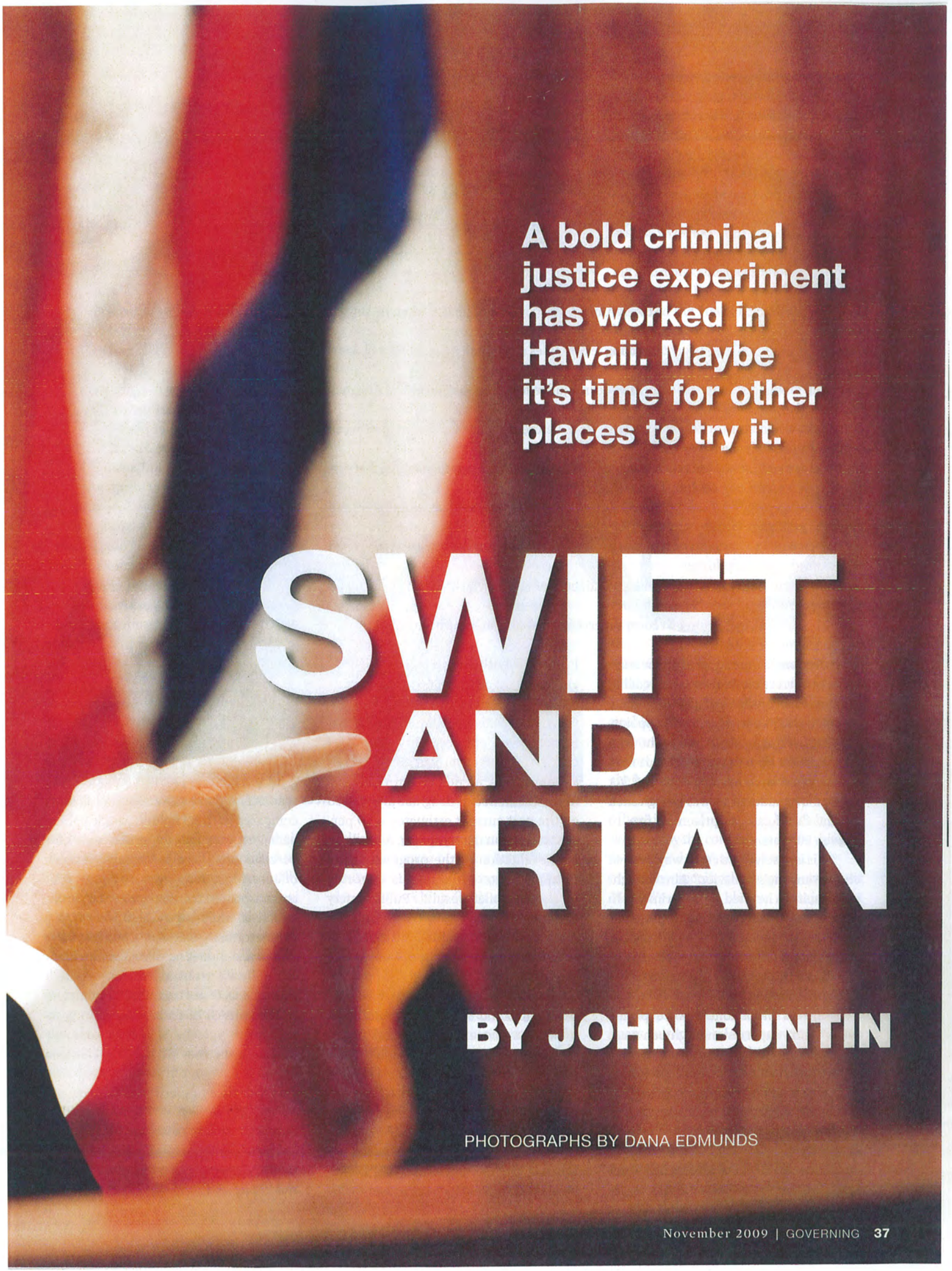

A bold criminal justice experiment has worked in Hawaii. Maybe it's time for other places to try it.

SWIFT AND CERTAIN

BY JOHN BUNTIN

PHOTOGRAPHS BY DANA EDMUNDS

Steven Alm was no courtroom novice when he started handling felony cases as a circuit judge in Hawaii. He'd already been a judge for three years, and U.S. Attorney for seven years before that. But in his very first week handling a felony docket, he noticed something that surprised him. It wasn't the nature of the felony offenses—he was prepared for that. It was the way the system dealt with probationers: offenders who had been placed under court supervision rather than being incarcerated.

Probationers were supposed to be amenable to correction. Yet Alm was reading motions that consisted of page after page of violations: 10 or more missed appointments, dirty drug tests, failure to show up for treatment. In most cases, all this misbehavior had essentially been ignored. Yet now, all of a sudden, he was being asked to send the violator to prison for five, 10 or even 20 years.

"This is absolutely a crazy way to try to change anyone's behavior," Alm thought to himself. So he tried an experiment. In place of the existing practice, he proposed a kind of correctional time-out—brief but immediate punishment. Anybody found violating any term of his probation would be returned to a jail cell for a few days.

Some 34 probationers were placed under Alm's supervision. Eighteen were sex offenders; the others were chronic transgressors who had been on probation for a variety of felony offenses. Many had substance-abuse problems: About 40 percent routinely failed even pre-scheduled drug tests.

That was five years ago. Today, Alm's initiative, known as Hawaii Opportunity Probation with Enforcement (HOPE), encompasses nearly 1,500 of the roughly 8,000 probationers on Oahu. With very little dedicated public funding, it has achieved extraordinary results: It claims an 80 percent reduction in missed appointments, an 86 percent reduction in the incidence of drug use and, based on the best current estimates, a 50 percent reduction in recidivism. A randomized evaluation of the program, slated to appear later this year, is expected to show similar results. Public-safety experts are hailing HOPE—and the ideas behind it—as something that could transform the American criminal justice system.

"There may not be another intervention that could have a more dramatic impact on crime, drug use and prison spending," says Adam Gelb, who heads the Pew Center on the States' Public Safety Performance Project. UCLA policy analyst Mark Kleiman goes even further. In his new book, *When Brute Force Fails: How to Have Less Crime and Less Punishment*, Kleiman argues that HOPE combined with a strategy of "focused deterrence" could reduce the nation's crime rate and prison population by 50 percent in 10 years.

But lurking behind all this praise is a puzzling question: If a dramatic new approach to crime reduction has been found, why aren't other places using it?

In fairness, a few are. For more than 30 years, Project Sentry, in Lansing, Michigan, has used frequent drug tests and immediate sanctions to reduce drug use and recidivism among probationers. The District of Columbia's drug court piloted a similar testing-and-sanctions regime several years ago, and it, too, experienced dramatic reductions in positive drug tests. Nonetheless, the successful new model was allowed to lapse after the evaluation concluded.

Probation is the forgotten stepchild of the criminal justice system. It's the sanction judges use when they don't want to send someone to jail. Nationwide, more than 4.2 million people are on probation, compared with 2.3 million people behind bars. Just over half the probationers (51 percent) are there for a misdemeanor offense. Most of the rest are felons. Probation shouldn't be confused with parole, which is court supervision following a prison term. Parolees are a much smaller group: fewer than 1 million nationwide.

In theory, probation officers are well-trained social workers who keep a close watch on each of their charges. In practice, they typically supervise so many offenders—in Hawaii, 160 is a common caseload for one officer—that they have very little time to spend with their clients. When they do see problem cases, they have the option of threatening prison. But that's not something either they or the judges are eager to do, given the fact that these are rarely violent offenders. So

Hawaii Circuit Judge Steven Alm: He took risks to change a broken system.

probation officers typically wait until their most troublesome clients have racked up large numbers of violations, then finally move to revoke probation and send them to court. At that point, judges can either send them to prison for several years or more—or, as one judge puts it, "send them to the beach" (that is, ignore the violations altogether). Of those who do go to prison, roughly two-thirds are rearrested within three years, and then sentenced either to more probation or a new prison term. Probation is the swinging door of the criminal justice system.

Before becoming a judge, Steve Alm saw that system from a different vantage point: After graduating from law school in California, he became a prosecutor in Honolulu, where he had grown up. Most ambitious young prosecutors want to spend their time before a jury, litigating felony crimes. Alm did too, at first. But he also liked teaching (both of his parents were university professors). He attracted notice for his skill at training deputies. When the DA asked him to head the district and family court division—the office's largest division and the place where most new hires start out—it was in large in part to train and winnow new prosecutors. He did well in that capacity, too. After four years, President Clinton nominated Alm to be U.S. Attorney for Hawaii.

Previous U.S. attorneys had not worked closely with local law enforcement. Alm changed that. When local authorities identified a group of thugs who were mugging Japanese tourists in Waikiki, Alm federalized the case and won a confession from the ringleader, closing down the loosely organized gang almost immediately. When businesses in the Chinatown section of Honolulu complained about open crack dealing in a neighborhood bar, Alm dropped by for a look, then spearheaded a process that ultimately led to forfeiture of the bar and all its assets: $575,000. Alm gave the money to police, who used it to convert half the building into a new precinct station.

In 2001, Alm made another change: He moved to the Hawaii circuit bench. First, he was assigned to handle misdemeanor domestic violence. Then, he began to hear misdemeanor jury trials. Finally, he moved on to felonies. That's when Alm did something strikingly unusual for a judge: Instead of focusing all of his attention on his docket, he decided to change the underlying system that was feeding it. "It never occurred me that I couldn't," he says.

To many outsiders, Hawaii conjures up images of an earthly paradise—broad white beaches and luxurious high-rise resorts at Waikiki, with the volcanic cone of Diamond Head rising in the distance. But Honolulu, a sprawling city of 900,000 people (about 70 percent of the total population of the Hawaiian islands), has long struggled with a serious crime problem. It's not so much violent crime; that's comparatively rare. It's property crime that's pervasive. Burglaries, auto thefts and robberies in Honolulu often rank among the top five among cities anywhere in the country. Much of that crime is driven by the confluence of two things—tourists and methamphetamine.

Meth—specifically crystal meth—is Hawaii's drug of choice. A majority of users consume it by lighting ice pipes and smoking it, rather than shooting up. Most of the meth originates in Mexico and is then brought in from California. It sells in Hawaii for double the mainland price. But despite the cost, dealers have over the years cultivated a large market. In 2003, the last year for which data were available, more than 40 percent of male arrestees and more than 57 percent of female arrestees tested positive for meth.

In recent years, a variety of experts has struggled to persuade policymakers and elected officials to treat substance-abuse problems as a public health issue

rather than as simple criminal misconduct. One result has been the emergence of drug courts, which offer to dismiss or reduce charges against drug offenders in exchange for their agreement to participate in court-supervised drug treatment. Typically, that entails regular drug tests and sessions with the supervising judge. More than 1,200 drug courts now operate nationwide. While their methods of operation vary considerably, a wide variety of studies have found that drug courts successfully reduce criminal recidivism rates. What's not so clear is how effective they are at keeping inmates off drugs after testing ends.

But the one thing Judge Alm noticed immediately, and more recent studies have confirmed, is that the threat of future punishment employed by the probation system and most drug courts was ineffective. "For the guys we're working with," Judge Alm says, "next year, they might get hit by a bus, they might get an inheritance. What might happen next year is meaningless." What was necessary was something that would get their attention immediately.

"I thought, well, what do I do with my son? If he does something wrong I'm going to talk to him and give him a consequence right away . . . You have a swift and certain consequence and then you follow through with it." In Judge Alm's court, the swift and certain consequence was jail—only for a short time, but right then and there. If a probationer came in on a Friday and failed a test, he could be locked up by nightfall. If that meant missing a child's birthday or graduation two days later, so be it.

Not all probation officers liked this. Trained in the techniques of motivational interviewing and cognitive-behavioral therapy, many feared that the approach Judge Alm was advocating would interfere with the "therapeutic partnerships" they were taught to establish with their clients. Other participants were skeptical, too. Public defenders worried that Alm would bring a prosecutorial rather than a judicial mindset to the proceedings. Many also doubted that people with serious methamphetamine or crack cocaine habits would stop using the drugs if given a light but virtually instant sentence. "The fear would be that these people cannot possibly control themselves, that they would shoot their mother for crack," says Paul Perrone, chief of research for the state attorney general.

Probation supervisor Cheryl Inouye's hotline helped keep violators clean.

On the other side of the issue, some public defenders thought the very notion of punishing people for drug addiction was cruel.

"There's one school of thought that you do not alter a person's behavior through punishment, by throwing them in jail," says public defender Jack Tonaki. "Getting them into counseling or a program is what they really need. That was probably the most vociferous objection." Despite sharing Judge Alm's belief that the current system was broken and the revolving door needed to stop, Tonaki himself had doubts about whether it would work. But ultimately he was willing to try it. So were the other essential partners: the prosecutors, defense attorneys, jailers and the sheriff's department.

One of the most difficult problems was finding a law enforcement agency willing to track down probationers who skipped a hearing; serving a bench warrant of this sort was typically a low priority. But as a former U.S. Attorney, Alm had a few tricks up his sleeve: He asked the federal fugitive task force to serve bench warrants instead. They took on the job.

By early 2005, it was clear that the new approach was generating compliance. But it also was clear that the court wasn't measuring some aspects of the problem in a meaningful way. For example, the drug tests still were being scheduled well in advance. It took only a modest amount of self-control for a drug user to stay clean in the few days leading up to testing time. "We've got to come up with some way to randomly test them, to get them on the hook a lot quicker," Alm told the head of probation's high-risk group, Cheryl Inouye. Inouye responded with a novel idea—a drug testing hotline. Probationers were assigned a color. They were instructed to call the drug hotline every morning. If their color came up, they had to go in that day for a drug test. If they failed it, they were taken into custody immediately and remanded to the Oahu Community Correctional Center, the local jail.

So the probationers had no idea when their test day would come. The only safe approach was to stay clean. There were doubts whether hard-core drug offenders could do this. But to even Alm's surprise, more than 80 percent of the probationers were able to manage it. Those who didn't, Alm concluded, were the ones who really needed intensive (and costly) drug treatment.

By the autumn of 2005, Alm felt so confident about his results that he asked the Hawaii legislature to give him $1.2 million so he could increase the size of his program more than 10-fold, from 100 probationers to more than 1,000. The legislators found the money. By early 2007, all 10 of the First Circuit's felony judges were using the HOPE approach, and all 10 were seeing results similar to what Judge Alm had found. By the spring of 2009, 1,500 probationers were under HOPE supervision.

At this point, the biggest obstacle to an expansion of the program in Hawaii isn't the probation officers, or the probationers. It's the judges. Earlier this year, several of them decided to stop using the approach.

Distributing HOPE cases across multiple courtrooms was making work more difficult for the various agencies that had to deal with different judges employing different rules. Alm was worried that the courts using HOPE had hit a ceiling in terms of the caseload it could handle. So earlier this summer, the First Circuit allowed him to consolidate supervision of most HOPE cases in his courtroom. Federal stimulus funding has allowed HOPE to add two additional drug testers and probation officers, as well as a specially assigned prosecutor and public defender. With these additional resources, Alm hopes to dramatically increase the number of HOPE probationers taking part in the system.

When it comes to expanding beyond Hawaii, other questions emerge. Hawaii is an island state 2,000 miles from the American mainland. Probationers can't slip across the border to avoid being caught. One can't be sure whether courts and law enforcement officials could make good on the enforcement threat in states with no restrictions on border crossing.

Is that the reason why, after nearly five years of dramatic results, not many places have tried to replicate the system? Or is it something larger and ultimately more troubling? Could it be that the American criminal justice system simply has difficulty with innovation?

In some cases, it turns out that the problem is largely political. About a decade ago, Maryland launched "Break the Cycle," which sought to apply a testing-and-sanctions model to all 17,000 probationers in the state. Many judges declined to buy in, and enforcement of the sanctions was sporadic. When a probationer who'd committed scores of violations without incurring any sanctions killed a police officer, the program was ended. Soon after that the political career of its sponsor, Lieutenant Governor Kathleen Kennedy Townsend, ended, too.

Still, the results that Judge Alm has obtained in Hawaii are so striking that one would expect some broader attempts to use his methods. However, Michigan and D.C. notwithstanding, there have been very few such efforts. For example, the United States has 25,000 federal judges. So far, not one has stepped up to try the Hawaii system. "One of the lessons of the D.C. drug court experiment," says UCLA's Mark Kleiman, "is that changing the behavior of addicts is easy. It's changing the behavior of the judges that is hard."

As for Steve Alm, he's pressing ahead. His goal for next year is to supervise 3,000 cases, almost 40 percent of all probationers in Hawaii. "What I want to get to one day," he says, "is the point where we have the 19- or 20-year-old who comes into court for their first real problem with the law—drugs, driving a stolen car, something like that, maybe they are smoking ice once every month at a party or every couple of weeks when they run into some money. I'm convinced we can stop them for using for five years. And if they can go from age 20 to 25 without using drugs, then, at the end of that time, they'll probably be employed, they'll have a boyfriend or girlfriend, they'll be started in life, and they won't look back." G

E-mail jbuntin@governing.com

© 2009 Thomson Reuters L-353213/9-09 Thomson Reuters and the Kinesis logo are trademarks of Thomson Reuters.

EVERYONE IS WATCHING.

How fast you spend stimulus money is as important as doing it correctly.

Award stimulus funds faster and more confidently with titles from West, including:

- *The Government Contractor®*
- *The Nash & Cibinic Report®*
- *Government Contract Changes, 3d*

Trusted by attorneys, judges, and scholars for over 135 years, West publishes many titles to help you negotiate and secure contracts.

For information or to order, call **1-800-238-5775** or visit **west.thomson.com** and enter OFFER CODE 615984.

THOMSON REUTERS™

WEST®