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Postmodern penalty? GPS electronic monitoring and the new penology.

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POSTMODERN PENALTY?

GPS ELECTRONIC MONITORING AND THE NEW PENOLOGY

By

Ryan S. Cotter

**A Thesis Submitted to the Faculty of Graduate Studies and Research
Through the Department of Sociology and Anthropology
In Partial Fulfillment of the Requirements for the Degree of
Master of Arts at the University of Windsor**

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By

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ABSTRACT

Within the latter half of the 20th century, contemporary academics have noted a significant reorientation of criminal justice policy and practice. Explanations for this reorientation have been explained by: the emergence of a postmodern penalty (Feeley and Simon, 1992); the limits of the sovereign state and the culture of high crime societies (Garland, 1996, 2000); and the imposition of 'New Right' politics (O'Malley, 1999). This thesis specifically examines Feeley and Simon's proposition that a postmodern penalty has emerged. It is argued that rather than a replacement of the old penology with a new penology paradigm, contemporary practices are more characteristic of a hybridization of discourse, objectives, and practices. Utilizing Global Positioning Satellite (GPS) electronic monitoring as a referent, the tenets of the old and new penology are examined. Results indicate that GPS electronic monitoring operations represent an amalgamation of both old and new penology attributes. It is suggested that while there may be an attempt to implement a new penology at macro level practice, micro level public politics may exert sufficient political pressure to coerce an amalgamation of both old and new penology ideals.

DEDICATION

In loving memory of Raymond F. Cotter (09-21-17 – 11-18-97) who, due to personal circumstances could not pursue his academic dreams, but – alongside his loving wife Hazel Cotter (08-25-20 – 03-03-94) – through personal sacrifices provided opportunities for their family to follow our dreams. We miss both of you.

“Don’t tell me, show me”

- Raymond F. Cotter

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POSTMODERN PENALITY?

GPS ELECTRONIC MONITORING AND THE NEW PENOLOGY

INTRODUCTION

European and North American scholars have recently suggested that contemporary penal policy and practices are experiencing a significant transformation (Cohen, 1994; Feeley and Simon, 1992, 1994; Simon, 1993; Garland, 1995, 1996; Nelken, 1994). Within the latter half of the 20th century, criminal justice policy and practices have witnessed: a significant growth in incarcerated populations¹; the rise of radical policies such as ‘three-strikes laws’;² a new system efficiency focus; increased concern towards cost-efficiency; a growth in utilization of private sector services³; a revitalization of programs such as boot camps⁴; increased use of the death penalty; and the emergence of technologically advanced alternatives such as electronic monitoring. Scholars have explained these shifts through various divergent frameworks with one common element present in each: recognition that the criminal justice system has been altered to some extent from the welfare model of the early 20th century.

Previously the welfare state employed individual rehabilitation or reformation as the primary method of controlling criminal behaviour. Within this system “the state assumed responsibility for the management of a whole variety of risks – to individuals, to employers, to the state itself – in the name of society” (Rose, 1999: 128). Criminal or moral risks were promoted by psychologists, criminologists, and other social scientists as being correctable within proper institutions (O’Malley, 2002b: 24). From the 1950s onward these welfare methods of controlling deviance became the target of criticism within various public and political arenas, initiating a reorientation of crime control.

O’Malley (2002b: 17) asserts that from the 1950s onward many governmental organizations have been reshaped around developing models of ‘risk management’, including risk identification, risk reduction, and risk spreading. According to O’Malley

¹ For increased incarceration rate information – see “The Sentencing Project” <http://www.sentencingproject.org/pdfs/pub9036.pdf>; Statistic Canada <http://www.statcan.ca/english/Pgdb/legal30a.htm>.

² ‘Three Strikes’ public policy information – see Shichor (1997).

³ Privatization and the private sector – see Ethridge and Marquart (1993).

⁴ Boot Camp revitalization – See Simon (1995).

(2002b: 24), under the risk management system, a new actuarial discourse has emerged which

“involves the deployment of statistical probabilities in sentencing and parole decisions, in which the length of sentences is determined by the risk that offenders represent to others, rather than the moral wrong they have committed (punishment), or the nature of the correction needed to remedy their pathology (welfare sanction).”

‘Responsibility’ has also been significantly reoriented in such a way that the state no longer assumes the role of primary guardian, exemplified by the off-loading of previously held responsibilities onto community organizations, citizens, and offenders themselves (Garland, 1996: 452). This shift in governance noted in the 1970s is proposed to have occurred due to the failure of scientific correctionalism to actually rehabilitate the individual offender, therefore precipitating the necessity to replace the rehabilitative model with an increased support for probability over determinism (O’Malley, 2002b: 25). Criminals, therefore, are no longer seen as individuals in need of help and rehabilitation, but are invested with personal responsibility for their status and actions as individual risk managers (O’Malley, 2002b: 27).

These recent shifts in support coupled with advancements in technology have reallocated the criminal justice focus towards a system of offender control rather than offender reformation. In an update of Foucault’s technologies of power, Deleuze proposes that “the 1990s are witnessing a process of transition to a fourth technology or mode of power, namely one of ‘control’” (Jones, 2000: 9). Within the criminal justice system specifically it has been posited that “prisons should be abandoned because today’s technology offers a better method than prisons to *control* criminal offenders...” (my emphasis, Toombs, 1995: 343).

This transition in the mid 20th century where the reformative model of the welfare state becomes criticized marks the reorientation in criminal justice philosophy outlined by scholars. While explanations for this recent transformation in policy development and practice are diverse, three major theoretical frameworks have emerged: the rise of a postmodern penalty (Feeley and Simon, 1992, 1994, 1995; Simon, 1993); evidence of the limits of the sovereign state and the culture of high crime societies (Garland, 1995, 1996, 2000); and the imposition of ‘new right’ politics (O’Malley, 1999).

This research specifically investigates Feeley and Simon's (1992, 1994, 1995) original contention that the transition experienced in contemporary criminal justice policy and practices can be explained by the emergence of a *new penology* paradigm radical enough to constitute the commencement of postmodern penality. In examining this *new penology* proposition, Global Positioning Satellite (GPS) electronic monitoring was chosen as a reference point. If Feeley and Simon are correct in citing electronic monitoring as an innovative technology particularly applicable to the ideals of the new penology paradigm (1992: 457), yet the alternative sanction has shown the capacity to sustain the ideals of the old penology or welfare paradigm (Bonta, Wallace-Capretta and Rooney, 2000a; Petersilia and Deschenes, 1994; Payne and Gainey, 2000), then is GPS electronic monitoring better understood as a hybridization of discourse, objectives, and practices?

ELECTRONIC MONITORING

The first electronic monitoring programs were initiated in Florida and New Mexico in the early 1980s (Payne and Gainey, 2000: 94) as an alternative to prison, which focused predominantly on low-risk offenders in accordance to the LSI-R⁵ (Bonta, Wallace-Capretta, and Rooney, 2000b: 62). Recognition of the futility in sentencing people to prison for non-violent crimes, particularly where protection of the public is not required (Schulz, 1995: 27) provided the rationale for developing alternative sanctions such as electronic monitoring which allows offenders to avoid the negative impacts of imprisonment in a cost-effective manner⁶.

Preliminary electronic monitoring programs – Radio Frequency (RF) – utilized permanent telephone lines in conjunction with an anklet or bracelet attached to the offender. A continual radio signal is emitted from the bracelet to a base indicating that the offender is within a defined range, usually up to 150 feet (John Howard Society, 1996: 1). Should an offender move too far from the RF base, the signal between anklet/bracelet and base becomes inadequate, thereby signifying that the offender has

⁵ The "Level of Service Inventory – Revised" (LSI-R) is an assessment tool utilized to determine the degree of risk/dangerousness posed by an offender.

⁶ See BI Incorporated for the promotion of GPS electronic monitoring cost-effectiveness: <http://www.bi.com/content.php?section=solutions&page=budget#>.

absconded, at which time the base transmits a message to appropriate authorities indicating that the offender has left his/her specified area. The principal dilemma with the preliminary electronic monitoring system was its ability to only indicate that the offender was not within his/her specified area; thus, should an offender abscond his or her whereabouts cannot be determined. Recent advancements in technology, specifically the development of the Global Positioning Satellite system, have overcome this technological fallacy faced by early electronic monitoring systems, and can now provide information on an offender's location anywhere via satellite triangulation.

By exploiting U.S. military defense satellites – known as the 34 NAVSTAR GPS satellites – electronic monitoring agencies have begun to replace the older RF electronic monitoring system with the more advanced GPS satellite based system, making it possible to pinpoint an offender's location anywhere.⁷ By utilizing information from three to twelve NAVSTAR satellites, electronic monitoring agencies can triangulate an exact position of the Portable Tracking Device (PTD) attached to the offender, the speed the offender is moving, and the direction in which the offender is travelling, 24 hours per day, seven days a week, virtually anywhere on Earth.

With the new capability of tracking offenders anywhere within their communities, GPS electronic monitoring agencies are consequently able to apply inclusion zones (areas the offender is allowed to enter), and exclusion zones (areas the offender is not allowed to enter).⁸ Upon entering an exclusion zone, a violation warning is sent to both the offender monitoring centre and the offender himself or herself, which now includes the offender's current location should authorities choose to apprehend.⁹

Technological advancements within the electronic monitoring industry have also led to the proposal of implanting transponders – predominantly for sex offenders – to which electronic shocks could be delivered via satellite transmission, immobilizing offenders immediately following or ultimately prior to a violation (see Toombs, 1995). Currently, Britain is considering a controversial scheme to surgically implant tags in

⁷ See ProTech Monitoring – <http://www.ptm.com>

⁸ See National Law Enforcement and Corrections Technology Center (1999) for discussion on GPS electronic monitoring capabilities and emerging technologies – <http://www.nlectc.org/pdf/Elec-Monit.pdf>

⁹ Such capabilities are highly compatible with the application of Beccaria's *felicity calculus* theory (1764) which suggests that sanctions must be swift, certain, and just severe enough to outweigh the pleasure one would gain from the criminal act in order to deter future misconduct (Payne and Gainey, 2000: 101).

convicted pedophiles amid fears that the extent of child abuse has been largely underestimated (Bright, 2002). Such tags would be inserted beneath the skin under local anaesthetic and would have the capabilities of monitoring the offender's heart rate and blood pressure which may help to pre-determine if another sexual attack is imminent (Bright, 2002).

While implanting tags has not yet been realized, there are variations in GPS technologies currently implemented. Two types of GPS electronic monitoring currently in operation are *active* and *passive* systems. Active GPS programs recalculate the monitored individual's position in intervals ranging from approximately every second to every 10 seconds, whereas passive GPS systems calculate an offender's location within a specified time period via a printout, usually every six or twelve hours. While active GPS systems are often praised for their added control in continuously monitoring an offender's whereabouts, passive GPS systems - although exacting a lesser surveillance of offender whereabouts - are acknowledged as being more cost-effective.

In the following section each of the three predominant theoretical frameworks previously noted will be examined, beginning with the limits of the sovereign state, leading to the contradictory elements of New Right politics, and concluding with the original thesis of an emerging postmodern penalty. Thus, each framework will be examined in reference to GPS electronic monitoring operations respectively.

DISCOURSES ON CONTEMPORARY PENAL PHILOSOPHY

THE LIMITS OF THE SOVEREIGN STATE: GARLAND

Garland (1995: 183) states that "the concept of the postmodern is not particularly persuasive or powerful as a means of understanding contemporary penal developments." The postmodern interpretation of contemporary penal practice is undermined according to Garland (1995: 197) in three areas: the indeterminacy and ambiguity of certain concepts used; the identification of allegedly postmodern characteristics which are actually characteristic of modernity rather than divergent from it; and finally, that the very thesis of a distinctive postmodern social configuration depends upon a caricature of modernity and its social referents. To support this argument Garland (1995: 200) points out that we are not witnessing a major realignment within penal practices; imprisonment, supervision,

and monetary penalties continue to be dominant. Indeed, although different sectors are being utilized and the system is expanding as a whole, we have not entered into an era in which new institutions and practices are being legislated into existence, at least in comparable degree to that experienced between 1890 and the First World War era. If the apparatus is changing, it is not doing so in institutional form, but only in objectives (Garland, 1995: 200). Garland (1995: 201) does acknowledge managerialism as a new and important development within the *system*, but suggests that it is largely explicable in terms of organizational growth and technological advancements: “far from being a postmodern phenomenon, the penal system is only now, somewhat belatedly, experiencing a form of management that has long been taken for granted elsewhere.”

According to Garland (1995: 197), contemporary practices exemplify penal philosophy as it enters into “high modernity.” Penal modernism is not being dismantled; what we are experiencing is a shift in objectives where the system itself has entered into modernism allowing for an independent level of criticism to be applied to itself, which has prompted organizations to adjust objectives (Garland, 1995: 203).

Within this framework Garland suggests that the contemporary incoherence in criminal justice policy should be interpreted as evidence of “the crisis of welfare state technologies and penal modernism,” or ultimately the “limits of the sovereign state” (Garland, 1990: 7; 1996: 448-449). The *normality* of high crime rates experienced within the last 30 years has, according to Garland, created a governmental dilemma within which the myth of the sovereign-state’s capabilities to provide security within its territories has eroded, leading to a new form of “at-a-distance” governance whereby governments now wish to deny primary responsibility for crime control (Garland, 1996: 446, 452-454).

The predicament faced by governments today then is realized by the need to withdraw from being the primary provider of state security while acknowledging that taking such a position could be politically catastrophic. Garland identifies this predicament as being the cause of recent “volatile and ambivalent pattern[s] in policy development” (Garland, 1996: 449). According to Garland, it is this realization of the limits of the sovereign state which has caused the recent emergence of a new genre of criminologies, new definitions of criminal justice objectives, and new forms of

responsibilization strategies imposed through governance approaches (Garland, 1996: 450-456).

As previously noted, the welfare state assumed responsibility for the management of a variety of risks (Rose, 1999: 128) by implementing social insurances, unemployment insurances, (Walters, 2001: 62), and job security with the goals of combating risk in the name of national well-being and state security. According to Giddens (1998: 28), “Sickness, disablement, [and] unemployment [became] treated by the welfare state as ‘accidents of fate’, against which insurance should be collectively provided.” In the latter half of the 20th century this governmentally assumed responsibility is radically transformed into what Garland coins “at-a-distance” governance (Garland, 1996: 454-454).

The primary goal of at-a-distance governance is clearly to place responsibility in the hands of individuals rather than the government, convincing citizens and organizations to take up arms together in preventing crime both in their community and on an individual basis (Garland, 1996: 453). Rose (1999: 122-128) also notes that within the 20th century we have witnessed a shift from governmentally assumed responsibility during the welfare state era to individually assumed responsibilization and self control within neo-liberal governance: “social control [or individual responsibilization], that is to say, must arise from the natural processes of society [school, church, etc.], to the extent that they produce social roles which ascribe both individual selfhood and ethical responsibility.” Under this new responsibilization strategy individuals rather than the government are empowered to become personal pre-emptive risk managers.

Bauman (2000a: 40) similarly notes that neo-liberal governments have begun to utilize a newly found set of strategies: escape, avoidance, and disengagement. Under these at-a-distance governance strategies “the regulations and disciplining of citizens is directed at the autonomous, self-regulated individual. Citizens are positioned in governmental discourses, therefore, as active rather than passive subjects of governance...” (Lupton, 1999: 88). Thus, while crime has become a normal facet of social life, a risk to be identified, calculated and controlled rather than accidental as

previously believed,¹⁰ individuals become entrenched with a responsibility to avoid and manage independent risks within their everyday lives (Garland, 1996: 452).

Such at-a-distance governance explains increasingly vigorous community policing policies, and the new genre of criminologies (such as situational crime prevention or routine activities theories) aimed at acknowledging individual responsibility in preventing crime, as well as the increased involvement of the private sector in providing a newly marketed security apparatus once solely the responsibility of the sovereign state (Garland, 1996).

Aligning with the new development of “an *adaptive strategy* stressing prevention and partnership and a *sovereign state strategy* stressing enhanced control and expressive punishment,” Garland (2000) suggests that we have entered into a new “culture of high crime.” Garland (2000: 356-358) argues that ‘liberal elites,’¹¹ the group of individuals once supporting the welfare and correctionalist penal philosophy most, have within the last three decades shifted support away from the correctionalist model towards tougher policies on crime. Garland (2000: 357-358) explains this shift in support with reference to a decline in political power experienced by the ‘liberal elites’ in the 1970s, and more importantly due to an increase in the perceived personal effects of crime. Such developments have given rise to new strategies focusing on “expressivity, punitiveness, victim centredness, public protection, exclusion, enhanced control, loss-prevention, public-private partnerships, [and] responsabilization,” all of which are grounded in the new collective experience of crime as a normal facet affecting everyone (Garland, 2000: 369). Bauman, likewise, notes that the late modernity of an open, porous, and mobile society of strangers has given rise to new crime-control practices seeking to create a less mobile society by immobilizing individuals, quarantining whole sections of the population, erecting boundaries, and closing off access (Bauman, 2000b; Garland, 2000: 369).

Within this debate the rise of GPS electronic monitoring would be explained in terms of the alternative sanction’s ability to be a service provided by private sector

¹⁰ See O’Malley (2002b: 17) and Lupton (1999: 63) in reference to the shift in use of *risk* from fate based beliefs within the classical liberal state, to calculable risk based beliefs.

¹¹ Garland characterizes the ‘liberal elites’ as the educated middle class and public sector professionals (2000: 356).

corporations, thus allowing governmental institutions to off-load responsibility onto service providers. Also, the program is particularly appropriate for the dissemination of individual responsibility. Concepts such as the “panoptic measures”¹² are applicable by employing a level of corrective-coercion onto individual offenders through conditions set within monitoring orders. Finally, GPS electronic monitoring provides a technology primarily focusing on creating less mobile individuals through the application of inclusion and exclusion zones which erect boundaries and exclude access to a specified segment of the population in the name of public and victim protection.

NEO-LIBERAL/NEO-CONSERVATIVE POLITICS: O'MALLEY

The recent incoherence in policy implementation has also been explained by the recent success of neo-liberal politics (Brown, 1990; Cohen, 1985; O'Malley, 1992, 1994; Rose, 1989). In an extension of this explanation, O'Malley (1999: 175) suggests that “such incoherence is better understood in terms of the contradictory elements of New Right Politics.” Within this framework the recent incoherence is better understood as the consequence of aligning neo-conservative and neo-liberal ideals under the ‘New Right political’ agenda, leading to a simultaneous extension of policy development in both “‘nostalgic’ (neo-conservative) and ‘innovative’ (neo-liberal) directions” (O'Malley, 1999: 175).

While neo-liberal politics can provide vast insight into contemporary penal practices, O'Malley (1999) suggests that independently, neo-liberalism fails to provide a complete explanation. The main weakness of the neo-liberal explanation lies in the neglect to acknowledge the “contradictory nature of the diverse formulations and practices of penal policy” often considered consistent with neo-liberal rationale. For example, O'Malley poses the question “can the same political rationality be deployed to explain the rise of boot camps *and* the incapacitation and warehousing of prisoners *and* reintegration *and* prisoner enterprise schemes?” (O'Malley, 1999: 184-185).

Where the neo-liberalist agenda may fail to fully explain such policy incoherence, the New Right agenda can be utilized to build a more complete explanatory framework

¹² See Rose (1999: 103); Mathiesen (1999: 229-230); and Foucault (1995: 201) for an explanation of panoptic measures and self-responsibilization.

(O'Malley, 1999: 185). Under the New Right alliance, neo-conservative ideals such as loyalty, tradition, the nation, and discipline all become paramount, while neo-liberal ideals such as individual freedom, market freedom, and enhanced autonomy also become simultaneously paramount (O'Malley, 1999: 186-188). O'Malley (1999: 189) asserts that "the alliance of these two rationalities explains the rather bi-polar pattern of development that is extending the diversity or range of sanctions." For example, "on the one hand is the resurrection or revitalization of formerly discredited but venerable penalties and penal orientations (retribution, strict discipline, death penalties, and chain gangs)" attributed to the neo-conservative ideals (O'Malley, 1999: 189). On the other hand, the addition of radical and innovative initiatives such as models of self-governing, enterprising, and 'active' prisoners, have been attributed to neo-liberalist ideals (O'Malley, 1999: 189).

Within this New Right framework, GPS electronic monitoring programs would be utilized as a method of cost-effective incapacitation that promotes both neo-conservative and neo-liberal ideals. For example, focus would be placed on the punitive, retributive, and strict disciplinary aspects of the neo-conservative agenda while simultaneously promoting neo-liberal ideals such as self-governing and enterprising capacities.

POSTMODERN PENALITY – OLD VS. NEW PENOLOGY: FEELEY AND SIMON

The original thesis explaining contemporary incoherence in the criminal justice system policy and practice was proposed by Feeley and Simon (1992) who suggest that a transition into postmodern penalty has occurred. In identifying this contemporary transition, Feeley and Simon credit Samuel Walker (1993) for interpreting the reports of the President's Commission on Law Enforcement and the Administration of Justice as being "the most enduring contribution to the criminal justice reform movement of the 1960s," and for its promoting the idea of the *system* (1995: 162). According to Feeley and Simon (1995: 163), "the reports of the President's Commission on Law Enforcement and the Administration of Justice mark[s] the transition from the old progressive penology to the new." These reports support the shift from morality based philosophy experienced during the welfare era towards a *system* based focus where unpredictable objectives such as rehabilitation become replaced with more reliable system goals such as cost-effective surveillance based on risk identification.

Feeley and Simon (1992) cite three distinct shifts (see Table 1) which together constitute the basis of this new penology paradigm: “the emergence of new discourses,” “the formation of new objectives for the system,” and “the deployment of new techniques” (Feeley and Simon, 1992: 450).

Table 1

Paradigm Characteristics	Old Penology	New Penology
Discourses	Moral or clinical description based discourse - individual responsibility focused.	Replacement of the clinical diagnosis discourse with an actuarial discourse primarily focusing on probability and risk management.
Objectives	Rehabilitation represents the primary objective of the old penology. Reducing recidivism is utilized as a criterion for program success.	System efficiency in crime control replaces rehabilitation as the primary objective. The new penology is not concerned with punishing or rehabilitating individuals, but with the identification and management of unruly groups. System objectives focus on making crime tolerable through systemic coordination rather than elimination. Recidivism, once considered an indication of program failure, is altered whereby the return of offenders to prison is seen as evidence of the efficiency and effectiveness of the control apparatus.
Techniques	Techniques are applied at the level of the individual – individual treatment programs, individual crime control, etc. Techniques are anchored in the desire to rehabilitate, reintegrate, reducing recidivism, provide employment, etc.	New actuarial techniques targeting aggregate populations replace individual focused techniques. Techniques focus on cost-effective incapacitation. The development of new statistical techniques for assessing risk and predicting dangerousness are coupled with selective incapacitation which no longer depend on the nature of the criminal offence or individual assessment but a statistical risk profile.

(adapted from Feeley and Simon, 1992: 452-458).

THE OLD PENOLOGY

Feeley and Simon characterize the old penal philosophy – or welfare philosophy - as being predominately concerned with first of all offender responsibility, fault, accountability, and moral sensibility, and second with the clinical diagnosis, interventions, and treatment of the *individual* offender (my emphasis, Feeley and Simon, 1992: 451-452). The discourse, objectives, and techniques all focus on the individual, with the purpose of determining “intention in order to assign guilt” (Feeley and Simon, 1992: 451).

Specifically, old penology *discourse* focuses on the moral capacity of the individual and individual clinical descriptors primarily to determine both accountability and the most effective method of deploying necessary correctionalism techniques for rehabilitating or normalizing offenders. *Objectives* predominantly involve rehabilitation,

reducing recidivism levels, and reintegration. *Techniques* are applied at an individualistic level through the design of individualized treatment programs and crime control policies. As Garland notes, earlier criminologies “began from the premise that crime was a deviation from normal civilized conduct, and was explicable in terms of individual pathology or else faulty socialization...” and thus believed the individual to be capable of reformation through rehabilitation (Garland, 1996: 450). Within this era, the sciences and disciplinary institutions emerged, offering to tame the irrational individual who chose to partake in morally risky behaviour (Rose, 1999: 103). According to Feeley and Simon (1992: 452), emphasis was placed on the “impaired individual in need of treatment or morally irresponsible persons who need to be held accountable for their actions.”

As previously noted, these welfare ideologies came under attack in the latter half of the 20th century. Support for probability over determinism grew alongside the emerging belief that scientific correctionalism’s ability to rehabilitate the individual offender has failed (O’Malley, 2002b: 25). The perceived failure of scientific correctionalism consequently led to its displacement for the certainty of incapacitation, and the emergence of a new actuarial system focusing on risk identification and the application of social control and risk management strategies (O’Malley, 2002b: 27).

THE NEW PENOLOGY

Feeley and Simon (1992) posit that this actuarial system functioning in a pre-emptive manner to control statistically identified risky populations emerges during the 1960s. Within this shift into the new penology, the *discursive* emphasis on morally incompetent ‘individuals’ found within the old penology is replaced with a system focused actuarial discourse concerned with the statistical identification of high-risk aggregate populations to which a managerial apparatus is applied. The centre of attention is no longer the individual offender for specific treatment; within the new penology the individual clinical diagnosis and treatment discourse has been replaced by an overwhelmingly actuarial language based on the statistical prediction of populations at risk (Feeley and Simon, 1992: 452). Feeley and Simon (1992: 455) assert that “the new penology is neither about punishing nor about rehabilitating individuals. It is about

identifying and managing unruly groups.” The new penology discourse can thus be described as managerial, actuarial, statistical, and risk identification focused.

The *objectives* of the new penology are realized through this *systemic managerial* focus, within which the philosophy of scientific correctionalism is dismantled and replaced with the goal of producing a cost-effective, efficient system to manage risky populations with a greater level of certainty than previously realized in the welfare model. The objectives therefore become focused on identifying unruly high risk populations and applying a cost-effective managerial system based on the certainty of incapacitation (or selective incapacitation) and prolonged surveillance rather than rehabilitation. Current testimony from offenders placed on GPS electronic monitoring can be found to support the proposed replacement of rehabilitation with incapacitation.¹³

This system also applies new *techniques* that are managerial and rely on new actuarial practices to identify at risk populations in need of management (Feeley and Simon, 1992: 452-455). Under this new managerial approach the criminal justice system has become preoccupied with the development of more cost-effective forms of custody and control as well as the potential capabilities of new technologies to classify risk (Feeley and Simon, 1992: 457). Such a management system has emphasized the profound importance of classifying, sorting, and positively managing targeted populations efficiently (Feeley and Simon, 1992: 456). Aggregate populations, rather than individuals, are targeted allowing for the implementation of managerial systems, which determine appropriate levels of control to be applied based on statistically calculated risk profiles. Renzema (2000: 26) observes that current GPS electronic monitoring programs are being used as an alternative sanction for (and possibly the targeting of) domestic abuse offenders, pedophiles and other sex offenders, and high risk pre-trial offenders. Also noted is the transformation of previous rehabilitative techniques into control techniques under the new managerial apparatus. Community-based sanctions such as probation become implemented on the basis of their ability to manage unruly groups rather than their ability to rehabilitate and reintegrate (Feeley and Simon, 1992: 461).

¹³ See Nancy Yousseff – “Tethers may ease jail crowding, state budget” – for offenders subjective perceptions of GPS electronic monitoring programs – http://www.freep.com/news/mich/alter10_20030210.htm

According to Feeley and Simon (1992: 461), “rather than instruments of reintegrating offenders into the community, they [community programs] function as mechanisms to maintain control...”

According to Simon (1995: 28), such a shift in penal practices and the development of new system objectives can be understood to represent “the end game of penal modernity,” whereby recent developments could be interpreted as an exercise in the implementation of “‘wilful nostalgia,’ a sensibility that is a crucial marker of postmodernization in a variety of social fields.”

GPS ELECTRONIC MONITORING: OLD PENOLOGY VS. NEW PENOLOGY

To investigate the shift endorsed by Feeley and Simon (1992, 1994, 1995) that a postmodern penal philosophy has been implemented within the contemporary criminal justice system, GPS electronic monitoring operations have been operationalized with reference to three possible alternatives: the new penology paradigm has fully been implemented and old penology paradigm dismantled; the old penology paradigm still dictates penal philosophy and there is little evidence of an implemented postmodern penology philosophy; or a combination of old penology and new penology ideals amalgamated into a penal philosophy no longer strictly welfare oriented nor completely systematic and managerially oriented.

A literature which facilitates empirical study of adaptations in old and new penology has yet to develop useful operationalizations. Table 2 is intended to provide an innovative building block towards that end. Table 2 provides an operationalization of specific characteristics that GPS electronic monitoring operations should possess within either an old or a new penology philosophy. Should GPS electronic monitoring operations adhere to the third possibility of an amalgamation of old and new penology paradigm ideals, both characteristics in Table 2 should be exemplified.

Table 2
GPS Electronic Monitoring: Old Penology vs. New Penology

Paradigm Characteristics	Old Penology	New Penology
Discourses	<p>Predominated by moral or clinical description.</p> <p>References the <i>individual</i> rather than the <i>aggregate</i>.</p> <p>References scientific correctionalism or rehabilitative capacities.</p>	<p>Predominated by an actuarial language, based on statistical predictions of risk.</p> <p>References both aggregate populations, and statistical techniques of identifying risk.</p> <p>Dominated by cost-effective incapacitation, management, and system efficiency.</p>
Objectives	<p>Dominant objectives include individual rehabilitation, lowering recidivism levels, and offender reintegration.</p>	<p>Dominant objectives include system efficiency and the management of identified high-risk populations in the most cost-effective manner.</p>
Techniques	<p>Application of rehabilitative programs to correct individual pathology.</p> <p>Psychological assessment would be the primary technique of assessing individual appropriateness for the alternative sanction and treatment program.</p> <p>Programs would include rehabilitation focusing on lowering recidivism levels and reintegrating offenders.</p>	<p>Application of actuarial techniques to identify high-risk categories of offenders.</p> <p>Cost-effective incapacitation and management of groups is crucial.</p> <p>Treatment programs would not be included.</p>

As suggested within Table 2, a GPS electronic monitoring program based on the old penology paradigm would entail a clinical/rehabilitative assessment of individual offenders to determine appropriateness for this particular sanction. The sanction would also incorporate an individual treatment component focusing on the reformation of morally incoherent qualities, a reduction in recidivism levels, and reintegration into the community.

Previous literature does suggest that such ideals can be achieved within electronic monitoring programs. Most notably Bonta, Rooney, and Wallace-Capretta (2000a) found that when coupled with treatment programs electronic monitoring can yield rehabilitative results. In their study, offenders placed on electronic monitoring had significantly higher completion rates of rehabilitative programs; more specifically 87% of offenders on electronic monitoring were found to complete treatment programs, whereas only 52% of individuals not on electronic monitoring completed an equivalent treatment program (Bonta et al, 2000a: 323). While electronic monitoring alone may not be considered rehabilitative, when coupled with a treatment program it could yield rehabilitative results by significantly affecting program attendance and completion rates.

Furthermore, electronic monitoring has been considered not only competent in holding individuals accountable through punishment but capable of promoting reintegration. Petersilia and Deschenes (1994: 324) found that “there are intermediate sanctions [including electronic monitoring] that equate, in terms of punitiveness with prison.”¹⁴ Electronic monitoring has also been praised for its reintegrative capabilities by allowing individuals to maintain the support network of their families and community while completing their sentence. Proponents have argued that electronic monitoring provides a more cost-effective alternative to prison, a humane alternative to the negative impact of confinement, and by allowing the offender to remain in the community and maintain family and employment ties, increases the likelihood that the offender will revert to a law-abiding citizen (Griffiths and Verdun-Jones, 1992: 588). Courtright, Berg, and Mutchnick (2000: 296) acknowledge that “some researchers have noted that the efficacy of EM in facilitating rehabilitation is due largely to the fact that it keeps the offender’s family intact and avoids exposing the offender to the harmful effects of prisonization.”¹⁵ Finally, Bloomfield (2001: 179) notes that with “the changing conception of the prisoner, particularly as regards concerns over prison overcrowding, the brutalizing effect of prisons, and the fear that prison enables young offenders to learn further ways of criminality from seasoned inmates,” an effective or more humane alternative to incarceration within the penal system is needed. Such propositions acknowledge electronic monitoring as an alternative sanction capable of increasing rehabilitative results, reducing recidivism levels, and assisting in the reintegration of offenders.

A GPS electronic monitoring program based on the new penology paradigm would look significantly different. Such a program would entail the utilization of statistical measurements to determine individual appropriateness, and would focus on: cost-effectiveness, pre-emptive incapacitation, and the management of categories or aggregate populations of offenders. Moreover, under the new penology, no treatment component would be included, recidivism would be reoriented into a characteristic of

¹⁴ Also see Payne and Gainey (1999: 203) for discussion on electronic monitoring’s perceived punitive capabilities.

¹⁵ Courtright, Berg, and Mutchnick note the research of Berry (1985); Glaser (1964); Morgan (1993); and Blombert, Waldo, and Burcroff (1987) for literature on the rehabilitative and reintegrative capabilities of electronic monitoring.

system efficiency by recapturing repeat offenders while no referent to reducing recidivism levels would be present, and reintegration would retain little significance.

Lastly, a GPS electronic monitoring program characteristic of an amalgamation of both old and new penology ideals would represent a combination of both programs outlined above. For example, such a program would be orientated around system management and cost-effective incapacitation, deploy either individual or aggregate based applications, and include a concern for offender rehabilitation, reduced recidivism levels, and reintegration.

METHODOLOGY

DESIGN AND SAMPLE

Data was gathered from GPS electronic monitoring program directors and/or managers to determine specific operational characteristics that would support either the old penology or new penology ideals (see Table 2). Of the 26 program managers and/or directors contacted, 19 responses from 16 states were gathered between June 17th and August 22nd, 2004 representing a response rate of 73.1%. GPS electronic monitoring program characteristics included governmentally run programs, governmentally contracted out programs, privately run programs, non-profit programs, sheriff's departments, and county jails. The majority of programs have been in operation for 1-2 years (66.7%), and are non-governmentally run (58%). Combinations of both *active* and *passive* GPS electronic monitoring systems were utilized within 63.2% of the programs. In addition, all of the GPS electronic monitoring programs participating in this research are currently located within the United States.

RESULTS

Table 3 presents the overall mean for both the old and new penology ideals, followed by independent means for the discourse, objectives, and techniques respectively.

Table 3

Paradigm Characteristics	Old Penology	New Penology
	Mean	Mean
Total Index	2.723 ¹⁶	3.002 ¹⁷
Discourse	2.0667	2.6000
Objectives	3.1047	3.4375
Techniques	3.0000	2.9706

The mean results have been calculated in reference to a scale ranging from one to four, with one representing least supportive of a specific characteristic and four representing the most supportive of a specific characteristic; thus, a mean score of less than 2.5 would not support the prospective ideal, while a mean score greater than 2.5 would support the prospective ideal. Overall findings indicate that both old and new penology ideals are incorporated into the operation of GPS electronic monitoring programs with mean scores of 2.72 and 3.00 respectively.

On an independent level, findings indicate that the discourse, objectives, and techniques utilized by GPS electronic monitoring agencies represent an amalgamation of both old and new penology ideals. Although program discourse was not found to support the old penology clinical descriptive discourse, represented by a mean score of 2.07, overall Table 3 suggests that rehabilitation, reduction in recidivism levels, and reintegration are important within program operations. In reference to the new penology discourse, a supportive mean score was found at 2.60. Due to the overall support in objectives and techniques it could also be suggested that the overall discourse of the new penology may be implemented more extensively than results suggest.

Program objectives were found to be supportive of both old and new penology ideals at 3.10 and 3.44 respectively. In reference to the old penology, individual rehabilitation was found to be an ideal that can be described as follows: programs “place the most emphasis on” (83.4% agreed), is considered one of the “most important indicators of cost-effectiveness” (69.3% agreed), and an attribute that the program is “most effective at achieving” (70% agreed). Also, reducing recidivism levels was identified as a “primary method of determining program effectiveness” with 90.9% of

¹⁶ Representative Questions – Discourse: 15; Objectives: 21c, 14b, 18b, 22a, 21a; Techniques: 13.

¹⁷ Representative Questions – Discourse: 9; Objectives: 14c; Techniques: 17, 21b, 14a.

respondents agreeing, and was identified as an ideal that programs “placed the most emphasis on” with 80% agreeing. In reference to the new penology, 100% of respondents agreed that the “ability to manage categories of offenders” was considered one of the most important indicators of cost-effectiveness within their program. It was also found that specific categories of offenders or aggregate populations were in-fact being targeted, with “sex offenders” representing the most concentrated population followed by high risk pre-trial offenders, domestic abuse offenders, an identified “other” specific category, and only 10.5% stating that their program monitored no specific population.

Program techniques were also found to support both old and new penology ideals at 3.00 and 2.97 respectively. The old penology technique of individual treatment was supported with 80% of programs acknowledging that offenders are required to attend treatment programs regularly. Respondents also identified “cost-effective incapacitation” as a characteristic their program placed the most emphasis on, with 92.3% agreeing, while 78.5% identified the ability to incapacitate an offender as being one of the “most important indicators of cost-effectiveness” within their program operations. Both tenets supported within the new penology paradigm.

It should also be noted that the findings support Bayens, Manske, and Ortiz-Smykla’s (1998) research which suggested that several tenets of the new penology were not found within the operation of ISP programs in “Midwestern County.” Bayens et al (1998: 56-58) found that while the new penology purports that higher risk offenders will receive more surveillance than lower risk offenders, offenders identified as medium risk received the most surveillance. In support of these findings this research found no significant relationship between “sex offenders” and the amount of time offenders were required to be home. Lynch (1998: 851) found while working with parole officers that there was a “prevailing definition within the agency of sex offenders as the most dangerous class of clients.” In defining “sex offenders” as the highest risk category of offenders, results according to the new penology should have concluded that ‘sex offenders’ were required to be in-home more than all other categories of offenders. Such results were unfounded within this research.

Table 4

Paradigm Characteristics	New Penology Total Index	New Penology Discourse	New Penology Objectives	New Penology Techniques
Old Penology Total Index	.655** .003 18	.272 .327 15	.633** .009 16	.561* .015 18
Old Penology Discourse	.244 .382 15	.422 .151 13	.528 .053 14	-.280 .313 15
Old Penology Objectives	.702** .002 17	.377 .238 14	.594* .015 16	.489* .047 17
Old Penology Techniques	.561* .030 15	.214 .462 14	.704** .007 13	.535* .040 15

* Correlation is significant at the 0.05 level (2-tailed).

** Correlation is significant at the 0.01 level (2-tailed).

Finally, a Pearson's correlation coefficient was utilized to identify any significant relationships between the index variables within the discourse, objectives, and techniques (Table 4). The total index for the old penology was found to be positively correlated at a significant level with the new penology total index, new penology objectives, and new penology techniques. Likewise, old penology objectives were found to be positively correlated at a significant level with the new penology total index, new penology objectives, and new penology techniques. Finally, old penology techniques were found to be positively correlated at a significant level with the new penology total index, new penology objectives, and new penology techniques. Such findings suggests that GPS program operations represent an amalgamation of both old and new penology ideals rather than a replacement of the old penology with the new penology paradigm.

DISCUSSION AND CONCLUSION

Using data collected from 19 directors or managers of GPS electronic monitoring programs, Feeley and Simon's (1992) proposition of an implemented *new penology* was tested. While findings support the ideals outlined within the new penology paradigm, they also suggest that the old penology ideals are equally valuable within GPS electronic monitoring operations. More specifically, the old penology ideals of rehabilitation, reduced recidivism levels, and reintegration were found to be clearly implemented, while the new penology ideals of managing categories of offenders, cost-effective

incapacitation, and the ability to incapacitate offenders were equally found to be implemented. The findings thus suggest that rather than a replacement of the old penology paradigm with a new postmodern penology, program operations represent an amalgamation of both ideals. While such findings could be explained as a period of transition from the old penology into the new penology - which would inevitably allow for a grace period where both ideals are implemented – results suggest that this is not the case. If penal philosophy were currently experiencing a transformation period findings would display a negative correlation within the discourse, objectives, and techniques; thus, as the new penology ideals are implemented with increased merit, the old penology ideals would decrease in merit and ultimately become antiquated. Findings suggest the contrary. While no significant relationship was found within program discourse, a positive correlation was found for all variables indexing program objectives, techniques, as well as the overall total index of both the old and new penology paradigm. A non-significant relationship would support neither a hypothesized amalgamation of ideals nor a transition between ideals; however, the positive correlation found within program objectives, techniques, and overall index, suggest that as the new penology ideals increase in perceived importance the old penology ideals likewise increase in perceived importance. It was found for example that as the rehabilitative ideal increased in importance, the ability to manage categories of offenders similarly increased in importance. In conclusion, the findings presented suggest that rather than a radical shift in penal philosophy characterized by new discourses, objectives, and techniques, the contemporary criminal justice system is experiencing an amalgamation of both old and new penology ideals.¹⁸

While this research focused primarily on Feeley and Simon's (1992, 1994) proposed explanation of an emerging postmodern penalty, insight into explanations promoted by Garland (1996) and O'Malley (1999) should also be examined. Support was found for Garland's 'at-a-distance' hypothesis with 42% of programs identifying themselves as being governmentally run, while 58% were identified as: privately run, governmentally contracted, or an "other" category, supporting the contention that

¹⁸ See Hannah-Moffat (2001) and Bosworth (2000) for discussion on the hybridization of ideals within a penal context.

governmental institutions may be off-loading responsibility. Similarly, an amalgamation of old and new penology ideals fits with Garland's (1995: 197-201) insinuation that the criminal justice system has now entered into high-modernity within which the old penology ideals – although possibly declining in support – may still be implemented, while a “rather belated” system management focus has been applied. While Garland (2000: 357-358) does acknowledge the recent decline in support for the welfare model, including a decline in support by the ‘liberal elites,’ he does not suggest that the correctionalist model has been completely eliminated as Feeley and Simon suggest (1992). Rather, Garland (2000: 369) acknowledges that as penal philosophy has entered into high-modernity welfare support has declined – rather than been eliminated - and objectives have shifted towards: “punitiveness, victim centredness, public protection, exclusion, enhanced control, loss-prevention, public-private partnerships, and responsabilization,” all of which are paramount in GPS electronic monitoring operations.

An amalgamation of ideals also supports tenets of O'Malley's ‘New Right Politics’ proposition. Within the New Right framework the neo-conservative alignment would explain the punitive characteristics of program operations, while the neo-liberal alignment would explain the system efficiency focus, shift in responsibility from governmental institutions to service providers, and the cost-effective focus of program operations. In reference to the continued rehabilitative referents of the old penology, the New Right explanation is not supported. Both neo-liberal and neo-conservative political alignments converge on their mutual support for dismantling the welfare state; thus, while punitive tenets are characteristic of disciplinary society experienced *prior* to the welfare state, and the focus on efficiency, cost-effectiveness, deference of responsibility, and the system are characteristics of the *post*-welfare state, all of which are supported within the New Right framework; the reformative ideal of the welfare era lacks support. While this research does support some tenets of both Garland and O'Malley's propositions, further research is required for a more explicit understanding of contemporary program operations within each framework respectively.

Perhaps the most feasible explanation for the hybrid of both old and new penology ideals within GPS electronic monitoring practices is found in the schism between discourse and practice. Feeley and Simon (1992: 465; 1995: 147) state that the old

penology discourse “portrays crime primarily as a relationship between individuals and their communities,” while the new penology discourse is organized around actuarial statistics. In support of an amalgamation of ideals, Feeley and Simon (1995: 151-153) note that public discourse has not yet shifted from understanding crime control based on the relationship between individuals, communities, and the fear of crime itself, to an actuarial based crime prevention strategy. Such phenomena is characterized by public support for radical laws such as “three-strikes,” and programs such as “bootcamps,” both substantially supported by the public, yet strongly opposed by policy intellectuals and academics. Thus, Feeley and Simon (1995: 170) suggest that, while the new penology has significantly affected professional and academic discourse, it has not yet affected the public discourse of crime control. It could be suggested that public support may influence program operations by promoting the ideals of the old penology to which they more easily relate. As Garland (2000: 352) notes, while punishment and crime control held little significance in electoral competition for most of the twentieth century, in the 1960s a significant shift has occurred whereby crime control has now become prominent in election manifestos. In conjunction with this realization, Garland (2000: 350) similarly notes that “policy measures are constructed in ways that privilege public opinions over the views of criminal justice experts and professional elites.” Thus, if the public still promotes the old penology discourse, political implementation of crime control policies – even if seeking to transform penal philosophy towards a new penology - would be significantly compelled to continue the promotion of old penology ideals at some level to retain public support.

The level of implementing penal philosophy also has significant relevance to crime control policy and practices. Lisa Miller (2001) critically suggests that ground level politics have been insufficiently examined, and that the implementation of macro level politics such as a new penology paradigm can be resisted at a micro level. Specifically, in examining the implementation of a crime control program called “weed and seed” based on new penology ideals, Miller (2001) found that local resistance significantly altered the characteristics of “weed and seed” to include tenets more aligned with the old penology. Originally the program focused on increased surveillance, arrest statistics, and incapacitation (Miller, 2001: 174) within a specific area in Seattle,

Washington. Due to the fear of being targeted, local residents were able to develop a coalition to resist specific aspects of “weed and seed” which eventually shifted the locus of control from law enforcement organization towards a community based program. Successful resistance shifted emphasis away from arrests and incapacitation, as well as funding decisions away from organizations believed to be utilized for identifying and targeting local residents towards increased educational opportunities, apprenticeship programs, and entrepreneurial training under the supervision of a community appointed board (Miller, 2001: 177-180). Miller (2001: 180) suggests that “this development illustrates the power of community residents to change police priorities when significant citizen pressure is involved.” Similar resistance was observed by Mona Lynch (1998) in reference to parole practices. Lynch (1998) found that although the new penology ideals of risk management, and actuarial techniques were implemented at a macro level, local level parole officers resisted such techniques in favour of more traditional operations. For parole officers “little faith was placed in making judgements based on any kind of scoring system; agents had their own system – one that relied heavily on actual interaction with the parolee - to decide who posed risks” (Lynch, 1998: 855). Rather than risk based “waste managers,” these agents continued to model themselves after traditional police officers, and “actively fought those aspects of the job that pushed toward the model of aggregate risk management suggested by the ‘new penology’” (Lynch, 1998: 862). Finally, while parole agents actively resisted the macro implementation of new penology ideals at a local level, Lynch (1998: 853) also notes that outside pressure by the public and political arena help define certain aspects of the program - for example, which categories of offenders should be perceived as the greatest social threat. At a level of implementation these findings (Lynch, 1998; Miller, 2001) suggest that while the shift towards a new penology paradigm may be initially implemented at a macro level, micro or local level resistance in adhering to these ideals could compel policy implementation to align with an amalgamation of both old and new penology ideals. Thus, with the public still understanding crime control in an old penology discourse, the increased strength of public opinion on crime control politics, and with the ability to resist implementation at a local level, crime control policies may be required to find a balance between the old and

new penology ideals to retain public support for the stability of realized crime control policies.

The caveats of this research are as follows. First, due to the limited number of respondents involved in this research, the findings can only be considered exploratory, and should be followed by larger studies with a more representative sample. Second, in determining individual appropriateness for electronic monitoring programs Renzema (2000: 7) notes that judicial orders are the predominant method of determining an offender's allocation to GPS electronic monitoring programs. It could thus be proposed that risk profiles or psychological descriptions are taken into account and applied prior to agency involvement which was the focus of this research. Third, although GPS electronic monitoring has been implemented with vast growth in various countries globally, this research was limited to agencies located within the United States. Due to the significant divergence in policy implementation by various countries (O'Malley, 2002a) these findings should be considered applicable only within their United States context. Finally, it should be acknowledged that respondents may provide differing information to different audiences – trade journals, correctional boards, academia, etc. Thus, it should be noted that respondents recognized the academic setting of their responses.

APPENDIX A



LETTER OF INFORMATION: CONSENT TO PARTICIPATE IN RESEARCH

Title of Study: **POSTMODERN PENALITY? GPS Electronic Monitoring and the New Penology**

You are asked to participate in a research study conducted by Ryan Cotter, from the Department of Sociology at the University of Windsor to which the results will be compiled into a Masters Thesis.

If you have any questions or concerns about the research, please feel free to contact Ryan Cotter at 1 (519) 919-2247, or Dr. Willem de Lint at 1 (519) 253-3000 ext. 2192.

- **PURPOSE OF THE STUDY**

To investigate GPS electronic monitoring and the underlying reasons for its success and growth as an alternative sanction within the 21st century. The research also proposes to examine current penal practice and the underlying goals of alternative sanctions within the 21st century.

- **PROCEDURES**

If you volunteer to participate in this study, we would ask you to do the following things: **Complete a Survey Questionnaire:**

Participants are asked to complete one survey questionnaire that should take approximately 10 minutes. Each participant should carefully read the following letter of information before completing the questionnaire to ensure that you understand your rights to confidentiality and the right to withdrawal from the research project at anytime. Upon completing the questionnaire participants will be asked to return the questionnaire to the primary researcher via the submit form procedures outlined within the questionnaire.

- **POTENTIAL RISKS AND DISCOMFORTS**

Due to the nature of the proposed research the names of participant and/or organizations/agencies will be kept confidential. Due to the strict confidentiality of the research project there are no foreseeable risks or discomfort to participants.

- **POTENTIAL BENEFITS TO SUBJECTS AND/OR TO SOCIETY**

This study hopes to enable the future criminal justice system and criminologists to develop a clearer understanding of penal practices in operation during the closing of the 20th century and beginning of the 21st century. More specifically this research proposes to gain a clearer understanding of 'what works' with regard to alternative sanctions entering into the 21st century.

- **PAYMENT FOR PARTICIPATION**

Participation in this research study is to be considered voluntary by the participant. Potential benefits should include the acknowledgement that the expert opinions provided will help inform the criminal justice community of penal practices as they enter into the 21st century.

- **CONFIDENTIALITY**

Any information that is obtained in connection with this study and that can be identified with participants will remain confidential and will not be disclosed at any time within the research and publication process. The confidentiality of respondents is regarded with the utmost care. The names of: respondents, agencies/organizations, and contact information is not required, consent will be implied upon the return of the questionnaire. At no point in the research study will individual names, contact information, or agency/organization names be published. All information will be securely protected: questionnaires will be locked in a file cabinet to which only the researcher will have access too, and all electronic information will be encoded on a computer protected by password that only the researcher will have access too. Only the individual researcher and his/her research advisors will have access to the raw data for the purposes for conducting research. Upon the completion of the research project all questionnaires and raw materials pertaining to the research study will be destroyed to ensure confidentiality.

- **PARTICIPATION AND WITHDRAWAL**

You can choose whether to be in this study or not. If you volunteer to be in this study, you may withdraw at any time without consequences of any kind. You may also refuse to answer any questions you don't want to answer and still remain in the study. The investigator may withdraw you from this research if circumstances arise which warrant doing so

- **FEEDBACK OF THE RESULTS OF THIS STUDY TO THE SUBJECTS**

The concluding results will be made available if requested by the participant via email or hardcopy. Within the questionnaire the participant will be asked if he/she wishes to be have knowledge of the results of the study, if the yes box is checked then he/she will be made fully aware of what the research has found.

- **SUBSEQUENT USE OF DATA**

The raw data collected within this research project will not be used in any future research undertaken by the primary researcher. All raw data will be destroyed upon completion of the current study to ensure the confidentiality of participants.

- **RIGHTS OF RESEARCH SUBJECTS**

You may withdraw your consent at any time and discontinue participation without penalty. This study has been reviewed and received ethics clearance through the University of Windsor Research Ethics Board. If you have questions regarding your rights as a research subject, contact:

Research Ethics Coordinator
University of Windsor
Windsor, Ontario
N9B 3P4

Telephone: 519-253-3000, ext. 3916
E-mail: ethics@uwindsor.ca

- **SIGNATURE OF INVESTIGATOR**

These are the terms under which I will conduct research

Signature of Investigator

June 10th 2004
Date

APPENDIX B

GPS Electronic Monitoring Questionnaire

Please complete the questionnaire by checking the most appropriate box or by filling in the blank with your response:

1. The GPS electronic monitoring program currently operated by your agency would be best described as:

- Privately run
- Governmentally run
- An agency contracted by the government
- Other (please specify): _____

(please indicate your response by checking the appropriate box)

2. How long has your GPS electronic monitoring program been in operation?

- 1-2 years
- 3-4 years
- 5-6 years
- Longer than 6 years

3. How many offenders are currently being monitored by your program? _____

4. What type of GPS electronic monitoring does your program offer?

- Active* GPS electronic monitoring
- Passive* GPS electronic monitoring
- Both *Active* and *Passive* GPS electronic monitoring

** **Active** = continual monitoring of offender position 24/7

** **Passive** = monitoring of offenders position by periodic printouts (every 12 hours, or every 24 hours)

5. Has your program ever change the type of GPS electronic monitoring offered? For example: from *Active* to *Passive* GPS electronic monitoring or vice versa.

- Active* to *Passive* GPS electronic monitoring. If *YES* then how long in years and/or months:
 - a) *Active* GPS electronic monitoring was in operation for: _____
 - b) *Passive* GPS electronic monitoring has been in operation for: _____

- Passive* to *Active* GPS electronic monitoring. If *YES* then how long in years and/or months:
 - a) *Passive* GPS electronic monitoring was in operation for: _____
 - b) *Active* GPS electronic monitoring has been in operation for: _____

6. If the type of GPS electronic monitoring has changed (active GPS to passive GPS, vice versa), please indicate the reasoning for the change.

- To increase the hours of offender surveillance.
- To cut operation costs.
- Other (please specify): _____

7. What is the approximate cost per offender on either *passive* or active GPS electronic monitoring within your program?

- Passive* GPS electronic monitoring cost per offender: _____ dollars. →
 - Per week
 - Per month
 - Per year

- Active* GPS electronic monitoring cost per offender: _____ dollars. →
 - Per week
 - Per month
 - Per year

8. Are offenders required to pay offender fees for their monitoring services?

- Yes ----- If *YES* please specify approximately what percentage of the daily cost offenders are required to pay

0-25%	26-50%	51-75%	75-100%
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- No

9. Statistical measurements of risk are used to determine an individual's appropriateness for your GPS electronic monitoring program.

- Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree
-

10. Is there a specific category of offenders your GPS electronically monitored population predominantly monitors?

- | | Approximate Percentage
of monitored population | | | | |
|---|---|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> Sex Offenders → | 1-25% | 26-50% | 51-75% | 76-100% | |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> Domestic Abuse Offenders | 1-25% | 26-50% | 51-75% | 76-100% | |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> High Risk Pre-Trial Offenders | 1-25% | 26-50% | 51-75% | 76-100% | |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> Other (please specify): _____ | 1-25% | 26-50% | 51-75% | 76-100% | |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> No Specific category of offenders monitored. | | | | | |

11. What is the average length of time an offender is placed on GPS electronic monitoring?

- Less than 6 months
- 6 months to 1 year
- 1-2 years
- over 2 years

12. Approximately how many hours per day does your program ensure that offenders are in their homes:

- Less than 5 hours
- 6 – 10 hours
- 11 – 15 hours
- 16 – 20 hours
- 21 – 24 hours

13. Offenders on GPS electronic monitoring are required to attend treatment programs regularly.

- Strongly Agree-----Agree-----Don't Know-----Disagree-----Strongly Disagree
-

14. Which of the following are considered the most important indicators of cost-effectiveness within your program and to what degree?

- | | | | | | |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> The ability to incapacitate an offender | Strongly Agree----- | Agree----- | Don't Know----- | Disagree----- | Strongly Disagree |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> The ability to rehabilitate an offender | Strongly Agree----- | Agree----- | Don't Know----- | Disagree----- | Strongly Disagree |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> The ability to manage categories of offenders | Strongly Agree----- | Agree----- | Don't Know----- | Disagree----- | Strongly Disagree |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Other (please specify): _____ | Strongly Agree----- | Agree----- | Don't Know----- | Disagree----- | Strongly Disagree |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

(Please check each box that applies, and the degree to which that answer applies to your program)

15. Offenders are assigned to the GPS electronic monitoring program based on a psychological assessment.

- Strongly Agree-----Agree-----Don't Know-----Disagree-----Strongly Disagree
-

16. How many offenders is each operator assigned to monitor?

Each operator is responsible for monitoring _____ number of offenders.

****Operator** = agency employee responsible for overseeing offenders positioning.

17. Offenders are assigned to the GPS electronic monitoring program based on a statistical measurement designating them to be of sufficient risk.

Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree

18. Which of the following is your program most effective at achieving and to what degree?

Prevention of future criminal behaviour through incapacitation. Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree

Rehabilitating individual offenders. Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree

Providing an alternative to prison. Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree

Other (please specify): _____ Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree

19. Is your GPS electronic monitoring agency held accountable to an outside source?

Yes ----- If YES please specify who -----> Department of Corrections
 No Private Funding Organization
 Don't Know Other (please specify): _____

20. How is the accountability affected?

Contract withdrawal
 Budget cuts
 Other (please specify): _____

21. Your GPS electronic monitoring program places the most emphasis on which of the following and to what degree?

Reducing offender recidivism. Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree

Cost-effective incapacitation. Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree

Offender rehabilitation. Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree

Other (please specify): _____ Strongly Agree ----- Agree ----- Don't Know ----- Disagree ----- Strongly Disagree

22. Which of the following are the primary methods of determining program effectiveness and to what degree?

- | | |
|--|--|
| <input type="checkbox"/> The reduction of offender recidivism levels. | Strongly Agree---Agree---Don't Know---Disagree---Strongly Disagree |
| | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| <input type="checkbox"/> The number of offenders assigned to GPS EM. | Strongly Agree---Agree---Don't Know---Disagree---Strongly Disagree |
| | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| <input type="checkbox"/> Number of offenders who successfully complete their monitoring order. | Strongly Agree---Agree---Don't Know---Disagree---Strongly Disagree |
| | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| <input type="checkbox"/> Other (please specify): _____ | Strongly Agree---Agree---Don't Know---Disagree---Strongly Disagree |
| | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |

23. Approximately how many violations per offender are experienced per month?

- Approximate number of violations per month: _____

24. What types of violations are committed most within your GPS electronic monitoring program?

	Approximate Percentage of all violations			
	1-25%	26-50%	51-75%	76-100%
<input type="checkbox"/> Technical violation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Battery low technical violation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Entering into a 'hot' zone	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other (please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

25. Is there any *leniency* for offenders who commit violations or are all violations *strictly* enforced?

- Leniency (please elaborate): _____
- Strictly enforced (please elaborate): _____

26. What are the penalties offenders can receive for committing a monitoring violation?

<input type="checkbox"/> Warning	Strongly Agree-----Agree-----Don't Know-----Disagree-----Strongly Disagree
	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Sent to prison	Strongly Agree-----Agree-----Don't Know-----Disagree-----Strongly Disagree
	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Extension of time being monitored	Strongly Agree-----Agree-----Don't Know-----Disagree-----Strongly Disagree
	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Other (please specify): _____	Strongly Agree-----Agree-----Don't Know-----Disagree-----Strongly Disagree
	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

27. In your opinion what could be done to improve the program?

28. Please indicate if you would like to be informed of the results of the study upon completion.

YES, I would like to be informed of the research results found from this study.

NO, I do not wish to be informed of the research results found from this study.

When complete please check the "Submit Questionnaire" button



Thank you for taking the time to complete the questionnaire. I truly appreciate the time you have set aside to answer the questionnaire and acknowledge that your expert opinions will help to inform others of current penal practices regarding 'what works' as we enter into the 21st century. Once again thanks for you time.

Sincerely,

Ryan Cotter
University of Windsor.

APPENDIX C

Research Ethics Board Clearance Letter



June 4, 2004

REB #04-096

Mr. Ryan S. Cotter
Department of Sociology & Anthropology
University of Windsor
Windsor, ON N9B 3P4

Dear Mr. Cotter,

Subject: "What works in the 21st century? An investigation of GPS electronic monitoring and penal practice"

This letter is in response to your application for ethics review of your Masters project at the University of Windsor. The University of Windsor Research Ethics Board (REB) has reviewed the above noted study. I am pleased to inform you that the proposal has been cleared by the Board for a period of one year.

As indicated in the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* you are required to do the following:

- Submit a Progress Report if your project extends beyond one year;
- Notify the REB when your project is completed;
- Submit a Request to Revise for any modifications to your project;
- Contact the Office of Research Services immediately regarding adverse events or unexpected events.

Forms for submission/notification to the REB are available at the Office of Research Services' Web Site: www.uwindsor.ca/reb.

Please be sure that your supervisor completes and returns to the Research Ethics Coordinator the enclosed sheet to indicate when your project was completed.

We wish you every success in your research.

Maureen H. Muldoon, Ph.D.
Chair, University Research Ethics Board

cc: Dr. Willem de Lint, Department of Sociology & Anthropology
Linda Bunn, Research Ethics Coordinator

Enclosure

401 SUNSET CHRYSLER HALL TOWER WINDSOR ONTARIO CANADA N9B 3P4
TELEPHONE: 519/253-3000 (3916) OR (39-18) FAX: 519/971-3667 WEB: www.uwindsor.ca/research/ors

APPENDIX D

Research Ethics Board Completed Research Form

UNIVERSITY OF WINDSOR RESEARCH ETHICS BOARD

COMPLETED RESEARCH - STUDENT

REB #04-096

Researcher's Name: Mr. Ryan Cotter, Department of Sociology & Anthropology
Faculty Supervisor: Dr. Willem de Lint, Department of Sociology & Anthropology
Subject: "What works in the 21st century? An investigation of GPS electronic monitoring and penal practice"

The *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* states that the Research Ethics Board must be informed when this project is completed. Therefore, we are asking you to pass this letter to your supervisor upon completion of your Masters project. At that time your supervisor must date and sign this form and return it to the following address:

Research Ethics Coordinator
Office of Research Services
Room 309, Chrysler Hall Tower
University of Windsor
Windsor, ON N9B 3P4

This project was completed on _____

Sept 21, 2004

Signature of Supervisor: _____

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VITA AUCTORIS

Ryan Cotter was born in Owen Sound, Ontario where he lived until commencing University in September, 1998. Upon completing a combined Bachelor's degree in Honours Psychology and Honours Criminology at the University of Windsor, Ontario, he began graduate studies for a Masters of Arts in Sociology – with a specialization in Criminology. In September 2005 Ryan intends to pursue his doctoral studies in the United Kingdom.