

Day One

Intensive Supervision/ Electronic Monitoring/GPS

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SUMMARY

Technology's role in supervising individuals is on the rise. This panel discussed technologies currently being used to enhance supervision, including monitoring through radio frequency and active and passive Global Positioning Systems (GPS). These technologies are often referred to collectively as "location monitoring." While the focus of the use of these technologies—and new ones being developed and tested, such as hybrid tracking systems, real-time transdermal alcohol testing, and television tracking—is currently on enhancing existing supervision rather than as alternatives to incarceration, they could be used as alternatives.

The panelists also discussed the limitations on the effectiveness of these technologies, and raised privacy and implementation concerns related to their use. Some limitations are due to "environmental obstacles" such as storms, subway travel, and landline telephone interruptions. An interruption in monitoring due to an environmental obstacle acts as an alert that must be investigated by law enforcement officers, even though it may prove to be innocuous. Other limitations are due to the surveillance purpose of the technologies and the fact that, in order to change behavior in the long term, quality person-to-person supervision and treatment must accompany the monitoring. Privacy and other civil rights concerns were discussed, including due process and Fourth Amendment challenges to the use of these monitoring devices; the question of who owns surveillance data and how long this data can or should be preserved; and the "net-widening" use of these technologies being added to incarceration, rather than serving as alternatives to incarceration.

Finally, the panel addressed the importance of continuing evidence-based research in order to determine the areas in which, and populations for whom, these technologies can be effectively used. One panelist discussed conclusions from various studies examining these technologies. Among other things, the studies concluded that while monitoring is capable of identifying certain risks and determining whereabouts, it cannot change behavior; electronic monitoring is generally ill-suited for mentally ill individuals or addicts who are actively abusing substances; and recidivism rates appear to be lowered by the use of electronic monitoring in the short term, but not in the long term.

INTENSIVE SUPERVISION/ELECTRONIC MONITORING/GPS

COMMISSIONER HOWELL: Good afternoon, everybody. My name is Beryl Howell. I'm one of the commissioners on the Sentencing Commission. And I think we are going to have a very interesting breakout session this afternoon talking about different technological means that can be used for intensive supervision and electronic monitoring and location information.

One of the things that we hear about quite frequently these days is how we're living in a surveillance society, and usually that has a very negative connotation. In the sentencing context, though, I think some surveillance technologies may hold out some hope for serving as an alternative to incarceration, for helping judges evaluate whether an alternative to incarceration might be a viable option, if a judge can assure him or herself that some of the risk to public safety, risk of failing to comply with conditions, can be mitigated by use of some technologies.

I think what we're going to hear about this afternoon is specifically about what some of those technologies are that are available and being used now, what some of the technologies are that may be coming online in the future, about their costs, and also about how technologies are no panacea and what studies and experiences have shown about their effectiveness and their limitations, as well as implementation concerns.

Each panelist in our format will speak for about ten to 15 minutes, and then we're going to leave hopefully some time at the end, although we're running a little short, for questions. So I'm going to introduce each of the panelists now in their speaking order, and then we'll start with the panel.

To my left is Mr. Trent Cornish. He's worked since 2005 at the Administrative Office of the United States Courts as a probation and pretrial services administrator, and he's responsible for overseeing the Federal Location Monitoring Program. He has a very interesting presentation for us. Previously he served as a senior officer and a supervisor in the District of Maryland's U.S. Pretrial Services Office, and as a state probation officer in Virginia. He's a graduate of Radford University and of the Federal Judicial Center's Leadership Development Program.

To his left is Mr. Thomas Williams. He's the associate director for Community Supervision Services for the Court Service and Offender Supervision Agency for the District of Columbia and is responsible for the delivery of parole and probation services in the District of Columbia for offenders who are sentenced in the superior court in this district. His staff includes over 400 community supervision officers and supervisors.

To his left is Ms. Olinda Moyd. She's chief of the Parole Division for the District of Columbia Public Defender Service and has served on its staff since 1998. Ms. Moyd previously served in the legal department of the national office of the NAACP and at the ACLU National Prison Project and on the staff of the D.C. Public Defender Service. She's a graduate of Ohio State University College of Law.

To her left is Dr. Marc Renzema. Dr. Renzema is a professor of criminal justice at Kutztown University where he teaches research methods, corrections and substance abuse. He previously taught at Indiana State University and was a psychologist at the New York State Department of Correctional Services. He also founded an offender monitoring newsletter that later became the *Journal of Offender Monitoring*. He is the former editor of the *Executive Exchange* which is a publication of the National

Association of Probation Executives and has been on the editorial board of the *Community Corrections Reporter* since 1993. His bachelor's degree is from Johns Hopkins University, master's degree from Temple University (both in psychology), and he has a doctoral degree in criminal justice from the State University of New York at Albany.

So, with that, we can turn to Mr. Cornish.

MR. CORNISH: Good afternoon. Most importantly, I want to thank the Sentencing Commission for the invitation. It's my pleasure to be able to spend at least 15 minutes talking a little bit about the program in the federal courts, what location monitoring consists of, and to give you some advice or maybe even tips on how to use it in the federal system. But, most importantly, one of the things I want to emphasize, is how GPS, radio frequency, all location monitoring technologies can be used as an alternative to incarceration.

And, in general, as I go through my presentation, I would think about it this way. Think about it from a judge's perspective, and you have a defendant or an offender either being sentenced or being considered to be released on supervision, and they pose a risk. There has been an identified risk that needs to be addressed as it relates to his or her location in the community, and if it weren't for one of these technologies, the judge may not consider release, which ultimately can lead to increased incarceration. So I'd ask you to think about it that way.

Regarding the program itself, a lot of you probably recognize the old name, the "Home Confinement Program." It's now called the "Location Monitoring Program." This particular program and the policy were just recently endorsed by the Judicial Conference and, most significantly, the name change. Location monitoring represents what we do, in that we're monitoring a defendant or offender's location not only in the home, but in the community now. The technologies have emerged so it gives officers and the court the ability to have conditions that can monitor a defendant or offender in the community, not just in the home, so that explains the name change to a Location Monitoring Program.

The one thing I also want to emphasize is to consider the program a tool bag, and this tool bag can consist of many, many different tools. Now going back to 1986 when the program was first created, the only tool that was really out there, if you can even consider it as a tool, is a random telephone call, and it was a curfew monitoring program that took place. Really, the only way of monitoring that particular condition was through random telephone calls, and we quickly realized that wasn't exactly efficient.

When I was an officer in the early '90s, we used to monitor defendants and offenders through that random telephone call. We did a little experiment and we called ten offenders one night. Nine of them were home, one wasn't. The next night we said, "You know what, we're going to call ten of them, and then we're going to call them right back ten minutes later." Seven of them the next night were not home on the second call. So you can see the need there for some more efficient type of technology, more continuous, more effective.

Going back to the tool bag concept, here's an analogy for you. Hypothetically, my wife asks me to do some home repair job. I have this trusty little screwdriver that I love to use each and every time. It's got a little magnet on the front that keeps the screw from falling off. I love it. I use it every single time for every project, no matter what.

Now the problem with that is, as the project changes, I'm trying to accomplish or do different things, but I'm most comfortable with that screwdriver. I need other tools to use. Those tools may or may not be available. The bottom line is, every project—pretend the project is a case—needs to be handled on a case-by-case basis. You may have to use a different tool depending on the needs and depending on the risks. I'll go through the different types of technologies, but the point is, one of the challenges of the system is that there's no cookie-cutter approach. You can't match GPS up with a specific case and then use it on a hundred offenders unless you do it on a case-by-case basis.

It's all about risk, to manage or mitigate an offender's risk, such as the risk an offender poses to a specific person or the community. It provides the capability to enforce and monitor an offender's compliance with one or more conditions of supervision. That's something else I want to emphasize. Previously, primarily with the RF or the radio frequency technology, the primary condition that was monitored in the past has been the components of a curfew, home detention, home incarceration, everything about monitoring that person in his or her home.

Now with the different technologies that I'll talk about, such as GPS, it gives an officer of the court the ability to use the technology to monitor pretty much any condition. For example, if you have a high-risk offender who has a stable home and stable employment, but they pose such a risk that the judge wants to know specifically, "Make sure they're home; make sure they're in their employment." Okay. Now we can do that. We can enforce the employment condition through GPS technology with an inclusion zone, and I'll talk more about that in a little bit.

More principles of the program—one of the differences now compared to the past, it can approve an offender's location in a home, or in a community, and it can also provide tracking of an offender into prohibited areas, for example. It establishes 24/7 accountability, and I'll emphasize the word "accountability" over and over again throughout this presentation.

These are the various types of technology that are currently offered in the federal courts now, going from the least restrictive to the most restrictive. I use the terminology "least restrictive to most restrictive" over and over again. When it comes to addressing risk, for the most part, whether you're trying to fulfill a sentencing objective or an alternative to detention pretrial, you should start with the least restrictive condition and then move your way up to the most restrictive condition.

In the United States courts, we have two contracts right now that offer all the technologies that I just talked about, called "B.I." and "G4S Justice," and the courts may order those services off of that particular contract through funding that they receive. Training is available through the vendors. The vendors are required to provide at least yearly training. In some districts that training is for the entire court family.

One of the things I want to talk about, too, is what services are available, because I'll get a call that says, "Well, Trent, we don't have GPS in our district."

Well, you do have GPS in your district. Your local probation/pretrial services office may or may not have decided to order those services quite yet. Maybe they haven't been trained on it. But from the national level, all of the technologies that I just showed on that list are available through the national contract.

Now keep in mind there are resource decisions that go into that, but one of the things I want to emphasize is that all of those technologies are available on the national contract.

The role of myself, and particularly OPPS, is basically we developed a national policy on location monitoring. The monograph was just approved by the Criminal Law Committee and the Judicial Conference, which now includes GPS guidance. We also are responsible for the program management and the oversight of the two contracts. We establish the requirements for the national program and, as new technologies come out, we test the technologies and, depending on the effectiveness, add them to the national contract.

How is it utilized in our courts? Again, I'm emphasizing the use of the technology on a case by case basis. The type of technology selected always should be based on the sentence and identified risk factors. The emphasis again is on going from the least to the most restrictive, or vice versa, depending on offender's supervision adjustment.

There will be a time when there's one piece of equipment and one software that gives an officer the ability to go in and change technologies throughout the day. I'll talk a little more about the different technologies, but right now that requires a separate piece of equipment, for the most part.

I'm going to get right into the type of technologies. Voice ID recognition. Voice ID recognition is one that is proven and has become more and more accurate, but is particularly underutilized in our system, particularly on lower risk defendants or offenders.

I got the five-minute warning, so I'm going to whip through this. The voice verification systems are very cost-effective and no traditional electronic monitoring is required for this type of technology. Again, it targets low risk offenders, but it's not continuous monitoring. As far as cost effectiveness, it's about \$1.65 per day.

Radio frequency is the most commonly used technology right now and radio frequency is simply the technology that verifies whether someone's home or not. Through their landline it detects the presence of the transmitter worn on the offender's ankle. For example, everyone knows what the Martha Stewart case was. That was an example of radio frequency. That was also an example of how electronic location monitoring should not be used, from our perspective, because it didn't address a risk.

Right now there are 5,500 defendants or offenders in our system on RF technology. There are 25,000 defendants or offenders who, during the course of the year or at some point in time, are under some form of electronic monitoring.

RF, as it's commonly referred to, is ideal for continuous curfew monitoring in the home and very cost effective, as well, for a lock down status. What we see a lot in the system is GPS on folks who are locked down in their homes. Well, they're never monitored in the community, so why pay the cost of GPS when you can use RF for half the cost, when all you're doing is monitoring them in their homes?

A little bit about the misconceptions of GPS, what it can and can't do. The larger tracking device unit itself is monitored through GPS. The offender has to carry that around with him at all times. That's what acquires the signal and tracks his or her location. A lot of times I get the question, "Well, what prevents them from just leaving it on their desks and walking away?"

Well, the transmitter on the ankle is a cellular service signal and that transmitter is detecting the presence of that tracking device at all times. So the technical term is “tethered,” and what that does is generate an alert to the officer if that offender left that tracking device behind.

GPS—two forms, active and passive. Active is real time. I know I only have a minute or two, but I’ll talk a little bit about some of the environmental challenges. We use passive right now more than we use active technology, but the misconception is that at any given time when an offender is in a location where he or she should not be, then in real time the officer’s going to get that alert. Not with passive technology. The information is not downloaded until such time as the offender returns home and actually docks the unit. That’s passive, and there’s a difference in the cost between active and passive, about three dollars.

Again, GPS is ideal for monitoring offenders who have a condition with a prohibited area. It’s called an exclusion zone or even an inclusion zone. Like I said, the employment example. I can think of many examples for inclusion zones. It could be a drug treatment center from 6:00 to 8:00 every evening.

In the federal system we’ve taken a very deliberate approach. We only have right now 400 defendants/offenders monitored in our system. Because of the labor intensive nature of the work, you can only manage so many cases. And I think one of the other presenters is going to talk a little bit about that particular aspect.

Just real quick I’ll show you some examples of some zones and some mapping. This will be where an offender’s either working or at home, and that’s the zone around him. That’s the zone where they’re allowed to be during prescribed hours. If they go outside of that zone, the officer would get an alert.

Here’s an example. The blue are just simply tracking. This is the offender’s movement. The green is an inclusion zone. That’s where they should be during prescribed times. There’s an exclusion zone in the red which would show if the tracking went into that exclusion zone and it would generate an alert, assuming you have GPS and cellular service technology at that time.

The alert notification system, to wrap things up. It’s one of the most important protocols that, I think for the most part, is difficult to understand. On average, our federal probation officer can get potentially up to 20 alerts for every one case, so every time there’s an event, it can generate an alert. Most of those alerts are what we call innocuous alerts, and what we mean by innocuous is they left early, they came home late, they accidentally drove through a zone because of a traffic jam.

But the one thing to remember from this presentation, is the labor intensive nature of the work, because every alert requires some sort of investigation. The officers have no idea whether it’s an innocuous or an accidental alert or not, but they have to investigate each and every alert. The alert is just information. The officer still has to produce a pretty significant investigation for each alert.

One of the things our policy emphasizes is the 24/7 nature of the work. When we were preparing this policy document, we met with one of the judges advisory groups, and one of the things a lot of the judges emphasized was to make sure that this was a 24/7 program. That means that judge expects that if there’s an alert at 1:21 a.m. on New Year’s Eve, that there’s an officer who’s going to get that alert, investigate that alert, and respond to that alert. So that’s an important notation to make as far as our

program. Again, the violation is not based on the alert itself. The violation is based on the investigation that the officer produces.

I know some of the others are going to talk a little bit about this—limitations, environmental technology constraints; those are always a consideration. I'll wrap it up just by giving you one example. We just tested some GPS software in New York City where they're using a different type of technology, and it was supposed to be advantageous in the city as it relates to skyscrapers and traveling through zones. Well, we tested and we put five officers on that technology, and even though it was better than any other technology we use, we still generated 12 alerts per night in the city setting up zones, and that was just a matter of them getting on the subway, losing the signal, getting off the subway. That generates an alert each and every time. Keep in mind the way the technology works; you assume they get on the subway. You don't know. You get an alert saying no GPS signal. You don't know they got on that subway. If their subway ride is a two-hour ride, there's a two-hour window where they're not being tracked, so that's another misconception related to GPS to keep in mind.

There is some technology out there right now, particularly a one-piece. I have an example of it right now. This is the one-piece unit. You can come up and look at it. But basically what this does is it has cellular and GPS service all in one, so there's no tracking device anymore.

There's television technology and testing right now, which sounds very "Big Brotherish," but it is, in fact, in testing. It is a vendor's effort to interface the technology from either a transmitter into the programming of digital television, so when offenders walk into their home, through the presence of their television it would track their location. Again, there's no plan to add that to the national contract, but a lot of folks ask what this television tracking is about. We'll hold the questions until the very end. Thank you.

COMMISSIONER HOWELL: Thank you. Mr. Williams.

MR. WILLIAMS: Good afternoon, everyone. In the interest of time, I'm probably going to skip a couple of slides, but my responsibility today in terms of presenting is to kind of give you a local flavor of how we're using GPS in our agency as opposed to what's going on on the national level.

Just very brief history, our agency is an independent agency under the Department of Justice. We were actually created in 1997 through an act of Congress. So basically what we did was took two independent state-wide functions and then melded them together, parole and probation, and melded them under one umbrella. So what used to be the former D.C. Board of Parole and also D.C. Probation no longer is in existence. Our agency, Court Services and Offender Supervision Agency, is the agency now responsible for the supervision of offenders who actually come out of the Superior Court for the District of Columbia versus the U.S. District Court.

So we have about 15,000 offenders under supervision. About 60 percent of them are probation offenders, and about 40 percent are parole and supervised release offenders, since in 2000 the statute did away with parole in the District of Columbia.

I will talk a little bit about some of the reentry challenges that we have, and how we use GPS to help us with some of those challenges. This chart depicts some of the issues that our offenders face when they come home in terms of community support, employment, or the lack thereof. About 47 percent of

our offenders under supervision are employed. You can see that's a challenge, with folks coming back, and sometimes with those folks that are going to court, in terms of this whole issue of employment. That can impact a person's length of stay under supervision through us.

Housing is another important thing that we run into with guys coming back from prison. In terms of stable housing, as most of you know who are familiar with D.C., a lot of areas that used to be affordable, in terms of housing for the offenders, no longer exist. A lot of our offenders' families have moved to other locations either in Maryland or Virginia, so coming back to D.C. really makes a challenge for them if they want to have a place to stay. And, unfortunately, we don't have a viable home plan for a person who wants to come back to D.C. We have to either put them in a shelter, or find transitional housing before we can get them a more stable environment to live in.

Substance abuse is another challenge that we face. About 70 percent of the folks who are coming back to us have some kind of substance abuse history. And, as a result, if you combine the substance abuse, lack of employment, lack of housing, and issues in vocational/educational development, and then involve the criminal associates, you've got a real bad mix there for guys to get back into. I guess I should say, difficulties of that kind lead them back into prison.

When we test the population academically, about 40 percent of them have less than a high school education or GED, and a pretty good percentage are really testing below adult basic education, at the eighth grade level and below. That also brings challenges for us, as we try to get folks into that employment realm as well.

So what do we try to do? Well, certainly what we want to do is decrease violent re-arrests, drug re-arrests, but we definitely want to increase employment retention, housing, and social function with the folks that we're charged to supervise, the academic levels, as well as treatment stays—that's length of stay in treatment.

One of the things that we're fortunate to have within the agency is that a lot of the services that are traditional parole and probation, we have to broker. We're able to fund within the agency, so we're able to fund as we test the population to determine if there's a treatment need to put them into various levels of care.

We have what we call "learning labs" on site in our field locations where, again, we can test the population or see what comes from the Bureau of Prisons, in terms of their academic levels, and engage them in increasing their academic services. We also have employment counselors. So one of the things that we're attempting to do as we do our assessments is to determine where that person is and then try to put them in some type of service or programmatic service so that we can then reduce their propensity to go out and commit criminal offenses.

This is a study that Mr. Aos was talking about earlier this morning. And he had this in the middle range of his slide. This is one of the things that we're trying to focus on within the agency. As he indicated today, if you can couple intense supervision with treatment, with the studies that they looked at, there is at least a 16- or 17-percent reduction in terms of success and also a reduction in crime. And also you can see the cost benefit of that to the population as well as the other cognitive behavioral treatment and as well as employment in terms of those net effects.

So we've taken some of the literature that's out there currently and tried to bring it within the agency to help us to manage the population as we do our assessments, and that's key for us. Our assessment is actually built within our system, something that we built ourselves. Within the first 25 working days, if a person's granted release to us, then we will then do our assessment. Then based on that assessment we'll determine what his plan of supervision is going to be and actually include it in our information system for the staff.

This is another study that's yet to be released, this federal probation study. Again, it shows the nexus between employment, either at the beginning part of supervision, or at the end of supervision, and also various levels that the person has as he's assessed. And basically, in short, we don't try to spend too much time with low-risk offenders, but certainly look at the high-risk offenders and then where they are with respect to coming out of supervision and their employment status. So we are putting a lot of emphasis in trying to get folks employed, not just to get a job, but meaningful employment.

One of the things that we're attempting to do within the agency is to try to tackle that employment question right out front because, as this study is indicating, there's a greater propensity for the persons to complete the period of supervision satisfactorily, particularly at that high-risk level, if we can get them employed in the short time that they come to us or are under supervision.

So you say, "Well, how does all this relate to GPS?" Well, as a result of our screener instrument, we will then determine the risk and needs of that offender under supervision, and we use GPS as one of the strategies for supervision as opposed to an "alternative" to incarceration.

One of the things that we're looking at through our auto screener, which is our risk and needs screen instrument, is what we see as a potential risk for this person. To give you an example, people come to us for supervision, and we will help them with job leads, where we work with our employment counselor to try to get employment, and we really will give them about 30 days to get employment.

But one of the things that we have found, if we have recalcitrant folks, that is, "I'm not really getting up in the morning and going to look," or "There's no job out there for me, so I'm not going to look," well, what we'll do is put that person on GPS. Fortunately for us and also for the person that we put on GPS, in a short time they will get employment. That's kind of a miraculous thing with us, if there are no jobs available at first, we put them on GPS and then they will get employment. And then they'll come back into the office soon after getting employment and say, "Okay, now you can take the unit off," and we say, "No, we want you to maintain the employment, so let's wait 30 or 60 days and see if you will maintain that job." And we've had some success particularly in that area in terms of getting employment.

We also have specialized units where we will use GPS, particularly with our sex offenders. The child molesters is one offender group that we will use the GPS on. And we have one unit which is demonstrated here. We have active, passive, and what we call a hybrid unit. And with the hybrid unit we can change it from active to passive pretty much by just calling the vendor.

Our GPS unit is a web-based unit, so when we hook the person up on the unit, then our staff is actually able to go on the web, and then if we have them on an active system, can track them in real time, or if they're on the passive system, we can then check the next day to see what the tracks have been. And if we have a person on one of our hybrid units, and we determine that we want to, then click it over from

passive to active, we can do that by just making a phone call. We have about 700 folks on our GPS units currently, and by the end of this month, we'll probably be up to 750, close to 800, on GPS.

We also have trained several law enforcement entities within the District and Maryland in our GPS unit. We do what we call "accountability" towards our high-risk folks, and then, during those accounting tours, we have trained the Metropolitan Police Department to access through the web anyone who's on GPS for us. MPD has actually used our GPS environment to help them to solve crimes.

To give you an example, we had a situation where, unfortunately, one of our offenders was committing several burglaries in hotels in Virginia. They had a suspect. They wanted to know if we had him on GPS, which we did. They asked us for the tracks of that person and, unfortunately for him, we were able to pinpoint him doing these burglaries at the time that law enforcement had, as well.

The other way that we can use GPS from a law enforcement standpoint is with regard to the sex offender. We had a gentleman who was on supervision through us who was a rapist. I think that was his charge. The officer was checking his GPS. We had him on an active system, as a matter of fact. The office came in that morning, checked the GPS, saw him, and determined that he was at a motel on New York Avenue. We contacted MPD, went to the location where he was, and he was in the room with a prostitute. We then had the MPD officer get a search warrant for his home, and then we went into his home, and we found several weapons as well as ammunition, as well as some other information that he really wasn't supposed to have as a result of his release on supervision to us.

So we're using GPS for several purposes, one of which is as a sanction for non-compliant activity. We also use it as a way to try to manage offenders within the community, particularly the high-risk folks that we have under supervision. And normally our range for GPS is anywhere from 30 days to 90 days, but we may expand it depending on the person's compliance levels with us.

Again, just to give you an example of the various populations that we do use GPS on, we do use it as a curfew, as well, for certain populations. When I mean curfew, if we want to restrict the person's movement from his home, or have him be at home during certain hours, we will actually use it for that. The offices within the agency have responsibility for managing that population. We have a unit of five folks who will do the enrollment for us for GPS, but it's the office's responsibility to manage the activity and the GPS units. And, as I indicated before, we train several law enforcement agencies within D.C., as well as in Prince George's County and Montgomery County. They, too, can have access to our GPS units.

One of the things that we work with MPD on is particularly around our high-risk sex offenders as MPD doesn't have the ability to pull up a GPS in its vehicles on its PC for anyone that we collectively have an interest in. Since we make our visits with law enforcement in the community, they pretty much know who the higher risk folks are, and any time that they have a need to check, they certainly can do that.

QUESTIONER: How long do your records exist? In other words, is it sort of like videotaping that's recorded over?

MR. WILLIAMS: No, it's forever. It's maintained by our vendor, so any time that we need it, whether it's a year or two years, we can actually go back and then pull the information up. I think that's all. Thanks.

COMMISSIONER HOWELL: Ms. Olinda Moyd will speak next.

MS. MOYD: Thank you. You might ask the question, "Why is a defense attorney on a panel to talk about GPS monitoring?" At the Public Defender Service here in the District, we have a division that specifically was created during the discussions of the Revitalization Act, to represent every individual in the District who says that they want representation at a parole revocation hearing. So we have ten attorneys in our division who represent folks facing revocation before the United States Parole Commission. We represent about 2,200 individuals at hearings before the United States Parole Commission, and I've been tasked with the responsibility of raising questions about whether or not we are over-using the GPS and other types of monitoring systems.

I hope that during the presentation we will raise those kinds of questions, you know, how far do we go? Do we move to a society where half of the population is on some form of monitoring, and the rest of us are charged with tracking those monitors? Again, how far do we go?

Most states have, at this point, passed legislation that requires certain individuals to wear GPS devices in order for their movements to be recorded and transmitted. One of our presenters before has already talked about the types of GPS monitoring, active versus passive monitoring.

The populations thus far that have been targeted for GPS use include sex offenders, and you've heard discussions about that group, domestic violence cases, gang members. In California you'll see GPS devices used for tracking individuals who are known to be involved in gang activity. Probationers and parolees certainly are a targeted population. In some jurisdictions we see that devices are being used to monitor juveniles when they are not in school or when they are not where they're supposed to be.

I also came across some studies that show that devices are used by parents to just keep track of their children. There's been a lot of discussion about using it in the work place, using it for tracking employee activities, and also using it for individuals who are mentally ill. There are several studies that talk about using GPS devices for folks who suffer from dementia to keep track of where they are.

GPS devices are quite effective when they are used in lieu of prison, for several reasons. The offender is in a less restrictive environment. It helps to facilitate successful reentry. The person is allowed to be in the community, to make those community connections. It's also less costly, and Mr. Cornish talked some about the cost that's associated with the various types of GPS monitoring equipment.

But there are some challenges that come with using GPS equipment. Some of those challenges include equipment failure, malfunction. It does happen. Equipment tampering—we do have offenders who believe that they are quite innovative and can devise a way to try to remove the equipment. Insufficient manpower—that's a big issue. There are many studies that talk about the use of GPS that raise the issue of whether we have enough staff at the supervision offices. Do we have enough staff in the courts to continue to monitor the equipment once it's put on a large number of individuals?

Low battery, improper charging—in our practice we see very, very often individuals who are facing revocation before the U.S. Parole Commission because one of the chargers is improperly charging. When the device is placed on the individual they have to sign a contract, and as a part of that contract they say that they have to put the device on a charging [inaudible]. They have to charge it two times a day for at least 35 minutes a day. We often we see cases in which a person is facing revocation before the U.S. Parole Commission because of improperly charging the device, not leaving it plugged in long enough, or falling asleep with it plugged in. All of those things can affect the charging. Dead zones—Mr. Cornish talked about even the best devices—you're going to have some areas where a person cannot be tracked. Challenges with the use of the equipment also include overusing the equipment.

Again, how far do we go? How many people do we put on GPS? Placing folks on the GPS does give us a false sense of protection. It doesn't make our society any safer when we have 50 people on the GPS monitor versus 600 people on GPS monitor. It does not prevent a person from reoffending. Placing a person on GPS alone does not prevent a person from reoffending. GPS also cannot replace supervision, the human interaction, the human factor that must come into play. It's not a substitute for the human factor. There's little evidence that GPS without any treatment and services does anything to change offender behavior.

If the goal of supervision is to change the person's behavior, placement on GPS alone, without treatment, without services, does not benefit us to that end. Even when violations are reported, there must be an investigation of the information to determine whether or not a violation has occurred.

And we do know cases—Mr. Williams talked about cases—in which the GPS has been used quite efficiently to track a person's behavior and it turned out that the person was engaged in some behavior they should not have been. But we've also had cases in which a parole officer has charged a person with being in violation and we pulled the GPS information and found out that the person was not in the zone or in the area where they were told to stay away from, or where they were not supposed to be. So, yes, it's been used to shore up some convictions, but it's also been used to exonerate individuals.

Personal interaction is also needed to assure that the offender reentry process is developing without incident. Again, I just can't emphasize enough that equipment alone just cannot replace the human factor, the human interaction that must go along with supervising individuals while they are in the community.

Locating affordable housing and finding steady employment are major challenges to successful reentry. GPS alone does nothing to address either of these issues.

We have several individuals who are currently seeking assistance from our office because they have been placed on GPS monitoring by their supervision officer solely because they can't find a job, and you heard Mr. Williams talk about that. Sure, it can be used as a scare tactic, that you'd better go get a job, I'm going to put you on GPS, but the work that's got to be done by the supervision officer to assist that person in getting a job is not going to change if the person is on GPS or if the person is not on GPS monitoring.

It's more costly to place persons on GPS who do not warrant that level of monitoring. It can in some cases interfere with successful reentry. I did have a client who came into my office, and I don't know how legitimate it was, but he went into an employment office, said that he had the job almost

shored up, and when they learned that he was on GPS, they told him, “No, thank you, we do not want someone on the premises who’s wearing a GPS monitor.”

It also can inhibit the reconnection with the community and family. If you’re in this business, you remember the old devices were connected to the telephone, so a homeowner had to agree that the telephone service could be used for tracking GPS. I don’t think we use those services much anymore, but that meant that if you were not going to be released to an address where the person would agree, or even to an address where there was a working phone, that you had to remain in prison. Getting out and getting on GPS was not an option for you.

My time is running out, but I want to talk about some legal challenges that have been raised in the courts regarding GPS tracking. Most of the challenges come under due process and Fourteenth Amendment challenges. In *Katz v. U.S.*, the Supreme Court did establish that individuals have a right against unreasonable search and seizure in areas where they have an actual expectation of privacy, but we know that persons who are on parole or supervised release have a diminished expectation of privacy. There still have been some successful challenges in the courts.

Statutes that impose GPS tracking on all offenders, solely because of the type of offense he or she has been convicted of, will likely face due process challenges based on the absence of individualized assessments. There must be an individualized review of the case, a case by case determination, before blanket application of GPS equipment is used, or you’re going to face legal challenges.

Fourth Amendment challenges of unreasonable searches and seizures prohibit the tracking of persons in areas where they have an expectation of privacy. Violations of due process rights to publicly stigmatize sex offenders without a hearing to assess their current level of dangerousness will also face challenges.

Again, anytime that you have a blanket application of GPS solely because of a person’s conviction, without looking at the person’s current status, current risk to the community, current level of dangerousness, you’re going to face legal challenges.

Authorities should promote adequate screening and not blanket use application of GPS. GPS programs also need to be monitored. So we increase the number of folks that we put on GPS and we continue to increase it. Our use of these programs has to continuously be measured and evaluated. What purpose is it serving? What’s the goal? Are we getting the bang for our buck? Are we just increasing the number of folks who are on GPS without any consideration as to how effective it actually is?

Again, there must be a case by case analysis to determine whether the GPS condition, or any condition, is reasonably related to the original offense and the goal of rehabilitation for that individual. “One size fits all” supervision, including the use of GPS, does not work. GPS application decisions must be made with careful consideration.

We believe that there should be a consideration of dynamic and not static factors. Static factors include your number of convictions, your criminal history. Those things are not going to change. We believe that decisions about GPS applications should be made based on dynamic factors, such as community connections, healthy relationships in the community. How is the person generally doing on

supervision? Overuse of GPS widens the breach of legal challenges and gives us all, the entire community, a false sense of protection.

Again, how far do we go with tracking individuals? I refer to “human Lo-Jack” because one of the studies that I read talked about the placement of chips under the skin, and I know we’re probably not far from that. How far do we go? Who owns the information that’s relayed by the satellite tracking system? We know who puts the satellite up, but who owns the information?

Who’s liable if the recording information is faulty? Say someone serves time in custody and it’s discovered later that the person was not actually in a prohibited zone. Who’s liable?

If we don’t focus on changing the behavior, then do we move towards placing persons on GPS for life? And there were a couple of studies that I looked at in which it was actually considered—placing sex offenders, in one particular case, on GPS for life. How costly is that going to be?

And so I thank you for your time, and I hope that, again, I have raised some questions about the use of GPS and how far we go. Thank you.

COMMISSIONER HOWELL: Thank you. Dr. Marc Renzema?

DR. RENZEMA: Hi. Good afternoon. It’s a pleasure to be here and I am very pleased at the quality of the previous presentations and the earlier sessions. Just one note. This presentation is not on the CD. It is available at my own web site. Notice that there’s no “www.” If you type in a “www,” you’re going to get my mail server, okay, so it’s just “<http://renzema.net>.” And there’s some other stuff on electronic monitoring and a couple of other Powerpoints done in other forums over the last couple of years.

I don’t think I need to focus much that electronic monitoring (EM) is not a program. That’s been drummed over and over and over again this morning. Intensive supervision by itself doesn’t work. Well, EM by itself, if you’re talking about the goal of recidivism reduction, doesn’t work.

We are very, very, early in the process; we’re sort of like in medicine in the 1920s. What works for whom? There are some suggestions, but there are not a whole lot. There’s certainly not enough information.

Beware of the bounce. I’m only talking about three studies, because most studies say, “Oh, we got him through EM, fine. Now they’re fine,” or, “Oh, let’s look at him after three years.” What seems to be going on is that you can suppress criminal behavior during the period of electronic monitoring, but if you follow up at later periods of time, and it’s a good design with a comparison or control group, the curves merge again.

We need to talk briefly about what you really want from your electronic monitoring program. Sometimes recidivism is a good thing. The last thing is a mix of art and science. We don’t really know enough, but I have some feelings, as well as informed opinions, about where it should be appropriately applied.

Basically, it was invented as a therapeutic tool. That's not the way it's been used for the most part. By the way, everything I'm talking about today is ankle bracelet RF electronic monitoring. There's only been one study I'm aware of that uses GPS and tries to tease out the effects of GPS. That's a Florida study, but it's complicated and I can't deal with it here. It's also kind of confusing.

Georgia did a nice study. On my web site there's a bibliography. What I'm talking about here is the Finn study. Georgia did a study looking at recidivism at three different points of people who were paroled with electronic monitoring, versus a matched comparison group of those who went out without it. And they found that overall there's no impact of electronic monitoring, but this is a study of several hundred parolees. They had 25 sex offenders and they only had a 5.7 percent recidivism rate. But those who went out without electronic monitoring had a 29.4 percent. Now remember overall there was no effect, so what are they saying? It seems to me what they're saying is that the people on electronic monitoring who weren't sex offenders were doing slightly worse.

A widely cited study by Jim Bonta up in Canada, I think it was New Brunswick, compared some low-risk offenders with some high-risk offenders on electronic monitoring plus cognitive behavioral therapy. What they found was that the low-risk offenders placed on electronic monitoring had a higher, specifically 17.8 percent higher, recidivism rate than a comparison group of prisoners. Those who had high-risk had a 19.5 percent lower rate.

So should you reserve it only for high-risk offenders? Well, yes, until we get a few slides later to Sweden, where it made no difference at all. There were problems with that work in that the contingencies for the low-risk and high-risk offenders were different, but the point is that there were very different results depending on [inaudible] the risk classification.

Something that isn't out yet is a study that was done in Sweden, where they looked at three-year recidivism of a group of early prison releasees who were getting electronic monitoring, compared to a group of similar people who served their full time, but got the same package of services. Most probation and parole people in this room would probably think they died and went to heaven if they had available the kind of services that the Swedes offer. They offered either employment finding or state paid employment services. They offered psychotherapy. They offered substance abuse services, housing, and what they found was overall monitoring looks pretty good compared to the comparison group. But for the very highest third of offenders, monitoring didn't make a difference, like these were ordained to fail. Monitoring seemed to work best on the older offenders.

The evidence about the bounce is kind of flaky. There needs to be a lot more research done, but here's one example—the Georgia study by Finn. Monitorees had 2.53 percent lower recidivism, not statistically significant, 150 days after release. A year after release, they were about seven percent lower, and that was significant. Three years after release, .02 percent. In other words, “the bounce.” This is something that you really need to think about when you're deciding whether you want to do monitoring or not. Is it worth it to try to suppress offending for a brief period of time? What can you do so that the curves don't merge again?

Martha Stewart is probably a good example of punishment on the cheap. What was that about, other than making her life a little bit uncomfortable and reminding her she was bad?

Britain—England and Wales seem to be quite content to use electronic monitoring as a safety valve on their prison populations. If you get electronic monitoring as a condition of early release in prison in England, you get out 60 days early and you can go see your probation officer if you want to. Do you think it's surprising that there's no long-term recidivism reduction?

I like it for the purpose of enhancing treatment compliance, or enhancing deterrents via accountability, but I know some probation officers who reserve their scarce monitoring resources for people who either are acting up, or they're pretty sure they're going to fail anyhow, and their whole objective of putting people on monitoring is to catch them early, before they do heinous harm. So if you get an evaluator just keeping score on recidivism, that may or may not be what the program is about.

Who should be on electronic monitoring? So many kinds of offenders, so many kinds of monitoring equipment. One thing that none of the other presenters mentioned was this little gadget called a "SCRAM" that monitors alcohol in your sweat. The current generation of devices has to be plugged in at your house to upload the information, but there's a new generation that's currently in beta testing that will give real time information about alcohol.

Here's what I'm thinking, after 20 years of watching the research. You need a relatively rational offender. If they're severely mentally ill, don't bother. If they have real impulse control problems, such as you might encounter with fetal alcohol syndrome, don't bother.

A study I did 15 years ago suggested that 80 percent of the people revoked for technical violations during monitoring actually were revoked for positive alcohol or drug tests, where only 20 percent were revoked because of being out of bounds. Fine. Use it on drug addicts and alcoholics if they are not using, but if they are using, there's not much point.

They really need to have a reason to not go to jail. Maybe they have a close bond with their family. Maybe they're sex offenders, pedophiles in particular, and they know the social environment they'll be facing if they go to prison.

I recall having a conversation with a judge who had just been appointed to the criminal bench after being on another service and he had just sentenced a prisoner to a year in the county jail the day before. The offender laughed and said, "That's PC," and the judge said, "Well, what's politically correct about that?" The prisoner further explained that "PC" was a "piece of cake." It didn't really matter whether he was in or out.

I forget which one of my predecessors mentioned it for gangs. If you're trying to disrupt a criminal network, that might be a good use. "I don't think I want to talk to Marc, and I don't think I'll go around his house because he's got that thing on his ankle, okay?"

Something that is buried in the addiction literature that I think most criminal justice people haven't found yet is a study that was published just last year by Lapham. It's an Oregon study. On one hand, I should be a DUI offender in Oregon because I would really get treatment. On the other hand, it's probably the most intrusive treatment package I've ever seen.

In Oregon, if you're a two time or more drunk driver, you get mandated treatment. That may include 12 step meetings. It may include psychotherapy. You get polygraphed at least every six months.

“Have you driven a car; have you driven drunk?” You get urine and breath testing and you get fairly intensive human supervision. You also, until the beginning of this experiment, got electronic monitoring. You got an ankle bracelet to make sure you maintained curfew, and you got a gadget that you kept in your house that you blew into, whenever requested, that would transmit your breath alcohol levels to probation central. Oh, and you had to sell your car—okay, full whammy or triple whammy.

A federal study funded an experiment where some of those elements were taken out at random. The number one condition was everything I just described. Number two was you got everything, except you didn't get electronic monitoring. Number three was you got electronic monitoring, but you didn't have to sell your car. And number four was you didn't get electronic monitoring and you didn't have to sell your car.

Now the randomization was pretty near perfect, but there were some crossover conditions, that some people got sanctioned using electronic monitoring that weren't supposed to get electronic monitoring because they screwed up. There was only one check as to whether you had actually sold your car over a three-year period, so it's not a perfect study, but here are the results. Hazard ratios, looking at risks of arrest, where the full treatment produced one. Okay. The full treatment represents one. How much worse is it if you make them sell their car but don't put them on the electronic monitoring? At three months, it's four times worse. What happens if you put them on the treatment package and electronic monitoring, but don't make them sell their car? It's twice as bad. Or how about you don't make them do either? Well, then it's 3.3 times.

Now there are some inconsistencies in here, and particularly embarrassing is that if you look at three years out, you see that the best outcome is doing neither sales nor electronic monitoring, but taken as a whole. What that says is the more treatment, the more intervention, the more targeted behavior you have, the better it is. Electronic monitoring is not a treatment. Electronic monitoring can be an adjunct to treatment. I think that's it.

COMMISSIONER HOWELL: Okay. Thank you.

DR. RENZEMA: Yes.

COMMISSIONER HOWELL: We're almost out of time, but if somebody has a question, let me know. Yes?

QUESTIONER: Mr. Cornish, you mentioned that if there's a violation or an alert, the officer has to do an investigation. I know from my clients that it involves a phone call for the client, whether on the [inaudible] or home. Are you guys set up nationwide so that the probation officers have computers at home where they can see the offender and track that, or do they have to go in the office for that?

MR. CORNISH: They're set up for the most part, depending on the protocol, but they can pull up the tracking. If you're talking about GPS-specific, they can pull up the tracking through their PDA device at any given time or log in. Most of them have VPN network. But, again, there are different protocols. Or they can also call the monitoring center and talk to a customer service rep. But for the most part, to answer your question, yes, it's set up so they have PDAs that they call pull up and look at the tracking, and then compare from their homes.

QUESTIONER: And there was some talk, I think it might have been Mr. Williams, switching from passive to active, and then vice versa. Is that at the discretion of the probation/pretrial office, or do you go to the courts to modify the conditions of release?

MR. WILLIAMS: Well, actually we don't go to the courts when we put someone on GPS, because the officers have the authority themselves to do that. They switch from active to passive based on a number of factors. One, what's going in their community; what's going on with the person; and also discuss with the supervisor.

QUESTIONER: Okay. Thank you.

MR. CORNISH: We go to the courts.

QUESTIONER: You go to the courts.

COMMISSIONER HOWELL: Yes?

QUESTIONER: Would you address a little bit about tampering and beating the system? Are they getting better at that?

MR. CORNISH: Yes, we've gotten a lot better. As far as the "tamperers" go, tamperers have gone down significantly, particular in the past five years. A lot of tamperers used to be related to the battery charging which has increased. The battery chargers right now are primarily the one-piece, but for the radio frequency and the two-piece tracking devices, battery isn't as much of an issue. We used to get a lot of tamperers when defendants and offenders took showers and things like that. Now they're completely water-resistant. Very rarely you get tamperers. So I guess, in short, false tamperers, they certainly haven't been eliminated, but they have significantly been reduced over the past five years based on the technology and the advancement.

QUESTIONER: Because that's, you know, really defeating the system.

MR. CORNISH: When you say really defeating the system, you're talking about taking the transmitter off undetected?

QUESTIONER: Yes.

MR. CORNISH: It's almost impossible now. Now, again, let me speak to the misconception. If you're in a zone where there's no cellular or GPS service, you can do whatever you want and it's not going to be detected. You can go in a subway and do whatever you want, so it depends on what you mean by beat the system. But actually taking off the transmitter undetected or anything like that, it's almost impossible nowadays.

COMMISSIONER HOWELL: Okay. Thank you all very much for coming. There's one more session before the afternoon's over. Thank you.