to face trial, but to face new charges (and one-third of these are rearrested more than once). The alternative is no more acceptable: Detaining all likely repeat offenders would jam already-crowded jails. And in all probability, many suspects who would *not* commit another crime if released, and who *would* show up for trial, would be penalized.

Whatever its defects, the original U.S. bail system remained largely unchanged from 1789, when the Judiciary Act created the federal bail system, until the passage of the Bail Reform Act

of 1966. The 1966 Act established and encouraged nonfinancial conditions for release such as release on recognizance (ROR). It also assumed that pretrial release decisions would be based on the likelihood of an individual's appearance at trial rather than on the danger presented by his freedom. In 1970, however, Congress empowered the Washington, D.C., Superior Court to detain without bail any suspect whose alleged crime and prior record indicated that he was dangerous to the community. As is usually the case in law enforcement, state and local law, under which the vast majority of offenders are processed, has gradually followed the lead of the federal government. Public debate in the last 15 years has centered on the use of ROR programs and preventive detention.

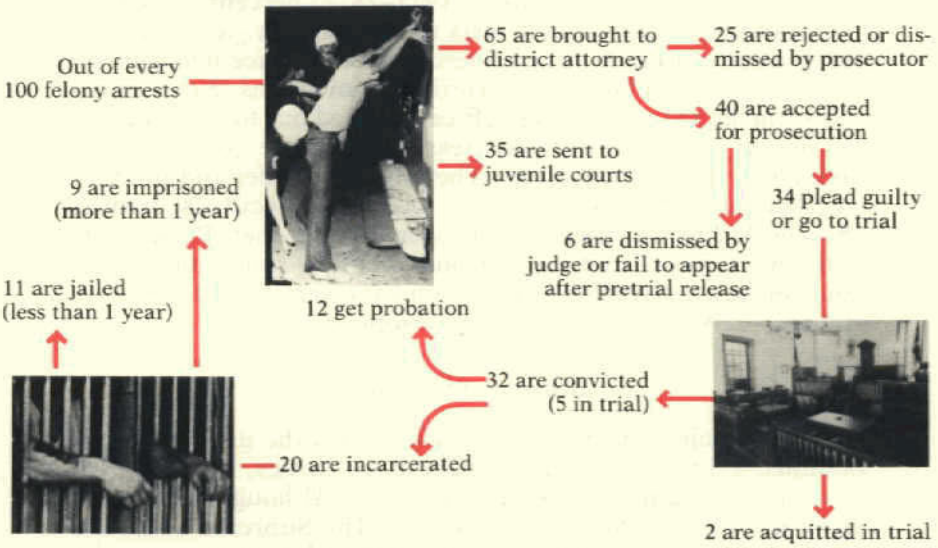
Screening Suspects

ROR programs rely on actuarial tables based on factors such as the suspect's community and family ties, his prior record, and his employment history to estimate the chance of his returning for trial. Prisoners judged as low risks are released. Having proven as effective as traditional bail programs—Manhattan served as the first laboratory—ROR has been adopted by 120 cities. Among its advantages: It is less expensive than jailing suspects; it operates more quickly than the bail system; and it does not discriminate against the poor.

Preventive detention is more controversial, since it amounts to imprisonment before conviction. (Contrary to popular belief, the right of a defendant to be "presumed innocent" applies only to the trial; were it otherwise, no arrests would be made in the first place.) Nine states now permit their courts to consider a potential threat to community safety in decisions to grant bail. In 1981, the Reagan administration proposed that preventive detention be allowed in federal cases. What makes preventive detention attractive is that it would keep the most dangerous recidivists off the streets while perhaps helping to reduce the fear of crime in the local community. In 1982, Arizona voters ap-

This essay has been adapted from chapters of Crime and Public Policy *(Copyright © 1983 by the Institute for Contemporary Studies) written by Steven R. Schlesinger, Acting Director of the U.S. Bureau of Justice Statistics (criminal procedure), Brian Forst of INSLAW, Inc. (prosecution and sentencing), Daniel Glaser of the University of Southern California (the supervision of offenders outside of prison), Alfred Blumstein, J. Erik Jonsson Professor of Urban Systems and Operations Research at Carnegie-Mellon University (prison populations and capacity), and Peter W. Greenwood of the Rand Corporation (the effects of incapacitation).*

AFTER THE ARREST: DISPOSING OF CASES



Source: INSLAW, Inc.; U.S. Department of Justice.

Not shown above: recidivism. A study conducted in Oregon reveals that, of every 100 persons arrested in a given year, 35 will be arrested again at least once within three years, 17 at least twice.

proved a referendum that would deny bail to any suspect "found to pose a danger to society." In its major legal test so far, *U.S. v. Edwards*, preventive detention was ruled constitutional in 1981 by the D.C. Court of Appeals, a decision the U.S. Supreme Court declined to review.

While defendants are worrying about posting bail, prosecutors are deciding which cases they want to pursue. Each attorney in a typical big-city prosecutor's office must decide how to dispose of about 100 felony cases per year. Obviously, a prosecutor cannot give Watergate-level attention to every third-rate burglary. Even the toughest prosecutor will free more suspected criminals than the most lenient judge. As Brian Forst of INSLAW, Inc. (formerly the Institute for Law and Social Research) has written, "about 40 percent of [adult] felony cases are either rejected outright at the initial screening stage or dropped by the prosecutor soon afterward." Prosecutors say that most often it is lack of evidence—weapons, stolen goods, eyewitness accounts—that forces them to abandon cases. This lace of evi-

dence results more from poor police work than from a criminal's skills. In seven U.S. cities during 1977–78, 22 percent of the local police officers who made arrests made not a single arrest that led to a conviction. A mere 12 percent of the policemen were responsible for *one-half* of all criminal convictions. Not surprisingly, the most "productive" officers turned out to be especially persistent about finding witnesses and more conscientious about follow-up investigation. They worked harder and smarter.

The second most common reason prosecutors dismiss charges is that the offense is not worth the bother. Prosecutors will sometimes divert less serious offenders into programs of counseling, restitution, or community service. In most instances, "trivial offense" cases are dropped outright.

Search and Seizure

The "exclusionary rule," which forbids the use of illegally obtained evidence in court, is said by its critics, including the President, to hamper prosecution greatly. Although the controversy is growing, the issue is not new. The Supreme Court imposed the rule on federal courts in 1886 and on state courts for many crimes in 1961. Its chief purpose is to deter police misconduct, but most of the evidence suggests that it fails to achieve this goal. For one thing, the impact of the rule falls more directly on prosecutors than on individual police officers (whose performance is usually judged by the number of arrests they make, not by the convictions that follow). Meanwhile, the exclusionary rule impedes the truth-finding function of the courts, fails to distinguish between flagrant and "good faith" errors by a police officer, benefits only the guilty, and undermines public respect for the judicial system.

Supporters of the exclusionary rule note that, in the nation as a whole, prosecutors drop only about one percent of all felony and serious misdemeanor cases a year because of the Fourth Amendment "search and seizure" procedural requirements. Yet, as Schlesinger points out, that one percent still amounts to 55,000–60,000 cases.* He adds that "if the exclusionary rule is

*For a good overview of the subject, see *The Effects of the Exclusionary Rule: A Study in California*, U.S. Department of Justice, 1982. Regardless of the number of cases actually dropped, the suppression hearings and appellate litigation made necessary by the rule are a major drain on the courts' time. A 1979 General Accounting Office study of 42 of the 95 U.S. Attorneys' offices in the country found that "thirty-three percent of the defendants who went to trial filed Fourth Amendment suppression motions." According to the report, the exclusionary rule was the single most important issue arising most frequently in federal criminal trials. At the appellate level in 1979–81, more than 22 percent of the criminal cases reaching the U.S. Court of Appeals of the District of Columbia required a decision as to whether evidence should be excluded.

misguided, then the release of even one convictable person is one release too many." The Supreme Court in late 1982 agreed to reconsider the exclusionary rule in its 1983 term, even as new proposals were being floated by Schlesinger and others to curb police misbehavior by making officers *as individuals* subject to disciplinary proceedings and liable for damages.

Copping a Plea

Courtroom drama rarely interrupts the peristaltic advance of a case through the criminal justice system. The television triumphs of Perry Mason notwithstanding, only about seven percent of all felony suspects have their guilt or innocence established by the clash of opposing lawyers and the judgment of a jury or judge.

When prosecutors decide that the nature of the evidence and the offense *does* warrant pressing on, nine out of 10 times they win a conviction by plea bargaining. So routine are these negotiations that they may take no more than five to 10 minutes to complete in a prosecutor's office or a judge's chambers. The form of the bargain is always the same: In return for relaxed prosecution, the defendant does not contest the charges. The substance of these agreements varies widely. As one Assistant U.S. Attorney told sociologists John Hagan and Ilene Bernstein, "We'll let [the felony suspect] plead to a misdemeanor and won't prosecute . . . all the way . . . to charging him with exactly what he did and saying nice things about him at sentencing."

Like most other aspects of the criminal justice system, plea bargaining has drawn intense criticism in recent years. Defense lawyer Seymour Wishman has charged that plea bargaining "often hides the incompetence or unlawful behavior of law enforcement officials or conceals the preferential treatment of defendants." The National Advisory Commission on Criminal Justice Standards and Goals recommended in 1973 that plea bargaining be abolished. Alaska, El Paso, Philadelphia, and other jurisdictions have experimented with doing just that. Yet few deny that plea bargaining will persist.

There are several reasons for its durability. It is time honored if not venerable. During the 1920s, political scientist Raymond Moley, later an adviser to President Franklin Roosevelt, studied the American criminal justice system and found plea bargaining already both pervasive and entrenched. And plea bargaining is quick and cheap. California's Judicial Council found in 1974 that a jury trial in the state consumed an average of 24 hours of court time at a cost of more than $3,000; a guilty

POLICE: THE THIN BLUE LINE

Television's police dramas typically feature at least one arrest per episode. In real life, the average cop in a large (250,000+ people) American city makes only about 25 "collars" per *year*. Of these, only six are for major (or "index") crimes. Fewer than one out of five index crimes is "solved" by an arrest. Why is the figure so low?

One reason is that relatively few police officers are actively engaged at any time in combating crime. New York City boasts a police force of 28,000, but thanks to court appearances, administrative duties, and the burden of paperwork, only 6,600 are out on the streets during any 24-hour period, and this force is divided into three eight-hour shifts. According to a study by the Police Foundation, officers on patrol spend about half their time writing traffic tickets, investigating traffic accidents, waiting for tow trucks, arresting drunks, and traveling to and from the police station, the police garage, the courthouse, and their "beats." Another one-fourth of duty time is spent relieving boredom and tension—eating, resting, talking on the radio, girl-watching.

In the time remaining, the police cruise the streets and respond to calls. Seventy-five percent of all crimes are discovered well after the fact, and the perpetrators are unlikely to be apprehended. The police try to focus their attention instead on the other 25 percent ("involvement crimes"), where the victim has been in direct contact with the criminal. Reports coming in on the "911" or other emergency numbers, however, are often poorly screened at headquarters; patrol officers, as a result, must often deal with trivial complaints that could be handled by phone.

Victims are also slow in calling, if they call at all. (An estimated 47 percent of violent crimes and 26 percent of property crimes go unreported.) To judge from a survey of Jacksonville, Peoria, Rochester, and San Diego, 73 percent of all calls come after the critical first minute and 46 percent come after *five* minutes. Arrest statistics suggest that waiting five minutes is as bad as waiting 60. When police arrive, witnesses may be unavailable, unable to speak English, or so traumatized by the incident that their accounts are unreliable. All of which suggests that a rapid "response time" by police officers, something the public clamors for, is in fact a negligible contribution in the fight against crime. Luck seems more important.

plea took 15 minutes and cost about $215.

In New York City, 90 percent of all defendants, unable to afford a lawyer even for a brief trial, must rely on court-assigned attorneys or public defenders. Such counsel spends an average of only 30 minutes with each client before adjudication. Under such circumstances, a jury trial may well appear to the accused as an invitation to disaster. A plea bargain becomes a more at-

tractive alternative. Prosecutors also like to avoid trials because of their unpredictability.

Moreover, doing away with plea bargaining has its drawbacks. Two years after banning it, El Paso found city courts hopelessly backlogged. Authorities had to relent and permit some kinds of negotiations. Philadelphia discovered that its prosecutors simply switched to "trial bargaining," making deals on whether a defendant would receive a full jury trial or a so-called bench trial. Because bench trials last only a few minutes, the new bargaining differed little in results from the old. For better or worse, plea bargaining endures.

Judges and Sentencing

During the past 10 years, prosecutors have increasingly tried to target their best efforts at the "career criminal." As in ROR programs, the aim is to distinguish between the typical suspect whose run-in with the law is an unusual event and the hard-core minority who have criminal lifestyles. Bolstered by studies documenting the existence of a small but very active group of chronic criminals, the criminal justice system has mobilized to put them out of business. The Washington, D.C., and New York City police departments have formed career criminal task forces. San Diego, New Orleans, Kalamazoo, and 95 other cities have established career criminal prosecution teams. These teams resist plea bargaining and seek tough sentences. Their record, however, is mixed. A statewide effort in California boosted the conviction rate on the most serious charges (rape, murder, armed robbery, and so on) from 60 to 85 percent and won sentences that were a year longer than those awarded in similar cases not specially prosecuted. A 1981 Justice Department survey, however, revealed that the four big-city career criminal prosecution teams it studied won neither more convictions nor severer sentences. Still, the popularity of targeting career criminals continues to grow.

Sentencing practices vary widely. Depending on the location and the crime, judges, juries, prosecutors, or elected officials—or all four—may decide how the guilty are punished. In Texas and a dozen other states, the jury votes on the sentence; most states require jury sentencing in capital cases. In many jurisdictions, prosecutors and defense attorneys can settle on penalties in "sentence-bargaining" sessions and have the presiding judge rubber-stamp the agreed-upon punishment.

Judges have the single greatest influence on the sentence. Criminologist Brian Forst notes that sentences are determined

primarily on the basis of who the sentencing judge is rather than on the basis of the seriousness of the crime, the criminal's prior record, and the criminal's plea, all put together. Judges are nonetheless generally tougher on the repeat offender than on the first-time criminal, more lenient on those who admit their guilt than on those who deny it and are convicted. Charles Silberman found that, in New York City, judges were three times more likely to imprison the robber who had victimized a stranger than the one who robbed an acquaintance. They tended to treat women more leniently than men for the same offense.

Most judges apparently do not discriminate against blacks. "Blacks are overrepresented in prison populations primarily because of their overrepresentation in arrests for the more serious crime types," a 1982 National Science Foundation panel concluded.

Actions by state legislatures have taken away some judicial discretion. By 1978, six states had instituted "determinate sentencing" laws. Under these laws, judges retain the right to grant probation to low-risk offenders but must adhere to legislatively set sentences when putting an offender in jail. Six other states have removed the judges' sentencing power altogether in certain cases with mandatory sentencing laws that require prison terms, usually for armed, violent, or drug-related crimes. Many jurisdictions make use of nonbinding guidelines. Thus, in Maryland, judges are advised to give consecutive rather than concurrent life sentences in murder cases if the defendants have also been convicted of abduction or rape. The new legislation reflects a dramatic change that has occurred since 1970 in the commonly accepted rationale for putting people behind bars.

The Demise of Rehabilitation

Of American penitentiaries, Alexis de Tocqueville wrote in 1833: "It is not yet known to what degree the wicked may be regenerated, and by what means this regeneration may be obtained." Yet, from the Progressive era through the 1960s, the assumption that prisons could and should transform thieves, hoodlums, and murderers into law-abiding citizens dominated the criminal justice system. The rehabilitative ideal influenced a vast array of penal developments in the 20th century. Prisons became "correctional institutions." Rehabilitation was the reason for the indeterminate sentence (not to mention for the creation of the first American juvenile court in 1899). When prison officials decided that a convict had been successfully "rehabilitated," they would recommend his release. Despite many

examples of excessive leniency—one thinks of the Norman Mailer-induced parole in 1981 of Jack Henry Abbott, a convicted killer who went on to kill again after 45 days of freedom—the fact remains that those who make parole decisions usually believe in what they are doing.

And yet, ever since World War II, researchers have been compiling evidence that *no* rehabilitative program seems to work, at least in the aggregate. One-third of "rehabilitated" convicts, it turns out, commit crimes after release, about the same number as "unrehabilitated" ex-convicts. The late criminologist Robert Martinson of the City College of New York wrote the epitaph for the rehabilitative ideal in 1974. Summarizing 231 research studies, he concluded: "With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had little appreciable effect on recidivism." Plastic surgery didn't help, counseling didn't help, job training didn't help. Judging by one Danish study, even castration proved insufficient to bring the recidivism rate of male sex offenders down to zero.

The debate about what criminal punishment could and could not achieve had actually come to a head well before Martinson published his findings. Frightened by rising crime rates, the American public during the late 1960s demanded, in effect, that "retribution" replace rehabilitation as the purpose of incarceration. Alabama Governor George Wallace made a surprisingly strong showing in the 1968 presidential race with

promises to "stop pussyfooting around" and to imprison lawbreakers "and throw away the key." New York's passage in 1971 of tough legislation providing mandatory sentences for drug law violations reflected the same impulse.

By the mid-1970s, the idea of "just deserts" was enjoying a certain vogue. Punishment, the argument went, should fit the crime and be based on no other criteria. Only so would it increase respect for the law and thus deter crime. Many elected officials used these claims in promoting mandatory sentencing laws. In any event, more people began going to jail more often. Between 1974 and 1979, the number of men in jail as a percentage of the adult male population jumped 40 percent.

Cost-Effective Justice

By the end of the decade, the most observable effect of tougher imprisonment policies was overcrowded prisons. Courts in 31 states had decided that wretched prison living conditions required judicial intervention.* In a typical action in 1976, Alabama Judge Frank Johnson ordered state prison authorities to provide at least 60 square feet of space per inmate. State legislators soon counted up the costs of toughness—$50,000 to $70,000 for one new prison cell, $10,000 to $15,000 a year to keep a prisoner in it. During 1980–81, voters in Michigan and New York turned down prison-building referendums. In New Mexico, the legislature approved a $107 million prison construction bill only after the worst prison riot in U.S. history left 43 dead in the state penitentiary south of Santa Fe in February 1980.

The lesson of the 1970s seems to be that retribution as a crime-fighting philosophy has its limitations, too. While the crime rate seems of late to have steadied, population trends rather than tougher sentences are probably the reason. Meanwhile, because mandatory sentencing laws suffer from rigidity, the trend toward their adoption has slowed. New York has modified its drug laws to allow lesser offenders to plea bargain. The reason: Juries often refused to convict lesser offenders if conviction required harsh punishment. Among public officials, a con-

*Four out of five convicted felons find themselves confined in a medium- or maximum-security facility. One out of two such facilities in America is more than 80 years old. A prisoner is likely to share with another inmate a cell designed for a single occupant, accommodations that the Supreme Court held (in *Bell* v. *Wolfish*, 1979) did not necessarily constitute cruel and unusual punishment. Prisoners are guarded by officers whose education is, on the average, only slightly better than their own and whose salaries average $15,000 per year. If California's prison system is typical, prisoners face a four percent chance of serious injury in any given year. They are likely to suffer homosexual rape, especially if they are young and white. Slightly more than half of them will be released within one year.

sensus arose that the *certainty,* not the *severity,* of punishment best deterred crime.

Increasingly, criminal punishment today emphasizes cost-effectiveness above all other goals. "Incapacitation" is the by-word of this new approach. The least expensive and most lenient treatment goes to criminals least likely to commit serious crimes again, regardless of the seriousness of their offense. The most expensive, that is to say, the harshest punishment goes to those who, in the words of Carnegie-Mellon University's Alfred Blumstein, "represent the greatest crime threat if they were outside, either because the crimes they will be committing are the most serious, because they will be committing them at the highest rate, or they can be expected to continue committing them for the longest time into the future." Legal attention in the 1980s focuses on the removal of the most dangerous at the least cost.

This philosophy may seem to be nothing more than common sense, but considering how many long-accepted criminal justice goals it contradicts, it represents a significant development. The advocates of cost-effective justice take little interest in reforming the wrongdoer. They downplay the importance of "just deserts," an eye for an eye. They ignore the goal of putting away larger numbers of criminals. And they rely heavily on the unpopular sanctions of probation and parole.

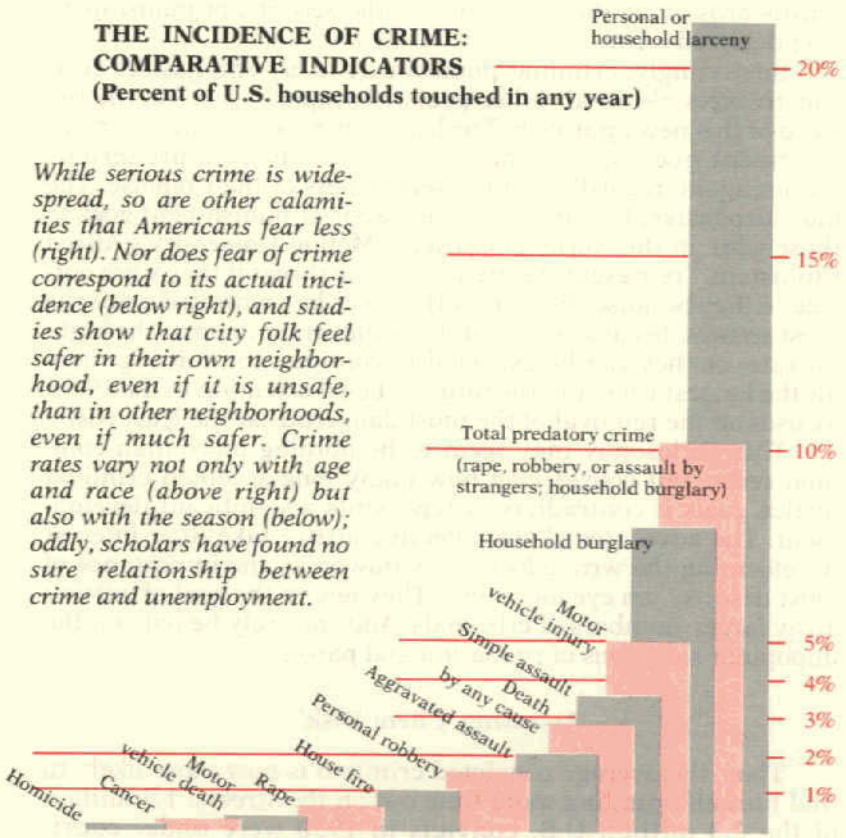
Assessing 'Client Risk'

Thus, the average convicted criminal is now more likely to find himself spending more time out on the streets: 1.5 million of the 2.3 million U.S. convicts in 1980 were under court-ordered "supervised release." Another 270,000 were on parole, the supervised release that follows incarceration. The number of convicts on probation or parole increased 24 percent between 1976 and 1981.

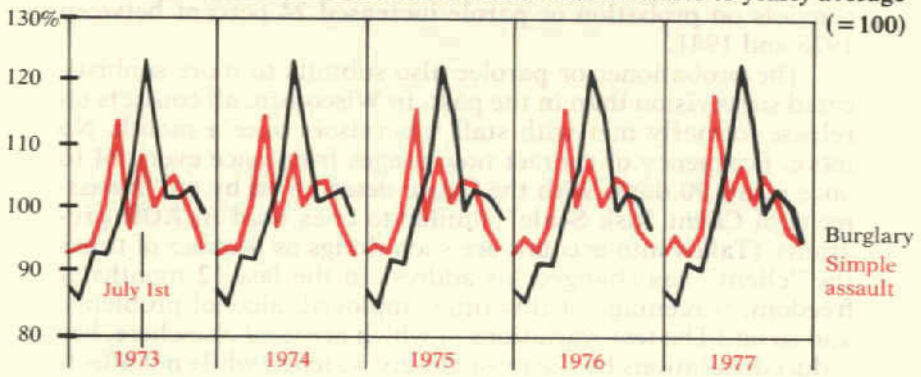
The probationer or parolee also submits to more sophisticated supervision than in the past. In Wisconsin, all convicts on release formerly met with staff supervisors once a month. No more. Frequency of contact now ranges from once every 14 to once every 90 days, with the figure determined by an "Assessment of Client Risk Scale" similar to ones used in ROR programs. (Taken into account are such things as number of times the "client" has changed his address in the last 12 months of freedom, percentage of this time employed, alcohol problems, and so on.) The test, variations of which are used elsewhere, has reduced violations by the most closely watched while not affecting violation rates among the least supervised.

THE INCIDENCE OF CRIME: COMPARATIVE INDICATORS
(Percent of U.S. households touched in any year)

While serious crime is widespread, so are other calamities that Americans fear less (right). Nor does fear of crime correspond to its actual incidence (below right), and studies show that city folk feel safer in their own neighborhood, even if it is unsafe, than in other neighborhoods, even if much safer. Crime rates vary not only with age and race (above right) but also with the season (below); oddly, scholars have found no sure relationship between crime and unemployment.

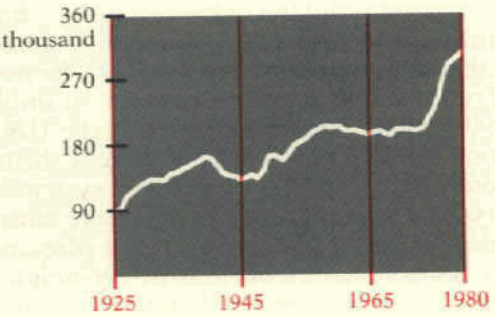


CRIME AND THE SEASON: Fluctuations in rate relative to yearly average (=100)



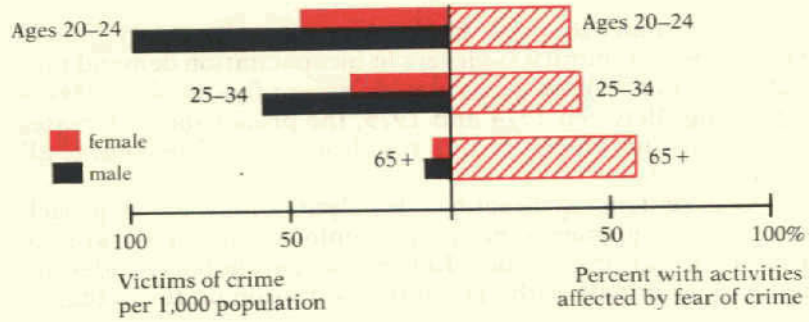
ARRESTS IN 1981 BY RACE, AGE, AND OFFENSE (FBI Index Crimes)

FEDERAL AND STATE PRISON POPULATION, 1925–1980



Source: U.S. Department of Justice, Bureau of Justice Statistics.

VICTIMIZATION AND THE FEAR OF CRIME



Authorities are also making heavier use of halfway houses. As criminologist Daniel Glaser notes, "halfway houses and work release are usually justified primarily as ways of helping prisoners become accustomed to community life before they are more completely free, but these residences also impose considerable control on offenders." Parolees must sleep at the halfway house. They must account for their whereabouts at work or with friends. They must take tests for alcohol and drug use—a once-cumbersome procedure now made easy by development of portable electronic urinalysis equipment. ("Open an attache case, perform a few simple steps . . . ." begins a full-page Syva Company advertisement in the latest American Correctional Association directory.) Halfway houses cost half as much as prisons and are growing more common. To ease prison overcrowding during 1981–82, California tripled the number of inmates assigned to halfway houses in major metropolitan areas. By using actuarial risk tables to select the people released, the state brought the halfway house escape rate to a 20-year low.

Worth a Try?

Glaser reports that some judges have begun sentencing criminals to halfway houses with no initial stay in prison. Rather than halfway *out* of prison, he notes, these inmates are halfway *in*. With prison congestion unlikely to ease until the 1990s, when, demographers say, the U.S. population of crime-prone young males will have greatly shrunk, the trend toward a "community-based" correctional system is likely to continue. In Massachusetts, halfway houses have entirely replaced reformatories for juveniles. However, the placement of halfway houses has ignited scores of "not-in-my-neighborhood" protests in places ranging from Prince George's County, Maryland, to Long Beach, California. Local opposition could retard the spread of such facilities in coming years, no matter how cost-effective they are.

While many low-risk lawbreakers may be safely placed back in the community, believers in incapacitation demand that high-risk offenders be incarcerated. Recent figures show this is happening. Between 1974 and 1979, the proportion of inmates serving time for violent crimes rose from 52 to 57 percent of all inmates.

As a sentencing practice, this "put-'em-away" approach naturally complements the career criminal control efforts of police forces and prosecutors. Judges and parole boards identify high-risk criminals with yet another variation on the actuarial

table. The Federal Parole Board guidelines, for example, allow offenders to be graded on a zero-to-11 scale based on various factors and recommend fixed prison terms for each grade of offender in seven categories of crime. Thus, a heroin addict with two prior convictions and two stints in the state pen, who was under 18 when first incarcerated, who had violated parole at least once, and who had spent less than six months at work or in school in the two years prior to his latest arrest would have a total of two points—marking him as a poor risk. If convicted of arson, he would get a prison sentence of at least 78 months.

Whether an incapacitation policy can help lower the crime rate by locking up the most active criminals will not be known for certain for years. Rand Corporation researcher Peter Greenwood asserts that because murder, rape, and assault are so rare for any one offender, the incidence of these crimes will not be affected by incapacitation. Nor, he believes, will incapacitation inhibit those convicted of larceny, fraud, and auto theft. Because these offenders now go to jail infrequently, imprisoning more of them would put an intolerable burden on the prison system.

"The crimes for which selective incapacitation principles appear most appropriate are burglary and robbery," Greenwood concludes. "They are the high volume predatory offenses of which the public is most fearful. They are also the offenses in which career criminals predominate, and they are the crimes for which a substantial number of convicted defendants are currently incarcerated."

The logic of incapacitation appears sound and its goal seems attainable. It offers, as other methods controlling crime once seemed to, a strategy for reducing crime without exceeding the country's capabilities. If not the most draconian solution to the problem, it is at least the best practical solution in a turbulent society where the financial cost of justice may soon rival the financial cost of crime.