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# HOFSTRA LAW REVIEW

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## SYMPOSIUM ON SENTENCING, PART II

### NEW FINDINGS, NEW VIEWS: A NOTE OF CAUTION REGARDING SENTENCING REFORM

*Robert Martinson\**

A favorite method of past reformers of our criminal sentencing statutes might be called the "indignant method." Through selective application of this procedure, one discovers that inmate A in Nebraska has suffered three times the penalty that inmate B in Colorado has suffered. Reformers rush to correct this disparity, then that one, then another, all with no awareness of the complexity of the criminal justice system and thus of the problem: Any serious consideration of sentencing reform in the United States is plagued by the fantastic variety of combinations and forms found in our state and local jurisdictions. Contrasting perceived disparities in the way similar individuals are punished with the American ideal of fair and equal justice is somewhat simpler than devising a solution which will eliminate all possibility of such polar examples.

This "indignant method" is not only unscientific, it is, by definition, sporadic. It produces, not surprisingly, sporadic and unscientific reforms. Moreover, while it is indeed troublesome to find widely disparate treatment accorded similarly situated individuals, it should be of even greater concern that the system manifests astounding disparity in the way *classes* of individuals are treated.<sup>1</sup>

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1. The study that my associates and I are now completing, *see* note 6 *infra*, indicates phenomenal differences in the way juveniles and adults are reprocessed by the criminal justice system. *See* text accompanying notes 5-14 *infra*. For explanation of the term "reprocess," *see* note 5 *infra*; text accompanying notes 14 & 15 *infra*.

The purpose of this Article is to suggest that not only must sentencing reform be undertaken with knowledge of such system-wide class disparities, but that *any* reform must be undertaken with great caution. Tinkering with the system runs a major risk of serious, detrimental ramifications. Contrary to common belief, the rate of recidivism (reprocessing rate)<sup>2</sup> in this country is not high, it is quite low.<sup>3</sup> And, contrary to my previous position, some treatment programs *do* have an appreciable effect on recidivism. Some programs are indeed beneficial; of equal or greater significance, some programs are harmful.<sup>4</sup>

#### JUVENILE VERSUS ADULT: SYSTEMWIDE CLASS DISPARITIES

Within the arbitrary legal boundary of age separating the juvenile and the adult *sentenced* offender, rather fabulous differences appear in the way in which segments of the criminal justice system reprocess<sup>5</sup> grossly similar offenders. Table I provides some selected examples.<sup>6</sup>

The table presents the differences between the mean reprocessing rates of juveniles and adults for sixteen roughly comparable combinations of sentenced offenders and segments of the criminal justice system. The combinations were created by controlling for three conditions: (1) The criminal justice segment doing the reprocessing (police, supervision, or courts); (2) the risk

2. "Reprocessing rate," more precise than the term "recidivism rate" which it was coined to replace, is defined in text accompanying notes 14 & 15 *infra*.

3. See text accompanying notes 16-18 *infra*.

4. See text accompanying notes 19-37 *infra*. Other programs are simply impotent: they have no appreciable effect on "recidivism." *Id.*

5. "Reprocess" describes the systematic handling of sentenced offenders by segments of the criminal justice system.

6. Table I and the other tables and figures in this Article are drawn from an unpublished national study which I am now completing, tentatively titled *Reprocessing Criminal Offenders: A Synthesis of Research Findings*. The primary aim of this study is to explore the impact of current treatment methods on juvenile and adult sentenced offenders in the United States. Information was derived from 555 research studies published primarily during the period from the end of World War II to the present. The study was done under grant No. 76-NI-99-0023 from funds provided by the National Institute of Law Enforcement and Criminal Justice. The views expressed are mine, and do not necessarily reflect the views of the National Institute.

The research we looked at was not specialized: Studies were sent to us from all regions of the United States, from all but five states, and reflect the work of all departments of research, not merely the experimental (evaluation) research to which our previous book was limited. See D. LIPTON, R. MARTINSON & J. WILKS, *THE EFFECTIVENESS OF CORRECTIONAL TREATMENT* (1975). Indeed, it was misleading to judge criminal justice on the basis of these evaluation studies. See text accompanying notes 19-37 *infra*.

TABLE I

SELECTED DIFFERENCES BETWEEN THE REPROCESSING RATES OF  
JUVENILES AND ADULTS(By Risk Category, Time in Follow-up (short = 12; long = 13+), and  
Criminal Justice Segment Doing the Reprocessing)

<i>Segment</i>	<i>Risk Group</i>	<i>Reprocessing Action</i>	<i>Follow-up</i>	<i>Difference</i>
Police	Low	Arrest	13+	+30.1
Supervision	High	Imprisonment/Technical	13+	+19.9
Police	Low	Arrest	12	+15.9
Police	High	Arrest	12	+14.4
Courts	High	Prison/New Conviction	12	+11.9
Supervision	High	Imprisonment/Technical	12	+10.1
Courts	High	Conviction	12	+ 9.9
Supervision	Low	Imprisonment/Technical	13+	+ 9.2
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Police	High	Arrest	13+	+ 8.2
Courts	Low	Conviction	12	+ 7.7
Courts	Low	Prison/New Conviction	13+	+ 7.4
Supervision	Low	Imprisonment/Technical	12	+ 7.3
Courts	Low	Conviction	13+	+ 6.4
Courts	High	Prison/New Conviction	13+	+ 0.6
Courts	Low	Prison/New Conviction	12	+ 0.1
Courts	High	Conviction	13+	+ 0.0

- Notes: 1. "Supervision" refers to parole or probation agents who recommend imprisonment on the basis of infraction of conditions or other evidence (or suspicion) of wrongdoing.
2. "Courts" refers to prosecution, defense, and judiciary in combination. We have no measure to separate out the activities of these three sub-components.
3. "12" indicates follow-up of up to twelve months. "13+" indicates follow-up of thirteen months or more.

group (high or low) into which these sentenced offenders fell;<sup>7</sup> and (3) whether these offenders were followed up by research for a short time (up to twelve months) or for a long time (thirteen months or more).

As the table indicates, police reprocess sentenced offenders by means of arrest. Supervision reprocesses by recommending imprisonment for a technical violation of the conditions of probation or parole. Reprocessing by the courts segment is measured in two ways by the research we have examined. We label these measures "conviction" and "prison/new conviction."<sup>8</sup>

7. Risk categories were created using background information such as age, sex, and prior incarceration. "High" and "low" risk describe the probability of an offender within a given group being reprocessed.

8. Some research employs conviction alone as an outcome measure and does not consider the sentence received by those convicted. This research is contained in

The "difference" column reports the difference between the mean reprocessing rates of juveniles and adults for each of the sixteen combinations. These differences are ranked from high to low. The dotted line distinguishes those combinations generating relatively large differences (above the line) from those producing differences which are relatively small (below the line).

Juveniles have a higher reprocessing rate than adults under nearly all conditions—and other evidence from our current study confirms that juvenile sentenced offenders are somewhat more "criminalistic" than their adult counterparts.<sup>9</sup> But criminal justice segments respond to this quite differently. Police and supervision respond to juvenile offending by reprocessing juveniles (by arrest or imprisonment) at relatively high rates (in comparison to adults). For example, the largest discrepancy (+30.1) occurs when police arrest low-risk offenders as reported in studies which used a long follow-up period (13+). That is, the police arrest low-risk juveniles (in the long run) much more frequently than low-risk adults. Note that police and supervision tend to be above the dotted line, where the largest differences are generated.

The courts, however, tend to be below the dotted line. They convict (or imprison) juveniles and adults *as though* they were about equally criminalistic. In one case, the courts reduce the discrepancy between juveniles and adults to zero. We seem to be looking at a system of vast incoherence among decisionmakers. Police and supervision generate differences which tend to disappear when courts are the decisionmakers.

Whom shall we believe—the police and supervision or the courts? Police do make "bad arrests," but does this happen often enough to account for the gap? Are high-risk juveniles so different from high-risk adults that supervision agents are properly using their discretion in imprisoning juveniles at rates so much higher than adults? Are we to blame the adult court or is the juvenile court simply using the vast discretion it has to do what it sees fit?

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our "conviction" category. Other research provides information of imprisonment imposed following a new conviction. This we label "prison/new conviction."

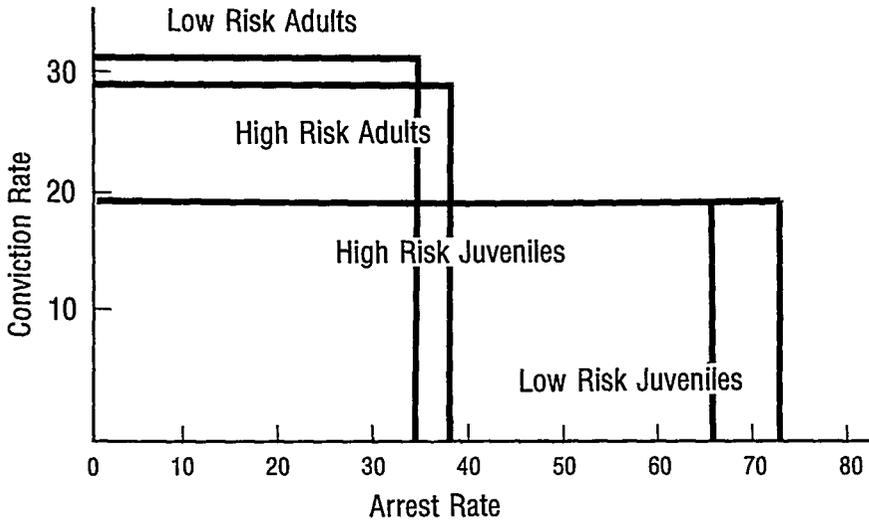
9. The mean of 1349 reprocessing rates for juveniles is 27.9; the mean of 4292 adult rates is 20.9. We have no direct measure of offending behavior other than reprocessing. However, we can safely conclude that juvenile sentenced offenders are reprocessed at higher rates than adult sentenced offenders. Furthermore, in another comparison from our current study (not included in Table I), juvenile means are higher than adult means in all but 4 of the 60 possible comparisons. This evidence leads us to infer that juveniles commit offenses at higher rates than adults: They are more "criminalistic."

*The Maxout Offender and the Court*

“Maxout” is slang for an offender released from confinement with no supervision—“set entirely free.” So many adults and juveniles are released maxout that this category is critical for public policy, yet it is almost (but not quite) *invisible* to research.<sup>10</sup> Once, everybody was released maxout. Among adult felons released from state prisons and reformatories, the maxout is still about forty percent.<sup>11</sup> Practically all of our vast population of misdemeanants are also maxout (over ninety percent).<sup>12</sup>

In Figure I we look at how two segments—police and courts

FIGURE I  
ARREST AND CONVICTION FOR JUVENILE AND  
ADULT RISK CATEGORIES (MAXOUT)



10. Research in the United States has traditionally focused on following up persons under the jurisdiction of criminal justice (those in prison, on probation or parole, or in some form of treatment program). Consequently, in our current study we have managed to locate only 175 rates for this completely neglected class of maxout offenders. One major recommendation will be that reprocessing rates for this “invisible” offender be systematically collected so that comparisons can be made with offenders who are under the jurisdiction of criminal justice.

11. See National Probation and Parole Institute of the National Council on Crime and Delinquency, Uniform Parole Reports Newsletter, Mar. 1976, at 6.

12. See National Advisory Commission on Criminal Justice Standards and Goals, *Local Adult Institutions*, in *CORRECTIONAL INSTITUTIONS* 67, 69-70 (2d ed. R. Carter, D. Glaser & L. Wilkins 1977).

—handle the juvenile and adult maxout offender. We run the arrest rate for a category on the horizontal axis, the conviction rate on the vertical axis, and label the parts. The more rectangular the box, the more the arrest rate exceeds the conviction rate for a group. Both of the adult boxes are only slightly rectangular, indicating a fairly close fit between conviction and arrest (the kind of fit one would expect). High-risk adult maxouts are being arrested somewhat more than low-risk, and one notes that the conviction rates for the two risk categories are almost identical in the adult courts.

But the juvenile court seems to operate on a different principle. Juvenile maxouts (both high- and low-risk) are arrested at about twice the rate of adult maxouts; yet, they are convicted at approximately two-thirds the rate at which adults are convicted. One can see that, if the juvenile arrest rate remains the same (or about the same), and if the juvenile boxes become about as square as the adult boxes, then the juvenile conviction rate will become *over three times* what we find it to be.<sup>13</sup>

The law is a practical instrumentality of human devising, and often must employ arbitrary cutting points to make decisions on complex issues. The difference between juvenile and adult status may be a matter of a few years for many, but it is a matter of weeks or days for some. Yet, as we have shown, there can be grotesque disparities in the way similar groups of juvenile and adult sentenced offenders are reprocessed. Such differences are today concealed by the high walls of the two subsystems; but as Figure I indicates, the invisible location, maxout, is an object lesson in how far justice can stray from the American ideal of fair and equal treatment.<sup>14</sup>

Practitioners of the “indignant method” are correct to the ex-

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13. Note that by conveniently refusing to convict the juvenile maxout, the juvenile court may be informally binding him or her over to the adult court. The gap between the two subsystems may be an arena ruled by expedience and not by law: Is the refusal to convict in the interest of the young person or is it an attempt to relieve the juvenile system of an unwanted burden?

14. Consider the low-risk maxout adult. Figure I indicates that he or she is almost certain to be convicted if arrested. But his or her juvenile counterpart has about a one-in-four chance of being convicted if he or she is arrested. These are not polar examples but average results. By refusing to convict the juvenile maxout, is not the juvenile court admitting that the juvenile system cannot handle this type of offender? But why not say so out loud so that legislation can properly adjust the boundaries? If there is need for a juvenile court, this can easily be shown, but the boundaries between the two subsystems may have gradually departed from their origins (over a 70 year period) in directions unforeseen by the founders.

tent that they perceive disparities between the treatments accorded similar individuals. And such disparity does argue for sentencing reform. Perhaps more important, although generally not perceived, is the disparity which exists between treatments accorded different classes within the system. It is this systemwide class disparity, combined with the system's disparate treatment of similar individuals, which, I believe, makes the case for sentencing reform compelling. We must move cautiously, however, for efforts to effect reform may increase, rather than decrease, recidivism.

#### REFORM—THE APPROACH MUST BE CAUTIOUS

##### *The Reprocessing Rate (Recidivism) Is Low*

Terms must be defined. Crime committed by those released from prison (or those supervised by probation and parole officers) is often called recidivism. The term is so misleading that we should stop using it. For some, it refers to the *attributes* of offenders. John Smith is a recidivist; many people in prison are recidivists. Most researchers, however, use it to refer to a *process*—what happens to a group of offenders that is followed up in the community.

The process needs its own name, so I will use the ungainly but precise term, reprocessing rate. To reprocess an offender is to subject him or her to further arrest, conviction, or imprisonment. If thirty-five of one hundred sentenced offenders are arrested during a year in the community, the reprocessing rate for arrest is .35 (35%). If twenty-one of the one hundred are convicted, the group's reprocessing rate for conviction is .21 (21%). Reprocessing rates can vary from 0 to 1.0. Although rates will vary depending on which segment of criminal justice is doing the reprocessing, it is possible to estimate an average reprocessing rate for a state, a region, or for the nation.

To further illustrate how confusing the word recidivism can be, imagine the above group of one hundred sentenced offenders consisting of seventy recidivists (people with the attribute of a previous record) and thirty first-offenders. The proportion of *recidivists* in the group is .70 (high), but the "recidivism rate" *for the group* is *low* and will fall somewhere between .35 and .21. To say that a group has a high proportion of recidivists is not to say that *when this group is followed* it must therefore have a high recidivism rate. The term "reprocessing rate" is designed to reduce this confusion.

Reprocessing rates are one of a number of important social indicators used in criminology. The crime rate, police clearance rates, and victimization rates are others. Reprocessing rates indicate what proportion of the offenders processed by criminal justice are reprocessed. They are our only systematic and universal measure for keeping track of what happens to the millions of dollars we pour into prisons, courts, probation, and parole. They are useful to legislators, citizen groups, planners, criminal justice administrators, and congressional watchdog committees. They are also useful to offenders, who should be made aware of the likelihood of their being reprocessed by the various segments which make up criminal justice.

Table II is derived from information provided by 555 research studies taken from our unpublished national survey.<sup>15</sup> The table reflects what happened to well over a million sentenced offenders in the period following World War II. The rates coded from the studies are computed by taking groups of at least ten persons and asking what proportion of each group was reprocessed by criminal justice. A completely law-abiding group would have a rate of zero, and in Table II we are able to find only nineteen instances in which the rate climbed above 90%.

The table clearly contradicts the common understanding that recidivism is especially high in the United States.<sup>16</sup> The probability of finding a rate above 50% is less than .06! So if research has produced high recidivism rates for the United States, we have been unable to locate them despite the most thorough, nationwide search yet accomplished.

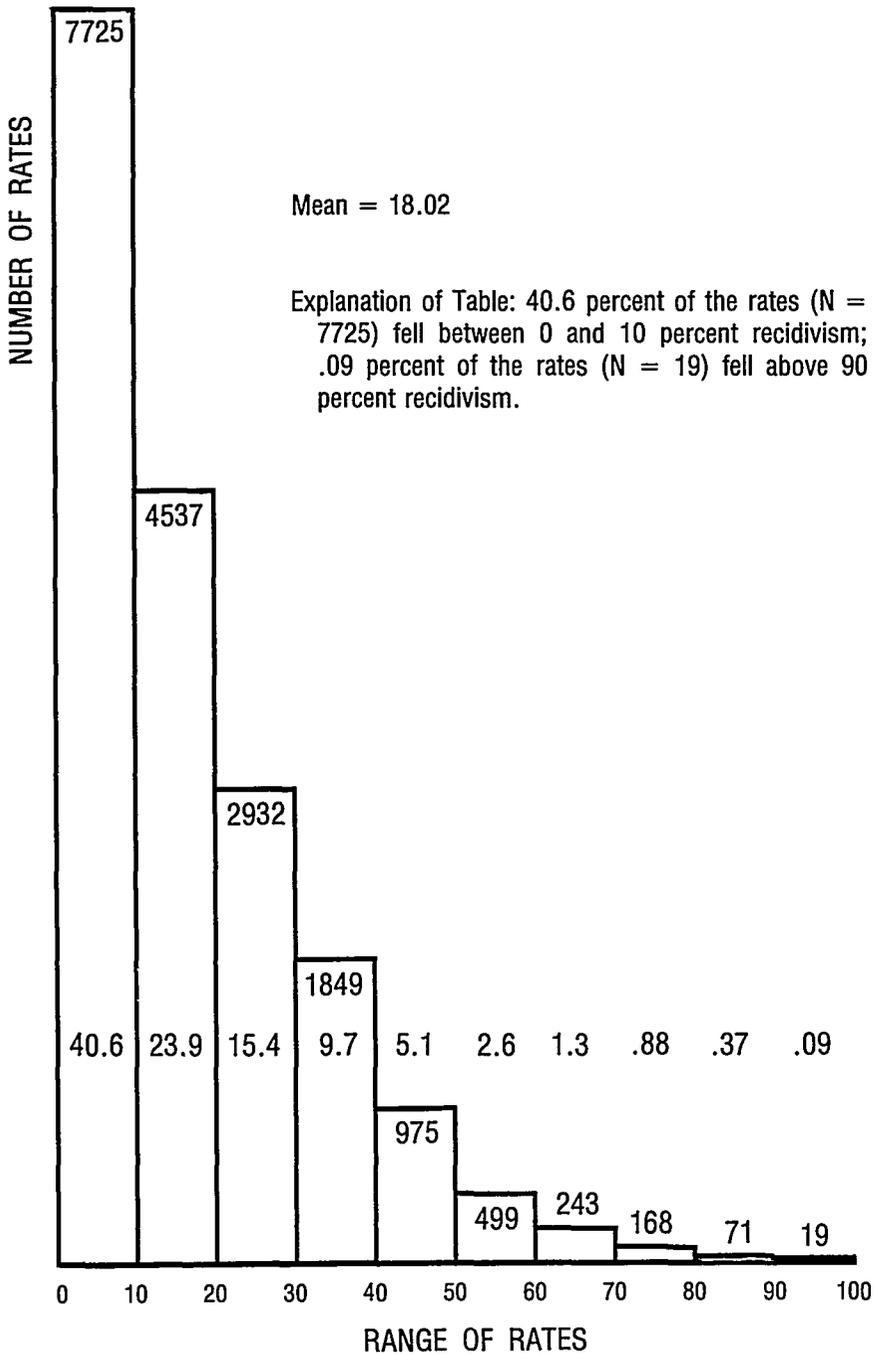
We must be cautious since our sample is not a national random sample, but is based on a large number of research studies. However, it is useful in putting some hard questions to critics of criminal justice (myself included). The mean of our 19,018 rates is 18.02, and after we eliminate more than half these rates through editing, the mean is still about 22%. The juvenile mean is about

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15. See note 6 *supra*.

16. One source of the myth that recidivism is high is the Careers in Crime project of the *Uniform Crime Reports*, but this study may have radically biased the results by using outcome (arrest) to select the sample in the first place. See FBI, U.S. DEPT OF JUSTICE, *UNIFORM CRIME REPORTS FOR THE UNITED STATES*, 1974, at 46-53 (1975). In addition, a committee of criminologists recently referred to "continuing high rates of recidivism," but cited no data. See *COMM. ON RESEARCH ON LAW ENFORCEMENT AND CRIMINAL JUSTICE, UNDERSTANDING CRIME* 116 (S. White & S. Krislov eds. 1977).

TABLE II  
DISTRIBUTION OF RECIDIVISM RATES  
(Juvenile plus Adult, N = 19,018)



seven percentage points above the adult, and, as one would expect, the mean varies depending on what criminal justice segment is doing the reprocessing. For example, the mean for the police segment is 32.1; the mean for the courts segment (prison/new conviction) is 7.4.<sup>17</sup>

Conservatively, during the last twenty years, where our rates are mostly concentrated, one of four sentenced criminal offenders was reprocessed by criminal justice decisionmakers. However one explains this low rate, it does supply a useful benchmark for any attempt to improve criminal justice. It is far easier to suggest obvious improvements in a process when there is a good deal of room for improvement. But when rates of reprocessing are already low, it is also likely that thoughtless tinkering will make things worse.<sup>18</sup>

#### *Treatment Programs: Some Help, Some Harm*

Any conclusion in scientific inquiry is held provisionally, subject to further evidence. My original conclusion concerning the importance of treatment programs in criminal justice<sup>19</sup> was derived from a survey accomplished for the State of New York covering the period 1945-1967. This survey led to a book, *The Effectiveness of Correctional Treatment (ECT)*,<sup>20</sup> which summarized research from 231 studies. I coauthored *ECT*. The conclusion I derived from *ECT* is supplied in an article which has been widely quoted and reprinted.<sup>21</sup> However, new evidence from our current study<sup>22</sup> leads me to reject my original conclusion and suggest an alternative more adequate to the facts at hand. I have hesitated up to now, but the evidence in our survey is simply too overwhelming to ignore.

Different procedures were used in the two surveys. *ECT* is based primarily on the findings of evaluation research—a special kind of research which was applied to criminal justice on a wide

17. Means for the other segments of criminal justice are: conviction (courts in general)—21.8; imprisonment/technical (probation and parole officers)—17.0; and imprisonment/unspecified has a rate of 27.1. In the case of imprisonment/unspecified, we are unable to pinpoint which segment is responsible for the act of imprisonment.

18. I have had occasion to say harsh things about the mindless faddism which plagues criminal justice. Our study indicates that, if anything, there is more of it today. See Martinson, *California Research at the Crossroads*, 22 CRIME & DELINQUENCY 180 (1976).

19. See text accompanying note 24 *infra*.

20. D. LIPTON, R. MARTINSON & J. WILKS, *supra* note 6.

21. Martinson, *What Works? Question and Answers About Prison Reform*, PUB. INTEREST, Spring 1974, at 22.

22. See note 6 *supra*.

scale for the first time in California during the period immediately following World War II.<sup>23</sup> This research is experimental—that is, offenders are often randomly allocated to treatment and nontreatment groups so that comparison can be made of outcome. Our current study, however, compares the reprocessing rates of groups receiving treatment with roughly comparable groups who receive the “standard processing” given to most offenders across the United States.

*ECT* excluded about ninety percent of the research it had available because it was not evaluation research. Only evaluation studies were included on the ground that only this kind of study can truly unearth causality. Our current survey, on the other hand, includes any study which contains a verifiable reprocessing rate for a group of at least ten sentenced offenders. By including annual follow-up studies we increase the number of rates for persons given standard processing. In comparison to *ECT*, our sample is much more representative of criminal justice nationally.

In brief, *ECT* focused on summarizing evaluation research which purported to uncover *causality*; in our current study we reject this perspective as premature and focus on uncovering *patterns* which can be of use to policymakers in choosing among available treatment programs. These patterns are sufficiently consistent to oblige me to modify my previous conclusion.

The authors of *ECT* laboriously summarized hundreds of evaluation studies, but astonishingly the book itself contains no general conclusion. It is a compendium of findings displayed in hundreds of subparagraphs, and, in my opinion, it defies summary as a whole. I undertook, on my own responsibility, to supply what the authors of this work could not or would not supply—a conclusion. I limited my summary to recidivism, and included with the summary brief discussion and analyses of the research on which the summary was based. My conclusion was: “With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.”<sup>24</sup>

This conclusion takes the usual form of rejecting an hypothesis, *i.e.*, the hypothesis that treatment *added to* the networks of criminal justice does in fact have an *appreciable* effect. The very evidence presented in the article indicates that it would have been

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23. For a description of evaluation research, see D. LIPTON, R. MARTINSON & J. WILKS, *supra* note 6, at 14-20.

24. Martinson, *supra* note 21, at 25 (emphasis deleted).

incorrect to say that treatment had *no* effect.<sup>25</sup> Some studies showed an effect, others did not. But, all together, looking at this entire body of research, I drew this conclusion, and thought it important that the conclusion be made public and debated. It surely was debated.<sup>26</sup>

On the basis of the evidence in our current study, I withdraw this conclusion. I have often said that treatment added to the networks of criminal justice is "impotent,"<sup>27</sup> and I withdraw this characterization as well. I protested at the slogan used by the media to sum up what I said—"nothing works." The press has no time for scientific quibbling and got to the heart of the matter better than I did.

But for all of that, the conclusion is not correct. More precisely, treatments will be found to be "impotent" under certain conditions, beneficial under others, and detrimental under still others. The current study, by enabling us to uncover a major category of *harmful treatment*, is an advance on *ECT*.<sup>28</sup> It enables us to indicate, at least roughly, the conditions under which a treatment program will fall into one of three categories: (1) beneficial (the program *reduces* reprocessing rates); (2) neutral (*no impact*, positive or negative, can be determined); and (3) detrimental (the program *increases* reprocessing rates).

The most interesting general conclusion is that no treatment program now used in criminal justice is inherently either substantially helpful or harmful. The critical fact seems to be the *conditions* under which the program is delivered.<sup>29</sup> For example, our results indicate that a widely-used program, such as formal education, is detrimental when given to juvenile sentenced offenders in a group home, but is beneficial (decreases reprocessing rates) when

25. See generally *id.*

26. See, e.g., Palmer, *Martinson Revisited*, 12 J. RESEARCH CRIME & DELINQUENCY 133 (1975). For my reply to Palmer, see Martinson, *supra* note 18.

27. See, e.g., Martinson, *supra* note 18, at 190.

28. *ECT* summarized project-by-project evaluation research which typically controls for many of the conditions which we are able to vary in our current study. This is one reason why we find substantial evidence that treatments can do harm under certain conditions, while it is rare to find experimental groups which have a significantly higher reprocessing rate than control groups in *ECT*.

29. Controlling for these conditions in a regression analysis indicates that some treatments added to criminal justice do have overall effects. These effects are not large and many of them are unstable. In general, treatments added account for less than three percent of the variance in reprocessing rates. It is the effect of treatment given at certain "locations" that prompts me to withdraw my previous conclusion. See text following note 34 *infra*.

given to juveniles in juvenile prisons.<sup>30</sup> Such startling results are found again and again in our study, for treatment programs as diverse as individual psychotherapy, group counseling, intensive supervision, and what we have called "individual/help" (aid, advice, counseling).

Table III illustrates some of these contradictory patterns. A "mean effect size" reports the average tendency of a treatment to fall above or below the mean reprocessing rate for standard treatment across the United States.<sup>31</sup> In this table we examine treatments under three conditions: group home (preprison community treatment residences), prison (standard training school confinement for juveniles), and shock probation (brief period of confinement followed by standard probation).

TABLE III  
MEAN EFFECT SIZES FOR THREE LOCATIONS  
(JUVENILE SENTENCED OFFENDERS)

<i>Treatment</i>	<i>Group Home</i>	<i>Prison</i>	<i>Shock Probation</i>
Job placement	+1.46	+ .07	
Benign custody	+ .12	+ .01	— .96
Reduced supervision		— .12	
Increased custody	+ .62	— .13	
Job training	— .32	— .25	
Volunteer/help		— .36	—1.49
Group counseling		— .43	
Psychotherapy	+2.09	— .45	—1.73
Milieu therapy		— .51	
Group therapy	+ .51	— .66	
Behavior modification	+ .09	— .88	
Intensive supervision		—1.00	—1.42
Education	+ .46	—1.37	
Individual/help	+1.62	—1.79	

- Notes: 1. A positive (+) mean effect size indicates a treatment mean higher than the standard processing mean.  
2. A negative (—) mean effect size indicates a treatment mean lower than the standard processing mean.  
3. Mean effect sizes for the group home are computed using standard probation as a comparison group.  
4. Mean effect sizes for prison and shock probation are computed using standard juvenile prison as a comparison group.

30. See Table III *infra*.

31. Differences between mean effect sizes are not meant to provide a quantitative estimate of differences between treatments. Our research is exploratory and the mean effect size permits one to merely look for *patterns*.

A negative effect size indicates that a treatment is below the mean of standard processing and has a beneficial effect. All but two of the treatments have *beneficial* effects when given in prison (and when compared to standard youth confinement *without* treatment). On the other hand, all but one of the treatments have *detrimental* effects when given in the group home condition.<sup>32</sup> One treatment, job training, is beneficial under both conditions.<sup>33</sup>

Treatments do seem to differ when given in prison, individual/help having the largest beneficial effect (-1.79). Yet when this treatment is given in a group home, it becomes substantially detrimental (+1.62). Four comparisons are possible between treatments given in youth prison and under the condition of shock probation. In all four cases, shock probation is superior, and in one case (benign custody) the sign of the mean effect size changes from plus to minus.

The group home and shock probation can be called "locations." Recent reforms have introduced them into criminal justice as *alternatives* to standard processing.<sup>34</sup> The treatment programs examined in *ECT* were primarily *additions* to standard processing. The patterns of treatments effects under these locations offer clear evidence that reforms in criminal justice can be either beneficial or detrimental. The patterns in Table III should be a warning to policymakers and local decisionmakers. One can no longer assume that innovations (or treatments) will differ primarily in the degree to which they are beneficial. Certain types of reform programs can have a strongly harmful effect on those to whom they are administered.

Table III also warns against confining juvenile offenders without some kind of treatment. The pattern of effects does not indi-

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32. In Table III mean effect sizes for the group home are computed using standard probation as the comparison group. If the group home is compared with standard youth prison, it does somewhat better, but it is still inferior to standard youth probation (using the same comparison).

33. Job training has a beneficial effect (for both juveniles and adults) under seven of the eight conditions we can investigate. Yet in one condition (job training given to juveniles in a halfway house setting), the effect is detrimental (mean effect size = +.36). One concludes that even a generally beneficial treatment, such as job training, can be extraordinarily sensitive to the conditions under which it is delivered and evaluated.

34. We have identified five of these "locations"—group home, halfway house, early release, shock probation, and work/study release. In general, patterns for locations are much clearer than for treatments added to standard processing.

cate that *any* treatment will work (for example, job placement and benign custody are questionable). But most treatments for incarcerated juveniles have negative effect sizes and one suspects that a *common process* may be at work. Future research should compare these various treatments and seek to discover what this common process might be.<sup>35</sup>

Perhaps the most extreme case of radical tinkering with the system of criminal justice is the nationwide movement to abolish parole release, and with it, parole supervision of released offenders. As part of our study, we were able to make eighty controlled comparisons between parolees and roughly comparable offenders released maxout. In seventy-four of these eighty comparisons, parolees had lower reprocessing rates than those released without parole supervision.<sup>36</sup> Our conclusion is cautious. We have stated that these results "should give pause to those policymakers and legislators who have been operating on the unexamined assumption that parole supervision *makes no difference*."<sup>37</sup>

The evidence that parole supervision *works* (reduces reprocessing rates) is more convincing than the bare assumption that it does not. I suggest that it can work better if the courts and the sentencing reformers stop trying to reduce it to impotence. Indeed, parole supervision should be extended to those misdemeanor and felony offenders who are currently released maxout as part of a definite sentence so that parole will be properly *limited* both in duration and in its function, which is to reduce crime through surveillance and quick action when danger threatens.<sup>38</sup>

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35. Our data indicate that a juvenile will do better on standard probation than if he or she is given treatment in prison; so these patterns do not suggest that juveniles should be confined *for the purpose of giving them treatment*. What they do suggest is that *if* a juvenile must be confined, then he or she should be confined in a facility which provides treatment of the proper kind. It may be that most treatments have the capacity to somehow *reduce the damage* caused by standard youth confinement. When given in the community, these same treatments may be interpreted by the juvenile as a mitigation of punishment.

36. See Martinson & Wilks, *Save Parole Supervision*, FED. PROBATION, Sept. 1977, at 23, 26.

37. *Id.* at 27 (emphasis in original).

38. Parole boards may be left with the function of sentence-setting or sentence-reviewing. Inmates should be released on a date certain and parole supervision should be made part of their sentence so that street time always counts toward the sentence. Parole should be primarily a specialized law enforcement function backed up by a legal concept which gives the parole agent the tools he or she needs to intervene quickly and effectively.

### CONCLUSION

The current system of sentencing in the United States must be reformed. Not only are individual offenders treated disparately, but classes of offenders are treated disparately as well. Yet any reform must be approached with caution. The reprocessing rate is low and while some programs are beneficial under certain conditions, others can be distinctly harmful. In fact, some recent reforms show evidence of increasing the reprocessing rate, rather than decreasing it. Thus great care must be taken when introducing alternatives to our standard procedures—probation, imprisonment, and parole supervision. Those treatments that are helpful must be carefully discerned and increased; those that are harmful or impotent eliminated.