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Will Electronic Monitoring Have a future in Europe?

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Will Electronic Monitoring Have a Future in Europe?

Contributions from a European Workshop, June 2002

edited by

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Associated European Laboratory
Crime and Policies of Safety and Prevention: French-German Comparative Research
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Preface

June 13th was one of the most sweltering days of the year 2002 as the 48 participants gathered in Freiburg from all over Europe for this workshop, "Will Electronic Monitoring Have a Future in Europe?". We will all remember these days in association with the unexpected heat, but also with the convivial wine tasting in the village of Merdingen, which gave us a little relief.

The Associated European Laboratory[1] had invited practitioners and research fellows from each European country applying or experimenting with electronic monitoring, as well as scientists who were recognized as experts on this subject. The open minded atmosphere – for which the organisers are grateful – encouraged new questions and worthwhile debates on the topic. Both organisers and participants were satisfied and encouraged by the productiveness of the workshop.

The book which you now hold in your hands contains the 29 presentations given in the workshop. The efforts of the authors have brought enriching and enlightening contributions to the debate, and the editors would like to thank all for their hard work and commitment. We hope this anthology will make a worthwhile contribution to the advancement of the research on electronic monitoring and the surrounding discussions and debates.

This workshop and the anthology would not have been possible without generous financial support from the Fritz-Thyssen-Foundation and the Centre National de Recherche Scientifique. Finally, we would like to thank Dvorah Silverstein and Bessie Leconte for making the text corrections.

Markus Mayer, Rita Haverkamp, René Levy

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[1] The Associated European Laboratory *Crime and Policies of Safety and Prevention: French-German Comparative Research* is a German-French research program supported by the Centre National de la Recherche Scientifique and the Max Planck Society, whose partners are CESDIP (Guyancourt, France), IFRESI-CLERSE (Lille, France) and the Max Planck Institut (Freiburg, Germany).

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Will Electronic Monitoring Have a Future in Europe?

RITA HAVERKAMP, MARKUS MAYER, RENÉ LÉVY

Overcrowded prisons and limited financial resources have been typical for most industrial societies in Western Europe during the last decade. Due to more repressive crime policies, violent offenders, drug offenders and sexual offenders were sentenced to longer prison sentences. The time spent in prison lengthened for many inmates due to aggravations in sentencing, categorization and restrictive reforms concerning parole. This tendency can be found in nearly all countries opting to use electronic monitoring. In this context, electronic monitoring can be seen as one of the most promising alternatives to incarceration adopted to solve the problem of overcrowding.

At the beginning of the new century electronic monitoring could be found in many Western European countries. In England, Sweden and the Netherlands, projects using electronic monitoring are well-established in the penal and correctional systems. Pilot projects can be observed in Belgium, France, Germany, Italy, Portugal, Switzerland and Spain.

A European workshop entitled „Will Electronic Monitoring have a Future in Europe?" took place in Freiburg (June 13 – 15, 2002) and was attended by representatives from the countries mentioned above. The workshop was initiated by LEA (European Associated Laboratory)[1] and organized by CESDIP (Centre de Recherches Sociologiques sur le Droit et

[1] The Laboratoire Européen Associé "Délinquances et politiques de sécurité et de prevention" was founded in 1998 by the Centre National de la Recherche Scientifique (CNRS, France) and the Max-Planck-Gesellschaft. It groups by the following institutions: The CESDIP (Centre de Recherches Sociologiques sur le Droit et les Institutions Pénales), the IFRÉSI-CLERSÉ (Institut Fédératif de Recherche sur les Économies et les Sociétés Industrielles, CNRS-University of Lille) and the Max-Planck-Institute for Foreign and International Criminal Law (Freiburg, Germany).

les Institutions Pénales) and the Max Planck Institute for Foreign and International Criminal Law. Financial support came from the Fritz-Thyssen Foundation and the CNRS.

One objective was to analyse the normative frameworks of electronic monitoring in the Western European countries which ran a trial or implemented a programme on the option. Key issues were addressed in the presentation of programmes and evaluation research on electronic monitoring. This presentation was expected to reveal what the programmes have in common and their differences. The workshop also supported the intention of developing further research methods. The first round table concerned the so-called „net-widening effect". The term itself and appropriate evaluation methods were discussed. The role of social work in connection to the use of electronic monitoring was the subject of the next round table, because the measure might create new challenges for social workers and change their relationships to offenders. During the third round table principal questions concerning the role of punishment were discussed. The workshop was the first to provide for an exchange between scientists and practitioners. This exchange did not aim to remove the contrast between theory and practice, but it was expected to develop new questions and maybe lead to some answers to the question of what will be the role of electronic monitoring in the 21st century.

In his opening speech, *René Lévy* gave preliminary reflections on the development of electronic monitoring. After outlining the term and its historical background, he introduced the possible advantages of electronic monitoring like reduction of prison overcrowding, prevention of recidivism and lower costs, always emphasizing that these advantages were difficult to evaluate and have not yet been proven. Then he turned to the disadvantages, beginning with the question of whether electronic monitoring favoured the development of a surveillance-pervaded society. Other arguments against electronic monitoring were the possible inequalities due to its requirements (home, work, and telephone), negative consequences for the offender's family and the self-disciplining character of the measure. He concluded with several remarks about the future of the option. In his eyes there were three reasons for the further use of electronic monitoring. The measure was a simple alternative which could be easily implemented and seemed to be inexpensive. Another aspect was the hidden functions of electronic monitoring. In the United States for example, the probation services took advantage of electronic monitoring in order to relegitimize their role

in the criminal justice system. Finally, the technological progress (second generation systems) should be taken into account.

This introduction was followed by an overview of the situation in the United States and especially in Canada by *Pierre Landreville*. Today, there are 1,500 projects in the U.S. and 4 in Canada. The average population under electronic monitoring amounts to over 100,000 in the U.S. and 500 in Canada at present. The most common technical system is still the first generation type, controlling the presence and absence of the offender at home, but the second generation of electronic monitoring – tracking the offender constantly – is already in trial. Due to the huge number of projects in the U.S. there is a variety of target groups and legal application areas. Electronic monitoring is mainly used instead of pretrial detention, as a control order during probation or parole in conjunction with a curfew obligation and to prevent marital violence. Because of a punitive crime policy, the original objective of electronic monitoring as an alternative to imprisonment changed to a punitive, surveillance-orientated aim in order to improve the efficiency of sanctions, for example, probation. Its function as an addition to probation creates an increase of cost instead of a reduction. Finally, *Landreville* concluded with several questions concerning electronic monitoring. The measure seems to be a technology looking for an eligible clientele to examine advanced types of control. The question arises whether electronic monitoring is not only a mere technological innovation, but also represents a model of crime policy in the United States.

1 Projects on Electronic Monitoring in Europe

Eleven projects on electronic monitoring in Europe were described by representatives of the countries. Every presentation was followed by a report of the research project's results.

In England, Sweden and the Netherlands programmes with electronic monitoring are well-established, the biggest and most ambitious of which is carried out in England. The majority of the projects started around the turn of the millennium. Electronic monitoring should function as an alternative to imprisonment and also reduce recidivism; it may be seen as one measure reviving the treatment idea.

The use of electronic monitoring can be observed during the whole criminal procedure from pretrail detention up to parole. In several countries there is a range of application possibilities. The option is imposed in the

Table 1: Electronic Monitoring in Europe

Country	Begin	Yearly Caseload	Average Monitoring Time span	Completion Rate	Daily Costs per Offender (EUR)[2]
England	1989	~ 20,000	48 days	90%[3]	50 €
Sweden	1994	~ 3,000	~ 1 month	94%	70 €[4]
Netherlands	1995	~ 390	~ 4 months	93%	*)
Belgium	1998	2,100	~ 2 months	90%	35 to 40 €
France	2000	235[5]	5.4 months	94%	*)
CH-Basel	1999	~ 200	3 to 6 months	93%	34 €
CH-Vaud	1999	73	~ 2 months	94%	*)
Italy	2001	*)	*)	*)	*)
ES-Catalonia	2000	26[6]	~ 9 months	85%	6 €
Portugal	2002	39[7]	*)	*)	14 €[8]
D-Hesse	2000	57[9]	~ 4.5 months	91%	49 €[10]

*) Information not available

case of release on bail in England, Italy and in Portugal. The court metes out the measure as a curfew order in England, or as a condition to a suspended prison sentence in Hesse and in the Netherlands. Electronic monitoring is used as a method of enforcement of a short prison sentence by the correctional administrators in Sweden, Switzerland and France. The biggest application sphere in numbers is the use after release from prison. Apart from Portugal all countries implement electronic monitoring in the case of parole or before parole.[11]

In Western Europe electronic monitoring is used as an instrument of home detention. This application means that the offender remains at home

[2] A comparison between the different countries concerning the costs is difficult because the calculation basis varies considerably.

[3] Completion rate in the Home Detention Curfew Programme; over 80% in the Adult Curfew Order Programme.

[4] Including costs for treatment programmes and home visits. The daily costs amount to approximately 6 Euro per unit.

[5] October 2000 up to the 1st of May 2002.

[6] During the first trial period up to December 2001.

[7] Until June 30, 2002.

[8] Supposing a caseload of 250 offenders.

[9] May 2000 up to May 2002.

[10] With a caseload of 15 offenders.

[11] In Hesse electronic monitoring may be granted in case of pardon.

except for leisure time and the time spent at work or in treatment programmes. Requirements for electronic monitoring are usually a suitable residence, a functioning phone line and an occupation (work, study, community service order, etc.). Normally the offender and his/her fellow occupants have to agree to the option. In several countries, a fee must be paid by the monitored people (Sweden, Switzerland).

Many differences exist in the enforcement of electronic monitoring. In England the electronic monitoring is performed by private security companies. A combination of private business and probation service or a team of social workers can be found in the Netherlands, Portugal and Switzerland. The private enterprises supply and install electronic monitoring equipment, and the probation service is responsible for the social work during the supervised time. In Hesse a team of social workers looks after the monitored persons, whereas a semi-public enterprise carries out the technical part. In Sweden, the probation service alone is in charge of the programme. In Italy the police implement the measure. The prison staffs are responsible for the project in Catalonia.

Programmes involving the probation service or a team of social workers follow the assistance approach. Assistance is given in various ways concerning practical aid with daily routines, life style etc. On one hand there can be observed a strict practise of unannounced home visits, alcohol/drug controls, compulsory treatment and personal change programmes like in Sweden. On the other hand a more lenient practise is preferred including the consumption of alcohol, free time on weekends, time for socially accepted activities etc. as in Hesse, the Netherlands and Switzerland.

Target groups for electronic monitoring consist of many types of offenders though differences appear in the case of front-door and back-door programmes. In principle, front-door programmes are considered for offenders with short term imprisonment for minor offences. A typical offence is drunk driving in Sweden and in the Swiss Canton of Vaud, whereas in other countries such as England, Hesse, and the Netherlands a range of minor offences can be observed. Even former drug addicts in substitution programmes may participate in the Swiss Canton of Basle and Hesse. Fine defaulters and persistent petty offenders are regarded as eligible target groups in England. In back-door programmes inmates with serious crimes (sex offenders) are either excluded (England) or may participate after careful assessment (Catalonia, Netherlands, Sweden). In comparison with front-door programmes the assessment of inmates follows stricter criteria. The

focus lies on aspects of security and eligibility in conjunction with a stronger treatment approach.

2 Research on Electronic Monitoring in Europe

Every electronic monitoring programme is followed by an evaluation except in Italy.[12] In most of the countries represented in the workshop a research unit of the Ministry of Justice or the Department of Law or Criminology of a university was responsible for the evaluation of the monitoring programme. Only the German part of Switzerland engaged a private research institute to evaluate their programmes. The use of a quantitative approach was dominant in the research projects; only in France, Sweden and Germany additional qualitative methods, e.g. narrative interviews, were applied.

The main questions of the research programmes concerned the description of the people under electronic control (age, sex, social status, type of crime committed, etc.) and the course of the monitoring programme (number of monitored persons, length of the monitoring measure, infractions, success and failure rates). When pilot programmes were evaluated, the common main questions were whether electronic monitoring was generally feasible, whether the target group was of sufficient size, whether the monitoring technique worked and what costs were to be expected by the measure. In some projects the implementation process itself was the object of the evaluation, usually by ascertaining the opinion of the judiciary staff concerning the electronic monitoring programme. Two other important issues of the research projects dealt with the recall to prison rates and recidivism. The qualitative studies focussed especially on the conditions of the monitored people. The problem of net-widening played a secondary role; actually only in Switzerland, France and Germany were efforts undertaken to evaluate these effects.[13]

In spite of the differences in the research projects there are some results which are common to all European countries: Electronic monitoring is generally feasible, both concerning its implementation in the judiciary system and the monitoring technique used by the programmes. The monitoring time varies from a few days of being under control to up to one year while

[12] See contribution of *Alessandro di Giorgi*.

[13] In England, the Netherlands and Sweden studies concerning net-widening were already carried out in the late nineties.

most of the measures take three or four months. The failure rate is fairly low in all recent programmes, though the criteria for what is considered failure varies considerably. In some electronic monitoring programmes every infraction of the curfew scheme leads directly to imprisonment, while others react much more leniently.

The successful use of electronic monitoring does apparently not depend on the target group. Even "difficult" offenders like former drug addicts in methadone programmes were able to participate successfully. The size of the target group is smaller in front-door programmes than in back-door programmes. The electronically monitored persons and their families are usually satisfied with their situation. Electronic monitoring does not increase the amount of domestic violence considerably if the monitored persons do not have to stay at home 24 hours a day. On the contrary, wives rather appreciate their husbands spending more time at home than before.

3 Electronic Monitoring and Net-Widening

The object of the first round table discussion was "Electronic Monitoring and Net-Widening". *Karl F. Schumann* opened the discussion with an introduction of the term of "net-widening". He then outlined that the most relevant type of this phenomenon with regard to electronic monitoring would be the development of stronger and new nets. The measurement of such effects could consist of evaluating the time a person is under the control of the criminal justice system or in determining whether the monitored offenders come predominantly from a population which would be treated more leniently or more severely if electronic monitoring was not available. Another way to determine the scope of net-widening is to compare the size of the population of prisoners and parolees before and after the introduction of electronic monitoring. His final point was that it was essential to measure not only the scope but also the mechanisms creating it or contributing to it. Only this combined research strategy would allow the specification of the exact relationship between the behaviour of the criminal justice system and net-widening effects.

Pierre V. Tournier introduced the distinction between virtual and real alternatives to prison. Real alternatives definitely reduce the amount of time actually spent behind prison walls, whereas virtual alternatives increase the duration of detention. Even in the case of prereleased prisoners there could be net-widening if the courts changed their manner of judging in reference

to the new legislation concerning electronic monitoring. In France a study was planned to measure these changes by comparing the dossiers of all offenders the year before the introduction of electronic monitoring with those who were sentenced in the first year after the beginning of the pilot project.

After these presentations the following subjects were discussed:

First, some participants remarked that the image of the net was inadequate, because it implied that social control was a priori something negative, which is not the case. Besides the question if there was net-widening, it was also necessary to ask for the quality of the specific manner of social control. Moreover, it was outlined that net-widening was a special manifestation of an unintended result. This meant that good intentions could go wrong and that the criminal justice system had to learn to also reflect upon these side effects. Finally it turned out that the question of net-widening was closely tied to the question of cost effectiveness. In the case of net-widening, savings could not be expected by the use of electronic monitoring.

4 Social Work and Electronic Monitoring

The second round table began with the presentation of *Michael Lindenberg*. He started with the question of how it was possible that some uncertainties about electronic monitoring were still unresolved, especially the net-widening problem and the question of whether electronic monitoring helps to alter behaviour. The answer to this question lay in the fact that there were two distinct schemes of assessing electronic monitoring, the practitioners' and the academics'. He further outlined that the use of electronic monitoring was improved by the rise of managerialism in social work, because it referred better to economic terms like 'input' and 'outcome' than the usual dialogue. This would ultimately remove the dialogue from the human interaction between client and social worker.

Mike Nellis described the process of the implementation of electronic monitoring in England. Since the first trials of electronic monitoring, the representatives of the NAPO (National Association of Probation Officers) were opposed to it. This prompted the Home Office to introduce electronic monitoring apart from social or probation work, rather as a private sector initiative. At the same time the criminal justice system shifted away from a humanistic approach towards a managerial-surveillance paradigm. The first contact between probation officers and electronic monitoring came with the

New Labour curfew scheme, which facilitated the early release of short term prisoners. Probation officers had more contact with tagged offenders and thus became more aware of the tag's potential, but they also recognized the dangers of consolidating the private sector presence in criminal justice. He stated that today a transformation in the nature of offender supervision is taking place, in which surveillance will play a bigger part.

Norman Bishop underlined that there had to be an ethical basis for the implementation of electronic monitoring. He referred to the Council of Europe Recommendation No. R (92) 16, concerning community sanctions and measures. Actually, he saw no problem in joining the recent social work based on these ethical standards with electronic monitoring. But he also warned of future forms of electronic monitoring like behaviour controlling implants, which raise many ethical and legal issues. The privatization of electronic monitoring and social work was a questionable development as well, because it was not evident that private institutions doing social work would act with the same care as public social work did. The way it was recently used, electronic monitoring would have a future in Europe, but the development of the monitoring technique had to be observed very cautiously.

Dick Whitfield began his presentation with the remark that electronic monitoring was initially opposed by many social work organizations. Today, however, there is growing evidence that electronic monitoring could work together with social work and present advantageous opportunities for the social workers. While social work with offenders always was a mixture of assistance and control, the use of electronic monitoring made the control more apparent, but in a more impersonal way, which many offenders were much more able to accept. Consequently, the role of social workers was changing, too. There were significant new demands on social workers. They, too, had to work in a disciplinarian framework; they had to develop new analytical skills and the ability to work with the offenders' families.

The discussion after the presentations stressed two topics: The first topic concerned the question of whether ethical standards were necessary for the use of electronic monitoring in the context of social work. While some members of the workshop argued that ethical discussions were of no help in this context because any ethical standard could be found in either basic human or constitutional rights, others outlined that the standards applied by criminal justice system always rely on ethical questions. The second topic was how humanistic probation on one hand and surveillance and control on

the other hand could be brought together in a reasonable and constructive way. Most of the workshop members agreed that, even if this discussion is a very old one, the answer to this question could lead to a rediscovery of social work in the criminal justice system.

5 The Place of Electronic Monitoring in the Development of Punishment

The presentation of *Jean-Charles Froment* opened the third round table discussion. He proposed the perception of electronic monitoring as a manifestation of a progressive change towards a "society of control". This new situation makes the distinction between public and private space disappear, a distinction which, nevertheless, the concept of a liberal society is based upon. This development causes new risks which have to be identified in order to create new defences for the human rights.

Hans-Jörg Albrecht stated that, seen from the recent changes in the development of punishment, the question to be posed was whether and how electronic monitoring would fit into a sanction system. Electronic monitoring was in principle based on the concept of a citizen, who has a home, conventional daily activities and who is willing to cooperate with the representatives of the sanction system. It would play a role in systems of sanctions that try to offer something in between diversion, non-prosecution policies and fines on the one hand and physical control through imprisonment on the other hand.

In the following discussion most of the workshop members agreed that electronic monitoring would have a future, whereas they were quite in disagreement about what would or should be the place of electronic monitoring in the criminal justice system. Some declared that electronic monitoring should be introduced as an intermediate sanction between probation on one hand and imprisonment on the other hand. Others argued that electronic monitoring would probably play a greater role in the surveillance of offenders who have already been released from prison. But the participants agreed that even in societies whose criminal justice system is based on a concept of control like in the Unites States, electronic monitoring would play only a minor role in the surveillance of offenders.

6 The Future of Electronic Monitoring in Europe

In his closing speech, *Robert Lilly* gave a distinct description of the situation of electronic monitoring in the United States. He underlined that the role of electronic monitoring in the United States was not as important as it might seem from a European point of view. Compared to six million people under some form of criminal justice supervision, the number of 100,000 daily monitored offenders was quite small. Incarceration was still seen as the most utilitarian response to crime.

In the future, electronic monitoring in the United States might have a new chance for two reasons. First, since 9/11 the balance between security and civil liberty has shifted. Governmental secrecy, intensive surveillance, assaults on privacy and war-like appropriations for the nation's military have been rising. Second, there was a certain rethinking of reliance on imprisonment referring to reflections about how to reduce prison costs. The use of GPS-based systems would very likely play an important role in the development of electronic monitoring. Concerning Europe, the appropriate question was not whether electronic monitoring had a future, but what will influence its future. The combination of three factors might establish a climate favouring the expansion of electronic monitoring: Firstly, Europe has been experiencing a remarkable shift to the right during the last few years that has manifested itself through a rise in rightwing populism, law and order or anti-immigration issues. Secondly, there was an increased interest in cost effectiveness and technological solutions within criminal justice. Thirdly, a certain progress towards commercialization of punishment and social control could be observed in Europe, still largely neglected by the social sciences. Therefore, the future of electronic monitoring in Europe will not only be based on the needs of criminal justice, but also on these other issues.

He concluded with two recommendations: The criminal justice system should design well worked out programmes on electronic monitoring before approaching monitoring equipment vendors. In the same way, it was essential to expect technology-related problems in order to counter them wisely.

One can arrive at the following conclusions from the workshop. The exchange between practitioners and scientists turned out to be productive. Their interaction supported the comprehension of each other's views and led to new and unforeseen questions. One example is the realisation that the monitored person may benefit from this kind of impersonal control. All participants agreed that electronic monitoring definitely has a future, but in

particular several academics were concerned about the further development of the technical equipment, for example behaviour controlling implants that evoke ethical problems. One challenge to the future of electronic monitoring is to elaborate on an ethical standard for the implementation of electronic monitoring. Another crucial point is the future of social work in connection with electronic monitoring. Former misgivings concerning the disappearance of social work have not yet been confirmed in practise. Most of the participants – especially practitioners – were convinced that the usual assistance approach combined with technical control might lead to a revival of the treatment idea and an appreciation of social work. Concerning the question of how net-widening should be evaluated, the discussion showed that this topic is one of the most complex questions in criminology. The role of electronic monitoring in a „society of control" is obviously a topic of a rather academic discussion. But as in many other fields concerning the relationship between governmental authorities und civil rights, the events of 9/11 also profoundly changed the context for the debate about the future of electronic monitoring.

Electronic Monitoring: Hopes and Fears

RENÉ LÉVY

As will be shown in the following chapters, electronic monitoring is now in full swing in Europe. As an introduction, I intend in this chapter to broach several of the key issues that will be addressed below in greater detail. And to begin with, I would like to define what is actually at issue.

The English expressions, *electronic monitoring* or *electronic tagging* and the French *placement sous surveillance électronique* are vague and ambiguous. They refer to the technique rather than to the object or the content of the surveillance, whereas what interests us here is an electronic device for the remote control of the presence of a given individual in a given place.

Theoretically, this surveillance could be applied – through the use of appropriate devices, which already exist – to three situations: constant monitoring of the movements of the person involved, detection of his or her presence in a prohibited place[1] and assignment to a given place (usually the person's home) for a period of time. In practice, the most widespread application, on which we will focus here, is the latter one, corresponding to what is called *home arrest, home confinement* or *home detention*[2], and more specifically *electronically monitored home confinement* in English, or *assignation à domicile sous surveillance électronique (ADSE)* in the original French terminology.[3] This measure involves the use of the first genera-

[1] There has been some mention of the possibility of prohibiting access to a stadium to previously identified troublemakers, Nellis (1991): 176.

[2] Renzema (1992).

[3] The expression was first used in the 1996 Cabanel report, Cabanel (1996); the Bonnemaison report, in 1989, which first considered this measure, simply spoke of *surveillance électronique* Bonnemaison (1989); the December 19th 1997 Act finally adopted the term *Placement*

tion of monitoring devices, which are capable of viewing a single place and determining whether a given individual is present or not. But it is also important, and I will have more to say about this, to visualize the forthcoming implementation of second generation devices which will be able to do real-time monitoring of moving individuals and identify their location (using the GPS or Galileo systems).[4]

In the context of the explosion in the number of people durably managed by the criminal justice system in the USA in the 1980-1990s - which explosion was not limited to correctional facilities but, as we too often tend to forget, also affected community-based solutions and release on parole in particular - electronically monitored home confinement seemed to be an ideal solution. It was easy to implement and apparently inexpensive in terms of investment and running expenses, but nonetheless enabled the continuous, remote surveillance of target individuals, thus seemingly responding to the twofold concern of relieving correctional facilities of a part of their population (through early release or avoidance of incarceration), while ensuring the intensive surveillance of sentenced individuals within the community.

EM is a good example of an orphaned technique, so to speak: one that is in search of an application, and is not put to use until some conducive circumstances arise. The feasibility of device for remote electronic surveillance was demonstrated in the late 1960s by an American psychologist (*Schwitzgebel*) for therapeutic purposes, finally really came into its own in the early 1980s, thanks to two converging factors. There were advances in micro-electronics, telephonic and computer science, which fostered miniaturization and lowered the cost of the devices. In addition, the reorientation of community-based management in a more coercive direction, with intensive probation supervision (IPS), was supposed to reduce recidivism and

sous surveillance électronique (PSE). Some people suggest that different degrees of home confinement be given different names, but do not furnish any clearcut criteria for differentiating them, nor in fact do they agree among themselves as to this nomenclature, which is superfluous, in my opinion (Papatheodorou (1999): 112; Mampaey; Renaud (2000): 25).

[4] On variations in first-generation systems and in the new systems presently being developed, see Mainprize (1996); Perrin; Kouliche (1999): 28ff.; Mampaey; Renaud (2000). It should be pointed out that second-generation systems are used, for instance, to follow the movements of the bears that have been reintroduced in the French Pyrénées mountains, and a North American manufacturer also sells a GPS transmitter in the form of a wristwatch thanks to which worried parents may locate their children, provided they take out a subscription (Wherify Watch, www.wherifywireless.com). As we all know, car manufacturers are now making this system available on an optional basis ("Le GPS se démocratise", *Le Monde*, December 16-17 2001, p. 27), and it is installed in some public transportation vehicles.

above all was expected to be instrumental in solving the problem of the prison population explosion and its attendant costs.[5] In this perspective, EM had two advantages. It was more coercive than traditional community based surveillance techniques, and more "humane" than imprisonment. Thanks to this supporters of community based solutions, reproached with over-leniency in the hyper-repressive atmosphere of the '80s in the United States, were able to stand up to their opponents and to reinforce the IPS programs, which were showing their limits.[6] In this context, such traditional measures as curfews and house arrest, which had become quite marginal, were given a real face-lift.[7]

The history of penology, at least since *Tocqueville* and *de Beaumont*, is for a large part the history of the international circulation and reception of ideas and innovations in the field of the management of offenders. It seems to me that this history remains to be written where EM is concerned. While its beginnings are known, and it is easy to identify the phases of the importing of the device in various countries, it is much more difficult to determine the intellectual channels and the individuals and pressure groups that contributed to promoting it, the industrial relays through which the equipment was manufactured, the opposition it met and the reasons for the success or failure of its implementation.

It is a known fact, for example, that in Great Britain a pressure group called the Offender Tag Association (OTA), created by *Tom Stacey* – a journalist and prison visitor, campaigned for EM whereas the professional organization of probation officers (NAPO) was violently opposed to it, to the point where this led the government of the time (which was only too eager to do so) to resort to the private sector.[8] In France, on the other hand, the situation is unclear, and the list of the individuals consulted by the two members of Parliament who successively proposed the establishment of EM does not give any clue as to who gave them the idea.

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5 On the early developments of EM in the USA, see Ball; Lilly (1988): 34ff; Renzema (1992). For an overview of IPS, see the articles published in *Crime and Delinquency* (1990; 36, 1) and more specifically, Clear; Hardyman (1990); Tonry (1990); von Hirsch (1990); to a large extent the considerations on IPS are transposable to EM.

6 Hudy (1999), p. 19ff; Mainprize (1996); Tonry (1990).

7 Ball; Lilly (1988).

8 See Nellis (1991): 168-171 and Nellis (2000) for a detailed account of the development of EM in the UK. See also Stacey's testimony, in Nellis (2001). According to a recent survey, probation officer's hostility seems to be decreasing (Nellis (2000)).

One thing does seem sure, however: as opposed to what occurred in the USA, where the development of EM was spectacularly rapid, in other countries the authorities were very cautious in taking that path. In France in particular, they were even markedly reticent, often encouraged by the hostility of the professional organizations involved. The experiments devised for this system in most instances are indicative of this reluctance.

Although the penologic context is different, the arguments used in Europe to promote EM hardly differ from those advanced in earlier days in the USA.[9] Great Britain was the first to transport the measure to Europe in the late 1980s, on the basis of a government report aimed at promoting more intensive non-custodial measures expected to reduce recidivism and prison overcrowding.[10] The same arguments were used in the Netherlands[11], Belgium[12], Canada[13] and Sweden[14].

In the case of the French, EM was first mentioned in an official report dating back to 1989, written by a socialist Member of Parliament, *Gilbert Bonnemaison*[15], on "The modernization of the public corrections department"[16]. EM was mentioned in connection with a numerus clausus system for prisons, designed to limit overcrowding and the subsequent violations of human rights and the human dignity of inmates. In this perspective, the idea was to select those prisoners who were most apt to benefit from EM, either prior to sentencing (in pre-trial detention) or after sentencing (mitigation of punishment) so as to make room for new arrivals. The report also considered the possibility of using EM as an alternative to short prison sentences.[17]

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[9] Papatheodorou (1999).

[10] Nellis (1991): 169. The document is the Green Paper entitled *Punishment, Custody and the Community* (Home Office, 1988). This writer gives a detailed analysis of the English controversy in the '80s. One noteworthy peculiarity is the existence in GB of a pressure group (The Offender Tag Association, OTA), formed as early as 1982 by a journalist and prison visitor to promote this measure. For an evaluation of these first experiments, see Mair; Nee; Barclay; Wickham (1990).

[11] National Agency of Correctional Institutions (1996).

[12] Kaminski (1999): 631.

[13] With the noteworthy exception of Quebec, which opted for staff increments to cope with the legal requirement that the supervision provided by its probation agencies be reinforced, whereas the other provinces all adopted EM (Kaminski; Lalande; Dallaire (2001)).

[14] Hudy (1999): 26; Tomic-Malic (1999).

[15] When the left came into power in 1981, this representative played a major role in the redefinition of security-related policies.

[16] Bonnemaison (1989).

[17] The Bonnemaison report is not devoid of contradictions, since it mentions pretrial prisoners only at one point (p. 25), and both pretrial and sentenced prisoners at another point (p. 30).

On the basis of the Florida example (and of projects under study in Great Britain), this report contended that EM constitutes "an effective means of punishment, whereas it is too often believed that prison is the only true punishment" (p. 28)[18], while enabling the person to maintain family ties, keep a job or do training, and that its cost would be "much lower than the cost of imprisonment"[19].

The *Bonnemaison* report thus broadly outlined what was to become the French scheme, but it did not receive any immediate follow-up. The issue was taken up again in 1995-96 in another parliamentary report by a right-wing senator, *Guy-Pierre Cabanel*, entitled "For a better prevention of recidivism"[20]. Following a review of projects already in use or in the experimental stage in other countries (Great Britain, the Netherlands and Sweden), the *Cabanel* report also drew the conclusion that EM was an efficient, financially worthwhile means of preventing recidivism and combating prison overcrowding. The scheme it proposed aimed primarily at using EM as an alternative to short prison sentences and for the mitigation of longer prison sentences in their terminal phase. The author of the report was definitely more reserved as to the use of EM in the pre-sentencing phase.

Less recourse to prison, effective prevention of recidivism and low cost were thus the leitmotivs of the development of EM around the world, but also the most controversial aspects of the measure, viewed by many as a Trojan horse for a new social and penal paradigm rooted in the all-inclusive surveillance of individuals. These, then, are the questions I wish to discuss briefly. My discussion is divided into two parts:

- What are the alleged advantages of EM?
- Are we on our way to a surveillance-pervaded society?

However, it excludes the replacement of pretrial surveillance by EM, for fear of its extension to individuals for whom no pretrial detention had been ordered.

[18] This echoes the criticism frequently voiced in the USA, whereby community-based measures are only "a slap on the wrist of delinquents" (Tonry (1990): 184).

[19] The Bonnemaison report did not conceal the shortcomings of EM, including the risk of net-widening, social discrimination and violation of the person's dignity, but it did relativize or refute them (p. 29-30).

[20] Cabanel, 1996; in the last analysis, it was thanks to the persistence of senator Cabanel that EM was legally adopted in 1997, following withdrawal by the government of its original project, under fire from the judges and lawyers' professional associations (Kuhn; Madignier (1998): 676).

1 The alleged advantages of EM

At the very heart of the evaluation of EM, and actually of any alternative to imprisonment, there is the issue of whether it really substitutes for imprisonment or for something else. This issue is usually coined as "net-widening", but it is in fact more complex. As *Crawford* points out, in a synthetic analysis of various studies, finer distinctions may be made: besides or instead of "(...) 'net-widening' (in which new populations are dragged into the criminal justice net)", we can also find "'mesh thinning' (in which the degree of interference in the lives of those involved is increased), 'penal inflation' (in the which the degree of severity of interventions is increased), 'institutional blurring' (by which the boundaries between 'inside' and 'outside' the system are confused), and 'transcarceration' (by which those incarcerated move from one institution of incarceration to another)"[21]. All of these processes (except for the last one) are susceptible of operating in EM.

The fact is that the main effects expected of this measure can be achieved only if EM is effectively applied to a population of former prisoners or of people who would *unquestionably* have been sent to prison. In the opposite case, EM does not reduce the prison population nor does it cut the overall costs of managing sentenced offenders. There remains the question of its effect on recidivism.

1.1 Reduction of prison overcrowding

Utilization of EM by the criminal justice system may be divided into three categories:

- As a means of control in the pre-sentencing phase of the penal process; that is, as a form of pre-trial surveillance to replace pre-trial detention;
- As the main sentence, pronounced by the judge;[22]
- As a way of mitigating the sentence, eventually serving as an alternative to a short prison sentence pronounced by a judge, under certain circumstances, or else as an intermediate phase between detention and release, possibly combined with other measures.

[21] Crawford (1997): 52. For a more thorough discussion, see Blomberg (1995). See also Palumbo, Clifford; Snyder-Joy (1992): 239-240.

[22] These first two uses represent front-end programs, while the third is a back-end program, according to Tonry's classification (1999).

Several difficulties arise in any attempt to analyze the effect of EM on the size of prison populations.

1.1.1 Is replacement a reality, and what is replaced?

The eventuality of this measure replacing imprisonment is not the same in the three instances, depending in how it is used, but it is unanimously believed that "the earlier in the penal process the type of sentence-serving is decided, the greater the risk of net-widening (...)"[23]. It is preferable then to wait until a prison sentence has been meted out, since it is very difficult to be sure that it really would have been given had EM not been available. This is why the solution retained in many countries is the ability to convert a short prison term into EM at the sentence enforcement stage ("back-door" program).

However, even in the latter case there is still the risk that the sentence pronounced may anticipate the ability to demand the EM alternative, and that a judge will give a prison sentence on the (perhaps misguided) assumption that it will be converted to EM.[24] The opposite reckoning is also encountered, with judges attempting to prevent the implementation of EM by pronouncing a heavier sentence so that the offender does not comply with the prerequisites for an alternative sanction. Furthermore, even when substitution is granted by a judge other than the one who pronounced the prison sentence, as is the case in France, one sometimes wonders whether it is really being used as a replacement. Indeed, in the French case, judges in charge of sentence enforcement (JES) have several alternative sentencing options when faced with an unsuspended prison sentence of less than one year. This means that even without EM, the prison sentence would not have led to incarceration, and that EM may simply be a substitute for another alternative sentence-serving measure. The same is true for the mitigation of the terminal phase of a longer prison sentence.

The situation is similar for the pre-sentencing phase. How can one be sure that EM is actually used as an alternative to detention prior to sentencing rather than to pre-trial surveillance or to no control at all?

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[23] Kuhn; Madignier (1998): 675.

[24] This kind of anticipation occurs in France in the periods prior to the traditional amnesties following the election of each new president of the Republic.

1.1.2 Does EM actually reduce the prison population?

Even if we assume that EM is really used as an alternative to imprisonment, the outcome is not necessarily a reduction in the prison population. Here too, different hypotheses must be considered:

- In the case where a sentence of imprisonment is purely and simply converted into EM by the JES (substitution from the outset), there is avoidance of incarceration, with no reduction of the prison population. The same is true when EM is decided directly by the trial judge, when this is allowed.
- In the case of end-of-sentence mitigation there is effectively additional departure from prison, but only in the case where no other alternative measure was feasible.

More generally speaking, the idea that EM is authentically an alternative rests on two postulates. The first is that the number of EM pronounced offenders will have to be sufficiently large in the long term as to have an effectively measurable, significant impact on the prison population – be it in terms of early departure from prison or in avoided entries. Such is not the case in most countries, except perhaps in the UK[25], and we find ourselves in the paradoxical situation of a series of experiments whose overly limited character prevents them from producing the desired effects.[26]

The second postulate involves the idea that such substitution may take place spontaneously, in the absence of any regulation of the correctional supply. Now the sentences pronounced and their mitigation, which constitutes the two sources of EM, are produced by a great many independent prescribers. As *Bonnemaison* rightly saw, if there is no strict numerus clausus for prisoners, every discharge and prison entry avoided thanks to

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[25] Lilly; Nellis (2001); from a survey of the "Home Detention Curfews" program launched in January 1999 as implemented in Northern England, these authors conclude : "(...) it has been undertaken on such a large scale that there can be no doubt that it has helped keep the prison population stable" (p. 65). Indeed, according to a Home Office study (Dodgson, Goodwin, Howard, Llewellyn-Thomas, Mortimer, Russell; Weiner (2001), p. iii-ix), in the first 16 months of operation, 21'400 prisoners have benefited from this program, i.e. 30% of eligible inmates ; on average, 2'000 were under EM at any given time, with a 5% recall rate ; average length of HDC was 45 days. The scheme is said to have "reduced *demand* for prison places by around 1'950 places in the first year (2'600 in the first 16 months)" ; but the authors also indicate that "many of the prison places freed may be used to reduce overcrowding or *house different prisoners*" (p. 42, my emphasis). Thus, it seems that the scheme accelerates the turnover in prison places, rather than actually reducing the prison population or bringing about a decrease in places.

[26] Except perhaps in Sweden: Landreville (1999): 111-112; Perrin; Kouliche (1999): 12-13.

EM may be countered, so to speak, by another unsuspended prison sentence that is not converted into EM: this is known as the "revolving door" effect. Even if the rising use of EM succeeded in slowing the growth rate of the prison population, one may well imagine the simultaneous growth of the two populations, as is in fact the case in the USA.[27]

Consequently, the question of the cutback in the prison population thanks to EM raises formidable evaluation problems.[28] On the whole, most experts feel that there is no proved positive effect, even in the USA.[29]

Be that as it may, the issue is perhaps now losing some of its topicality, in that the use of EM differs increasingly from its original destination, with the growing tendency to resort to surveillance of some of the movements of sentenced offenders. This is the case of attempts to prevent people who have committed violence from returning to the home of their victims (the receiver is then placed in the latter's home and sets off the alarm when the monitored person approaches it). This trend will necessarily be reinforced by the development of second generation systems.

1.2 Prevention of recidivism

The obsession with recidivism as a motivating force for penal innovation is of course exploited by manufacturers of electronic devices who, here too, promise tremendous success, despite the criticism that may be addressed to this evaluation criterion.[30] Advocates of EM link the problem of recidivism to the prison question, on the basis of the argument that the main advantage of EM resides in avoidance of the harmful effects of imprisonment on both the offender and his or her entourage.

The Valuation of the effectiveness of EM in this respect may be made either on its own terms – what proportion of those individuals subjected to the measure "backslid" over a given period of time? – or as compared with

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[27] This is the case in Florida: Baird; Wagner (1990).

[28] One example of this difficulty may be found in the evaluation of Florida's diversion program, which shows, firstly, that after 6 years of existence (1981-1987), and despite the fact that it is the most ambitious program of its kind in the USA, the number of admissions to prison increased sharply. But this rise is linked to the new much more severe measures taken in the interval. Now in this context, if no alternatives had been available, 50 % of sentenced offenders who benefited from a probationary measure would have been sent to prison. The program may therefore flaunt a success rate of 50 %, which is very high, but it still did not prevent the constant rise in the number of incarcerations ... (Baird; Wagner (1990)).

[29] Landreville (1999); Tonry (1999).

[30] Landreville (1982).

detention or other alternatives to prison. The latter comparison is obviously the most interesting, but in many countries it is unsupported because of the insufficient number of people under EM. Even in the USA, by far the main user of EM with about 100,000 measures[31] currently being applied, no systematic evaluations are available, and those findings available are not encouraging.[32] An evaluation of three Canadian programs also tends to indicate that EM is not significantly better than other measures in this respect.[33]

Actually, the question of evaluation of the comparative effectiveness of EM and imprisonment with respect to recidivism raises a whole series of basic, underlying questions:

- First of all, any alternative to prison rests on the selection of those cases judged most apt to benefit from the new measure, and consequently on the definition of a new group that differs from the previous one in ways that are deemed the most important for the new scheme. The consequence is that the two groups are no longer really comparable: any difference that may be observed in the respective outcomes will be essentially ascribable to the selection operated beforehand. In other words, if the "best cases" are selected, as they inevitably are, there is nothing surprising in the fact that their results are better, and if they are not, the relevance of the selection criteria should be questioned.[34] As the head of one rehabilitation agency participating in the EM experiment in France told us, the real experiment would have consisted of emptying the local prison and placing all of the prisoners under EM and then measuring the results.
- Theoretically, we can of course devise an experiment based on the random choice among those pre-selected individuals who will effectively benefit from the new measure, with the poor losers being sent back to prison to serve as a control group. However, this procedure raises some ethical (and perhaps legal) problems.
- More radically, *Tonry* points out that the comparison between prison and community based measures is meaningless, since it amounts to

[31] Landreville (2000): 110.
[32] Byrne (1990): 25; see also, Smith; Akers (1993).
[33] Tonry (1999) and Bonta; Wallace-Capretta; Rooney (2000).
[34] At the same time, this selection procedure possibly removes those individuals who had the best chances of succeeding with a different measure, thus reducing the effectiveness of the latter measure.

comparing a situation – incarceration – which prevents the person from committing any offence in the outside world with another, sentence-serving within the community, which – by definition – is unsuitable for achieving the same result. Consequently, a group of people who serve their sentence within the community will necessarily have a higher rate of recidivism than it would have had if the sentence had been served in a correctional facility!

- The main difficulty in evaluation lies in isolating the effects specific to electronic monitoring from those generated by the accompanying measures. In particular from the more or less intensive attention these people receive from social work agencies and the implementation of "therapy" programs for some specific problem (especially when the measure is applied to specific behaviour such as drug abuse[35], drunken driving[36], etc.).[37] According to the above-mentioned Canadian study, the intensity of care is more decisive than the electronic device itself.[38] It should be noted in passing that these effects may be positive, but they may also be negative, for instance when closer surveillance reveals the existence of other faults that would otherwise have gone unnoticed, thus tending to increase the failure rate for the measure.[39]

This brings us to the question of the cost of this system.

1.3 Low cost

EM is less expensive than prison, a fact which is perhaps the main reason for its development.[40] What we first notice is that this brings us to the omnipresent problem of net-widening, since the actual materialization of the promised economic savings implies that EM effectively replaces imprisonment. Conversely, if EM is simply another element in the range of avail-

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[35] Jolin; Stipak (1992); Watts; Glaser (1992).

[36] Lilly; Ball; Curry; McMullen (1993).

[37] On the increasing "fragmentation" of the EM market, see Landreville (1999).

[38] Bonta; Wallace-Capretta; Rooney (2000). Another study covering a program for drug abusers and combining EM and a drug-weaning program achieved better results, in terms of recidivism, for those people who completed the treatment course. However, this success was tarnished by the fact that close to half of the individuals did not succeed in completing treatment (Jolin; Stipak (1992)). Similar results were found for the IPS program without EM; Petersilia; Turner (1990).

[39] This perverse effect is frequently mentioned in evaluations of IPS, see Tonry (1990): 178.

[40] Corbett; Marx (1992), Byrne (1990), Baird; Wagner (1990).

able sanctions and measures it will represent an additional expenditure. The same is true if it replaces less expensive measures.

The monetary argument is usually based on a comparison of both investment and running costs. Logically, there is no doubt that it costs less to invest in the purchase of electronic devices than to build a prison with a given capacity. It also seems obvious that the operating cost is lower for EM, as shown by the evaluation conducted by *Lilly et al.* on the first 7 years of running the Palm Beach, Florida EM program, but much of the amount saved comes from the fact that monitored individuals had to pay a tax designed to cover the cost of the program.[41]

However, the calculation consisting of determining the average cost per person in custody or under monitoring by dividing the total investment and operating cost of each type of punishment by the number of individuals involved and introducing a time factor when necessary to account for the length of enforcement remains quite unsophisticated.[42] *Tonry* rightly points out that to be accurate, the effects of (non) substitution should be taken into consideration, and that the outcome may vary enormously depending on the respective proportion of individuals committed to EM and removed from prison on the one hand, and of other community based measures less expensive than EM on the other hand.[43] Furthermore, the relevant figure is the marginal cost of a measure, not its average cost: now the marginal cost of one additional prisoner is low, meaning that to achieve substantial savings, a prison-avoidance program would have to result in the closing of a facility or the cancellation of a construction project.[44]

Another factor incremental to the cost of EM is the attendant social care. It goes without saying that the Swedish program, which calls for a caseload of about ten EM cases per probation worker is much more expensive than the French program in which probation workers handle about one

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[41] Lilly; Ball; Curry; McMullen (1993). The practice of obliging monitored individuals to pay a tax is frequent in the USA and Sweden (Landreville (1999): 117); it increases the punitiveness of EM and tends to introduce an element of financial discrimination among potential candidates for the measure. In France, monitored individuals are only obliged to pay for the telephone expenses connected with the scheme.

[42] This is the case in the Palm Beach study, where the authors attempt to include the fact that judges generally compensate for the leniency of the EM sentence in comparison with imprisonment by considerably lengthening the sentence (Lilly; Ball; Curry; McMullen (1993)).

[43] A good example of varying cost effectiveness of EM depending on the "mix" of inmates can be found in a review of the Arizona program (Palumbo; Clifford; Snyder-Joy (1992): 236-239).

[44] Tonry (1990): 180-183; Clear; Hardyman (1990): 55-56, point out that when a prison-building project is dropped, the savings are only virtual.

hundred cases of all sorts, of which EM cases represent only a small percentage.

But over and above this, economic calculations do not take into consideration a whole range of factors that make EM preferable to imprisonment, and are related to the fact that the monitored person can continue to lead a practically normal family and social life. From the strictly economic standpoint, he or she can continue to earn a living and at the same time lead the life of a consumer and tax-payer. As far as family and social life is concerned, EM reduces the risk of precarious living conditions for the family, and may have a positive effect on the physical and mental health of its members, all of which may have noticeable financial repercussions for society.

All in all, the arguments usually advanced in favour of EM do not seem convincing. Even if the evaluations available are spotty, most specialists contend that there is no proof either that EM has a decisive effect on the size of the prison population or that it is particularly effective in combating recidivism. Moreover, the fact that we have doubts as to its actual replacement of imprisonment ruins the economic argument when it is compared with other less expensive alternative measures. The fact that apparently it not only subsists despite these negative judgments – as did many other alleged penal innovations before it – but is even developing, leads many writers to wonder about the signification of EM in the history of criminal justice. It is this point that I would like to address now.

2 Are we on our way to a surveillance-pervaded society?

As every specialist knows, the penal applications of the electronic bracelet were conceived (so we are told) by the inventive mind of a New Mexico judge who was a science fiction comic strip fan.[45] It is not surprising then, that this sort of invisible electronic leash in the hands of the authorities lends itself to a terrifying uchrony, or to borrow *Cohen*'s term, to a sort of *dystopia*[46].

In his book *Crime Control as Industry*, published in 1993 – and bearing the eloquent subtitle: "Towards Gulags Western style" – the famous Norwegian criminologist *Nils Christie* said the following about developed

[45] On the history of the method, its technical developments and early uses, see Renzema (1992).

[46] Cohen (1985): 149 ff.

countries: "God and neighbours have been replaced by the mechanical efficiency of modern forms of surveillance". Many writers view this trend as the starting point for a new form of social control.[47]

And the fact is that the development of surveillance techniques – all susceptible of automation– be they systems for the interception of communications or telecommunications, the constitution of computerized databases, the automatic detection of dangerous and/or illegal substances (drugs or explosives), systems for visual or thermal recognition (ranging from urban video surveillance to the spy satellite), or digital or biometric identification and detection (used as keys for access, to measure blood alcohol levels or drug intake) or remote location (using GPS) is absolutely staggering.[48]

The pervasion of all social relations by technical devices capable of tracking individuals in whatever they are doing, including in their private life (even if that is not necessarily their original destination) seems to reflect the transition from a *disciplinary society*, analyzed by *Michel Foucault* and characterized by the predominance of confinement, ranging from prisons to factories, to what his friend *Gilles Deleuze* foresaw to be a *society of control*, based on computerization.[49] This implies that we are entering a new age of social control, of which EM would be only one of many manifestations: a new age characterized by "deterritorialization", "de-institutionalization" and the privatization of sentence-serving (henceforth disseminated throughout the social fabric), the increased blurring of the

[47] Christie (1993): 21 quoted by Nogala (2000): 111. It should be said, however, that Christie views EM as playing only a subsidiary role in the development of the generalized custody he predicted for developed countries (Christie (1993): 114-115), in accordance with what he found in the USA.

[48] Nogala (2000); as this writer points out, it is not because a technique exists or is conceivable that it is produced, ipso facto, for marketing, and not because it is produced that it is necessarily circulated and used in significant amounts, not to speak of the usually unforeseen difficulties in its implementation; and yet, he says, we should not delude ourselves: these devices will be increasingly present and intrusive (ibid., n. 6, p. 118). Furthermore, this list should be completed by all those schemes whose objective is not surveillance or location but which nonetheless make it possible to reconstitute the doings of certain people subsequently, because they leave a digital trace. This is especially the case of credit cards and cell phones (Lianos; Douglas (2001)).

[49] Deleuze (1990); Deleuze (1992). This article is the German translation of a text first published in 1990 in *L'Autre Journal, n° 1*: Deleuze explicitly refers to the electronic bracelet (which he calls the "electronic necklace") to illustrate the society of control. For a socio-historical approach to surveillance as an instrument of state bureaucracy under capitalism: Dandeker (1990).

boundaries between public and private spaces[50] and the growing invisibility of authorities that are nonetheless more omnipresent than ever.[51]

In the long run we may imagine what Jones describes as a digitally ruled society based on the generalized use of coded access systems (already in existence in the form of digital cards, access codes and passwords) with automatic remote control consenting or refusing individualized access to specific services.[52] In a society of this kind, punishment no longer resides in the physical exclusion of individuals, but in depriving them of access to one service or activity or another.

In the same vein, and inspired more by *Gilles Deleuze* and *Félix Guattari* than by *Michel Foucault* but in a less catastrophic register, *Haggerty* and *Ericson* have suggested the concept of a *surveillant assemblage* instead of a *society of control*, so as to emphasize the fragmented, decentralized and unstable nature of the whole built upon surveillance schemes, which are no longer all state-dominated.[53] They also stress the fact that nowadays these schemes are no longer exclusively aimed at the under classes for the greater benefit of the power elites. The latter are subjected to these technology-based schemes just as much as the others, so that as *Lianos* suggests, what we conventionally call "social control" increasingly takes on "automated asocial forms"[54].

These analyses, which I cannot render here in all of their complexity, have the merit of drawing our attention, often through an extrapolation of what is embryonic in present-day schemes[55], to the dangers inherent in the development of EM and of other similar measures and schemes.[56] One is in

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[50] The malaise of this point touches those very writers who have defended and even promoted home confinement as an alternative to prison before it was combined with EM (BallLilly (1988); Lilly (1990)).

[51] Froment (1996); Froment (1998); on the privatization of EM: Lindenberg (1995).

[52] Jones (2000).

[53] Haggerty; Ericson (2000).

[54] On the non-discriminatory character of "automated socio-technical environments" and for an analysis of the impact of technical schemes on the very notions of deviance and control: Lianos; Douglas (2001), esp.: 155.

[55] In the French case, for instance, can one legitimately speak of the arrival of "a new economy of the power to punish" (Froment (1998)) except virtually, given the fact that about 200 EM measures were pronounced over an 18 month period ?

[56] However, critics of the "surveillance-based society" tend to underestimate the fact that the growing dependence of developed societies on automated systems produces heightened fragility of control devices, henceforth at the mercy of all sorts of breakdowns and unforeseeable accidents. This is typically the case of the New York Crisis HQ, a real fortress but unfortunately located in the World Trade Center. It was built to resist gales, power failures and even nuclear attacks, but was totally destroyed on September 11, 2001, just when it was

fact struck by the absence of any such elaborate arguments in favour of EM.

And yet, when reading these authors one sometimes gains the impression that alternatives to imprisonment (community-based solutions) suddenly came into existence with EM, whereas a whole series of reproaches, formulated in fact mostly by French-speaking writers, may be applied comprehensively to all alternatives to prison:

- This is the case, for example, when EM is accused of "inevitably generating flagrant inequalities" between those offenders who meet the requirements (home, work, telephone) and the others.[57] Aside from the fact that it is up to rehabilitation agencies in charge of implementation of the measure to help candidates for EM to meet these requirements, it is clear that this problem is inherent in any alternative sentence and is actually inseparable from the principle of the individualization of punishment.
- Another criticism views as a perversion the fact that this measure involves the family of the offender in sentence-serving (since it takes place in the home) and worse still, it puts offenders "in charge of punishing themselves", since they alone are responsible, so to speak, for its progressing properly.[58] Aside from the fact that irrespective of the country, EM does effectively rest on the explicit consent of sentenced offenders and their family, this argument amounts to denying any legitimacy to the objective of rehabilitation.

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most needed. The same catastrophe caused the interruption of cellular telephone communications (with the destruction of the antennas located on top of the WTC) and deprived the FBI and its antiterrorist bureau, the NY police force, the CIA and the secret service of most of their telecommunications network, which could not be repaired for nearly two days (*New York Times*, Sept. 29, 2001, quoted in Polizei-Newsletter (htttp://www.polizei-newsletter.de/).

[57] Kuhn; Madignier (1998): 674; Froment (1996): 22; Sarazin; Vachon (1997).

[58] Kaminski (1999): 650; Froment (1996): 22-23. An extreme version of this thesis may be found in Razac, who views as characteristic of Deleuze's society of control the fact that "(...) individuals take responsibility for exerting violence on themselves. In prison offenders are subjected to violence, but in community-based punishment they do violence to themselves. They control their behavior in their own interest, they discipline themselves for their own good, not for the institution. Disciplinary violence has become their own business. If they lapse, they will not be punished, but will be reminded of the clauses of the contract they have signed (Razac (2001): 34). Over and beyond community-based punishment, it is the very process of socialization that is challenged here, by a sort of reversal of self-control, as depicted in Elias' "Process of Civilisation".

- There is also something surprising in the assertion that with EM the home becomes a prison.[59] Firstly, because the regulations to which the offender is subjected liken it more to semi-liberty than to pure and simple imprisonment. Secondly, because as Baumer and Mendelson point out, EM does not physically hinder freedom of movement, but simply reports any disobedience of pre-established schedules to the authorities: with EM there are no barred windows, and escape from it is easy.[60]

In the last analysis, several of these criticisms smack of a sort of nostalgia for custody, for "the good old days" of punishment, so to speak, when things were clear. Froment, for instance, writes that with the introduction of this measure, punishment "is no longer something experienced in a given place specially conceived for that purpose and from which one may, finally, escape, or at least have the hope of escaping"[61]. *Antoine Lazarus*, a longstanding militant of prisoners' rights and prison reform, in his strong stand against EM, declares: "If you ask me whether I prefer prison, for pre-trial detention or following sentencing, to the relative freedom of walking down the street with that bracelet on my leg, I would definitely say yes. However much suffering it causes, and despite our militant opposition, over the years, to the use made of prison, there is something that should not be confiscated from those people, and that is the visibility of their history in their relations with other people"[62].

2.1 Conclusion: what does the future have in store?

I have not by any means given a complete overview of the issues raised by the implementation of EM, of course, and the following pages will complete the picture. In my closing remarks, and with no intention of encroaching on *Robert Lilly's* concluding chapter, I would like to give my own feelings about the future of EM.

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[59] Froment (1996): 24.

[60] Baumer; Mendelsohn (1992):. 65; this is in fact why use of EM is prohibited for dangerous criminals, and limits its potential as an alternative to prison. The validity of the distinction operated by Baumer and Mendelsohn becomes clear in the example, mentioned above, of the GPS bracelet for children. It is easy for these children to elude their parents' surveillance, since nothing proves that they are really in the same place as their bracelet !

[61] Froment (1998): 155. Froment's position is ambiguous. Elsewhere, he rejoices at the fact that EM makes it "legitimate to imagine the gradual demolition of prisons" (Froment (1998): 159).

[62] Lazarus (2000); our survey in France shows that people under EM do not share this viewpoint and tend to prefer symbolic custody to physical detention.

Despite all of the reservations as to its ability to achieve its official objectives, I personally believe that EM will not disappear, for several reasons:

Firstly, there is no doubt that its apparent simplicity makes this measure an attractive compromise for people who feel that community-based punishment is not sufficiently coercive, but that systematic incarceration is not desirable. People who have an essentially pragmatic attitude towards punishment may also view it as one more blade in the "Swiss knife" of rehabilitation. Or again, it may simply seem to be an inexpensive, easily enforced alternative to community-based measures requiring a large staff of well-paid, highly trained but dubiously efficient workers.[63]

Secondly, and in any case, as *Tonry*[64] points out, the efficacy of a sanction is not measured exclusively with respect to its official goals. Its latent functions, possibly decisive for its survival, must also be considered. In the present case, at least in the USA, probation services view EM as a way of relegitimizing their work in the eyes of the public and the authorities, who tended to consider community-based punishment as ineffectual. Now that they have succeeded in convincing themselves and their constituencies that EM is worthwhile, this has translated into new respect for these agencies, attended by increased funding. In the best hypothesis, we are in a situation where everyone has something to gain:

"Offenders are spared imprisonment. Judges have to hand a new, believable intermediate punishment. Prison crowding is reduced. The state saves money. The probation department is seen to have achieved all these things and, at the same time, increased the department's size and funding. From an organizational perspective, these are remarkable achievements for a department of government theretofore in most places accorded little esteem. From a bureaucratic perspective, the probation officials in charge are little short of wizards and can feel that they have served their institution well."[65]

In this context, workers themselves feel more useful, more respected, in the vanguard of innovation; their profession gains in visibility and arouses new vocations. In France too, we have seen probation services and correctional facilities volunteer to experiment with EM because they viewed it as an opportunity to gain additional resources.

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[63] Corbett; Marx (1992): 94; Byrne (1990).
[64] Tonry (1990).
[65] Tonry (1990):185.

A third reason resides in the forthcoming development of second-generation systems. I am convinced that there will be a market for them, because the unheard-of possibilities they offer will win them support from one pressure group - the group speaking in the name of victims - that is now decisive for the criminal justice system in many countries. Until now, home arrest under EM has mostly been helpful to the penal system by providing a less expensive alternative to prison (even when it is not used as a replacement) or to intensive human surveillance within the community. With the second generation systems, and especially if the present climate pervaded by fear of crime persists, I am sure that we will be faced with a demand voiced by victims whenever they are in a position to fear an encounter with a previously identified potential assailant (and I am thinking especially of women subjected to sexual harassment, domestic violence, sexual crimes, etc.).

In conclusion, I would simply stress that the professed objectives of EM are legitimate: recourse to prison must be as limited as possible; the rehabilitation of sentenced offenders is a necessity; it is preferable not to waste fiscal resources that could be put to better use. Is EM the right solution? The only way to answer that question is to perform serious evaluations, and it is up to the authorities to enable them to be conducted and then eventually to draw the necessary conclusions. Hopefully this book will be a step in this direction.

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La situation aux États-Unis et au Canada

PIERRE LANDREVILLE

Today there are about 1,500 electronic monitoring projects in the U.S. and 4 in Canada. The average population under electronic monitoring amounts to over 100,000 in the U.S. and 500 in Canada at present. The most common technical system is still the first generation type, controlling the presence and absence of the offender at home, but the second generation of electronic monitoring – tracking the offender constantly – is already in trial. Due to the huge number of projects in the U.S. there is a variety of target groups and legal application areas. Electronic monitoring is mainly used instead of pre trial detention, as a control order during probation or parole in conjunction with a curfew obligation and to prevent marital violence. Because of a punitive crime policy, the original objective of electronic monitoring as an alternative to imprisonment changed to a punitive, surveillance-orientated aim in order to improve the efficiency of sanctions, for example, probation. Its function as an addition to probation creates an increase in costs instead of a reduction. The measure still seems to be a technology looking for an eligible clientele in order to examine advanced types of control. The question arises whether electronic monitoring is not only a mere technological innovation, but also represents a model of crime policy in the United States.

La surveillance électronique (S.E.) est une invention américaine, comme l'a souligné *Josine Junger-Tas* (1994, p. 53), et c'est dans ce pays qu'elle a connu un développement considérable durant les deux dernières décennies. Déjà, dès le début des années 1960, certains (*Schwitzgebel* et al., 1964) proposaient la surveillance électronique des contrevenants. Depuis, ce marché en expansion (*Landreville*, 1999) a débordé les frontières nord-américaines à la recherche de nouvelles clientèles.

Selon les souhaits et les consignes des organisateurs de ce colloque, l'objectif général de l'exposé sera de faire une présentation de l'état de la surveillance électronique des délinquants aux États-Unis et au Canada. Compte tenu du fait qu'il y a plus de 1 500 projets aux États-Unis et quatre au Canada, dispersés dans un très grand nombre de juridictions différentes, il ne pourra être question que d'une synthèse très générale avec un accent particulier sur la situation canadienne. Le bref état de la question sera complété par quelques questions au sujet de l'impact de cette technologie sur la philosophie et les pratiques pénales.

La présentation sera divisée en six points :

- L'historique et l'ampleur du phénomène
- La technologie utilisée
- Les populations cible et les modalités juridiques
- Les objectifs et les moyens mis en place
- Les coûts pour l'État et pour les personnes prises en charge
- La conclusion et quelques questions de réflexion.

1 L'historique et l'ampleur du phénomène

1.1 Aux États-Unis

La surveillance électronique (S.E.) a été expérimentée pour la première fois avec des contrevenants aux États-Unis en 1983 (*Ford* et *Schmidt*, 1985). Le nombre moyen de personnes sous surveillance électronique est passé d'environ 3.000 en 1988 (*Lilly*, 1995, 113) à 12.000 (dans 400 programmes) en 1990 et à 95.000 (1.500 programmes) en janvier 1998 (National Law Enforcement and Corrections Technology Center, 1999, 1). Cette augmentation, qui peut être perçue comme fulgurante, doit être mise en perspective dans un pays qui incarcère 2 millions de ses citoyens[1] et qui en contrôle environ 4,6 millions en probation ou en libération conditionnelle.[2]

[1] 1 965 495 en juin 2001 (Beck, A.J. et al., 2002).

[2] À la fin de 2000 (Probation and parole statistics, extrait du site : www.opl.usdoj.gov/bjs).

1.2 Au Canada

Au Canada, la mesure a vu le jour en Colombie-Britannique en 1987 et quatre provinces (sur 10) ont présentement des projets de S.E. qui touchent environ 400 personnes.[3] Dans cette province, le programme s'adressait à des personnes incarcérées pour moins de six mois, libérées soit en absence temporaire soit en libération conditionnelle. En 1996-1997, le compte moyen des personnes en S.E. était de 287 soit environ 16% du stock des détenus condamnés dans les établissements de détention de la province. Depuis janvier 2001, la politique a changé radicalement. La S.E. n'est plus utilisée pour les absences temporaires mais elle est plutôt mise à la disposition des tribunaux pour contrôler les conditions de couvre-feu lors d'une peine d'emprisonnement avec sursis. Elle peut encore être utilisée en libération conditionnelle. En 2001-2002, il y avait 129 personnes en S.E. dont environ 125 en sursis et de 5 à 10 en libération conditionnelle.

Les projets des autres provinces sont beaucoup plus modestes et hésitants. La Saskatchewan a mis sur pied un programme de surveillance intensive en probation avec surveillance électronique en janvier 1990. Le programme vise principalement les délinquants autochtones (qui constituent les deux tiers de la population carcérale de cette province), les femmes et les délinquants à risque élevé qui auraient normalement été incarcérés. Le programme a pour objectif d'être une solution de rechange à l'incarcération et, règle générale, la période de S.E. ne dépasse pas six mois. Actuellement il y a en moyenne environ 150 personnes en S.E.

En Ontario, le ministère des Services correctionnels a initié un programme de S.E. au Centre correctionnel de Mimico à Toronto en avril 1989. Le projet visait la remise en liberté en absence temporaire de détenus à faible risque qui ne se seraient pas qualifiés pour participer aux programmes ordinaires tout en réalisant une diminution des coûts et une diminution de la population carcérale. Une évaluation du programme d'avril 1989 à octobre 1990 constate que, pendant ces 18 mois, 158 détenus ont participé au programme et conclut que le programme «n'a pas élargi les critères de remise en liberté [...] il n'a qu'amélioré les probabilités de remise en liberté de ceux qui se qualifiaient déjà pour les programmes existants» (ministère des Services correctionnels, 1991, p. 35). Par la suite, ce programme a été aboli. Un nouveau programme a été implanté en janvier 1996. Il est utilisé, comme le précédent, pour des détenus purgeant

[3] Il y a environ 31 500 adultes incarcérés au Canada.

ordinairement des peines de 30 à 60 jours qui sont libérés en absence temporaire (*Leonard* et *Price*, 1996). En 1997, il y eut en moyenne 70 personnes en S.E. (*Landreville*, 1999, p. 107) et 62 en 1999 (John Howard Society of Ontario, 1999, p. 3). Le 22 février 2002, le ministre des Services correctionnels, *Rob Samson*, annonçait que les personnes qui purgent leur peine dans la communauté seraient surveillées plus souvent et de façon plus intensive au moyen de la S.E. Les nouveaux programmes de surveillance s'adresseront tant aux personnes en libération conditionnelle qu'à celles assignées à résidence comme condition d'une probation ou d'un emprisonnement avec sursis.[4]

La province de Terre-Neuve s'est lancée beaucoup plus récemment dans l'aventure de la S.E. Son programme d'absence temporaire avec surveillance électronique date de novembre 1994. Jusqu'au 31 mars 2000, 478 personnes purgeant des peines de moins de deux ans, en absence temporaire, avaient été acceptées dans le programme qui vise la réhabilitation, par des programmes de traitement obligatoire et la réinsertion sécuritaire dans la communauté et en 2001-2002 il y avait en moyenne 17 personnes en S.E.[5] Le 13 mars 2002 elles étaient 7.[6]

La surveillance électronique au Canada

Colombie-Britannique	
Début :	1987
Modalité juridique :	absence temporaire (6 mois et moins) depuis 2001 : sursis, libération conditionnelle
Nombre de participants : 2001-02, N moyen 129	1996-97, N moyen 287
Ontario	
Début :	avril 1989
Modalité juridique :	absence temporaire (moins d'un an) projet depuis 2002 : probation, sursis, libération conditionnelle
Nombre de participants : 1999, N moyen 62	1997, N moyen 70

[4] Extrait du site : www.corrections.msc.gov.on.ca, le 02-03-14.

[5] Communiqué de presse du vérificateur général du 1er février 2002, extrait du site : www.gov.nf.ca/release/auditorgen, le 14 mars 2002.

[6] Courriel de Wayne Payne, Chief Probation Officer, Corrections and Community Services, le 13 mars 2002.

Saskatchewan	
Début :	janvier 1990
Modalité juridique :	probation (6 mois et moins)
Nombre de participants :	2001-02 : N moyen 150
Terre-Neuve	
Début :	automne 1994
Modalité juridique :	absence temporaire (moins de deux ans)
Nombre de participants :	1994 à avril 2000, N=478
2000-01, N moyen 17	
13.03.02, N=7	

2 La technologie utilisée[7]

Jusqu'à tout récemment, il n'était généralement question que de la S.E. de «première génération» soit l'assignation à domicile (home incarceration) sous une forme ou une autre. Dans ce cas, si le contrevenant quitte le lieu qui lui est désigné, ordinairement son domicile, hors des heures convenues, l'appareil signale l'infraction. Si la personne s'est réellement «évadée» rien ne permet de savoir où elle est et ce qu'elle fait.

La surveillance électronique est actuellement réalisée au moyen de systèmes passifs et actifs. La technologie dite «active», celle qui est le plus souvent utilisée, est généralement réalisée au moyen d'un système qui comprend trois éléments : 1) un transmetteur miniature, fixé de façon inamovible à la cheville du contrevenant, qui transmet un signal dans un rayon de 60 à 70 mètres; 2) un récepteur-transmetteur situé dans la résidence du contrevenant, près d'un téléphone, qui capte et relaie le signal à un ordinateur central par la ligne téléphonique; 3) un ordinateur central qui reçoit le signal et produit un rapport lorsqu'un des surveillés n'émet plus pendant les heures prescrites. Un autre appareil n'utilise pas le téléphone. Il s'agit aussi d'un petit émetteur fixé au contrevenant qui transmet un signal de façon continue. Un récepteur portatif, installé dans la voiture du surveillant, capte le signal de cet émetteur, lorsque le véhicule est situé dans un certain rayon de la résidence du contrevenant.

La technologie dite «passive» utilise le téléphone pour vérifier périodiquement si le contrevenant est à l'endroit désigné. Ce dispositif, qui peut

[7] Voir à ce sujet : Conway, 2001 ainsi que «The Survey of electronic Monitoring Manufacturers – Year 2001» dans *The Journal of Offender Monitoring»*, 14, 1-2, 2001.

fonctionner selon plusieurs modalités, utilise toujours un ordinateur central programmé pour téléphoner, de façon aléatoire ou selon un horaire préétabli, au contrevenant durant les heures d'assignation à résidence. Selon une première modalité, l'information est enregistrée sur une cassette et sur l'imprimante de l'ordinateur. Celui-ci enregistre le numéro composé, la réponse, le moment de l'appel, si la ligne était occupée, si l'appel n'a pas pu être acheminé, si on a raccroché ou s'il n'y a pas eu de réponse. La personne responsable de la surveillance, l'agent de libération conditionnelle, par exemple, peut lire périodiquement le rapport produit par l'ordinateur et écouter l'enregistrement. Il peut ainsi vérifier si c'est bien le contrevenant qui a répondu. On peut aussi munir le contrevenant d'un bracelet inamovible retenant un petit module de plastique. Le contrevenant doit insérer le module dans un appareil relié à son téléphone, de façon à s'assurer que c'est bien lui qui répond à l'appel de l'ordinateur. Dans un autre cas, c'est un identificateur de voix qui reconnaît le contrevenant. Enfin, on peut remettre au contrevenant une montre bracelet inamovible programmée pour produire un chiffre spécifique lors de chaque appel. Le contrevenant doit composer ce nombre sur son téléphone, en réponse à l'appel de l'ordinateur. Certains de ces appareils de la première génération sont branchés à un ivressomètre pour prendre des échantillons d'haleine des contrevenants afin de contrôler leur consommation d'alcool (National Law Enforcement and Corrections Technology Center, 1999, p. 3).

Nous en sommes arrivés à la seconde génération de S.E. qui permet, grâce notamment au G.P.S. (ou d'autres systèmes de surveillance par satellites), de suivre constamment à la trace en temps réel, à 50 mètres près, les délinquants. Le système permet de programmer certaines zones «d'inclusion», d'où le délinquant ne doit pas sortir, ou «d'exclusion», où il ne doit pas pénétrer (*Siuru*, 1999; *National Law Enforcement and Corrections Technology Center*, 1999,). *Renzema* (2000) rapporte qu'en mars 2000 il y avait aux USA au moins 635 contrevenants (dont 349 en Floride) surveillés ainsi dans 68 programmes. Au moins trois compagnies offraient de tels systèmes à la fin de l'année 2001 (The Journal of Offender Monitoring, 15, 1, 2002, p. 43). Un nouveau système, constitué d'un émetteur-récepteur qu'on peut porter à la taille, permet d'enregistrer tous les déplacements du surveillé au cours d'une journée. Ces informations sont transmises à l'ordinateur central une fois par jour (*Conway*, 2002, p. 11). Éventuellement, on pourra intégrer une camera vidéo à ce système pour voir constamment la personne surveillée et, dans un avenir rapproché,

l'émetteur pourra être implanté dans le corps du surveillé (*Fabelo*, 2000, p. 2).[8]

La troisième génération de S.E., perçue comme plus «hypothétique» ou plus futuriste est considérée sérieusement et non pas comme une simple spéculation. Elle serait constituée d'un système (un signal sonore, une drogue, un choc électrique ou une stimulation d'une certaine zone du cerveau) pouvant réagir à certaines informations indiquant que le surveillé commet une infraction ou est sur le point de le faire, en l'avertissant, en le punissant ou en tentant de l'en empêcher. Déjà, certains appareils émettent un signal sonore qui devient de plus en plus fort, pour avertir le contrevenant qu'il est en infraction, jusqu'à ce qu'il respecte les consignes (*Siuru*, 1999, p. 3). De tels scénarios avaient déjà été imaginés il y a plus de 25 ans. Ainsi, Ingraham et Smith ont, en 1972, imaginé des utilisations peu rassurantes.

«À la lumière de l'état des recherches, il semble tout à fait possible et réalisable d'utiliser la télémétrie, comme méthode de contrôle, pour surveiller des êtres humains, pour obtenir des données physiologiques ainsi que sur leur système nerveux, et pour stimuler leur cerveau, à distance, par des ondes électriques... Certaines données physiologiques, telles la respiration, la tension musculaire, la présence d'adrénaline dans le sang, associée à la connaissance de l'endroit où se trouve le sujet, peuvent être particulièrement révélatrices. Ainsi, si un libéré conditionnel, qui a déjà commis des cambriolages, est dépisté dans un quartier commercial (précisément près de boutiques fermées pour la nuit) et que ses données physiologiques révèlent une accélération de son rythme respiratoire, une tension musculaire inhabituelle et une augmentation de son taux d'adrénaline, on peut facilement deviner qu'il y a quelque chose de louche. L'ordinateur pourrait alors, après avoir soupesé les probabilités, en venir à la conclusion d'avertir les policiers ou l'agent de libération conditionnelle pour qu'ils puissent intervenir. Si on avait déjà implanté un transmetteur dans le sujet, ils pourraient transmettre un signal électrique qui lui ferait abandonner ou oublier son projet.»

La compagnie *Digital Angel Corporation* a mis sur le marché récemment un appareil qui peut enregistrer certaines données physiologiques, tels le pouls et la température, et les transmettre à l'ordinateur central en même temps que la localisation du surveillé (*The Journal of Offender Monitoring*, 15, 1, 2002, p. 17). Récemment, Fabelo (2000, p. 5) mentionnait la possibi-

[8] Voir aussi *Libération* samedi et dimanche 12 mai 2002, 33-36.

lité de mesurer le niveau d'hormone de délinquants sexuels au moyen d'un implant et de les «paralyser (*stunned*)», au besoin, par la libération de produits dans leur système.

3 Les populations cible et les modalités juridiques

On peut certes constater qu'il y a une grande diversification des populations cible ou des modalités d'application de la S.E. Initialement, la S.E. était surtout utilisée pour obliger une personne condamnée à rester chez elle en dehors des heures consacrées au travail ou au traitement. La mesure se voulait une solution de rechange à l'incarcération. Parfois, il s'agissait d'une modalité d'application d'une courte peine d'emprisonnement imposée directement par le juge ou gérée par les administrateurs pénitentiaires. On la retrouve maintenant comme solution de rechange à la détention provisoire, comme modalité de surveillance des conditions de probation, d'emprisonnement avec sursis ou de libération conditionnelle, associée à une ordonnance de couvre-feu ou encore dans le champ de la prévention de la violence conjugale. On impose cette S.E. dans le cadre d'une remise en liberté sous cautionnement ou d'une probation pour s'assurer que la personne surveillée respectera la condition de ne pas retourner au domicile de la victime et pour tenter de prévenir des manifestations de violence.

4 Les objectifs et les moyens mis en place

Au début, la S.E. était essentiellement vue comme une solution de rechange à l'incarcération. L'une des préoccupations était alors d'éviter l'escalade pénale, le «*net-widening*» et de s'assurer que la S.E. ne serait imposée qu'à des personnes qui auraient été incarcérées.

Le rationnel s'est cependant effrité, particulièrement aux États-Unis où une politique pénale axée sur la sévérité des peines prône des sanctions intermédiaires réellement punitives qui se situeraient entre la probation traditionnelle et l'incarcération. La S.E. devient alors une mesure punitive et de contrôle qui peut rendre plus efficaces des sanctions comme la probation, l'emprisonnement avec sursis, l'ordonnance de couvre-feu ou l'imposition de conditions de remise en liberté sous cautionnement. Plus récemment, certains (*Bonta* et al. 1999, p. 35) prônent d'associer la S.E. à une intervention thérapeutique appropriée pour rendre l'intervention auprès des délinquants plus efficace.

Au Canada, une équipe de chercheurs du ministère du Solliciteur général du Canada a évalué trois des programmes de S.E. : ceux de la Colombie-Britannique, de la Saskatchewan et de Terre-Neuve. Ces programmes visaient à réduire la population carcérale ou du moins à gérer sa croissance. Les chercheurs concluent à ce sujet que «la prédominance de délinquants à faible risque dans les programmes de S.E. décrits dans les ouvrages donne à penser qu'il y a effectivement un élargissement du contrôle social. Rien ne semble prouver que la surveillance électronique a été une véritable solution de rechange à l'incarcération» (p. 8). Un peu plus loin ils ajoutent à propos de certains des délinquants qu'ils ont étudiés «une mesure non privative de liberté aurait été suffisante pour beaucoup de ces délinquants» (p. 20). Par ailleurs ils constatent que «dans les trois provinces, entre 86% et 89% des délinquants ont terminé le programme de S.E. sans incident» (p. 4) et que «L'analyse de la récidive a montré que la surveillance électronique n'a pas d'effet sur le comportement délinquant. L'une des conclusions les plus révélatrices est que le taux de récidive des délinquants sous S.E. n'était pas différent de celui des probationnaires lorsque nous tenions compte du facteur risque-besoins. Cette constatation nous fait mettre en doute l'économie que la S.E. est censée entraîner par rapport à la probation» (p. 35).

5 Les coûts pour l'État et pour les personnes prises en charge

Le débat à propos de la S.E. porte aussi sur un des arguments fondamentaux des représentants de l'industrie selon lequel la S.E. ferait réaliser des économies considérables. La démonstration repose sur le postulat que la S.E. remplace l'emprisonnement et les calculs comparent presque toujours les coûts moyens par jour des deux mesures. Par exemple, dans un document récent du *National Law Enforcement and Corrections Technology Center* on peut lire «The average cost of EM has been estimated at between $5 and $25 per day, compared with a $50 per day cost of keeping an offender in a detention center [...] Despite the benefits of GPS, the price is high, averaging $30 to $40 a day» (1999, p. 1-5) Le coût moyen, qui varie évidemment selon le type de technologie utilisée, laisse entendre que chaque détenu, ou chaque jours/séjour, entraîne les mêmes coûts, et que si un programme de solution de rechange à l'incarcération permet de réduire l'occupation de cinq ou de dix pour cent, il entraînera des économies du

même ordre. Ce n'est évidemment pas le cas. Puisque près de 90% des frais (tels la rémunération et les frais d'entretien de la prison) sont relativement fixes et incompressibles, les derniers cinq ou dix pour cent de détenus n'engendrent pas des coûts de 50$.[9] Par ailleurs, l'évaluation des coûts de la S.E. ne tient souvent compte que de ceux de l'appareillage électronique. De plus, la substitution n'a pas toujours lieu et elle n'est même plus toujours souhaitée. Dans ces cas, il est évident qu'une S.E. qui s'ajoute à une probation revient plus cher qu'une simple ordonnance de probation. «Malheureusement, parce que beaucoup de ces programmes semblent s'adresser aux délinquants à faible risque et sont susceptibles d'élargir le filet du contrôle correctionnel, il est difficile d'évaluer les économies réelles» (*Bonta* et al., 1999, p. 10). Il faut aussi rappeler que souvent, du moins aux États-Unis, les juges imposent des peines de S.E. plus longues que la peine d'emprisonnement qu'ils auraient imposée (*Mainprize*, 1992, p. 167), ce qui n'est généralement pas pris en considération dans l'évaluation des coûts. Plusieurs ont, par ailleurs, observé que les personnes sous surveillance intensive au moyen de la S.E. sont beaucoup plus souvent reprises (et parfois réincarcérées) parce qu'elles n'ont pas respecté les conditions imposées, ce qui peut avoir un impact non négligeable sur les coûts du système.

Au Canada, les données récentes montrent que les coûts de la S.E. sont plus élevés que ceux avancés par les promoteurs de cette technologie aux États-Unis. En Saskatchewan, selon le directeur des programmes communautaires monsieur Terry Lang[10], les coûts reliés uniquement à la surveillance électronique sont de 7,22$/jour par personne. À cela, il faut ajouter des coûts d'encadrement (*supervision*) de 4,27$/jour pour les personnes représentant un risque élevé (total 11.49$) et de 2.44$/ jour pour les risques moyens (total 9.66$). En Ontario, on rapporte que le coût par jour était de 52$ en 1999(*John Howard Society of Ontario*, 1999, p. 3). À Terre-Neuve, selon le vérificateur général de la province[11], les coûts sont très supérieurs. Les contrats relatifs à la S.E. s'élèvent à 456.000$ par année pour 50 unités, soit 9.120$ par unité (25$/jour par unité). En 2000-2001, il n'y avait cependant que 17 contrevenants par jour en S.E., de sorte que le coût moyen était de 73,50$/jour par personne.

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[9] Voir aussi à ce sujet Landreville, 1995.

[10] Courriel du 24 mai 2002.

[11] Communiqué de presse du vérificateur général du 1er février 2002, extrait du site : www.gov.nf.ca/release/auditorgen, le 02-03-14.

Par ailleurs, il devient préoccupant, par rapport aux principes de justice et d'équité, que cette modalité d'exécution de la peine soit réservée, dans une certaine mesure, à une population pénale privilégiée. D'une part, en effet, pour bénéficier de la mesure, il faut avoir un domicile fixe, un téléphone et une certaine insertion sociale et, d'autre part, il est souvent d'usage de faire payer aux surveillés une partie des coûts de la S.E. En 1989, environ les deux tiers des programmes états-uniens imposaient des frais de 200$/mois en moyenne (environ 6,65$/jour, *Renzema* et *Skelton*, 1990, p. 14). Au Canada, en 1999, l'Ontario imposait des frais de 12$/jour aux surveillés (*John Howard Society of Ontario*, 1999, p. 3), tandis que ces frais sont actuellement de 4,25$/jour à Terre-Neuve.

6 La conclusion et quelques questions de réflexion

Certaines questions ont été maintes fois soulevées au sujet de la S.E., telles celles de l'escalade du contrôle pénal (*Landreville*, 1987; Bonta et al. 1999), des modalités de surveillance dans nos sociétés (*Marx*, 1985; *Corbet* et *Marx*, 1994; *Froment*, 1996) ou de l'impact de l'entreprise privée sur les orientations des politiques pénales (*McMahon*, 1996; *Landreville*, 1999). Dans ce sens, la S.E. n'est-elle pas un archétype des politiques étatiques néo-libérales qui font de plus en plus porter une partie des coûts aux usagés, même dans le champ pénal? On peut aussi se demander si la S.E. n'est pas actuellement une technologie à la recherche d'une clientèle vulnérable pour tester de nouvelles possibilités de contrôle et, enfin, dans le contexte de ce colloque, si les États-Unis ne sont pas en train d'exporter non seulement une nouvelle technologie mais aussi un modèle de politique pénale dont on pourrait questionner la pertinence en Europe. Les rationnels et les justifications de ce type de contrôle ont été élaborés dans un contexte où l'on favorise le «tout carcéral»[12], où les populations carcérales sont environ sept fois plus importantes qu'en Europe (*Landreville*, 2002) et où les objectifs sont avant tout la surveillance, la punition et le contrôle (*Mainprize*, 1992). Malgré le contexte carcéral somme toute très différent, souhaite-t-on appliquer les mêmes solutions, poursuivre les mêmes orientations pénales?

[12] Selon l'expression de Wacquant, 1999.

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Electronic Monitoring in England and Wales

JAMES TOON

1 Implementation and Legal Basis

Electronic monitoring in England and Wales was initiated by the Home Office, a department of the UK Government. A series of pilot projects operated in selected areas in 1989–1990 (adult defendants on bail), 1995–1999 (adult offenders sentenced to a curfew order by a court), and 1998–2000 (adult and juvenile defendants on bail; juvenile offenders sentenced to a curfew order by a court; and fine defaulters and persistent petty offenders). The legislation governing these pilots was the Bail Act 1976, the Criminal Justice Act 1991, and the Crime (Sentences) Act 1997.

The first electronic monitoring programmes to operate throughout England and Wales began in 1999. Other programmes began in 2001 and 2002. The following table gives details of those currently operating.

All these programmes use standard (first-generation) tagging technology. The Home Office is also piloting an alternative form of electronic monitoring, using voice verification technology, to monitor compliance with other programmes. These pilots began in 2001 and will continue until 2004. They are operating in three probation areas in England (Hampshire, West Yorkshire, and Nottinghamshire). So far the take-up has been low.

The Home Office is also considering options for the use of tracking technology, possibly from 2003. This could be used, for example, to monitor the movements of dangerous sex offenders who can no longer be detained in custody, and to monitor compliance with exclusion orders. It is subject to technological development and the availability of funding.

Start date / legislation	Type of programme
28.01.1999 s.34A and s.37A of the Criminal Justice Act 1991	Home Detention Curfew ("back door"). Offenders sentenced to at least 3 months but under 4 years imprisonment. Released up to 2 months early on a curfew with electronic monitoring. Minimum curfew duration is 9 hours a day; in practice almost all curfews run for 12 hours overnight. Sex offenders and some other categories are automatically excluded.
01.12.1999 s.12 and s.13 of Criminal Justice Act 1991, now consolidated in s.37 and s.38 of the Powers of Criminal Courts (Sentencing) Act 2000	Curfew order ("front door"). Offenders aged 16 or over, sentenced by a court to a curfew order with electronic monitoring. Maximum length of order is 6 months. Curfew hours are between 2 and 12 hours on days when curfew operates.
01.02.2001 s.43 of the Crime (Sentences) Act 1997, now consolidated in s.37 and s.38 of the Powers of Criminal Courts (Sentencing) Act 2000	Curfew order ("front door"). Offenders aged 10–15, sentenced by a court to a curfew order with electronic monitoring. Maximum length of order is 3 months. Curfew hours are between 2 and 12 hours on days when curfew operates.
22.04.2002 in 11 areas in England 01.06.2002 throughout England and Wales s.3AA of the Bail Act 1976 and s.23AA of the Children and Young Persons Act 1969	Bail ("front door"). Defendants aged 12–16 remanded on bail or to local authority accommodation, who are charged with serious offences or have a history of repeated offending while on bail. No statutory minimum or maximum length of curfew or daily curfew periods.
29.05.2002 s.75 of Crime and Disorder Act 1998, now consolidated in s.102 of the Powers of Criminal Courts (Sentencing) Act 2000.	Detention and Training Order ("back door"). Offenders aged under 18 who are sentenced to a Detention and Training Order of between 8 and 24 months. Released either 1 or 2 months early on a curfew with electronic monitoring. No statutory minimum or maximum daily curfew periods; in practice almost all curfews run for 12 hours overnight. There is a presumption in favour of early release unless certain conditions apply.

2 Staff and executing guidelines

Electronic monitoring in England and Wales is delivered by private security companies under contract to the Home Office. Three companies operate in four regions in England and Wales. Securicor Custodial Services operate in the Northern region, Reliance Monitoring Services operate in the Southern region, and Premier Monitoring Services operate in the London & Eastern and Midland & Wales regions. (All of these companies are also involved in escorting prisoners to and from court, and two of them (SCS and PMS) operate private prisons, again under contract and on behalf of the Government.) The electronic monitoring contracts began in 1999 and expire in 2004, but may be renewed for up to two more years. New contracts will be let when the current contracts expire.

The contractors provide a complete service. They supply and install electronic monitoring equipment, they monitor those on the programme, they follow up violations and if necessary they will either return the subject to court themselves or report the violation to another appropriate agency for enforcement action.

The Home Office manages the electronic monitoring contracts through a team consisting of 15 civil servants. Their functions include auditing the performance of the contractors against a detailed operational specification, through meetings, visits and studying case files; ensuring that contractor invoices are paid on time (subject to any financial deductions for underperformance); developing new uses of electronic monitoring as new technology becomes available; and advising Government Ministers and colleagues and other criminal justice agencies on the operation of the programmes.

The programmes can be seen as having a number of aims although these are not formally stated in legislation. In the "front door" programmes the curfew element can be seen as a restriction on liberty and also as providing some degree of public protection. Curfews with electronic monitoring can operate either on a stand-alone basis or in conjunction with another community sentence such as probation or community service. In the "back door" programmes the aim is to ease the transition from custody to the community by providing a structured environment in which the offender is at liberty subject to certain restrictions. The programmes have also had the effect of releasing custodial places and therefore reducing the pressure on the custodial estate. (In late May 2002 the prison population in England and Wales was around 71,000.)

3 The Assessment Process

Different programmes have different assessment and selection processes. For the "front door" programmes, selection for the programme is by the court, which may have a recommendation from a probation officer or other supervisor. For the "back door" programmes, selection is by the prison governor on behalf of the Home Secretary and in accordance with stated eligibility and other criteria. Some categories are automatically excluded from some programmes (for example sex offenders and prisoners awaiting deportation may not take part in the Home Detention Curfew programme). Where someone is eligible, the risk assessment (where one is required) will consider issues such as likely compliance with the curfew requirement, and the risk of re-offending during the period for which the curfew operates.

Assessment for the programme is done by the supervising officer, in consultation with prison staff and other agencies as needed. There should be a home visit to check the suitability of the premises and to check that other family members are content for the person being curfewed to reside at the premises. The curfew address must have an electricity supply connected to the mains. A telephone line is needed and if necessary will be installed by a telecommunications provider at the request of the contractor. Recently the contractors have incorporated mobile phone technology into the monitoring equipment, and this can be used in place of a landline subject to network coverage.

4 The Technical Equipment

The technical equipment uses radio frequency transmissions. It consists of a transmitter, which is usually worn round the ankle, and a receiver unit which is either connected to a landline telephone or which incorporates mobile phone technology. The receiver unit communicates with a central computer system at the contractor's monitoring centre. The transmitter sends signals to the receiver at regular intervals and these are sent on to the central computer. The signal strength of the transmitter is calibrated to the receiver so that if the subject goes out of range (generally this means outside the building where the receiver is located), there is a break in signal and this is also registered by the central computer which generates follow-up action.

The transmitter can be removed only by breaking its strap. This interferes with the fibre-optic circuitry inside the strap and is immediately registered as a tamper, also generating follow-up action.

The pilots of voice verification technology operate in a different way. The equipment registers the voice print of the subject and this is stored centrally. When the subject is supposed to be attending a programme or at a specified address he or she can be prompted to telephone the monitoring centre at random intervals and answer a number of computer-generated questions. The voice print is checked against the record so that the identity of the subject can be confirmed or denied.

5 Actual State of the Programmes

The following table gives details of the number of persons who started each programme between 28 January 1999 (when the current contracts began to operate) and 31 May 2002, and the number still being monitored at 31 May.

Programme	Total participants	Current caseload
Home Detention Curfew	51,913	2,353
Adult curfew order	14,638	1,758
Juvenile curfew order	1,406	248
Juvenile bail	86	41
Detention and Training Order	3	3
Total	68,046	4,403

The HDC caseload figure has risen by about 600 in recent months. This follows the introduction of a streamlined scheme which omits the risk assessment for eligible prisoners serving sentences of between 3 months and less than one year. Those sentenced for offences relating to drugs or violence, and some other offences, are excluded from the streamlined system and must undergo the standard risk assessment procedure.

Exact figures are not available for the number of successful and unsuccessful completions for all programmes. However, the successful completion rate is estimated at over 90% for the Home Detention Curfew programme and over 80% for the adult curfew order programme. The proportion of female subjects varies between different programmes but is around 10% on average.

6 Costs of Electronic Monitoring

All the costs of electronic monitoring including start-up costs are recovered through the contract pricing structure. This is based on volume bands so that there is one fixed price for 1–500 cases a year, another fixed price for 501–1,000 cases a year and so on. Different prices apply to different programmes. Total costs can be quoted and an average unit cost can be derived from these, even though cases are not charged on a per case basis.

In the year April 2001 to March 2002, a total of 22,793 persons took part in electronic monitoring programmes. The total cost was GBP 36.4m (EUR 55.5m) and the average unit cost was GBP 1,600 (EUR 2,440).

The Home Detention Curfew scheme has shown itself to be cost-effective when compared with imprisonment. In the year April 2001 to March 2002, a total of 14,952 persons took part in the Home Detention Curfew programme at a total cost of GBP 24.0m (EUR 36.6m) and a unit cost of GBP 1,600 (EUR 2,440). The average length of time on HDC was 48 days, so the daily unit cost was GBP 33 (EUR 50). In comparison, the average annual cost of a prison place in 2001/02 was GBP 36,377 (EUR 55,470) and the average daily cost was GBP 100 (EUR 152). The average HDC caseload was around 1,700, so the cost of that number of prison places was GBP 61.8m (EUR 94.3m). The net saving in 2001/02 from the HDC programme (the cost of the prison places minus the cost of the electronic monitoring) was therefore GBP 37.8m (EUR 57.6m).

Because of the high volumes, these savings are real and not marginal. The HDC caseload amounts to a number of new prisons that do not need to be built, or at least that will be built later than they would have been built without the programme.

7 The Future of Electronic Monitoring in England and Wales

For the foreseeable future the largest programme will continue to be the "back door" HDC programme using first-generation technology. The parameters of the programme may expand so that volumes increase further. Other programmes using first-generation technology are expected to increase in volume, although less significantly. For example the use of the curfew order with electronic monitoring by the courts should continue its slow growth as the courts become more familiar with this option.

New technology is developing and could be used in innovative ways in dealing with offenders, but this is subject to resources becoming available. At present it is too early to say whether, or when, such programmes will begin.

Recent Evaluations of Electronic Monitoring Programmes in England and Wales

ANYA MILLINGTON

Below are a summary of findings from three recent evaluations of electronic monitoring programmes by the Home Office of England and Wales, UK.

1 Electronic monitoring of released prisoners: an evaluation of the HDC scheme

1.1 Programme

The Home Detention Curfew (HDC) programme provides a 'back door' scheme designed to monitor prisoners on early release from prison. The release can be up to two months before the end of sentence and the curfew period between 9 and 12 hours a day.

1.2 Evaluation period and research issues

The evaluation covered the first 16 months of the scheme from the 28th of January 1999 to the 31st of May 2000.[1] The issues of the research were:

- To conduct an analysis of the release rates and recall to prison rates
- To identify the impact of HDC on:
  - Curfewees prior to release
  - Curfewees on their transition back to the community

[1] DODGSON, Kath *et al.*: Electronic monitoring of released prisoners: an evaluation of the Home Detention Curfew scheme. Home Office Research Study No. 222. London. (2001).

  - The families of curfewees
  - And on the work of probation officers supervising curfewees subject to other, non-HDC licence conditions.
- To examine the relationship between HDC and recidivism

1.3 Methodologies and findings

The methodology used to ascertain release rates and recalls, was an analysis of quantitative data from the Prison Service's 'Inmate Information System'. This was supplemented by other data from the electronic monitoring companies. Approximately 30% of all eligible prisoners were granted HDC in the 16 months of the evaluation; this amounted to 21,400 offenders in total.

Of those released only 5% were recalled back to prison for failing to fulfil the terms of the scheme. The two main reasons for recall back to prison were breach of curfew conditions, which accounted for 68% of recalls and change of circumstances which accounted for 25% of recalls. Offender circumstances that had changed included loss of residence at curfew address and withdrawal of consent to be monitored. Only 1% of curfewees were recalled due to the threat of risk of harm to the public.

Release rates were identified as being linked to the type of establishment from which release was made and individual characteristics of the offender. Needless to say higher risk prisoners held in higher risk establishments had the lowest HDC release rates.

Women were more likely to be granted HDC than men with 40% of eligible females being released in comparison to 29% of males.

Regarding ethnicity, white and black offenders had very similar release rates of 29 and 31% respectively. In contrast prisoners from the South Asian and Chinese and other categories showed significantly higher release rates of 51 and 39% respectively. The higher than average release rates for females, South Asian and Chinese and other prisoners was linked to a generally lower predicted risk of re-offending for these groups.

In analysing recall rates, there was no identifiable difference between males and females, of which the recall rate was 5% for each. South Asian and Chinese and other category offenders displayed lower recall rates than other ethnic groups. Additionally a correlation between release and recall rates and age was identified. It appeared that younger offenders were less

likely to be released and when they were released they were more likely to be recalled.

In order to identify the impact of several groups affected by the scheme, a survey of curfewees, household members and probation officers was conducted. The Home Office commissioned RSGB (Research Surveys of Great Britain) to undertake the research amongst a sample of prisoners released on HDC over a five-week period. The sample was stratified by sentence length and random booster samples were identified for female, ethnic minority and young offenders. A selection of curfewees were randomly identified for interview with a household member and similarly a sample of probation officers was drawn from those curfewees who had given prior consent for their probation officer to be contacted.

A sample of recalled prisoners was then selected from each of the electronic monitoring contractor regions of which there were 4 at the time.

Interviews were conducted using computer assisted interviewing, which provided quantitative data. However in depth interviews were held with recalled prisoners using a discussion guide.

The survey found that the vast majority of the curfewees, household members and probation officers viewed HDC positively. Prior to release, over one third of prisoners said that the prospect of being granted HDC had influenced their behaviour in prison. The curfewees themselves listed the main advantages of the scheme as being out of prison and meeting up with family. Other household members noted that the main advantages to them were having the curfewee back home and there being no more need for prison visits. Neither group mentioned many disadvantages, although 41% of curfewees cited the curfew restrictions as a disadvantage.

At the time of the interviews, 28% of curfewees were in employment and a further 36% were seeking work. Interviews with recalled prisoners suggested that there could be a conflict between employment and curfew restrictions although curfewees not recalled and in employment were less likely than other groups to mention problems with keeping a job because of curfew restrictions.

61% of curfewees had experience of a curfew violation; nearly two thirds of these claimed that the violation was due to equipment failure rather than any action by the curfewee. However, the electronic monitoring contractors, Prison Service and Home Office were unaware of any widespread equipment malfunction.

Of the recalled prisoners, equipment malfunction was also cited as one of the main factors in their return to prison. Other factors included prob-

lems with maintaining motivation to keep to the curfew, the return to substance abuse or chaotic lifestyle, anger management and housing or domestic issues.

The third aspect of this evaluation was a reconviction study in order to identify whether HDC had any impact on re-offending. A short-term reconviction study was carried out on a sample of prisoners who were eligible for discharge on HDC in May and June 1999, some of whom were released on HDC and some who were not. This programme group were compared with a control group of similar discharged prisoners taken from October and November 1998, who would have been eligible for consideration for HDC had it been available at the time. Data on short-term reconvictions received up to six months after the automatic release date, which would have been the original discharge date for any offenders released early on HDC, were analysed for both groups using police national computer conviction data.

The findings indicated that just over 2% of curfewees were reconvicted for offences committed whilst on HDC. In the six months after the curfew period or discharge date, offenders eligible for HDC had very similar reconviction rates to the control group which was a rate of around 30%. The differences between the 2 groups were not significant and this suggested that the impact of HDC is broadly neutral in terms of re-offending when compared with the control group results. However, the reconviction data also highlighted evidence that the risk assessment procedures used with offenders eligible for HDC were operating effectively at an individual level.

The evaluation concluded that HDC appears to be operating relatively smoothly and has somewhat achieved its aim of easing transition of prisoners from custody back into the community with cost savings and little impact of re-offending.

2 Electronic monitoring and offending behaviour: reconviction results for the second year of trials of curfew orders

2.1 Programme

The second evaluation is a reconviction study for the second year of the trials of curfew orders. Curfew orders are a 'front door' scheme which offenders are sentenced to by a court. The order consists of an electronically

monitored curfew period of between 2 and 12 hours a day, on days stipulated, and can be up to 6 months in length.

2.2 *Evaluation period and research issues*

The second year of the trials was between July 1996 and June 1997- the first year of the trials was not analysed due to low numbers of offenders on the scheme at that time. It is noted that, as with the introduction of any new community penalty, the scheme was still establishing itself during the second year of the trials and therefore offenders sentenced in this period may not have been wholly typical of those who were sentenced once the order had become established.[2]

The research issue of the evaluation was to examine the relationship between electronically monitored curfew orders and offender recidivism during and after the order. By comparing this data with information gathered on re-offending by other offenders who had not received curfew orders, the study could attempt to identify any rehabilitative effects of the order.

2.3 *Methodology*

The evaluation used a methodology that sought to ensure the reconviction rate could be attributable as much as possible to the sentence being studied rather than other social or demographic influences.

This was done by gathering information identified on the Offenders Index, a Home Office database containing criminal histories, on a sample of 261 offenders from the trials. From this, risk of reconviction for each offender could be predicted and compared with the actual reconviction results. The data was then used to identify a retrospective group of offenders sentenced to combination and community service orders in April 1996. Offenders on these particular orders were chosen for comparison, as previous research by Mortimer and May in 1997 had indicated that if curfew orders had not been available to the programme group, they would probably have received that type of order. The retrospective group was further matched on demographic characteristics seen as related to offending. A se-

[2] SUGG, Darren *et al.*: Electronic monitoring and offending behaviour- reconviction results for the second year of trials of curfew orders. Home Office Research Findings No. 141. London. (2001).

second comparison was made with other offenders sentenced, at the same time as the programme group, to community sentences other than curfew orders.

2.4 Findings

Over 80% of offenders had completed their curfew orders successfully. The programme group was considered to have been of a medium-high risk of reconviction. This analysis was made using a Home Office algorithm that predicts risk of re-offending, known as OGRS2 or the offender group reconviction scale. Using OGRS2 it was predicted that 67% would have been reconvicted within 2 years.

Nearly 73% of offenders were reconvicted for a further offence within 2 years of being sentenced. Theft and violence were the most common categories for which individuals were reconvicted. The reconviction rate for the retrospective group was very similar at 74%. This suggested that the curfew orders were having no impact on re-offending compared to other community penalties. The predicted rates were probably lower due to OGSR2 being a national predictor, which doesn't take into account local influencing factors, such as police clear up rates and so does not indicate a rise in reconviction whilst on curfew.

The reconviction rate was also no different to that of a comparison group of offenders who received community penalties other than curfew orders during the same period.

In terms of the characteristics of offenders sentenced to curfew orders with electronic monitoring- they tended to be male, in their mid-20s and had been offending for around 8 years. Over 40% had previous experience of custody and over 70% of other community sentences. More than half the programme sample also served other community sentences alongside their curfew order, of which very few of the offenders breached, although this finding was not statistically significant. There was also no significant information relating to female or ethnic minority offenders due to the small sample group.

In conclusion, the evaluators note that the study only looked at the potential rehabilitative impact of electronically monitored curfew orders on re-offending. It did not focus on any possible deterrent or punitive nature the orders may have. Additionally any incapacitation effects of the offender being curfewed were not studied.

3 Curfew orders: evaluation of the first year of national roll out

3.1 Programme

The final study is the evaluation of the first year of the national roll out of curfew orders, of which the trial reconviction study has been detailed above.[3]

3.2 Evaluation period and research issues

The evaluation period ran from December 1999 to December 2000.
The research issues of the evaluation were to establish whether the experience of the pilots was replicated nationally, including:

- The usage and effectiveness of the order
- The characteristics of those monitored on curfew
- The views of criminal justice practitioners (probation officers and youth offending team officers), electronic monitoring staff and curfewees.
- And an analysis of the 'market share' of curfew orders, in terms of the sentences curfew orders were replacing.

3.3 Methods

The following methods were used in the evaluation:

- A selection of five probation areas was chosen as the research sample.
- Data on curfew orders made, the offenders on the orders, breach rates and outcomes and court notifications were obtained from the electronic monitoring companies and supplemented by centrally held information on offending.
- Pre-sentence reports or PSRs, prepared during the evaluation period, were obtained to examine the reasons for, and extent to which curfew orders were being proposed by probation officers.

[3] WALTER, Isabel: The national roll out of curfew orders. Home Office Research Study, London (forthcoming).

- Individual and group interviews were conducted with probation and youth offending team officers, magistrates and district judges. Interviews were also conducted with offenders who were, or had been, subject to curfew orders.

In order to assess the 'market share' of all sentences given that curfew orders formed, data on the types of offenders on curfew orders was compared with a retrospective group, devised by matching on demographic factors related to offending. This identified the sentences that the retrospective group had been given and that probably would have been given to the curfewees had they been sentenced prior to the roll out of the programme.

3.4 Findings

Take up of the orders was somewhat lower than the original predictions. Criminal justice practitioners attributed this to a lack of knowledge about and confidence in, the penalty primarily as it had not yet become established as a sentence. They additionally doubted the value of fully standalone curfew orders and felt the orders could be used most constructively alongside other community penalties. All felt it would remain a rarely used sentence due to the deficit in cases where a curfew order would be a relevant option.

90% of offenders tagged were male and the average age of offender was 25.5 years old. The most common offences for which curfew orders were imposed were theft and handling (23%), driving whilst disqualified (15%) and burglary (10%). The average length of all orders was 98 days which was similar to the pilots at 99 days. Curfew orders were jointly imposed with another community sentence in 26% of cases.

Most curfewees considered an electronically monitored curfew order a genuinely punitive measure and an alternative to custody. Offender's household members were generally positive about the order as it kept the offender out of prison and at home.

Curfew orders appeared to have been used in place of a range of alternative sentences. However, the 'market share' of the order will have been affected by the practice of using curfew order as a breach sentence.

4 The future of electronic monitoring

There are two current Home Office electronic monitoring programme evaluations being conducted. One of these is the 'juvenile offenders subject to

to electronically tagged bail/remand to local authority accommodation: evaluation'. This evaluation will involve analysing administrative data, interviewing juveniles who are tagged and the completion of a questionnaire by sentencers. The research is being conducted by *Anya Millington* and a report is due in spring 2004.

The other project is the 'New uses of electronic monitoring: pilot evaluation'. This study will evaluate the introduction of powers to provide electronic tagging and voice verification requirements as part of a community penalty in three pilot areas in England. The University of Hull have been commissioned to conduct the research and a report is due in spring 2004.

5 References

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WALTER, Isabel: The national roll out of curfew orders. Home Office Research Study, London (forthcoming).

Intensive Supervision with Electronic Monitoring in Sweden

KJELL CARLSSON

Sweden made an early debut in the EM arena. The first limited pilot project – a front-door scheme – was launched in 1994, went nationwide in January 1997 and in January 1999 the operation was transferred into a permanent part of the Swedish Penalty Code. Since its start in 1994 we have implemented some 18.000 sentences by EM. In October 2001 the EM program was expanded with what is usually referred to as a back-door scheme.

The negative effects of imprisonment are well known and often debated – and are a dilemma for any society with an ambition to influence and adjust anti-social behaviour. During the last 20 years Sweden has put a lot of effort into creating alternatives to imprisonment. Consequently this was also the main objective for implementing EM in Sweden – to create a trustworthy and more humane alternative to imprisonment without its well-known down sides, and also to create a more cost efficient alternative to imprisonment.

Let me start by giving you the characteristics of the Swedish EM operation.

In the Swedish operation we do not speak of EM, but of intensive supervision with EM, in short ISEM. In our operation the EM is one of many means of controlling the offender during the implementation of the sentence, it is a tool for whatever you want to achieve during the implementation.

Secondly, the ISEM is characterized by a high degree of interaction between the offender and the Probation Service (PS), who is the body carrying out the monitoring of the offender. The concept is based on an effort

not only to monitor and control the offender, but to influence his anti-social behaviour and his motivation to adjustment.

Thirdly, all means for implementation of the EM are kept within the administration and the PS is the body responsible for the full content of the implementation of ISEM, starting with information before the application to de-tagging at the end, included the EM – which means that we do not use a service provider for the electronic part of our operation. The MC for the nationwide operation is run by, and is placed at, the central administration. For reasons of reliability and security we felt a need to keep as strict control as possible on these parts of the operation. Also when doing the EM the Swedish way, you get a lot of interaction between the service and the offender when performing the monitoring – serving as a platform for the interaction needed to be able to influence the offender if necessary. As pointed out earlier, something that is desired in the Swedish schemes. All agencies have their own 24 hour on-call duty to be able to at all time react instantly to any alert showing misconduct by the offender or technical problems.

All Probation Agencies have access to the system interface and can, if they choose to do so, work in the system and perform their own monitoring of the offenders allocated to their agency. Later on I will give you a more detailed view on the Probation Service, their central role in the strategy for implementing EM in Sweden and how they perform the EM schemes.

Finally, when pointing out the characteristics of the Swedish operation – referring to the original scheme – we use what we call a front door concept, where ISEM is implemented as an alternative to short term imprisonment. The court has no say whether the offender goes to prison or serves his sentence by ISEM. After the final judgment of the court all eligible offenders – those sentenced to a maximum imprisonment of 3 months – are offered to serve their sentence by ISEM instead of going to prison. This arrangement was imposed to secure enough input to the scheme during the implementation phase and to limit the net widening effects as much as possible. The offender's application for ISEM is decided upon by the Probation Service. Almost all offenders agreeing to the content of ISEM and complying with the demands for an acceptable living and an acceptable occupation are admitted in the scheme. There is a risk assessment built into the selection process, but the tolerance for deemed risks is very high. Out of the group applying for ISEM some 90 per cent get their application granted.

Finally, when pointing out the characteristics I would like to stress that ISEM the Swedish way means strict rules, a high degree of control and a

low tolerance for misconduct. We recognize no conflict between control and what in wider terms could be referred to as social work. The offender is confined to his home and is only allowed to leave in order to uphold his obligatory occupation and to take part in activities connected to the implementation of the sentence, for instance taking part in the obligatory motivation or personal change programs. In the average case this adds up to a total leave from curfew of 46 hours per week. The offender is not allowed to use any kind of drugs, alcohol included, and he has to put up with several unannounced home visits per week performed by the PS. All of them including drug controls (breath samples and sometimes even urine samples). The offender also has to visit the local PA at least once a week.

From this you can understand that ISEM means a high level of interaction between the PS and the offender, even apart from the interaction caused by the EM. The strict rules, the low tolerance for misconduct and a tight control – even so, or possible just because of this, we have a low failure rate in terms of breaches – 6.5 per cent. Research performed by the National Council for Crime Prevention and the administration itself during the two stages of the pilot project, show that a majority of the offenders found ISEM as strict as prison and in some aspects even stricter.

Today ISEM is the most common way of implementing short term prison sentences in Sweden – approximately 60 per cent of all prison sentences with a maximum of three months are served by ISEM.

Due to new legislation concerning Community Service in 1999 the numbers in our operation have dropped some 35% over the last two years. Today we have a daily average caseload of some 270 offender and a yearly caseload of approximately 3,000 offenders. There are a lot of overhead costs in this kind of operation, and this has, of course, had a negative effect on our cost efficiency. Today we are looking at a daily cost per head of almost 70 Euro – to be compared to the 50 Euro the scheme showed in 1999. This places the Swedish EM program as one of the most expensive programs. But mind you, most of these costs are not directly related to the EM, but to the personal interaction with the offender such as the motivation or treatment programs and the frequent home visits. The daily cost for the EM is some 6 Euro per head.

The front-door version of ISEM has been a success in Sweden and all interested parties, even the media, applaud both the scheme and the way it has been implemented through the two stages of the pilot project and later on turned into a permanent operation. And I think they have good reason to be happy. We have delivered according to order – a human and trustworthy

alternative to imprisonment, which has made it possible to shut down some 400 prison cells, adding up to an average annual saving of almost 100 M Sek, which compares to 11 M Euro.

Research performed by the National Council for Crime Prevention and the administration itself shows that this has not been carried out at the expense of either public approval or support, nor on a negative impact on reoffending. Studies made by the administration show that the 3 year reoffending rate regarding the ISEM scheme is as low as 11 per cent – to be compared with 24 per cent within the group that served their time in prison. This suggests that the legislator was right on target in his choice of offender group and when pointing out the cornerstones of the program, but I think it also suggests that the administration and the Probation Service have been successful in implementing and carrying out the schemes and also that the EM scheme – at least – is not less effective on fighting reoffending than imprisonment.

In October 2001 Sweden launched the second phase of the Swedish ISEM program – a scheme often referred to as a back-door scheme. Personally I dislike the term back-door, as it suggests a way to flee, an escape route. This new scheme offers no escape – on the contrary, it offers long term offenders an opportunity to, under strict control, prepare themselves for their parole by working on their adjustment to society. The target group is offenders with a minimum 2 year sentence. They can apply to serve, at the most, the last 4 months before parole under ISEM instead of in prison.

The objective for this new scheme is quite obvious – in Sweden as in most other countries in the world, this group of offenders have an unacceptably high reoffending rate, close to 25 per cent within 3 years from the release from prison. The aim for the scheme is to cut down on this reoffending rate.

This new scheme is similar to the front-door ISEM, concerning rules and operation – the offenders are confined to their homes, they have to have an occupation, no drugs are allowed, there are strict control rules, and the Probation Service is in charge of the implementation a. s. f. The most obvious differences from the original scheme are to be found in the selection method, where security and suitability criteria are much more closely attended to than in the front-door ISEM scheme, and where need for support is the conclusive guideline.

Offenders deemed to be a risk, due to, for instance, lack of motivation, reoffending, or any other misconduct during the implementation of the scheme, are excluded. The back-door ISEM is supposed to be an extension

of each offender's individual plan for social adjustment, set at an early stage of the imprisonment. Consequently this period will provide means for whatever is regarded as sufficient to prepare the offender for re-entering society. Therefore, offenders in the back-door scheme will be allowed more release from curfew than the offender in the original scheme.

We estimate the target group to be some 800 offenders per year and expect to see some 200-250 of them ending their imprisonment by ISEM. So far, we have had close to 200 offenders in the scheme. It is still too early to make any conclusive statement regarding the operation, but at least so far the outcome looks good. We prepared well and the organization has been successful in carrying out the scheme. Misconduct in term of breaches is as low as 2 per cent.

The back-door scheme is part of a large reform intended to provide better structure regarding the full implementation of a prison sentence. This reform demands more and better efforts by both the prisons and the Probation Service at an early stage of the imprisonment. Obviously it will take some time before this new working order has been fully and completely implemented. In many cases today the offender has not been prepared at all for his parole during the imprisonment. Consequently it has been difficult in these cases to find the proper tools for rehabilitation during the short backdoor period. I expect the future to provide the scheme with better prepared offenders, which means that we more often can take on those who today are excluded due to high risk of misconduct.

The back-door scheme is on a trial basis until 2004, and will be evaluated by the National Council for Crime Prevention in the same way as the first pilot project was.

Regarding the technical side of the EM operation I can tell you that Sweden during last year launched its third generation EM system. Since the start in 1994, we have been using a typically home monitoring/home detention concept, based on a home monitoring unit consisting of a transmitter and a receiver, using the phone net for communication. The reason for sticking to this rather old-fashion concept all these years, in spite of the evolution of GSM and GPS, is that we find this concept to be the only one available today that can deliver electronic home detention and that is reliable and secure enough to meet our needs.

As I told you before, Sweden has a distributed form of EM, where all agencies nationwide have access to the system and are able to log on to the data base – creating their own local MC. I think this concept is quite rare, at least in Europe.

Our new system is an enhanced version of a system we have been running since January 1997. The system has over the years grown into a smoothly working tool, well adapted to its purpose and serving our schemes in a most efficient way. It delivers the limited monitoring we require – no more, no less – in a cost efficient manner.

We have seen some trouble getting there, though. Our experience show that to get a system adapted to your needs, you really have to know what those needs are before you contract someone to build your system – and you have to be very persistent in your efforts to get it as close as possible to your needs. Otherwise you risk ending up with an extremely sophisticated – and expensive – system, not fulfilling your needs. Our experience has also shown us that the technique can be built to meet most of your needs. As long as you are aware of your needs in terms of managing the system and fulfilling the demands of your scheme, money is the only real obstacle here.

As experienced users of EM technology, we are prepared to manage this today, but it is easy to identify problems in this process for new actors on the EM field.

More than eight years of EM has shown us that the kind of technique Sweden uses is well adapted to its purpose and that it can be made reliable within our own domain of responsibility. The smaller you make this domain the more you have to depend on others to keep your operation going. This was one of the Swedish objectives for self-managing the monitoring system – but you can never create a scenario where you are in charge of all the necessary means to get your EM operation working. You will always be dependent on someone to provide and operate the channel for communication of the messages generated in whatever system you are using. After a major system breakdown in 1997, it became most obvious for us in Sweden that it was necessary to put adequate effort into getting the system, and, as far as it is possible, also any external cooperating body as reliable as possible. At least in our operation, there is very little space for technical failures or mistakes. One major incident can overthrow your whole operation – at least ours.

Technical dependence is the Achilles heel of an EM operation – there are other weak spots too, but the total dependence on the EM system is without a doubt the weakest of them all.

Finally some words regarding the Probation Service:

In the Swedish ISEM scheme the Service is the body responsible for implementing the full content of the monitoring program – from the first

information about the offender, through the investigation and selection process and all preparations before the implementation (such as arranging for temporary work or a phone line to the offender's home) and on to the actual implementation of the sentence.

When implementing ISEM, the Service performs several visits per week at the offenders home and at his place of work or study, motivational and personal change programs (individually or in groups) and drug tests (urine and breath samples). They also have several additional meetings with the offender to do the ordinary probation work.

On top of this they also manage the electronic monitoring equipment; tagging and de-tagging the offender and performing the electronic monitoring, either through the central MC or at their own local MC. All through the implementation of the sentence they have a 24 hour on-call duty standby to react to all messages in the system suggesting misconduct or technical problems. In cases of misconduct the Service is also allowed to decide that the ISEM shall temporarily be breached to wait for a final decision by a local judicial enforcement board. In these cases the offender is immediately placed in a prison or in a remand prison by the police. Most of the 40 agencies nationwide have officers specializing in ISEM, but most of them also participate in the other work performed by the service – ordinary supervision, work with parolees and so forth.

This concept has worked very well in the Swedish operation. As a matter of fact this was one of the cornerstones of our strategy for success when implementing ISEM in 1994 – to place the Service in charge of the full scheme, including management of the electronic monitoring. To support our strategy the Service was given a major role in the projects preparing for both the front- and the back-door schemes. Through a network representing all parts of the service, we sort of built the schemes on sight – straight into the organization. Apart from the obvious possibility to influence the final outcome this arrangement offered the service, it also created a joint venture that resulted in strong feelings of participation and path finding – emotions worth gold for the possibility of succeeding with the implementation of any operation.

For the future I foresee no drastic changes in the Swedish EM program. We have a lot of space capacity in both the electronic system and in the organization and an extension of the program would be preferred, not the least from an economic point of view. Both the front- and the back-door schemes could be expanded without any major changes made to the content of the program. However this demands a parliamentary decision, which is

not yet processed or even prepared. I think we will have to await the first report from the National Council regarding the back-door pilot project – estimated to be presented in the spring of 2003 – before we can expect any changes in the program.

So, to the million dollar question: Does EM work? I would say that the answer depends on what you are trying to achieve and what your expectations are.

From a technical point of view there is no question that the monitoring works, as long as you choose a reliable technique that compares to your scheme. For a home detention scheme this leaves you with the tag-receiver concept that most countries in Europe are using today.

Does it work as an alternative to imprisonment? If your aim is to save money in the short run, it does. But if you are using the concept in the wrong context, with high rates of reoffending during the implementation of the prison sentences, I think you will get into trouble in the long run.

Does it work in terms of rehabilitation and fighting reoffending? Of course not! EM has no healing powers, as many seem to believe. EM is only a tool – a tool that used in the right context can perhaps show an impact on rehabilitation and fighting reoffending. Used in the wrong context, you will risk the opposite effect.

Another frequent question is the one about the threat to the integrity of those monitored and their family. This is, of course, a highly sensitive area and you have to be very cautious with this aspect when preparing and performing your EM scheme. On the other hand I would say that you would have to act really, really clumsily to threaten their integrity the way you do during an the implementation of a traditional prison sentence.

The theme of this workshop is "Will EM have a future in Europe". I would say that it has, as long as Sweden is a part of Europe and provided EM is correctly used, wherever it is used. New techniques for EM will emerge, providing a more intelligent and precise tool for monitoring, creating new applications and new areas for application for EM. This calls for political and administrative caution, but that goes for the use of prisons and imprisonment as well.

The Evaluation of a Three Year Pilot Project on Electronic Monitoring in Sweden

EVA OLKIEWICZ

In Sweden electronic monitoring was introduced in a pilot project in 1997 and 1998. The target group for this reform were persons with a maximum sentence of three months. The evaluation showed that about half of them chose to serve their sentence with electronic monitoring. Half of the persons in this group were convicted for drunken driving and among them the rate of recidivism was significantly lower than in the comparison group.

The positive results from the evaluation of this pilot project has led to an interest in testing if electronic monitoring can be extended to other groups. Therefore, in October 2001 a three year pilot project on electronic monitoring started in Sweden following a decision of the Swedish government. Convicts serving prison sentences of two years or more and meeting certain requirements can apply to serve the last one to four months before probation parole at home, under electronic monitoring.

The National Council for Crime Prevention was commissioned to carry out the evaluation of this project in joint consultation with the National Prison and Probation Administration. The evaluation of the project will be in progress during the three years until April 2005.

1 Goals

The overall aim of the pilot project is to contribute to lowering the rate of recidivism, and this will ultimately be measured during the third year. Lowering the rate of recidivism should be accomplished through the following goals, namely:

- Persons belonging to the intended target group apply for and are granted electronic monitoring.

The requirements are that the convict has a sentence of two years or more, and is considered suitable from a risk and security assessment point of view.

- The social situation for the convicts has improved while in prison.

Lodgings, maintenance and occupation are a prerequisite for being granted electronic monitoring. Therefore convicts who have such needs while in prison shall be supported in their efforts to arrange this.

- The social situation for the convicts is improved during the time they are subject to electronic monitoring.

Convicts in need of support to arrange a more permanent improved social situation regarding lodgings, occupation, maintenance, a non-criminal network and to achieve total abstinence from alcohol and other drugs shall receive such support while they are subject to electronic monitoring and before probation parole.

- Inspection and control during the electronic monitoring:

Intensive inspection and control will be conducted throughout electronic monitoring as well as personal visits in the convict's home and work-place by contact persons and by carrying out drug tests. In case of misconduct disciplinary measures will be taken.

2 Methods

Both quantitative and qualitative methods will be applied in the evaluation. In the quantitative part of the evaluation all convicts who have applied for electronic monitoring will be described by means of a questionnaire which will be filled in by the probation officer. The questionnaire includes variables regarding the convicts´ background, social situation and possible improvements, as well as variables concerning control, inspection and possible disciplinary measures during the period of electronic monitoring. This will, according to estimates, encompass about 200 of the approximately 800 persons leaving prison each year after a minimum sentence of two years.

This group will be compared to a sample of convicts with the same length of prison sentence who have not applied for electronic monitoring.

A comparison will also be made with convicts who have applied but whose application for various reasons has been turned down. A shorter form of the questionnaire mentioned above will be used. This comparison group will also be used for evaluating the impact of electronic monitoring on recidivism.

Another questionnaire will be distributed to convicts with electronic monitoring with the following topics:

- if the possibility to apply for electronic monitoring at the end of their sentence had led them to a better adherence to rules and regulations in prison than would otherwise have been the case,
- how they felt they could cope with being confined in their movements, and especially how this was experienced by those serving three or four months at home compared to those with one or two months,
- how they had experienced the support and control during administration by the probation officers,
- if they, having this experience, would choose electronic monitoring again in a similar situation, and
- how the system could be improved within the present regulations.

An interview with open questions will also be conducted with convicts who according to prison authorities meet the requirements for electronic monitoring but did not apply. The purpose of the interview is to find out why they preferred to stay in prison.

The qualitative part of the evaluation will also consist of interviews with staff as well as convicts and their families. Interviews conducted this year with staff will focus on rules and practices regarding implementation. Next year's interviews will focus on issues concerning possible improvements in the social situation of the convicts. The interviews with the convicts will focus, among other things, on their experiences of electronic monitoring and - within the limits of the regulations - what can be changed to improve it. The interviews with the families will concern their experiences of electronic monitoring – the pros and cons, and if possible what could be done to improve the system within the limits of the regulations.

3 Analysis

The first report will be submitted to the government in April 2003. Its main focus will be on the implementation of the pilot project with regard to the

possible need for changes in regulations and practices. One question is what obstacles to good practices the probation officers have experienced, and what suggestions they might have to improve the system. Another important issue will be the analysis of whether the convicts applying for and being granted electronic monitoring correspond to the target group, intended by the government. This includes, for example, the following questions:

- Convicts who, according to prison authorities, meet the requirements, but do not apply for electronic monitoring – why do they choose not to apply?

- Convicts, who have applied but whose application has been turned down by the authorities – the reasons behind the rejection of the applications need to be analysed, in order to examine the interpretation of the rules and established practices.

The second report will be submitted in April 2004 and will mainly focus on the social situation of the convicts prior to as well as during the time they are subject to electronic monitoring. A special focus will be on the need for support this group has compared to other convicts with similar lengths of sentence, and whether they received any help from the authorities.

The third and final report will be submitted in April 2005 and will address the overall aim, namely whether electronic monitoring has an impact on recidivism or not.

Electronic Monitoring in the Netherlands

RUUD BOELENS

In 1995 we started experimenting with EM in the Netherlands. It is now seven years later and we are still working with relatively small numbers. The introduction and implementation of new ways of dealing with offenders is – in the Netherlands anyway – a long and tedious process.

I will give you some background information on EM in the Netherlands. By presenting to you some of the basic principles we use, I will try to give you a picture of the way we use this tool. Because, please remember this, EM is only a tool.

I will draw this picture along 3 lines: first I will briefly discuss the history of EM. Then, I will discuss the basic principles and characteristics of this instrument. Finally, I will inform you about the elements of EM programmes. I will finish my speech by making a few personal observations.

1 A Short History

It is more than 12 years ago that the application of EM in the Netherlands was first under consideration. An advisory committee, appointed by the Minister of Justice, concluded in 1988 that there should first be a national discussion whether EM should be used at all. There were serious doubts whether the use of EM would not mean a severe violation of the privacy of participants. Organizations like the Probation Service, the national lawyers association and the association of judges, as well as the academic commu-

nity seriously doubted the necessity of introducing EM into the Dutch penal system. Two years later, after this discussion, another committee again advised negatively.

Another two years later in 1992 a group of civil servants from the Ministries of Justice and Finance reviewed the way money was spent within the Ministry of Justice. Among other things, they advised to replace 350 prison cells by using EM. It would save about 20 million guilders per year.

Although there had hardly been any discussion within society and actually no discussion at all in the Dutch parliament, the government decided in 1993 that a trial with EM should take place. Another advisory committee was appointed to develop specific proposals. This committee had only two guidelines: EM should be a real alternative to incarceration; that meant that EM should not be a "soft option", and EM must not lead to net-widening. Oddly enough, there was no specific target to be met with regard to financial aspects.

And it is noteworthy that the major political parties' programmes for the 1994 general elections mentioned a wish to experiment with EM. For some reason the political climate had changed in favour of experimenting with EM. My guess is that crowded prisons and decreasing budgets were the decisive reasons!

I know that there was some discussion within the Ministry of Justice as to which organization should be asked to supervise the offenders while under EM. I'm fairly sure that several people in the Ministry were in favour of asking the department of prisons to do that. But it was decided that the Probation Service should be invited to do it. I remember that one day in 1994 an official of the Ministry of Justice actually came to a meeting of the association of chief probation officers and suggested that the Probation Service should take up this new task. We already executed community service and probation orders, so why not this as well. And if we didn't want to do it, well, the money would go elsewhere (and you have to realize that the Probation Service suffered severe cuts in their budget at the time). The Probation Service finally agreed to do it, but on one important condition: EM should be used as a means to promote the reintegration of offenders into society and that therefore EM always should consist of a set of activities, to be carried out by the offender and to be supervised by the Probation Service. The Ministry of Justice wholeheartedly agreed to that and so there you have the two main characteristics of EM in the Netherlands: it is both a punishment and a means to influence somebody's behaviour.

2 Basic Principles and Characteristics of EM in the Netherlands

I will give you some of the basic principles and characteristics of EM in the Netherlands.

2.1 Introduction of Electronic Monitoring

EM was introduced on an experimental basis in order to find out whether it would be accepted by relevant parties in the Dutch society. That was actually the only written goal of the experiment: finding out whether EM would be an acceptable way of dealing with offenders.

The *scale of the experiment was limited*: a maximum of 50 offenders could be under EM at the same time.

Since the nationwide introduction, the only limit is the 200 available EM-units.

2.2 Legal framework

The *trial was executed within the framework of the existing penal law.* At the time I thought this was a good idea. Looking back now, I am not so sure anymore. We knew so little about EM that I am almost certain that changing the penal law would have restricted our possibilities more than we would have liked. I realize on the other hand that an alteration in the law might have promoted the use of EM by the district courts.

2.3 Implementation

EM is being carried out in a *public-private partnership.*

- A security company is responsible for the technical side (the actual tagging of a person, the instalment of the equipment, running the host computer, etc). They also serve as a telephone service for the Probation Service outside office hours.
- The probation service is responsible for advising the authorities, for drawing up EM programmes and for the actual supervision of the participants.

I know that, for example in Sweden and in England they do it differently, but I like this division of labour: Probation Service and Security Company

carry out their core business. The evaluation of the experiment in 1997 resulted in the decision to continue this joint venture.

2.4 Aims of Electronic Monitoring

As I said before, *EM should be both a punishment and a means to re-socialize offenders*. This implies two things:

- On the one hand: offenders are closely monitored and they have, one might say, more obligations than rights.
- On the other hand: there can be no EM without a personal programme which the participant is obliged to carry out.

2.5 Target groups

Based on the principles mentioned before (EM is not a soft option and the use of EM should not lead to net-widening) two target groups were selected:

- The first group are long-term prisoners (that is prisoners who have been convicted to a prison sentence of one year or more, there is no limit as to the length of the sentence, only lifetime sentences are excluded). When they have served at least 50% of their original prison sentence and meet other prerequisites (that have mainly to do with past, present and expected behaviour) they will be allowed to serve the last 6 weeks to 6 months of their sentence outside prison – the time depending on the total length of their sentence. As I said, until 1999 we used EM on an experimental basis. Since January 1999 however we have a new Penitentiary law. One important new element of this law is the introduction of what is called a penitentiary programme. It is in effect an early release scheme. Participants must be willing to take part in a specific personal programme of at least 26 hours a week. EM often is part of such a programme, at least during the first part of it. Very recently it was decided to extend the maximum length of a penitentiary programme to one year. In 2001 over 600 prisoners participated in a penitentiary programme; 328 of them with EM.
- The second target group are offenders who would, without the availability of EM, have been sentenced to a prison sentence of up to 1 year. EM in this case is a special condition to a suspended sentence, often

combined with a community service order, the latter to be executed after the period of EM. In 2001 we had ± 60 cases.

Other possible target groups were taken into consideration when we started but were rejected. In particular, the use of EM as a special condition to suspension while on remand was discussed. But because of experiences abroad and because of the uncertainty that EM would in effect be an alternative to incarceration, this use was rejected, at least until now.

2.6 *Types of Crime*

With respect to the *types of crime* committed no category is excluded beforehand. As we want to use EM as a means to reintegrate offenders, especially long-term prisoners, this seemed an obvious decision. But for the Probation Service it is sometimes difficult to decide what to advise in cases where people had served many years for example for murder or serious sex crimes. On the other hand, these offenders will be free 6 months later anyway, so we might as well use these months to try and prepare them for their return into society.

2.7 *Risk assessment*

There should be a limited risk with respect to reoffending while under EM. Two or three parties are involved in selecting candidates. In our so called front door variant it is the Probation Service, the public prosecutor and finally the judge who play a part in the assessment of risk. In the early-release schemes the Probation Service as well as the prison authorities are involved in the decision making process.

2.8 *Offenders (and their housemates) have to agree to EM*

My colleagues spend quite a lot of time informing both parties of the consequences of being under EM. Whenever possible we try to have a separate conversation with the partner to make sure that she agrees voluntarily.

2.9 *Low tolerance*

There will be a *low tolerance policy* (yellow and red card principle) as to breaking the rules of the programme. Low tolerance does not mean zero

tolerance. Being late for half an hour, for example, does not mean that the EM will be stopped. We will, of course, discuss a breach of rules with the participant, and when it happens again an official warning is given. We have a lot of offenders under EM who are not very good at organizing their lives. We want to use EM to improve their planning and I think that is exactly the way EM works.

2.10 Telephone line

The participant must of course have *suitable housing and a functioning telephone*. If he does not have a telephone (for example because the telephone company cut him off because of debts), we are willing to provide one, but only when he is willing to pay back his debts, for example by a monthly arrangement.

3 Electronic Monitoring Programmes

As I said before, participants must be willing to observe a programme during EM. In practice this means that no participants will be allowed to stay at home 24 hours a day. In the course of the experiment EM programmes developed into having four elements:

- Time for programme activities
- Time for socially accepted activities
- Free time, and of course
- Time at home

I will elaborate a bit on these elements as they may give you an idea about the way we see and use EM.

3.1 The time for programme activities

This is the time offenders are allowed to leave their house, well, actually must leave their house, in order to carry out programme elements. In general this amounts to 20-40 hours a week, with an average of 30 hours a week.

The most important element for many participants is work. Sometimes they have a paid job, others are self-employed. More often they start working without getting paid, as a kind of work training. We work in close

cooperation with employment agencies to enhance their chances of finding a paid job. Education, treatment and participation in probation programmes are other important programme elements.

3.2 Time to spend on socially acceptable activities

As we want offenders to participate in society and to lead a normal life, we encourage participation in, for example, sports activities, family duties, church attendance, etc. The probation service carries out random checks in order to make sure that participants actually do these activities and no other.

3.3 Free time

Participants have no general right to free time in the sense that they are free to do what they want. But as we want offenders to resocialize, the probation service can give them a certain amount of free time and thereby give them more and more responsibility for their behaviour.

In general, a participant will start his or her (I didn't mention it before, but of course there are also women under EM) EM with two or four free hours on Saturday and two or four on Sunday. If they act in accordance with the programme agreed on, these hours can be increased to four or eight hours after 1 month of EM. After eight weeks they can earn another 8 free hours per weekend, and after three months they are even given a weekend off. In case of an EM of 6 months they will have a weekend off every fortnight after five months of EM.

In case a participant breaks the rules, we can give somebody an official warning, as well as withdraw free hours.

3.4 Time that must be spent at home

Obviously this takes up most of the hours of an EM schedule.

4 Concluding Remarks

To finish my speech I will make a few observations.

- The use of EM has been generally accepted as part of the Dutch Penal system.

- In my view both the Probation Service as well as the Criminal Justice system as a whole are nevertheless in need of a comprehensive policy with respect to dealing with offenders and the use of EM in that context. In that respect Sweden is way ahead of us.
- So far only few participants reoffended while under EM. Given this result we might wonder if we have not been too careful during the selection process.
- One should not underestimate the possibilities EM offers with respect to structuring offender behaviour. In our case the average length of EM is 3½ to 4 months. And as I have explained before, EM the Dutch way in practice means that somebody's behaviour is structured almost 24 hours a day for the whole period.
- EM has had a positive effect on the image of the Probation Service. We were able to show prison authorities, public prosecutors and politicians that we are able to participate in the execution of sentences while at the same time remaining an organization that helps offenders to lead a better life. At the same time some work still has to be done to fully integrate the use of EM in our working methods.
- Practitioners like EM project managers and people in the Probation Service work on the basic assumption that "there is something that works for some people". We are constantly looking for trustworthy alternatives to incarceration that are cost effective, acceptable to the community and lead to a reduction of recidivism. So far the academic community has been rather critical about the use of EM. They should be critical, because we practitioners need to be challenged. But at the same time I invite the academic community to help us with their knowledge about criminal behaviour to improve or alter our programmes; to suggest to us what programmes might work for what sort of offenders.

Ladies and gentlemen, this concludes my introduction to this seminar. Thank you very much for your attention.

Results of the Evaluation of the Netherland Project on Electronic Monitoring

RENÉ A. SCHAAP

Electronic Monitoring will never become a mass penal measure in the Netherlands. This is why Electronic Monitoring has a future!

1 Electronic Monitoring (front-door model) 2001 – Penal Programmes (back-door model) 2001

Electronic Monitoring is an alternative to unconditional custody: the court imposes a specific period of Electronic Monitoring as a special condition of a suspended sentence (at the final verdict), along with unconditional custody which has been converted into community service (front-door model). It was administered by the Public Prosecution Service and the Probation Service.

Electronic Monitoring is applied within a Penal Programme which provides the offender with the opportunity to serve the last part of his unconditional custodial sentence (at present still ranging between 6 weeks and 6 months) outside the institution (back-door model). It was administered by the National Agency of Correctional Institutions and the Probation Service.

The front-door model was introduced nationwide in December 1999. The back-door model was introduced along with the new Custodial Institutions Act (*Penitentiaire beginselenwet*) in January 2000.

1.1 Figures for 2001:

- 50-60 sentences with Electronic Monitoring through the front-door model;
- an inflow of 601 participants through the back-door model; 328 with Electronic Monitoring;
- Low failure rate (7%);
- Basic principle: both models (front-door and back-door) are based on tailor-made individual programmes (minimum: 26 hours per week) combined with Electronic Monitoring.

2 Experiment on Electronic Monitoring for juveniles (2001/2002)

- A two-year experiment for juveniles aged between 12 and 18, a modality for provisional custody;
- Aim: to maintain and strengthen the social ties of the juveniles;
- Conditions: amongst others, productive daily activities (programme of 30 hours per week), adequate discipline and cognitive capacity;
- Administered by the Public Prosecution Service, the Child Protection Board and the Youth Probation Service.

The experiment was conducted in one city in the Netherlands, namely Rotterdam. After 18 months, Electronic Monitoring had been applied to 23 juveniles (out of an expected 48). The intake was low: juveniles frequently lack discipline and cognitive capacity; many have no stable home situation or daily activities. The modality met with competition from 'night detention'. Most of the participants were juveniles with an average age of 15.5. There was a 25% distribution of Dutch, Moroccan, Surinam and Turkish juveniles; 70% of the offences concerned robbery with violence. The throughput time for each participant was 6 weeks. 21 juveniles completed the experiment. 4 juveniles reoffended after the experiment. EM proved burdensome for the juveniles and parents (the family felt it was being punished).

The State Secretary decided to terminate the experiment. The intake was extremely low (partly due to strict selection criteria). A rapid increase in the intake was not expected in the future. The product proved to be labour-intensive and the State Secretary wanted fast and consistent settlement of juvenile criminal cases and fast court procedures. The target group turned

out to be the same as for night detention. The intake for night detention was good; the procedures were easier and cheaper than Electronic Monitoring. Negative assessments came from the Public Prosecution Service and the courts. They foresaw a trend towards unequal treatment and the risk of an elitist modality. The Juvenile Institutions Act (*Beginselenwet Justitiële Jeugdinrichtingen*) provides for Social Training Programmes in combination with Electronic Monitoring (back-door model). It is more likely that Electronic Monitoring will be applied in tailor-made programmes within the framework of phased detention.

3 Feasibility study of Electronic Monitoring as a form of provisional custody (2002)

A feasibility study was carried out in the framework of the Sanction System Review Project of the Ministry of Justice. The question was whether 'rudimentary' Electronic Monitoring (i.e. without an activity programme) could be a useful form of provisional custody for juveniles who do not need to be detained but still require monitoring.

3.1 Results:

'Rudimentary' Electronic Monitoring is not a viable alternative to provisional custody. The target group for this modality is very small if sought within the group which is currently housed in correctional institutions. Hence, Electronic Monitoring does not help to solve the capacity shortage in the prison system. The target group of the study was 'those suspected of an offence with a time- and place-related recidivist risk, who were not multiple offenders and who had some form of structure in their lives and no serious drug or alcohol addiction problems'. The majority of the delinquents who were in correctional institutions failed to meet the criteria for successful rudimentary Electronic Monitoring. The suspension option continues. There was no 'new' target group. Perhaps Electronic Monitoring should be applied in order to improve preventive supervision of suspended detainees.

4 Experiment on Electronic Detention Houses (2001/2002)

- An experiment on a flexibilization measure with the aid of electronics;

- Aim: to test a measure that would free up cell capacity during peak inflow periods without necessitating earlier Incidental Accelerated Release (capacity measure);
- Target group: final-phase detainees who have served 90% of their sentence and still have a maximum of 60 days to go;
- Application of the Area Monitoring System (variation of Electronic Monitoring);
- Administered by the National Agency of Correctional Institutions of the Ministry of Justice;
- Electronic Detention Houses must be quickly operational (and able to be closed);
- Stringent daily programmes;
- Cheaper than Minimum Security Institutions;
- Limited use of personnel and resources.

4.1 Current state of affairs:

- The average period of detention is 3 weeks;
- The target group is less manageable than was assumed;
- More supervision is required than was assumed;
- 200 detainees received at 2 locations in 6 months (ten detainees each);
- Very low failure rate;
- Urge to quickly 'resocialize' among personnel;
- The National Agency of Correctional Institutions is eminently capable of administering Electronic Monitoring.

4.2 Follow-up 'by developing':

- Other target groups (individual applicants and women);
- Leave arrangements;
- Tailor-made programmes;
- Camera supervision;
- A lower personnel requirement;
- Increase the locations from 2 to 5 (maximum 50 participants per day);
- Stringent programmes;
- Possibly other types of electronics.

Implementation of Electronic Surveillance in France A Quantitative Analysis

ANNIE KENSEY

This article deals with the quantitative aspect of a study on the implementation of electronic surveillance in France, conducted by the Department of Consultancy, Forecasts and Budget (AP/PMJ1) and the Sociological Research Centre on Law and Penitentiaries (CESDIP).

The analysis deals with all electronic surveillance measures in the four pilot sites throughout the implementation period, i.e. from October 1, 2000 to October 1, 2001: Aix-Luynes Prison, Loos-les-Lille Prison (populations concerned: jail and penitentiary), Agen Prison and the Grenoble Day parole Centre. This period was extended to May 1, 2002 in order to attain a larger number of convicts examined. As such, we studied the 175 files corresponding to cases of electronic surveillance terminated on May 1, 2002.

The files include a follow-up report on cases of electronic surveillance, and – where necessary – modification reports or incident reports, as well as the photocopy of the updated criminal record report on the date the electronic surveillance came to an end.

1 Geographic Breakdown of the Electronic Surveillance Study

Since the beginning of the experiment, 255 cases of electronic surveillance were ordered by the judges enforcing sentences.

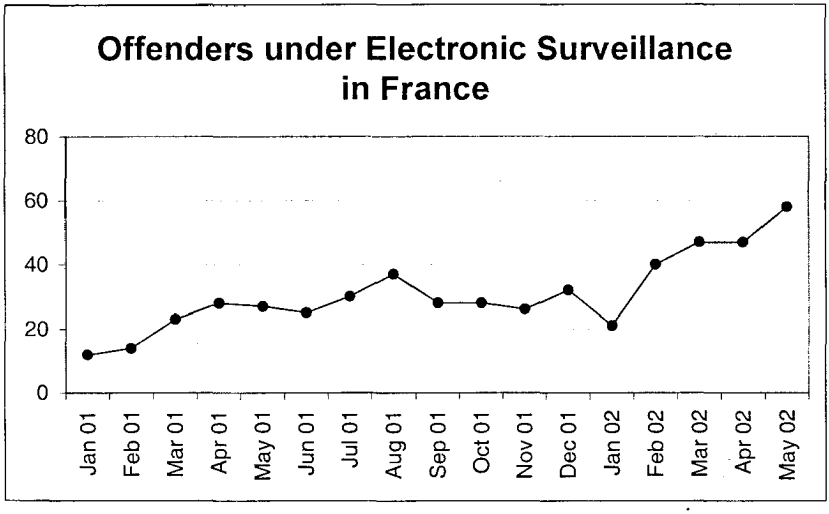
Table 1: Total cases of electronic surveillance (May 1, 2002)

Surveillance centre	Jurisdiction	Total cases of electronic surveillance	Cases in progress	Suspended cases	Terminated cases
Agen Prison	Agen High District Court	57	11	0	46
Aix-Luynes Prison	Aix-en-Provence High District Court	67	15	0	52
Béziers Prison	Béziers High District Court	3	1	0	2
Grenoble Day parole Centre	Grenoble High District Court	49	15	1	33
Loos Prison	Lille High District Court	62	17	0	45
	Dunkirk High District Court	9	5	0	4
	Hazebrouk High District Court	0	0	0	0
Osny Prison	Pontoise High District Court	8	6	0	2
Total		**255**	**70**	**1**	**184**

Results presented here deal with the files of the four experimental sites for which electronic surveillance ended on May 1, 2002, i.e. for a total of 175 prisoners. Obviously this number does not enable us to proceed to multi-criteria analysis, but it is sufficient to reveal certain tendencies.

The monthly evolution of the number of persons placed under electronic surveillance on the first of each month for the four sites is as follows.

Each site has at its disposal 20 devices; the total number of those placed under electronic surveillance on a given date cannot be over 80 for the four sites. Thus, after stagnating around 30 for the first year, the number of cases of electronic surveillance increased since January 2002 to reach close



to 60 in May 2002. This means that three quarters of the total number of devices available was used by this date. However, since the beginning of implementation, each site has the possibility of obtaining 20 additional devices. The total number of all devices can thus reach 40 per site, should the request be made. We can conclude that the measure started slowly, as the rate of use of devices (counting the potential additional devices) only reached 37 % on May 1, 2002.

The analysis of different reports requested of the prisons for each case of electronic surveillance produces the results described below. Those placed under electronic surveillance will be examined according to their demographic and social characteristics, as well as in light of their criminal record. We will then analyse under which conditions the measure was accorded by the judge enforcing sentences, and how it was conducted.

2 Demographic and Social Characteristics of the Convicts Placed under Electronic Surveillance

The characteristics of persons placed under electronic surveillance are compared – when possible – with those of persons entering custody[1] in the

[1] Or to be more precise, with the number of "entrances" in a given year, as the same person may be jailed, released then jailed once again, either at different stages of the procedure for the same offence or for different offences.

year 2000. We took this data from the National Prisoners List (FND)[2]. We chose to make comparisons with those entering custody, as opposed to those leaving custody or those present in jail, as persons who are placed under electronic surveillance are so placed for relatively short periods. They will also be compared with those persons being followed in open settings.[3]

2.1 Demographic characteristics

The proportion of women amongst those placed is close to 9 %, i.e. a relatively high proportion, if it is compared with the proportion recorded of the total number of imprisonments during the whole of the year 2000 (5 %), but similar to the proportion of those followed in open settings (10 %).

In the same way, the proportion of foreigners is significantly lower (4 %) than that calculated amongst those starting detention in the year 2000 (24 %), as well as that of persons followed in open settings (7 %).

The average age of convicts at the beginning of their being placed under electronic surveillance is 34 ½. Such convicts are on the average older than those incarcerated during the year 2000 (29.4 years). The average age of those followed in open settings is a little higher (32.5 years), but remains lower than that of persons placed under electronic surveillance.

2.2 The family

The marital status of those placed under electronic surveillance differs from the marital status of those being incarcerated. Bachelors are less numerous: 39 % as opposed to 67 % for those being incarcerated. On the other hand, convicts under electronic surveillance who are married – or who live with their partner as a couple – are represented to a larger extent (respectively 19 % and 26 %) than those who are incarcerated (12 % and 13 %).

They are also more likely to have custody of children: 52 % as opposed to 33 % of those being incarcerated Amongst those who have children, 68 % have a maximum of two children (69 % for those incarcerated) and 11 % have four children or more (as opposed to 14 %).

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[2] Information drawn from the prison calendar by the DAGE Statistics, Studies and Information Subdivision (SD/SED), and by the Prison Administration (DAP/PMJ1).

[3] Files opened in 1998 – Guillonneau, Maud: Sanctions and Measures in an Open Setting, Cahiers de démographie pénitentiaire, DAP/PMJ1, June 2000.

2.3 Social characteristics

The schooling history of those placed under electronic surveillance is relatively longer than that of those incarcerated. Only 20 % of those placed under electronic surveillance say that they are illiterate or received a primary school education. This is the case for 48 % of those who start a detention period. Seventy-four percent (74 %) received a secondary school education or more, as opposed to 47 % of those incarcerated. Sixty-eight percent (68 %) say that have a trade or profession. In most cases – 60 % – of those placed under electronic surveillance have a professional activity, and 14 % declare that they are looking for a job.

This summarized data (which gives a brief overview) enables us to conclude for the time being that in the implementation phase of electronic surveillance, a choice was made for those who benefit from this measure, as they present less of a failure risk being less marginalized socially than those incarcerated. We have to see if these conclusions – which are typical in the implementation phase of a measure – can stand the test of time.

3 Characteristics of Those Placed under Electronic Surveillance According to the Criminal Records

Electronic surveillance is accessible to three categories of convicts: those whose sentence(s) are not longer than one year, those for whom the remainder of their sentence is less than one year, and those for whom the judge enforcing their sentence considers electronic surveillance to be a conditional measure for release on probation for a duration of less than a year. Among the cases of electronic surveillance which terminated on May 1, 2002, more than eight out of ten concern the first category (i.e. those convicted to short sentences), close to 13 % have a remainder of their sentence of less than a year, and for close to 2 % only, electronic surveillance is a conditional measure for their release on probation.

In more than half the cases (55 %), the decision to place a convict on electronic surveillance was made on the initiative of the judge enforcing the sentence. No such decision was made by the Head of the Prosecution Department over that period, and electronic surveillance was requested by the convict in 45 % of the cases.

Upon reading the criminal record report, 84 % of convicts whose period of electronic surveillance has ended were only judged for one offence.

Concerning the nature of the offence which led to conviction, we examined all the offences, knowing that any given case could include several offences. It is a new measure, and that is why it is not easy to draw up the nomenclature of offences.

Table 2: Offences punished

	Cases	Percent
Breach of the law on narcotics	26	14.9
Assault and battery with intent, violence	20	11.4
Rape, concealing of stolen property	18	10.3
Rape, concealing of stolen property with aggravation	18	10.3
Sexual assault	15	8.6
Drunken driving + other driving-related offences	13	7.4
Fraudulent misuse of funds, racketeering	11	6.3
Theft, receiving and concealing of stolen goods + racket	9	5.1
Other driving-related offences	9	5.1
Drunken driving	7	4.0
Theft with violence	7	4.0
Breach of the law on narcotics + theft with aggravation	1	0.6
Assault and battery with intent + other offences	1	0.6
Theft + theft with aggravation	1	0.6
Theft with violence + drunken driving + other driving-related offences	1	0.6
Theft + drunken driving	1	0.6
Violence + drunken driving	1	0.6
Three offences	1	0.6
Other offences alone[4]	14	8.0
Total	**175**	**100.0**

Source: AP.PMJ1-CESDIP

To summarize, those convicted of theft (all types) represent 27 %. Those convicted of road traffic offences (including drunken driving) represent 17 % of all cases, followed by those condemned for a breach of the law on narcotics (15 %), assault and battery with intent and violence against persons (11 %) and those condemned for sexual assault (9 %).

The sum of firm jail terms of all sentences pronounced comes to an average of 6.9 months. Fifty percent (50 %) of those placed on electronic sur-

[4] Damage/deterioration, performing undeclared work, offence against the legislation on arms, failure to perform work of general interest on court order, rebellion committed in a group, using gambling devices in private premises, desertion from the armed forces inside the country in times of peace.

veillance were sentenced to less than 5.5 months (median). The firm jail term pronounced is equal to or higher than two years in 2.3 % of all cases.

4 Initial Conditions of the Measure

Electronic surveillance involves – for the convict – a prohibition by the judge enforcing the sentence to leave his or her residence or any other designated premises (Art. 723-7 of the Code of Criminal Procedure). Indeed, the person placed under electronic surveillance can be domiciled in a private or public establishment, a home for the elderly, a boarding school etc. In all the cases studied, the prohibition to leave that premises concerns the convict's residence. Periods of leave which are clearly determined pertain to all days of the week, including weekends in eight cases out of ten. For 18 % of those convicted, leaves are prohibited on weekends.

The periods established by the judge enforcing the sentence take certain conditions into consideration: holding a job in over half the cases (56 %), if the convict holds a job and participates in family life (7.4 %), on the job training or temporary employment (7 %) and medical treatment (5 %). Participation in family life alone is a condition for close to 6 % of those convicted.

The criterion of gainful employment applies in particular to those persons under electronic surveillance who already have a job (¾ of those who must meet this requirement already have a job). For the others – unemployed people, retired workers and those whose situation is uncertain – four out of ten had this condition imposed on them. This data does not tell us if gainful employment was found for those persons, or if it has yet to be found.

The judge enforcing the sentence can also submit the person under electronic surveillance to the measures enforced by Articles 132-43 to 132-46 of the Criminal Code concerning stay of execution with a putting to the test (Art. 723-10 of the Code of Criminal Procedure).

Twenty-five percent (25 %) of the convicts are subject to the control measures provided for in Article 132-44 of the Criminal Code[5].

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[5] *Art. 132-44*: The control measures to which the convict is subjected are as follows:
1 – reply to the summons of the judge enforcing the sentence or of the designated probation officer;
2 – receive visits from the probation officer and provide him or her with the information or documents required to verify the convict's means of subsistence and to ensure that the convict fulfils his or her obligations;

Twenty-six percent (26 %) of the convicts are subject to at least one of the measures foreseen in Article 132-45 of the Criminal Code[6].

5 Time Required for the Implementation of the Measure

5.1 Since conviction

The time that has elapsed since conviction could only be examined for those convicts condemned for a single offence (they represent 84 %). Three situations were distinguished:

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3 – inform the probation officer if the convict changes jobs;
4 – inform the probation officer if he or she changes his or her residence, or of any travel plans, the duration of which exceed fifteen days, and inform the officer of his or her return;
5 – obtain the prior authorization of the judge enforcing the sentence for travel abroad and – when it may present an obstacle to the fulfilment of the convict's obligations – obtain the prior authorisation of the judge enforcing the sentence for any change in employment or residence.

[6] *Art. 132-45*: The jurisdiction which pronounced the conviction or the judge enforcing the sentence may specifically impose on the convict the observation of one or several of the following obligations:
1 – exercise gainful employment or follow an educational programme or vocational training;
2 – establish his or her residence in a given location;
3 – submit to a medical examination, treatment or health care, even if hospitalization is required;
4 – prove that he or she contributes to family expenses or pays regularly alimony for which he or she is liable;
5 – compensate – fully or partially – for damages caused by the offence according to the convict's capacity to reimburse, even in the absence of a civil suit;
6 – prove that he or she pays the sums due to Internal Revenue – according to the convict's capacity to pay – following his or her conviction;
7 – refrain from driving certain vehicles determined by categories on the convict's driver's licence, as specified by the Highway Act;
8 – refrain from performing the trade or professional activity performed at the time the offence was committed;
9 – refrain from appearing in any specially designated location;
10 – refrain from gambling, notably through bookies;
11 – refrain from frequenting places which serve alcoholic beverages;
12 – refrain from frequenting certain convicts, notably those who committed the offence or were accomplices in it;
13 – refrain from establishing relations with certain persons, in particular the victim of the offence;
14 – refrain from possessing or bearing arms.

- The first concerns those who entered custody due to a final judgement and who benefited from electronic surveillance as soon as imprisonment was scheduled to begin on the basis of Article D 49-1. This is the most common situation, as there are 129 such cases, i.e. 88 % of those condemned for a single offence. The duration between the date of conviction and the date when the convict entered custody is, on an average, close to 16 months. In close to half the cases, the time which went by was less than one year, and for the other half, it was more than one year.
- The second situation concerns those persons who entered custody due to a final conviction, but for whom electronic surveillance was decided during detention. Eleven convicts amongst the 147 condemned for a single offence are in this category, i.e. 7.5 %. In this case, we calculated two time phases: the one which ran between the date of conviction and the date of entering custody, and between the date of custody and the beginning of the application of electronic surveillance. Between the conviction and entering custody, the lead-time is close to ten months on the average. Between entering custody and the beginning of electronic surveillance, the lead-time is three months.
- Lastly, the third situation which was encountered to a much lesser extent (6 cases) concerns those who entered detention under remand. Once again, we calculated two lead-times: the one running between entering custody and the date of conviction, and the one between conviction and the date of the ruling for electronic surveillance, granted by the judge enforcing the sentence. Between the times the convict entered custody and the judgement, the lead-time is an average of 28 days. Between the judgement and the ruling of the judge enforcing the sentence, an average of close to four months went by.

5.2 Since the ruling of the judge enforcing the sentence

Between the ruling of the judge enforcing the sentence and the actual beginning of electronic surveillance, a relatively short time elapses: an average of eight days and in 67 % of all cases, less than ten days.

6 How the Measure was implemented

The judge enforcing the sentence can, at any time, designate a doctor so that the latter may verify that the implementation of the electronic proce-

dure does not present any hazard for the convict's health. A doctor has to be so designated should the convict request one (Art. 723-12 of the Code of Criminal Procedure). No convict made such a request, but in 30 % of all cases, the judge enforcing the sentence designated a doctor to proceed with such verifications.

Aside from any alert, employees mandated to control convicts on electronic surveillance may go to the designated premises where the convict should be found. In 62 % of all cases of electronic surveillance, the employees made such visits at least once. After a recognized absence, the employees have not made such a visit in eight cases out of ten.

The judge enforcing the sentence may rightfully – after approval by the State Head of the Prosecution Department – modify the conditions of application of electronic surveillance (Art. 723-11 of the Code of Criminal Procedure). He or she may also do so at the request of the convict. We note at least one such modification for 45 % of all convicts put on electronic surveillance.

Two thirds of all modifications concerned a change in the periods of leave at the request of the convict. Thirty percent (30 %) of the modifications also dealt with periods of leave, but on the initiative of the judge enforcing the sentence. The convict who works may be requested to do overtime by his or her employer, and it would be a pity for the convict to have to refuse this possibility under the pretext that the planned schedule for his or her presence at home would thus not be respected. In most cases, this was the reason evoked. We also noted modifications for medical examinations, hospitalization, and summons to appear before the judge or meetings of parents-teachers associations.

We noted a single modification of the place of the convict's designated presence upon the request of the convict. On the other hand, over that period there were no modifications concerning the conditions of implementation for electronic surveillance in virtue of Article 723-10 of the Code of Criminal Procedure, i.e. modifications or cancellations of obligations imposed on the convict.

Fifty-seven percent (57 %) of cases of electronic surveillance took place without any incidents, i.e. without the alarm going off, corresponding to an absence, verified after a phone call. For close to 20 % of them, a single incident took place, with at least three incidents in 15 % of the cases. In two exceptional cases, we observed a very high number of incidents (37 and 41). The measure of electronic surveillance was removed for these persons.

As such, we counted 267 incidents over this period in the four sites. The reaction to these incidents was – in 72 % of all cases – a mere telephone call by the employee mandated to survey the convict without having to summon him to appear. Fifteen percent (15 %) of all incidents resulted in a summons to appear to the convict who did not show up on the agreed date.

The reasons put forward by the convict to explain the incident recorded in the supervisor's report are based on lateness (24 % of cases), employment-related or medical reasons (7, and close to 6 %). The convict under electronic surveillance denies having left his residence in 7 % of the incidents recorded, and 6 % of them declare having mistaken the weekday schedule with the weekend schedule for being assigned to residence.

We learn from the reports that in most cases, it was the supervisors who proposed to the judges enforcing the sentence a change in the schedule for being assigned to residence, particularly for those who state that they were late for employment-related reasons.

In the case of four convicts placed under electronic surveillance, legal proceedings for evasion were brought against them.

7 The End of the Measure

Ninety-four percent (94 %) of those electronic surveillance measures which came to an end on May 1, 2002 terminated by a release from custody. No one who was placed under electronic surveillance ended this measure on the planned date without being released from custody. We could have come across this scenario, in the case of a plurality of offences (detention under remand for a first offence, interrupted by the application of a sentence under electronic surveillance for a second offence).

The measure of electronic surveillance was withdrawn and the convict imprisoned in eleven cases (6 %). One of those convicts was imprisoned in the framework of a day parole arrangement. Six of them did not meet the requirements set on the basis of Article 132-45 (Obligation 1 – holding a job, education, vocational training) to which he or she was submitted. Three were condemned once again. None of these persons appealed the decision of the judge enforcing the sentence.

Only one convict requested the withdrawal of electronic surveillance and was incarcerated with a day parole arrangement.

The actual duration of the electronic surveillance measure was, on the average, 2.4 months: 22 % were assigned to residence for less than one

month, and 51 % for less than two months. For 16 % of them, it lasted four months or more.

These results include all those involved in the study. Each of the four sites designated for implementation has a project manager for electronic surveillance. This person is mandated to define procedures and the organizational chart of his choice on the basis of the law of 1997.

Given the small number of electronic surveillance measures for each site, it is obviously difficult to maintain that there is a given local specificity regarding demographic, social or criminal characteristics of the convicts concerned, either in light of the initial conditions imposed, or in light of how the measure was implemented. Nevertheless, we have identified a certain number of specific characteristics related to convicts' demographic and criminal features, and also to the conditions attached to the measure, as to how the measure was implemented and how changes and incidents were dealt with.

The harmonization of local practises will come about with the generalization of the measure, and the increase in the number of convicts placed under electronic surveillance. The law governing the four-year plan of the Ministry of Justice (2003-2007) expects a significant development in electronic surveillance of convicts. Over the next five years, it could concern 3,000 persons simultaneously.

Electronic Monitoring in France: An Appraisal of the Early Phase of Implementation

ANNA PITOUN

The first phase of the implementation of electronic monitoring in France, in accordance with the December 19, 1997 Act, took place on four pilot-sites starting in October 2000. These sites were the prisons of Lille, Agen and Aix-Luynes, and a centre of semi-liberty in Grenoble.

A research project conducted jointly by the CESDIP (Centre for Sociological Studies on Law and Penal Institutions) collected the quantitative data that Annie Kensey has just discussed, along with some qualitative elements which I will now broach.

The qualitative study began in July 2001; that is, less than one year after the onset of the experiment. One of its aims was to determine the representations and expectations of the different judiciary, correctional and social workers with respect to the electronic bracelet, another being to collect the opinions of some people who had been subjected to electronic monitoring.

Some 70 interviews, covering practically all of the participants, were conducted on the four pilot sites between the months of July and November 2001.

Since today's talk obviously cannot provide a comprehensive view of all of the issues raised in these interviews, I have chosen to make a few remarks on four main points:

- Firstly, the major organizational differences between the four sites
- Secondly, the initial findings with respect to net-widening: that is, concerning the fact that more people get caught in the net of penal punishment, and that the sentences pronounced are more severe

- Thirdly, the fact that tagged offenders tend to be those who are not yet incarcerated, and relatively rarely those already in prison
- Last, the question of follow-up, in terms of social aid for the tagged, and checks on their absences.

1 Organizational Differences

As expected, these interviews revealed that electronic monitoring was viewed differently on the different pilot sites. This may really be epitomized as: 4 sites, 4 organizational models.

While all of the sites were equipped with the same monitoring systems, generally speaking (although the suppliers of the equipment might not have been the same), and all had been granted a single additional supervisory position and no additional position in the rehabilitation and probation departments, they were free to make whatever arrangements they preferred. This led to relatively different organizational models.

They differed, above all, in terms of the physical presence of personal supervisors and social workers behind what may be termed the machinery of electronic monitoring. Some sites chose to involve workers physically, to have people go out together in twosomes for preliminary investigations, to install the equipment, do follow-up and respond to alarms, whereas others preferred to keep contacts to a minimum.

In Agen, for instance, neither the personal supervisor nor the social worker went to the monitored person's home, barring some exceptional reason. The offender set up his or her own equipment.

Conversely, on the Lille site, the personal supervisor and the social worker worked as a real twosome, and travelled to the monitored person's home at each phase of the process (investigation, commencement and follow-up). Night and weekend visits were not established, however.

On the Agen site, in case of night alarms, the local police or gendarmerie was called in to make checks at the person's assigned domicile. They did experience some difficulties in implementing this method during the early months, however.

On the Aix-en-Provence site, the personal supervisor position was shared by two individuals working on alternate weeks. When these workers were on the job as EM referrals, they were allowed to visit the tagged person at any time, if the alarm went off, including nights and weekends. The social

workers participated in the preliminary investigation, as in Lille, and practically systematically went to the person's home.

The same was true in Grenoble, where night and weekend visits were not considered, however. Ordinarily, telephone checks were done systematically on week days, but no home visits were planned either.

The question of checks on absences from the assigned place was in fact a major issue for the various people involved. I will return to this later.

In any case, these relatively variable organizational patterns produced similar results in terms of revocation, a rare occurrence anywhere, but considerably different results in terms of reported incidents, since the Aix-en-Provence site reported no incidents for 90 % of the electronically monitored, Lille for 51 %, Grenoble for 44 % and Agen for 42 %.

Just a word about incidents: It was interesting to note that the judges were quite surprised that there were so few absences at telephone calls. The interviews with monitored individuals showed that they were rarely determined to break the rules, to come home later or go out earlier than the prescribed time and to claim that they had been at home but the machine was out of order. I would not say that they did not bend the rules. Generally speaking, where there is a rule – there are people who bend it. We are in a position to know that.

What we did notice was that the means used were not necessarily the expected ones. Some of the tagged individuals questioned did actually admit that they used another tactic. One was to use their allotted time out for activities other than those planned. For example, one person who was supposed to pick up his children at school sometimes asked their mother to do that so he could cruise around during that time. Another had asked his employer to give him additional working hours, etc.

The outcome was that there were not very many incidents or unauthorized absences on any of the sites.

2 The Issue of Net-Widening

Before going on to the second point, which is the increased number of people caught in the net of penal justice, or tougher punishment known as net-widening, I would like to mention one of the main findings of this study, which will be interesting to keep in mind when examining this point. This finding pertains to the opinions of those people subjected to electronic monitoring and who agreed to be interviewed.

These people all expressed real satisfaction with the measure. We must of course be very cautious in considering this finding, and three points must be kept in mind.

First of all, there is the fact that all of these people had agreed to be tagged, since the judge in charge of enforcing sentences cannot prescribe that measure without the consent of the person involved. Some had actually taken the initiative of asking the judge for it. But that was not always the case, since some judges told us that several offenders to whom it was proposed had refused it outright, sometimes because they claimed to be afraid they would not respect the imposed schedule, while others refused to have the supervisory personnel enter their private life. Still others seemed apprehensive about constantly wearing an object they viewed as stigmatizing them.

The second element to be considered as qualifying the satisfaction expressed by the offenders was the method used to select interviewees. We did not have enough time to meet all formerly tagged offenders. The choice of who to interview was therefore a random one, made by drawing lots on the basis of prison roll registration numbers, and by classing people on the basis of the length of the monitoring stint (more or less than three months), the nature of the offence committed (theft or other) and whether or not follow-up had revealed any incidents. Some twenty-odd individuals were selected and contacted. Three refused to talk about that period of their life. One had returned to prison for another offence. One person, whose electronic monitoring had been revoked, had returned to prison and committed suicide. Three could not be found. In all, a dozen people agreed to participate in interviews, and they did so mostly because monitoring had gone well.

Lastly, we have the third and most important reason: the offenders' very positive assessment of their experience with electronic monitoring is due, to a large extent, to the fact that these people were all convinced they had escaped imprisonment. And that on the whole, practically all were in situations in which a prison stay would have been a very painful experience. Some were ill (three had cancer), others were momentarily very fragile (one woman was pregnant and also on a surrogate drug treatment program, one man had just lost a child, another was suffering from depression, a young man had just attempted suicide), another had been sentenced for an offence dating back several years and had completely changed his way of life since.

All were convinced they had avoided imprisonment, a place where, as some people openly said, they felt their life would be endangered.

Now it should be stated that most of these people had also been offered another form of mitigation of their sentence, usually in the form of semi-liberty if there were places available in semi-liberty centres or prison blocks.

Actually, then, most of the time they had not avoided an unsuspended prison sentence, rather semi-liberty or in some cases, had it been feasible, placement in the community. And yet, although the people interviewed definitely did mention the other proposals they had received, they almost systematically referred to prison as representing what they were trying to avoid. This brings me to the point of net-widening.

If we take the example of semi-liberty, it is a fact that the various persons questioned view it as more coercive than EM in the hierarchy of sentences. But there now are some "more lenient" semi-liberty measures. They are designed for offenders who are "eligible" for semi-liberty but who live too far from a semi-liberty centre, for example, or again, who work late-night shifts. In such cases the person is only obliged to go to the centre once or twice a week, or to spend the weekend there, for instance. This measure is then viewed as less coercive than EM.

Now, in the pilot EM districts, the judges interviewed stated that they hardly ever pronounce this type of mitigation of a sentence any more, since the new EM measure is susceptible of solving the problems of distance between the workplace and the place where the sentence is enforced, or again, those involved in work schedules.

The outcome, then, is that the conditions of enforcement of sentences have become harsher.

The same reasoning applies to another type of mitigation of sentences: releases on parole prior to imprisonment. Here too, some judges tended to pronounce release on parole prior to imprisonment as a palliative to the shortage of space in semi-liberty or community facilities, etc., although this was in contradiction with the case law of the Court of Cassation, which prohibits such practices. By deducting the months by which their sentence might be reduced, or an eventual pardon might be decreed during the time served by the offender, the judges reached the conclusion that the offender was at the halfway point and thus granted conditional release from the outset. This extremely attractive practice, from the offenders' viewpoint, ceased to exist when EM was introduced.

Another net-widening effect was noticed during this investigation. It was drawn from an interview with one of the judges in charge of sentence-enforcement, who pointed out that one advantage of EM such as it is prescribed by the law is that it may be accompanied by additional probationary measures, as stipulated in paragraphs 132-43 to 132-46 of the criminal code.

This judge, who also sat in regular courts, stressed the value of EM for individuals for whom he had up to now pronounced suspended imprisonment with probation (SIP), whereas, he said, he would have preferred a punishment that prevented people from going out at night. But now he claimed he could consider pronouncing an unsuspended prison sentence instead of an SIP if the person presented certain guarantees such as a steady job and housing, etc. "Thinking that the sentence will certainly be mitigated", as he put it.

Still and all, it should be said that only one of the seven judges in charge of enforcing sentences interviewed on the pilot sites held this line of thought. The others rejected arguments of this type. Since the judge who metes out the sentence is not the same as the one who prescribes mitigation, there is indeed a real risk that EM will not be granted, especially if the person is sent into detention immediately, following a summary trial for instance.

3 Who is Subject to EM?

This leads me to the third point, concerning the fact that in this study we noticed that EM tended to be granted to people who were free at the time, rather than to those who were in detention. It is a fact that few offenders were released from prison thanks to EM.

Two explanations were advanced by actors in the pilot projects to account for this. One pertains to individuals sentenced to less than 4 months imprisonment, the other to those whose sentence or remaining sentence was comprised of 4 months to one year.

For the first group, the social workers pointed out that preliminary investigations for EM might require up to two or even three months, since they are more complete than conventional social investigations, and more difficult to conduct when the offender is in prison, since the investigator must go to the person's home, get the opinion of his or her family, and must also wait until the sentenced person is registered on the rolls of the prison's sentence enforcement court. People who are sentenced to 4 months

tence enforcement court. People who are sentenced to 4 months in prison who might hope to have their sentences reduced for good conduct are therefore not very motivated to apply for EM.

With respect to imprisoned offenders serving longer terms, the judges and deputy public prosecutors in charge of sentence enforcement made the point that on several occasions they had refused EM (or expressed a negative opinion in the case of the deputy public prosecutors), since they viewed the measures for social aid or for checking absences inadequate on some sites.

4 The Follow-up of EM

This brings us to the fourth point. Before the introduction of EM, the correctional administration conceived the idea of organizing a trip to the Netherlands for the various people in order to observe Dutch practices.

This was an excellent initiative, and the various participants were very interested in what they had seen. But one thing interested them particularly: the extent of the social aid measures offered to sentenced offenders.

Now in France, there is no legal obligation for sentenced offenders to successfully engage in a social project.

And yet, and this is in fact one of the strong points of the bill, EM is theoretically not intended to be confined to so-called integrated individuals. As opposed to semi-liberty, for example, one need not necessarily have a job or look after one's children, be in training or under medical treatment.

EM may be granted so as to set up, or create, the elements enabling the offender to achieve rehabilitation. To look for a job, find training, begin treatment, and so on.

Social workers were very enthusiastic about that prospect. While some viewed EM as a conventional community-type measure for mitigating sentences, others felt it provided a genuine opportunity to introduce even more complete individualization of sentences.

- The new approach to the offender's family
- The extremely intense participation of the tagged person, which took the form of a real moral contract, as noted in some interviews
- The detailed work that must be done on the offender's schedule, and which leads to a very concrete approach to the person's everyday life

- The question, during follow-up, of how the person relates to his or her body, since the object must be worn constantly
- The fact that it is up to the offender to decide whether or not to reveal the existence of this mitigated sentence to his or her family

All this interested social workers considerably. Actually, this was fundamentally the reason for what I referred to earlier as expressions of the offenders' satisfaction.

For some people EM provided large periods of freedom. The schedules took into consideration the offender's work-related activities, recreational activities and family obligations. Some were allowed to go out from 7 in the morning to 7 at night on weekdays.

Even without any additional resources, social workers went along with the experiment and turned out to be extremely open. Divested of any surveillance function, for which there were specific personal supervisors, they focused on the problems of assistance in case of requests to modify schedules (decided in France by the judge in charge of sentence-enforcement, in some other countries by social workers themselves), and psychological support, by broaching the subject of the meaning of the sentence in a roundabout way, by discussing the fact of concealing – or not – the object from the entourage.

When they had been able to set up rehabilitation projects, and especially when they had been able to help an offender find a job or training, both judges in charge of sentence enforcement and social workers, who had worked together on this, expressed great satisfaction.

The same thing was true for the personal supervisors – selected among local prison guards –, who felt they had gained recognition through this new mission. What the personal supervisors on all four pilot sites had in common was actually their considerable investment in their work and above all in the new relationship they had established with the tagged individuals. This was another very noteworthy finding in our study. In most cases the relationship had been established extremely intelligently, with an interesting kind of proximity. It differed from the anonymity prevailing in prison, and was more like what sentenced offenders may experience habitually in community-based alternatives, when they have what is known as a reference person; that is, someone to contact if a problem arises. Here, two people played this role: the social workers and the EM supervisors, and it must be said that the supervisors invested a lot of energy in it.

I think it was this "exceptional social guidance", as Dan Kaminski[1] puts it, which was praised by the tagged offenders as well.

It should be noted, however, that for lack of additional resources in terms of personnel or means of intervention for the social workers, EM was mostly granted to people who were already economically active and could claim some special situation. As many of the people involved remarked, in the last analysis, not many risks were taken in the choice of whom to tag.

This is particularly true for checks on absences. As I mentioned earlier, this question elicited some debate.

The reason for the debate was the interpretation of paragraph 723-13 of the code of criminal procedure, created by the December 19, 1997 Act which states that the judge in charge of sentence enforcement may cancel the decision to implement electronic monitoring, especially "in case of non-observance of the conditions of enforcement, registered during a check at the assigned place".

The various participants all wondered about this formulation. Some came to the conclusion that a telephone call was a sufficient check. Others felt that the lawmakers had set a strong requirement and had absolutely no confidence in the telephone check system, and drew the conclusion that workers should physically visit the tagged person's home.

Such visits, day and night, were not feasible on all sites. As a result, some judges felt that the guarantees were insufficient for some offenders. One deputy public prosecutor even regretted that the supervisory system did not call for "traceability" of the offender, using a GPS device for instance. We can reassure him, the system has already been developed by some service companies: it represents the second generation of electronic monitoring.

But here too, it must be said that the judges all claimed to be rather hostile to this type of proposal, and preferred to focus on the elements of social aid.

All in all, we found that the various people – judiciary, correctional and social (and also those offenders interviewed) – found EM a relevant solution provided the measure focused on real help by actual human beings, and not otherwise. There must be a genuine presence behind the monitoring boards. There is a cost to be considered here then, to be evaluated on the

[1] Kaminski, Dan : L'assignation à domicile sous surveillance électronique : de deux expériences, l'autre, *Revue de Droit Pénal et de Criminologie*, 5, 626-652.

basis of feedback from the early participants in the experiment. Barring this, according to some people, the generalization of EM may well lead those involved to lose much of their interest in it.

Electronic Monitoring as an Alternative Penal Sanction in Switzerland

DOMINIK LEHNER

1 Implementation and Legal Basis

In Switzerland, the Cantons of Basel-Stadt, Basel-Landschaft, Bern, Waadt, Ticino and Geneva are currently running a pilot project with electronically monitored confinement. The project started September 1, 1999 and will end after 3 years on August 31, 2002. Electronic Monitoring was introduced based on an article of the federal criminal code enabling the federal government to allow execution of pilot projects concerning research and development in the penitentiary system.

Each of the six cantons adjusted the set-up that Basel-Stadt had presented differently, covering sentences from one up to six months in three cantons and up to twelve months in the other three cantons. Four cantons also started Electronic Monitoring in a back door version for up to 12 months before conditional release on probation.

Swiss authorities visited Sweden, England and Holland beforehand and copied the Dutch version to a large content.

1.1 Staff and Executing Guidelines

Currently the Swiss project is working with about eight employees, mostly social workers executing the work with the clients while the superiors are part of the regular staff of the penal departments in the Justice or Police Ministries of the cantons.

The executing guidelines also vary between the Cantons. Common to all the cantons is the first aim of the pilot project which is to reduce adverse effects of imprisonment, such as stigmatization and the loss of social networks and employment. In the many cases of short term sentences of one or two months, we are quite sure that it is often *all* we are doing and often all that we can do. Where longer sentences are being served by Electronic Monitoring all Swiss schemes concentrate on the assistance of the offenders in various ways always with the one aim – the reduction of recidivism. The Swiss project does not count curfew hours. Restriction of freedom should be reduced progressively as long as the offender collaborates. The first experiences have shown that the discipline of the clients is very high, which allows the Social workers to concentrate on their work in place of generating useless new sanctions (more house arrest) during the (sanctioning) process.

1.2 The Assessment Process

Any person, sentenced within the ranges named above, can choose Electronic Monitoring. Only the canton of Geneva made restrictions, in practice not allowing offenders sentenced for driving under the influence of alcohol into the project.

Depending on the length of the sentence every offender can chose from a variety of penal measures including Electronic Monitoring. If he chooses Electronic Monitoring the project staff will examine whether he complies with the participation criteria. The criteria are almost the same in all six cantons.

The following criteria are to be complied with in Basel:

- The offender declares his agreement to Electronic Monitoring
- The offender agrees to participate in the fee according to his means
- The offender can provide a domicile or home of some sort
- A telephone line is available or may be installed
- Adults sharing the same domicile consent to the Electronic Monitoring
- The offender is in a state of health that allows participation
- The offender can provide work or occupation
- The offender agrees to an individual time schedule
- The offender has not been sentenced to expulsion.

In Switzerland administrative authorities advise the sentenced client to Electronic Monitoring. The Electronic Monitoring teams – usually social workers – take up their work with the client with an intensive screening process sometimes even including a first visit of the offender's home. The above named participation criteria are checked. Obviously by doing so the appointed social worker gathers much data and personal information about the client and his usual surroundings. It is within this process that – compared with detention of every sort – a much more useful basis for the following social work can be obtained.

1.3 The Technical Equipment

The Swiss project works with products of BI, meaning field Monitoring devices and software. The Electronic Monitoring staff is signalled by telephone or fax. In the future one aim will be to install an ADSL information system instead. If the information is available via Internet, the staff will be freer to receive the information from different places by dialling in from different places even between visiting different offenders. The information is coded so there is no problem with data protection. When the Internet fails, telephone or fax is taken up again immediately.

2 State of the Project

The pilot project will end on the 31st August. An evaluation firm in Zurich will scientifically evaluate it and in the Canton of Waadt a small, randomized experiment will compare the effect on recidivism of offenders having done community service with others having participated in Electronic Monitoring. The project will be followed by a continuation, on an experimental basis, in all six cantons. As a seventh canton the canton of Solothurn is expected to join in the scheme. The consent of the federal government to continue Electronic Monitoring is expected before the end of July, 2002. There will probably be only small alterations within the schemes at this time. Several Cantons would like to widen the range of sentences – possibly up to 18 months. The evaluation data is not expected until the end of 2004.

The main aims of the evaluation are:

- Effect on recidivism
- "Market Effect" of EM on the whole range of other sanctions

- Differences between front-door and back-door versions
- Problems of implementation in Cantonal administrations
- Cooperation of technical and social workers
- Cooperation of private firms and public administration
- Effect on offender and offender's surroundings, family, social
- networks
- How long should an ideal Electronic Monitoring last?
- Results.

428 offenders participated in an area with a population of about 2.7 million inhabitants after two years. As of May 2002 over 600 offenders have been monitored in Switzerland. During the first two years in only 30 (7 %) cases the sentence was not completed. Due to this figure we do not consider the assessment to be a major difficulty or problem. It may be possible to even widen the range (up even to 18 months) if the federal government agrees.

Those cantons that are practising a back-door version intend to continue, hoping that the evaluation will show why the caseload was not as high as was expected. It could be due to the high rate of expulsions combined with the sentences. Offenders with expulsion sentences are not allowed into Electronic Monitoring because these offenders will not be (re-)socialized in Switzerland.

As in other countries, Electronic Monitoring does not only find admiration when discussed in public. In Switzerland it was expected from the beginning that Electronic Monitoring was up against a small battle with the district attorneys offices, as well as with political parties from both sides. This was due to Electronic Monitoring being not much of a serious punishment to some and on the other hand, an intolerable intrusion into private spheres to others. Nevertheless, Electronic Monitoring has clearly been accepted in public today. Due to an overwhelming interest of the media, Electronic Monitoring has become quite well known in Switzerland. So, for the time being – meaning as long as there is no serious incident caused by an offender under Electronic Monitoring – Electronic Monitoring will remain. Surprisingly, the interest in the combination of modern technique and criminal justice at least gave a small chance of raising the question of what the aims of criminal justice should be in public. A question that still did not arise often enough to lead to acceptable development of penal measures appropriate to the modern Swiss society.

The cooperation of private firms and public administration in the Swiss project deserves a special mention as it has proved to work extremely well. Project management and social workers were always in close contact with three private firms. One doing the evaluation, one for the electronic communication (net-administration), and one providing the instruments, hardware and software with its related firm registrating and communicating the actual monitoring and the alarms. As already mentioned, a private firm is registrating the alarms and communicates them to the social workers by fax and/or phone. Still, technique and social work were not completely separated. Technology was installed in the Electronic Monitoring offices for the social workers enabling them to check on their clients without contacting the alarm registration service.

2.1 Costs of Electronic Monitoring

The Swiss project will cost about 6 million Swiss Francs or 4,127,000 € in total over three years. 1/3 covers technical devices, network, hardware, software and evaluation and 2/3 for human resources. The costs of Electronic Monitoring have not yet been scientifically evaluated. Estimations lead to costs of clearly less than 50 Swiss Francs or 34.30 € per day per offender, as compared with at least 110 Swiss Francs or 75.65 € per day per offender in detention.

2.2 Achievement

What has been achieved with the Swiss Electronic Monitoring Project? Even before scientific evaluation results, some conclusions can be drawn:

1. Electronic Monitoring in its first generation works as a technical device to control the offenders' presence at home. We do not know yet whether there are sensible applications other than the one we are using. So we are not considering other uses for the time being. The control aspect was not the main approach because we do not think control as such to be a valuable solution to the criminals considered (sentences usually below 3 months), recalling that over 80 % of all sentences in Switzerland are for minor offences.
2. The assistance approach leads to an improvement in social work with the offender. The screening and knowledge of the offender's personal surroundings give a clearer view of the state and condition which the offender is in and therefore enables an individualization of the approach.

3. This effect is not necessarily attached to Electronic Monitoring. Given the legal basis the same approach could be combined for instance with community service. Even a combination with detention is possible although not ideal. Our experience shows that the willingness of the offender is drawn to a large extent from the offer to replace jail with something else, whatever this may be. It is probable that the willingness of the offender would strongly reduce as soon as Electronic Monitoring is a "something more" and not in the manner we introduced it in Switzerland as an offer "instead of".
4. The bracelet is only a mere instrument. It enabled the introduction of an intensive treatment program in Switzerland and helps reduce prison population including the costs.

Les arrêts domiciliaires sous surveillance électronique dans le Canton de Vaud

ANDRÉ VALLOTTON

Like the other alternatives to confinement not yet adopted by the Swiss Criminal Code, electronic monitoring, introduced in the form of test three years ago, is considered to be a form of liberty deprivation in the legal scheme. It is not decided by the judge, but by the administrative authorities after judgment. The emphasis is more as a measure for the accompaniment of the offender. A process of randomized assessment has been implemented, and the results of the comparisons with other sanctions will be published in three years. The first impressions seem to show that electronic monitoring is more efficient if the offender is taken as the subject, and not as the object of the sanction.

1 Résumé

Comme les autres alternatives à l'enfermement non prévues par le code pénal suisse, *l'electronic monitoring*, introduit à l'essai depuis trois ans, est considéré sur le plan légal comme une modalité particulière de privation de liberté. Il n'est pas décidé par le juge, mais par les autorités administratives après jugement. Le phénomène de net widening est ainsi négligeable.

L'accent est davantage porté sur les mesures d'accompagnement du condamné, qui bénéficie d'un suivi intensif en relation avec ses infractions, que sur le contrôle de la personne.

Un processus d'évaluation randomisée a été mis en place. Les résultats des comparaisons avec d'autres peines seront publiés dans trois ans.

Les premiers constats semblent montrer que *l'electronic monitoring*, qui n'est pourtant pas une sanction moderne par rapport aux approches de justice restauratrice, gagne en efficacité en rendant davantage le condamné sujet, et non objet de l'exécution de sa peine.

2 Historique du projet

La volonté politique d'introduire les arrêts domiciliaires sous surveillance électronique dans le canton de Vaud date de 1994. En réponse à la motion d'un député qui y voyait des économies possibles, le Conseil d'État[1] de l'époque en avait accepté le principe, mais avait souhaité différer son introduction pour achever les restructurations en cours.[2]

Une comparaison randomisée de l'efficacité des courtes peines privatives de liberté et du travail d'intérêt général mobilisait en effet toutes les énergies, et il était paradoxalement indispensable, vu le taux d'encadrement trop faible des condamnés dans les modes d'exécution de courtes peines existants, d'engager du personnel supplémentaire avant de pouvoir amorcer cette nouvelle expérience.

La mise en œuvre de *l'electronic monitoring* a commencé à Lausanne en 1999 dans le cadre d'un projet pilote regroupant 6 cantons. L'initiative du projet revient au canton de Bâle, qui recherchait des partenaires.

L'article 397 bis du code pénal suisse permet en effet à la Confédération, autorité de surveillance en matière d'exécution des peines, d'autoriser un ou plusieurs cantons à expérimenter l'introduction de peines ou de modalités ou formes d'exécution non prévues par le code dans le cadre de projets pilotes. Cette phase d'essai précède en général l'extension de l'autorisation aux autres cantons, puis l'introduction de la nouvelle modalité d'exécution dans le code pénal ou dans ses dispositions d'application. L'état central peut financer jusqu'à 70 % de la mise en œuvre et de l'évaluation de ces projets pendant la période d'essai.

3 Le projet suisse

Le fédéralisme helvétique donne à l'exécution des peines une structure particulière. La Confédération n'intervient dans ce domaine qu'à travers

[1] Le Conseil d'État est l'autorité exécutive cantonale.

[2] *Schmutz, D.* : Réponse à la motion Vuillemin demandant l'introduction des arrêts domiciliaires à la place de l'exécution des courtes peines de prison (1994).

l'octroi de subventions à des constructions, au traitement des jeunes ou à la mise en œuvre expérimentale des nouveaux projets. Elle exerce également sa haute surveillance sur le respect par les cantons des accords et conventions internationales signés par la Confédération. Si le code pénal est fédéral, la procédure pénale est encore cantonale et les cantons sont directement responsables de l'exécution des sanctions. Cette responsabilité leur restera confiée à l'avenir, même si la Confédération souhaite à juste titre accroître ses compétences de légiférer dans le domaine de l'exécution des peines.

Le code pénal ne prévoyant comme peines principales que l'amende et la peine privative de liberté, les alternatives à l'enfermement sont encore considérées, et ceci jusqu'à l'entrée en vigueur de la nouvelle partie générale du code pénal en 2004 ou 2005, comme des modalités particulières d'application de la peine privative de liberté prononcée par le juge.

L'affectation à une exécution sous forme *d'electronic monitoring* n'est par conséquent pas de la compétence du juge, mais de l'autorité administrative. Ceci évite dans une large mesure les risques de net widening rencontrés lors d'autres introductions ou aménagements des peines.

Les candidats doivent être volontaires, et l'accord de leur famille est requis. Cette modalité d'exécution est régie par des règlements cantonaux validés par la Confédération, mais n'est pas encore inscrite dans une loi fédérale.

Une des particularités de ce projet a été l'association et la collaboration, peu courante en Suisse, de cantons alémaniques et romands pour un large partie du projet.

Le suivi technique a été confié à une entreprise de sécurité qui gère le hard et le software, dessert l'unique centrale de surveillance, et assure la maintenance de la plate forme technique. Un fournisseur américain a été choisi pour sa capacité à fournir l'ensemble des composants et pour son expérience. La fiabilité technique du matériel n'a à aucun moment été mise en défaut.

La majeure partie de l'évaluation scientifique a été confiée à un bureau d'étude zurichois, chargé de suivre l'ensemble de l'expérience dans les cantons pilotes.

4 Le projet vaudois

Dans le canton de Vaud, il a été décidé de limiter l'accès à *l'electronic monitoring* à des condamnés à des peines privatives de liberté de 6 mois au

plus, ce qui correspondait aux règles d'octroi de la semi-détention. Cette possibilité a également été offerte à des détenus en fin de semi-liberté. Les conditions formelles d'admission à ce programme étaient l'engagement du condamné à participer à l'expérimentation scientifique, l'accord de sa famille, un domicile légal et la présence à domicile des installations techniques nécessaires. Peu de candidats ont été écartés en raison de critères non formels.

Les condamnés vaudois à une courte peine étaient invités, lors de l'exequatur de leur condamnation, à choisir un ou plusieurs modes d'exécution (TIG, semi-détention, arrêts domiciliaires). Leur demande était examinée, puis préavisée, par les agents de probation responsables des programmes, et leur affectation finale à une forme d'exécution décidée par les autorités administratives sur la base d'un rapport des organes de probation.

Le programme quotidien des condamnés était négocié par les agents responsables, et faisait l'objet d'un contrat signé par le condamné et l'Office de probation.

Outre les horaires d'assignation à domicile fixés en fonction de ses activités, le condamné était invité, selon ses délits, à des entretiens, thérapies, contrôles ou suivis complémentaires. Chaque condamné faisait l'objet au minimum d'un suivi hebdomadaire à domicile ainsi que d'un entretien au bureau de son agent. Il était de plus invité à participer à des cours, des thérapies, sensibilisations ou autres contrôles en relation avec ses délits.

2/3 des condamnés ayant été jugés pour des infractions au code de la route, particulièrement pour des récidives d'ivresse au volant, c'est dans ce domaine de prévention et de traitement que se sont concentrés la majorité des efforts. Suite à un premier bilan, chaque candidat s'est vu proposer un programme de soutien correspondant à sa situation personnelle.

En plus des interventions de spécialistes de la dépendance, les agents de probation choisis pour ce programme étaient tous formés dans les thérapies de famille et dans les approches systémiques. Lors de leurs rendez-vous à domicile, ils ont ainsi pu intervenir directement sur certains dysfonctionnements familiaux et venir en aide à des milieux souvent perturbés par les changements de vie du condamné, et parfois en relation directe avec sa délinquance.

Une autre particularité du programme vaudois a été la décision de constituer par randomisation un groupe de contrôle de condamnés exécutant un travail d'intérêt général. Les buts de cette évaluation étaient de pouvoir comparer, avec un minimum de biais, les effets et les conséquences des

deux formes d'exécution retenues sur des groupes aussi semblables que possible et de vérifier si les hypothèses soulevées lors de l'introduction du travail d'intérêt général dans le canton, randomisée elle aussi, se confirmaient sous cette nouvelle forme d'exécution.

La justification de ce tirage au sort est relativement aisée. Nul ne peut dire avant la comparaison des résultats si une forme d'exécution est plus avantageuse qu'une autre, ou laisse plus de séquelles.

Une phase expérimentale ne permet pas d'offrir ces nouvelles formes d'exécution à tous les condamnés. Le tirage au sort des candidats n'est dans ce cas pas plus injuste qu'une autre forme de choix, qui biaiserait de plus l'évaluation et privilégierait le choix de candidats mieux adaptés à la nouvelle méthode. Les résultats de cette expérimentation seront connus dans trois ans. Ils porteront sur la comparaison des récidives, sur celles des changements de vie socio-professionnelle et privée liés à l'exécution de la sanction et sur les changements d'attitude consécutifs à cette dernière.

5 Premier bilan

À fin avril 2002, 218 candidats avaient achevé leur exécution de peine sous forme d'arrêts domiciliaires.[3] Ce contingent représentait près de la moitié du nombre de condamnés suivis dans les différents cantons pilotes.

Un seul condamné en exécution de longue peine a choisi *l'electronic monitoring* en fin de semi-liberté. Les conditions trop restrictives prévues par le projet ont dissuadé la majorité des condamnés en fin de peine de demander cette forme d'exécution. La durée exécutable à domicile était trop courte pour intéresser vraiment des personnes qui avaient retrouvé un travail, et souvent un foyer au cours de leur semi-liberté et les astreintes du week-end trop importantes par rapport à l'autre forme d'exécution. Les conditions seront améliorées lors de l'extension du programme afin de favoriser cette étape en direction de la sortie.

L'ensemble des autres candidats exécutait des peines inférieures à 6 mois. Le groupe de contrôle, formé de condamnés au travail d'intérêt géné-

[3] En 2001, 73 personnes ont achevé dans le canton (640.000 hab.) l'exécution de leur peine privative de liberté sous forme d'arrêts domiciliaires, 620 sous forme de travail d'intérêt général, 173 sous forme de semi-détention et 240 sous forme d'arrêts fermes. Comme dans le reste de la Suisse, les peines privatives de liberté représentent 40 % des peines prononcées, mais 2/3 d'entre elles sont assorties du sursis et 80 % des peines de prison sont inférieures à 6 mois.

ral, était constitué à cette date de 88 condamnés ayant achevé l'exécution de leur peine au service de la communauté.

6 % des exécutions de peine d'arrêts domiciliaires, soit 14 cas, ont été interrompues en cours d'exécution. Le nombre de dossiers ouverts se montait à 552. 122 dossiers furent écartés faute de respect des conditions objectives ou parce que les condamnés n'avaient pas voulu participer à la procédure proposée.

Les premières exécutions permettent de constater, à côté de la faiblesse du taux d'échec en cours d'exécution, la compliance exemplaire de la majorité des condamnés.

Cette bonne volonté ne semble pas être uniquement une réaction face à la menace de la prison ni à la contrainte, jamais exprimée par les responsables de l'exécution des peines, de respecter des conditions draconiennes à défaut d'être soumis à une forme d'exécution plus dure. Certains condamnés disent en effet également préférer la semi-détention, plus facile, plus anonyme, qu'un investissement dans le travail d'intérêt général ou dans un programme de remise en question accompagnant les arrêts domiciliaires. La courte peine de prison, effectuée dans des établissements particuliers, n'effraie d'ailleurs pas vraiment une population vaudoise qui s'est habituée à voir séjourner en prison une ou plusieurs connaissances suite à des consommations alcooliques excessives, mais courantes dans une région viticole. La courte peine n'est pas stigmatisée par une population qui y voit plutôt un manque de chance ou un incident de parcours. Un humoriste vaudois a même fait de l'exécution de sa sanction de travail d'intérêt général un spectacle complet, qui a tourné près de deux ans en Suisse romande et en France.

Le comportement de la majorité des condamnés volontaires pour les arrêts domiciliaires semble prouver l'intérêt des mesures d'accompagnement centrées sur le délit, telles que l'aide à l'abstinence. Elle semble être pour beaucoup d'entre eux une réelle première occasion de se retrouver face à sa problématique. Le contrôle des mouvements et présence, qui apporte peu en soi, même s'il est le premier prétexte de la discussion des modalités d'exécution et de leur relation avec le délit, ainsi que l'élaboration et le respect du programme semblent être les médiateurs d'une prise de conscience qui va au delà de l'exécution de la seule peine.

L'évaluation scientifique en cours permettra, nous l'espérons, de confirmer ces premières remarques et d'évaluer les conséquences de l'exécution de la sanction sur le plan de la récidive comme sur celui de l'attitude des condamnés face à la Justice ou face à leurs responsabilités.

L'expérience montre également l'importance de l'accompagnement, la nécessité d'un taux d'encadrement élevé, et celle d'une planification et d'un suivi soignés de l'exécution de la sanction.

Le sérieux de la préparation de l'exécution de la peine, l'examen minutieux avec le condamné de ses conditions de vie avant la négociation du programme semble être le pivot du bon déroulement de l'expiation de la sanction.

L'investissement de l'agent de probation, qui commence lors de l'élaboration du programme et se poursuit tout au long de l'exécution de la sanction, est un facteur essentiel. Le faible nombre de condamnés attribués à l'agent doit permettre cette relation intensive.

6 Conclusions et hypothèses de recherche

Même si l'avancement du projet ne permet pas encore de tirer de conclusions définitives, il est cependant déjà possible d'émettre un certain nombre de réflexions et d'hypothèses qui méritent d'être vérifiées au cours des études à venir.

Dans la troisième édition entièrement refondue de son traité de pénologie et de droit des sanctions pénales, *Georges Kellens* propose une liste exhaustive des conceptions de la peine inspirée de la liste du baron Constant.

Il cite plus particulièrement :[4]

- la vengeance et les formes possibles de composition avec la victime,
- l'expiation : soit le rachat par la souffrance,
- l'intimidation : le rappel de l'interdit par l'exemple,
- l'amendement : la remise à sa place, le redressement, la normalisation,
- la défense sociale : l'élimination ou le soin,
- le travail social : l'aide et la surveillance,
- la gestion des risques : la canalisation des dangers,
- et enfin la conciliation : soit le règlement du différend.

La majorité des peines visent plusieurs de ces objectifs et recherchent le meilleur compromis possible entre leurs contradictions.

[4] *Kellens, G.* : Traité de pénologie et de droit des sanctions pénales (2001), Louvain.

Si les peines les plus anciennes étaient fortement influencées par l'efficacité attribuée à la souffrance et à la force de l'exemplarité, les plus récentes sont devenues plus pragmatiques et plus réalistes. Les objectifs les plus anciens n'ont pourtant pas complètement disparu de ces nouvelles formes d'exécution.

Au contraire de peines ou de procédures telles que le travail d'intérêt général ou la médiation pénale, les arrêts domiciliaires sous surveillance électronique, bien qu'apparus en dernier, ne sont pas une révolution par rapport aux peines classiques.

Alors que diverses composantes de la justice réparatrice renoncent à la rétribution, à la vengeance et à la neutralisation pour se tourner résolument vers la réparation et la restauration d'un nouvel équilibre entre auteur, société et victime, *l'electronic monitoring* s'inspire des mêmes objectifs que la peine privative de liberté. On y retrouve autant d'inspirations rétributrices, éducatives ou de défense sociale que dans la détention. Seul le lieu d'enfermement change.

Il serait donc inexact de parler de peine révolutionnaire pour une sanction qui ne fait que décentraliser l'exécution vers la prison à domicile et dont la modernité peut être légitimement remise en question par rapport aux courants innovateurs de la justice restauratrice.

La volonté de contrôle sur l'individu qui s'exprime à travers cette peine et ses développements technologiques peut même être considérée comme un retour en arrière. À quand le retour vers un contrôle absolu de toutes les activités, émotions et déplacements ? À quand une maîtrise de la personne encore plus rigoureuse que celle dont aurait pu rêver Bentham ?

Si cette méthode d'exécution s'étend à des couches de condamnés encore épargnés par la peine aujourd'hui, et si une stricte proportionnalité n'est pas appliquée en terme de contrôle, *l'electronic monitoring* représentera même un retour en arrière bien dans la ligne des tendances sécuritaires actuelles.

Il doit donc être développé avec de nombreux gardes-fous.

Ce qui varie par contre fortement entre l'electronic monitoring et les formes habituelles de privation de liberté est l'importance de l'investissement du condamné dans son programme et la forme consensuelle que peut prendre l'exécution. Comme dans l'exécution d'un travail d'intérêt général, dans un processus de médiation ou à travers l'exécution d'une mesure éducative ou thérapeutique, le condamné devient sujet, et non plus objet de la sanction pénale. Cette différence fondamentale qu'est une participation ac-

tive au processus d'exécution pourrait bien être une des causes majeures de la modification d'attitude et de comportement des condamnés par rapport au délit et à leur sanction déjà constatée lors de l'introduction du travail d'intérêt général.

Lorsque le condamné reçoit un jugement exécutoire, il se voit offrir diverses possibilités d'exécution. C'est lui qui doit faire un premier choix et s'impliquer dans l'exécution d'une sanction qu'il a acceptée et reconnue.

Lorsque les arrêts domiciliaires sont retenus comme mode d'exécution, c'est encore lui qui doit négocier son programme, proposer ses présences et ses absences et les gérer dans le quotidien. C'est lui, et non l'agent de probation, qui doit faire le choix de respecter ses horaires de rentrée et de sortie.

La participation active et consensuelle du condamné ne s'arrêtera pas là. À travers le contrat passé avec l'autorité d'exécution, le condamné prendra l'engagement, en contrepartie des facilités qui lui sont offertes, de ne consommer ni drogue, ni alcool et de s'astreindre au programme qui lui est assigné. Il se confrontera donc directement, par l'intermédiaire de ces règles de conduite, aux causes de sa délinquance dans le cadre d'un processus négocié et accepté. Là aussi, l'aspect impliquant de la peine se distinguera d'une peine subie.

Enfin, en incitant le condamné à réviser son rythme de vie et son mode de relation avec son entourage, l'assignation à domicile pourra être pour lui l'occasion de construire un nouveau cadre existentiel.

Nous pouvons donc imaginer que les arrêts domiciliaires pourraient avoir, tout comme les autres formes d'exécution participatives et consensuelles, un effet différent des peines seulement subies. Cette approche consensuelle et participative pourrait d'ailleurs ne pas s'appliquer qu'à cette forme d'exécution. On peut également rêver de voir le consensus et la participation gagner ce qui reste d'une partie de la prison et de ses régimes.

Les expériences faites montrent que le barreau symbolique qu'est le bracelet émetteur n'est peut qu'être une étape de transition, et que la vraie modernité de *l'electronic monitoring* résidera peut être dans la suppression de cette contrainte technique encore politiquement indispensable comme dans le renforcement de la participation active du condamné. Le contrôle de la personne s'effaçant derrière une participation active à un nouveau mode d'existence, une relation intense entre condamné et agent de probation et une réflexion approfondie sur le délit et ses causes pourraient éloigner cette nouvelle forme d'exécution du rêve de trop de populistes et

la rendre véritablement efficace. Bentham, Franklin et Auburn n'ont en effet vraisemblablement été qu'une étape d'une évolution pénale qui s'éloigne toujours davantage du contrôle pour se rapprocher d'un véritable processus de changement.

Partial Results of the Evaluation of the Swiss Project on Electronic Monitoring in the Canton of Vaud

PATRICE VILLETTAZ

At this moment, the Swiss evaluation on Electronic Monitoring is still in progress. Therefore, only partial information is given. The average age of the monitored persons is 39 years. 93% of them are male and 84% are employed. 44% are addicted to alcohol and 10% to drugs. During their sentence, 62% of the offenders have undergone a therapy. In 61% of cases, the length of the sentence is 1 to 2 months, in only 20% of cases is the length of sentence over 3 months. 9% of them have committed serious administrative violations during the execution of their sentence. Each person was visited at home by his probation officer several times, and regular contacts were set up between the probation officer and the offender. The main complaint against electronic monitoring concerned the discomfort of bracelet. The monitored persons have chosen the electronic monitoring mainly to avoid prison and its stigmatization (67%) and to keep their employment (52%).

Dans le cadre des 6 projets d'EM (Electronic Monitoring) qui ont été développés en Suisse, l'Institut de police scientifique et de criminologie de l'Université de Lausanne a été mandaté par l'Office fédéral de la justice pour évaluer les programmes développés dans la partie latine de la Suisse, soit plus particulièrement dans les cantons de Vaud, de Genève et du Tessin.

Comme le projet pilote inter-cantonal a débuté en septembre 1999 et s'est terminé le 31 août 2002 pour ce qui est de la période d'évaluation du programme des arrêts domiciliaires, les rapports finaux d'évaluation seront

soumis à l'Office fédéral de la justice au cours du premier trimestre 2003. Deux ans plus tard, soit à la fin de l'année 2005, les rapports portant sur l'analyse de la récidive des personnes qui ont été soumises aux arrêts domiciliaires seront à leur tour présentés audit Office.

1 Généralités

Dans le cadre des projets pilote d'EM, le canton de Vaud est le plus grand fournisseur de candidats aux arrêts domiciliaires. En effet, près de la moitié des personnes qui ont terminé avec succès l'exécution des arrêts domiciliaires proviennent de ce canton ; le canton du Tessin quant à lui fournit un quart de l'effectif total. Par conséquent, les cantons de Vaud et du Tessin fournissent actuellement à eux deux les trois quarts des personnes exécutant des arrêts domiciliaires en Suisse.

Avant de présenter les résultats intermédiaires pour le canton de Vaud, il est utile de rappeler brièvement la situation suisse en matière de sanctions pénales.

2 Le système suisse des sanctions pénales

Lorsque l'on pense à « sanction », à punition, on pense sans détour à la peine privative de liberté, à la prison. Pour une bonne partie des spécialistes, des juges en particulier, et de l'opinion publique bien évidemment, la peine privative de liberté représente encore le châtiment pénal par excellence si l'on se réfère aux chiffres officiels et à une récente étude entreprise avec le professeur André Kuhn sur la punitivité des juges et de l'opinion publique en Suisse.[1]

En Suisse, comme dans d'autres pays européens du reste, la peine privative de liberté est très largement utilisée puisque sur les 70.000 condamnations pénales prononcées annuellement par les juges suisses, 66% concernent des peines privatives de liberté, 33% des amendes et 1% seulement sont des mesures. Parmi les peines privatives de liberté prononcées, en réalité seules 23% d'entre elles environ sont exécutées tandis que 77% des peines privatives de liberté sont prononcées avec un sursis. Cependant

[1] KUHN, André, VILLETTAZ, Patrice, JAYET, Aline : Opinion publique et sévérité des juges. Crimiscope 19 (juin 2002), Institut de police scientifique et de criminologie, Université de Lausanne, Lausanne.

sur l'ensemble des peines privatives de liberté prononcées sans sursis, la majorité d'entre elles (85%) ont une durée inférieure à 6 mois.

Face à l'augmentation sensible de la durée des peines prononcées, au surpeuplement carcéral, à l'explosion des coûts de l'incarcération et à l'échec relatif de la prison sur la récidive, une discussion sur la recherche de solutions pratiques et mieux adaptées aux catégories de condamnés s'est également engagée en Suisse dans le but d'éviter une certaine paralysie du système de l'exécution des peines.

Au début des années 90, on assiste à un changement de philosophie dans le traitement des délinquants et l'on passe d'une dogmatique de la peine *privative* de liberté à celle d'une peine *restrictive* de liberté pour les délits qui ne constituent pas de réel danger pour l'ordre et la sécurité publique.

Si, au cours des années 90, le travail d'intérêt général a été l'alternative - par excellence - à l'emprisonnement, cette modalité d'exécution d'une peine privative de liberté est en train d'atteindre son seuil critique de *« management »* comme nous avons déjà pu le relever dans notre étude sur la période 1996-1998.[2]

Au début des années 2000, la Suisse expérimente à son tour l'EM, non pas comme une peine de substitution à l'emprisonnement, mais plutôt comme une modalité d'exécution d'une peine privative de liberté qui, au lieu d'être exécutée en milieu fermé, sera exécutée en milieu dit ouvert.

Contrairement à ce qui se passe dans beaucoup d'autres pays, les arrêts domiciliaires ne font pas partie de l'arsenal des peines et des sanctions à disposition du juge pénal, mais font au contraire partie intégrante des modalités d'exécution des peines privatives de liberté de courte durée qui sont à disposition du service d'exécution des peines.

3 L'évaluation

Dans le cadre de l'évaluation du projet des arrêts domiciliaires, notre rôle d'évaluateur consiste à vérifier si les objectifs principaux visés par les sanctions alternatives peuvent être atteints et si oui dans quelles mesures. Pour rappel, les objectifs principaux des sanctions alternatives sont :

- de réduire les coûts du système pénitentiaire en proposant des mesures d'exécution plus économiques que l'emprisonnement ordinaire,

[2] KUHN, André, VILLETTAZ, Patrice : Le travail d'intérêt général de 1996 à 1998. Office fédéral de la justice, Office fédéral de la statistique, Neuchâtel, 2000.

- de déterminer des alternatives plus efficaces que la détention ordinaire en vue de diminuer la récidive,
- d'adapter les alternatives en fonction des diverses catégories de condamnés afin de faciliter leur réinsertion familiale, professionnelle et sociale,
- et, de participer à la réduction de la surpopulation carcérale.

Au delà de l'évaluation proprement dite de ces objectifs, notre rôle consiste également à déceler toutes les frictions qui peuvent survenir lors de l'exécution des arrêts domiciliaires à la fois dans le cadre du travail, de la famille et des relations sociales des condamnés.
Pour vérifier la pertinence de ces objectifs, notre attention devait porter initialement sur l'exécution de 3 catégories de peines privatives de liberté, soit :

- les peines privatives de liberté de >1 à 3 mois (Frontdoor),
- les peines privatives de liberté de >3 à 6 mois (Frontdoor),
- et, les peines privatives de liberté concernant la fin de l'exécution des longues peines (Backdoor).

Cependant au cours de la mise en place du programme des arrêts domiciliaires, il s'est avéré que les condamnés en fin de peine avaient de fortes réticences à vouloir participer à l'expérience dans le cas où ils remplissaient les conditions requises pour y participer, car, en l'état actuel du programme, ces condamnés perçoivent plus d'inconvénients que d'avantages pratiques dans l'exécution de leur fin de peine sous la forme des arrêts domiciliaires.

Si l'on considère la longueur des peines privatives de liberté à exécuter sous la forme des arrêts domiciliaires, on constate que 80% d'entre elles ont une durée inférieure à 3 mois et seules 20% ont une durée de 3 à 6 mois. Cependant en se référant à la longueur des peines privatives de liberté prononcées sans sursis de >1 à 6 mois, on constate qu'il n'y a pas véritablement de disproportion entre les peines de >1 à 3 mois et celles de >3 à 6 mois exécutées sous la forme des arrêts domiciliaires puisque les peines de >1 à 3 mois prononcées par les tribunaux suisses représentent environ 78% des peines privatives de liberté fermes de >1 à 6 mois.

Si, avant le lancement du programme des arrêts domiciliaires, les responsables du programme avaient estimé que l'on pouvait recruter au mieux une trentaine de personnes condamnées à des peines de >3 à 6 mois dans

les cantons de Genève, de Vaud et du Tessin et ceci pour toute la durée de l'évaluation, force est de constater que ce nombre est déjà dépassé puisque dans le canton de Vaud, 35 personnes condamnées à des peines de >3 à 6 mois ont déjà exécuté avec succès leurs arrêts domiciliaires.

Cela montre très clairement que, lorsqu'une infrastructure composée d'assistants sociaux compétents et dynamiques est mise en place, le développement des arrêts domiciliaires prend très vite de l'ampleur, car les programmes donnent pleine satisfaction à la fois aux services pénitentiaires et de probation, ainsi qu'aux condamnés comme le montrent les informations recueillies.

Pour le volet des courtes peines privatives de liberté de >1 à 3 mois, nous avions proposé d'effectuer une expérimentation randomisée dans les cantons de Genève et de Vaud qui connaissent à la fois le travail d'intérêt général et les arrêts domiciliaires, ceci en vue de déterminer quelle sanction alternative produit le meilleur impact sur la réinsertion sociale et la réduction de la récidive.

Pourquoi une expérimentation randomisée a-t-elle été envisagée entre le travail d'intérêt général (TIG) et les arrêts domiciliaires (EM) et non pas entre les arrêts domiciliaires (EM) et l'emprisonnement ordinaire ?

La raison en est bien simple, étant donné la situation actuelle de l'exécution des peines en Suisse et des projets pilote, la participation au programme des arrêts domiciliaires se détermine sur la base du *« volontariat »* des personnes condamnées à une peine privative de liberté de courte durée. Si ces personnes renoncent aux arrêts domiciliaires, elles ont le choix d'exécuter leur peine privative de liberté sous la forme d'un travail d'intérêt général ou dans le cadre de la semi-détention, c'est-à-dire qu'elles peuvent purger leur peine en dehors de leurs heures de travail, soit durant la nuit et les week-ends.

Par conséquent, comme il fallait promouvoir avant tout les arrêts domiciliaires et étant donné que les clients potentiels aux arrêts domiciliaires sont les mêmes que ceux qui exécutent des peines privatives de liberté de >1 à 3 mois sous la forme d'un travail d'intérêt général, on ne pouvait absolument pas les dissuader de participer au programme des arrêts domiciliaires en leur imposant l'emprisonnement comme alternative dans le cadre de l'expérimentation contrôlée.

Pour participer à l'expérimentation contrôlée, toutes les personnes intéressées devaient remplir les conditions cumulatives permettant l'exécution de leur peine à la fois sous la forme des arrêts domiciliaires et d'un travail d'intérêt général.

Si, dans le canton de Vaud, l'expérimentation randomisée des arrêts domiciliaires pour les courtes peines privatives de liberté de >1 à 3 mois a bien fonctionné, malheureusement nous devons déplorer la non-participation du canton de Genève en raison de sa politique pénale axée essentiellement sur l'exécution en milieu fermé des peines privatives de liberté prononcées à l'encontre des délinquants routiers qui composent, il faut le relever, plus de 60% des condamnés susceptibles de purger leur peine sous la forme des arrêts domiciliaires.

Aujourd'hui dans le canton de Vaud, plus de 180 personnes participent à l'expérimentation randomisée, dont une moitié purge sa peine privative de liberté sous la forme d'un travail d'intérêt général. Parmi les personnes qui ont été randomisées, seuls 4% ont renoncé ou ont été écartées de l'expérimentation. À la fin de la période d'évaluation, 240 personnes environ auront été sélectionnées soit pour exécuter des arrêts domiciliaires, soit pour accomplir un travail d'intérêt général.

4 Résultats intermédiaires pour le canton de Vaud

Quelles informations peut-on déjà relever à ce stade intermédiaire de l'évaluation des arrêts domiciliaires dans le canton de Vaud ?

4.1 Caractéristiques socio-démographiques des EMistes :

Qui sont les condamnés qui exécutent leur peine privative de liberté sous la forme des arrêts domiciliaires ?

Sur l'ensemble des EMistes considérés à ce stade de l'évaluation, 93% sont des hommes et 7% seulement sont des femmes. La proportion des étrangers résidents qui exécutent leur peine sous la forme des arrêts domiciliaires représente plus de 30% des cas. En comparaison avec le travail d'intérêt général, il y a 4% de plus d'étrangers qui exécutent leur peine sous la forme des arrêts domiciliaires, ceci peut résulter de la capacité de mobilité réduite de la population étrangère dans le sens qu'ils possèdent moins souvent que les Suisses un véhicule privé pour effectuer leur déplacement dans le cadre d'un travail d'intérêt général.

Dans l'ensemble, les personnes qui choisissent d'exécuter les arrêts domiciliaires sont respectivement plus âgées que la moyenne des TIGistes et des détenus exécutant leur peine en régime ordinaire, soit 39 ans au lieu de 36 ans pour les TIGistes et de 34 ans pour les détenus. 8% des EMistes ont moins de 25 ans tandis qu'ils sont 17% à avoir plus de 50 ans.

Concernant l'état civil, 36% des EMistes vivent maritalement, 37% sont célibataires et 27% sont séparés/divorcés/veufs.

En référence aux conditions d'éligibilité pour participer aux arrêts domiciliaires qui sont entre autre l'exercice d'une occupation agréée (travail, étude ou autres tâches), 84% des EMistes ont une activité professionnelle rémunérée et parmi ceux-ci, 94% travaillent à plein temps.

4.2 Durée des peines converties en arrêts domiciliaires :

La plupart des personnes exécutant des arrêts domiciliaires ont une histoire judiciaire. En effet, 88% d'entre elles ont déjà été condamnées à une peine avant la condamnation qui a conduit aux arrêts domiciliaires. Si l'on observe la durée des peines, on constate que plus de 80% des peines à exécuter sous la forme des arrêts domiciliaires ont une durée inférieure à 3 mois et que la moitié des peines ont une durée inférieure à 50 jours.

Dans un de mes articles paru en 1998 sur la question des arrêts domiciliaires[3], je faisais remarquer que plus une peine alternative est longue, plus il y a de risque que l'exécution de cette peine échoue à moyen terme et entraîne dès lors un surcoût d'exécution puisque le solde de la peine doit être exécutée en milieu fermé. Parmi les 13 exécutions qui ont été interrompues à ce jour (ce qui représente 6% d'échec), 9 concernaient des peines supérieures à 60 jours, on peut donc supposer que cette catégorie de condamnés représente de mauvais risques dans le sens où ils ont à la fois un passé délictueux plus lourd que le reste des EMistes et que le fardeau de la peine devient au fil du temps de plus en plus insupportable. Nous avions déjà relevé une situation similaire dans le cadre des études que nous avions menées au sujet du travail d'intérêt général.[4]

Depuis le lancement du programme des arrêts domiciliaires dans le canton de Vaud, près de 13.000 jours de détention ont été effectués sous la forme des arrêts domiciliaires par plus de 200 EMistes ayant terminé d'exécuter leur peine ou étant en cours d'exécution de peine.

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[3] VILLETTAZ, Patrice : Assignation à domicile sous surveillance électronique : une alternative viable ? Les expériences américaines comme élément de réponse. Bulletin de criminologie (2/1998), 35-56.

[4] KUHN, André, VILLETTAZ, Patrice : Le travail d'intérêt général de 1996 à 1998. Office fédéral de la justice, Office fédéral de la statistique, Neuchâtel, 2000.

4.3 Types de délits commis par les EMistes :

Au cours de la période considérée, les peines privatives de liberté converties en arrêts domiciliaires résultent principalement :

- d'infractions à la loi sur la circulation routière (72% des cas, dont ivresse (65%) et violation grave des règles de la circulation (7%)),
- d'infractions contre le patrimoine (11% des cas, vol, dommage à la propriété, escroquerie, faux dans les titres, recel),
- d'infractions en matière de stupéfiants (6%),
- d'infractions contre les personnes (2%).

4.4 Satisfactions et plaintes par rapport aux arrêts domiciliaires

Quelles satisfactions peut-on retenir des arrêts domiciliaires selon le modèle du canton de Vaud ?

Pour y répondre, revenons aux conditions objectives que doivent remplir les candidats aux arrêts domiciliaires. Pour accéder au programme des arrêts domiciliaires, le condamné doit remplir les conditions suivantes :

- avoir un domicile fixe,
- disposer d'un raccordement téléphonique et électrique,
- donner son accord, ainsi que celui des personnes vivant avec lui,
- exercer une occupation agréée,
- s'engager à respecter les conditions fixées par le programme, entre autre chose l'abstinence à l'alcool, aux drogues, et bien sûr l'obligation de rester au domicile pendant les heures prévues par le programme.

Parmi les conditions objectives pour participer aux arrêts domiciliaires, il faut relever l'accord des membres du ménage. Dans seulement 4% des cas, les membres du ménage de l'EMiste ont hésité à donner leur accord pour une participation au programme des arrêts domiciliaires.

Comment l'exécution de la peine sous la forme des arrêts domiciliaires s'est-elle déroulée ?

Au cours de l'exécution des arrêts domiciliaires, un tiers des EMistes (33% des cas) ont violé les modalités du contrat d'exécution de peine. Cependant, la plupart de ces violations ont été considérées comme bénignes et n'ont entraîné aucune sanction de la part de l'officier de probation. Les vio-

lations bénignes les plus fréquentes ont été commises au début de l'exécution de la peine et concernaient des problèmes de ponctualité en référence au programme horaire préétabli.

Par contre, dans 9% des cas, l'EMiste a commis une violation grave des modalités d'exécution, ce qui a entraîné des sanctions disciplinaires de la part de l'Officier de probation dans un premier temps, puis du service pénitentiaire. Dans les cas très graves, le service pénitentiaire a suspendu momentanément l'exécution de la peine, puis a interrompu l'exécution de la peine et renvoyé le condamné en exécution ordinaire.

D'autre part, au début de la surveillance électronique, dans près d'un cas sur quatre (24%), de fausses alertes ont été relevées.

Lors de l'exécution des arrêts domiciliaires, chaque EMiste a reçu au moins une fois la visite à son domicile de l'officier de probation et un contact téléphonique régulier s'est instauré entre ce dernier et l'EMiste. Un des reproches que l'on peut faire à l'exécution de la peine sous la forme des arrêts domiciliaires est l'incursion des agents de l'État dans la sphère privée. En l'état actuel des choses, seuls 3% des EMistes se sont plaints des dérangements liés aux visites domiciliaires des agents de probation. En moyenne, les agents de probation se sont rendus entre 3 et 4 fois au domicile des condamnés durant l'exécution de leur peine.

Si lors de l'exécution des arrêts domiciliaires, plus de 60% des EMistes (62% des cas) ont suivi une démarche thérapeutique, il ne faut pas oublier que 44% des EMistes souffraient d'une dépendance à l'alcool et 10% d'une dépendance aux drogues.

Si les agents de probation ont pu relever au cours du suivi des condamnés une préexistence de conflits familiaux dans 18% des cas, 5% des EMistes ont mentionné que les arrêts domiciliaires avaient entraîné de grands problèmes familiaux, dans le sens où ils ont favorisé l'apparition de nouveaux conflits et ont encore détérioré leur vie familiale.

Sur le plan professionnel, seul 4% des EMistes ont rencontré de grands problèmes.

Sur le plan de l'exécution proprement dite des arrêts domiciliaires, plus de 70% des EMistes (72%) n'ont formulé aucune plainte et, parmi ceux qui en ont formulé, les plaintes les plus fréquentes concernaient la gêne physique qu'entraînait le port du bracelet et les horaires trop contraignants.

D'autre part, un certain nombre d'EMistes se sont plaints de la diminution de leur temps libre (35% des cas) et du surcroît de stress (20%) liés aux horaires restrictifs imposés par les arrêts domiciliaires.

Si les arrêts domiciliaires requièrent la participation financière des condamnés, un tiers des EMistes en ont été exonérés. Cependant, parmi ceux qui ont dû s'acquitter d'une participation financière, un quart d'entre eux (26%) considère comme inacceptable le fait de devoir s'acquitter des frais d'exécution des arrêts domiciliaires.

Les 4 raisons principales invoquées par les EMistes pour exécuter leur peine sous la forme des arrêts domiciliaires étaient :

- d'éviter la prison (68% des cas),
- de garder leur emploi (52% des cas),
- de ne pas être séparé de sa famille (35% des cas),
- de ne pas perdre la confiance de son employeur (12% des cas).

Si la plupart des membres de l'autorité judiciaire estiment que les arrêts domiciliaires ne peuvent pas être considérés comme une peine au même titre que la détention, plus de la moitié des EMistes considèrent que les arrêts domiciliaires demeurent bel et bien une peine.

5 Conclusion

Pour conclure, nous tenons encore à mentionner les deux faits suivants.

Si, à la fin de l'exécution de leur peine, 8% des EMistes ont donné une moins bonne impression de leur personne, 40% des EMistes en ont donné une meilleure par rapport au début de l'exécution de leur peine. Comme quoi, un travail soutenu d'assistance sociale lors de l'exécution des arrêts domiciliaires peut produire des fruits dans l'immédiat et faire prendre conscience aux condamnés de leurs propres responsabilités.

Dès lors, nous sommes d'avis que la clé du succès des arrêts domiciliaires passe par le soutien psychosocial du condamné afin qu'il réfléchisse sur son passé et son devenir.

Mon ultime considération concerne le futur des arrêts domiciliaires, si l'on stoppe le programme des arrêts domiciliaires, les deux tiers des personnes condamnées choisiraient d'exécuter leur peine sous la forme d'un travail d'intérêt général (69% des cas), une personne sur cinq choisirait la semi-détention (22% des cas) et 3% des EMistes purgeraient leur peine privative de liberté en régime ordinaire.

The Italian Pilot Project on Electronic Monitoring

ALESSANDRO DE GIORGI

1 General Context and Legislation

The introduction of electronic monitoring has been debated in Italy for some years, particularly during the second half of the 1990's. Depending mainly on the political forces in power, public discussion over the monitoring of offenders and/or defendants has taken different tones. It has been proposed alternatively either as a measure whose application would have resulted in a gradual reduction of the prison population, or as an instrument whose aim would be the improvement in the level of security and protection of the public against criminal offending and especially re-offending. Electronic surveillance was finally introduced into the Italian criminal justice system in January 2001, under a centre-left government.[1] It is worth illustrating the general legislative context and particularly the political climate within which the new measure emerged as a concrete crime policy option.

The electronic monitoring of offenders is disciplined by a large and complex law, familiar to the Italian public under the label of anti-prison release decree, whose explicit aim is indeed to render the release of prisoners from pre-trial detention more difficult. In fact, at the time the law was voted on, the national public opinion had been shocked by a number of widely publicized criminal incidents involving defendants or ex-prisoners who had committed violent crimes soon after having been released from custody, often due to the expiration of pre-trial detention terms or to the application of non-custodial measures.

[1] Law n. 4/2001 (voted January 19, 2001).

Among many important novelties in the field of penal procedure, the law establishes some new guidelines to be followed by the judges when deciding both the application of preventive measures (i.e. before a criminal conviction takes place), and the application of alternatives to imprisonment (i.e. in the phase of penal execution). For example, it is required that the judge always verifies the concrete possibility for the police to exercise an effective control over the defendant/convicted and to make sure that s/he complies with the provided regulations. In other terms, before opting for the application of a non-custodial measure (either as a preventative measure or as a proper punishment) the judge should contact the police and take into account their point of view about the level of "controllability" of the person under judgment. It should be noted that before the introduction of the new law this evaluation was left to the judge's discretion. It is not difficult to foresee that a norm of this kind will affect (in a restrictive way) exactly those categories of people whose access to alternatives to imprisonment is already more difficult than for others: immigrants, drug addicts, the unemployed, people without a stable family, the homeless, low-income groups etc. In fact, in all these cases, it will become almost impossible for the defendant/convicted to display a level of controllability high enough to gain access to non-custodial measures. This aspect of the new legislation will have important effects, given that a great proportion of the Italian prison population is composed of pre-trial detainees – and the proportion gets much higher in the case of immigrants.

It is in the wake of this (punitive) climate that electronic monitoring was introduced in Italy. The power to decide the application of the measure is demanded to the judge, whereas the installation of the devices is a competence of the police. According to the law, the defendant (when electronic monitoring is added to a preventive non-custodial measure: "front-door model") or the convicted person (when it is applied to an alternative to imprisonment: "back-door model") has a "faculty" to express his/her consent to the application of the measure: in other words, the person him/herself will decide whether s/he accepts to be electronically monitored or not. However, this "freedom of choice" appears to be fictitious, given that the denial of consent implies the automatic return to prison (either in the form of pre-trial detention or as a prison sentence). Therefore, accepting electronic monitoring becomes a further condition for the application of a non-custodial measure. In effect, electronic monitoring has been conceived of as something to be added to already existing alternative measures: a regi-

ment whose expected effect would be a further restriction on non-custodial regiments, rather than an enlargement of these benefits.

In this respect, it is quite significant that the legislator did not establish any precise limit to the duration of monitoring; assuming implicitly that its extension would depend on the duration of the main measure (i.e. "house arrest") to which it will be applied.

A further evidence of the "punitive" character embodied by electronic monitoring in Italy is suggested by the fact that the law introduces a new (related) crime: the act of altering or damaging the electronic equipment will result in one to three years in prison. Moreover, the breach of any disposition concerning house arrest or other alternative measures will result automatically in a referral to prison, whereas under the old provisions, the judge had a discretionary power to decide on these violations, depending on the seriousness of the infraction.

2 Application and Technical Aspects

The details of electronic monitoring have been disciplined through a decree signed by the Minister of Interiors and the Minister of Justice.[2] As said before, the installation of the electronic equipment is remanded to the police.

The minimum requirements for the installation are:

- A known domicile
- A phone line (possibly digital).

The equipment consists of:

- A control system
- A phone line
- A centralized information system.

The control system is the electronic engine to be installed inside the domicile of the defendant/convict. It is composed by a transmitter and a responder. The transmitter is worn around the ankle and is not removable by the defendant/convict. It weighs almost 50 grams and is built out of hypoallergenic material. The responder is an electronic device receiving a signal from the transmitter. The signal is continuous: this means that the control over the person is not random but constant. The responder's com-

[2] Decree of February 2, 2001.

munication protocol is encrypted and thus rendered inaccessible to any unauthorized person. It is powered by electricity but has its own battery, so it can work also in case of power interruptions.

The phone line can be analog, but the decree shows a strong preference for the digital line (ISDN).

The centralized information systems are installed in police stations. Each system is connected to every tag installed in a given area of competence. The system consists of hardware and software, and collects any information concerning the electronic devices of the area. All information is visualized on a monitor, and then collected and archived through a software program. However, following a recent decision by the "Authority for the Protection of Privacy and Personal Data", all irrelevant information should be automatically destroyed after a short time. According to the decree, the Ministry of Interiors will rent the electronic equipment from private contractors. The daily estimated cost is 30/40 € for each monitoring device.

3 Current State of the Project

According to some opinion polls realized soon after the law on electronic monitoring was voted on by the parliament, the Italian public opinion reacted with reasonable enthusiasm to the new measure. In fact, 52.1 % of the interviewed expressed a strong support for electronic monitoring, whereas a small 26.3 % criticized the new control system. However, 43 % of the sample showed a low degree of confidence in the effectiveness of the new device.

Arguably supported by this data, a few days after the introduction of electronic monitoring the Italian Ministry of Interiors launched the first pilot project. The experiment started in April 2001 and its first phase included 300 systems to be installed before the end of 2001 and 3,000 to be activated before the end of 2002. Its total estimated cost was 2,500,000 €. The experiment, involving four cities, Milan (in Northern Italy), Rome and Naples (in Central Italy) and Catania (in the South), should have lasted until December 2001. It is worth remembering that the experimental phase was intentionally restricted to large urban areas, due to the expected increase in economic costs that would have followed if the system had to be extended to non-urban zones. In each of these four cities, 75 devices were to be installed, distributed among (and put under the control of) the three main Italian police forces:

- 34 devices to the Italian civilian police ("Polizia di Stato")
- 34 devices to the Italian military police ("Arma dei Carabinieri")
- 7 devices to the Italian financial police ("Guardia di Finanza")

So far there is no precise data available about the results of the experiment (due to the supposed "confidentiality" of the matter and to a certain degree of disorganization in the Italian criminal justice information system). However, according to my own findings:

- 25 devices were installed in Napoli
- devices were installed in Roma
- devices were installed in Milano
- 2 devices were installed in Catania.

Following confidential sources of information, the most relevant problems in the experimental phase were due to:

- Delays by the police in transmitting to the judges the necessary information concerning the eligibility of offenders for the monitoring programme;
- A consequent difficulty in the identification of the offenders to be proposed for the program. In the wake of the decision processes, many virtually eligible offenders were given other measures (such as pre-trial detention, house arrest and so on);

The first known case of electronic monitoring experiment took place in Milan, and concerned a South American offender, the Peruvian Cesar Augusto Albirena, who had been sentenced to 5 years in prison for drug trafficking and possession. The experiment started on the of April 21, 2001 and ended on June 26, 2001 with the escape of the monitored person.

4 Two Relevant Comments about the Introduction of Electronic Monitoring in Italy

In this section I would like to report two relevant comments that appeared in Italy a few weeks after the introduction of electronic monitoring. The first statement was released by the (then) Minister of Interiors Enzo Bianco: its noteworthiness resides in the fact that his words clarify the political intentions behind the new measure. The second comment was given by a non-profit Italian organization, the "Associazione Antigone",

whose work on prisons and crime control-related topics has been very valuable in the last fifteen years.

In a press conference on electronic monitoring, held in the Police Station in Rome, Minister Bianco said:

"At present, in order to supervise 350 house arrestees, we employ 50 patrols: two officers for each patrol and you get 100 police officers who are diverted daily from the task of street control. Therefore, costs are too high and the level of public security is too low. From electronic monitoring we expect an increased level of security and a reasonable certainty that those on house arrest won't get back out on the streets to commit new crimes. In this way the degree of security is improved, because the detainee cannot disappear, even for a minute. In our choice, we will prioritize some specific types of crime, such as extortion or the racket of prostitution. Be careful however: this is not an alternative to imprisonment. This instrument is not a panacea for all the evils of crime, but just a new technology which should allow us to get two important results: first, to employ fewer officers; second, to make sure that people under pre-trial supervision are actually conforming to the rules".[3]

What emerges quite clearly from these words is, a philosophy inspired by a "cost-benefits analysis" concerning on the one hand the investment of monetary resources and the employment of police officers, and on the other hand a high priority assigned to security and to the protection of the public.

Of a completely different tone is the statement given by the cited association "Antigone", whose spokesperson said:

"In this way we are exporting the prison, not the prisoner, to the outside. The requisites for the application of the new measure are a domicile and a phone line (and this will already exclude the poorest among the poor: immigrants and drug addicts). This measure, contrary to what its "left realist" proponents argue, will not represent an opportunity to get out of the prison; instead, it will establish a new and higher standard to which those prisoners who already benefit from alternative measures will have to conform in the future".[4]

[3] Minister Enzo Bianco, press-conference in Rome, April 5, 2001.

[4] Associazione Antigone, press-conference in Rome, January 17, 2001.

5 Some Critical Remarks

It could seem a paradox that whereas before its introduction electronic monitoring featured almost on top of the list of priorities of many Italian political parties (both on the left and on the right of the political spectrum), soon after its introduction and first experimentation, it has actually disappeared from the public debate. In the last year the mass media rarely reported news about the subject and politicians do not even mention it as a possible point of their electoral programmes. Of course, crime and disorder (as well as "illegal" immigration) still feature in political debates and quite often as suitable topics for periodic moral panics. However, it would seem that the public discourse has shifted gradually toward the war on immigrants and street crime (I think for example of the new, discriminatory if not overtly racist, legislation on immigration and asylum).

What can be said considering the political climate affecting Italy in the last two years, is that electronic monitoring has never been conceived of as a real alternative to imprisonment. In fact, it looks more like an "alternative to alternatives" than an "alternative to imprisonment". In the wake of the parliamentary discussions surrounding it, electronic monitoring never was defined by its proponents an instrument for the reduction of the Italian (ever growing) prison population. Instead, it was seen (and then proposed and voted on by the parliament) as part of a policy of increased control of defendants/convicts and of enlarged protection of the public. One could think, for example, of the requisite of explicit consent to be given by the person to be monitored: accepting to be monitored becomes now a further condition to be satisfied before any alternative measure can be applied, even in those cases in which it would have been applied anyway. But there are also other requisites conjuring against the image of electronic monitoring as a "deflationary" measure: for example the fact that it can be used only if the person has a known domicile. As we pointed out earlier, this means that a significant proportion of immigrants and poor people will be excluded in principle from the supposed "benefit" (as they were already under the old provisions). In this respect, the conditions of applicability of electronic monitoring will be easily translated into risk-prediction indicators: those categories of people who are now ineligible for electronic monitoring will be easily labelled as "dangerous", and will thus be excluded also from other measures. In other words, electronic monitoring

seems to be inspired by (and to feed) an actuarial rationality: it both functions on an actuarial basis and reinforces it, in a kind of vicious circle.[5]

Rehabilitation is completely absent from the Italian legislation on electronic monitoring: no individual programmes, drug treatments, work schemes are provided. Surveillance and control: this is what electronic monitoring is all about. The Italian programme is based on the so called "H 24" principle: that is, the monitored person has to be at home for 24 hours a day, without leaving the monitored place. This distinguishes the Italian model from others, such as the English one, in which electronic monitoring is conceived of as a road toward the gradual reintegration of the offender in the community (through work).

As we have seen, the violation of any disposition concerning the regiment of electronic monitoring implies an immediate return to prison, even in those cases in which (under the former legislation) the judge maintained some degree of discretionary power. In this respect, it seems that electronic monitoring will give a significant "Italian style" contribution to the transformation of the existing "alternatives to imprisonment" into some kind of "punishment in the community": a transition which, according to some criminologists, has already taken place in England and the USA (i.e. in the case of probation, parole, community orders, etc.).[6]

Finally, it seems foreseeable that electronic monitoring, given its "political meaning", its discipline and the requisites for its application and especially the consequences of any breach of its regime, will lead us another step closer to the "net-widening" process described by Stanley Cohen[7] many years ago, rather than to any reasonable way of reducing the Italian prison population.

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[5] On actuarialism, see *Feeley, Malcolm*; *Simon, Jonathan*: Actuarial Justice: The Emerging New Criminal Law. In: The Futures of Criminology, ed. by *Nelken, David* 1994, 173-201.

[6] See for example *Simon, Jonathan*: Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990, Chicago 1993 and *Worrall, Anne*: Punishment in the Community: The Future of Criminal Justice, London 1997.

[7] *Cohen, Stanley*: Visions of Social Control, Cambridge 1985.

The Pilot Project on Electronic Monitoring in Catalonia, Spain

MARC CERÓN I RIERA

1 Introduction

The Justice Department of the Autonomous Government of Catalonia has run the Prison Service of Catalonia (12 facilities, and more than 6,800 inmates) since 1984.

This means the management of own budgets, staff, and prison policies. Despite these individual executive issues, the Catalonian Prison Service shares a common legal basis with the Central Spanish Prison Service.

This fact explains why in Spain there are two EM projects based on the same legal context, with very similar aims and procedures but with different management.

In this article I shall only refer to the EM project of the Catalonian Prison Service.

2 The Background of the Project

In June 2000 the Catalonian Prison Service decided to develop an EM pilot project. The pilot had two aims:

- To develop a measure that was included, but not tested, in the last reform of the National Prison Regulation (1996).
- To assess the chance to extend this measure, after a legal reform, to other penalties (curfew orders, etc.).

During the preparation of the project information was gathered on the results of experiences of EM in other countries, particularly from Europe.[1] From this work of was concluded that the pilot project must consider the following issues:

- Clear criteria for selection of candidates/participants.
- EM must be considered as a part of an individual programme, based on the needs of the candidate.
- The daily time monitored on EM must be the same time spent by the candidate in an open prison (usually 8 hours).
- The maximum length of the measure should not exceed six months.
- Motivational tools may be incorporated to reduce the length of the measure in accordance with a positive evolution of each participant.
- Participants as well housemates must consent to EM.
- Consequential reactions to misconduct may be designed.
- Net-widening may be avoided.

3 The Project

The project began in October 2000 and finished, formally, in October 2001.

3.1 Main aspects

Application of EM was made in accordance with article 86.4 of the National Prison Regulation. This article allows the use of EM as an alternative to the obligation of spending the night in an open prison, for prisoners who are serving the last part of their sentences. So we are in front of a "back-door" scheme.

In the article 86.4 the use of EM is conditioned to the volunteer acceptance by the participant and to the fact that candidates only remain at prison during the time fixed in there programmes to develop treatment activities, interviews and other controls, including urine tests.

The inception, the follow up, and the end of the measure are competence of the Prison Service, but Public prosecutor can make an appeal against this decision.

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[1] *Whitfield, Dick*: Tackling the Tag – the Electronic Monitoring of Offenders, ed. by Waterside Press, Winchester, 1997. This book was the clearest reference during this part of the work.

The Prison's Judge decides the appeal of the prosecutor. A Public Court takes the final decision.

EM was considered a part of the individual treatment programme (ITP) of each candidate. ITP covers several areas, usually related to personal, labour, educational, or family care needs.

The weekend was not included in EM monitoring, because inmates in open prison have licence to stay at home from Friday morning to Sunday night.

The process was monitored by staff of the Prison Service. This means that the installation of the personal and home equipment and the monitoring of the daily timetable were made by members of the Prison Service, previously trained by staff of the Company.

3.2 Selection criteria

EM could be applied to prisoners who were placed in an open prison for at least 8 months before inclusion in the programme. The remaining time until release on parole may be fewer than two years. The participants may exhibit a steady situation before access to the measure (at least, half-time employment, do not have drug problems or need to be in treatment,). They can live with their families or alone, but they may show no conflictive relationships with relatives.

Beforehand no target group was excluded, but offenders who had committed very serious offences were assessed profoundly.

3.3 Characteristics of the participants

From October to December 2000 the proposed candidates were assessed in order to select the final group.

The assessment process included a background report of previous stays of each candidate in an open prison, several interviews with candidates and their family, alone and all together, and a home visit. This work was made by prison staff (psychologists and social workers), and was supervised by staff of the Justice Department Headquarters.

During this time, 48 candidates were reported on by prison staff. From those 48 candidates, 30 (63 %) were selected: 26 of them participated in the project, and 4 did not accept participation after having been selected.

The final 26 participants in the project were mostly male (81 %). The average sample age was 33 years.

The offences that had been committed were: drug traffic (58 %), actions against property (19 %) and fraud (23 %).

The average length of the sentence was 5 years and 9 months, with stays ranging from 27 months to 9 years and 6 months. The average previous time spent in an open prison was 10 months, ranging from 2 months to 2 years and 1 month. The average time spent waiting for release on parole was 17 months, ranging from 7 to 28 months.

The majority of the candidates showed a steady situation: all of them worked, 58 % lived with their spouse and child and 38 % lived with their parents and only 8 % were involved in drug treatments.

3.4 Development of the project and results

From December 2000 to February 2001 prison staff installed personal and house equipment.

The participants were transferred to Wad-Ras Prison, located in Barcelona, where a multidisciplinary team was created that followed up on all the cases.

The main equipment was installed at central headquarters of the Prison Service in Barcelona, from where the information was sent to Wad-Ras Prison.

At the beginning of the project two participants (8 %) terminated in advance for reasons of misconduct. Another six participants received an appeal by the public prosecutor. Two of the appeals were accepted by the Prison's Judge, so those participants were able to leave the project, also in advance.

The rest of the participants (85 %) finished the measure without any incidence or breach of the previously accepted conditions.

4 Assessment of the Project and Conclusions

The project and the results obtained were assessed by the staffs of Wad-Ras Prison and of the Prison Service Headquarters. These are the main conclusions of the study:

- The equipment, a first generation type, works well. It is easy to use and very reliable.
- The participation of the prison staff in the installation process increases the commitment of the team with the project. This was reflected in two

aspects: the initial doubts concerning EM disappeared very quickly; the role of educators and social workers experienced a change, someone called it a revolution (24 hours of information means more knowledge, more action).

- EM is a tool in the context of the help and control process. Close contact between staff and clients increases the positive effect of EM.
- The candidates and housemates experience EM as a punishment, but both prefer EM to prison.
- There is no significant impact by EM in daily life for both candidates and housemates.[2]
- EM helps to improve the execution of the ITP.[3]
- Contrary to what was previously thought, candidates and housemates have no problem with extending the measure beyond six months. In fact, 67 % of the candidates were in the programme for 11 months. It is easy to suggest that the very progressive regiment of free time during the weekend explains this. So in the future the measure will be applied for 6 to 12 months.
- Risk assessment showed three main target groups: domestic violence offenders, young candidates with fatherly duties, and old drug abusers involved in methadone programmes.
- All the parties involved in the project may share the purposes and the principles of action. In this context, we need a deep, steady and global agreement and cooperation with prosecutors and judges.
- The daily EM cost per candidate (6 Euros) is cheaper than the daily cost in prison, because each EM participant means a new place in an Open Prison, without extra investment.

5 The Future

In accordance with the positive results of the pilot project, the Justice Department of the Autonomous Government of Catalonia decided to extend the measure in order to obtain two goals in the next three years: to cover

[2] In a Lickert scale from 1 to 5, where 1 means complete disagreement, and 5 means complete agreement, participants score 3.9 and housemates 3.9 the next idea "... EM has not meant an interference in daily life ...".

[3] In a same scale, participants score 3.8 and housemates 4.0 the next idea "... EM helps to improve the participant and family quality of life ...".

the whole area of Catalonia, and to increase the number of EM measures to reach at least 125 clients per day (75 at the end of 2002, 100 at the end of 2003, and 125 at the end of 2004)

Until the tender was solved the Justice Department decided to maintain the scheme of the project (the same work team, and a new group of participants).

The measure was applied to 25 new participants, with very similar positive results. On May 15, 2002 the tender was solved, and so began the extent of the project.

The success of the project stimulates a debate on the benefits of changing the legal basis of the management of weekend detention at prison, in order to introduce the chance of detention at home with EM.

Many prosecutors and judges are in agreement with the basic idea, so now the goal is to get political support for this project, in order to produce at the Central Parliament a new legal basis.

The Portuguese Pilot Project on Electronic Monitoring

JOSÉ RICARDO NUNES

1 Implementation and Legal Basis

Electronic monitoring was introduced in Portugal to enforce a bail condition, the bail curfew. In fact, bail curfew had not yet been a valid option as a remand decision due to the fact that there were no reliable and effective ways to enforce it. With electronic monitored curfew as a condition of bail it is expected to create an alternative to custodial remand, since the custodial remand rate in Portugal is very high.

In order to render possible the utilization of electronic monitoring, a specific change was introduced in the Penal Procedural Code and a law was approved, establishing its jurisdiction.

Electronic monitoring has been in use in Portugal as a pilot project since January 1, 2002, for a 3 year period, in the Lisbon area. A "Mission Structure" within the competence of the Portuguese Probation Service was created to prepare and implement the electronic monitoring programme. This structure is formed by an Executive Unit and by a Supervision Committee including a project manager, prosecutors, magistrates, lawyers, police forces and prison service representatives.

2 Staff and Executing Guidelines

The Executive Unit consists of the Project Manager, the Coordinator of the task force, 2 Probation Officers and 9 Assistant Probation Officers. It's a non-stop service, 24 hours a day, ready to take action at any time.

The main goal of the programme is to ensure the complete compliance of the bail curfew, which places the gravity centre in the control activity. Nevertheless, and along with control, there is also a regular support action, which aims to contribute to a broader psycho-emotional stabilization of the defendant and to his social reintegration. Aiming for the establishment of conditions which will facilitate a larger utilization of electronic monitoring (buffering the natural discrimination effects brought up by the electronic monitoring process itself) and easing the compliance process, some specific support programmes for alternative lodging, addiction treatment and professional occupation are being prepared.

In the bail curfew decision, the judge may impose other additional conditions (addiction treatment, for instance) and may allow the defendant to leave his home base, establishing the aims of these absences (work, professional training, treatments and so on). The Executive Unit checks if the defendant really uses these permissions for those specified purposes.

In the case of an alert regarding the possibility of non-compliance by the defendant, the procedure calls for immediate phone contact and a visit to the home base. Within the periods in which the courts do not work, this visit takes place with the support of the police forces. If failure of compliance is, in fact, occurring, the court is immediately informed both through a visit by the Executive Unit and through a subsequent anomaly report.

3 The Assessment Process

There are no pre-established criteria for the admission to the programme, besides the legal criterion that bail curfew is only possible for cases where custodial remand may take place. The electronic monitored bail curfew may be requested by the defendant or by the Prosecutor and may also be brought up by the Judge after the end of the inquiry. The consent of the defendant is always required and it may be revoked at any time.

The bail curfew enforced with electronic monitoring is a decision always preceded by a report made by the Portuguese probation service. The report contains a thorough assessment concerning the fulfilment of the required conditions of the defendant for electronic monitoring to take place, namely: lodging (characteristics of the existing space; existence of electrical power and a telephone link), social and family framework (it is relevant to emphasize that those people living with the defendant must consent to the use of electronic monitoring), subsistence conditions, health problems, structured

activities, community links and any other specific situations which may be considered relevant.

4 Technical Equipment and Operational Rules

The system consists of a radio transmitter (personal identification device), placed around the wrist or the ankle of the defendant, and a responder placed at the home base (local monitoring unit), which communicates (through the regular phone line or through mobile phone) the registered data to the control centre, where the communication media and the computers are located. The technological management of the system, the installation of field equipment and the electronic monitoring of the defendants are carried out by a private company. The alerts are communicated by phone and fax to the Executive Unit.

So far there have not been significant problems at this level, concerning the learning context and the ever growing acquirement of experience in using the system. False negatives are, nevertheless, frequent. In one particular case it was quite difficult to ensure the adequate functioning of the equipment, due to the defendant's household characteristics. Recently, there were two cases of equipment malfunctioning and the equipment was immediately replaced.

5 Actual State of the Pilot Project

Up to June 30, 2002, 90 cases were submitted to the probation service for assessment. For 39 of those cases the electronic monitored curfew was the option and, for 27 it wasn't; for 24, the court decision has not yet been taken. So far, 3 bail curfew decisions have been successfully completed. Currently, there are 36 defendants on electronic monitoring. The programme is still growing.

Cases submitted for assessment	participating	not participating	no judicial decision yet taken
90	39	27	24

Concluded tags	Ongoing tags
3	36

We consider that the rate of the participating decisions is quite high, taking into account the number of cases assessed (nearly 50 %). The number of

cases in which electronic monitoring was requested is still lower than was initially anticipated.

6 Costs of the electronic monitoring

The Portuguese project was designed to simultaneously monitor up to 250 defendants. The standing costs, which do not depend on the degree of utilization (control centre; facilities, functioning and personnel expenses of the Executive Unit), are about 54,000€ per month or 1,800€ per day. The variable costs, which depend on the number of monitored defendants, are, per defendant, 195.80€ per month or 6.53€ per day. Once full capacity of the Programme is achieved, the electronic monitoring costs per defendant will be 13.77 € per day. In Portugal, the costs for imprisonment are 37.04 € per day.

Evaluation of the Portuguese Electronic Monitoring Programme

CRISTINA PENEDO

1 The main questions of the evaluation

Having in mind the design of the Portuguese programme of electronic monitoring we can identify five key issues which will be the bone structure of the evaluation process.

A central issue concerns the programme effectiveness along three main fronts. It is relevant to find out if electronic monitoring is technically feasible, by registering and evaluating all occurrences linked to the technological process. Another relevant issue is to determine the compliance rate of the programme, taking into account the registered number of non-compliance cases and the number of consequently revoked cases. Finally, it is also relevant to find out if the programme brings about social and humanitarian improvements, through the analysis of the curfew periods and the conditions attached to the decisions and of the psycho-social changes of the defendants during the bail curfew.

A second evaluation domain relies upon the opinion both of the defendants participating in the programme and their families and of the judiciary staff involved. Data collection at this level will allow the evaluation on how these two groups perceive electronic monitoring, the gains brought about to them by the programme and their receptivity to the bail curfew enforced with electronic monitoring.

Another must for the evaluation is which costs are involved in carrying out the programme, by using the data obtained concerning the programme's feasibility and extra value, when comparing these costs with those involved in imprisonment.

The forth issue to be pondered regarding the evaluation of the electronic monitoring programme derives from its main goal, which is to determine if the programme can, in itself, become an alternative to custodial remand. Various other factors contribute to this approach. Besides the data already mentioned which will enable us to certify the programme's effectiveness, there are also more specific markers which will enable us to show how the quantitative data about the frequency/occupation of the programme relates to the reality of custodial remand, in order to assert if custodial remand has diminished, and by how much, due to the existence of the programme. In this domain, it will also be relevant to conduct a qualitative analysis about the motives stated in the remand decisions which sustain granting or not granting electronic monitored bail curfew.

We have also programmed to conduct an exploratory study about the possibilities of broadening the scope of the programme, including either other geographical areas or new penal frameworks. The collected and evaluated data will be of utmost importance to the future of electronic monitoring in Portugal.

2 Methodology

We will use several instruments and strategies for both the collection of data and data analysis. We aim to create a database to ensure the monitoring of this pilot project along different lines. We will use judicial statistics that will enable us to characterize in an evolutional way the utilization of custodial remand and of bail curfew, even before it was possible to enforce this last one with electronic monitoring. For the data collection on the programme users' opinion, a survey will be used. The survey is directed towards the Magistrates opinions and an interview guide for the defendants and their families has also been developed.

The evaluation plan and the methodological support underneath it will be analyzed by a Supervision Committee formed by representatives from the various judicial and police authorities. This committee has been also assigned the task of supervising the necessary procedures of the set-up and implementation of the pilot project.

3 Preliminary results

Since it's been only the first six months since the start of the electronic monitoring experience in Portugal, we can only present preliminary data, which indicates a few tendencies.

On average, we have received six new monthly admissions to the programme, except in April, when 13 new admissions took place. For most cases, electronic monitored bail curfew is replacing a previous custodial remand decision.

Generally, the monitoring period is in most cases 24 hours a day and the court authorizes exceptional or occasional outings for various purposes.

In 21 cases, electronic monitoring was requested by the defendant himself; in 18 cases, it was requested by the Prosecution. In 31 cases, electronic monitoring replaced a previous decision of custodial remand; only in 7 cases, the previous remand decision was the curfew order. In the large majority of cases, electronic monitoring was decided in the first phase of the judicial process (the enquiry); in only two cases, the electronic monitoring decision was taken after the conclusion of the accusation.

The most frequent offences are against property (24 cases). There are also 7 drug traffic offences and 4 cases of offences against people.

In what concerns gender and age, 35 are male defendants and 4 female, and there is a significant number of young offenders under 21 years of age.

As for the curfew periods, only in eleven cases were the defendants given permission to go out on a regular basis, and the main purpose of these permissions were either to go to work, to get professional training or to attend school. However, there were also permissions granted for recreation purposes, without any other goal. In five cases, these permissions were stated by the court in the electronic monitoring decision. In the other six cases, they were granted by the court later on.

Up to the end of May, the courts authorized the defendants to go out, exceptionally, in ninety-three occasions. These concerned mainly health matters or dealing with judicial or police affairs. In these first six months there were sixteen emergency absences and all were justified by a court decision when reported by us after the appropriate investigation.

Until now, there were no relevant non-compliances, nor revoked orders.

The Hessian Pilot Project on Electronic Monitoring in Frankfurt, Germany

WOLFRAM SCHÄDLER

1 Conception

In Hesse, as the first German Federal State, the application of electronic monitoring has been possible since May 2, 2000 without the necessity of a change in legislation.

Electronic monitoring is applied principally in the event of a criminal offender sentenced to a probationary penalty, but it is also used according to previous experience with prisoners in detention pending trial where the execution of detention is suspended. Since this date then, Frankfurt am Main Superior and Lower Court sentencing judges can, for example, in their probation instructions order the application of electronic monitoring when this offers the promise of a last chance for better control of such offenders within the framework of probationary supervision. This is principally intended, within a time period generally not longer than 6 months, to decisively advance the self-discipline of the sentenced party. It thereby represents an important prerequisite for their successful reintegration into society. The last two years of the model experiment, in which a maximum of 30 criminal offenders could be simultaneously supervised, should clarify whether electronic monitoring proves itself in practise and, where possible, where difficulties for District Attorney's offices, the court, the probation services and even in the technical area lie. At the end it was decided in May 2002 that the electronic monitoring should be applied on a lasting basis in the whole state of Hesse.

The main effect of electronic monitoring is that it can establish whether a convicted person is in his residence at the times prescribed in his instructions, or whether the person is present in his residence at times when he should not be there due to his obligations to be at his workplace, technical school, therapy session or other locations in accordance with the framework of the required sensible daily activity.

There have been two cases up to now of legally binding decisions made by Superior Court with regard to the model experiment for the testing of electronic monitoring. In one case, the probation order of electronic monitoring was given by the court with the consent of the convicted party in order to prevent the unavoidable revocation of the sentence in favour of probation. The office of the District Attorney in Saarbrücken, which presided over the sentencing, submitted a complaint against it as such. The Frankfurt am Main Superior Court established that no legal considerations exist against such an order according to either the Criminal Code (StGB) or the Constitutional Law.

2 Criteria for the Acceptance or Rejection of Electronic Monitoring Following its Examination

Each potential test person must declare his consent to participation in the project in writing. This also applies to all adult persons living with the test person in one household. Project employees rejected persons in the following cases: Current use of drugs or alcohol abuse, no contact following the third letter, break off of contact by the test person, attempts to deceive in the first interview as well as the founded suspicion of possible commission of an offence. In each individual case, within one week the court or the office of the District Attorney was presented with a detailed social report dealing with the following points:

- Declaration of personal data
- Representation of the living/residing circumstances
- Technical preconditions for execution of the model experiment, in particular a telephone connection
- Criminal biography
- Financial circumstances
- Health situation, in particular addictive drug dependence
- Free time conduct.

Beyond this, a detailed weekly schedule is prepared for the court and the office of the District Attorney in which it is recommended as to when the test person should be at home, how the sensible daily activity should look, when the test person should not be at home in accordance with the former and how high the contingent is of free time for the test person.

An indispensable prerequisite of participation in the model experiment was that the test person also pursued a so-called sensible daily activity for a minimum of 20 hours weekly. This could be a compulsory insurance employment relationship as well as public welfare work or medical care circumstances – doctor's appointments, drug counselling, etc.

3 Results of the Hessian Pilot Project on Electronic Monitoring

The pilot project showed very positive results in achieving changes of behaviour in test persons on probation. They do not become recidivist again despite the fact that they had previously been convicted of a number of crimes before. The use of electronic monitoring is a particularly efficient way of avoiding revocation of probation. In all (eleven) cases, a revocation of probation could be avoided by monitoring full compliance with the conditions as charitable service work. Not one out of the total number of 38 persons who completed electronic surveillance since December 2000 as planned has been known to become recidivist since.

With the help of electronic monitoring and close cooperation with social workers, the accused are monitored much more closely than they could be with any other possible conditions specified outside pretrial detention. In only two out of 14 cases a warrant for arrest had to be issued and the probationer had to be imprisoned again.

57 persons have been and/or are being monitored within the framework of the pilot project until the 2nd of May 2002. Currently ten persons are being monitored electronically. On the whole, the model project was required to verify the suitability of test persons in 101 cases. Most of the requests were issued by the public prosecutors at the lower trial courts (67 requests) and by the lower trial courts and registry courts in Frankfurt am Main, Bad Homburg and Königstein (62 requests). On the whole, 15 different judges at the lower trial courts and registry courts organized project requests. Although the focus was at the lower trial court and registry court of Königstein, this court only accounted for 15 % of all requests.

In written statements at the end of 2001, all judicial authorities in Frankfurt assessed the previous course of the pilot project to be positive and pressed for the continuation of the project (lower trial court and registration Court, higher trial Court, public prosecutor, public prosecutor at the lower trial Court as well as chief public prosecutor).

The surveillance period averaged four and a half months, test persons who wore bracelets for the purpose of avoiding pretrial detention were, in part, monitored for a much longer period (up to twelve months).

The majority of test persons was male (91 %); the average age of test persons was 35 years. The percentage of foreign participants was 40 %. Approximately half of the monitored persons were unemployed when the project was launched.

The majority of crimes committed by the test persons or for which they had been convicted were drug offences and ownership offences as well as road traffic act offences.

Most test persons committed major violations of their weekly schedule either rarely or not at all. Because the test persons are working, however, the originally planned schedules agreed to with project staff in advance were regularly deviated from.

There is a major difference between electronic monitoring and other types of intensive care of criminals. This is based on the nature and intensity of contact between project staff, electronic controls on one hand and the test person on the other hand: Project staff was given an opportunity to intervene at an earlier stage with more intervening options, the test person is made permanently aware of his situation, there is the unique opportunity to contact the project staff twenty-four hours a day.

The potential of suitable test persons in Frankfurt can be exploited even further by making the decision-making courts more aware of the specific opportunities and potential of electronic monitoring.

The costs of electronic control depend on pilot project capacity utilization: According to calculations of the Max Planck Institute, electronic surveillance becomes cheaper if more than eight test persons are regularly being monitored. As more than ten test persons were part of the project for most of term of the current project, the state of Hesse could have already saved a considerable amount of money with the current pilot project. This effect could be increasingly exploited if the pilot project is extended.

4 Summary

It can be determined by the project employees as well as by the opinion of one court that all test persons participating in the model experiment maintained a level of self-discipline that was enormous by their standards for the fulfilment of their prescribed weekly schedules. According to previous assessment, the sensible and careful selection of the test persons can successfully result in long term unemployed and substance dependent test persons. Most of those who participated in a prior detoxification and therapy program respectively under continued supervision with verified psychological control were quickly motivated to adopt a regular daily routine. In the case of these test persons, all of whom had previously experienced intensive and close care by the justice authority social services, a level of motivation and effort was attained that was not previously reached with conventional methods of probation assistance. The persons in question appear – according to the representation made by the court – to suddenly "awaken" and perceive the measure as the "last chance for them". An initial, short period of time without defect reports therefore signifies a successful experience for these test persons and they are then apparently spurred on to further efforts. As such, the probation order associated with electronic monitoring has proven itself up to now to be an effective measure for the prevention of crime.

The German Pilot Project: Potentials and Risks

MARKUS MAYER

A look at the trials of implemented programmes on electronic monitoring all around Western Europe generally shows high rates of success regarding the quantitative outcome. Completion rates are mostly 90% or higher.[1] Also in the German pilot project remarkable changes in the conduct of electronically monitored people could be observed. Offenders who formerly were difficult to handle and had not fulfilled the obligations imposed upon them quite promptly began to comply after being monitored and were even proud of not having infringed the curfew scheme.

But the mere figures do not account for the differences in the outcome of electronic monitoring projects compared to other forms and types of probation work. The question is how an explanation for these differences can be found.

The following reflections are based for the most part on qualitative interviews with the offenders and refer to the German pilot project. They deal with some of the specific potentials of electronic monitoring used in combination with social work as well as with some pedagogical questions and problems, without aiming to cover the phenomenon entirely.

1 Specific potentials of electronic monitoring

In comparing electronic monitoring with regular probation work we found some remarkable differences. In particular, the conduct of those offenders who were tagged for the breach of a probation order changed considerably

[1] See contribution of *Haverkamp/Lévy/Mayer*.

during the period of monitoring. Before this most of them were convoked to court several times during their regular probation phase and were admonished to fulfil their duties. Despite these warnings, they did not change their conduct until electronic monitoring was applied.

The differences in the offenders' conduct cannot alone be accounted for by the current caseload under which normal probation officers do their daily work. Average figures show 62 offenders to each officer.[2] These differences are also dependent on the particular possibilities which can be provided by electronic monitoring.

1.1 Continuous Confrontation

A particular potential of electronic monitoring lies in the continuous confrontation of the offender with his situation. Offenders often report of having forgotten their regular probation situation after two or three weeks, whereas it is obviously more difficult to forget being monitored. Three factors are responsible for this continuous reminding:

Firstly, there is the physical sensation of the bracelet around the ankle. The offenders see their bracelet; they feel it several times a day. They are also occupied with hiding the bracelet from the others. So this bracelet reminds them constantly of their situation. Secondly, there is the curfew scheme imposed upon the offender. The offenders take the curfew scheme seriously and believe that any form of violation bears the risk of imprisonment. They are afraid of the results of not being punctual. Daytime activities have to be planned more carefully than without the curfew scheme. Thirdly and finally, there is the project staff which controls the offenders with regard to the curfew scheme. Since the offenders cannot always be on time, for example if they have to work overtime, they know that there will be a phone call and they will have to justify any delay. Thus, the social worker becomes the human counterpart of the technical control.

The new situation of being under electronic control determined by these factors is surely stricter than the conditions of a regular probation; it is also surely more stressful and exhausting for the persons on trial. Tagging may not prevent offenders from doing something illegal, but it is obviously able to motivate the offender to comply with the probation order, e.g. a community service order. An extract from an interview may help to illustrate the offenders' view of this situation:

[2] Average caseload in Hesse, Germany 2001.

There were times, when you were out of your home and could have done anything you liked.
Yes, but I didn't get up to anything because I had the tag. It was sort of under current from here [points to his head], because I knew all the time that if I started really messing around again I'd be back behind bars.
And this feeling of awareness. Didn't it exist under normal probation conditions?
No. It was there at the beginning but just faded away after a few weeks or even days. But the tag kept reminding me of what was at stake. That's why I didn't see it as a punishment, but as a kind of help. It reminded me all the time of what'd happen if I got up to my old tricks. Breach of probation and all that again... And then bit by bit it helped me find my feet and settle down.

1.2 Closer Contact between Social Workers and Offenders

The social workers obtain a lot of information about the offender even before the monitoring programme begins. The offender's home has to be visited and the technical circumstances have to be checked. The offender has to report all his activities, both private and professional, outside the home in order to adapt the curfew scheme to his needs. But also the partner, the adult children or the parents of the offender have to be informed about the details of the monitoring if they share the same home. During monitoring time, social workers and offenders have to get in contact at least once a week.

But apart from the information necessary for the probation work, the social workers also get a lot of information which could be called "trivial data". This is mainly concerned with problems arising from an incompatibility between the curfew scheme and the individual needs of the offender. Offenders can have difficulties in being punctual due to work overtime, rush hour or delays of suburban trains. In the German pilot project, we recorded about ten deviations from the timetable per month for each offender. Nearly all of these deviations could be accounted for and, therefore, had no negative consequences for the offender. But they lead to a lot of "trivial data", which, together with the "necessary data", form a dense net of information about the offender. This dense network of information makes the work of the probation officer easier and more efficient whilst making it more and more difficult for the offender to fool the social workers. Consequently the social worker's authority is strengthened and his

course of action can have a more intense impact as it is based on knowledge of the offender, which is close to reality.

At the moment, you don't have a tag.
No.
Is that the way things are going to stay? [The changes in daily life]
Yes, I hope so. I hope it's going to stay as it is. Until now yes. That's why I am glad I have [name of project staff member] as probation officer. I could have had someone from the [name of the regular probation service department], too. And then things would have been quite lax again. Once a month a phone call: Yes, I'm alright, blah blah blah. I'm still alive, bye.

1.3 Social Workers Can Reward the Offenders' Conduct

Most of the offenders feel punished by electronic monitoring. They say they cannot act as spontaneously as they used to before being monitored. This applies above all to leisure time activities, like having a glass of beer with friends in the evening or meeting family on the weekend. The social workers can in fact change the offender's situation in a positive way by adapting the weekly timetable to the offenders needs and making these changes dependent on the offender's behaviour. This is a kind of reward which can be used directly and can be acknowledged immediately by the offender. It seems to be one of the rare possibilities provided by the correctional system of rewarding the offender's behaviour. Rewarding and appreciating the behaviour desired of the offender would seem to be even more important than the penalizing aspects of electronic monitoring.

1.4 The Project Staff Can Be Reached 24 Hours a Day

The social workers in the German pilot project can be reached 24 hours a day. Most of the offenders really appreciate this option. The offenders prefer to be able to contact their social workers if they know they will be late and most do this even before the monitoring system notifies the social worker of the delay.
But they also make contact when problems start to arise. Offenders called the probation staff, for example, in the case of drug problems, when there were conflicts with members of the family or the danger of suicide. This shows that the social workers in the electronic monitoring project were able

to establish a noteworthy relationship with the offenders and could immediately react to the offenders' needs.

> ..., and above all, you can always, if you've got anything like problems, you can always call straightaway and there's always someone there and that's worth a lot. That makes a big difference. Not just, "You can come round next week." Because next week will be too late and the damage can already have been done. But you can ring up around the clock and say, "I'm in trouble, I got a problem", and then they do something for you. And that makes sense. It's a good feeling to know there's somebody if you need someone; not just someone saying "Next week" or "I can give you an appointment in two weeks."

2 Pedagogical Questions and Problems

The changes in the relationship between social worker and offender caused by electronic monitoring do not only have positive aspects. There are some differences that lead to important questions and problems.

2.1 More Power for Social Workers

It is obvious that the social workers' authority is strengthened by electronic monitoring. But at the same time the social workers obtain a lot of power which they can exercise on the offenders. The most important instrument in so doing is the offender's curfew scheme. By changing the scheme the probation staff can have a noteworthy affect on the offenders' situation either in a positive or a negative way. Of course, any change of the curfew scheme has to be decided by court. But it is also evident that the judges usually accept the changes of the curfew scheme such as they are suggested by the social workers.

It is even possible for social workers to change the scheme without informing the court. Our evaluation of the offenders' files shows that this happened in some rare cases.

Two types of misconduct are imaginable:

Firstly, social workers could allow more free time than decided by court. In this case, one could speak of fraternization between social worker and offender against the correctional system. The judge would have no regular possibility of gaining knowledge of this misconduct, if it were not by chance.

Secondly, the social worker could limit the offender's free time without being authorized by the court. The offender's mobility would be reduced without any legal procedure. Also in this case, the judge would not necessarily find out about this deprivation of liberty.

These reflections show that electronic monitoring leads to a considerable extension of the social workers' power. The system lacks an institutionalized control.

2.2 *Electronic Monitoring Preventing Useful Social Contacts*

Usually, the offenders are afraid of someone finding out about their situation. This applies to their friends and relatives but above all to their employers since the offenders are afraid of losing their jobs. Mostly just a few persons, such as the husband or wife or some good friends know about the bracelet. Even the parents or children do not always know about the offenders' situation.

While it is rather easy to hide the bracelet from others, it is much more difficult to explain the behaviour which results from the curfew scheme. Offenders often may, for example, have to end a stay at their friends' or relatives' home earlier than they would have done in former times or they cannot go out spontaneously in the evening. Usually, friends or relatives want to know why the offender cannot stay longer or why he cannot meet them.

If the offender does not want to tell the whole truth – this would mean risking negative reactions by his friends or relatives – he is consequently forced to lie or at least to invent some stories to explain his behaviour. Some offenders report a decline in their circle of friends due to this problem.

Both the lying and the loss of social contacts cannot be regarded as an intended result of rehabilitation work. They could be avoided if the curfew scheme would not only respect the working hours but also allow enough leisure time activities with friends and relatives.

2.3 *Curfew Scheme and Irregular Hours of Work*

Most of the offenders have more or less regular working hours. This concerns all the offenders who have to do community service and most of the employed offenders. But there are also offenders who are self-employed

like, for example, taxi drivers or offenders who have to do shift work. These persons often do not know their working hours for the next week or even the next day. As the timetable cannot be changed every day by the judge, the social workers have two ways of reacting: Either they don't change the curfew scheme, which leads to a lot of "allowed" deviations, or they extend the period of free time to such high extent that electronic monitoring becomes a farce.

Since more and more people have irregular hours of work, it could be argued that the idea of electronic monitoring applies to industrial employment schemes instead of accepting the shifting and flexible working hours of post-industrial society.

2.4 Judges Facing Pedagogical Duties

While judges usually only have to deal with an offender at the beginning and end of a probation period, electronic monitoring demands a higher effort from them throughout the entire programme. They have to consent to every significant change of the curfew scheme. This happens three times per month on average. Therefore, even if there are no infractions of the curfew scheme the court clearly has more duties than before.

These duties have a pedagogical nature. The judge has, for example, to decide if an offender is allowed to visit his relatives in another town during the weekend. In making such a decision, judges can only draw from their own experience or follow the social workers' advice, as they usually have not been taught how to apply pedagogical concepts.

The increase of duties and their pedagogical character may be two reasons why most of the judges able to apply electronic monitoring in the framework of the German pilot project still do not make use of it.

3 Conclusion

The current research findings of the German pilot project show that electronic monitoring combined with social work has particular possibilities which cannot be provided by regular probation work or even by intensive supervision. At the same time, we cannot but observe the absence of a pedagogical concept able to integrate these positive aspects into a coherent system. Also, the dangers related to the use of electronic monitoring have still not been systematically analysed either by scientists or by practitio-

ners. These circumstances lead to a monitoring practice that produces accidental and unsystematic results.

As long as the expected effects of electronic monitoring are not clearly defined, the legal procedures do not prevent misuse and the everyday practice of probation work is not based on a coherent and appropriate theoretical concept, tagging risks being disadvantageous for monitored people. A sensible and successful use of electronic monitoring in the future will, therefore, need further reflections both in theory and in practice.

Real Alternatives versus Virtual Alternatives: On the Theory of Net-Widening Applied to Electronic Monitoring in France

PIERRE V. TOURNIER

French lawmakers, intent on widening the range of alternatives to personal restraint within penal measures and sanctions (PMS), decided to make commitment to electronic monitoring (EM), called *placement sous surveillance électronique*, or PSE in French, a polymorphous measure. The December 19, 1997 Act was the birthright of EM as a means of enforcement of sentences of personal restraint. In cases of sentences up to one year or less (type I), or when the sentence remaining to be served amounts to one year or less, the judge in charge of the enforcement of sentences (JES) may decide that the sentence will be served under the EM system (type II). EM may also be ordered for release on parole (RP) for the duration of one year or less (type III).

Furthermore, according to the June 15, 2000 Act, pre-trial detention, when pronounced, may be served under EM (type IV) if the judge of release and detention (JRD) so prescribes. In all four cases the "committed" individual is placed on the prison rolls for the duration of the commitment, and is counted in the prison population.

1 A Polymorphous Measure of the Third Kind

It was in the aftermath of a study conducted jointly with André Kuhn of the University of Lausanne and Roy Walmsley of the British Home Office on overcrowded prisons and prison population inflation for the Council of

Europe[1] that we proposed an original classification of alternatives to personal restraint. The "first category alternative" includes any PMS that result in a cutback in the number of admissions to confinement. This is the case of pre-trial surveillance from the outset, when pronounced before any pre-trial detention, or of a community service order (CSO) or a suspended sentence, with or without probation when the accused person is not already in custody. These alternatives may be said to be "radical", in that they avoid admission to confinement, thus totally circumventing incarceration of the accused or sentenced person, who will not enter prison at all.

"Second category alternatives" reduce the duration of detention, or more accurately, the time on the prison register. Measures of this sort represent the lesser of two evils, and may be termed partial or relative, since recourse to confinement is not avoided but the time spent on the prison register is shortened through a measure of some kind. To this way of thinking, sentence cutbacks for "good behaviour" or for "serious evidence of potential for social rehabilitation" as well as individual or collective pardons are all second category measures when they affect imprisoned individuals.

This dichotomy is definitely inadequate, however, in that PMS cannot be divided into two distinct categories. Many fall into one or the other category depending on how they are applied. Pre-trial surveillance, for instance, is in the first category if prescribed from the outset. But it becomes a second category measure if applied to a person in pre-trial detention, since it reduces the length of the prison stay prior to judgment of the case. The same is true of suspended incarceration: it is in the first category if the defendant was not in pre-trial detention, or in the second category in the opposite hypothesis. Parole is in the second category. Although it does not reduce sentence-serving, it leads to early release – with removal from the prison register, the rest of the sentence being served under the supervision of the probation services. Clearly then, the issue of reforming punishment is an integral part of the question of alternatives to imprisonment.

The limits of the above-mentioned dichotomy become evident when applied to alternatives as a whole. Where, indeed, shall we class semi-liberty and employment outside of prison, which are also partial or relative alternative measures, but do not avoid entry into the prison register? They are

[1] Council of Europe, 2000.

not in the first category, since they do not reduce the time on the prison register, nor are they in the second category either.

We have therefore created a "third category of alternatives" for those PMS which reduce the amount of time actually spent behind prison walls without removal from the prison rolls, and therefore without reducing the time spent on the prison register. This is the case of semi-liberty and of employment outside of prison as well as of furloughs. Electronic monitoring, be it of types I, II, III or IV, also comes under this heading.

2 Virtual Alternatives versus Real Alternatives

When a person who has not yet been sent to pre-trial detention is granted release under pre-trial surveillance and is finally given a totally suspended sentence, it would seem that this individual surveillance measure really enabled him or her to avoid prison. But it is also true that the examining judge would not have resorted to pre-trial detention if pre-trial surveillance had not existed as a legal possibility. The judge made use of an additional guarantee, since it was available. If such is the case, pre-trial surveillance does not play its role as an alternative to prison (meaning it is a virtual alternative), but rather, it extends the net of social control. This is what the theory of net-widening is about. The same question may in fact be raised more or less for all first category alternatives. Would so-and-so, given a CSO, have been given an unsuspended one-year sentence if the law had not created community service work? Wouldn't he or she have been "granted the benefit" of a simple suspended sentence, or perhaps even a fine?

The terms of the issue are quite different for category 2 alternatives. A prisoner who has three years of confinement left to serve and who is released on parole has benefitted from a very concrete alternative. He or she will serve the remaining three years outside prison walls. Yet, it is still a known fact that the number of prisoners released on parole in France has been waning.[2] The Parliament and the Government eventually became aware of the situation, and finally engaged in a major reform of parole-granting procedures, formulated in the June 15, 2000 Act. Let us suppose that parole really is more liberally granted, as recommended. Will this not lead, eventually, to a compensatory increase in the length of the sentences meted out by courts, out of frustration at seeing "their" sanctions excessively "cut

[2] *Tournier*, 2000.

sively "cut down"? This means that a 2nd category alternative, truly effective at the "micro" level (the beneficiary has no doubt about it), may become completely virtual at the "macro" level.

By discussing third category measures, a distinction should be made between those taken from the outset – from the start of confinement – and the others. Let us take the case of type IV EM, theoretically introduced by the June 15, 2000 Act. Article 62 reads as follows: "the judge in charge of release and detention takes into consideration the person's family situation, especially when he or she has parental authority over a child who habitually resides with him or her, and who is under age ten". If EM had not existed, would that person have been sent to prison, or would he or she have simply been placed under pre-trial surveillance? The same may be said of EM corresponding to the enforcement of a sentence to less than one year of imprisonment (type I). Can it be that courts are now encouraged to mete out unsuspended prison sentences of less than one year in those cases where they would previously have granted a suspended sentence, knowing that the person may avoid going to prison thanks to the bracelet? This reasoning is perfectly conjectural, however, since we may very well imagine the following "calamitous sequence of events: a court hands down an unsuspended prison sentence of six months, for example, rather than a suspended sentence with probation, considering that the latter will be served under electronic monitoring, but the judge of enforcement of sentences, in charge of the commitment decision, rejects this option. In this case, far from being an alternative to personal restraint, EM contributes to recourse to imprisonment.

Conversely, end-of-sentence EM (type II) does not raise the same type of question. Probationary measures connected with parole (semi-liberty, employment outside of prison or type II EM) represent a different case. The fact of their existence may make for a more liberal use of paroling, since they represent additional guarantees, on which the JES may rely. It may, however, delay actual release on parole. Without these measures, parole would have been effective on date t; with them, the prisoner is not released (does not leave the prison register) until date t + t'. The alternative is virtual then, since its effect is to increase the duration of detention.

Is there something Janus-faced about these penal measures and sanctions? Some time from now, someone will come up with a "specialist" who will endeavour to quantify this duality accurately, and will announce that in 50 % of cases probationary EM favours paroling, and in the other 50 % it

delays it.[3] This remark does not close the debate, but one way of informing it would undoubtedly be to dispose of accurate quantitative data on the consequences of the introduction of this new penal measure.

3 The Desperate Search for EM

Although the June 15, 2000 Act relating to EM can not yet be implemented for lack of an enforcement order, EM, used as a measure for the mitigation of an unsuspended prison sentence has been experimented with since October 1, 2000. The CESDIP has therefore taken the initiative of developing a tool, in cooperation with the research department of the correctional administration, for the quantitative study of implementation of this measure[4], completed by a qualitative field approach based on interviews with actors. As of April 1, 2002, 18 months after the onset of the experimental period, 217 commitments to EM had been implemented. If we confine ourselves to the four sites initially selected[5], the figure is 212, representing an average of 3 commitments per site and per month.

During the first phase[6] we analyzed the case files corresponding to EM terminated as of October 1, 2001 (n = 87): 72 EM were of type I, 13 of type II and 2 of type III. Net-widening or not, commitment to electronic monitoring hardly "disturbed" the scope of the application of PMS, be it in the area of short sentences or in the preparation for release of inmates having served a longer sentence in detention.

The CESDIP investigation also covered semi-liberty, outside employment and release on parole measures pronounced during the same period (from October 1, 2000 on) for prisoners detained in the same four facilities, so as to enable comparisons with EM. The semi-liberty measures involved are those pronounced by the judge of the enforcement of sentences (par. 723-1 or D49-1 of the code of criminal procedure). This was also the case for release on parole.

Lastly, it is our intention to collect data, subsequently, on those sentenced prisoners who were not given the benefit of these various measures despite eligibility for them. This is important for the differential statistical analysis of the requisites conditioning the granting of these measures.

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[3] *Descombres*, 1997.

[4] *Kensey, Lévy, Tournier,* 2000.

[5] The Agen prison, the Aix-Luynes prison, the Grenoble semi-liberty center and the Loos-les-Lille prison.

[6] *Kensey, Lévy, Pitoun, Tournier,* 2001.

4 Tools for an Eventual Analysis of the Thinness of the Mesh

4.1 Follow-up

A follow-up sheet is established for each EM measure. It is composed of two parts: one to be filled out at the beginning of the EM, the other to be filled out exclusively at the end of the commitment, irrespective of the reason for its termination. A photocopy of the sheet is sent to the central administration immediately after termination of EM, along with photocopies of the corresponding "modification" and "incident" sheets when relevant (see below). A photocopy of the criminal record form (*fiche pénale*) up to date at the end of the commitment is included.

4.2 Modifications of the measure

This term designates modifications in the obligations specified in the JES *ordonnance*, pertaining to the places and periods of required presence and the application or non-application of paragraph 723-10 of the code of criminal procedure. A separate "modification" sheet must be established for each modification *ordonnance*. All of these sheets are sent to the central administration immediately following termination of the EM, along with the follow-up sheet.

4.3 Incidents

The term "incident" applies to any case in which the alarm was set off by a proved absence following a telephone call. Each incident must be recorded on a separate incident sheet. All of these sheets are sent to the central administration immediately following termination of the EM, along with the follow-up sheet.

4.4 Requests for EM expressed by inmates and refused by the JES

In this case a photocopy of the rejection *ordonnance* is transmitted, along with a photocopy of the criminal record form (*fiche pénale*). This type of transmission is immediate.

4.5 Other measures expressing trust

The correctional facilities are also requested to send a photocopy of the criminal record form of inmates who were granted semi-liberty, outside employment or release on parole during the October 1, 1999 to October 1st 2000 period (reference period A, with no EM) and the October 1, 2000 to October 1, 2001 period (period B with EM). These photocopies are to be transmitted on the day of removal from the prison register.

4.6 A reminder

At a later date (October 2002) we hope to collect information on those prisoners who were not granted any of these measures during period A (October 1, 1999 to October 1, 2000) and period B (October 1, 2000 to October 1, 2001) despite their eligibility.

The population involved the October 1, 1999 to October 1, 2000 period is composed of all sentenced prisoners released between October 1, 1999 and October 1, 2000 as well as those still present as of October 1, 2001 and who were eligible for RP during the October 1, 1999 to October 1, 2000 period.

The population involved the October 1, 2000 to October 1, 2001 period is composed of all sentenced prisoners released between October 1st 2000 and October 1, 2001 along with those still present as of October 1st 2002 and who were eligible for RP during the October 1, 2000 to October 1, 2001 period.

These are not separate groups, of course.

The procedure visualized here is completely unheard of in France for measurement of the effects of the introduction of a new PMS. It should enable us to describe the evolution of decision-making through the use of a control period (twelve months before the introduction of the measure), to compare the socio-demographic and penal characteristics of those sentenced individuals who were granted the benefit of the new measure and of previously existing measures as well as of those who, although eligible for such measures, did not benefit from them.

But for this work to be feasible, the thing itself has to come into existence.

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Widening the Net of Formal Control by Inventing Electronic Monitored Home Confinement as an Additional Punishment: Some Issues of Conceptualization and Measurement

KARL F. SCHUMANN

This paper addresses the search for adequate methods to measure net-widening effects which are to be expected if electronically monitored home confinement (EMHC) becomes available as an option for the Criminal Justice System for detention, sentencing or correctional purposes.
I will organize the paper in five parts:

- some general assumptions about features of criminal justice systems which facilitate net-widening,
- some reasoning on what types of net-widening might be connected with EMHC,
- some empirical ways to study net-widening effects related to EMHC and
- to other reforms in the past, and finally
- some considerations about how to measure the probable effects of including EMHC into the range of penal measures.

1 General Assumptions

Criminal justice systems (CJS) in Western industrial societies seem to have three features in common:

- Like almost all organizations in society they have a tendency to slowly and consistently expand their area of responsibility, e.g. their size and field of work.
- The parts of the CJS, e.g. police, prosecution, courts, correction do not communicate very well with each other nor do they trust each other to advance the same principles of punishment.
- The parts are almost completely exempted from evaluating their work regarding effectiveness. If the CJS does not work as expected, no particular part of it will be held responsible, because the failure can always be blamed on the increasing malice of their clientele.

Those three features, the tendency to expansion, lack of coordination and irresponsibility for the results allow a permanent and subtle net-widening process which seems to go on rather unnoticed everyday. Therefore, if new sanctions are introduced it may be reasonably presumed that this addition will become a stepping stone for net-widening. The question regarding the addition of a new penal measure is not: will there be net-widening, but: how much net-widening will occur and how can that effect be exactly measured? Let me briefly explain how the three features are working.

Expansion is imminent in organizations in general as the well-known *Parkinson's* Law[1] with its ironic formula suggests that civil servants as well as organizations tend to enlarge their work-load to gain more prestige and staff. For that creeping expansion of work different routes are available. For the CJS those routes include: adding provisions to the penal codes, enlarging the scope of behaviour covered by a legal term (e.g. violence and assault referring more and more to psychological rather than physical impacts), turning to more proactive police work (e.g. drug controls), increasing the length of sentences meted out by judges, introducing additional screening procedures regarding dangerousness for the parole decisions etc. Those routes differ in particular countries but their direction is the same. While there are a few contradicting examples, they hardly ever aim at reduction of the scope of formal control to provide more tolerance for deviancy. Thus, the tendency for expansion can be taken for granted.

The lack of cooperation within the CJS has been pointed at repeatedly by *Louk Hulsman*: "In countries where researchers and policy makers have undertaken a critical examination of their criminal justice systems, they have found that there are few common aims, that there is a considerable

[1] See *Parkinson* 1958, 17.

diffusion of duties and responsibilities and little or no coordination between the sub-systems." (1985, V38).

The lack of coordination of the subsystems causes suspicion: police distrust judges because they release easily arrested offenders. Judges distrust correctional staff and parole boards because the sentences meted out are only partly served by the convicted and so on. The widespread suspicion that other parts might not share the same ideologies on punishment leads to increasing punitiveness. Subsystems tend to strengthen the element of punishment to raise the probability that the result reached at conviction will still be acceptable to them. For example, prosecutors in the U.S. tend to exaggerate offences to eventually arrive in the plea bargaining process at a reduced classification which draws a sentence they had in mind anyway. Judges seek ways to manipulate sentencing guidelines to regain discretion for sentencing. Such manipulations of the work of subsequent parts increase the probability that benevolent reforms in one part of the system will be turned around by counter-strategies elsewhere in the CJS.

Finally, the denial of responsibility for the lack of effectiveness by the CJS leaves it without controls for counterproductive effects. If the prison population rises, this can always be blamed on the rising crime figure or the increasing dangerousness of the population. Monitoring parts of the system to detect net-widening strategies seems to be widely ignored by the CJS. One striking example is decision-making about releasing or not releasing prisoners who have been previously considered dangerous: there is a built-in tendency to prefer false positives rather than risking a false negative.[2] This tendency keeps most of them incarcerated beyond the point in time they have lost their dangerousness and increases thereby the number of false positives. To detect the proportion of incarcerated false positives has been of little concern to the CJS. This ignorance is actually highly problematic in lieu of the constitutionally granted ultima-ratio-principle, implying that punishment ought to be the last resort, which applies also to the appropriate degree of repressiveness of the intervention.

2 Forms of Net-Widening

Net-widening has been raised as a problem in the context of de-institutionalization in juvenile justice as well as in psychiatry. In their classic article *Krisberg and Austin* distinguish three forms:

[2] See *Kühl & Schumann* (1989) for details.

"1. Wider nets: Reforms that increase the proportion of subgroups in society, whose behaviour is regulated and controlled by the state.

2. Stronger nets: Reforms that increase the state's capacity to control individuals through intensifying state intervention.

3. New nets: Reforms that transfer intervention authority or jurisdiction from one agency or control system to another" (1981: 169).

There have been elaborations of the concept of net-widening in the meantime, especially by *Blomberg* (1995), but for our purpose at hand the distinctions made by *Austin and Krisberg* will suffice.

While the first aspect of wider nets has been of major importance for an understanding of the reforms aiming at deinstitutionalization and diversion, because new subgroups of juveniles seem to have been included in the clientele of juvenile justice systems, it seems to be of less importance for our issue at hand. EMHC is either used as form of detention or of sanctioning persons who otherwise might be fined or imprisoned.

If an intervention of one type or another is already granted, net-widening will occur in the form of strengthening the net. State's intervention may become tougher by the availability of EMHC for a particular subgroup of controlled persons which otherwise would be treated more leniently if EMHC was not an available option. In the remaining part of the paper I will restrict my analysis to this issue of stronger nets.

In addition there certainly is a tendency for the third type of net-widening: emerging new nets. This refers to the staff who handles the monitoring, additional interventions and treatments for the monitored persons, their power to terminate EMHC and transfer subjects to prison etc. As soon as a particular staff (e.g. monitoring specialists) emerges, or the police or social workers or prison authorities become responsible for handling the population targeted by EMHC, a professional philosophy will emerge. It may consist of particular classifications for the subpopulation which is perceived as suitable and may also include second codes to determine success and failure. The staff may work towards increasing the caseload to make their new task a permanent one. To demonstrate success the inclusion of low risk groups will be preferred, if the staff gets any control over the intake. This contributes to extending the dimensions of control as well as to legitimize its permanence.

Since this paper deals predominantly with issues of measurement it will neglect the dimension of system net-widening and restrict the scope to stronger nets.

3 Measuring the Effects of Net-Widening by EMHC – Preliminary Empirical Knowledge

The effects of net-widening have been studied predominantly in relation to deinstitutionalization and the introduction of community service orders, but there are already some studies addressing the effects of EMHC. We will start with those and fill in the gaps based on research on diversion and community corrections.

The mechanisms which cause net-widening differ in size and type according to the phase in the sequence of criminal persecution (front-door or back-door) EMHC is placed, and to the type of decision it is supposed to substitute for.

Electronically Monitored Home Confinement may serve:

- as a form of detention: as such it may be a substitute for jailing persons (A) or for putting them on bail (B),
- as intensive probation: as such it may be a substitute for having them serve a prison term (A) or for putting them on simple probation (B) and
- as intensive parole: as such it may serve as a substitute for letting them stay on in prison (A) or for putting them on parole under normal conditions (B).

For all three types the alternative (A) makes EMHC a more lenient intervention while alternative (B) is widening the net by intensifying the reaction. In fact most often both alternatives will be part of the picture. Evaluation of diversion practices has established that up to 50 % of the diverted cases were net-widening cases (*Bohnstedt* 1978; *Hylton* 1982). Whenever some of the case-flow into EMHC qualifies as type (B), there is net-widening going on by way of creating a stronger net.

One way to grasp net-widening effects would be to study mechanisms of lengthening the time persons are under control of the CJS. *Leigh, Knaggs and McDowall* (1997) have suggested defining net-widening as "lengthening the total time the offender is under criminal sanction". This can either be accomplished if EMCH is used as an interim phase before offenders are channelled into the normal practice (release or probation), or it occurs as a consequence of a higher risk of technical violations which will put the offender back to prison and thereby delay the ending of the imprisonment or parole process. In either case prolonging the intervention and delaying the point in time when a person has regained full control over his life certainly is also a mechanism to make the net stronger.

There are some random experiments which at least produced evidence that the second mechanism (prolonging the time under control by a higher rate of technical violations due to EMHC) is at work.

Austin and Hardyman (1991) evaluated the use of EM under the Oklahoma parole system using a randomized experimental design. A total of 750 inmates released early were randomly assigned to experimental (n=175) and control (n=575) conditions; the experimental condition being EMHC, the control consisted of the regular parole supervision. The failure rate was higher among the experimentals (28.7 %) than among the controls (21.4 %), with technical violations comparing 14.7 % to 10.9 % (1991, p. 77). Another randomized experiment undertaken by Baumer and Mendelson (1990) resulted in a slightly higher rearrest rate of the monitored offenders (*Austin and Hardyman* 1991, p. 15).These finding are consistent with the results which *Turner and Petersilia* found in their 14-sites random experiment evaluating Intensive Supervised Probation (1993). At Los Angeles, Atlanta, Macon, Des Moines and Milwaukee they consistently found that the electronically monitored offenders had more technical violations and in effect were more often incarcerated than the controls. Since in a randomized experiment experimentals and controls are equivalent, because both groups are taken by chance from the same population considered eligible for EMHC, the higher technical violation rate definitely indicates a mechanism by which EMCH will lengthen the time under control.

Another research strategy aims at determining whether the monitored offenders stem predominantly from a population which would be treated more lenient or more severe if EMHC would not be available. Those attempts try to determine whether offenders are predominantly of the type (A) or (B) by using offender classifications (*Palumbo, Clifford and Snyder-Joy* 1992). Some such studies found that inmates eligible for EMHC were largely the same as those suitable for normal parole (that is: type B).

If we are interested in the size of net-widening rather than the probability of the very fact or the mechanisms which contribute to it, one way to determine the scope is the comparison of figures of the population of prisoners and parolees before and after introduction of EMHC. *Baird and Wagner's* evaluation of the Florida Community Control Program indicates a net-widening effect of some size which may be caused mainly by the sentencing guidelines accompanying the introduction of EMHC. Judges tended to become more punitive, using EMHC as an alternative to community corrections rather than to prison (1990, 118). Since this study evaluated a

front-door approach, the finding points at the manipulative tactics of judges to secure their influence on the consecutive correctional decisions.

4 Measuring Net-Widening – Knowledge from Evaluations of Other Reforms

The notion of net-widening has been established as result of the diversion movement and the deinstitutionalization campaigns of the seventies in the U.S. and elsewhere. This issue has also been raised for community correctional interventions.

While diversion refers to strategies at the entry into the juvenile justice system, questioning the necessity of intervention at all, community corrections can be considered quite similarly to EMHC as an intermediate sanction for adults who are not considered so dangerous that they have to be put into prison under any circumstances. Community corrections resemble EMHC somewhat in their function to punish persons in a way somewhat less intrusive than prison, so it makes sense to look for lessons to be learned from evaluation studies of that type of sanction.

One example is provided by the study of *Baird & Wagner*, which suggests a methodological way to grasp changes in the selection of population for particular sanctions before and after the introduction of a new sanction measure. In a before-after study the decision-making of judges at time 1 before the new measure, say EMHC, becomes available could be statistically modelled by predicting the choice of prison versus community sanctions, based on variables of the offenders. By applying the best set of predictors for the time 1 decision making for prediction at time 2, after EMHC has been introduced, one may classify a sample of cases accordingly and check the predicted outcomes against the actual decisions. Thereby it should be possible to determine which types of cases constituted the pool from which EMHC cases were predominantly selected.

In measuring net-widening following the introduction of community corrections based on correctional statistics, some problems have been discussed by *Hylton* (1981), *McMahon* (1990) and *Landreville* (1995). They agree on the necessity to use a longitudinal comparative approach with a wide time window before and after the introduction of the new punishment. They disagree however on the comprehensiveness of the statistics: are data on fines to be included? How important is the inclusion of State as well as of Federal correctional statistics? And would the daily count, the

annual count or the number of admission to all varieties of punishment be equally valid as a measure for the change of the case-flow? While these are partly technical issues related to the particular statistics available for a particular jurisdiction, they refer to a general complication: it is not easy to establish exactly in what respect the sentencing decisions of judges have brought about the figures for particular sanctions and their variations over time. The scope of net-widening may be measured but not the mechanisms which contributed to it.

The mechanisms refer to the decision making of judges which is different depending on the place of EMHC in the process of persecution and punishment. If a front-door approach is chosen, the judges may more often than they would if EMHC was not available, choose decisions indicating "imprisonability" to select offenders for the new punishment (see *Vass* 1986). If EMHC would serve as an alternative to detention, the intake decisions into pre-trial detention might increase to make conditional release under EMHC an option (*Macallair and Roche* 2001). One may expect the size of net-widening to be related to the size of the population which is considered as appropriate input. The size will decrease at later stages of persecution: it will be largest at detention, smaller at front-door and smallest at the back-door, given the screening which goes on while the criminal justice process proceeds.

Diversion has taught the lesson that net-widening has the largest scope of all at the front end of the Criminal Justice System or Juvenile Justice System respectively. This insight has explained the puzzling findings of many evaluations of diversion, especially those which have been conducted by randomized experiments, that there is no difference between diversion to nothing and diversion to some educational services. The low recidivism rates and especially their similarity in varieties of diversion have been attributed to the large proportions of juveniles who otherwise would have been sent home by police if diversion was not available (*Dunford et al.* 1982a, b). In other words, the lower the recidivism rate for a particular type of punishing measure the more probable this will be the effect of net-widening by having included less harmful persons.

5 Some Conclusions Regarding Measurement

Finally I briefly want to sum up some suggestions for measuring net-widening:

- It is essential to measure not only the scope of net-widening but also the mechanisms creating it or contributing to it. Only this combined research strategy allows specifying the exact relationship between subsystem behaviour and net-widening effects.
- The overall scope might be measured by a before-after comparison using time-series for sanctions with a rather large time-window and looking comprehensively at all sanctioning options available in the jurisdiction. The ways subsystems develop principles to handle the new sanction emerge only over time, with interactions between the subsystems. Net-widening grows slowly and a smaller time-window might underestimate its effect. Of course, by using a large time-window one has to be aware of other intervening events of legal change.
- Before and after introduction of EMHC a classification of those offenders might be accomplished who constitute the targeted population for EMHC as well as those who come close to it. Based on that classification (age, prior records of Juvenile Justice measures and of CJS contacts, prior convictions, family status, work biography, residential specifics etc.) the sanctions applied to them and in fact served by them should be exactly recorded for a rather long time-window broken down in intervals. Thereby it would be possible to describe the type of offender which emerges as a suitable target for this new punishment as well as the type of sanction which has been used in regard to him, before EMHC became available.

To develop ways to measure the size of net-widening following the introduction of EMHC seems especially important, because EMHC may have been implemented not because it offers a particularly effective treatment for a specifiable group of offenders, but simply because it is on the market.

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From Social Work to Control Work: An Observation on Electronic Monitoring of Offenders and its Impact on Social Work

MICHAEL LINDENBERG

I shall discuss the connection between Electronic Monitoring (EM) and Social Work from a Social Work point of view. My question is: To what extend is Social Work altered by using it within the control context of EM?

I will orientate my discussion at three cornerstones. The first cornerstone is the question: How is it possible that the crucial uncertainties about EM, namely whether net-widening occurs and whether EM helps to alter behaviour in a rigid control setting apparently have remained unresolved? While addressing this subject, we have to keep in mind that this has been asked ever since EM appeared in the mid-eighties, some twenty years ago.

I would like to outline this cornerstone by using a story Gregory Bateson told Heinz von Foerster. Here is the story. Picasso was visited by a journalist. This person expressed his concern about Picasso's painting: "Why do you paint abstract? Why don't you paint real stuff, why don't you depict reality?" – "I am not sure I understand what you mean", replied Picasso. So the journalist pulled his briefcase out of his pocket and produced a picture: "This is my wife. This is a real and objective picture of her." – Picasso hesitated. Finally he remarked: "She is a bit small, isn't she? And she also appears really flat."

Readers may have reason to wonder how a story about Picasso's point of view as an artist can be connected to such a down-to-earth topic like EM. I will explain. I will not argue that I understand EM from the perspective of radical constructivism. I am not saying there is no reality out there. But I

am saying that we use our specific points of view to describe and to understand EM. And in the result, we are not describing EM, but ascribing it.

This theoretical position is widely acknowledged (but not necessarily agreed with) in criminology. Very often, a distinction is made between the theoretical and the practical point of view to characterize two dominant ascription schemes. I will try to elaborate this further by using this distinction between practical work and academic reasoning.

This brings me to my second cornerstone: On the one hand, we have the practitioners applying EM, and on the other hand the scientific community observing EM. Keywords of the practical position are evaluation, cost-effectiveness, reducing recidivism, handling caseloads. Keywords of the theoretical position are net-widening, human rights, penetration, intrusion. The critical academics derive their position for instance from Stanley Cohens' "Visions of Social Control" and indulge in quoting Krisbergs' and Tonrys' famous research on net-widening. And rightly so: as the sociologist Robert Merton has pointed out, science has to be organized scepticism. And rightly so on the practical side: These people have to do their job and implement programs, count figures, and expand EM if possible. Both sides have to do their jobs.

To qualify the distinction between the practical and the theoretical side even further, I would like to propose that the practical, managerial side is constantly forced to make decisions concerning the use of real programs, while the critical academic observers do not have to decide on existing or forthcoming programs. To begin with the practical side: The cabinet has to decide how to alter or augment the law, the leading civil servant has to decide what he proposes to his secretary of state, the Senior Probation Officer has to decide how his subordinates should handle their caseloads in general, and the rank-and-file officer has to constantly decide how to handle each single person on his caseload. Practical work is decision work. And since Social Work is practical work, it is decision work. From this point of view, EM is a useful tool in making decisions, since it seems to offer an additional instrument to handle difficult cases. The main characteristic of this tool is that it simplifies the social interaction, because it reinforces the tendency to reduce Social Work to Control Work. And it is therefore a useful device to demonstrate the ability of the workers to cope with their jobs.

I would like to explain this simple idea by telling a joke. "Who was the first social worker? Answer: Christopher Columbus. Why? When he started his journey, he had no idea where he would go. When he reached the new

world, he could not figure out where he was. When he came home, he could not tell where he had been. And all this on other people's money." Why does this joke apply to Social Work and it's involvement in EM? Being a trained social worker with the necessary degree in Social Work myself – which, according to the above joke, means I usually did not know why I was doing what I was doing – I propose a simple experiment. Spend a morning in the office of a Probation Officer. Any time a client has left the room, or the officer has finished a phone call, ask him a simple question: "Why did you do that?" Don't ask complicated questions, do not use a questionnaire. Complicated questions bring out complicated answers. The worker will most probably reply: "It's experience." – "I have done it this way many times before, and it was useful." – "My colleagues told me to do this."

What does this mean? Although he is an experienced worker doing a marvellous job, he can't really explain why he is performing his professional actions. But please note: this does not mean he is doing a bad job.

A managerial attitude however does not accept this any longer. This is my third cornerstone. Managerialism forces the worker to make exact statements about what he is doing at what time in order to reach a defined outcome. How can that be achieved? You have to trivialize social interaction. I am not using the term "trivializing" in a pejorative way. I use the word as it is used in systems-theory. Here is an example. A car is a trivial machine. You turn the key (input), and the engine starts running (output). Insofar as this, triviality is reliability and determination, even predetermination. And control, the dominant feature of EM, is a fairly reliable tool to trivialize the complexity of social interaction. Control removes the element of dialogue out of interaction. And Managerialism has good reason to remove the dialogue, because dialogue means that you can never be sure what the outcome of the interaction will be. Such contingency is evil for managerialism. Good workers know about this contingency in social interaction or, more precisely, in dialogue. Within a dialogue, all parties have to listen carefully if they are to have a chance to create a mutual understanding. The prerequisites for achieving this are mutual trust and equality.

While discussing this crucial dialogical foundation of Social Work, I am not saying that the relationship between worker and defendant has ever been characterized by mutual trust and equality. I am only saying that it is a matter of the professional skill of the worker to reach out constantly to create a dialogical interaction. He will never reach this point, but he has to

incessantly aim for it. If Social Work skills are of any use in the criminal justice system, this should be the main feature of this job.

These are my three cornerstones. I would now like to return to the beginning of my observation. We are often concerned about the potential of EM to relieve prison overcrowding, to serve as an appropriate intermediate sanction, of its potential to have an impact on people's behaviour. In spite of our concerns, we are still unsure about these topics. But I am sure that EM has the strong potential to remove the dialogue out of the human interaction between client and worker. And because this principle is vital for the professional performance of Social Work, I have ventured to state that the shift in Social Work under the auspices of EM is a shift from Social Work to Control Work. This shift is part of the beginning of the era of Managerialism in Social Work. EM fits well into this shift. The use of EM within the criminal justice system can be understood as a tool to smooth the way towards Managerialism. This may explain why the crucial questions about EM I have addressed at the beginning of my paper are still unresolved. Within the managerial attitude, they are not unimportant, but they are not at the top of the agenda. Managerialism is far more concerned with the handling and the processing of people within a given system. Managerialism is about solving technical questions. The moral and ethical implications of this technically perceived system remain widely unchallenged. They are taken for granted. It is taken for granted that people should be controlled. It is taken for granted that the expansion of the criminal justice system can't be changed. And the question of altering behaviour within a dialogical setting is reduced to the question of influencing recidivism within a control-setting.

I am not only regretting this shift because I have some doubtful and critical remarks concerning the Social Work attitude trying to use the dialogical principle. But preferring the Social Work attitude or the Control Work attitude is a matter of the professional and academic picture of the criminal justice system and the inhabitants of this system we carry around. It is a matter of our belief system, and not a matter of fact. And this belief system should remain open to debate and even dialogue between the professionals in the field and the academic staff at University.

Electronic Monitoring and Social Work

DICK WHITFIELD

The electronic monitoring of offenders (EM) was initially opposed by many social work organisations, usually on one or more of three main grounds: that it was an infringement of human rights, that it would lead to net widening and that offenders would be disadvantaged because more positive interventions, especially therapeutic ones, would not be possible if they were tagged.

In fact EM has not been subject to successful challenges on human rights grounds, largely because, in most jurisdictions, the offender's informed consent is required before any order is made. This is certainly true when it is imposed as a sentence of the court and, when used as an early release mechanism at the end of a prison sentence, prisoners usually have to apply for consideration. This makes explicit their acceptance of the conditions attached to any order.

The objections to net widening have produced more compelling evidence. After a decade of use in the USA, the National Institute of Justice concluded that schemes were being successfully implemented – but that low risk candidates were all too often chosen and the high rate of detected violations led swiftly to prison for people who would not have gone there for the original offence. Similar problems are observable in some European schemes, but the worst excesses of the American experience have been avoided. More recently, the growing popularity of EM as a post-release tool, a device for controlling prison numbers, makes net widening, per se, less likely.

What, then, of it's incompatibility with social work? The actual experience of working with tagged offenders has been very different to those early expectations.

Instead of being in competition with social work, there is a growing body of evidence that EM can work in partnership with it, and that EM actually presents social workers with opportunities which they can use to good advantage.

The importance of this partnership – which, when well targeted can make both partners more effective – is profound. In a criminal justice climate which seems to become more punitive and more prison centred, it may well be an important element in securing the long-term future of both electronic monitoring and social work.

The basic tools for social workers to use are the essential characteristics of EM:

- an immediate, disciplined, enforceable framework on an offenders life
- an early warning system of testing behaviour, or of breaches
- some short term stability.

The generally short term nature of EM is both an advantage and a problem. For the offender, it represents a realisable goal – not the impossibly long process that one or two years of probation, for instance, seems to so many of them. For the social worker however, it is only a window of opportunity, rather than a complete treatment period. It is a chance to establish trust and a good working relationship; to start motivating the offender to achieve more and to assess and start longer-term programmes which may be more effective in reducing reoffending.

In some ways this is no different to any court order – the process is the usual mixture of assistance and control, of help and authority. But with EM the balance is different. Authority and control are very apparent, but they are vested in a remote, more impersonal part of the process, which many of offenders are much more able to accept.

Very early on in England, we experienced a significant number of young, volatile offenders, often abusing drugs. Any sort of control on their lives was resented and challenged. They were difficult, if not impossible, to work with and they were often very aggressive towards the face of authority – the probation officer – who was attempting to bring some order into a chaotic lifestyle. Yet surprisingly, they were much more compliant with EM. They often tested the boundaries in the same way they always chal-

lenged authority, but they responded much more positively when they realised that all breaches would be followed up. Why?

It seemed to be a combination of three main factors:

- It was an impersonal, detached and absolutely fair kind of authority. It did not argue, or have favourites or behave unpredictably. You knew exactly where you were with it; one offender explained this to me by saying: "You respect it and it will respect you."
- Once you decided you need not fight authority in the shape of the tag, there was space to relate much more positively to human intervention in the shape of your social worker. Take away the conflict and testing behaviour – and while the social worker couldn't necessarily assume easy cooperation, he or she could work on a one-to-one or group basis without the difficulties that otherwise often had to be overcome.
- The demands of the tag – to be at a specific place at specific times – introduced the structure into offenders' lives which made treatment aims achievable, sometimes for the first time. It had spin-offs in family relationships, too, which we will look at later.

There is a fourth factor, too, but I am not sure how long it will last. The magic of technology, especially unfamiliar technology, meant that EM tended to be invested with much more power or qualities then it actually possessed. It was given exaggerated respect because it was new. I don't expect this to last and it may well be disappearing already.

So, to sum up this first section:

- The balance between assistance and control is changed by EM and provides positive opportunities for rehabilitation and therapeutic help.
- The role of the social worker is changed, too, and different demands on their ability are likely to be made.

What can we learn from experience so far?

First, making EM programmes work has been much more complex for social workers than simply making the technology work. Researchers in the USA (*Baumer* and *Mendelsohn*, 1995) showed that many agencies found it hard to come to terms with the new skills and procedures that were needed. It was difficult to integrate with existing programmes, learning was slow and new organisational arrangements needed time and commitment. Quite apart from anything else, EM produces large quantities of data which need to be checked, analysed and acted on. We know far more about our offend-

ers, through electronic checks, then we ever used to – and we have to decide what to do with that knowledge. One of the reasons for the very slow growth in GPS systems in the USA has been the completely unmanageable quantity of data produced by continuous monitoring.

Second, EM also changes family dynamics and other relationships. Social workers need to respond to these changes – and to use them positively – if the opportunities presented by EM are to be exploited effectively. And this is where the social worker's assessment skills are much needed. The evidence so far on family impact is very mixed. Early Canadian studies (*Doherty* 1995, *Mainprize* 1995) were fairly reassuring – over half said it had no effect on household relations and 20 percent claimed positive benefits, from bringing family members closer together to lower alcohol consumption and more regular work patterns. And when asked – has your home become like jail? – Almost 80 percent said no.

More recent studies in England and Scotland (*Dodgson* 2001, *Lobley* and *Smith* 2001) were less hopeful. In England, in one study, only 20 percent said EM had a positive effect and they were balanced by the same number who said it had been negative or had resulted in specific problems with another member of the household. Families were questioned separately from the tagged offender but produced very similar figures. In Scotland, parents spoke of "being unpaid warders" for their adult children who were tagged but still living at home, and said they had no idea if the impact it would make on their own lives.

The point here is that skilled social work intervention could be very positive in both these situations – but it does need good training in family work and time for the social worker to exploit, or help, or repair the family dynamics which emerge once EM is a reality. We started with a rather simplistic view that we should avoid EM if domestic violence was an issue or likely to become one. That is still true, but if EM is to be used to best effect then social workers have to use the unique opportunities it presents in terms of family work. Its long-term future depends on a number of factors – but this is certainly one of them.

The third and vital lesson from experience so far is to recognise the types of offenders for whom EM seems to work best. In the end, good targeting is the single most important factor in any successful EM scheme. We are still learning – and I hope that this conference will be an important stage in that learning – how best we can use it. After three years of experience I began, with the help of probation officers, to develop a typology of offenders

for whom the combination of EM and social work help seemed to be most effective.

This is how the list started:

- Offenders who need help dealing with authority figures. As we noted earlier, the tag is impersonal. Accepting it requires no personality clashes, no loss of face. It enables one of the barriers to effective social work supervision to be removed.
- Young adult offenders who need to resist peer pressure. Under 21's commit two-thirds of crime and almost the same proportion are committed with one or more other young people. Fear of backing down, of losing face and succumbing to peer pressure generally are major factors in offending. The tag is the perfect "opt out" for young offenders who are trying to keep out of trouble. Many have told us it gives them a chance to change, an excuse to stay clear of trouble. Social workers need to help them take that chance.
- This third group is wider than just those resisting peer pressure. There is also – it seems – a small group of persistent offenders who are motivated to stop offending but desperately need practical and positive help to get them started. The tag does this. Offenders' partners in particular seem to make positive use of it. They know instinctively, what research tells us – that the all-important gap in offending, even if it is for only two or three months, is the gap you can build on for longer offence free periods later.
- People who need a success to build on. Social workers know the value of small, regular, frequent successes, as a positive reinforcement for the offender who has to build on that kind of encouragement – and for whom the end of a two-year probation order seems an impossible distance away. In the early days of the English scheme, when numbers were low, even control room staff used to use this technique at the end of a month, or a week, or even a day, to boost confidence. And it worked.
- Lastly, people who have breached a community order but have still made some real progress. These have always been difficult cases for Courts. The message was always that offenders were being given a chance with a community order and if they breached it they would go to prison. EM gives the court an intermediate stage to build on progress even when it has been uneven (*Whitfield*, 2001).

We could usefully build on these beginnings of a typology, particularly since we now have much better information on why people fail (*Walter*, 2001). Addictions, housing problems and lack of family support are all crucial factors and social workers need to be aware of this. Tagging as a component part of a community penalty will only have a future, I think, if this learning is incorporated into practice, orders are properly targeted and effectively used.

Tagging and social work should provide an effective partnership, whether it is in relation to community penalties or – perhaps to a lesser extent – in post release schemes. Reconviction rates are not the only measure of effectiveness, although they will always be important. Social workers can add value to a period of EM in terms of attitudes and behaviour, which can improve longer term outcomes. The role of social workers need not be changed by EM, but it is a much more clearly defined role and the realisation that it provides an effective tool which can be used to good effect – and that EM is not just a competitor – will, I hope, the one of the messages from this conference. But it also makes significant demands on social workers – they, too, have to work in a disciplined framework and to a defined timescale; good analytical skills and the ability to work with families are also needed.

It is too soon to say what the longer-term impact of EM will be in Europe and I have tried to look at the most likely scenarios in my book (*Whitfield*, 2001). It could:

- Help keep prison as the cornerstone of criminal justice policy. The enthusiasm for post release schemes is an indication of how politicians have discovered they can talk tough and keep prison costs down at the same time.
- Replace community penalties like probation and community service, which are seen as "softer" options. I do not think there is any real evidence of this yet, however.

The third scenario depends on the constructive relationship between social worker and tagging which I hope we can develop. EM could revitalise and strengthen community penalties and could help build confidence in some of the well established social work interventions which have been under pressure of late.

Policymakers, researchers, managers and contractors – all have a part to play in working towards this, and I hope we can.

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Electronic Monitoring and Social Work in England

MIKE NELLIS

1 Introduction

Electronic monitoring (EM) developed slowly and experimentally in England and Wales, initially under a neo-liberal Conservative government, latterly (since 1997) under the more managerial New Labour (*Lilly* 1990; *Nellis* 1991; 2000; *Fay* 1993). Given its inauspicious beginnings, few would have predicted then the situation which pertains now, where England leads the world in its proportionate use. Each phase of EM's expansion has been triggered by acute government anxiety about rising prison numbers and prison overcrowding, but it has arguably acquired a momentum independent of such merely pragmatic considerations, which will eventually contribute to a transformation in what have traditionally been understood as "alternatives to custody" or "community penalties" – if not necessarily to a significant reduction in prison use.

The outline of the English experience of EM is well known. EM was used to enforce first bail curfews in 1989/90 and then a hitherto underused sentence, the curfew order, in 1995/6, the latter going national in 1999. A discretionary early release from prison scheme, Home Detention Curfew, was introduced, with immediate national effect, in 1999. The focus originally was on over 16s 10-15 year olds were made eligible in 1999, the more persistent young offenders being subject, from 2002, to a multi-component package of measures including EM, "Intensive Supervision and Surveillance" (ISSP). The maximum length of a curfew order for over-16s is six months, for under-16s, three months.

2 EM and Social Work: A Conflict Begins

When the idea of EM was first mooted in a government document – a Green Paper called *Punishment, Custody and the Community* (*Home Office* 1998) – few people in the social work/ community penalty field knew what it was, or were aware of the process by which the *Home Office* had been persuaded of its merits. *Harry Fletcher*, Assistant Director of the National Association of Probation Officers (NAPO) was among the best informed. He knew that the Offender Tag Association had been formed in England by former journalist/prison visitor *Tom Stacey* (in 1982) to promote the technology, and had been encouraging the *Home Office* to take note of North American developments, but initially had difficulty persuading NAPO itself that this should be attended to. Once the *Home Office* endorsed it *Fletcher* was sufficiently forewarned and forearmed to put both them and Stacey on the defensive, arguing that "tagging" – *Stacey's* term for EM – was wholly incompatible with the social work traditions of the probation service, that it would be irrelevant to the often chaotic lives of many offenders, that it would not be cost effective, and that it would be an unduly tough measure which, on the basis of the past proliferation of alternatives to custody, would not reduce the prison population.

Stacey proselytised actively for EM in the mid and late-eighties, and never disguised his irritation with NAPO's reaction to it, although his often gratuitous hostility towards the probation service was hardly designed to win him allies. He saw EM as a palpably stronger and more effective way of supervising offenders in the community whether on bail, on a sentence or as a means of early release from prison. His ideal was the tracking of people's movements rather than the monitoring of people's presence in their own homes but he accepted at the time that the technology for the former was not yet available. Tagging was something "different in kind from any penalty in history" and would "manifestly deter, discipline and provide genuinely verifiable surveillance" (*Stacey* 1989:19). "It in no way upstages the role of the social worker", he wrote, "but what it will do is verify, entirely neutrally, whether the offender is adhering to the conditions of his sentence and thus take all the snooping and checking off the shoulders of the social worker" (idem). He regretted that this ingenious resolution of social work's longstanding care and control dilemma with offenders was not more widely welcomed, criticised "vested interests" in the welfare professions and penal reform network for opposing the tag and was particularly saddened that he and they could not unite to reduce the use of

imprisonment. *Stacey* – despite his otherwise Conservative political outlook – had as great a personal animus towards prison as the liberal/left professionals and activists who were opposing tagging, and he felt that they were refusing a gift-horse.

Stacey's bold "prophesy that over the next half century the tag will reduce imprisonment, by over 50 %, for offences which usually mean custody today" (idem) was naive. Nonetheless he has won many of the arguments that social workers and probation officers ranged against tagging at the time, namely that it would not be used disproportionately against black offenders, or in favour of middle class offenders with homes and phones; that the technology was dependable; that its use was cheaper than prison; that there was some American evidence for its effectiveness; and that it would not *inevitably* be netwidening. Many of his social work critics had an exaggerated conception of the damage that EM might do to civil liberties and human dignity, and in claiming that EM unjustifiably invaded the privacy of the home neglected to set this against the fact that prison invaded the privacy of the person even more – and that many offenders would prefer EM (as indeed proved to be the case). NAPO's attempt to show that EM violated the European Convention on Human Rights on three grounds came to nothing (see *Fletcher* 1990). NAPO however has been proven right about EM's inability to reduce the use of custody, because during the period in which its use has been expanding the prison population has risen to an all time high.

Supporters of EM may of course say that this is a premature judgement, and that with the proper reform of community penalties EM will yet play a part in reducing the use of imprisonment. Perhaps – the most recent White Paper *Justice for All* (*Home Office* 2002a) is committed to a small reduction in prison use through a transformation in the way in which offenders "in the community" are supervised. EM is integral to it, but not symbolically prominent. For a variety of reasons it now seems unlikely that EM will develop in England as an adjunct of social work or probation in the way that it has in some other European countries. The time when that could have happened is probably past. EM in England has been developed by government as a private sector initiative, something separate from the probation service rather than integrated with, or embedded in it. If anything, the public/private division has deepened over time, with probation and EM developing on parallel tracks. Furthermore, the ethos of social work (humanistic ways of working) is declining in criminal justice and a way of working which is best characterised as control and surveillance is in the

ascendant. Possibly we are seeing a shift in criminal justice from a humanistic to a managerialist-surveillant paradigm, in which EM displaces and supersedes social work, in which social work becomes secondary, (and perhaps even optional) to surveillant and regulatory purposes, and in which private sector organisations eventually become more important than the existing public sector ones.

3 Probation Service Hostility to EM

This institutionalised separation was probably inevitable given the political conditions prevailing at the time EM was first introduced. The *Home Office* was attempting (rather cogently) to press changes on the Probation Service to move the emphasis from "social work with offenders" to "punishment in the community". The probation service had a long tradition of (at least initially) resisting anything which did not fit its narrow conception of social work, and repudiated all connotations of punishment. The only non-governmental supporters of tagging – the OTA – were outside the network of penal reform organisations whose views probation respected. Even the Police Federation and the Magistrate's Association were sceptical of EM, and the national press were, at best, lukewarm. Given these factors, it is perhaps unsurprising that the bodies which formally represented probation managers and practitioners – the Association of Chief Officers of Probation (ACOP) and the National Association of Probation Officers (NAPO) were confident in their opposition to EM, which, although it was only one facet of the overall "punishment in the community" initiative became emblematic of all that the probation service felt it was resisting: *Fletcher* (1989:11) characterised it as "pure punishment".

The *Home Office* were initially open to the Probation Service running EM schemes themselves, but service intransigence (augmented by the more influential magistrates) increased the likelihood that government would involve the private sector to implement it. It is possible, given the political climate in the late 80's and early 1990s, that the government would have championed commercial providers in any case (as it was beginning to do for prisons, in part to circumvent the hostility of prison officers to reform of prison management) but *Mair*, one of EM's original *Home Office* researchers, is clear that it was indeed Service attitudes which prompted the *Home Office* to go private (*Mair* 2001:172).

NAPO's stance was unfortunate because the actual attitude of working probation officers may have been more tolerant and open minded than the bodies representing them. In a 1987/88 snapshot of probation practice, drawn from interviews with 62 randomly sampled officers (in four probation areas) 31 officers indicated acceptance of it, while only 20 resisted it as unethical, something to resign or get sacked over (*Boswell, Davies* and *Wright* 1993:166-7). One of the first officers to write on tagging, *Andrew Wade* (1988), expressed cautious support for using it as alternative to custody, while warning strongly against likely netwidening. And while the chief probation officer who then chaired ACOP was wholly hostile to EM (*Read* 1990); the overall views of chief officers in this period are hard to gauge. At least one, *James Cannings* (1989), recognised that EM could not be disinvented, conceded that it was "one piece in a large jigsaw puzzle" pertaining to crime reduction and argued that it should at least be experimented with as a form of intensive supervision. Interestingly – and presciently – he envisaged it as a means of structuring release from custody rather than as a sentence, and more interestingly still, he did not anticipate the involvement of the private sector.

Home Office researchers were hard pressed to present the 1989/90 EM/bail trials as any kind of success (*Mair* and *Nee* 1990). *Stacey* complained that bailees were a less than ideal group to judge it on, and argued that only its use as a sentence would be a proper test of its potential. NAPO, and indeed other penal reform organisations, were mostly delighted by the apparent failure of the first scheme in 1989/90, and within two years were assuming that the whole idea of EM had been dropped. When an experiment with curfew orders was mooted in the mid 1990s NAPO insisted to policy makers that it would "not act as a deterrent for many offenders who by and large lead chaotic lives, may have mental health problems, may have problems with drink or drugs, are disorganised, are unemployed and tend to have unsettled home lives" (*NAPO* 1994). It publicly portrayed tagging as a gimmicky irrelevance to serious work with offenders, but behind this stance were deeper fears about the undermining of social work, and the growing influence of the private sector.

ACOP recognised that *Home Office'* support for probation was at a particularly low ebb in the mid-1990s, feared being marginalised, and adopted a more conciliatory approach than NAPO. *Dick Whitfield* (1995), their lead officer on tagging, conceded that tagging *could* work in conjunction with probation input, but still questioned its cost-effectiveness. Another chief

(*Wargent* 1995) said he would find it acceptable if it was targeted on high rather than low seriousness offenders released from prison. After the initial *Home Office* research on the curfew order trials had appeared ACOP were forced to concede more ground, although by then *Whitfield* was becoming a genuine supporter of the integrated approach to its use favoured in Sweden and the Netherlands. Magistrates in the trial areas were becoming more supportive, offenders found it irksome but not as bad as prison, and embarrassingly, probation officers in one area had been "at best equivocal and at worst obstructive" (*Mair* and *Mortimer* 1996:29). In early 1997 ACOP drew some positive lessons from a review of the international evidence on EM and welcomed the *Home Office* research, noting that "successful completion rates have generally been good and while the range of cases has been too wide to draw conclusions, levels of compliance have been higher than expected, including offenders with chaotic lifestyles, including drug abusers". It emphasised the importance of linking EM to "other supervision programmes" as a means of "reducing prison pressures" (ACOP 1997).

Rather surprisingly, no direct challenge was made to the dominant role of the private sector in EM's provision. It is possible that ACOP believed the commercial dimension of EM's provision would be checked by the incoming New Labour government, which, although not hostile to EM itself, had indicated in opposition that it would end the practice of *prison* privatisation. It reneged on this, however, and was thus unlikely to oppose privatisation in EM. New Labour's Home Detention Curfew scheme, which facilitated the early release of short term prisoners – greatly increased the scope of the commercial provider's work. It also had the effect of increasing probation contact with tagged offenders who palpably valued being let out a few weeks or months early, even on the semi-freedom of the tag. This tended to make probation officers more aware of the tag's potential, and to win support for it (*Nellis* and *Lilly* 2001). Other factors also affected this change of mood. A new younger generation of probation officers, less tied to the old social work ideals, more open to new technology in general, were willing to see EM entwined – where necessary and appropriate – with rehabilitation, rather than kept separate from it (*Mann* 1998; *Farooq* 1998). At this moment in time – although NAPO remains hostile to EM – probation officers in England would probably be willing to incorporate EM into their work, not least because they recognise the dangers of consolidating the private sector presence in criminal justice.

4 New Labour: Displacing Probation?

New Labour's plans for probation, however, are rather ambiguous. In the name of 'modernisation' it has been extending reforms – more managerialism, more central control, less professional or local discretion, greater emphasis on enforcement and punishment – that began under their Conservative predecessors, culminating, in April 200, in the creation of a National Probation Directorate. An emphasis on coercive rehabilitation (usually accredited, group-based re-education programmes) remains but in essence, old-style probation officers cultivated slow processes of inner change in offenders in a fairly individualised way, whilst new-style probation officers galvanise rapid processes of compliance with external requirements in a fairly standardised way. The paradox of this tougher approach is that the Service is working with less serious, lower risk offenders than a decade ago (with some significant exceptions post-release).

The simultaneity of change in governance, structure and ethos has produced a turbulent and demoralised organisation – and this strained situation will not be the endpoint of organisational and cultural change. The pressure of centralised, hierarchical control is felt at all levels of the service. Most officers have unwieldy caseloads, with little time for personalised welfare work. Service is individualised, but in a limited and routine way. Sufficient numbers of offenders for accredited programmes have been hard to find, and tight enforcement requirements means that too many are breached before completing them. There is almost certain to be underperformance in terms of tight government targets set for 2004. Experienced people are leaving the service and being replaced by inexperienced people, whose training may or may not have placed emphasis on humanistic ideals. A culture focused on targets and procedures – even without the rhetoric of punishment – makes such ideals hard to uphold, and as *Fionda* (2000:187) warns "the logical end to the managerialist argument lies well beyond the limits of humanitarianism". It is quite possible that community supervision will become an unappealing, impossible job for decent self-respecting, creative people, and hence more suited to unreflective functionaries and computerised surveillance systems.

Is this being too speculative? Although, in practice, both curfew orders and HDC have been underused in terms of initial *Home Office* expectations (*Walter, Sugg* and *Moore* 2001), there is a sense in which EM has already been normalised in English criminal justice, by becoming integral to the

very concept of supervising offenders in the community. New Labour's flagship legislation, the Criminal Justice and Court Service Act 2000 (which created the National Probation Service), made EM available across both the range of community penalties and of post-release supervision. It legislated for tracking tagging in anticipation of tracking technology being perfected soon, one use of which will be for victim protection. A future is clearly being envisaged in which many more offenders experience EM as a matter of course, although – and this is the paradox of the new White Paper – it has become (almost) discursively invisible by dint of being incorporated into new multi-ingredient supervision packages with names like "custody plus", "custody minus" and "community custody centre". Attention is not being drawn to it. This mirrors the way in which EM has already been embedded in the ISSP projects, and it may reflect *Home Office* recognition that EM by itself does not seem to the public and the media to be a particularly punitive penalty.

Rhetorically at least, New Labour has committed itself to "evidence-led policy and practice". Does the development of EM exemplify this? Insofar as the *Home Office* has only proceeded with national roll out after carefully researched trials (except in the case of HDC) the answer must be yes. But research on EM has at no point been integrated with the research into effective practice which informs the accredited programmes in which, in both the prison and probation services, government is placing so much faith. Nor are statistics on curfew orders contained in the annual "Probation Statistics" (*Home Office* 2002b), because the monitoring companies are considered the supervising authorities. This split may simply exist because of a silo mentality within the *Home Office* research and statistic streams, but it lends credence to the idea that EM is a separate development, something which is being encouraged to flourish apart from traditional providers of community penalties, and independently of the accredited programmes.

Even though some of its manifestations are now being hidden in sentencing packages, the growth and expansion of EM has to be seen, analytically, as part of an emerging surveillance culture – the intersecting, as yet haphazardly connected technologies and strategies which comprise the "surveillant assemblage" (*Ericson* and *Haggerty* 2000). This, combined with the official loss of faith in humanistic intervention, gives EM a significant momentum. The culture of managerialism – the monitoring by one means or another of tightly specified requirements – strengthens it further, by creating a climate more favourable to instruction-and-oversight rather

than to discretionary human responses. 'Managerialism gives a boon to technical controls that display some kind of elective affinity to it" notes *Scheerer* (2000:251), seeing just such an affinity between "managerialism and electronic monitoring". This affinity arguably has three aspects, all derived from the way in which monitored curfews and exclusion orders provide more reliable means of achieving managerialism's inherent need for meticulous control than welfare professionals relying only on offender's unmonitored promises. Firstly, a curfew with EM produces verifiable control-at-a-distance and in real-time in a way that probation officers cannot accomplish – EM is a "just-in-time"-control, the equivalent of the post-Fordist "just-in-time production" of goods. Secondly, it reflects and extends the growing reliance on computerised data – "virtual files" – and computer assisted decision-making in the criminal justice system – in this instance yielding clear, precisely-timed, usable evidence of compliance/non-compliance, Thirdly, it entails surveillance via the body rather than control via the mind (appeals to reason, conscience, self-interest, truth-telling); the emerging voice verification systems are a more sophisticated form of biometric surveillance which can dispense with the wearing of a tag.

5 EM: The Commercial Dimension

Every expansion of EM further entrenches the private sector as a player in the British criminal justice system. This remains an extraordinarily understudied area, given the shifting ownership of some of the service providers and the fact that they are demonstrably participants in "the commercial corrections complex" (*Lilly* and *Knepper* 1993). Securicor Custodial Services (a subsidiary of the main Securicor organisation, and already a provider of court escort services and immigration detention centres) was contracted for two of the curfew order trials; Geographix (a small independent organisation that had hitherto specialised in the electronic tracking of earthmoving equipment and boats) was awarded the third. Geographix's was subsequently taken over by Premier (a consortium organisation which included the USA Wackenhut Corporation and a provider of prisons in England. When HDC and Curfew Orders were rolled out nationally in England and Wales, Securicor gained the contract for the north, Premier for the midlands and London, and GSSC Europe (a subsidiary of the USA-based GSSC) for the south. GSSC Europe was subsequently taken over by an in-

digenous British security company, Reliance. In May 2002 the Wackenhut Corporation's worldwide operations were bought out by Group 4, already a provider of court escort services, prisons and immigration detention centres in England. This altered the composition of the Premier consortium, and made Group 4 the world's largest security company.

The medium and long term ambitions of these organisations remain opaque to crime policy researchers in a way that those of public organisations do not. Limited information is available from websites, publicity and official histories (e.g. *Underwood* 1997). Securicor, for example, seeks to "globalise its core product range – in this case integrated justice service" and see themselves as "leaders in the electronic monitoring market internationally" (www.securicor.com 5th May 2002). In Britain, Securicor employs one ex-probation officer in a middle management position, promoting EM. GSSC (now Reliance) employed three former probation staff (two managers and a retired officer). In conversation (16th May 2002), one of these managers noted the difficulty of engaging the newly formed NPD in dialogue about the future of monitoring but at the same time noted that their organisation wanted to be seen as more than a mere security company and had ambitions to be taken seriously as a player in the criminal justice system. Perhaps because of their probation backgrounds these men were clear that EM's "best" future – including tracking – was as a component in intensive rehabilitation programmes, not primarily as a stand-alone penalty. Whether more senior people in the organisation agree, however, is harder to ascertain. What is already clear is that each of the private sector providers is employing a growing number of monitoring staff (in control centres and in the field), who are being trained by the Custodial Care National Training Organisation (soon to be combined in a larger body with responsibility for police and probation training as well). The seeds of a new occupational group in the criminal justice system are possibly being sown here – separate from probation and youth justice – a group who may wish, or be directed, at some point in the future to encroach on the territory of existing groups.

There is no reason to believe that the commercial organisations involved in EM will promote a reduced use of custody, as, worldwide, many of them are also involved in its provision. "Integrated justice services" readily encompass both prison and its alternatives, with commercial organisations benefiting from *both* the government's disillusion with traditional community penalties and its continuing responsiveness to popular punitive demands for increased imprisonment.

6 Popular Punitivism and the Limits to Tagging

Popular punitivism – the vengeful sentiments expressed by certain sections of the public, the media and politicians in Britain – will undoubtedly constrain the development of EM for the foreseeable future. Contrary to the views of both supporters and opponents EM has not been seen by the British press as a significantly draconian punishment, (the corollary of this being an absence of anxiety about its civil liberty implications). At best, it has been portrayed as suitable for low to medium risk offenders, at worst as totally useless, a penalty easily evaded by the deceitful offender. The media derided *Home Office* attempts in Feb/March 2002 to extend HDC and to introduce EM as a pre-trial measure for young offenders. All this is something of a paradox for those early probation critics who anticipated that EM would be seen (and wanted it to be seen) as "pure punishment"; instead the popular media see it as something *analogous* to probation, just another "soft" community penalty, another 'liberal' excuse for not using imprisonment.

EM does possess some of what might be regarded as the conventional attributes of punishment – it restricts liberty and regulates an offender's time. But it is as equally well characterised as a surveillant form of control which enables real-time *pinpointing* and *locatability* in a way no other community controls have done before. Therein, however, lies the symbolic difficulty with EM, in both its curfew, and perhaps especially its tracking form – for pinpointing and locatability are more commonplace experiences in the post-modern world (mobile phones, data trails etc.), something we have come to regard as a convenience rather than as a threat to our freedom. It is true that there is a difference between making oneself voluntarily locatable to friends and colleagues (although the data trails left by credit card transactions, and the recording of our movements by CCTV in public space are hardly something to which we *actively* consent) and having one's right to geographical privacy temporarily removed by a state agency (see *Richardson* (2002) for a taggee's perspective on intrusiveness). Nonetheless, the kind of pinpointing facilitated by EM is now simply a point on a continuum of locatability created by ICT, in which we are all to a greater or lesser degree implicated. EM, therefore, even in its tracking form, may never "feel" distinctive enough, never "other" enough, to be perceived by the law-abiding public as a particularly painful experience; it is punitive to a degree, but it is not the visceral, volatile, ostentatious imposition of pain characteristically desired by popular punitivists.

Thus, although tagging may conceivably be "toughened up" in the future, there is no reason to think that monitoring technology in its present form will significantly displace prison, as Stacey envisaged. Prison, for all its failures as a rehabilitative institution, remains a demonstrably viable means of incapacitation and a potent symbol of exclusion and censure. EM mirrors imprisonment to a degree (though not as much as its critics claim) but not sufficiently to displace it as a form of containment. However, precisely because it is not tainted with a humanistic ethos it can arguably withstand "critique" by popular punitivism somewhat better than probation, and for this reason will probably displace probation with lower seriousness offenders.

7 Conclusion

The precise development of EM in England has been shaped by the micropolitics of penal reform and by deep underlying trends towards surveillance as a form of real-time control. Government has bowed to public and sentencer pressure for increased use of imprisonment, initially reinvented probation as a form of attitude-changing groupwork but is now seeking to blur completely the distinction between community and custodial penalties. EM has undoubtedly intensified the actual level of control over offenders in the community, but it has never been integrated with reinvented probation. There is arguably a greater degree of integration in the way in which EM has been introduced for young offenders – as an aspect of "intensive supervision and surveillance" – which may well be a precursor of the new multi-ingredient penalty for adult offenders being promoted in "Justice for All". What is happening here, though, is not the kind of rapprochement between EM and social work so eloquently championed by *Whitfield* (1997; 2001) but a transformation in the nature of offender supervision, in which surveillance will play a greater, if not necessarily more overt, part. Perhaps, in England, we would have arrived at this point anyway, but with hindsight it can be seen that the probation service, whilst not mistaken in insisting upon an overarching humanistic approach to offenders, was mistaken to reject EM so comprehensively at the outset, because it enabled government to involve and empower the private sector, whose ambition to develop "integrated justice services" may yet have fateful consequences for probation itself.

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Social Work and Electronic Monitoring

NORMAN BISHOP

"But the basic point is that you do not have to be evil to do evil. In an industrial and post-industrial world, it is sometimes enough merely to be efficient."[1]

1 Social work with offenders

By social work with offenders, I mean activities that seek to get them to address their offending behaviour and improve their personal and social situation in ways that are relevant for the prevention of re-offending. These activities are often carried out or mediated by probation services or social welfare organisations. Although preparation for social work with offenders may be started in prison, the main work when seen against the background of electronic monitoring is carried out in the community.

Professional associations of social workers affirm certain core values of social work, as follows:

- Respect for the inherent dignity and worth of the person;
- Each person to be treated in a caring and respectful fashion, mindful of individual differences and cultural and ethnic diversity;
- The promotion of each client's socially responsible self-determination;

[1] John Simpson, BBC World Affairs Editor, in "A Mad World, My Masters", Pan Books 2001.

- The enhancement of each clients' capacity and opportunity to change and to address personal needs;
- Cognisance of the social worker's dual responsibility to clients and to the broader society;
- Resolution of conflicts between the client's interests and the broader society's interests in a socially responsible manner consistent with the values, ethical principles and standards of the profession;
- Recognition of the central importance of human relationships;
- Belief that relationships between and among people are an important vehicle for change;
- The involvement of people as partners in the helping process;
- The strengthening of relationships among people in a purposeful effort to promote, restore, maintain, and enhance the wellbeing of individuals, families, social groups, organizations, and communities.

Ideally, as is the case in certain countries, such ethical values come to expression in law and form therewith the essential basis for social work with offenders.

International guidance on social work with offenders is given in the Council of Europe's European Rules on Community Sanctions and Measures.

2 The European Rules on Community Sanctions and Measures

The Rules are contained in the Council of Europe Recommendation No. R (92) 16. This Recommendation was adopted by the Committee of Ministers and transmitted in 1992 to the governments of member States to guide their policies and practices. Although Recommendations do not have the binding force of European Conventions, they have considerable moral authority since they must be always adopted unanimously by the Committee of Ministers representing the governments of all member States.

In the early 1990s, the expert committee drafting the European Rules on Community Sanctions and Measures debated whether to prohibit electronic monitoring in the Rules as a violation of the personal integrity of offenders. In the course of discussion, however, it was considered that the use of electronic monitoring should be permitted providing that it was used in conjunction with other Rules and certain safeguards established.

In particular, it was recognised that the development of forms of technological control could lead to a control of offenders that would be far more comprehensive than the electronic monitoring then in use. Accordingly, any Rule that was devised should apply to *both present and future forms* for the supervision of offenders. Supervision is defined in the Glossary to the European Rules as follows (my emphases):

"Supervision refers *both* to helping activities that are intended to maintain the offender in society and to actions taken to ensure that the offender fulfils any conditions or obligations imposed".

Rule 55 became the Rule that specifically covered the use of electronic or other forms of technological monitoring in conjunction with supervision in the community. It reads as follows (my emphasis):

"Community sanctions and measures shall be implemented in such a way that they are made as meaningful as possible to the offender and shall seek to contribute to personal and social development of relevance for adjustment in society. Methods of supervision and control shall serve these aims".

The question is whether electronic monitoring is congruent with the principles contained in Rule 55. Since, however, electronic monitoring is not a fixed phenomenon but is subject to variations in its use and intensive development, it is perhaps better to ask what forms of electronic monitoring are compatible and incompatible with the ethics and practice of social work with offenders.

3 Current forms of electronic monitoring

Electronic monitoring can be used as a "stand alone" sanction or in conjunction with a community sanction or measure. Its use as a "stand alone" sanction is provided for, for example, in the English 1991 Criminal Justice Act. In practice, it is more common for it to be used in combination with a probation type sanction or with conditionally released prisoners. These forms of use are well developed in, for example, England & Wales, the Netherlands and Sweden.

Electronic monitoring as a "stand alone" sanction is a simple substitute for incarceration in a traditional prison. A curfew, enforced by electronic monitoring ensures that offenders are spatially isolated from the community. Such isolation may satisfy a public and political demand for a simple or revengeful form of incarceration that is cheaper than building and run-

ning prisons. But "stand alone" use, violates Rule 55 of the European Rules on Community Sanctions and Measures. In addition, "stand alone" use has the same disadvantage as traditional imprisonment. Eventually monitoring ceases and the monitored offenders return to life in the community, usually with no greater ability to lead law-abiding lives than they had before. Social exclusion by itself does not make offenders into law-abiding persons (*Mortimer, E., Pereira, E.* and *Walter, I.* Home Office. London 1999).

Electronic monitoring combined with efforts to help offenders address their criminal behaviour and provide them with opportunities to take their place as citizens in the community, is widely used in Europe. *Whitfield* (1997; 1997) is a persuasive advocate of this possibility. He sees electronic monitoring as offering enhanced opportunities to reduce reliance on imprisonment and increase the use of community sanctions and measures. His views are supported by the extensive research that has been conducted in England & Wales and Sweden. The main findings seem to be that probation officers see no difficulty in combining electronic monitoring (as at present used) with their traditional role as supervisors (*Walter, I., Sugg, D.* and *Moore, L.* 2001; *BRÅ* 1999; *Bishop, N.* 1999; *Somander, L.* 1997, 1999). There is, however, little or no research on judicial and political views about the addition of electronic monitoring to traditional probation. Effects on sentencing are not, therefore, known with certainty. However, in Sweden anecdotal evidence suggests that electronic monitoring has strengthened the credibility of probation by providing firm control of the offender's whereabouts. Re-offending during or after the implementation of a sanction or measure seems to be unaffected by the use or non-use of electronic monitoring. High-risk offenders with high rates of subsequent reconviction tend were found to have serious problems with drug or alcohol misuse, unemployment and anti-social attitudes (*Sugg, D., Moore, L.* and *Howard, P.* 2001). It is clearly unrealistic to suppose that electronic monitoring will, of itself, enable these problems to be dealt with. Instead, the finding emphasises the importance of social work with offenders.

On the face of it, therefore, combining electronic monitoring with social work with offenders appears to offer important advantages (reduction of imprisonment) and no particular difficulties. But this conclusion relates only to first and second-generation EM technology and the delivery of social work programmes based on traditional ethical principles. What are the future possibilities? Do they constitute potential threats to the present scheme of things?

4 Electronic monitoring tomorrow

4.1 Technological developments

Technically, the forms of electronic monitoring currently tend to make use of first-generation or second-generation technology. This means that signals are sent from a bracelet transmitter worn by an offender to a master computer via a telephone modem. The master computer contains the times and details of the monitoring scheme. If these are breached it provides a warning to the monitoring staff. Second-generation technology is already available and will permit in-depth wide-area monitoring, even nation-wide. Already, technological development is such that monitoring can be extended to cover the use of prohibited drugs. The original Swedish project with electronic monitoring included the possibility, for example, of distance testing for the prohibited use of alcohol. To date, the technology has not proved sufficiently reliable for this to become a routine reality. It is only a matter of time before it will become so. One problem, however, with the ever more efficient detection of breaches of imposed conditions is that they will lead to the increased revocation of community sanctions and therewith to imprisonment, thus counteracting the desired reduction of imprisonment. If electronic monitoring is decided on with the consent of the offender, stringent monitoring may result in offenders preferring imprisonment – providing it is not for long periods – which often permit them to exploit prison conditions to their advantage, for example, through access to drugs and alcohol.

The desire to avoid revocations may lead to a monitoring technology that is increasingly oriented on preventing breaches of conditions or punishing them if they occur. Already, as other contributors to the present workshop have pointed out, developments of this nature are under way and proceeding with enormous rapidity. Third-generation – or is it fourth-generation? – technology will be able deliver a sound, an electric shock, or a stimulation of a particular area of the brain as a reaction to electronic information that the monitored person has committed an offence or is about to do so. These stimuli constitute a warning to, or punishment of, the offender in an attempt to prevent him from committing that act.

The prestigious English journal "The Economist" described advances in neurotechnology – a technology that makes possible the manipulation of the brain – in its issue of 25-31 May 2002. "Neuroscientists may soon be

able to screen people's brains to assess their mental health, to distribute that information ... and to 'fix' faulty personality traits with drugs or implants on demand" (my emphasis). It is not far-fetched to think that it soon will be possible to implant a receptor in an offender's body that permits the preventive or punitive electronic monitoring of the transgression of imposed conditions and a whole range of disapproved behaviour.

Developments of this kind raise ethical and legal human rights issues of the same nature and gravity as advances in genetics. Intrusive and comprehensive electronic monitoring may well breach internationally accepted principles for the protection of human rights and personal integrity. But, as The Economist article pointed out, there is astonishingly little public discussion of these issues. And even at the present workshop little time was devoted to considering the ethical demands and legislative protections that should be required of future forms of electronic monitoring.

4.2 Privatisation

Over and above the threat to social work with offenders posed by advanced forms of electronic control, there is a further potential danger.

The creation, installation and maintenance of the necessary equipment for electronic monitoring is largely in the hands of private firms. Inevitably, they respond to the market conditions of free enterprise. They are in competition with one another and must seek to maintain the dominant position that alone guarantees the profits that will satisfy their shareholders. This is a powerful motor for the development of the more comprehensive and intrusive technologies referred to above. But, in addition, a further avenue of development is to urge governments to allow private firms to assume increased responsibility for the actual operation of electronic monitoring in the day-to-day work with offenders. We can expect to hear the customary argument that private enterprise can deliver offender monitoring more effectively and more cheaply than a state or municipal service. It is an open question whether such monitoring will permit social work with offenders to be carried out, let alone to be carried out by suitably trained workers.

It is useful to recall here that recent years have seen impressive developments in the social work techniques for influencing offenders to lead law-abiding lives. There is now a sizeable research literature on what is generally known as "What works?" methods for influencing the behaviour of offenders. Cognitive approaches, that are getting offenders to think about

their criminal behaviour and its effects on themselves and others, combined with opportunities for social learning, have been shown to open up effective ways of reducing criminal behaviour (McGuire, J. 1995, Council of Europe Recommendation No. (2000) 22 on improving the implementation of community sanctions and measures).

But these methods demand continuing research and staff training investments if their potential is to be properly evaluated, developed and used. The research, training and operational requirements demand in their turn an organisational environment that can support long-term experimentation and evaluation. It is, to say the least, doubtful if competitive private enterprises possess the interest, will and capacity to engage in the necessary research, training and organisational structures necessary for the wide-scale use of "What works?" methods. The development of preventive and punitive approaches that are clear-cut, require little investment in human relations skills, and meet public and political demands for repression offer easier and more lucrative possibilities.

5 Concluding remarks

The title of the workshop asked if electronic monitoring would have a future in Europe. In the light of present tendencies, the answer to that question must be unreservedly affirmative. A more fundamental question is what kinds of electronic monitoring ought to have a future in Europe and, above all, what kinds ought *not* to have a future in Europe.

I have pointed out that the only European instrument on community sanctions and measures – the Council of Europe's European Rules – presupposes that electronic monitoring in any form shall be a tool that serves the aim of assisting offenders to adjust in the community. Methods for helping offenders to adjust in the community through social work have now been markedly improved through the development of "What works?" research and practice. Electronic monitoring that serves the wider aim of more effectively and positively influencing offenders to become law-abiding members of the community is unobjectionable. It focuses primarily on determining the whereabouts of offenders under supervision in the community and, possibly, to determine whether an offender is using prohibited substances.

"Stand alone" electronic monitoring as a simple substitute for prison incarceration is contrary to the European Rules and unlikely to achieve any

betterment of the offenders subjected to it. It is possible that long-term use subjects the families of monitored offenders to undue pressure, one that may amount to harassment. Practitioners view it unfavourably (*Walter, I., Sugg, D.* and *Moore, L.* 2001).

Electronic monitoring that makes use of physically intrusive technology combined with unpleasant stimuli to prevent or punish deviation from imposed conditions raises ethical and legal issues that have been insufficiently explored. Unless national and international debate takes place on these matters, there is a sizeable risk that marketing forces will enable private enterprises to enlarge the scope of punitive electronic monitoring to the detriment of social work with offenders. *Prima facie*, such monitoring is an evil that should have no place in future ways of implementing community sanctions and measures. What needs to be done now is to intensify the creation of national and international legal instruments to ensure that the tool of electronic monitoring serves the purposes of social work with offenders. Exclusion of this possibility, or the development of a parallel system of implementing community sanctions and measures that excludes this possibility, needs at all cost to be avoided.

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Le placement sous surveillance électronique comme expression d'un nouveau mode de structuration socio-politique : quels nouveaux risques pour les libertés ?

JEAN-CHARLES FROMENT

This text aims to examine electronic monitoring as a manifestation of a progressive change in social and governmental systems. As part of a development towards a "society of control", which is illustrated and reinforced by electronic monitoring, it participates in a more general movement of de-institutionalization and de-professionalization of the functions of the justice system. This new situation, which dissolves the separation between the private and public sphere – once constitutive for modern society – creates new risks for the fundamental rights that have to be identified in order to establish new defences for the citizen.

Je commencerais par une formule qui, *a priori*, pourrait paraître provocante, à savoir qu'en soi, le placement sous surveillance électronique (PSE), ne m'intéressera pas réellement dans ce propos. Dans cette analyse, il n'interviendra en effet qu'à titre d'objet conceptuel. Celle-ci n'aura donc pas pour vocation de dire ce qu'il est, mais d'identifier ce qu'il incarne, ce que sont ses potentialités politiques et ses risques en termes de libertés publiques. Maintenant et *a contrario*, il n'apparaît en rien comme un objet conceptuel isolé. En soi, le PSE ne dit pas plus que d'autres objets auxquels on pourrait le rapporter et qui s'inscrivent dans un champ de significations commun. Le PSE n'a donc de sens qu'en le ramenant à d'autres évolutions et mécanismes qui se développent parallèlement dans le champ pénal et de la sécurité, qui lui donnent sens et font qu'il produit du sens. C'est dans ce

cadre que nous voudrions émettre l'hypothèse que le développement du PSE révèle plus fondamentalement un déplacement ou une mutation des formes dans lesquelles le pouvoir s'exerce. Le PSE traduit une réorganisation des formes d'expression de la puissance publique qui, plutôt que de s'incarner, comme elle l'a longtemps fait, dans des institutions et des hommes sur un territoire public donné, semble peu à peu s'inscrire et se diffuser dans la société. Ainsi, le PSE dévoile le processus de dissémination d'un pouvoir qui se diffuse socialement par éclats. Ce sont ces « éclats de pouvoir », que *Lucien Sfez* a analysé, qui partout se projettent et notamment sur chacun d'entre nous. Chacun, en effet, est pouvoir dans la configuration présente d'une politique éclatée qui caractérise une société de type ordinatique. Rendre compte de ce processus de dissémination sociale du pouvoir n'est pas seulement céder aux fantasmes de big brother, comme semblent le penser certains, mais plutôt s'interroger sur les conséquences, dans un temps de contestation de son autorité et de sa légitimité, voire d'une crise généralisée de ses institutions, d'une recherche par la puissance publique d'une nouvelle efficacité et légitimité qui la conduit à s'ancrer de plus en plus dans la société elle-même. C'est en tout cas ainsi qu'il faut interpréter les remarquables analyses de *Gilles Deleuze* sur la naissance d'une « société de contrôle », laquelle se substitue au modèle foucaldien de la « société disciplinaire ».

En effet, *Foucault* s'écriait au début des années quatre-vingt : « Une fulguration s'est produite, qui portera le nom de Deleuze. Une nouvelle pensée est possible, de nouveau la pensée est possible... Un jour peut-être le siècle sera deleuzien »[1]. Alors pourquoi *Deleuze* plutôt d'ailleurs que *Foucault* ? Pourquoi les XXème et XXIème siècles seraient-ils deleuziens ? Comme le rappelle *Deleuze* lui-même, *Foucault* est souvent considéré comme le penseur des sociétés de discipline, et de leur technique principale, l'enfermement (pas seulement l'hôpital et la prison, mais aussi l'école, l'usine, la caserne). Mais en fait, il fut l'un des premiers à dire que les sociétés disciplinaires, quand il en parlait, c'est ce que nous étions déjà en train de quitter, ce que nous n'étions déjà plus. Et en fait, comme va l'exprimer *Deleuze* ce dans quoi nous sommes progressivement entrés à partir de la fin de la Seconde Guerre mondiale, ce sont des « sociétés de contrôle qui fonctionnent non plus par enfermement, mais par contrôle continu et communication instantanée. »[2] Analyse qui confirme l'idée que le PSE n'est

[1] *Foucault, Michel* cité dans *Deleuze, Gilles*: Pourparlers. Ed. de Minuit, 1990, p. 122.
[2] *Ibidem*, p. 236.

en rien un dispositif générateur d'une évolution politique plus fondamentale, qu'il s'inscrit dans un processus qui le surdétermine historiquement, et qu'il ne fait qu'illustrer et renforcer dans le même temps.

Les sociétés disciplinaires de *Foucault* se structurent autour d'une logique institutionnelle : « Elles procèdent à l'organisation des grands milieux d'enfermement. L'individu ne cesse de passer d'un milieu clos à un autre, chacun ayant ses lois : d'abord la famille, puis l'école ('tu n'es plus dans ta famille'), puis la caserne ('tu n'es plus à l'école'), puis l'usine, de temps en temps l'hôpital, éventuellement la prison qui est le milieu d'enfermement par excellence (...) » Or, constate *Deleuze*, « nous sommes dans une crise généralisée de tous les milieux d'enfermement, prison, hôpital, usine, école, famille. La famille est un « intérieur » en crise, comme tout autre intérieur, scolaire, professionnel, etc. Les ministres (...) réformer l'école, réformer l'industrie, l'hôpital, l'armée, la prison ; mais chacun sait que ces institutions sont finies, à plus ou moins longue échéance. Il s'agit seulement de gérer leur agonie et d'occuper les gens, jusqu'à l'installation de nouvelles forces qui frappent à la porte. (...) Par exemple dans la crise de l'hôpital comme milieu d'enfermement, la sectorisation, les hôpitaux de jour, les soins à domicile ont pu marquer d'abord de nouvelles libertés, mais participer aussi à des mécanismes de contrôle qui rivalisent avec les plus durs enfermements (...) Ce sont les sociétés de contrôle qui sont en train de remplacer les sociétés disciplinaires. »[3] La société de contrôle est une société qui parachève le modèle d'un pouvoir arborescent, rhizomatique, qui se diffuse par capillarité dans l'ensemble de la société civile. Mais alors, évoquer l'émergence de la société de contrôle ce n'est pas crier au totalitarisme, ce n'est pas plus céder au fantasme de big brother, c'est simplement analyser, identifier et interroger les conséquences d'un nouvel archétype social. Ne serait-ce que parce que la société de contrôle naît moins d'un dessein que d'un échec, que d'une crise, celle encore une fois des institutions traditionnelles, et dans le secteur qui nous concerne, de la police, de la justice, de la prison. Échec qui conduit ces institutions à rechercher de nouvelles rationalités, de nouveaux fondements de légitimité en développant de nouveaux concepts (prévention situationnelle, proximité, etc.) et des techniques innovantes (vidéosurveillance, télésurveillance, PSE, etc.).

Cela ne saurait en effet être neutre. Le contrôle n'appartient donc plus au milieu fermé mais au milieu ouvert désormais. La question est alors de sa-

[3] *Ibidem*, pp. 240-242.

voir quand le contrôle glisse du milieu fermé au milieu ouvert quelle transformation du pouvoir lui-même cela implique et quelles interrogations cela suppose pour qualifier la nouvelle société qui se met en place ? Notre proposition tiendra en trois temps : le développement des nouvelles technologies de contrôle se traduit par une progressive dilution de la division entre l'espace public et l'espace privé (1) que révèle de façon plus générale l'évolution des politiques de sécurité[4] (2) et qui génère une insécurité juridique nouvelle pour le citoyen (3).

1 Les nouvelles technologies de contrôle et la confusion policière et pénale des espaces public et privé

Nous n'insisterons guère sur une évolution dont on peut régulièrement apprécier aujourd'hui les manifestations. Il s'agit de celle de l'affaissement de la clôture public/privé. Les nouvelles technologies de contrôle nous placent face à un monde au sein duquel cette frontière interne et symbolique entre l'espace public et l'espace privé tend à s'effacer, s'évanouir. Et non pas au sens d'une entreprise consciemment totalitaire qui tendrait à placer sous contrôle public l'espace privé. Non le phénomène est plus complexe, il est réciproque au sens où, au sein d'un même et seul mouvement, on assiste à la fois à un phénomène de publicisation de l'espace privé et de privatisation de l'espace public. Cela se traduit dans un double mouvement de déterritorialisation et de désinstitutionalisation du contrôle.

Le concept de déterritorialisation a été défini par *Deleuze* et *Guattari* sous la forme d'une rencontre, celle de la guêpe et de l'orchidée. Dans la rencontre des deux, nous disent-ils « l'orchidée a l'air de former une image de guêpe, mais en fait il y a un devenir guêpe de l'orchidée, un devenir orchidée de la guêpe, une double capture ». Pour le dire autrement, la guêpe devient partie de l'appareil de reproduction de l'orchidée en même temps que l'orchidée devient organe sexuel pour la guêpe. Un seul et même devenir, un seul bloc de devenir, une « évolution parallèle de deux êtres qui n'ont absolument rien à voir l'un avec l'autre. »[5] Pour l'exprimer plus prosaïquement, la société de contrôle est une société dans laquelle le pouvoir ne s'exerce plus selon une logique de la division de l'espace public et de l'espace privé (logique du territoire, du segment, de la machine binaire : public-privé), mais au cœur des deux qui se rencontrent, qui se

[4] Dont nous évoquerons seulement l'exemple français.

[5] *Deleuze, Gilles*: Dialogues. Ed. de Minuit, 1977, pp. 8-9.

public-privé), mais au cœur des deux qui se rencontrent, qui se déterritorialisent l'un et l'autre, l'un dans l'autre. Pour l'écrire dans les termes de *Deleuze*, on pourrait dire que dans la configuration du pouvoir de la société de contrôle, il y a un devenir public de l'espace privé et un devenir privé de l'espace public.

Le PSE aboutit à ce que la peine s'exerce dans son propre domicile. Non plus dans un lieu public, mais chez soi, c'est-à-dire dans son « territoire de la personnalité », symbole même de l'espace privé dans une société libérale. L'amélioration des technologies et les expériences menées actuellement dans le monde démontrent que l'impact se situe bien au-delà, puisque c'est y compris dans les déplacements extérieurs que le repérage électronique ou le déclenchement peut avoir lieu.

Quant à la vidéosurveillance, inutile d'insister longtemps sur l'extension spatiale du regard qu'elle permet. On sait bien notamment la difficulté d'une caméra à ne pas se porter au delà de l'espace public, dans des lieux semi-publics, semi-privés (halls d'immeuble, etc.). Mais là encore, ce n'est pas seulement la peur du regard-espion de l'autorité publique qui est ici en jeu, c'est aussi un phénomène d'utilisation privée de la vidéosurveillance qu'il faut prendre en compte – dans les grands magasins, où l'objectif n'est pas seulement de contrôler les vols, mais aussi de surveiller l'activité des caissières – et puis le phénomène des gated communities, des villes ou quartiers-prisons dans lesquels on s'enferme volontairement pour mieux se protéger des menaces extérieures (Amérique Latine, Afrique, États-Unis – mais l'Europe, et notamment l'Espagne, est de plus en plus concernée). C'est une intégration totale du principe de la surveillance électronique, souvent désirée, impulsée par l'opinion publique, qui réclame même de voir et d'être vu. C'est Loft story, le règne des webcams ou encore la réception dans son domicile des images de son quartier selon les principes de la coveillance ou de la surveillance partagée, héritée des expériences de surveillance de voisinage, etc.

Cette frontière s'affaisse aussi au niveau des acteurs. Les nouvelles technologies de contrôle mettent en cause le principe même de l'existence de « professionnels de la discipline ». Par exemple, le PSE entraîne un mouvement de déprofessionnalisation des personnels de la puissance publique en cascades. On en distinguera ainsi quatre niveaux :

- Ainsi, si l'on prend pour exemple le cas des surveillants de prison, on s'aperçoit qu'avec le PSE, le rapport détenus-surveillants-administration n'a plus de sens institutionnellement ; il lui est substitué une autre rela-

tion triangulaire au sein de laquelle le surveillant perd sa place au profit de l'ordinateur qui joue le nouveau rôle de médiation entre le détenu et l'administration.

- La réflexion mérite encore d'être prolongée. Ainsi, dans le cadre du PSE, ce sont progressivement les agents de probation qui se verront confier des tâches qui jusqu'alors auraient relevé des surveillants. C'est-à-dire qu'en France la division des tâches entre surveillants et travailleurs sociaux tend à se diluer. Ce n'est que confirmé par l'évolution vers la reconnaissance d'une fonction de surveillant de proximité et finalement vers l'enracinement de la fonction de contrôle de la population pénale par les conseillers d'insertion et de probation. Nous sommes ici dans cette situation intermédiaire qui nous met en présence de surveillants sociaux et de conseillers surveillants.
- Les conséquences de cette évolution sont plus profondes encore. En effet, dans bien des expériences, ce ne sont de toute façon plus les surveillants qui sont chargés du suivi de cette surveillance électronique. Ainsi, sont retenus à l'occasion de ces dispositifs différents systèmes qui traduisent bien un mouvement de privatisation de la puissance publique.
- Mais ce mouvement de privatisation de la justice criminelle[6] peut aussi prendre la forme, plus riche encore à analyser, d'une socialisation. Ainsi, dans le cadre de certaines expériences étrangères un référent familial et professionnel doit se porter garant de la bonne exécution par le condamné des obligations résultant pour lui de son placement sous surveillance électronique. De façon générale, ces mécanismes renforcent une logique qui est celle du contrôle communautaire et le développement lui-même des peines alternatives à l'incarcération doit être rapporté à une telle évolution des modes de contrôle socio-politique.

Mais il faut encore le souligner ici, il s'agit moins de décrire un phénomène de surveillance généralisée, que d'identifier un mouvement de déprofessionnalisation de la surveillance. Cette évolution, illustrée de façon exemplaire par le PSE peut cependant être observée de façon plus générale à travers les mutations récentes des politiques de sécurité.

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[6] *Mac Mahon, M.*: La répression comme entreprise : quelques tendances récentes en matière de privatisation et de justice criminelle. Déviance et société, 1996, Vol. 20, N°2, p. 103 et s.

2 L'évolution des politiques de sécurité : vers une déprofessionnalisation de l'exercice des fonctions de contrôle

Mais ici il faut bien encore une fois le constater, et *Deleuze* le dit parfaitement, ce n'est pas la machine électronique, informatique qui est en soi génératrice de cela : « À chaque type de société, évidemment, on peut faire correspondre un type de machine : les machines simples ou dynamiques – poulies, leviers, horloges – pour les sociétés de souveraineté, les machines énergétiques pour les disciplines, les cybernétiques et les ordinateurs pour les sociétés de contrôle. Mais les machines n'expliquent rien, il faut analyser les agencements collectifs dont les machines ne sont qu'une partie. »[7] Même si encore une fois, le problème est moins celui d'un dessein totalitariste que d'une recherche accrue de légitimité et de résultat qui conduit à oublier un certain nombre de garde-fous essentiels pour les libertés, à affaiblir les protections traditionnelles pour les citoyens dont la société libérale se voulait pourtant la première garante.

Ce dont semble témoigner en France la promotion des politiques de la ville et de sécurité intérieure qui, en encourageant une approche horizontale des problèmes de délinquance et de sécurité, favorisent le procès de dilution et d'interpénétration des rôles entre acteurs sociaux et de sécurité. On peut aussi rapprocher de ce mouvement le développement des polices municipales et des « polices privées », de la police de proximité qui est aussi une police de l'espace privé – qui s'inscrit elle-même dans un mouvement international de renforcement des polices communautaires –, ou encore l'émergence des médiateurs, pénaux et sociétaux. Ainsi, au début des années quatre-vingt, le rapport *Bonnemaison* proposait un développement des polices municipales dans le cadre de nouvelles politiques de prévention de la délinquance.[8] Si juridiquement le statut de ces agents a été long à se dessiner, leur irruption quantitative a elle été incontestablement rapide. En effet, alors qu'en 1984, on comptait 5 642 agents de police municipale dans 1 748 communes, on en dénombre aujourd'hui environ 13 000 répartis dans 3 030 communes, sans compter désormais la possibilité ouverte par la loi du 27 mars 2001 relative à la démocratie de proximité aux établissements publics de coopération intercommunale de recruter leur propre police locale. Ce même mouvement se vérifie à travers le développement des

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[7] *Deleuze, Gilles*: Pourparlers. *Op.cit.*, p. 237.

[8] *Bonnemaison, Gilbert*: Face à la délinquance : prévention, répression, solidarité. La documentation française, 1982.

emplois-jeunes de sécurité ou d'agents de sécurisation. La loi du 16 avril 1997 relative au développement des activités pour l'emploi des jeunes a, dans son article 10, identifié des emplois spécifiques au secteur de la sécurité. Des emplois qui, en premier lieu, sont développés dans le cadre des C.L.S. Le gouvernement a prévu à ce titre la création de 35 000 emplois de sécurité, essentiellement regroupés dans deux catégories : 20 000 adjoints de sécurité (A.D.S.) employés dans la police nationale et de 15 000 à 30 000 agents locaux de médiation sociale (A.L.M.S.) qui peuvent être employés par les collectivités locales, leurs établissements publics, les associations, les gestionnaires de services publics, avec la participation de l'État. Très différents les uns des autres, ces deux types d'emplois ont cependant un point commun. Ils relèvent de la politique des emplois jeunes et leur mission est de contribuer par leur présence, par le dialogue ou par la médiation, à réduire les tensions, notamment dans les quartiers difficiles. Quant au secteur de la sécurité privée, inutile d'insister sur son régulier et considérable développement. Ainsi, l'effectif serait en janvier 2000, de 100 000 salariés exerçant des activités de sécurité physique des biens et des personnes, employées par 4 200 sociétés. S'ajouteraient 2 000 agences de recherche privée dont 89 % exerçant à titre individuel, tandis que 200 salariés seulement seraient répartis dans les 130 sociétés restantes[9]. Le nouveau gouvernement annonce un recours accru à ces entreprises notamment dans le domaine des gardes statiques.

C'est ainsi à la fin de l'idée d'un personnel spécialisé dans les fonctions de sécurité que l'on assiste. Mais tout autant, dans le même temps, à la perte de visibilité de l'État dans sa fonction souveraine dans la mesure où ces personnels étaient principalement porteurs d'un discours étatique, qu'ils étaient les vecteurs essentiels d'un rapport sociétal, de la médiation entre l'État et la société civile.

3 L'insécurité politico-juridique du citoyen

En remettant en cause le principe d'une séparation entre l'espace privé et l'espace public, les nouvelles technologies de contrôle soulèvent donc le problème de la limitation du champ d'action du pouvoir politique. En effet, l'apport principal de la Déclaration des droits de l'homme et du citoyen du

[9] *Ocqueteau, Frédéric*: Le secteur de la sécurité privée. Structuration économico-politique. *R.F.A.P*, N°91, Juillet-septembre 1999, p. 416.

26 août 1789, comme l'expose *Luc Ferry*, a sûrement été, moins que de proclamer le triomphe absolu des droits subjectifs, de poser le principe de l'existence d'une frontière nécessaire entre la sphère de l'action publique et celle de l'action privée, entre le pouvoir politique et la société civile.[10] Or, c'est cela que l'on remet progressivement en cause aujourd'hui ou dont on est en train de perdre conscience. À partir du moment où l'État pénètre la sphère privée et la société civile pénètre l'espace public, ces deux notions perdent de leur sens et il n'y a plus de séparation possible entre elles. Dès lors, l'action du pouvoir peut se porter en des lieux qui lui étaient interdits jusqu'alors puisque relevant précisément de la sphère des relations privées. Car à partir du moment où il n'y a plus de séparation entre les espaces publics et privés, les limites « territoriales » imposées aux interventions du pouvoir disparaissent.

Plus spécifiquement, à partir de l'exemple français, on pourra illustrer une telle perte de sens à travers l'extension des prérogatives de police judiciaire progressivement accordée à ces nouveaux personnels de sécurité aux statuts hétérogènes et pour lesquels *Philippe Robert* n'hésite pas à parler de prolétarisation.[11] Que l'on reconnaisse aux policiers municipaux une plus grande latitude dans ce domaine dans la loi du 15 avril 1999 relative peut apparaître légitime, même si cela nous semble aller *a contrario* d'une doctrine d'emploi efficace de ces agents. Mais que l'on accorde peu à peu les mêmes prérogatives aux gardes-champêtres (Loi du 27 mars 2002 relative à la démocratie de proximité), puis aux agents de surveillances de Paris et enfin – et surtout – aux adjoints de sécurité (loi du 15 novembre 2001 relative à la sécurité quotidienne), ne va pas du tout de soi. Quand la même loi étend aux agents de sécurité privée la possibilité, dans certaines circonstances, de procéder à des palpations de sécurité alors que quelques mois plus tôt les décideurs publics nous expliquaient qu'il s'agissait d'une limite infranchissable sous peine d'une grave atteinte aux libertés publiques, ce n'est pas non plus un phénomène naturel. De façon générale, la déprofessionnalisation des fonctions de contrôles entraîne une perte claire de conscience des partages traditionnels de compétences et des protections classiques dont celles-ci s'entourent. Ainsi le risque est-il que le droit à la sûreté dont bénéficie tout citoyen s'efface peu à peu derrière les exigences mal maîtrisées

[10] *Ferry, Luc*: L'humanisme juridique en question. Réponse à Bernard Edelman. Droits, N°13, 1991, p. 43 et s.

[11] *Robert, Philippe*: Le citoyen, le crime et l'État. Genève, Paris, Droz, 1999.

d'une droit à la sécurité soudainement promu comme référentiel politique et soubassement idéologique d'un nouvel État.

Sans doute convient-il donc ici de se méfier des pièges de la « modestie étatique » qu'encourage la pensée néo-libérale. D'abord parce que l'exercice du pouvoir devient moins visible. Dans le cadre du PSE précisément, le pouvoir continue à exercer de la même façon son pouvoir de punir, mais ce qu'il faisait jusqu'alors à travers un dispositif visible, il le réalise maintenant sans se donner à voir. Ainsi, la société civile pouvait jusqu'alors se prémunir en se distanciant de ce qui symbolisait le pouvoir. La notion de « périmètre sensible », analysée par *Philippe Combessie*, et traduisant une forme de répulsion sociale et physique à l'égard des établissements pénitentiaires dans les villes où ils sont implantés, symbolisait cette nécessaire et possible opération de distanciation de la société civile vis-à-vis du pouvoir.[12] Avec le PSE par exemple, elle n'est plus possible. Mais d'autre part, cette évolution, qui traduit l'émergence d'un État-régulateur en réponse à la crise de l'État-providence, produit aussi un autre effet pervers, à savoir celui d'un pouvoir qui n'agit plus dans une relation d'extériorité à la société civile. Ici pourtant, dans les fonctions de justice et de sécurité, intervient l'obligation propre à un gouvernement, obligation qui ne relève que de lui. Ainsi écrivait *Benjamin Constant*, « il [L'État] n'a pas le droit de faire retomber sur l'individu, qui ne remplit aucune mission, ces devoirs (de police), nécessaires mais utiles ». Autant donc la tâche de la conscience libérale est de veiller à la justesse et à la justice des lois (leur contenu et leur légitimité), autant sa responsabilité n'est pas d'endosser les missions propres du pouvoir.[13] On retrouve ici l'une des thèmes fondamentaux de la pensée libérale, à savoir celui de la séparation nécessaire de l'État et de la société. Comme le rappelle *Luc Rouban*, « c'est dans cette perspective qu'il faut bien comprendre que l'adoption d'une économie néo-libérale ne s'accompagne pas des limites politiques posées par la théorie libérale classique. Les possibilités multiples d'une recomposition de l'espace public sur lui-même élargissent le champ du politique dont rien, *a priori*, ne peut plus être soustrait. »[14]

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[12] *Combessie, Philippe*: Prison des villes et des campagnes. Étude d'écologie sociale. L'Atelier "Champs pénitentiaires", 1998.

[13] *Jaume, Lucien*: L'individu effacé ou le paradoxe du libéralisme. Paris, Fayard, 1997.

[14] *Rouban, Luc*: Le pouvoir anonyme. Les mutations de l'État à la française. Paris, Presses de la Fondation Nationale des Sciences Politiques, 1994, p. 41.

Cette évolution nous confronte donc à une interrogation fondamentale qui est celle de la réactivation du libéralisme politique et de sa version juridique, le constitutionnalisme. Le problème posé est celui de repenser dans ce contexte nouveau ce qui pourraient être les fondements les plus sûrs du maintien pour le citoyen de son droit à la sûreté. Les récents développements connus en France à l'occasion de l'adoption de la loi du 15 novembre 2001 relative à la sécurité quotidienne et à l'occasion de laquelle on a assisté à une connivence des parlementaires de la majorité et de l'opposition pour ne pas saisir le conseil constitutionnel afin de l'empêcher d'exercer son contrôle sur une loi dont on savait qu'elle présentait à bien des égards, tant sur la forme que sur le fond, une présomption d'inconstitutionnalité partielle, nous éloigne bien loin d'un tel objectif. C'est la notion même d'État de droit qui est alors bafouée.

Pour conclure, je reprendrai deux citations qui s'éclairent l'une l'autre. La première est du philosophe *Karl Popper* lorsqu'il nous indique que « les démocraties ne sont pas la souveraineté du peuple, ce sont, en premier lieu, des institutions armées contre la dictature. »[15] La deuxième est de *Deleuze* à qui il revenait de conclure ces propos : « Il n'y a pas lieu de craindre ou d'espérer, mais de chercher de nouvelles armes. »[16]

[15] *Popper, Karl, Baudoin, Jacques*: La philosophie politique de Karl Popper. Paris, PUF, 1994, p. 195.

[16] *Deleuze, Gilles*: *Op.cit.*, pp. 240-242.

The Place of Electronic Monitoring in the Development of Criminal Punishment and Systems of Sanctions

HANS-JÖRG ALBRECHT

1 Introduction

The question of what place electronic monitoring has and will have in the development of criminal punishment and in systems of penal sanctions must be answered with an approach that identifies how electronic monitoring is inserted into systems of criminal sanctions, what relationships between electronic monitoring and sentencing goals can be established, which consequences result from electronic monitoring and whether electronic monitoring is an indicator of deeper changes in the system of sanctions.

From a formal and legal view, electronic monitoring can be used as an addition to suspended sentences and thus represents an intensive supervision of probation. It can be used as a supervision of offenders otherwise subject to pre trial detention, or it can be attached to parole and thus serve as a parole condition. From a sentencing point of view, electronic monitoring can be used as a front end sanction and as an additional option in sentencing in its own right. Electronic monitoring may also move into a position to serve as an alternative in post-sentencing decisions on how to enforce a prison sentence. Finally, electronic monitoring may play a role in the correctional system concerning parole decision making.

With regard to the question of what the content of electronic monitoring is, it has to be insisted that it is after all not house arrest, but rather restriction of freedom through enforcing precisely defined or structured time schedules through technology. Electronic monitoring is then – with regard to content – basically voluntary. There is no way that electronic monitoring in terms of compliance with a structured time schedule may be enforced against the will of the sentenced individual. Electronic monitoring is community oriented in that it relies like any suspended sentence on the social environment within which the offender lives. Finally, electronic monitoring is characterized by attempts to influence and to keep somebody within the community.

The formal position of electronic monitoring therefore is determined through sentencing goals and its specific content and it must be located between imprisonment on the one hand and mere suspended sentences (or other intermediate penalties) on the other hand. One of the basic problems therefore also concerns how to develop exchange rates between electronic monitoring and other penalties, in particular imprisonment.

When considering the role of electronic monitoring in the system of sanctions, we first have to also acknowledge that there have been changes in sentencing theory and sentencing policies. First of all, it should be noted that there have been changes in sentencing goals that move from rehabilitation to either just and desert, proportionality, or positive general prevention as well as from individualization to the emergence of tariffs in sentencing.

These changes are leading towards uniformity in sentencing and reduction in disparity. There are also signs that there are further moves from repression to prevention, from control of recidivism to control of risks, from risk reduction to cost reduction, from behaviour modification to punishment and control, from hidden behaviour modification to visible and open punishment and finally from expertise driven penalties to punishment based on blame and ultimately emotion. Then there can also be observed a certain trend away from mere state organized punishment to community based punishment and the participation of the community in the process of enforcing criminal penalties.

Seen from these changes, the question must be raised of whether electronic monitoring fits into sanction systems. This will depend on how the systems of sanctions are conceived. In particular those systems where there is no possibility of partially suspended prison sentences, electronic monitoring could of course serve as a method of closing a huge gap between a fully suspended prison sentence and unconditional imprisonment.

Electronic monitoring, then, should fit into the Recommendations of the Council of Europe with regard to community sanctions and comply with basic rights standards. According to the European Recommendations, community sanctions should pursue giving assistance and support to the offender and reintegration as well as rehabilitation as long as such goals seem to be necessary.

2 Electronically Monitored House arrest: Models and Programmes

Electronic monitoring as well as house arrest belongs to a range of new types of sanctions ordinarily referred to as intermediate sanctions that fall in between ordinary fines and imprisonment.[1] In the U.S. electronic monitoring has been used since the mid-eighties[2]; it was then introduced in Australia[3] and some other countries[4] outside Europe. Since the early 90's electronic monitoring has started to gain momentum in Europe, too. After the introduction of electronically monitored house arrest in England/Wales, Sweden, Holland and Belgium experiments with electronic monitoring were also carried out in Germany[5], Switzerland[6] and France. The basic models are: Front-end model (introducing electronic monitoring either as sanction in its own right or as part of a suspended prison sentence – respec-

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1 With regard to the historical background of electronic monitoring see *Lilly, J.R., Ball, A.*: A Brief History of House Arrest. Northern Kentucky Law Review 13 (1987), pp. 343-347. See also *Schwitzgebel, R. K.*: Development and Legal Regulation of Coercive Behavior Modification Techniques With Offenders. Maryland 1971.

2 See *Schmidt, A.K.*: Electronic Monitoring: What does the Literature Tell Us? Federal Probation 62 (1998), pp. 10-19.

3 *Challinger, D.*: An Australian Case Study: The Northern Territory Home Detention Scheme. In: *Ugljesa, Z.* (Ed.): Alternatives to Imprisonment in Comparative Perspective. Chicago 1994, pp. 267-275.

4 An overview can be found in *Lindenberg, M.*: Elektronisch überwachter Hausarrest auch in Deutschland. Bewährungshilfe 1999, pp. 12.

5 *Albrecht, H.-J., Arnold, H., Schädler, W.*: Der hessische Modellversuch zur Anwendung der „elektronischen Fußfessel". ZRP 33 (2000), pp. 466-469.

6 See *Haverkamp, R.*: Elektronisch überwachter Hausarrest – Europa und die Schweiz. Neue Kriminalpolitik 1999, pp. 4-6; *Lindenberg, M.*: Elektronisch überwachter Hausarrest auch in Deutschland? Bewährungshilfe 1999, pp. 11-22.
Courier de la Chancellerie. Trimestriel d´ information de la.ministere de la justice, http://www.justice.gouv.fr/chancell/cc49inia.htm.
Max-Planck-Institut für Ausländisches und Internationales Strafrecht: Laboratoire Europeen Associee. Bilanz (1998-2001) und Perspektiven (2002-2006). Freiburg 2002, pp. 28-29.
Kuhn, A., Madignier, B.: Surveillance Electronique: la France dans une perspective internationale. Revue de sciences criminelles 1998, pp. 671-686.

tively intensive probation), or back-end model (making electronic monitoring either a special form of imprisonment or combining it with parole).

Holland introduced both models in 2000. Electronically monitored house arrest may be imposed as a sole sanction instead of a prison sentence of not more than 6 months. Electronic monitoring may also be combined with a suspended prison sentence as well as with community service.[7] Then a modification of serving a prison sentence was introduced which entitled a prisoner, after having served half of the prison sentence (but at least a minimum of one year), to apply to serve the rest in the form of electronically monitored house arrest. Here electronic monitoring is part of a correctional programme which lies at the discretion of prison administration and can range from six weeks to one year. Electronic monitoring thus adopts the function of low security detention facilities and of a precursor to parole. The programme provides for participation of the prisoner at measures of rehabilitation for a minimum of 26 hours a week.[8] Voluntary participation is required as is consent of adult members of the household where house arrest is to be served. Sweden has opted for a back-end model of electronic monitoring which covers prison sentences of up to three months.[9] Here too, consent of the convicted person as well as of the adult members of the household is a condition for electronically monitored house arrest. The experiment currently implemented in parts of Switzerland is based on the Swedish model.[10] The prison administration is the competent body which decides on whether and how electronically monitored house arrest is to be served instead of a prison sentence. The French model is also focussed on replacing immediate sentences of imprisonment; however, it is extended to serve as an alternative to remand prison.[11] It is aimed at convicted persons whose sentence does not exceed one year of imprisonment as well as at prisoners who had still to serve not more than 1 year of their original prison sentence. As in the other Dutch and Swedish models consent is required and furthermore has to be declared in the presence of a

[7] See *Spaans, E.*: Electronic Monitoring: The Dutch Experiment. CEP-Bulletin June 1998, pp. 6-8.

[8] *Van Kalmthout, A., Tak, P.*: New Sanctions Proliferating in The Netherlands. Overcrowded Times 11(1999), pp. 1, 20-23.

[9] *Haverkamp, R.*: Intensivüberwachung mit elektronischer Kontrolle – das schwedische Modell, seine Bedingungen und Ergebnisse. Bewährungshilfe 1999, pp. 51-67.

[10] *Haverkamp, R.*: opus cited, 1999, pp. 4-6.

[11] See www.justice.gouv.fr/chancell/cc49inia.htm for an overview on aims and the scope of application.

defence council. Either the convicted person or the public prosecutor can apply to substitute imprisonment for electronic monitoring; the correctional judge (juge d´application des peines) makes the final decision. Electronic monitoring should not exceed four months and should be embedded in a programme of rehabilitative measures. In England/Wales electronic monitoring was introduced through the Criminal Justice Act 1991 after a series of experiments.[12] The courts may impose electronically monitored house arrest in all cases where the law does not prescribe the penalty as imprisonment. However, a back-end model of electronic monitoring has been added which allows for the reduction of prison sentences of not more than four years by two months.[13]

Models of electronic monitoring in the U.S. are focussed regularly on prison (jail) sentences of up to one year and at the replacement of remand prison. Furthermore, programmes of electronic monitoring are implemented as parts of special programmes aimed at particular groups of offences or offenders.[14] Electronic monitoring thus is embedded in a structure of rehabilitative measures and modelled along intensive probation supervision. Strict limitation of the caseload of probation officers and rules prescribing a minimum of probation service client contacts apply in particular in cases of special problem groups, for example drug addicts or offenders with alcohol problems.[15] Serious violent offenders and certain forms of sexual offences are usually excluded from electronically monitored house arrest.[16]

The various models have the following in common:

- A precise structure of the time budget of the sentenced person which is consented to and introduces a relatively strict regulation of daily life.
- Consent of the convicted person as well as adult members of the household where electronically monitored house arrest is to be served.

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[12] *Whitfield, R.G.*: Electronic Monitoring – Erfahrungen aus den USA und Europa. Bewährungshilfe 1999, pp. 44-50.

[13] For a summary see *Whitfield, D.*: Tackling the Tag. The Electronic Monitoring of Offenders. Winchester 1997.

[14] See *Maxfield, M.G., Baumer, T.L.*: Electronic Monitoring in Marion County, Indiana. In: *Tonry, M., Hamilton, K.* (Eds.): Intermediate Sanctions in Overcowded Times. Boston 1995, pp. 108-112.

[15] See *Cromwell, P.F., Killinger, G.G.*: Community-Based Corrections. Probation, Parole, and Intermediate Sanctions. 3rd Ed., St. Paul 1994, pp. 274.

[16] For example see: Ilinois Compiled Statutes. Corrections: Unified Code of Corrections 730 ILCS 5.

- Electronically monitored house arrest is embedded in a structure of rehabilitative and educative measures (although punishment goals may vary).
- Programmes are implemented through probation services.

Differences exit with regard to:

- the focal groups (in terms of offences and offenders)
- the authority to impose electronically monitored house arrest
- the goals of electronic monitoring which may put the emphasis on surveillance and control, on rehabilitation, or on increasing the punitiveness of the measure

The goals pursued with electronically monitored house arrest point to the following:

- First, flexibilization of suspended prison sentences and probation sentences is sought, making supervision of rehabilitating efforts more reliable and intensive and providing additional opportunities with regard to combination of conditions of suspension or probation,17
- Second, electronically monitored house arrest shall replace imprisonment and reduce negative impacts of imprisonment,18
- Third, costs of criminal corrections shall be reduced,
- Electronic monitoring shall then contribute to stabilizing self-control mechanisms and with that a reduction in recidivisms,19
- The range of application of intermediary sanctions shall be enlarged through intensification of the punitive character as well as through adding more supervision.

A particular focus has been laid on replacement of imprisonment in the face of increasing prisoner rates in Europe during the last decade.[20]

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[17] *Morris, N., Tonry, M.*: Between Prison and Probation. Intermediate Punishments in a Rational Sentencing System. New York, Oxford 1990, in particular chapter 7: Control and Treatment in the Community.

[18] See *Märkert, W., Heinz, S.*: Der elektronisch überwachte Hausarrest – hilfloser Aktionismus oder sinnvolle Ergänzung. Der Kriminalist 1999, pp. 345.

[19] See *Schädler, W., Wulf, R.*: Thesen zur Erprobung der elektronischen Überwachung als Weisung und elektronischer Hausarrest. Bewährungshilfe 1999, pp. 3-10.

[20] See *Kuhn, A., Madignier, B.*: opus cited, 1998, pp. 671, p. 676.

The political developments with regard to introduction of electronic monitoring point thus far to a dynamic which is opposed partially by social and probation services as well as political parties but nevertheless did not lose momentum over the past years.[21] The political debates contain normative and moralizing discourses.[22] In part exaggerated expectations can be observed most probably as the result of a zoom effect which focusses closely on the technological skeleton of electronic monitoring, while the programme at large as well as the framework of developments and trends in criminal penalties remains outside the focus. Electronic monitoring seems to fit in particularly well into a theoretical framework of critical criminology which centers around commercialization[23], risk management, privatization and new forms of exclusion.[24] However, what is underlined with this "new penology" perspective[25] is that electronic monitoring represents only a facet in a general trend. This involves the change of systems of sanctions and social control at large as a consequence of technological advances and the move into post-modern societies.[26] Doubts arise obviously also from the problem of identifying suitable groups of offenders who could be eligible for electronic monitoring. Attention has been paid to the role of technology and commerce in pushing criminal sanctions such as electronic monitoring. But the current attraction of electronic monitoring obviously is due to the heavy concern for costs in the criminal justice systems and to its potential to symbolize cost-benefit consciousness and modernity on the one hand as well as its potential to symbolize crime politicians' concern for tough control and supervision of crime.

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[21] *Märkert, W., Heinz, S.*: opus cited, 1999, pp. 345-348, p. 345. *Weigend, Th.*: Sanktionen ohne Freiheitsentzug. GA 1992, pp. 345-367.

[22] *Feltes, Th.*: Technologie, Moral und Kriminalpolitik. Bewährungshilfe 1990, pp. 324-334.

[23] *Lilly, R.J.*: Review Essay. Selling Justice: Electronic Monitoring and the Security Industry. Justice Quarterly 9 (1992), pp. 493-503. *Lindenberg, M.*: Bestrafungs-Industrie. Neue Kriminalpolitik 9 (1997), pp. 8-10;

[24] *Garland, D., Sparks, R.*: Criminology, Social Theory and the Challenge of Our Times. In: *Garland, D., Sparks, R.*(Eds.): Criminology and Social Theory. Oxford 2000, pp. 1-22. *Gehm, J.R.*: The new moral entrepreneur & the culture of control: Surveillance advertising in the justice industry. Notre Dame 1990.

[25] *Pratt, J.*: The Return of the Whellbarrow Men; or, the Arrival of Postmodern Penalty? Brit-JCrim 40 (2000), pp. 127-145.

[26] See *Fabelo, T.*: "Technocorrections": The Promises, the Uncertain Threats. Sentencing and Correction. Issues for the 21st Century. No. 5, Washington May 2000, taking as examples electronic monitoring, the Humane Genom Project as well as pharmacology.

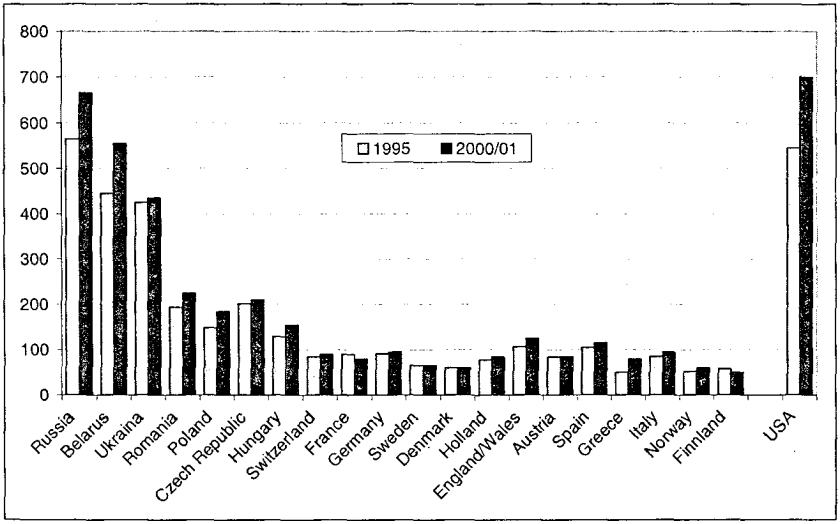
3 Developments in sentencing

European prison figures provide some evidence that there is a trend towards increasing rates of imprisonment and with that an increased use of prison sentences since the end of the eighties. This is true for both the Western and the Eastern part of Europe. What is reported from virtually all European countries is a fairly elevated rate of imprisonment in the mid-nineties as compared to the seventies and the early or mid 80's. Graph 1 demonstrates this trend by displaying the mid-nineties and the 2000/2001 prisoner rates. Germany, for example, reports at the beginning of the new millennium imprisonment rates which come close to rates observed some 40 years ago before a massive decline in prison figures occurred. Obviously, as current projections suggest, England/Wales is expecting further increases in the prison population.[27] It is remarkable then that there was definitely a process of convergence in rates of imprisonment in Western Europe. Large variations as observed in the seventies and still at the beginning of the eighties do not exist anymore. So the Netherlands, once proud of their mild penal climate, have experienced a remarkable growth in prisoner rates as did most of the Southern European countries like Greece, Italy and Spain. The reasons for these trends are easy to grasp. First, there is a trend towards longer prison sentences, in particular for drug trafficking and violent offences, which contributes to the increase in the prison populations in Western Europe. Second, there is a trend towards increases in the size of precarious populations, populations most likely to be eligible for prison sentences. Precarious groups come especially from the immigrant and migrant populations as well as from groups of the long-term unemployed. Sentencing policies developing today can be roughly split up into punitive policies accompanied by philosophies such as "truth in sentencing" and "low tolerance" (two- and three-strike laws), incapacitative policies focussing on dangerous offenders (essentially sex offender with whom new interest in indeterminate sentencing also comes up), the mixing of penal and administrative responses in the case of illegal immigrants and "business as usual" regarding the vast majority of low profile crimes such as theft and other property and personal crimes. What is apparently different when comparing the United States and Europe is the outcomes of the sentencing of the recidivist offender. While in the U.S. the daily count of pris-

[27] *Morgan, R.*: English Penal Policies and Prisons: Going for Broke. Overcrowded Times 7(1996), p. 1, 20-21.

oners reveals in 2001 an all time high of 1.962 million[28], prisoner rates in European countries remain much lower and do not exhibit the dynamic of U.S. prison rates.

Graph 1: Rates of Imprisonment in Europe and the U.S. 1995 and 2000/01 – N of 100.000 people[29]



It was particularly from the viewpoint of the abundant use of imprisonment that in Western Europe (but also in North America) the question was raised as early as the sixties as to whether the range of criminal penalties should be widened by what today is commonly called intermediate, community or alternative criminal penalties and what conditions must be established to make these types of criminal penalties work. Faced with rising crime rates on one hand and the consequent increasing numbers of offenders adjudicated and sentenced, virtually all criminal justice systems since the sixties have been preoccupied with the search for cost-efficient but non-custodial responses to crime other than the summary fine and non-prosecution policies based on conditional or unconditional discharges. It goes without

[28] Sourcebook of Criminal Justice Statistics 2001, p. 478.

[29] Source: *Walmsley, R.*: Prison Systems in Central and Eastern European Countries. Progress, Problems and the International Standards. Helsinki 1996. *Walmsley, R.*: World Prison Population List (third edition). Home Office: London 2002.

saying that these efforts were devoted considerably to the search for alternatives to imprisonment which, on one hand, lays a heavy financial burden on the state, and, on the other hand, does not seem to fulfil promises such as being an effective deterrent to crime or reducing recidivism.

4 The place of electronic monitoring within a concept of intermediate sanctions

The search for alternatives to imprisonment back in the sixties was fuelled by theoretical arguments which stressed the counterproductive effects of detention practices in terms of stigmatization and labelling, as well as the then still strong political and public support of rehabilitative approaches to the individual offender. A bifurcated approach developed with an attempt to concentrate "rehabilitative" imprisonment on heavy recidivists (in particular career offenders) while the non-dangerous or one time offenders should be eligible for non-custodial criminal sanctions and diverted from the prison system. Mistrust voiced against prisons and imprisonment by Franz v. Liszt at the end of 19th century prevailed and was supported up by the rise of the labelling theory on one hand and general (social-democratic) political programmes leading towards more freedom and less repression on the other hand. Furthermore, sentencing theory as elaborated in the sixties and seventies strongly advocated the need for a wide range of penalty options thought to facilitate the matching of particular sentences to particular offenders. Putting the focus on individualization in sentencing partially reflected rehabilitation theory but was in particular called for by the assumption that personal and individual guilt as expressed in criminal offending could be best accounted for by various sentencing options tailored to the individual case. The limits of the bifurcated approach to sentencing criminal offenders have been disclosed by evaluation research, showing that rehabilitative efforts in prison environments have only modest effects, if at all. Prison environments are certainly not optimal frameworks of implementing rehabilitation and behaviour modification.

Intermediate penalties have therefore been of common interest since the 80's in virtually all penal systems. They offered alternatives to imprisonment which played an important role in the 60's and 70's and were implemented as instruments for offender groups outside the range of alternatives to custody like, for example, fines and ordinary probation.

Changes in sentencing goals (from rehabilitation to proportionality) and customers of criminal sanctions (from offenders to the victim and the public) then demand (more than it was the case under the goal of rehabilitation) a clear and rational conversion rates between the various penalties incorporated into the system of criminal sanctions. Intermediate penalties as well as community based sanctions on one hand, and financial and custodial sanctions on the other hand must be related to each other and made comparable on one or several dimensions. There are two dimensions on which various penalties can be compared. The first dimension refers to the time an offender is subject to a criminal penalty; the second concerns the intensity of restrictions which are placed upon the offender. Convertibility is sought more and more in combination schemes which allow for combining various community sanctions as well as sentencing guidelines which provide for normative guidance in imposing alternatives to imprisonment.

What seems of paramount importance particularly with regard to acceptance of intermediate penalties by the judiciary system and the public is the requirement of clear and rational conversion rates between the various penalties incorporated in the system of criminal sanctions. Research on the implementation of intermediate penalties suggests that the courts make heavy use of intermediate penalties. However, it is obvious that there are still very clear priorities in the use of alternatives to imprisonment and intermediate penalties. Day fines and summary fines are the sanctions used most widely, followed by probation and suspended sentences.

Compensation/restitution as well as community service rank rather low with regard to the scope and size of application. Although we may observe some community service and compensation "bubbles" on the European landscape, these "bubbles" are explained by the fact that in most systems the use of compensation and community service remains invisible even though they are used in practice. They serve either as additions to suspended sentences or probation or are introduced at the end of the enforcement process as, for example, alternative sentences for fine defaulters. However monetary penalties, probation and suspended sentences continue to represent the backbones of sentencing. An obvious problem for implementing intermediate penalties is the use of pre trial detention, which has recently gone up in many European countries. In fact, the use of pre trial detention makes intermediate penalties or community sanctions illusionary. The use of pre trial detention partially reflects "short sharp shock policies", but in general – at least in Europe – reflects responses towards

immigrants and migrant populations. Thus, the concept of intermediate penalties points also to the need to develop strict criteria which help to avoid the abuse of pre trial detention as a form of pre trial custodial penalty. Furthermore, it has been argued that various intermediate sanctions do not replace imprisonment but rather other intermediate (or alternative) sanctions, assuming a net-widening effect.

Community based penalties or alternatives to imprisonment require settled offenders and compliance. Community service is certainly dependent fully on the voluntary cooperation of the offender. However, compensation, probation and other non-custodial penalties also rely on a certain measure of compliance. This conformes with developments in the criminal process which focus on simplification and consent; also with developments in community sanctions that ultimately lead to contract sanctions and the acceptance of behaviour-changing treatment approaches. A basic problem in implementing intermediate penalties therefore concerns the question of what to do with non-compliance or violations of conditions attached to intermediate penalties. With respect to intensive supervision of probation clients, research demonstrated that the rate of technical violations increased sharply compared to ordinary probation programmes.

Changes in sentencing goals and addressees of sentencing certainly have also contributed to the developing of alternative and community or intermediate sanctions into more restrictive and punitive sentences. Even though sanctions such house arrest and electronic monitoring are to be served in the community, they provide tight supervision instead of the community bound sanctions of the 60's and 70's which led to the rehabilitation and reintegration of criminal offenders under the guidance of social or probation workers. Electronic tagging provides evidently for a potential of sending out credible messages of supervision and control.

Evaluation research has dealt with the question of whether and to what extent electronic monitoring meets expectations as raised with respect to intermediate sanctions.

Studies on recidivism after electronic monitoring carried out in Canada demonstrate recidivism rates lower than those observed after ordinary probation and imprisonment. However the difference is evidently – at least in part – due to differences between the groups emerging with sentencing decisions.[30] Studies show that integration into the labour market is better for

[30] *Bonta, J., Wallace-Capretta, S. Rooney, J.*: Can Electronic Monitoring Make a Difference? – An Evaluation of Three Canadian Programs. Crime & Deliquency 46 (2000), pp. 61-75.

those having served electronically controlled house arrest than for offenders subject to other forms of punishment.[31] Research has pointed to interaction effects between actual rates of recidivism and the level of risk present before entering electronic monitoring. Significant differences have been confirmed for groups with a high level of risk of relapse into crime.[32] Furthermore, research reveals a positive correlation between the length of electronic monitoring and the time interval between completing electronic monitoring and relapse in crime, a negative correlation between the length of electronic monitoring and the recidivism rate has also been established.[33] These findings speak in favour of an assumption that in fact certain subgroups of offenders may profit from close and lengthy supervision (also after release from prison).[34] However, differences do not show up in the case of offenders with established bonds. Such correlates are consistent with theory and fit into the current knowledge about recidivism.

The main issue raised in the discussion of the net-widening hypothesis with regard to replacement of imprisonment was the assumption that electronic monitoring will not replace prison sentences but merely other alternatives to imprisonment or even may even lead to an intensification of punishment.[35] Two types of effects in general are being considered, one highlighting systemic net-widening (in terms of widening the resources of the criminal justice systems and its subsystems), another describing offender related net-widening in terms of subjecting offenders to more intensive forms of criminal justice responses.[36] Research results have come up with inconsistent results for both types of possible effects.[37]

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[31] *Klein-Safran, J.*: Electronic monitoring versus halfway houses: A study of Federal offenders. Maryland 1993.

[32] *Bonta, J., Wallace-Capretta, S., Rooney, J.*: A Quasi-Experimental Evaluation of an Intensive Rehabilitation Supervision Program. Criminal Justice and Behavior 27 (2000), pp. 312-329, p. 324.

[33] *Gainey, R.R., Payne, B.K., O'Toole, M.*: The relationships Between Time in Jail, Time on Electronic Monitoring, and Recidivism: An Event History Analysis of a Jail-Based Program. Justice Quarterly 17 (2000), pp. 733-752, p. 748.

[34] These findings are consistent with results stemming from evaluation research addressing intensive probation supervision, see *Wiebush, R.G.*: Juvenile Intensive Supervision: The Impact on Felony Offenders Diverted From Institutional Placement. Crime&Delinquency 39(1993), pp. 68-9 and *Petersilia, J.*: A Decade of Experimenting With Intermediate Sanctions: What Have We Learned? Federal Probation 62(1998), pp. 3-9

[35] See for example the position voiced by the British Columbia Civil Liberties Association as of November 23, 1988 (www.bccla.org/positions/prisoners/88ems.html).

[36] *Mainprize, St.*: Electronic monitoring in corrections: Assessing cost effectiveness and the potential for widening the net of social control. Canadian Journal of Criminology 34 (1992),

Comparative analysis of costs and cost reductions attributable to electronic monitoring also came up with mixed results.[38] Costs certainly are dependent on the number of cases entering electronic monitoring programmes.[39] However, the designs of research studies implemented to test assumptions are rather poor. In general, assessments are positive, in particular with regard to European studies.[40] But, as a meta-analysis of cost-benefit research in the field of criminal justice interventions recently has demonstrated, studies that are based on adequate designs are rare. Only 7 studies could be identified which complied with evaluation standards, none of which dealt with electronic monitoring.[41]

Summarizing existing research thus far leads to the conclusion that findings are not consistent. However, there is some evidence that electronic monitoring may claim a place among intermediate sanctions that aim at re-

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pp. 161-180. *March, B. L.*: Prison crowding and alternatives to incarceration: A diffusion study of acceptance in the state of Missouri Columbia 1993.

[37] *Mainprize, St.*: opus cited, 1992, pp. 161. *Landreville, P.*: Prison overpopulation and strategies for decarceration. Canadian Journal of Criminology 37 (1995), pp. 39-60. *Lilly, Robert J.*: Electronic Monitoring in the U.S. In: *Tonry, M., Hamilton, K.* (Eds.): Intermediate Sanctions in Overcrowded Times. Boston 1995, pp. 112-116. *Bonta, J., Rooney, J., Wallace-Capretta, S.*: Electronic monitoring in Canada. Ottawa 1999.

[38] *Alison Church, A., Dunstan, S.*: Home DetentionThe Evaluation of the Home Detention Piolt Programme 1995 – 1997. Ministry of Justice, Auckland 1998. *Bonta, J., et al.*: opus cited, 2000, pp. 61. *Smith, D.*: opus cited, 2001, p. 209. *Lilly, J.R., Ball, R.A., Curry, G.D., McMullen, J.*: opus cited, 1993, p. 462. *Courtright, K. E., Berg, B. L., Mutchnick, R. J.*: The Cost Effectiveness of Using House Arrest With Electronic Monitoring for Drunk Drivers Federal Probation 61 (1997), pp. 19-22. *Altmann, R.N., Murray, R.E.*: Variety on the Job: Special Skills, Special Duties in Federal Probation – Home Confinement: A '90s Approach to Community Supervision. Federal Probation 61 (1997), pp. 25-37. *Beck, J. L., Klein-Saffran, J., Wooten, H.B.*: Home Confinement and the Use of Electronic Monitoring With Federal Parolees. Federal Probation 54 (1990), pp. 22-31. *Enos, R., Black, C.M., Quinn, J.F.; Holman, J.E.*: Theoretical Basis For Electronic Monitoring. In: Alternative Sentencing: Electronically Monitored Correctional Supervision. Wyndan 1992, pp. 29-42. *Deborah D.*: ICM Phase III Project www.ncsc.dni.us/ICM/cedp/Abstracts/alternativestoincarceration.html (1999).

[39] See also *Wiebush, R.G.*: opus cited, 1993, p. 68 www.vadoc.state.va.us/community/hem.htm. Max-Planck-Institut für Ausländisches und Internationales Strafrecht: Laboratoire Europeen Associee. Bilanz (1998-2001) und Perspektiven (2002-2006). Freiburg 2002, p. 28.

[40] *Mortimer, E., May, Ch.*: Electronic Monitoring in Practice: The Second Year of the Trials of Curfew Orders. London 1998. *Brottsförebyggande radet*: Intensivövervakning med elektronisk kontroll. Et utvärdering av 1997 och 1998 ars riksomfattande försöksverksamhet. Stockholm 1999. *Mortimer, E., Mair, G.*: Curfew orders with electronic monitoring: an evaluation of the first twelve month of the trials in Greater Manchester, Norfolk and Berkshire, 1995 – 1996. London 1996.

[41] *Welsh, B.C., Farrington, D.P.*: Correctional Intervention Programs and Cost-Benefit Analysis. Criminal Justice and Behavior 27 (2000), pp. 115-133, p. 124.

placing imprisonment with the hope of decreasing recidivism as well as costs associated with other type of criminal justice based interventions.[42] The potential of serving as an alternative to prison sentences should be seen primarily in widening the use of suspended prison sentences, probation, parole as well as combinations of intermediate sanctions. Research has revealed also that electronic monitoring may be implemented without producing high failure rates due to technical violations.

5 Conclusions

Basically, sentencing and systems of sanctions will develop further on the basis of a bifurcated approach targeting on one hand the citizen-type criminal who, for what ever reason, has committed crimes, and on the other hand enemy-type criminals. Enemies are defined through their inability or lack of readiness to generate a minimum of basic trust or feeling of safety (which is, in principle, produced by the individual conveying the message that he or she can be efficiently controlled through community sanctions). Enemies, such as organized and rational criminals and dangerous individuals fall under the concept of enemy-type sanctions that lead to incapacitation. With electronic monitoring however, the criminal citizen is addressed. Although within the context of incapacitative measures electronic monitoring might play a certain role, the current models of electronic monitoring certainly will have no place at all within the framework of incapacitation or eliminating, criminal sanctions ultimately used to confront an enemy. Electronically monitored home arrest or electronically monitored periods of suspended sanctions certainly cannot be part of incapacitating sanctions or measures neither with the first nor with the second or third generation electronics. The whole make-up of electronic monitoring points to its use only within the civil or civilized arm of criminal sanctions. Although there are evidently conflicts as to whether assistance or control or a mix of both should be a central feature of electronic monitoring, electronic monitoring is in principle based on the concept of the citizen. A place of residence, conventional daily activities

[42] See *Petersilia, J.*: A Decade of Experimenting With Intermediate Sanctions: What Have We Learned? Federal Probation 62 (1998), pp. 3-9, and *Brown, M.P., Elrod, P.*: Electronic House Arrest: An Examination of Citizen Attitudes. Crime&Delinquency 41 (1995), pp. 332-346.

and, most important, cooperation are needed to implement this type of criminal sanction.

A second assumption concerns a general trend in the development of criminal sanctions. Within criminal sanctions addressing the citizen who has broken the law, we find in the face of the epidemic spread of criminal offences a need for the development of criminal procedures and criminal sanctions which are both simple and of a non-controversial nature. Here too, electronic monitoring will have no real place and no real role to play as its implementation and enforcement seems to be too complicated and too costly compared to summary or day fines. What remains then is an area which during the last decades has been discussed under the label of intermediate criminal penalties. Electronic monitoring will play a role and should play a role in systems of sanctions that try to offer something in-between diversion, non-prosecution policies and fines on the one hand and physical control through imprisonment on the other hand.

There are several reasons that speak in favour of this position. First, experiences with electronic monitoring have shown that there exists a certain potential of reducing recidivism as well as replacing or shortening prison sentences. Second, current models of electronic monitoring comply with the standards developed by the Council of Europe's recommendations as they are meant to create a rehabilitative and supporting environment. Then suspended sentences, probation and parole certainly can be expanded with electronic monitoring contributing to more flexibility in combining conditions of probation and suspension of prison sentence. Combining electronic monitoring with other conditions will also ultimately lead to a better fit of the sentence to offence seriousness.

From an American Point of View: Does Electronic Monitoring Have a Future in Europe?

ROBERT LILLY

It's coming to America first, the cradle of the best and the worst ...
Leonard Cohen (1992)

1 Introduction

For this conference I was asked to discuss from an American point of view 'Does EM have a future in Europe?' For several good reasons it is impossible to the answer the question as it was posed. Put simply, to offer an authoritative and singular "American point of view" would distort the complex, subtle and diffuse composition of opinions surrounding electronic monitoring in the United States. For one to claim otherwise would give fodder to the unfortunately far too often accurate assertions that voices from many quarters in the United States on European matters are generally guilty of cultural imperialism. It is nonetheless worth noting at the outset that one of the more notable features in the U.S. discussions of EM is how circumspect and restrained they have been regarding its future. Before presenting my thoughts on the future of EM in Europe, it is helpful to briefly summarize what I think has happened to it in the United States.

It is crucial to remember that the bulk of the U.S. experience with EM has been based on RF (Radio Frequency) technology. It remains to be determined how GPS (Global Positioning Systems) will be used across the nation in the future. Michigan and Florida, two of the nation's EM powerhouses already have experience with GPS. Florida currently monitors approximately 600 offenders per day with GPS.

2 EM in the United States: Boom to Bust

Currently it appears that with nearly 100,000 offenders daily under RF-EM that it is a huge success. Upon closer examination it is clear that EM has not lived up to its potential in the United States. It has hardly gotten off the ground in view of the number of offenders in the US who could be tagged. With 6 million people under some form of criminal justice supervision, EM is actually used minimally. There are several reasons for the relatively small use of EM within the United States.

First, unlike the scenario described by our French colleague during the conference's Opening Night address, EM has not become *the tool* for probation/parole officers to either manage caseloads, impress ones supervisors, or grown an agency. While on occasion ringing claims are offered in the U.S. for criminal justice panaceas – EM, shock probation, boot camps, zero tolerance and more prisons with longer sentences – they often soon loose their luster and some of them have been quickly relegated to the slag heap. Four broad factors – cultural, professional and constitutional – in the U.S. have prevented EM from becoming "the tool." Each point is overly generalized and can be easily criticized with contradictory evidence. Yet, they are useful for discussions of where, when, how and why EM has developed within the U.S. and they have relevance for discussing the EM's European future.

2.1 Anti-Centralization

The U.S. has a long and ingrained dislike for governmentally sponsored centralized control, or what in historical and legal terms is known as *federalism*. Support for this sentiment varies during times of crises such as war. During these times "grass root" or "home grown" localized control of government agencies wanes and becomes deferential to national concerns. At the heart of the nation, nevertheless, is the value so succinctly expressed by the famous Irish-American politician from Boston, "Tip" O'Neill, and former Speaker of the U.S. House of Representatives – "All politics are local."

A current anti-centralization example is illustrative. Shortly after the 9/11 terrorist attacks on the World Trade Center, President George W. Bush announced plans for the largest reorganization of federal government since World War II. The heart of the changes would be a new cabinet level Homeland Security Department based in large measure on the merging of 22 federal agencies and 170,000 employees. In the opinion of many ob-

servers, Bush's plans regardless of good intentions are very likely to fail. Not only would the proposed agency be a political liability because of his campaign pledge to keep government from growing, it is contrary to the nation's anti-centralization sentiment. According to one political science professor, "It is just too colossal, even for 'everything bigger is better' American logic." While bigger cars and houses continue to dominate the landscape, *better* is the new operative word for national government security agencies. In the words of the *New York Times* conservative columnist, William Safire who said on 11 June 2002: "We don't need more information, we need people with enough intelligence to analyze the information we already have."[1]

Just a few weeks later as the Bush administration was urging rapid passage of required enabling legislation for its proposed Homeland Security Department, one of the nation's senior and most powerful senators, a Democrat, opposed it. Partly on the grounds of haste, but also because it represented executive branch excess heavily slanted towards creating a larger governmental bureaucracy via reorganization.[2]

While RF-EM has had an impact on probation/parole in many places in the United States it has yet to become *the tool* for these agencies. Its usage is unlikely to expand because, in part, in some quarters it is interpreted as means by which centralize greater and greater amounts of information and decrease local, inter- and intra-agency decision-making.

2.2 Pro-Discretion

Professional discretion is one of the corner stones to understanding the behavior of many employees in the United States' multi-tiered criminal justice system. Police, courts and correction agencies have a long history of objecting to and often thwarting governmental efforts to narrow the scope of their professional choices. Seen in this light, the constant production of hard data by EM technology is burdensome because it can contribute to or, indeed, actually narrows the range of discretion otherwise available to probation/parole workers.

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1 *Safire, William* 2002. "J. Edgar Mueller" *New York Times*. 11 June: A-19, Col .5-6.

2 *Firestone, David* 2002. "For Homeland Security Bill, a Brakeman: Senator Byrd Slows the Process With a Demand for Deliberation" *New York Times*: 31 July: A-17, Col. 1-4.

2.3 *Anti-surveillance*

The Constitution of the United States gives its citizens a right to privacy. Government efforts to weaken privacy protection are often vigorously and unsurprisingly resisted. For example, highway surveillance cameras to catch speeders, while widely used in some parts of Europe, are still an anathema in most of the United States. In early 2002 Hawaii initiated a program involving unmarked vans armed with digital cameras that were intended to catch car speeders. Public reaction was so negative, Gov. B. J. Cayetano ordered the program to be abandoned, but not before drivers had organized a counter-surveillance response. It included illegally obscuring car license plates and using cell phones to call local radio stations to report the locations of the vans. In turn the radio stations announced the location of the vans so that drivers could avoid them. What seemed to have angered the drivers the most is that they felt they did not have the "wiggle room that they have with a police officer."[3]

Volunteering to participate in self-initiated surreptitious surveillance is another matter. In some cities today doormen in bars and shops electronically scan the driver license to determine the age of those wanting to enter. If a license is valid a red light blinks and "the patron is waved through."[4] This strategy allows the club operators/owners to not only keep out underage drinkers who use fake ID's, but also to download all the information on the license. This enables businesses to create electronic databases that contain personal and private information other than age, which can then be used for an unlimited number of legal and illegal purposes. Because laws are weak when it comes to how businesses can use such information – about 40 states embed bar codes or magnetic stripes with standardized date – privacy advocates are concerned that national databases are being constructed without the knowledge or consent of the public. EM has long been associated with Big Brother and the implications of turning home into jails and kin into agents of the state.

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[3] *New York Times*. 2002. "Drivers in Hawaii Suffer From Camera Rage." 27 Jan.:A-9, Col. 1.

[4] *Lee, Jennifer* 2002. "Welcome to the Database Lounge." *New York Times*. 21 March: D-1-5, Col. 2-3; 1-5.

2.4 *Utilitarianism*

Perhaps no other trait better characterizes the United States than utilitarianism, especially within its criminal justice systems.[5] Every state has its own approaches on how best to deal with crime and punishment. The adoption of RF-EM is another but not the latest, example of localized utilitarianism. While many, if not all states have created enabling legislation paving the way for EM to be used state-wide, no state as yet can claim that all of its probation/parole offices use it. For some offices and districts it has utility, for others it does not. Incarceration is still seen as the most utilitarian response to crime. Compared to prison RF-EM is not perceived as protecting the public. GPS technology and tracking may change this perception.

2.5 *The Future of EM in the U.S.*

Will EM be rediscovered and given a second chance? There are several reasons to think that this will occur. First, and most important, the social contexts influencing interest in security within the United States changed dramatically following 9/11. Since then the balance between security and civil liberty has changed.[6] There is little doubt the upper hand is now tilted toward greater governmental secrecy, intensified surveillance, assaults on privacy and war-like appropriations for the nation's military. The effort to create the new homeland security behemoth is illustrative. One commentator described it as "nothing less than a project to transform American society."[7] This proposal came after the nation has already enhanced its coasts, air and land borders with billions of dollars of added military security.

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[5] *Cullen, Francis T. and Wright, John P.* "Two Futures for American Corrections." Pp. 198-219. In: *Maguire, Brenda and Radosh, Polly F.* 1996. *The Past, Present and Future of American Criminal Justice.* Six Hills, NY: General Hall.

[6] *Mitchell, Alison* 2002. "The Nation: A War Like No Other: The Perilous Search for Security at Home." *The New York Times.* 28 July: Section 4 – Week in Review: Pg. 1; Col. 4. *Liptak, Adam; Lewis, Neil A. and Weiser, Benjamin* 2002."After Sept. 11, a Legal Battle On the Limits of Civil Liberty." *The New York Times.* 4 Aug.: A1-A16, Col.1-2. *Hulse, Carl* 2002. "Senate Easily Passes $355 Billion for Military Spending." *The New York Times.* 2 August: A14; Col. 1-4. *Risen, James and Shanker, Thom* 2002. "Rumsfeld Moves to Strengthen His Grip on Military Intelligence" *The New York Times.* 3 Aug. A1, C. 1-2; A8, C1-5.

[7] *Ibid. Mitchell.*

In mid-summer 2002 another plan to enhance domestic security met with mixed responses. It suggested that the post-Civil War 1878 Posse Comitatus (the force of the country) Act that forbade the use of the military to enforce law, be appealed.[8] If this proposal bears fruit it will be a radical departure from the philosophy that commits subordinating military power to civilian authority.

Still another proposal by President Bush to reduce the risks of terror asked the public to become spies in the interest of national security. The Terrorism Information and Prevention System, or TIPS, which is expected to start in late 2002, has been described as a program to have mail carriers, utility workers and train conductors pass on useful information that will be deposited in a central database.[9] This proposal was also opposed by another powerful senator, this time a member of the President's own party, who warned the nation's Attorney General: "We don't want to see a '1984' Orwellian-type situation here where neighbors are reporting on neighbors."[10]

Who will be the new targets of EM? According to a Harvard law professor who is also a member of the United States Commission on Civil Rights, "... in these jittery times, suspicion itself is like a highly charged cloud looking for something to attach itself to."[11] He was reported to have said that something is likely to exist in the netherworld of immigration and preventive detention where it is more difficult to resist the government's arguments about security.[12]

For a nation devoted to transparency of governmental actions, the public thus far has not expressed much concern about the varied forms of government sponsored security enhancements. To the contrary, the public seems to be accepting it rather willingly.

The federal government has already activated plans to expand its use of EM within its criminal justice system. In March 2002, the federal government's Administrative Office of the United States Courts contracted with Securicor EMS to an extendible five-year contract worth $30 million dollars to provide electronic monitoring. The targeted population of approximately 5,500 felony participants at any one time includes all of the

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[8] *Liptak, Adam* 2002. "Posse Comitatus Act Limits Armed Service at Home" *The New York Times*. 21 July: A-16, Col. 2.

[9] *New York Times*. "Informant Fever" 22 July: A-16; Col. 1.

[10] See fn. *Mitchell. The New York Times.*

[11] See fn. *Mitchell. The New York Times.*

[12] *Ibid. Mitchell. The New York Times.*

94 federal districts found in the 50 states, Guam and Puerto Rico. It would require little effort to expand this program to include other populations.[13]

In 2001 U.S. prison populations grew only 1 %, the lowest rate in thirty years. This development, while not a contradiction with a recent increased crime rate, is part of state searches for ways to reduce prison costs.[14] In some states, including Texas, thousands of inmates have been released on parole where EM supervision is often desired. A rebirth of EM will very likely be a significant part of the nation's current re-thinking of its three-decade heavy reliance on imprisonment.

The second generation EM technology will very likely play an important role in the rebirth of EM. It has already been tried on high-risk offenders and evaluated in Michigan, and it is currently being tested experimentally by the Department of Corrections in Florida. Unlike its RF-based predecessor that monitors presence/absence, Global Positioning Systems technology offers agencies the option of virtual tracking of offenders. Victims lobbying groups, especially those concerned with domestic violence have long advocated the development of virtual tracking as well as use of tagging.

It is against these contextual changes that EM, especially GPS with its promise of virtual surveillance, will likely boom again.

3 The Future of EM in Europe

This conference was only the latest international gathering to address EM issues. The first of several in England began in 1987 at the Canadian House, Trafalgar Square, London. It was under the sponsorship of the then Leicester Polytechnic, later DeMontfort University, which had its last EM meetings in 1990. In the interim years between then and the second workshop on EM sponsored by CEP (Conference Permanente Européenne de la Probation) in 2001, several European countries, most notably in England, developed monitoring programs. By the end of 2002, according to Dick Whitfield, approximately 40,000 offenders will have been tagged in Europe.[15]

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[13] www.uscourts.gov, Press release 19 March 2002.

[14] *Butterfield, Fox* 2002. "1 % Increase in U.S. Inmates Is Lowest Rate in 3 Decades" *The New York Times.* 31 July: A-14, C 5-6.

[15] *Whitfield, Dick* 2001. *Electronic Monitoring in Europe.* CEP Workshop Report. Pp. 1. www.cep-probation.org

The appropriate question is not does EM have a future in Europe; rather it is what will influence its future. If the past is any indicator of what is to become of EM in the future, it is very likely to be shaped by a continuation of salient shifts in Europe's social contexts including 1) a continued shift to the right on a number of issues (immigrants, rise of surveillance, decline in support for social work and probation), 2) increased concern about cost effectiveness and technological solutions within criminal justice, 3) and a growth in the influences of private business on criminal justice policies and practices. It is doubtful that any one of these factors alone is powerful enough to expand EM in Europe. When combined they suggest a climate favoring the expansion of EM. These factors are consistent with what Sebastian Scheerer identifies as three trends that are leading the way into the new millennium; the managerial, the populist and the roads toward global justice.[16] Because the conference was primarily concerned with technological issues and status reports, only one and three will be discussed here.

3.1 Shifts to the right

Without suggesting the presence of a cohesive ideological bloc, surveys and election results gave evidence in the spring of 2002 that Europe was experiencing a rise in rightwing populism. Several overlapping issues are leading this development. For France, Austria, the Netherlands and Romania it was law and order issues intertwined to some extent with xenophobia and racism.[17] Similar anti-crime and anti-immigration issues are present in Italy, Belgium Denmark and Germany. More important than any European countries particular concerns, however, is the fact that as the European Union inexorably moves toward completion: "Europeans are awakening to a less sovereign, less comfortable world, and the kind of anxiety among the elderly and poor that ... feeds the growth of the far right."[18] According to Simon Serfaty, director of European studies at the Center for Strategic and International Studies: "People feel an invisible invasion: too many immi-

[16] *Scheerer, S.* 2000. "Three Trends into the New Millennium; the managerial, the populist and the road towards global justice. In: *Green, P. and Rutherford, A.* (eds). Criminal Policy in Transition. Oxford: Hart Publishing.

[17] *McNeil, Donald G.* 2002. "Whodunit? In Europe, Of the Immigrant" *The New York Times*. 28 April: A-4. *Daley, Suzanne* 2002. "France's Nonwhites See Bias in Far Rightist's Strength." *New York Times*. 30 April.

[18] *Erlanger, Steven* 2002. "Europe's Identity Crisis" 5 May:WK-5; Col. 4.

grants, the European Union, the intrusion of American culture."[19] The nation-state identity born out of WW II is now under the pressure of globalization it is being traded for EU memberships.

The expansion of EM into European criminal justice systems at this time and under these circumstances would in no way be entirely new or novel. It would be instead a déjà vu of the 1980s' socio-political contexts of Reaganism and Thatcherism when conservative politics re-introduced privatization into the public realm of criminal justice. At the same time it would be fully consistent with the type of surveillance that was initiated nearly 20 years to police European borders, a practice now known as the Schengen Information System. Surveillance plays a large role in the EU, an extremely important point succinctly summarized by Mathiesen.[20]

3.2 Selling Justice

Twenty years ago no justice system in the world was confining criminals to their homes with the aid of EM. Today we can only guess at the number of people monitored in the interim. No doubt the total is near 1 million. To comprehend some of the contours of EM's past and especially its future it is important to locate it within what has been variously identified as the "corrections-commercial complex" and the "prison industry complex."[21] Its proponents hold that a powerful and influential sub-government exists between public and private for-profit interests in criminal justice systems worldwide.

Ten years ago this concept was useful in explaining the growth and implementation of EM in the US and the UK. At that time it was concluded that EM would continue to grow within criminal justice, in part, because it was directly linked to another and more powerful sub-government, the defense industry and its surveillance technology. Most recently the concept has been used in discussions of the legitimacy and accountability of private

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[19] *Ibid.*

[20] *Mathiesen, Thomas* 2002. "On the Globalisation of Control: Towards an Integrated Surveillance System in Europe" Pp. 167-192. In: *Green, P. and Rutherford, A.* (eds). Criminal Policy in Transition. Oxford: Hart Publishing.

[21] *Lilly., J. Robert and Knepper, Paul* 1993. "The Corrections-Commercial Complex." *Crime & Delinquency.* 39(2): 150-166. *Schlosser, Eric* 1998). "The prison-industrial complex." *Atlantic Monthly.* December: 51-77.

prisons in the UK, and in research on transformations in prison commodities advertising 1949-99.[22]

Thus far it has been all but neglected in Europe, yet it has considerable conceptual utility for understanding the future of EM worldwide as something other than just another criminal justice alternative. The very able European conference attendees, for example, seemed to be either uninterested in the socio-political and economic nexus behind EM, or unwilling to grapple with this point. No one, for example, discussed the future of EM in Europe in terms of it being *sold* by what Feely recently calls the entrepreneurs of punishment. He claims that privatization in corrections has a long history of creating demand for alternative services and then supplying new forms of social control. Nor, it seems, have the attendees at previous EM conferences been aware of the influence that the EM businesses/vendors already have had on the practice of probation where EM is used. Neither has interest been expressed in the recent development or implications on both sides of the Atlantic of a new type of criminal justice professionals, those who have shifted employment from probation to private sector EM vendors. In early 2002, for example, two former managers in England's Probation Service, both with more than 20 yrs. of experience, were working in high-level administrative positions for a private EM vendor in western England. Nor is there any research on the even larger number of vendor employees who have no previous criminal justice experience but who nevertheless do the actual ground work of monitoring the equipment that monitors offenders.

The political and business interests that have thus far driven the growth of EM despite the glaring lack of data that demonstrates some as simple as a long-term reduction of prison or jail populations has also been neglected. England and Florida, two of the world's powerhouses in the initiation, development and growth of EM, nicely illustrate this point. It remains to be seen if Europe follows the same path. Fortunately there is enough time to examine this important nexus.

While criminal justice policy transfer does not always flow from the US to Europe, it is crucial to remember that it did in the case of EM.[23] This

[22] *Genders, Elaine* 2002. "Legitimacy, accountability and private prisons" *Punishment and Society*. 4(3) July: 285-303. *Lynch, Mona* 2002. "Selling 'securityware': Transformations in prison commodities advertising, 1949-99." *Punishment and Society* 4(3) July: 305-19.

suggests that current cutting edge EM developments in the US whether they are technological, business-based or both potentially have great import for what might be part of EM's European future. Florida's initial use of GPS is illustrative because it demonstrates how a 1) former elected high-level public official has influenced the adoption of GPS by 2) emphasizing its "...tracking technology is the same used by the [US] Defense Department to locate troops and equipment on a battlefield."[24]

Between 1987-1991, Bob Martinez was Florida's governor and the city of Tampa's mayor from 1979-1986. He was defeated for re-election to the governorship and was soon hired by then-President Bush to be the federal government "drug czar" as head of the White House Office of National Drug Control Policy. This happened despite the fact that drug related crimes soared in Florida while he was governor. The irony of the appointment was not lost on one critic who candidly asked: "You couldn't do nothing about drugs in your state because all of your friends was the dope dealers. What do you expected to do on the national level?"[25] To counter his flagging public image Martinez hired a "spin control" expert who had once helped alter the public image of former President Reagan's wife, Nancy.[26]

Criticism nevertheless followed Martinez when it was made public that after his election defeat he divvied up $63,000 in leftover campaign funds by giving $61,000 of it to the Republican Party of Florida for the purpose of getting President Bush re-elected. A little more than a year later he was associated with a bank scandal when it was revealed that while [1979-1986] he sat on a bank's board of directors it made more than a dozen loans to four members of a crime family who "were later convicted of large-scale drug trafficking."[27]

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[23] *Nellis, Mike* 2000. "Law and Order: The Electronic Monitoring of Offenders." Pp.98-117. In: *Dolowitiz, David P. et al.* Policy Transfoer and British Social Policy: Learning from the U.S. Buckingham: Open University Press.

[24] Sun-Sentinel Wire Service.1997. "Ex-Governor's Company Wins Contract." *Sun-Sentinel.* 8 January: 6B.

[25] *Crawford, J. C. and Groer, Anne* 1991. "In the Hot Seat." *Orlando Sentinel Tribune.* 23 June: G4.

[26] *Holton, S.* 1992. "Martinez's 'Spin Control' Has $112,100 Price Tag." *Orlando Sentinel Tribune.* 6 April: A1.

[27] *Danielson, R., Carlton, S. and De La Garza, P.* 1992. "Martinez owns stock in bank under investigation." *St. Petersburg Times.* 12 August: 1B.

None of this seems to have had negative impact on his business interests. By 1999 Martinez was haled for his ability to lure big businesses to Florida and for his expertise in international trade issues. One example of the latter involved the selling of cellular phone services in the Czech Republic.[28] Prior to this in February 1996 when the press announced that Florida's Department of Corrections (DOC), which Martinez oversaw 1987-1991, was interested in using "orbiting wardens" [GPS] for some of its offenders, he and his son, Alan, were identified as a partners in the company – Pro Tech Monitoring – that the DOC indicated it might use. The company had previously pitched its "product at a recent convention of the American Probation and Parole Officers Association in Portland, [Oregon]."[29] There it emphasized that a team of aerospace engineers who relied on GPS used by the military developed the monitoring system.

In January 1997 Florida's DOC signed a five-year contract to test a new criminal tracking system called the Smart System. The equipment for the GPS-based technology came from ProTech Monitoring. During the first year of the agreement Florida promised to pay $ 340,000 to Pro Tech. "The company was the only bidder on the contract."[30] According to Martinez, Pro Tech's president, the system would keep a constant eye on criminals and save money.

Another useful demonstration of the linkages between offender monitoring and defense contractors occurred in November 1997, when BI Incorporated announced an agreement with Harris Corporation to market Harris' MicroTrax technology for criminal justice applications. BI is the "largest manufacturer of offender monitoring equipment [in the US] while Harris Corporation sells four billion dollars of products each year in the defense, communications, and office equipment sectors."[31] To neglect this type of information, to not inquire about its implications when considering the future of EM in Europe would be like the ostrich with its head in the sand. EM vendors have powerful and influential allies that can exert significant

[28] *Parks, Kyle* 1999. "Martinez tapped to help lure business of Tampa." *St. Petersburg Times*. 8 January: 1E.

[29] The Associated Press. 1996. "Officials Seek to Test 'Orbiting Wardens.'" 17 February: 3A.

[30] Sun-Sentinel wire services. 1997. "Ex-Governor's Company Wins Contract." *Sun-Sentinel*. 8 January: 6B.

[31] *Renzema, Marc* 1998. "Alternatives to GPS." *Journal of Offender Monitoring*. Spring. Pg. 13.

influence for adopting technology that has yet to demonstrate long-term benefits.

4 Conclusions and Recommendations

Initially EM developed on both sides of the Atlantic during social and cultural shifts that ushered in increasingly conservative criminal justice polices. Currently similar changes are sweeping Europe as well as other parts of the world and there is little indication they will soon disappear. Under such conditions EM may very well flourish in Europe, especially in view of the fact that real tracking with GPS-based technology is rapidly developing. Marketing research in the US, for example, has recently estimated that as many as 100,000 offenders will be followed by this technology by 2006.

The future of EM in Europe will not be based on criminal justice needs alone. Personnel from social work and probation will very likely influence it immeasurably by taking their expertise to the private world of punishment technology. Defense-based surveillance technology will no doubt continue to be civilianized with more and more rapid adoption as distances shrink, borders fade and personal privacy is either compromised or totally lost.[32] Despite this somewhat bleak assessment, two recommendations based on 20 years of observing the development of EM may ease the inevitable.

First, criminal justice personnel including high-level government officials should design well thought out programs about what they want to accomplish with EM *before* seeing monitoring equipment vendors. This is no easy task because it easier, more interesting and exciting to look at the equipment first. Vendors, after all, are entrepreneurs whose bottom-line interest is to beat the competition and have a profitable market share.[33] Their livelihood both individually and collectively is based on their ability

[32] Even Japan, a longtime bastion of emphasizing privacy over efficiency now has mandatory national computerized registry. See: *Brooke, James* 2002. "Japan in an Uproar as 'Big Brother' Computer File Kicks" In *The New York Times*. 6 August: A3; Col. 1-4.

[33] This is not the place to discuss this point in detail, but it is important to recognize that the EM industry has a long and intriguing history of litigation involving such matters as patents, product liability, non-performance of equipment, and predatory pricing. These disputes have been intra- as well as international.

to persuasively describe and illustrate their products to professionals in criminal justice whose expertise generally have little exposure to cut-throat capitalism and cutting edge technology. It is because of this that they have a great advantage especially at the initial stages of EM programs. But it must be remembered that EM generates enormous data and provides unexpected as well as expected opportunities for change. Planning for this in advance cannot be overemphasized. It is a reasonably safe and sane way to prepare. Hundreds of thousands of dollars of EM equipment in the US is presently unused in large measure because of lack of sound planning.

Second, it is also crucial to expect technology-related glitches. There is not a monitoring program in the world that has avoided them. Circumspect reactions during these times are prudent. More often than not the reactions have been knee-jerk responses from hostile audiences with agendas in competition with EM advocates. Hopefully the future of EM in Europe will benefit form its past.

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