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Probation Reform: Is Zero Tolerance a Viable Option?

Patrick Kelly
Don Stemen

Can community supervision compete with incarceration as a means of crime control? Mark Kleiman, professor of policy studies at the UCLA School of Public Affairs and the author of *When Brute Force Fails: Strategic Thinking for Crime Control*, believes it can.[1] At a July 2005 roundtable discussion sponsored by the National Institute of Justice (NIJ), Kleiman told a group of researchers and prominent community supervision administrators, "If we get [community supervision] right, we could cut incarceration by 50 percent, have less crime rather than more crime, and spend the same amount of money."[2]

This paper, produced by the Vera Institute of Justice with support from NIJ, summarizes the discussion between Kleiman, who has proposed a new model of community corrections based on his theoretical work, and his audience of researchers and community corrections administrators, who represent a wealth of practical experience. The paper begins with an overview of Kleiman's proposal for reforming probation (and by extension, parole), including a brief sketch of the proposal's theoretical foundation drawn from *When Brute Force Fails*. It then looks at the practitioners' feedback to Kleiman's ideas. The paper concludes by suggesting a number of experiments that might be conducted to resolve the differences between the two perspectives and advance theory and practice alike.

In addition to Kleiman, the roundtable participants included Barbara Broderick, chief probation officer for Maricopa County, Arizona; Judith Sachwald, director of parole and probation for the State of Maryland; and Martin Horn, commissioner of the New York City Department of Correction and Probation. A number of representatives from NIJ and the Vera Institute were also present.[3]

Community Corrections as Crime Control

The United States now incarcerates a larger part of its population than any other country. All told, more than two million people are behind bars in the U.S. on any given day, or just over 726 per 100,000 residents.[4] Many of these individuals are serving sentences for nonviolent drug or property crimes. Criminologists have pointed out that for offenders such as these, who generally pose little threat to public safety, incarceration is a needlessly punitive method of crime control. It is also expensive: it costs upwards of $22,000 a year to confine an individual in jail or prison, as compared with as little as $200 per year to supervise an individual on probation or parole.[5]

Yet, while there were almost five million people on probation or parole in the U.S. in 2003, many commentators contend that community supervision, as it currently stands, is not effective in controlling crime. They can point to the fact that parole is little more than a way station on the road back to prison for many former inmates. In 2003, 38 percent of everyone on state parole in the U.S. was returned to prison, either for a technical violation of their conditional release or for a new conviction.[6] Probation, meanwhile, often functions as a sort of stopgap measure. As Horn pointed out, "People are put on probation because the district attorney can't prove the case [well enough to send them to prison]." Indeed, an individual who receives a sentence of probation is commonly said to "get a walk."

A Proposal to Reform Community Corrections

In his presentation to the roundtable, Kleiman said, "I want to propose for community corrections what [former New York City Police Commissioner] Bill Bratton brought to policing: that community corrections agencies start holding themselves accountable and asking others to hold them accountable—not for successful completion, not for service delivery and compliance, but for the number and severity of new crimes committed by people under their jurisdiction."

Kleiman's plan calls for placing roughly four million people in a reformed probation-like community

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corrections program.[7] Within this group he would include the one million individuals with the lowest crime rates (weighted for severity) among the more than two million currently behind bars; the two million highest-risk offenders currently under community supervision; and another one million individuals "who ought to be on probation or parole, but who aren't—that is, the highest-crime group among recently convicted people who aren't under community supervision."

He also envisions a number of changes to the regime that would supervise these four million. The new system would have a small set of rules, each of which would be linked to crime reduction. Any rules that couldn't be effectively monitored would be eliminated. Also, the system would impose swift and certain—but usually mild—sanctions whenever it detects a failure to comply with the rules. Except when there are new crimes or in cases of repeated failure to appear for parole or probation check-ins, Kleiman would eliminate revocation: "Probation," he said, "should not be something you can flunk out of."

Kleiman offered the roundtable participants several examples of easy-to-monitor, crime reduction-linked rules. For instance, individuals under community supervision might be expected to abstain from using illegal drugs, a requirement that could be monitored with drug tests. They also might be required to obey curfews or stay away from individuals or locations associated with the offense for which they were convicted. Both of these conditions, he suggested,

could be guaranteed using "electronic handcuffs" or similar technology. Finally, they might have to attend anger management or substance abuse programs, which could be verified via data links between the service providers and community supervision officials.

The kinds of sanctions Kleiman offered for rule violations include increased supervision, unpaid community service, and confinement for short periods (48 hours or so). Kleiman placed special emphasis on the ability to confine violators. Together with the capacity to chase down absconders (people who stop showing up for probation appointments), he said, the threat of confinement would establish the credibility of the entire community corrections system.

Under the current regime, Kleiman noted, sanctions are neither swift nor certain. In most cases only judges can impose confinement on probationers, and it can take several weeks to conduct a judicial hearing—and even then the judge may find that there was no violation or decline to impose any substantial sanction. To remedy this situation, Kleiman proposed extending "day reporting" (the practice of requiring probationers to show up in person at a designated facility and remain there for the day) around the clock, in effect creating an administrative equivalent of a 24-hour confinement. Also, he would seek ways to subject offenders to immediate but relatively mild administrative discipline in lieu of tough judicial sanctions (for example, by inducing consent prior to their conditional release).

Finally, given that there are not enough resources to enforce such a tight supervision regime on all probationers, Kleiman proposed that authorities concentrate their sanctioning resources. Community corrections officials could make the most of their sanctioning capacity, he said, by initially enforcing a zero tolerance policy on a chosen group of probationers—say, all probationers in a particular office, or everyone on a particular officer's caseload. Over time, he believes, the tighter scrutiny would lead to fewer violations within the chosen group. This decline would free up sanctioning resources so that the zero-tolerance envelope could be expanded to other groups as well. Eventually, he said, the zero-tolerance zone could be extended to the entire four million targeted offenders.

The Theoretical Rationale for Kleiman's Proposal

Kleiman's emphases on swift and certain sanctions and on concentration of punishment capacity follows from the general approach to crime control set forth in *When Brute Force Fails*. This theory assumes that the community corrections system has finite resources for punishing offenders. It also assumes that, while offenders may not always pursue the course of

action that is in their best interest, they are averse to punishment. In other words, while they may not be perfectly rational in seeking to maximize their utility, they are at least "imperfectly rational." Given these assumptions, he is able to apply a modified economic model to the problem of crime control. Under this model, one can view punishment as a kind of "price," both for those who are punished (offenders) and those who impose the punishment (corrections officials), and then study the dynamics of the resulting system.

As it turns out, a system in which offenders are averse to punishment and criminal justice officials seek to maximize compliance (given limited enforcement resources) has two equilibria, or configurations in which the system is stable. When violation rates are high, the limited punishment resources are stretched too thin to be effective in reducing those

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rates. As a result, violation rates remain high (or may even increase). When violation rates are low, even limited resources suffice to keep those rates down. Consequently, violation rates remain low (or may even decrease).

In *When Brute Force Fails*, Kleiman illustrates such a system with an analogy. Imagine a parking lot in which 1,000 commuters choose each day between parking legally, for a $10 fee, and parking illegally. The fine ("punishment") for being caught parking illegally is $30. Assume further that there is a single ticket-writer, who is able to write no more than 100 tickets per day. (This corresponds to limited punishment resources.) If all 1,000 commuters park illegally, there is only a one in 10 chance that any individual commuter will be fined. The expected cost of parking illegally is thus $3 (0.1 x $30 = $3). Since this is less than the $10 parking fee, violation rates will remain high because it pays to park illegally. If, on the other hand, almost everyone parks legally, the few who don't are certain to be identified and fined. Thus, violation rates will remain low. (It bears mentioning that this simplified model

assumes that commuters are perfectly rational—that is, they always pursue the course of action that is most in their interest. In the real world, a multitude of factors, such as imperfect knowledge and imperfect rationality, would complicate matters. A simplified abstract model can nonetheless provide useful insights.)

In addition to providing a model of decision-making by commuters, the parking-lot analogy allows one to ask about decision-making by parking-lot (and community corrections) officials. Specifically, what enforcement strategies are most effective at reducing the violation rate? One approach would be to hire more ticket-writers. Another, less obvious strategy—the one Kleiman proposes—involves concentrating enforcement resources. A single ticket-writer could target the front of the lot, effectively turning it into a zero-tolerance zone for the first 100 illegally parked cars. Over time, assuming commuters are averse to punishment, this approach will reduce the violation rate at the front of the lot, in turn gradually allowing the ticket-writer to extend the zero-tolerance zone. "What I wanted to show," Kleiman noted after explaining these ideas to the roundtable group, "is what I thought was a counterintuitive result: compared to assigning punishments entirely at random, concentrating on somebody or somewhere works better—even if there's no other reason for making that person or place your priority."

The Response from Practitioners

The practitioners at the roundtable raised three major concerns about Kleiman's proposals. They noted that probation officers often lack the authority to impose swift and certain sanctions. They asserted that there may not be a direct relationship between sanctions and changes in violation rates. And they suggested that imperfect rationality may not be an adequate model of probationer behavior. Below are synopses of each of these concerns.

Probation officers often lack the authority to impose swift and certain sanctions. In his presentation, Kleiman contended that probation officers, through no fault of their own, face an "authority deficit." He attributed this deficit both to their inability to impose meaningful sanctions without going through a judge, and to a range of circumstantial conditions, including

heavy case loads, the limited availability of alternative sanctions, and the significant time and resource demands required by revocation hearings. Further, he pointed out that there is often no police action when probationers abscond; in fact, many police departments do not see the enforcement of probation as a priority. However, Kleiman suggested that the authority deficit might be overcome by giving probation officers the authority to confine those who violate probation.

Although the practitioners generally agreed that they faced an authority deficit, they attributed it to their obligation to cooperate with judges, the defense bar, and other criminal justice practitioners. (Unlike parole officers, who can send parolees back to prison, probation officers cannot themselves confine individuals following a violation; people on probation are guaranteed a full adversarial hearing before they can be confined.) The practitioners also pointed out that conditions vary widely from one jurisdiction to another. For example, in places where probation is administered by the judiciary, Barbara Broderick noted, revocation hearings proceed more quickly. ("Quickly"

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here is a relative term: sanctions imposed by a judge after 14 days would not count as "swift" in Kleiman's reckoning.) Broderick also suggested that centralized liaison units that free probation officers from representing themselves in court can help expedite hearings as well.

In contrast, Horn suggested that Kleiman is overly optimistic to envision probation officers being given the authority to respond to violations in a meaningful way. There is a "significant attenuation between detection [of probation violations] and sanctions," he explained. Instead of trying to bolster probation officers' authority, he advocated giving probationers

vouchers for services and holding them to a single condition: avoid re-arrest.

The relationship between sanctions and violation rates may not be straightforward. Several participants questioned whether sanctions predictably and reliably reduce violation rates. Was it possible, asked Chris Innes, chief of NIJ's Justice Systems Research Division, that in some cases sanctions may actually have a negative effect? Marlene Beckman, senior program analyst at NIJ, suggested that sanctions may actually antagonize some offenders. According to Beckman, research indicates that intensive supervision can actually increase violation rates among low-risk offenders.[8]

It was also pointed out that sanctions are not the only kind of intervention available to community corrections officials. Services or rewards might also prove effective in reducing violation rates. "We actually know a fair amount about sanctions," observed Vera's research director, Tim Ross, who suggested a need for new research: "I don't think we know very much about rewards. What are workable rewards—workable and politically plausible?"

Kleiman agreed that services and supervision may be "complementary strategies." But he added, "The more supervision you provide, the more valuable the services will be." If, for example, officials offer drug treatment and also ensure that individuals actually attend the treatment program, the treatment will likely be more effective, he said.

Imperfect rationality may not be an adequate model of probationers' behavior. A number of practitioners suggested that human behavior is much more complex—and much less rational—than Kleiman's model allows. Even "imperfect rationality" may fail to accurately describe the behavior of some individuals, they said. Drug addicts or individuals with severe mental illness, for example, may behave in unpredictable and irrational ways. This observation led several to argue that sobriety, rather than credible sanctions, may be the most significant factor in keeping crime rates down. "[A] massive addiction problem leads to a criminal justice problem," Beckman noted. Horn was even more emphatic: "If you can't stay sober, you will fail. End of story." On the other hand, Judith

Sachwald suggested that psychopathic individuals, who tend to undermine treatment programs in which they are enrolled, might respond to credible sanctions.

It was also noted that the nature of "rational" may depend on an individual's particular circumstances. For an unemployed probationer with few marketable skills and a family to support, for example, the decision to sell drugs in order to pay for food may well be a rational choice.

Similarly, several participants noted that what constitutes a sanction may vary from one individual to another and from one social group to another. This is particularly true of short periods of confinement, which, by all accounts, so-called "career misdemeanants" seem to view as a minor inconvenience or even a comfortable routine. "One thing we do know about the psychology of offenders," observed Innes, "is there's [often] this insensitivity to punishment." Beckman illustrated the same point by noting that women in abusive relationships may feel safer in jail than outside. Some people may even prefer short periods of confinement to probation, contended Horn: "The notion that being locked up for three days is bad isn't true."

Kleiman agreed that sanctions (or, alternatively, rewards) need to be appropriate to the individual. Thus, if some people consider probation less desirable than jail, then for them probation might serve as a sanction and a reduced term of probation a reward. In addition, he pointed out that confinement might be made more undesirable by restricting access to TV and other forms of entertainment. "If you're locking people up for 48 hours," he argued, "you can make it much more aversive than a jail without getting anywhere near cruel and unusual punishment."

Further Research and Feasible Tests

In *When Brute Force Fails*, Kleiman notes that his proposal for reforming community corrections represents an effort to adapt a simplified, theoretical model of crime control to "the actual complicated and messy world." The roundtable participants suggested a number of experiments for testing the assumptions of his proposal. They also identified areas in which further research is needed. In doing so, they focused on three broad challenges: how to identify factors that influence community corrections outcomes; how to

identify workable sanctions; and how to investigate workable rewards.

The roundtable participants' suggestions emphasized the need for experimental designs. In particular, they called for research that randomly assigns offenders to experimental and control groups in order to establish a high level of certainty that changes occur because of the intervention and not because of other factors.[9] Because, as described earlier, probation officers often lack the authority to impose swift and certain sanctions—especially sanctions that involve confinement—they also noted that much of this research may be most suited for individuals under parole supervision.

Identifying factors that influence community-corrections outcomes. Kleiman's model assumes that high rates of community corrections violations are associated with high recidivism rates. It further assumes that, by reducing violation rates, community corrections officials can reduce the commission of new criminal offenses. In fact, though, little is known about violation rates and recidivism in the context of community corrections. Several topics in particular need to be investigated further. These include the types of violations that offenders commit; the factors that are associated with high and low violation rates; the impact of the community corrections officer (and the relationship between the officer and the offender) on violation rates; the impact of services on violation rates; and the association between violation rates and recidivism rates. Only by understanding these factors can community corrections effectively link changes in supervision to successful community corrections outcomes.

Identifying workable sanctions. The idea that sanctions need to be both swift and certain in order to be effective is central to Kleiman's proposal. It should be possible to test this notion by varying the degree of swiftness and certainty of particular sanctions in a controlled manner, and examining the effect of that variation on violation rates. Below is a list of possible examples.

To accelerate the process by which violations are detected and sanctions are meted out (and thereby gauge the effectiveness of "swift" sanctions), practitioners might use drug tests that provide

instant results (as compared with those that provide results in 24 hours), or they might experiment with specialized "revocation courts" (courts specifically dedicated to probation violation hearings). Similarly, to make sanctions more certain, practitioners might impose 48-hour detention as a first response to any violation; they might increase the use of day reporting, intermittent jail sentences, and solitary confinement; and they might create specialized facilities for those convicted of probation violations. Finally, practitioners might explore the impact of reducing the severity of sanctions on violation and recidivism rates. They might, for example, compare offenders who are subjected to drug testing two times per week with those subjected to testing two times per month; they might reduce the length of incarceration imposed as a result of a violation to no more than 48 hours; and they might compare high-risk offenders under low levels of supervision to high-risk offenders under high levels of supervision.

Investigating workable rewards. While Kleiman's theoretical model emphasizes responding to violations with sanctions, researchers might also want to investigate the effects of rewarding good behavior. Little is known about the effectiveness of specific types of rewards or, for that matter, the impact of positive reinforcement in general. Types of rewards that might be tested include relaxed or "stepped down" levels of supervision; monetary rewards; vouchers for services; and early termination of supervision. Examples of "good behavior" might include remaining violation-free for a specified period (e.g., three months); having a negative drug test; or meeting other specified conditions of supervision. Practitioners were generally enthusiastic about the promise of rewards, especially as a cost-saving alternative to sanctions.

Conclusion

In organizing the roundtable discussion, NIJ officials had hoped to establish a dialogue between theory and practice with two goals in mind: to test Kleiman's ideas against practitioners' real-world experience, and to stimulate new thinking among practitioners. As we have seen, the roundtable participants conceived several ways of testing Kleiman's ideas. At the same time, they noted that while details remained to be hammered out before Kleiman's proposal could be translated into practice, the discussion had been helpful in raising awareness of the challenges and latent opportunities in community corrections.

However, there was also a sense that the conversation needed to be expanded beyond practitioners and theorists. As Broderick noted, "A discussion that included elected officials and judges would be very valuable." Horn stressed that any effort to reform community corrections would depend on the cooperation of judges. "That's where the decision-making takes place—the ability to do short sanctions, the ability to have any kind of certainty or consistency," he explained.

Finally, the list of research challenges generated by the discussion suggests that much remains to be learned about community-based corrections in general. "I think what we've proved is that there's not an easy answer," concluded Sachwald. "It's going to take a patchwork of different things [to address recidivism and reform community supervision]: two-day incarcerations, sentences, services, all of those things."

Endnotes

1 http://www.ncjrs.gov/pdffiles1/nij/grants/211204.pdf

2 The discussion took place on July 27, 2005, at the Vera Institute of Justice in New York City.

3 Other participants included Marlene Beckman, senior program analyst at NIJ; Thomas E. Feucht, assistant director for research and evaluation at NIJ; Jake Horowitz, social science analyst at NIJ; Chris Innes, chief of NIJ's Justice Systems Division; Michael Jacobson, director of the Vera Institute of Justice; Tim Ross, Vera's director of research; Don Stemen, senior research associate with Vera's State Sentencing and Corrections Program; and Daniel F. Wilhelm, director of the State Sentencing and Corrections Program.

4 Bureau of Justice Statistics, "Prison and Jail Inmates at Midyear 2004," (Washington, DC: April 2005). http://www.ojp.usdoj.gov/bjs/abstract/pjim04.htm (23 August 2005).

5 Bureau of Justice Statistics, "State Prison Expenditures, 2001," (Washington, DC: 2004); Joan Petersilia, "The Current State of Probation, Parole and Intermediate Sanctions," in *Community Corrections: Probation, Parole and Intermediate Sanctions*, edited by Joan Petersilia (New York: Oxford University Press, 1998).
    Although many would see parole spending increased, the difference would nevertheless remain substantial.

6 Bureau of Justice Statistics. "Probation and Parole in the United States, 2003," Washington, DC: July, 2004. http://www.ojp.usdoj.gov/bjs/abstract/ppus03.htm

7 Kleiman noted that in discussing community corrections he focused on probation rather than parole, in large part because he was more familiar with the former.

8 See for example D.A. Andrews et al., "Does Correctional Treatment Work?" Criminology 28, no. 3 (1990): 369-404.

9 Random assignment is important because it guarantees that the only difference between offenders in the experimental and control groups is the intervention itself. Any difference in outcomes between the two groups can then be traced to the intervention.