U.S. Department of Justice

National Institute of Corrections

Washington, D.C. 20534

National Institute of Corrections - Advisory Board Meeting
November 5-6, 1989, San Diego, California

This information packet provides a progress report on the Community Corrections Division's Intermediate Sanctions Project, a joint project of the National Institute of Corrections and the State Justice Institute. It includes background reading on the subject of judicial interest in intermediate sanctions and how change may occur in sentencing and the courts.

INTERMEDIATE SANCTIONS PROJECT
PROGRESS REPORT

NOVEMBER 5, 1989

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2. "Judges Foster Change," Article in the Philadelphia Inquirer, May 21, 1989.

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State Justice Institute

October 25, 1989

Mr. Norman Carlson
Chairman, Community Corrections
Committee
Advisory Board
National Institute of Corrections
320 First Street, N.W.
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Dear Mr. Carlson:

On behalf of the State Justice Institute, I would like to share my thoughts with you on the importance of our joint technical assistance and training effort to facilitate the use of intermediate sanctions.

As you know, the State Justice Institute is a private, nonprofit organization created by Congress to improve the quality and administration of justice in the State courts. The Institute Board and staff constantly talk with judges and court managers from all over the country about what they perceive to be the most critical problems facing the courts today. The apparent lack of sentencing options available to judges is a problem that has been cited to us repeatedly by court officials from both large and small jurisdictions. Their frustration stems from four sources: (1) The jail and prison overcrowding crisis; (2) the lack of credibility of the intermediate sanctions that are available among judges and within the community; (3) the absence of sufficient capacity in residential intermediate sanctions to accommodate the numbers of offenders who could be appropriately sentenced to them; and (4) the scarcity of information about the range, nature, and effectiveness of intermediate sanctions.

Judges and court staff also recognize that the underutilization of intermediate sanctions is a critical problem facing the entire criminal justice system, and that no single segment of the system can respond to it effectively. The judicial recognition of the need to work together with law enforcement and corrections makes this a particularly opportune time for the Institute to embark on a partnership with the National Institute of Corrections. It appears that this project presents a real possibility of bringing

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the system together (rather than dividing it, as projects addressing just one part of the system do too often).

Given the national interest in the program and the significant needs expressed by the jurisdictions that applied to participate, we feel strongly that the combined offering of training and planning followed by technical assistance holds great promise for facilitating change and improving practices in those jurisdictions and elsewhere. In addition, we believe that the project design offers the flexibility required to permit jurisdictions to meet their particular needs. The enthusiastic response of the jurisdictional teams selected to participate (and, conversely, the sincere expressions of disappointment conveyed by the jurisdictions that were not selected) underscores the desire of the policymakers representing the various parts of the criminal justice system to work together to find solutions.

I appreciate the opportunity to discuss our perspective with you. We look forward to continuing the excellent working relationship we have shared thus far.

Sincerely,

C.C. Torbert, Jr.
Chairman of the Board

A

INTERMEDIATE SANCTIONS PROJECT

PROJECT DESCRIPTION

Project Summary

The Intermediate Sanctions Project is designed to make more effective use of intermediate sanctions by improving the dialogue among the courts, those criminal justice agencies that have key roles in the adjudication process, and those that design, implement, and manage community corrections programs. Facilitating this dialogue is a key step to meeting more effectively the goals of the sentencing process, to making more appropriate use of intermediate sanctions, and to achieving more rational sentencing practices. The Project is focusing its efforts on local jurisdictions, primarily cities or counties with populations of 250,000 or more.

The Intermediate Sanctions Project is a joint undertaking of the National Institute of Corrections (NIC) and the State Justice Institute (SJI). SJI and NIC have entered into a cooperative agreement with the Center for Effective Public Policy to administer the project. The Center is working with the Institute for Court Management of the National Center for State Courts in carrying out the program.

As the crisis in the nation's criminal justice system spreads to suburban and even rural areas, policymakers in all branches of government are looking for new answers, answers that speak to both the sources and the aftermath of crime. The crisis comes at a point when public resources are limited. There is no question that the times call for greater creativity in responding to crime and criminals. Intermediate sanctions are an important part of that response. Judges want more than a choice between probation or prison; they need a full range of options to consider at the time of sentencing. They want options that are safe for the public and appropriate for offenders. Probation chiefs and other correctional administrators are struggling to provide adequate supervision and services to more offenders with the same level of resources. They want opportunities to put their ideas and experience to work to create safer and more productive supervision programs. Other policymakers are looking for a way to put a stop to the seemingly endless cycle of overcrowded institutions, new construction and swelling operational budgets. Responding successfully to the correctional needs of our communities requires the the committed leadership of key policymakers from all levels of government.

The Intermediate Sanctions Project will address the issue of effective and appropriate use of community sanctions in two parts: First, by bringing together teams of these key leaders, judges, corrections practitioners, prosecutors, law enforcement chiefs, defense attorneys, legislators and others involved in the sentencing process, at a symposium. In its second phase, the project will make available to participating teams follow-up technical assistance in carrying out their chosen strategy.

The Selection of the Jurisdictions

In response to over 400 individual mailings and announcements in numerous professional journals and newsletters, the Project received 38 timely applications from cities, counties and judicial districts. From these staff chose 12 jurisdictions for participation. (A list of the 12 jurisdictions and the teams they are sending to the symposium follows this description.)

The 38 applications represented a wide range of experience and success with intermediate sanctions and with a collaborative approach to policymaking. Many were from jurisdictions in the throes of severe crises in their systems: bankrupt local services, crowded jails, swelling numbers of arrests and a subsequent backlog in court processing. Others are turning the corner on court processing delays and are ready to address the sanctioning side of their systems.

The 12 jurisdictions chosen for participation were notified in early October of their selection. They represent the full variety of the applicant types, including differing needs for assistance, geographic diversity, and both large cities and smaller suburban counties. Each one, however, has the committed local leadership and the capability required to address sanctioning issues effectively.

Project Activities

The jurisdictions that were chosen for the project will attend a symposium in December, 1989. Teams of key decision-makers from those jurisdictions will join their colleagues from Sunday afternoon to Wednesday noon for workshops and team work-sessions with a distinguished faculty drawn from the field and academia, from courts and corrections.

The symposium will serve a number of objectives. By bringing the critical actors together, in a setting removed from the day to day pressures and demands of their home offices, the sessions will encourage them to identify common problems with and goals for sentencing practices in their jurisdiction. Working on assignments and projects as a team over a period of several days will help establish the efficacy of that approach in other settings. The workshops and small group sessions at the symposium will be designed to introduce the participants to the kind of policy analysis that is required to make the most effective use of intermediate sanctions. Finally, through peer interaction and faculty presentations, participants will have the opportunity to learn about the approaches and findings of other jurisdictions.

At the symposium's conclusion, each team will have devised a preliminary action plan for its jurisdiction. Symposium faculty will be available in the weeks following to help refine the plans.

The second phase of the project will be centered on assisting each jurisdiction with the implementation and on-going assessment

of its plan. Much of this assistance will be in the form of telephone consultation, the exchange of written materials, and referrals to peers, but there also will be on-site technical assistance available. The types of help offered to each jurisdiction will depend on its needs and the resources available.

INTERMEDIATE SANCTIONS PROJECT
SYMPOSIUM
December 10-13, 1989
Phoenix, Arizona

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(listed alphabetically by state)

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for the City of Detroit
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DALTON A. ROBERSON
CHIEF JUDGE
RECORDER'S COURT

AREA CODE 313
TELEPHONE 224-2444

August 11, 1989

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125 South 9th Street, Room 302
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Dear Ms. McGarry:

Detroit Recorder's Court is most interested in participating in the Intermediate Sanctions Project precisely for those reasons set forth in the project goal statement:

- to reach a common understanding in our local jurisdiction about effective sentencing practices that make more appropriate use of sanctions and programs available within a jurisdiction.

- develop a collaborative approach to the development of consensus regarding the use of intermediate sanctions.

- address the process of sentencing, that is formulating articulated goals for achieving justice in individual cases, and developing policies and plans to achieve these goals.

- develop an approach to intermediate sanctions that places them in the broadest context of overall sentencing policy and practices, and the total range of correctional programs and resources.

- develop an informational system which will gather data regularly on the performance of offenders in various programs and sanctions; to provide judges with information on what types of options seem to be most effective, and to keep judges informed on the outcomes of their sentencing decisions.

For the purpose of addressing these five project goals, we drafted an Intermediate Sanctions Preliminary Action Plan, a copy of which is enclosed. Please note that the draft goes well beyond the minimum requirements of your application and addresses, in fairly precise detail, how Detroit Recorder's Court will achieve the project goals. The development of Sanction Guidelines could well be of significant national importance.

Sanction guidelines are essentially a logical second generation product of sentencing guidelines. Michigan's Supreme Court mandated the use of guidelines in 1984 to coordinate sentencing policy and thereby reduce disparity. Since over 80% of all felony sentences now fall within the guidelines, progress has obviously been made. The Michigan Supreme Court has a guidelines committee and a guidelines project staff. Guidelines staff will participate in the development of sanction guidelines using existing computer programs and an existing guidelines data base.

The range of sentencing options now in use include fines, restitution, community service, work including cleaning the jail, boot camp, halfway house, urine monitoring, drug treatment, therapy for sex offenders, intensive supervision, regular probation for mentally handicapped offenders, plus various job and educational referral programs. Local jail space is not available for sentenced defendants. A secure short term housing facility for drug users is needed. Probation officers, using their experience and training, recommend conditions of probation.

There were approximately 12,000 sentences in Recorder's Court in 1988. Case filings, which have now reached 17,000 per year, increased 21% in 1988 and have increased an additional 11% in 1989. While the population of Wayne County has remained relatively constant at approximately 2.1 million for the past two years, filings have increased due to the severe narcotics problem. Recorder's Court's 29 judges plus 5 judges from Wayne County Circuit Court, who rotate on the criminal docket every 90 days, have been able to keep pace with the caseload as a result of a 38% increase in productivity.

Recorder's Court is a state funded court although many mandated functions, such as juror and witness fees, are funded by Wayne County. Recorder's Court submits its budget to the Michigan Supreme Court for review. Recorder's Court receives cases which are bound over from 21 district courts in Wayne County. Misdemeanors, traffic and other offenses with maximum sentences of one year or less are adjudicated in the district courts while offenses carrying over a one year maximum are bound over to Recorder's Court. Appeals on Recorder's Court cases are filed in the Michigan Court of Appeals and may then proceed on to the Michigan Supreme Court. Approximately 42% of all felons in Michigan's prisons were sentenced in Recorder's Court.

Recorder's Court is able to monitor its caseload because of its computer system. The Court, which began computerizing in 1969, has its own IBM AS400 with 167 terminals. All cases which were processed during the past eleven years are on-line. Providing a fairly comprehensive data base for research purposes. The current sentencing guidelines are computerized and that data base is also available for reference. A more complete description of Recorder's Court is provided in the enclosed Caseflow Management Profile.

Committments to participate in the Intermediate Sanctions Project and attend the symposium have been obtained from key officials in the Michigan Supreme Court, Michigan Department of Corrections, and Wayne County Prosecutor's Office. Letters are attached. I eagerly look forward to participating in this important project and hope that Recorder's Court's application is favorably reviewed.

Sincerely,

Dalton A. Roberson
Chief Judge of the
Detroit Recorder's Court

DAR/dh

cc: George L. Gish, Court Administrator

State's Attorney for Montgomery County
50 Courthouse Square
P.O. Box 151
Rockville, Maryland 20850

(301) 217-7300

STATE'S ATTORNEY
ANDREW L. SONNER

DEPUTY STATE'S ATTORNEY
I. MATTHEW CAMPBELL, JR.

SENIOR
ASSISTANT STATE'S ATTORNEYS
ROBERT L. DEAN
MAJOR OFFENDER BUREAU TEAM LEADER
BARRY A. HAMILTON
ANN S. HARRINGTON
CIRCUIT COURT TEAM LEADERS
EDWARD J. BARNES
DISTRICT COURT TEAM LEADER

SPECIAL INVESTIGATIVE UNIT
JOSEPH L. LAWRENCE
CHIEF SPECIAL INVESTIGATOR

August 10, 1989

Ms. Peggy McGarry
Project Director
Intermediate Sanctions Project
Center for Effective Public Policy
125 So. 9th St. Room 302
Philadelphia, Pennsylvania 19107

Dear Ms. McGarry:

Enclosed is an application from the Montgomery County **Criminal Justice Coordinating Commission** in response to the announcement and invitation to apply for consideration as a site for the **Intermediate Sanctions Project.** As the State's Attorney for Montgomery County, Maryland, I am most interested in participating in the project.

Montgomery County currently offers several community-based programs: an Alternative Community Services Program, and the Work Release Programs offered through our Pre-Release Center are examples of local programs offering alternatives to traditional case processing and incarceration. Additionally, over the past two years the State's Attorney's Office has implemented procedures to improve case processing: an expedited case settlement plan; a mediation program for misdemeanor cases; and, cooperated in the development of a modified differentiated case management system.

In spite of those efforts, the population of our local detention center is increasing. Since July, 1988, the average daily inmate population has increased from 596 inmates to 755 inmates. That increase in population is housed in a facility designed for 300.

As the State's Attorney and as the Chairman of the Criminal Justice Coordinating Commission, I am concerned that the increasing population of our detention facility may limit access to the facility for inmates who pose a public safety risk. Our detention center is an important community resource. As such, it is important that those of us who directly influence criminal justice policy be as well educated as possible on alternative solutions to case processing and sentencing.

Participating in the Intermediate Sanctions Project is an opportunity to develop strategies for implementing local community-based sentencing options with a national perspective. I look forward to working with you on this important project as a member of the Montgomery County team.

Sincerely,

Andrew L. Sonner

ANDREW L. SONNER
State's Attorney
Chairman,
Criminal Justice Coordinating Commission

ALS:RMC:CJCC

CIRCUIT COURT OF ILLINOIS
20TH JUDICIAL CIRCUIT

STEPHEN M. KERNAN
CHIEF JUDGE

COURTHOUSE
BELLEVILLE, 62220
(618) 277-7325

August 7, 1989

Ms. Peggy McGarry, Project Director
Intermediate Sanctions Project
Center for Effective Public Policy
125 South 9th Street, Room 302
Philadelphia, PA 19107

RE: Project Application

Dear Ms. McGarry:

Thank you for your letter of July 13, 1989 explaining the application procedure for the Intermediate Sanctions Project. I would like to address the issues in the same order as set forth in paragraph 2 of your application instructions as follows:

a) As mentioned in my letter of July 5, 1989, our area has an inordinate amount of crime for an area of its size. I have been on the bench for fifteen years and since that time, the prison population in the State of Illinois has trebled with no visible effect upon the State's crime rate. As to our particular area, it is my understanding that the crime rate has substantially increased. It would therefore seem clear that simply warehousing defendants is not the solution to crime and we are therefore most interested in seeking alternatives to this type of disposition.

b) We hope to learn through your project what alternatives to imprisonment exist, how successful they may have been in other jurisdictions, whether or not they would be appropriate for our area, and what assistance might be available to help implement such programs.

c) (1) I am not sure what you mean by the coordination of sentencing or correctional policies. Each Judge has the discretion to impose whatever sentence he deems appropriate in a particular case, and to my knowledge there has been no coordination amongst the Judges with an eye towards establishing set sentencing policies, i.e. X crime will receive generally X punishment. There is a presumption under Illinois law that first offenders shall receive probation, unless the incident is particularly aggravated. This does not apply to certain categories of violent crime wherein probation is not an available alternative.

(2) In the past we have made some use of community service as a condition of probation. We have recently instituted a drug testing policy as a condition of probation, and this month will be instituting on a very limited basis, an electronic home detention program. All of these functions are administered through our Probation Department.

d) Offenses in Illinois are classified as follows:

(1) first degree murder, 20 to 40 years;
(2) class X felonies, 6 to 30 years;
(3) class 1 felonies, 4 to 15 years;
(4) class 2 felonies, 3 to 7 years;
(5) class 3 felonies, 2 to 5 years;
(6) class 4 felonies, 1 to 3 years;
(7) class A misdemeanor, up to 1 year;
(8) class B misdemeanor, up to six months;
(9) class C misdemeanor, up to thirty days;
(10) petty offense, fine only.

Murder and Class X felonies are non-probationable. In all other offenses, the sentencing options are a period of probation, a term of periodic imprisonment, a term of conditional discharge, a term of imprisonment, a fine, and an order for restitution.

e) St. Clair County, Illinois is located directly across the river from St. Louis, Missouri. Its population is approximately 273,000 and is probably best described as "blue collar". Much of the smoke-stack industry which once flourished along the eastside of the Mississippi River has closed, dealing a crippling blow to the local economy. Recently the news media published a list of the fifteen poorest suburbs in the United States, and three of which (Alorton, Centreville and East St. Louis) are in St. Clair County. East St. Louis has recently been the subject of an article in Time Magazine and a segment of ABC's Nightline. Far and away the largest "employer" in East St. Louis is the government and welfare. Surrounding the East St. Louis area is a belt of typical suburban communities, and beyond that is smaller agricultural communities.

The City of East St. Louis is all but bankrupt and therefore it is not unusual for its employees to miss one or more pay periods. This has caused morale in the East St. Louis Police Department to be at an all time low.

Unfortunately East St. Louis is the city with the highest crime rate. While gangs have always existed in the city, it is apparent that they are becoming more sophisticated and organized. Drug dealers boldly set up tables and chairs in strangers front yards and sell cocaine as if it was lemonade. Traffic at some intersections becomes congested with youths hawking crack to motorists.

There is one trial level in the Illinois Courts which is staffed by Circuit and Associate Judges. The distinction between the level of Judges is minimal as each has practically the same jurisdiction, however in practice, the Circuit Judges generally hear felony matters and the Associate Judges generally hear misdemeanor and traffic matters.

As regards the local government, the Chief Executive of the county is the County Board Chairman, with the legislative being the County Board itself. In large part the court system is financed through the local county board, however the probation department receives substantial subsidies from the Illinois Supreme Court. The Illinois Supreme Court sets the guidelines as to how the probation department shall function and the Illinois Legislature sets the parameters regarding criminal sentences.

f) Our felony, misdemeanor and traffic cases have been computerized on a very limited basis, however the county is on the verge of entering into a contract for the computerization of the entire court system, which I am advised will enable us to retrieve virtually any type of information we desire.

Attached is letters of intent from the head of our probation department and our prosecuting attorney reflecting their desire to participate in this program. As I had mentioned in my letter of July 5, 1989, our county has an inordinate amount of crime for an area its size, and therefore would appreciate any consideration you could give to this application.

Sincerely,

S. Kernan

STEPHEN M. KERNAN
Chief Circuit Judge

SMK:pt

STANLEY PAUL GOLDE
JUDGE

SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF ALAMEDA
COURT HOUSE-OAKLAND 94612

August 8, 1989

Peggy McGarry, Project Director
Center for Effective Public Policy
125 So. 9th St., Room 302
Philadelphia, PA 19107

Dear Miss McGarry:

8/14/89

I have been contacted by Mr. Don Hogner who is the Chief Probation Officer for Alameda County concerning the program for the National Institute of Corrections described as the Intermediate Sanctions Project. I do the majority of felony sentencing in Alameda County, a county of approximately a million, four hundred thousand. I sentence approximately 4,000 felons per year.

I have found that my options consist of an aspirin (probation) or an ax, (state prison). We have presently in the State of California 78,000 people in the state prisons, and our county jails are overflowing to the point that we have cap release. In other words, as soon as the jail population reaches a certain figure, it is mandated that the defendant be released from custody.

Oakland is an urban center in Alameda County and as such has an enormous amount of drug trafficking as well as theft crimes which more appropriately can be handled through intermediate sanctions rather than incarceration. We have some programs at our disposal such as the Volunteer Bureau, Seven Step Foundation, American Friends Organizations, and a host of somewhat inadequate drug programs.

I look forward to the symposium. We may be able to seek out people in the community and promulgate other programs to handle these offenders.

I would appreciate the privilege of being chosen to participate in such a project.

Very truly yours,

Stanley P. Golde

SPG:jfl

Boulder County

Post Office Box 471 • Boulder, Colorado 80306

Board of County Commissioners

13th & Pearl Streets • Boulder County Courthouse • Boulder, Colorado 80302 • (303) 441-3500

August 8, 1989

Ms. Peggy McGarry, Project Director
Intermediate Sanctions Project
Center for Effective Public Policy
125 South 9th Street, Room 302
Philadelphia, PA 19107

Dear Ms. McGarry,

The Boulder County Board of Commissioners requests your approval of a grant to support a Boulder County team for the Intermediate Sanctions Project. While we have initiated a number of alternative programs beginning in the mid-70's, we are again faced with a severely crowded jail, full half-way houses, and the need to find and implement sanctions which do not require capital construction and high staffing costs.

The County is currently struggling with jail overcrowding in a concentrated way for the third time since the early 1970's. A new Justice Center and modern "model" jail were constructed in 1976. A completely new and expanded jail (from 64 to 287 capacity) was opened in August, 1988. Yet the current processes find us overcrowded after just one year in the new facility.

The cost of jail construction and staffing is enormous and the present facility will not be paid for until 1995. Sentencing sanctions are being sought that will cost much less than incarceration and that do not require capital construction.

We have a history of cooperation in our criminal justice system and there has been some form of criminal justice working group in effect for many of the past 17 years. A working group of key persons in the criminal justice system has met twice this summer as the jail nears capacity each weekend, to identify ways to decrease jail admissions and the length of jail stays while maintaining community safety.

While numerous innovative community programs have been initiated through a County community corrections agency and in other parts of the system, it is obvious we must explore new ideas.

Our involvement in the Intermediate Sanctions Project would provide the opportunity to learn what is working elsewhere and to discuss programs which have yet to be implemented. The Commissioners, the Chief Judge, District Attorney, Community Corrections and others in our system are eager to participate in this project.

I hope you will give this your highest consideration. We are very enthused about the possibilities this project holds.

Sincerely,

Josephine W. Heath

Josephine W. Heath, Chair
Boulder County Commissioners

JWH/lb

GARY HAINES
MONTGOMERY COUNTY SHERIFF

41 N. Perry Street
Dayton, OH 45422-2427

August 15, 1989

Ms. Peggy McGarry, Project Director
Intermediate Sanctions Project
Center for Effective Public Policy
125 South 9th Street, Room 302
Philadelphia, PA 19107

RE: Montgomery County, Ohio - Intermediate Sanctions Project Request

Dear Ms. McGarry:

I have had the opportunity to review the request for Montgomery County, Ohio to participate as a demonstration Intermediate Sanction Project and wish to support that effort.

As Sheriff, I am dealing with community demand to do more about drugs, live within a Federally mandated jail population and inadequate local funding to deal with the overall problem.

Myself, and my staff look forward to participating in and being part of the effort to deal with criminal justice alternatives in a fair and equal manner.

Sincerely,

GARY HAINES

GH/km

cc: Judith Cramer, Court Administrator
Deborah Feldman, Deputy Administrator
Jim Olin, Jail Administrator
File

ESTABLISHED 1826 JACKSON COUNTY MISSOURI

DEPARTMENT OF CORRECTIONS

(816) 881-4200

JACKSON COUNTY, MISSOURI

1300 CHERRY STREET
KANSAS CITY, MISSOURI 64106

CHARLES MEGERMAN
DIRECTOR

August 15, 1989

Ms. Peggy McGarry
Center For Effective Public Policy
125 South 9th Street, Room 302
Philadelphia, Pennsylvania 19107

RE: INTERMEDIATE SANCTIONS SYMPOSIUM

Dear Ms. McGarry:

This letter is in regards to the upcoming jail overcrowding symposium currently scheduled for December, 1989.

I am the Director of an adult local detention facility designed to hold 520 offenders. Our average inmate daily population for July, 1989 was 694 inmates in custody. This figure excludes approximately another 30 inmates who are under our jurisdiction but do no reside in the institution on a daily basis. Clearly, we have an overcrowding problem.

Several overcrowding intervention strategies have been attempted, but no particular alternative incarceration program(s) have proven to be effective over the "long run". I used to think, based on a NIC overcrowding study conducted in 1979/80, I knew which variables and which criminal justice actions fueled the inmate population, but the events of the last 18 months have me doubting what I used to believe to be truth. In December of 1987, our population reached 709 inmates in custody. By July of 1988, our population had dropped to 490. During July, 1989, one year later, our inmate population reached 715. As I write this letter, our in-house inmate population stands at 669.

Fluctuations of this magnitude are more than just reflections of our local legal culture, or are they? I used to believe that criminal justice system inefficiencies coupled with judicial independence (and hence a lack of consistency) were the root causes of overcrowding, but I am not so sure anymore. The overcrowding symposium would be an excellent opportunity by which to listen and share ideas with other jurisdictions facing overcrowding problems. If selected, I stand committed, along with the Prosecuting Attorney and the Presiding Judge, to attending and fully participating in this symposium.

Respectfully,

Charles Megerman

Charles Megerman
Director

CM/jkp

JUDGES AND THE USE OF INTERMEDIATE SANCTIONS AS ALTERNATIVES TO INCARCERATION

A Report to the Edna McConnell Clark Foundation*

Barry Mahoney and Daniel J. Freed

May 1988

In December 1986, the Edna McConnell Clark Foundation awarded a grant of $10,000 to the National Center for State Courts, to support a set of exploratory meetings aimed at learning how the aid of experienced judges can be enlisted in expanding the use of alternatives to incarceration. This report reviews the project's activities, discusses obstacles to greater use of alternatives, and sets forth recommendations regarding initiatives that might be undertaken by the Clark Foundation or other funding sources to reduce the over-use of incarceration in America.

Project Activities

Two meetings of judges were convened. The first, held in January 1987, brought together a federal district judge from Massachusetts, an appellate judge from Minnesota, and general jurisdiction trial court judges from Connecticut, New York, and the District of Columbia. The second meeting, held in January 1988, involved judges from general jurisdiction trial courts in Alabama, Arizona, Michigan, Missouri, New Jersey, and Oregon. All of the judges had handled criminal cases and were familiar with (and concerned about) issues of sentencing policy and practice. At the meetings, the judges described sentencing practices in their own jurisdictions and shared with us their views on matters of sentencing policy. Our objectives were to learn what judges saw as the principal obstacles to greater use of alternatives to incarceration and to develop ideas about ways of overcoming these obstacles.

We also conducted an informal canvass of Clark Foundation grantees involved in advocating the use of alternatives to incarceration, using a short questionnaire. While not a systematic survey, it gave us a sense of project objectives, operating procedures, criteria for case selection, obstacles encountered, and perceptions of success. Grantees who work in the courts on a day-to-day basis are, in a sense, the frontline troops of the alternatives movement. In considering strategies aimed at broader use of alternatives by judges, it seems useful to take account of the experience of advocates as well as of judges. Looking at their activities in light of what we learned from the judges also suggests ways in which the grantees might do things differently and thereby have greater long-term impact on sentencing practices.

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*This report is prepared pursuant to Grant No. 004-87, awarded to the National Center for State Courts by the Edna McConnell Clark Foundation. Points of view and recommendations contained in this report are those of the authors.

Obstacles to Greater Use of Intermediate Sanctions

Discussions at the meetings with the judges helped identify a number of obstacles that must be overcome if judges--even judges who are basically receptive to the use of alternatives to imprisonment--are to be persuaded to place less reliance on use of incarceration as a criminal sanction. They include the following:

1. Judges' lack of knowledge about available alternatives. Many judges (including some of the very able and well-informed judges who participated in our meetings) are simply not aware of the full range of possible sentencing options. And, even when they realize the range of possibilities, they don't have good knowledge of what specific alternatives may be available in their own jurisdiction. Information about sentencing options needs to be collected, provided to judges and others involved in the sentencing process, and updated regularly. Multi-judge courts (especially those in which judges periodically rotate into and out of assignments to a criminal division) should establish mechanisms for educating judges about available options.

2. Absence of realistic alternatives. In a number of jurisdictions, there are simply not many alternatives available, apart from probation, jail, and prison. There are often no organized community service or restitution programs, and court clerks' offices often do a haphazard job of collecting fines. Even where community-based programs do exist, they often do not meet the needs of specific offenders. We need to develop ways of helping communities to develop programs where few or none now exist.

3. Inadequate systems for providing necessary offender information to sentencing judges. Even when programs are available in a jurisdiction, judges often lack information about offenders that would help them to shape appropriate non-incarcerative sanctions. At present, the key items of information most commonly used for sentencing purposes are the current offense and the offender's prior record. For intermediate sanctions to be more widely used, other information about the offender (e.g., age, education, employment record, current income, financial assets, mental and physical condition, family responsibilities, community ties) must be available for and actually used in both the plea bargaining/sentence bargaining process (involving prosecutors and defense lawyers) and sentencing decisions. The earlier in the process such information is available, the better. For effective early decisionmaking about alternatives to be possible, it is important to develop systematic ways of obtaining such information shortly after arrest. Pretrial services agencies and defense lawyers could play key roles in this effort.

4. Lack of effective assistance from defense attorneys and probation offices. Both the defense bar and the probation service should promote broader use of alternatives. Most of the judges indicated, however, that they received little help from either source. Defense

lawyers' performance was the subject of particular criticism. One judge commented that, in his jurisdiction, most defense counsel "abandon" their clients after the determination of guilt; they simply are not effective advocates at the sentencing stage. Opinions about the work of probation departments was more mixed. It appears that the quality and utility of probation presentence investigation (PSI) reports varies widely. Most judges felt that PSI reports were often of little use in the sentencing decision, either because that decision was essentially a ratification of negotiations involving the prosecutor and defense counsel or because the PSI report was not helpful in identifying specific sanctions appropriate for the individual offender.

5. Lack of guidance on when specific intermediate sanctions are appropriate. The lack of any body of case law on the use of alternatives to incarceration means that, even where judges are amenable to intermediate sanction instead of jail or prison, they have no precedents to cite in support of their decisions and no sets of facts in prior cases to rely upon or to distinguish in a reasoned way. One important feature of sentencing guidelines is that they provide a basis for developing a common law of sentencing, as is now happening in Minnesota. Even in the absence of guidelines, however, it is possible to begin collecting principled decisions which set forth reasons for the use of intermediate sanctions in particular circumstances. This can only be done, however, if judges set forth the reasons for their sentences (preferably in writing) and if mechanisms are developed to collect and report these decisions systematically.

6. Prosecutors' positions. Judges perceive prosecutors as playing to the newspapers (pressing for severe sentences; viewing intermediate sanctions with suspicion). In a jurisdiction where the prosecutor takes a hard-line attitude, incarceration is the "safer" sentence for a judge. We need to develop ways to enable prosecutors and judges to collectively look at (and accept a share of responsibility for) the systemic consequences of a lot of harsh sentences in individual cases. The work of the Prosecuting Attorneys Research Council can be helpful on this score.

7. Judges' concerns about public safety. Most judges feel that one of their responsibilities in sentencing is to protect the public. Many are fearful that intermediate nonincarcerative sentences will not meet this need. They are concerned that extensive use of alternatives to incarceration, in cases where a prison or jail sentence is the norm, will result in them being perceived as "soft." One way for judges to deal with this problem is to use a short term of imprisonment (or the threat of imprisonment) as part of a sentence that is combined with other sanctions. The judges who participated in the two meetings gave a number of examples in which they used a threat or a short term of imprisonment as a key element of a sentence that (a) was mainly a community-based sanction; and (b) was consciously designed as an alternative to a longer term of imprisonment. Approaches included the following:

- o the "split sentence," beginning with a short term of "shock incarceration";

- o the "reverse split sentence," where a prison term is imposed and immediately suspended on conditions laid down by the court;

- o the two-part sentence, with a prison term commencing subject to early evaluation to determine whether the offender qualifies for intensive probation; and

- o intermittent imprisonment--weekends in jail or commitment to jail with daytime release to employment.

The judges who use these approaches do not wish to impose a prison or jail term in every case. However, they want that option to be available as part of an alternatives system that will have credibility with offenders, prosecutors, and the public.

8. Lack of leadership in support of intermediate sanctions. Most judges do not want to be perceived as crusaders. Few are eager to be seen as leading a movement, particularly one that will be viewed by some as "liberal" or wishy-washy. It is thus critical to develop operationally tested sanctions that are perceived as serving recognized sentencing functions (such as punishment and deterrence) and to develop support for them among mainstream judicial leaders. Chief judges of major multi-judge trial courts, leaders of state trial judges' associations, and judges serving on statewide sentencing commissions or task forces are key target groups here.

9. Lack of credible back-up sanctions if an intermediate sanction fails. Judges have little or no confidence that a defendant's performance on an alternative sentence will be monitored adequately and that possibilities of impending failure will be addressed. Moreover, if the intermediate sanction does "fail," they have little confidence that anything will happen to the offender, in part because of lack of space in jails and prisons. The development of credible back-up sanctions (and of mechanisms for using them) is an important area that needs attention.

Recommendations

How can the obstacles to broader use of alternatives be overcome? Any significant effort to change entrenched attitudes and practices (which in many states are reinforced by harsh mandatory sentencing laws) will be a long-term undertaking. Clearly, however, there is receptivity toward changes on the part of judges such as those who participated in our meetings. Top-flight judges--thoughtful, well-respected jurists who have formal or informal leadership roles in their courts and communities--can be valuable contributors to the change process, particularly if a strategy for change takes account of their needs.

The recommendations set forth here flow from the discussions at our meetings. They fall into five main categories:

- o A revised definition of "alternatives."
- o Statewide sentencing commissions, in which judges have central roles.
- o Development of operationally effective local-level systems of intermediate sanctions.
- o Development of mechanisms for providing guidance in the use of intermediate sanctions.
- o National-scope programs.

1. A Revised Definition of "Alternatives"

Judges often favor the use of alternatives to long prison sentences when effective options are presented. However, they do not react positively to the idea that "alternatives" should mean only non-incarcerative sentences. Their broad concern is effectiveness--i.e., in imposing sentences, they want to use sanctions that are enforceable and that have credibility with the public. Most of them like the idea of intermediate sanctions--sanctions that are neither straight prison nor straight probation--for dealing with middle range crimes and offenders.

Given this set of judicial perspectives, it may be useful to re-examine what we mean by "alternatives," and to reduce the emphasis on the absence of any imprisonment. There are several good reasons for doing so. First, there is a sense in which a short term sentence of imprisonment, either by itself or in combination with some other sentencing option, may be a desirable alternative to a very long sentence of imprisonment. The recent NCCD publication, It's About Time, makes a good case for the position that shorter sentences of incarceration can have a major effect on prison crowding. Second, a sudden shift on the part of judges and prosecutors, from thinking in terms of lengthy imprisonment to actually using alternatives that don't involve any imprisonment, is simply not in the cards. By contrast, a gradual movement away from lengthy prison terms, with increased reliance on a combination of sentencing options (which may include a short period of incarceration) is very possible. Third, it seems important to think in terms of alternatives to probation (which for practical purposes is widely regarded as a "walk" in many jurisdictions) as well as alternatives to imprisonment. There is a wide range of offenders for whom, in view of their current offense and/or prior record, something more than probation seems appropriate to prosecutors and judges. All too often, the only options they now think of are jail and prison.

These perspectives lead us to recommend that alternative sentencing advocacy be advanced and understood as an effort to enrich the sentencing process and reduce its excessive dependence on prisons, without totally excluding the possibility of custody as an integral part of some intermediate sanctions. This idea is consistent with the companion concept that prison

sentences ought to be shorter than at present. Taken together, these two ideas would move us toward a sentencing system characterized by shorter prison terms at the top; part prison (or jail)/part community penalties next; then community penalties of diminishing severity; and finally straight probation at the bottom.

There is, of course, a risk that the various intermediate sanctions--community service, fines, restitution, electronically monitored home confinement, etc.--will be viewed as alternatives (or add-ons) to probation, and make no real impact on the frequency or length of sentences of imprisonment. However, there are ways to guard against that possibility (especially through monitoring information on actual sentencing practices), and there is a strong argument to be made for developing a sense of legitimacy with respect to the use of these intermediate sanctions.

The ways in which words are used--what words, and how they are defined--are very important in seeking to make changes in sentencing practices. To the extent that "alternatives" are defined as meaning only "alternatives to imprisonment," the alternatives movement will inevitably meet with resistance from key decision-makers and policymakers. We are not prepared to discard the term alternatives, but suggest that a re-definition or a shift in emphasis--toward terms such as "intermediate sanction" that incorporate the idea that a particular sentencing option is, in a real sense, a legitimate alternative to a longer term of imprisonment--may be desirable.

2. Statewide Sentencing Commissions

Judges have been spurred to take an active role in sentencing reform by the combination of the prison and jail crowding crisis and the tendency of legislatures to replace judicial discretion with mandatory sentences or guidelines schemes. Because of this new willingness of judges to participate in reform efforts, it is appropriate to encourage the creation of statewide commissions that involve judges as central actors, including serving in leadership roles.

Several judges who participated in our meetings have served on statewide sentencing commissions or task forces. We were impressed by the extent to which such bodies appear to have been a positive force contributing to serious assessment of sentencing policies and priorities in those states. Sentencing commissions or task forces, if well-staffed, can perform a number of valuable functions:

- Enable judges to participate in the process of changing the system from within, drawing on their experience and expertise and giving the judiciary a sense of partnership (as contrasted with a sense of being victimized) at the conclusion of the process.

- Review the existing system comprehensively, gathering and exchanging information on sentencing practices and attitudes throughout the state.

- o Develop systems for collecting and analyzing information about sentencing policies and practices, and their relationship to jail and prison crowding, on an on-going basis.

- o Canvass sentencing reforms and programs involving intermediate sanctions elsewhere (via site visits, literature, clipping services, etc.), to draw on the experiences of other states in dealing with specific problems.

- o Develop knowledge and disseminate information about specific programs within the state that provide alternatives to incarceration.

- o Support the development, in a few counties, of model programs that provide effective intermediate sanctions, and document their operation.

- o Organize educational programs for judges, lawyers, probation officers, and other practitioners on aspects of sentencing, utilizing national experts and practitioners from within the state and from other states.

- o Conduct or sponsor studies of specific aspects of sentencing in the state, including evaluations of various sentencing options.

- o Identify the need for, and nature of, statutory changes that would lead to less use of imprisonment and more (and more effective) use of intermediate sanctions.

- o Stimulate favorable media attention to intermediate sanctions reduced use of imprisonment, and resulting cost savings.

The formation and on-going functioning of statewide sentencing commissions should play a central role in development of a strategy for reducing the use of imprisonment. They are logical focal points within a state for information collection and dissemination, for educating judges and other practitioners, and for shaping credible recommendations for revising the laws affecting sentencing. When they are broadly representative of the spectrum of criminal justice interests and perspectives, they are likely to have considerable credibility with legislatures as the direction of reform is charted. Their credibility can be further enhanced by the adoption of guidance systems such as those discussed below, in which judges give reasons for their sentences and appellate courts review the sentences.

3. Operationally Effective Local-Level Systems of Intermediate Sanctions

Sentencing in trial courts takes place within a context of federal or state laws, but it is essentially a local, county-based process. Even within the same state, there can be very wide differences in attitudes and practices, and in the availability and quality of relevant resources, from county to county. It seems desirable to develop some models of effective local systems,

particularly ones that draw upon (and feed information and ideas into) the work of statewide commissions. In thinking about how to develop such models, we have taken into account both our canvass of the Clark grantees and our own experience with a significant criminal justice reform effort that began in the 1960's.

A. The Grantee Survey

In developing models of local systems, some Clark-funded alternatives advocacy projects can have an important role. It is clear from our small-scale informal survey of Clark grantees that, as a result of the intervention of these projects, some offenders who would otherwise go to prison receive alternative sentences. Objectively, however, it is very hard to get a sense of the extent to which the projects actually are making a difference. None of the projects were able to provide information that would enable analysis of the project's impact in the jurisdiction(s) in which it operated. The lack of data on impact may simply reflect the fact that the projects have not been in operation long enough to develop such information. Or, it may indicate that the projects are not thinking in terms of assessing their overall impact on the system. By and large, the projects seem to operate on an ad hoc, case-by-case basis. We get the sense that they are more likely to be looking for targets of opportunity--cases in which the defendant appears to be a good prospect for an alternative sentence--than they are to be focusing on a target group of offenders who are headed for prison in the absence of project intervention. The emphasis is on the individual client, rather than attention to long-term impacts on local systems.

B. A Lesson From History

In assessing responses to the survey, we were struck by parallels with the experience of the pretrial release and diversion projects that developed in the 1960s and early '70s. Like the sentencing alternatives projects of today, those projects were led and staffed by committed and able individuals who wanted to improve the way the criminal justice process worked. With few exceptions, they tended to operate on a case-by-case basis, without much sense of the project's impact on the totality of cases flowing through the courts. To the extent they did any monitoring at all, they focused only on the cases they handled--not on the total population of defendants in the jurisdiction. Few of them had clearly articulated goals or target groups, and even fewer had good information systems that would enable them (or an outsider) to assess their effectiveness. Often, they had only a tangential relationship to the trial court, and they typically had little on-going contact with the chief judge, trial court administrator, prosecutor, and other key actors in the local system. When money began to get tight in the mid-70s, few of these programs were able to make successful claims for continued funding. While they had significant impact in terms of heightening judges' consciousness about alternatives to money bail and conventional case processing (and in some jurisdictions led to lasting reform), their long-term impact has been less than it might have been. We would hate to see the same thing happen to the alternatives movement, which at this point is still in an early stage of development.

C. Six Suggestions

If the alternatives movement is to have long-term impact, it needs to focus on systemic linkages and impacts. It is not enough simply to offer alternatives that may be available in specific cases; rather, there needs to be an emphasis on changing existing practices and attitudes of key local-level actors. Within a local jurisdiction, at least six elements are essential:

- o Information for decision-making. Judges need to know what sentencing options are available, and need to have basic information about the cases and the defendants at the time they decide upon what sentence to impose.

- o Program alternatives. There have to be realistic alternatives to prison, jail, and probation. At a minimum, there should be (1) an effective process in the court to collect fines and restitution payments; and (2) some type of community service program available through the probation department or an independent agency.

- o Resources for enforcement of alternatives. If judges are to use alternatives to imprisonment, they must have confidence that there are administrative mechanisms to monitor the offender's performance (e.g., is the fine paid? is the community service performed?) and that, in the event of non-compliance, the offender will be subjected to a more serious sanction.

- o Prosecutorial cooperation. The prosecutor's office must at least be open to use of alternative sanctions. It would help if the prosecutor's staff were trained about the range of alternatives and were interested in helping to develop new programmatic alternatives.

- o Effective defense advocacy. Defense lawyers need to be trained to do an effective job of providing information, rationales, and specific proposals to support alternatives.

- o Alternatives-oriented probation departments. Probation departments have critical roles to play in providing information about offenders and programs to judges in PSI reports, and in providing post-sentence supervision and enforcement of community-based sentences.

The complexity and interdependent nature of the sentencing process at the local level suggests the desirability of encouraging programs and projects that involve a cross-section of key local practitioners. Judges can have important roles in such programs; so, too, can existing alternatives advocacy programs.

Information about sentencing practices at the local level is a critical element of a change-oriented program. If judges (and other practitioners,

including prosecutors) are to be persuaded to change their policies and practices, it is important to begin by assembling an overview of current patterns and their systemic consequences. Such information can be a starting point for considering changes (including wider use of alternatives); it also provides a baseline against which the impact of reform effects can be measured.

Information about how a local system currently functions--e.g., how judges actually sentence, what options exist, and so forth--is also essential for effective education of judges, defense lawyers, prosecutors, and probation officers. Educational programs, to familiarize practitioners with available options, should be conducted at regular intervals. These functions can be performed by any of several entities--a trial court administrator's office, a probation department, a public defender's office or an alternatives project. If an alternatives project has good information on the full range of sentencing practices in a jurisdiction, that information can be valuable for the project's own operations and the project's analysis of the information can be useful to the judges.

4. Guidance in the Use of Intermediate Sanctions

Discussions with the judges attending our meetings, especially those at the January 1988 meeting, make it clear that judges do use alternatives in some situations where imprisonment in the norm. However, they tend to do so on an ad hoc basis, often responding to advocacy that stresses the uniqueness of a specific offender's circumstances. The advocates' arguments are addressed to the discretion of the sentencing judge, and implicitly proceed from a premise that the unique circumstances of a particular case justify an exception to a "normal" sentence of imprisonment.

While the ad hoc approach succeeds in many individual cases, it does not provide a foundation for broader use of alternatives to imprisonment in a wide range of situations. One major component of a strategy to reduce imprisonment should be the development of a system for providing guidance to judges in using intermediate sanctions. Such an approach would capitalize on the experience of judges who already use alternative sanctions in individual cases and would raise the visibility of alternative sentencing practice by converting it into a body of sentencing case law.

Historically, American judges have seldom written opinions giving reasons why they impose a particular sentence. Until recently there has been little in the way of appellate decisions that would provide guidance to trial judges. That is now beginning to change, especially in states where sentencing guidelines open up the potential for developing a common law of sentencing (most notably, Minnesota). The opportunity exists to shape the development of case law so as to broaden the range of cases in which intermediate sanctions are treated as viable alternatives to imprisonment. To do this effectively, several ingredients are necessary:

- o Categorical advocacy of alternatives. Defense lawyers can be trained to submit briefs and make oral arguments advocating the use of alternatives in specific categories of cases. To help support such arguments it is important that alternatives advocates now working at the trial court level develop

typologies of crimes and offenders for whom intermediate sanctions are appropriate and workable. Alternatives advocates should be encouraged to move away from the "uniqueness" approach, toward a categorical approach based on analysis of the common elements of cases in which they have been successful.

- o Reasons for sentences. Even though they do not generally file written opinions in sentencing cases, trial court judges often give their reasons--on the record--for imposing a specific sentence. At a minimum, it is possible to transcribe these oral opinions systematically. More ambitiously, judges can be encouraged to write opinions indicating why a specific sanction is used. When intermediate sanctions are imposed and reasons are given at the time of sentence, a record can be obtained.

- o Formulation of principles of sentencing. The development of a common law of sentencing must be an evolutionary process. It will require collection, synthesis, and refinement of decided cases--both trial judges' sentences and appellate decisions reviewing trial court sentences--into a system of case law. The most promising way to do this is to establish a mechanism for collecting and analyzing decisions in current cases involving sentencing alternatives. These cases--the underlying facts, the sentencing decisions, and the reasoning in support of a particular sentence--could be studied by judges and other practitioners, with a view to deriving principles of general applicability. As case law begins to develop in the trial and appellate courts, it could be collected and disseminated through a sentencing law reporter. Statewide sentencing commission could play an important role in this process, by encouraging the collection and analysis of sentencing decisions within a state. It also seems desirable to have a nationally-oriented program that would collect and analyze sentencing decisions across jurisdictional boundaries.

5. National-Scope Programs

The preceding recommendations have focused mainly on programs at the state and local levels. For such programs to succeed, it will be essential to have a variety of progams that are national in scope, that draw upon and feed into efforts in states and localities, and that utilize the skills and knowledge of persons familiar with sentencing problems and practices in different states. We can identify six general categories of national-scope programmatic work that can contribute significantly to broadened use of intermediate sanctions.

(1) Litigation. The prison litigation projects supported by the Clark Foundation have been critically important in developing awareness of prison and jail conditions and, in jurisdictions where court orders have restricted capacity

and imposed other requirements, have at least indirectly affected sentencing practice. Litigation forces recognition that a crisis exists in prisons and jails, and is a catalyst for action. That type of pressure needs to continue.

(2) Education and Training. In recent years, there has been increasing support (from, among others, the National Institute of Corrections and the Bureau of Justice Assistance) for education programs designed to help policymakers address problems of jail and prison crowding. Some programs include judges and prosecutors, but much more can be done in this area. It should also be possible to train defense lawyers and probation personnel to be more effective advocates for alternatives. Several different types of national-scope education programs are obvious possibilities:

- o Workshops for teams of key policymakers from metropolitan counties--e.g., chief judge, prosecutor, public defender or defense bar president, chief of probation, sheriff, community program advocate--designed to stimulate problem identification, set goals, and develop plans for greater use of intermediate sanctions and less use of incarceration.

- o Workshops and sentencing institutes for selected groups of leading judges, to raise their consciousness about sentencing issues and intermediate sanctions. Such programs might include prison visits, videos and written materials describing specific alternatives programs, and presentations by judges who have used alternatives effectively and who have credibility with their peers.

- o Training programs for defense counsel and probation officers aimed at developing skills in locating alternative programs and advocating their use.

- o Workshops and seminars designed to elicit understanding of and support for alternatives (including the alternative of shorter prison sentences) among key community leaders at both the state and local levels. Target groups for these programs include the media, legislators, and business and professional leaders, as well as leading judges and prosecutors.

(3) Information collection and analysis. Many types of information are needed to support a successful reform initiative It is highly desirable to collect data on key issues from many different jurisdictions. Key areas in which regularly up-dated information would be desirable include at least the following:

- o Listings of specific alternative sanctions: descriptions, by state (and perhaps by locality), of specific programs, how they work, types of offenders for whom they are designed, persons to contact, categories of offenders, etc.

- Information, by state (and preferably by county), on categories of offenders actually in jail or prison, why, and for how long. This kind of information enables us to focus on a key issue: to what extent are judges incarcerating offenders, such as recidivist petty thieves, for whom incarceration (or lengthy incarceration) is not clearly necessary for valid public safety reasons. Multi-jurisdictional data can point up sharp contrasts--some jurisdictions will be shown to be much harsher than others, with higher costs to the public and no apparent benefits.

- Information on the actual use of intermediate sanctions as alternatives in particular factual settings, to help develop the needed body of precedents.

(4) Experimentation and evaluation. While a great deal of experimentation can be undertaken at the local level, there is a definite place for initiation and evaluation of major experiments by a national organization. The Vera-designed day fine experiments now underway (or in the planning stages) in Staten Island and Phoenix are examples of programs that grew out of multi-jurisdictional research. They can, potentially, have national implications. The involvement of an organization with a national perspective (and experience in working in different environments) is important for such efforts.

(5) Information dissemination. Reforming sentencing practices is a difficult and often lonely task. It is important to keep persons involved in these efforts informed of what is going on around the country. They need to know about new ideas being tried, about innovative uses of intermediate sanctions, about legislative initiatives, about relevant research findings, and so forth. Additionally, as information is developed about approaches and techniques that work effectively, it is important that it be communicated to a wide range of audiences. Equally important, it is desirable to collect and disseminate information on the consequences of excessive reliance on incarceration and use of unnecessarily long prison sentences. Much information collection work undoubtedly takes place now, but more could be done in the way of dissemination to judges, to policymakers (and their staffs) at all levels of government, to the media, to researchers, and to individuals involved in providing direct technical assistance to states and localities.

(6) Technical assistance. As statewide sentencing commissions, local trial courts, prosecutors, and other institutions set about trying to analyze and change long-established practices, they often look outside for help. It seems desirable to develop a cadre of knowledgeable and

experienced persons--including both national experts and local practitioners who have successfully used alternatives--who can be called upon to provide assistance in a variety of ways. These might include, for example:

- o On-site study visits and consultation.
- o Conducting local workshops and seminars.
- o Facilitating visits to jurisdictions in which "model" programs are operating.

Further Planning: Threshold Issues

The preceding discussion raises issues and suggests ideas that can be explored in greater detail. As those explorations go forward, and more detailed plans are made, two considerations seem especially important:

1. Linkage of Jail Crowding and Prison Crowding. Although the Clark Foundation's central concern has been with prison conditions, the development of a viable strategy to broaden use of intermediate sanctions and reduce overall incarceration rates requires attention to the ways in which both jails and prisons are used. It also requires that attention be paid to the sentencing practices of judges in both limited and general jurisdiction trial courts. Typically, limited jurisdiction ("lower court") judges--e.g., judges in municipal courts and county courts in most states--have jurisdiction only over minor offenses and misdemeanors; usually they cannot impose sentences beyond a year in jail. Felony cases are usually handled in the general jurisdiction court (the "upper court") where judges' sentence options include state prison.

What happens in limited jurisdiction courts can greatly affect what happens in the upper courts. If lower court judges sentence large numbers of misdemeanor defendants to jail, for example, that is likely to have two significant effects: (1) it means that less jail space is available for felony defendants; and (2) upper court judges, seeing misdemeanor defendants sent to jail after conviction on relatively minor charges, are less likely to use non-incarcerative intermediate sanctions for felony offenders. Additionally, most upper court judges begin their judicial careers in limited jurisdiction courts. If they get used to using incarceration extensively when in the lower court, they are less likely to change their practices when they move up to the general jurisdiction court and find themselves sentencing defendants with worse prior records who are convicted of more serious offenses.

Much the same set of considerations is at work with respect to other practitioners--prosecutors, defense laywers, probation officers, etc. Their career paths tend to move them from handling less serious offenses toward more serious ones. The implications are clear: to make a significant impact upon sentencing policy and practice, we must look at the full range of criminal offenses and offenders and consider what types of sanctions are appropriate for each. In seeking to change sentencing practices, we must pay attention to the behavior of judges and others who deal with the less serious offenders as well as those who handle only felony cases.

2. Involvement of Other Funding Sources. The Clark Foundation has a well-established leadership role in addressing problems of over-use of incarceration, and it is in a position to spearhead new initiatives. But this is an area in which the Foundation's resources, no matter how wisely used, cannot begin to meet all of the readily apparent needs. To the extent possible, help should be sought from other funding sources. At the federal level, at least three agencies--the National Institute of Corrections, the Bureau of Justice Assistance, and the State Justice Institute--are potential sources of funding for sentencing reform efforts aimed at judges. The possibility of coordinated efforts with these agencies should be pursued. And, as initiatives take shape in specific states, it should also be possible to bring in local foundations and other funding sources (including legislatures, county commissions, and municipal governments) with an interest in slowing the escalation of expenditures for prisons and jails.

Judges foster change

Group meets to improve courts

By Linda Loyd
Inquirer Staff Writer

Quietly and behind the scenes, 11 Philadelphia Common Pleas Court judges have been meeting for more than a year to come up with ideas and recommendations for improving the inefficient and sluggish Philadelphia criminal courts.

The judges, who all hear criminal cases, fervently believe that the Philadelphia court system can be improved. And they are working with Edward R. Blake, the trial division's administrative judge, to address what they see as fundamental problems — making the justice system in Philadelphia more efficient, orienting new judges to the courts and making jurists more accountable for their performance on the bench.

"The committee has been a tremendous help to me as administrative judge," Blake said. "We are constantly reviewing different problems. It is very helpful to be able to toss these problems to the committee, and get their input," he said.

From the judges' perspective, the single most important problem is the tremendous backlog of criminal cases, which stands at more than 17,000 and is expected to reach just under 13,000 by the end of 1989.

One solution they have put forth is a return to an individual-judge calendar, in which each judge hearing criminal cases would be assigned a list of cases, similar to how federal judges get cases in U.S. District Court. At present, judges get cases assigned to them from a calendar-list room.

Already the judges have initiated a pilot program, with three Common Pleas Court judges being given a modified individual calendar of about 80 cases each to dispose of in June and July. All three — Jane Cutler Greenspan, Frederica A. Massiah-Jackson and Carolyn Engel Temin — are among the group of 11 working on court improvements.

Equally important are other concerns the judges are considering or have taken action on.

Last June, for example, in an effort to offer practical advice to new Common Pleas Court judges, the judges offered a substantive educational training seminar.

The two-day orientation dealt with the proper role of the judge, the importance of a judge setting the tone in a courtroom and a judge's relationship with lawyers and with court personnel.

"We told them they should expect to come in no later than 9:30 a.m., and should stay on the bench until all the cases listed that day had been disposed of," said one participant. "We believe in peer pressure."

Hand in hand with an individual-judge calendar, the judges favor some type of accountability in measuring the productivity of judges in disposing of cases.

Who are these 11 judges who meet to hash out common concerns? They are known as the Sheppard Committee — named for the chairman, Albert W. Sheppard Jr. — and they meet every two weeks over lunch.

(See JUDGES on 12-B)

Most of them came on the bench in the last six years. All are in their 40s or early 50s, and many were assistant district attorneys or public defenders.

The judges who have been meeting are: Mark I. Bernstein, Legrome D. Davis, Greenspan, John W. Herron, William J. Manfredi, Massiah-Jackson, William J. Mazzola, Sheppard, Michael R. Stiles, Temin and Thomas D. Watkins.

The judges originally were appointed by Blake in January 1988 to respond to a Pennsylvania Supreme Court directive ordering the courts, to reduce prison crowding, to try only cases where the suspect was already in custody. The judges made recommendations to Blake to forward to the Supreme Court. With that task completed, the committee continued to meet and moved on to other issues.

Over time, the Sheppard Committee has talked about everything from the need for fire drills and a fire-evacuation plan in City Hall to appropriate fees for expert witnesses in court appointments, from how to solve the logjam in the major-felony calendar room to the need for a modern criminal justice center.

"The most significant thing about it is that it is 11 judges who are talking" without any fanfare or specific mandate from above, said one judge.

"We're no better equipped than any other judges; we're no more concerned than most of the judges," said one. "We just happen to be sitting together in a small enough group to share views and do something."

With a tidal wave of criminal cases facing the court, the judges have urged a return to an individual-judge calendar as the "best, fairest and most appropriate" way to dispose of cases.

"The criminal case load has just gone out of sight, with the increase in crack," said Sheppard. He noted that criminal cases have doubled from 7,500 in 1978 to 14,676 in 1988. Altogether, the 85 Common Pleas Court judges and the 16 senior judges disposed of 13,500 criminal cases last year, but there is still a backlog, he said.

"We're getting 15 percent more criminal cases every year, and we estimate that 80 percent of them are in some way drug-related," Sheppard said.

Until late 1987, the city courts had an individual-judge calendar. That system was abolished by state Supreme Court Chief Justice Robert N.C. Nix Jr., who favored a calendar-room assignment method.

The judges who handle criminal cases now get their case assignments doled out from a calendar-list room, 625 in City Hall.

Under the individual-judge system, cases were assigned randomly from an assignment list, impeding "judge shopping" by defense lawyers.

However, under that system, inefficient judges could — and did — wind up with a list of cases far into the future, thus adding to the backlog.

The problem with the current case-assignment method is that a judge can be left idle as early as noon if a case falls through.

Although the Sheppard Committee judges favor a return to the individual-judge calendar — and have communicated this to Blake — Blake said he "prefers" the calendar room. It is widely known that Nix, who is Blake's boss, does not favor an individual-judge calendar.

The three judges who have been working on a modified individual calendar have been given more than 200 of the oldest cases in the system, cases that involve defendants who are in prison awaiting trial.

"If the three of us can dispose of all the cases that have been assigned, that would be a significant chunk" for three judges to dispose of in just two months, said one of the three. "The expectation is that in the fall, the individual-judge calendar will be tried again with another group of judges, or that the three of us will continue."

On the issue of performance for judges, the problem is how to measure productivity while still taking quality into account.

Statistics alone are not a fair measure, the judges said. Some judges, who are known to be tough in sentencing, end up with mostly jury trials. While other judges, who handle more waivers (nonjury trials before a judge) and pleas, dispose of many more cases.

"I think that there has to be something to force people to perform," said one judge. "It seems to me that if all my contemporaries know that I grant 60 percent of the continuances, whereas the norm is probably about 40 percent, I may have a better motivation to dispose of more cases."

Statistics on judges' productivity are kept by the court, but are not available to other judges or the public.

In an effort to instill a "work ethic" in new judges coming on the bench, the Sheppard Committee organized an educational orientation session under Temin's leadership June 29 for incoming Common Pleas Court judges.

"There had been sessions for new judges, but they were mostly welcoming sessions," said one judge. "There had never been an orientation to tell people *how* to be a judge, *how* to act, *how* to handle cases."

"We told the new judges that they must recognize that being a judge is not a job that they were just retiring into," said one committee member. "We told them that this was a hard-working job, and they should feel both pressure and incentive from their colleagues."

Watkins has written a "white paper" of about 20 concerns, including the need for judges to improve their public image and reach out more to the community, and the desirability of a mixed docket of criminal and civil cases for judges or a rotation in which a judge might spend a year hearing criminal cases and then a year hearing civil matters.

A major inconvenience to all judges, one said, is that "City Hall was never envisioned for the volume of cases we are facing in Philadelphia today."

Members of the Sheppard Committee said there was a new spirit in the Common Pleas Court. "There has been a definite change," said one judge. "It's in the attitude of the judges who come on with a work ethic."