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A Taste of the Bars

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"A TASTE OF THE BARS?"*

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I. INTRODUCTION

Little noticed in the current controversy surrounding sentencing philosophy and procedures are the "hybrid" sentencing alternatives. Hybrid sentencing alternatives are derivatives of probation and incarceration that provide the judge with the authority to sentence the offender to a brief period of incarceration followed by probation.[1]

There are two main types of hybrids: those decided at the sentencing stage and those decided after the offender has begun to serve the sentence of incarceration. At the sentencing stage, hybrid dispositions include mixed sentences (incarceration on one count and probation on another count), split sentences (suspending all but a small portion of the sentence of incarceration and placing the offender on probation after the incarceration period), jail as a condition of probation (attaching incarceration as one of the optional conditions of probation to be served before the probation period), and periodic confinement (weekend or nighttime confinement with probation during the time spent in the community). In the post-sentencing period, there are provisions that allow the judge to change the sentence after the offender has begun to serve a sentence of incarceration (sometimes labelled shock probation, modification of sentence, judicial parole, and the like). Each of these options is not available in every state, but each state authorizes judges to combine a brief period of incarceration and probation through some mechanism.

Although judges may select hybrid sentences for many reasons, the principal aim is frequently reflected in several popular phrases. Hybrid sentences are always associated with "shocking" or "jolting" the of-

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[1] For a description of the various forms of hybrid sentencing, *see* Parisi, *Combining Incarceration and Probation* FED. PROBATION, June 1980, at 3.

fender. By providing a "taste of the bars," hybrid sentences are expected to subject the offender to the negative aspects of incarceration for a short period of time in order to deter specifically the offender from committing further crimes:

> The "shock" of adapting to the rigors of prison culture, the loss of freedom, and the separation from family and friends is an unpleasant experience. Having experienced powerful aversive consequences, the offender will be anxious to avoid such treatment in the future and will thus be less likely to risk committing another crime.[2]
>
> The rationale behind this technique is to "shock" the offender into becoming fully aware of the harsh realities of prison life, including the rigors of prison culture, the loss of freedom, the separation from family and friends, etc. Thus, the shocking experience of a short prison term should serve to motivate him to successfully abide by the conditions of his probation and act as a deterrent to further crimes since, theoretically, a man is less likely to commit an act when he knows that it will lead to unpleasant consequences for himself.[3]

Some legislative commentaries accompanying hybrid laws reflect this shock objective. For example, the commentary on New York's 1974 split sentence option points out that the sentence is associated with "the taste of jail idea" and is intended to "have a significant effect on deterring [offenders] from future criminal conduct."[4]

Several assumptions are inherent in this specific deterrence rationale. First, a fundamental aspect of the "shock" objective is that the incarceration period should be a *novel* experience. The presumption is that the incarceration experience will have an impact if it is the offender's first time behind bars. Additionally, the introduction to incarceration is intended to be more than unpleasant ("shocking"). This should occur because the environment is often required to be a local jail, as opposed to a community halfway house or a less restrictive facility.[5] Third, the shock of incarceration will be apparent to the offender in a relatively brief period of time. Statutes adopting this premise generally provide a maximum incarceration period of less than one year.[6] Fourth, the experience will be so negative that the offender will avoid behavior that could again result in confinement. Fifth, those hybrids that postpone the probation decision until after the beginning of the sentence

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[2] H. ANGELINO, R. FULLER, J. KISHTON, J. WALDRON & J. ZIMBECK, A LONGITUDINAL STUDY OF THE EFFECTIVENESS OF SHOCK PROBATION—FINAL REPORT 2 (n.d.).

[3] M. SMILEY, UTILIZATION OF THE SPLIT SENTENCE AND SHOCK PROBATION AS SENTENCING ALTERNATIVES AND IMPLICATIONS FOR THEIR EXPANDED USE IN GEORGIA 2-3 (1977).

[4] N.Y. PENAL LAW, § 60.01 Commentary (McKinney 1975).

[5] Some persons sentenced to short terms may be housed in halfway houses, such as motels, when jails are overcrowded.

[6] Parisi, *supra* note 1.

add the factor of "unanticipated release" to enhance the shock potential.[7] George Denton, a proponent of the Ohio shock probation statute, stated:

> Likewise some judges were reducing the "shock" effect or value of the procedure by telling the offenders at the time of their commitment that if they would have their attorneys file motions for "shock probation" the court would give them favorable consideration, thus partially destroying the shock effect.[8]

This article will examine these assumptions, particularly by addressing the novelty of the incarceration experience and the impact of a short incarceration period prior to probation. Three research areas will be explored. First, is the disposition actually being given to first-time offenders without prior incarceration experience? Second, are the first-time offenders really "appropriate" candidates for the disposition in terms of being more likely to be "successful?" Third, does the incarceration experience provide an extra measure of deterrence so that the hybrid offenders have higher success rates than regular probationers without this experience, after all risk factors are controlled?

A. ARE THEY FIRST OFFENDERS?

With few exceptions, the legislative provisions do not limit the hybrids to those offenders without prior incarceration.[9] However, as noted previously, these dispositions assume that first-time offenders are the appropriate candidates.

Researchers working in California, Ohio, and Kentucky have examined whether judges are selecting persons who are perceived as suitable. In a study focusing on the outcome of split sentence offenders compared with regular probationers and regular jail offenders, the California Bureau of Criminal Statistics collected information on prior record for each sentence type. One category of prior record that includes prior incarceration experience showed that 6 percent of the probationers, 10 percent of those with jail as a condition or probation, and 26 percent of those with only jail sentences had prior prison records.[10]

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[7] Hence, is the "shock" in "shock probation" the surprise of release?

[8] G. Denton, J. Pettibone, & H. Walker, Shock Probation: A Proven Program of Early Release from Institutional Confinement 3 (n.d.) (Unpublished Mimeo of the Ohio Department of Rehabilitation and Correction).

[9] In most states, an offender must meet the criteria for probation in order to be eligible for a hybrid sentence. Eligibility may also be determined by class of offense. Rarely do statutes specifically authorizing a hybid option expressly exclude those who were previously incarcerated. In a January, 1980, survey of split sentence statutes, Massachusetts was the only state to provide legislatively that the incarceration period be a first-time experience. *See* MASS. GEN. LAWS ANN. ch. 279, § 6A (West Supp. 1978).

[10] CALIFORNIA BUREAU OF CRIMINAL STATISTICS, SUPERIOR COURT PROBATION

In an analysis of offenders receiving shock probation, probation, and incarceration in Franklin County, Ohio in 1970, Edward Bohlander found that 44 percent of the regular probationers, 28 percent of the shock probationers, and 52 percent of the incarcerated offenders had previously served jail or prison terms.[11] In a statewide study of Ohio shock probationers, Henry Angelino and others found that 14 percent of the males released on shock probation in 1969 had been previously incarcerated.[12]

In a report on the Kentucky shock probation provision, John Faine and Edward Bohlander presented prior record data on 1,603 offenders sentenced between March 1, 1972 and December 31, 1975. Approximately 8 percent, 10 percent and 31 percent of the male probationers, shock probationers, and incarcerated offenders, respectively, had prior records of incarceration for felonies. Comparable proportions were reported for these groups on prior incarceration for misdemeanors, except that the proportion of shock probationers with prior jail experience was 22 percent.[13]

Research in these states raises doubts about the shock or newness of the experience for the offender. Even without considering outcome, this disposition appears to be used for a large proportion of unsuitable candidates.

B. DOES IT MATTER?

Do the so-called suitable candidates have higher success rates than unsuitable candidates? Although there have been a number of studies of the outcome of persons under different forms of hybrid sentencing, not all of them have analyzed the outcome by prior record.[14] A 1969 California study did show that prior record was related to outcome, even when offense was controlled.[15] Bohlander's research in Franklin County, Ohio, indicated that a prior record of incarceration reduced the proportion of successes on shock probation.[16] In the Angelino statewide

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AND/OR JAIL SAMPLE: ONE YEAR FOLLOW-UP FOR SELECTED COUNTIES 29 (1969). [hereinafter cited as SUPERIOR COURT PROBATION].

11 E. Bohlander, Jr., Shock Probation: The Use and Effectiveness of an Early Release Program as a Sentencing Alternative 94 (1973) (unpublished Ph.D. dissertation in the Ohio State University Library).

12 H. ANGELINO ET AL., *supra* note 2, at 43, 47.

13 J. FAINE & E. BOHLANDER, JR., SHOCK PROBATION: THE KENTUCKY EXPERIENCE 62-72 (rev. ed. 1979).

14 For example, the SPECIAL STUDY COMMISSION ON CORRECTIONAL FACILITIES AND SERVICES, PROBATION IN CALIFORNIA (Sacramento, Cal. 1957) and Davis, *A Study of Adult Probation Violation Rates by Means of the Cohort Approach*, 55 J. CRIM. L.C. & P.S. 70 (1964), did not control for offense.

15 SUPERIOR COURT PROBATION, *supra* note 10, at 15.

16 E. Bohlander, Jr., *supra* note 11, at 150.

project on shock probationers in Ohio, the data showed that recidivism was significantly associated with prior record.[17] The Faine and Bohlander Kentucky research also found prior incarceration experience to be related to outcome.[18] Thus, regardless of the measure of success and failure,[19] studies have generally found that those without prior incarceration experience had lower failure rates than those with prior incarceration experience. This is not a surprising result, considering that prior record has always been associated with outcome in studies of recidivism.[20] These studies of hybrid sentences suggest that if the presumably suitable candidates are truly suitable, then success rates would increase if persons with prior incarceration experience were not selected for these hybrid dispositions.

C. DOES "A TASTE" REDUCE RECIDIVISM?

Research on the relationship between a "taste of the bars" and recividism requires that regular probationers be compared with those granted shock probation, placed on split sentence, etc. This permits an assessment of the relative effects of probation with and without a short period of incarceration. There have only been a few studies that have included comparison groups in their research designs, and some of these have not been able to control for the different factors that affect outcome.

Two studies should be noted. In the first study, the California Bureau of Criminal Statistics followed for one year a cohort of probationers, split sentence offenders, and offenders sentenced to jail only. The results indicated that those who received split sentences had lower recidivism rates than those who received jail only, but higher than those who

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17 H. ANGELINO ET AL., *supra* note 2, at 57. Vito also found prior record to be significantly related to outcome of those released in 1975 on shock probation in Ohio. G. VITO, SHOCK PROBATION IN OHIO: A COMPARISON OF ATTRIBUTES AND OUTCOME 133-37 (1978).

18 J. FAINE & E. BOHLANDER, JR., *supra* note 13, at 187, 189.

19 The California Bureau of Criminal Statistics measured failure by new arrests and convictions or technical violations of probation during a one year follow-up period. In the Bohlander study, *supra* note 11, failure included those with a revocation of probation and/or new arrests during an approximately two-year period. Angelino's study, *supra* note 2, followed shock probationers for a five-year period and measure effectiveness in terms of new arrests and convictions. The Faine and Bohlander investigation, *supra* note 13, defined success as "no further identifiable law-violating behavior," or early termination, or continuation on probation at the end of the study period, which ranged from 8 to 24 months depending on the length of supervision. Each of these studies differs from the federal study to be described because they involved a follow-up of a cohort, while the federal study had only a one-year data file and had to control for length of supervision. Failure included measures comparable to those in the California, Ohio, and Kentucky studies. See p. 1116-17 *infra*.

20 *See* Gottfredson, *Assessment of Prediction Methods*, in THE SOCIOLOGY OF PUNISHMENT AND CORRECTIONS 758 (3d ed. N. Johnston, L. Savitz & M. Wolfgang eds. 1978).

received straight probation. The results were similar when the prior record variable was controlled.[21] In the Bohlander study of Franklin County, Ohio, probationers and shock probationers showed failure rates of 16.7 percent for the former and 26.7 percent for the latter.[22] These figures could not be explained by the latter disposition including offenders in higher risk categories:

> The data presented . . . point to the finding that although no significant differences were found between those offenders granted regular probation and those granted shock probation, a higher failure rate was found among those originally incarcerated and later released and placed on probation than among those offenders who did not experience a short period of confinement.[23]

These two studies seem to show that the hybrid experience did not enhance individual deterrence.

II. THE RESEARCH PROJECT

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals joined a number of organizations and commissions that had criticized hybrid sentencing alternatives.[24] Despite the frequent condemnation of these dispositions, legislative provisions authorizing different forms of hybrids increased so that, as mentioned earlier, every jurisdiction now permits judges to combine incarceration and probation. However, little research has been conducted on the hybrids to support the legislative trend.

To examine comprehensively one hybrid option, a project that focused on the Federal split sentence was initiated in 1975. The research project focused on three areas: the conceptual framework behind the disposition, the characteristics of offenders receiving the disposition, and the impact of the disposition. The project investigated a number of topics in its three phases, including several assumptions associated with the "taste of the bars" rationale.

A. THE INTENT BEHIND THE SPLIT SENTENCE

The legislative history behind the 1958 passage of the Federal split

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21 SUPERIOR COURT PROBATION, *supra* note 10, at 29.

22 E. Bohlander, Jr., *supra* note 11, at 149-52.

23 *Id.* at 155. Vito's study appears to reach the same conclusion. G. VITO, *supra* note 17, at 144-46.

24 NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, CORRECTIONS 321 (1973). Those opposed to the hybrid option included: The American Correctional Association, The National Council on Crime and Delinquency, and the President's Commission on Law Enforcement and Administration of Justice. The American Bar Association and American Law Institute had cautiously supported hybrids.

sentence provision[25] indicated that a primary objective of the split sentence was to shock the offender. John Parker, Chief Judge for the Fourth Circuit, stated that the split sentence would give the offender a "taste of what punishment means."[26] More recently, commentary on the revisions of the Federal criminal code have also included statements that this disposition is intended to effect a shock.[27] In my own interviews with Federal judges and probation officers in 1976, the respondents confirmed that one of their prime motives in sentencing an offender to the split sentence was to give the person a "taste of the bars."[28] According to the literature and comments by Federal judges and probation officers, the most suitable candidates were offenders with little or no prior contact with the criminal justice system. Many of those interviewed specified that the absence of prior history of incarceration was an important factor to accomplish the shock. Therefore, like other hybrids, the Federal split sentence is aimed at shocking the offender, and a first offender is usually seen as the most appropriate candidate for the disposition.

B. FIRST OFFENDERS AND THE SPLIT SENTENCE

In order to assess the shock potential of Federal split sentence offenders, the prior incarceration records of these offenders were analyzed. Information on prior record and other variables was obtained from the Administrative Office of the United States Courts. This data set contained information on all persons sentenced in fiscal year 1974 in Federal district courts.

Table 1 shows that almost two-thirds of *all persons sentenced* had no prior periods of incarceration, either as an adult or juvenile. The proportion of probationers with no prior incarceration is substantially higher than that of incarcerated offenders (78 percent compared with 43 percent, respectively). Sixty-eight percent of split sentence offenders would be considered suitable hybrid candidates because they lacked prior sentences of incarceration. However, the proportion of those offenders who have had prior "tastes of the bars" is higher than one might expect. These data appear to indicate that unsuitable candidates are chosen by Federal judges approximately one-third of the time.

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25 18 U.S.C. § 3651 (1976).

26 *Hearings on H.R. 6238 and H.R. 7260 before Subcomm. No. 3 of the House Committee on the Judiciary*, 85th Cong. 2d Sess. 2 (1958).

27 *See* NATIONAL COMMISSION ON REFORM OF THE FEDERAL CRIMINAL LAWS (THE BROWN COMMISSION), STUDY DRAFT OF THE NEW FEDERAL CRIMINAL CODE § 3103(4) and comment (1970).

28 For the results of the interviews with judges and probation officers, *see* N. PARISI, THE SPLIT SENTENCE IN THE FEDERAL JURISDICTION: AN ANALYSIS OF THE CONCEPTUAL FRAMEWORK (1978).

TABLE 1

PERCENT OF OFFENDERS SENTENCED IN U.S. DISTRICT COURTS, BY TYPE OF SENTENCE AND PRIOR RECORD, FISCAL YEAR 1974

Prior Record	Total	Type of Sentence: Incarceration	Probation	Split Sentence
No prior convictions	100[a]	23	67	10
	37[b]	20	51	39
	(8,798)	(2,025)	(5,922)	(851)
Prior conviction with sentence suspended, or probation and/or fine	100	38	52	10
	26	23	27	29
	(6,085)	(2,292)	(3,148)	(645)
Prior conviction with imprisonment of 1 year or less with or without probation to follow	100	48	41	12
	12	13	10	14
	(2,732)	(1,298)	(1,117)	(317)
Prior commitment under juvenile delinquency procedure	100	56	35	8
	3	4	2	3
	(765)	(431)	(271)	(63)
Prior conviction with imprisonment of more than one year	100	72	22	6
	22	39	10	14
	(5,311)	(3,803)	(1,194)	(314)
	100	42	49	9
TOTAL[c]	100	100	100	100
	(23,691)	(9,849)	(11,652)	(2,190)

[a] Row percent.
[b] Column percent.
[c] Percents may not add to 100 because of rounding.

C. PRIOR INCARCERATION AND OUTCOME

The Administrative Office collects information on persons under supervision including: (1) persons received for supervision; (2) persons removed from supervision; and (3) persons under supervision at the beginning and end of the fiscal year. Data for fiscal year 1974 showed that there were 6,304 split sentence offenders under supervision. The measure of outcome or impact for these national data was determined by removals from supervision for any of the following reasons: (1) early discharge by order of the court for unsatisfactory performance while under supervision (revocation of probation); (2) no warrant issued, but removed to inactive status for absconding and missing 30 days or more,

or convicted for a new offense and sentenced to 30 days or more; or (3) warrant issued and removed to inactive status. Because persons under supervision were at risk for varying amounts of time, time under supervision was controlled.

Although a number of factors affect a person's probability of success or failure under supervision, the underlying theory of the split sentence disposition is that a person without prior incarceration experience will be more shocked, and, consequently more successful than those with prior incarceration experience. Prior record and outcome were examined to assess this hypothesis.

Table 2 presents information on the prior record of those split sentence offenders who were labelled "successful." These offenders were not removed from supervision during the study period. Those without prior incarceration experience do tend to be more successful than those

TABLE 2

PERCENT OF SPLIT SENTENCE OFFENDERS WITH FAVORABLE OUTCOMES, BY PRIOR RECORD AND TIME UNDER SUPERVISION, FEDERAL PROBATION SYSTEM, FISCAL YEAR 1974*

Prior Record	Total	Time Under Supervision		
		12 months or less	13 to 24 months	25 months or more
No prior convictions	97 (2,241)	98 (1,512)	95 (382)	96 (347)
Prior conviction with sentence suspended, or probation and/or fine	95 (1,633)	97 (1,090)	88 (271)	94 (272)
Prior conviction with imprisonment of 1 year or less with or without probation to follow	93 (898)	94 (532)	88 (178)	94 (188)
Prior commitment under juvenile delinquency procedure	88 (143)	90 (105)	[80][a] (20)	[83] (18)
Prior conviction with imprisonment more than 1 year	91 (784)	93 (527)	82 (107)	88 (150)
TOTAL[b]	95 (5,699)	96 (3,766)	90 (958)	94 (975)

* The numbers in parentheses indicate the total number of offenders in that category.

[a] Brackets indicate a base of less than 50 cases.

[b] The total number of cases shown for each table may vary because of missing information on certain variables.

with prior incarceration. Only 91 percent of those with prior incarceration of longer than one year were successful, while over 95 percent of those without prior incarceration were successful. This pattern holds true across the three categories of time under supervision. Although the differences are not large, these data and those from other research studies consistently indicate that the perceived suitable candidates tend to be more successful than the perceived unsuitable candidates.

D. COMPARING THOSE WITH AND WITHOUT JAIL

The observation that those without prior incarceration tend to fare better than those with prior incarceration does not resolve whether hybrid sentencing is a better deterrent than regular probation. To study this aspect of the "taste of the bars" philosophy, a comparison was made between the outcomes of the two groups under Federal probation supervision.

Data from the Administrative Office of the United States Courts were obtained on those regular probationers and split sentence offenders under supervision in fiscal year 1974. Approximately 5 percent of both groups were removed from supervision for unfavorable performances. Because removal can occur for technical violations as well as criminal behavior, the next step was to investigate the reason for removal from supervision. Even though the same proportion of both split sentence offenders and probationers may be labelled failures, the seriousness of their violations may differ.

Table 3 shows that more than half of all probationers, including split sentence offenders, were removed for technical reasons. The split sentence offenders were removed less often than probationers for technical violations (38 percent and 54 percent, respectively). When removals for convictions of major offenses resulting in a prison term are compared, 15 percent of the split sentence offenders and 14 percent of regular probationers had this type of removal. Split sentence offenders were more likely than probationers to be removed for two types of problems: (1) convictions for petty offenses resulting in short terms and (2) arrests waiting disposition (see Table 3).

In the analysis that follows, the type of violation resulting in removal from supervision is not presented. Technical violations perhaps should not be considered failures, even though they may sometimes disguise new crimes. For some, this definition of failure may overestimate recidivism. However, removal from supervision implies an unsuccessful performance and will be the criteria for failure.

TABLE 3

PERCENT OF OFFENDERS REMOVED FROM SUPERVISION WITH UNFAVORABLE OUTCOMES, BY REASONS FOR REMOVAL, TIME UNDER SUPERVISION, AND TYPE OF SENTENCE, FEDERAL PROBATION SYSTEM, FISCAL YEAR 1974*

		PROBATION				SPLIT SENTENCE		
Time Under Supervision	Total	Total	12 months or less	13 to 24 months	25 months or more	Total	12 months or less	13 to 24 months	25 months or more
Reasons for removal:									
Technical or minor violations other than conviction for a new offense[a]	51	54	55	53	52	38	42	36	33
Minor offense conviction when sentence is imprisonment for 90 days or less, or probation for 1 year or less, or a fine	4	4	4	4	4	4	3	5	5
Absconded and wanted for a major offense[b]	3	2	3	2	2	5	3	7	8
Arrested and waiting disposition for a major offense[b]	19	19	16	20	22	23	24	20	27
New conviction with a sentence of 90 days to 1 year imprisonment, or 1 year or less imprisonment and more than 1 year probation, or more than 1 year probation	8	6	7	6	6	15	11	20	14
New conviction with a sentence of longer than 1 year imprisonment	14	14	14	14	14	15	18	12	13
TOTAL[c]	100 (2,056)	100 (1,739)	100 (817)	100 (565)	100 (357)	100 (317)	100 (152)	100 (102)	100 (63)

* Only those removed from supervision with unfavorable outcomes are included in this table.

[a] Technical or minor violations include general violations of conditions or supervision, use of drugs, drunkenness, absconded and/or wanted for a minor offense.

[b] Major offense refers to a crime in which the maximum sentence is longer than 90 days imprisonment, or less than 1 year imprisonment and more than one year probation, or more than 1 year probation.

[c] Percents may not add to 100 because of rounding. The total number of cases shown for each table may vary because of missing information on certain variables.

Further, it should be emphasized that the *level* of failure is not really the issue. Rather, the focus of the analysis is on the *relative* levels of performance under supervision. Because there is no evidence of differential treatment of Federal offenders due to disposition (split sentence versus regular probation), the measures of outcome are presumably not biased along those lines. Interpretations of the effect of the dispositions can proceed without serious concern whether the measure of outcome accurately reflects recidivism.

In order to control for bias in selecting offenders for the sentences (for example, the lower the risk of failure, the more likely the offender would be to receive probation), the first step was to classify offenders into risk groups, according to a modified Burgess scoring method.[29] The Burgess method first dichotomizes each characteristic and cross-tabulates it with outcome. One point is assigned to each attribute with a better than average proportion of success. The points are added for each case: the higher the score, the higher the likelihood of success. Then the scores are usually grouped to produce as much differentiation as possible among the groups in terms of outcome. The scores are thus used to create groups with comparable risk potential for success.

For this analysis of the Federal data, sex, race, age, marital status, education, prior record, offense, and term of probation were used to create the Burgess scoring method.[30] The scores ranged from 1 to 14, a score of 1 having the lowest probability of success and 14 having the highest probability of success. Grouping them into five categories (A to E) and controlling the length of time under supervision permits us to assess whether the split sentence offenders were relatively lower or higher in terms of success or failure rates than probationers.

Table 4 presents the number and percent of offenders with unfavorable outcomes, that is, the failure designation, for each category of risk group, type of sentence, and time under supervision. The appropriate

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[29] Burgess originally cross-tabulated 21 characteristics with outcome of parolees. No consideration was given to strength of association in the Burgess method. However, the Burgess method is suited to categorical independent and dependent variables, which are the types of variables included in the Federal data set. For a discussion of the Burgess method, see R. SIMON, PREDICTION METHODS IN CRIMINOLOGY (1971).

[30] The points were devised from cross-tabulation of these characteristics with outcome for all probationers under supervision during fiscal year 1974 (N=42,454). The scores were calculated for each case by adding points as the probability of a favorable outcome under supervision increased. The formula was as follows: female (1) or male (0), plus white (2) or other (1) or black (0), plus 36 years or older (1) or 35 years or younger (0), plus married (1) or other (0), plus other education (1) or elementary or high school (0), plus no prior convictions (2) or prior convictions but no incarceration (1) or prior incarceration (0), plus fraud, embezzlement, and miscellaneous offenses (2) or other offenses (1), or auto theft (0), plus 0 to 12 months supervision (4) or 13 to 24 months supervision (3) or 25 to 36 months supervision (2) or 37 to 60 months supervision (1).

comparison is between split sentence offenders and probationers for the same risk group and same length of time under supervision. For example, for those offenders with the highest probability of unfavorable outcome (risk group A) who have had 12 months or less supervision, 12 percent and 10 percent of probationers and split sentence offenders, respectively, had unfavorable outcomes. As can be seen, the proportions of offenders of both sentences with unfavorable outcomes in risk group E, the lowest risk group, do not vary substantially across all periods of supervision. In the 13 to 24 month period of supervision, there is generally a higher proportion of offenders with unfavorable outcomes both for offenders sentenced to probation and those sentenced to a split sentence. Excluding the category with a base of less than 50 cases (which is considered too small for interpretation), there are comparable proportions of split sentence and probation offenders with unfavorable outcomes in risk categories B, C, and D who have been under supervision 13 to 24 months. For example, 26 percent of the probationers in B risk group who have been under supervision 13 to 24 months had unfavorable outcomes; only a slightly smaller proportion, 22 percent of the split sentence offenders in B risk group and under supervision 13 to 24 months, had unfavorable outcomes. The data show no substantial differences in outcomes of probationers and split sentence offenders when risk group and time under supervision are controlled.

Comparisons of these results with those obtained in California and Ohio studies should be made cautiously. Not only do the formats of the split sentence differ from each other and from the Federal jurisdiction, other system discrepancies, such as frequency in the use of the hybrid disposition, preclude drawing conclusions. Nevertheless, these research findings do *not* show that split sentence offenders have higher failure rates than probationers.

III. CONCLUSION

Despite strong criticism of hybrid dispositions in sentencing, the hybrid option is available in all jurisdictions and in all types of sentencing structures. To date, the assumptions behind these dispositions adopted from jurisdiction to jurisdiction have generally received little attention. This examination of the Federal hybrid disposition indicated that the assumptions regarding selection and outcomes of split sentence offenders were consistent with prior research in two of the three areas investigated.

Like the other hybrid alternatives, the Federal split sentence was meant to shock the offender without prior incarceration experience. If being a novice is crucial to being impressed negatively by incarceration, only two-thirds of the split sentence offenders are suitable. The second

TABLE 4

PERCENT OF OFFENDERS WITH UNFAVORABLE OUTCOMES, BY RISK GROUP, TYPE OF SENTENCE, AND TIME UNDER SUPERVISION, FEDERAL PROBATION SYSTEM, FISCAL YEAR 1974*

		Type of Sentence						
			Probation			Split Sentence		
Time Under Supervision	Total	12 months or less	13 to 24 months	25 months or more	Total	12 months or less	13 to 24 months	25 months or more
Risk Group:								
High A	15 (1,555)	12 (968)	38 (183)	13 (404)	15 (290)	10 (189)	[48][a] (27)	15 (74)
B	11 (2,274)	9 (1,298)	26 (326)	8 (650)	10 (492)	8 (302)	22 (60)	9 (130)
C	7 (8,705)	5 (4,918)	14 (1,439)	6 (2,348)	6 (1,769)	4 (1,111)	12 (263)	6 (395)
D	4 (9,600)	3 (5,653)	6 (2,049)	3 (1,898)	4 (1,651)	3 (1,100)	8 (306)	4 (245)
Low E	1 (8,244)	1 (5,774)	1 (1,812)	2 (658)	1 (1,078)	1 (745)	2 (249)	1 (84)
TOTAL[b]	5 (30,378)	4 (18,611)	8 (5,809)	6 (5,958)	5 (5,280)	4 (3,447)	10 (905)	6 (928)

* The numbers in parentheses indicate the total number of offenders in that category.
[a] Brackets indicate a base of less than 50 cases.
[b] The total number of cases shown for each table may vary because of missing information on certain variables.

part of the assumption is that first-timers will be more likely to be shocked, and thus, will have lower recidivism rates than those with incarceration experience. The data, not surprisingly, confirm this perception. Further, if more suitable candidates were chosen, the success rates could be expected to increase.

Finally, a "taste of jail" is thought to contribute an extra measure of deterrence over regular probation. If a "taste" does have an impact, it is not apparent from these data on Federal split sentence offenders and probationers. The split sentence offenders have comparable failure rates to probationers when other risk-related factors, like prior record, are controlled. The deterrent capacity of a "taste" will have to be weighed against the potential cost of incarceration, no matter how brief the incarceration period.

The other assumptions concerning the hybrids need to be tested. The shock itself needs to be further explored in terms of the unpleasantness of confinement and the length of time needed to achieve the negative impact. This aspect was included in the study conducted by Faine and Bohlander in Kentucky. They interviewed 500 new admissions to the Kentucky State Reformatory at LaGrange in 1975. Their results, based on interviews conducted in the first and fifth weeks of incarceration, indicated that offenders had already been shocked and "that even a short minimum period of 30 days allowed under the (shock probation) program was sufficient to enhance the antisocial, and even radically hostile attitudes of offenders."[31] These assumptions behind the "taste of jail" perspective and other aspects of the "hybrids" certainly require more examination.

[31] J. FAINE & E. BOHLANDER, JR., *supra* note 13, at 166.