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Federal PROBATION

a journal of correctional philosophy and practice

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THIS ISSUE IN BRIEF

Federal Probation During the Second World War–Part Two

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THE FEDERAL PROBATION service came into being rather late in the history of criminal justice. Within the scope of American history, probation had already been established in at least 35 states and the District of Columbia by the time the federal probation law was enacted in 1925.[1] (The history of parole in America goes back further.)[2] In the 50 years prior to the creation of the federal probation service, as probation evolved into a viable alternative to incarceration, America underwent an industrial revolution, domestic turmoil, several small military conflicts and one terrible world war. As a reflection of its society, American corrections confronts many of the same national difficulties other institutions meet, but societal upheaval always raises particular challenges unique to criminal justice. [3]

This was the case for the federal probation system. In its first decade of existence, federal probation filled a need in federal jurisprudence, but the growth needed to respond to the demands upon it was constrained by the harsh economic realities of the Great Depression.[4] Within 20 years of its creation, federal probation—like the rest of the nation—grappled with the challenges of another global conflict. The problems that challenged federal probation and parole mirrored what other state and local community corrections agencies were facing at the time.[5]

In an article published in the June 2003 issue of this journal, I examined the history of the federal probation service in the context of the Second World War. Focusing on the years between 1940 and 1945, I detailed how federal probation officers expanded their roles as advocates for offenders by working with induction agencies, courts, parole boards and various other agencies to secure military service for men with criminal records. This was just one of the specifically wartime duties the federal probation service adopted in addition to their normal duties to the community and the offender.[6] The earlier article also considered the impact offenders had on the war, and highlighted how the war called upon the services not only of offenders but also of federal probation officers, many of whom interrupted their careers to become soldiers. Finally, the article took a look at how the federal probation service became responsible for a new class of offender, the military offender.

There were other correctional concerns related to the war that federal probation had to address. The Second World War presented American corrections with challenges that either hadn't existed or had not previously been given as much attention. As one Chief U.S. Probation Officer from Ohio said in 1943, "the kinds of problems encountered [today] are for the most part different from those of several years ago."[7] That same year, Henry P. Chandler, director of the Administrative Office of the U.S. Courts, the agency responsible for the federal probation service, noted that "more and more the time of Federal probation officers, as of many other persons, is being given to activities connected rather directly with the prosecution of the war."[8] This article will continue the examination of the federal probation service during World War II by focusing on three supervision issues arguably peculiar to the war.

First, World War II provided America with an employment boom, with manpower shortages leading to opportunities for rehabilitation that probation and parole officers across the country would never have thought possible. Less positively, prostitution became a primary concern for governmental, military and correctional personnel during wartime. Finally, paralleling federal probation's responsibility for military offenders covered in my previous article, probation officers dealt with selective service violators and the impact they had on the system. "We are on new frontiers," another Chief U.S. Probation Officer wrote in 1943, demonstrating the commitment federal probation brought to this time in American history. "[B]ut we have all been on new frontiers before and know the effectiveness of sincerity of purpose, perseverance, tact and courtesy together with a definite knowledge of our work and what it will accomplish."[9]

Employment

In his comprehensive survey of American history, George Brown Tindall stated that after the attack on Pearl Harbor in 1941, "there was no doubt that the war effort would require all of America's huge productive capacity and *full employment of the workforce*" (emphasis added).[10] This is an extraordinary idea, considering that America was still coming out of the Great Depression; in 1940 eight million people—six percent of the population—were still without work.[11] Within only a couple of years, there was such an "extraordinary demand for labor" that unprecedented opportunities arose for everyone, including

women and minorities.[12] While a wartime economy would require sacrifices no less significant than those endured during the Depression, in the end, most people subscribed to the hope that peace and prosperity would most certainly follow.[13] For federal offenders, however, the promises of a recovering economy and the rewards of full employment would require assistance from, and in some cases coercion by, federal probation officers.

"One of the first concerns of a probation officer at any time," the Director of the Administrative Office of the U.S. Courts stated in 1943, "is to aid those who are under his supervision in procuring employment." From national administrators to line officers, it was firmly believed that a vital component of offender supervision was aiding the offender in finding work.[15] The importance of employment in general could not be overemphasized in the literature of the time. "A job cannot be measured solely in terms of wages and hours," wrote one researcher in 1940. "It must also be considered from the standpoint of a person's interests, his personality traits and his realization of opportunities for growth and advancement."[16] The warden of the federal penitentiary in Atlanta, Georgia, stated in 1943 that "suitable, productive employment is one of the greatest aids to rehabilitation."[17]

Thus, federal probation officers were expected to network with employers and employment agencies in their communities. They were to foster the needed confidence within their offenders and the community and be versed in vocational guidance counseling to the degree necessary to know where job opportunities were.[18] Yet despite the rehabilitative model of corrections prevalent in this era and what the literature aptly pointed out was integral to an offender's successful reintegration with society, *and* in spite of the ardent work of federal probation officers on their behalf, federal offenders continued to face frequent disappointment.[19] America's entry into the war against fascism might have united the nation towards a common purpose, but it certainly did not soften the public's intolerance of criminals, federal and otherwise.[20] To remedy this, the government became more active in educating employers about the law. In doing so, a significant segment of the population contributed to the war effort.

The massive industrial conversion experienced during the Second World War provided many employers with government contracts. Within months of Pearl Harbor, "auto makers switched to producing tanks, makers of shirts switched to mosquito netting, model train plants to hardware and the makers of refrigerators, stoves and cash registers to munitions."[21] To bolster production, government contracts specifically contained provisions prohibiting discrimination "on the basis of race, color, creed or sex."[22] However, as previously stated, federal probation officers found it difficult to convince employers to hire offenders, even during a national labor shortage. A criminal record proved to be a sure path to a "cold reception" and "the door."[23] What federal probation officers learned, however, was that one reason contracted employers were reluctant to hire offenders was because they misinterpreted certain clauses of their contracts as prohibiting employment of convicted offenders.[24]

It was not only supposed contractual provisions that barred federal offenders from finding work. At the same time that the federal government was urging people to work, long-standing civil service requirements made it impossible for offenders to do precisely that. In the war economy of World War II, the federal government controlled many industries needed for defense through its War Production Board.[25] Chandler recounts that before the war, civil service requirements prohibited any person from obtaining a job in any factory producing war-related goods for at least two years after their "release from prison, parole or probation."[26] This meant that offenders on federal probation and parole could not hope to find good-paying jobs assembling aircraft and naval vessels. For example, in the city of New York alone, at least a half dozen naval shipyards needed tens of thousands of employees to continuously work "under emergency schedules."[27]

These concerns were eventually brought to the attention of the Secretary of Treasury as well as the Attorney General, who issued simultaneous statements in 1942 clarifying that the prohibition in contracts (which actually read: "the contractor shall not employ any person undergoing sentence of imprisonment at hard labor") did not apply to probationers and parolees.[28] Furthermore, a year later, the U.S. Civil Service Commission amended its rules to allow *federal* offenders on probation or parole to work in government-contracted positions, *provided* they received "favorable" recommendations from federal wardens or federal probation officers.[29]

However, these actions on the part of the government did not mean it was opening its doors completely. The federal government still wanted a measure of screening to be done by employers as well as federal probation officers. The Director of Procurement within the Treasury Department wrote that "persons with tendencies toward arson or the malicious destruction of property should not be admitted to war production plants."[30] As well, offenders displaying "mental or emotional instability" were not to be hired. Notwithstanding these prohibitions, such government support eventually diminished resistance to the hiring of federal offenders so that midway through the war, most federal probation officers were reporting to the Administrative Office that the war industry was at last cooperating with their efforts to fill job vacancies.[31] In the meantime, the Civil Service Commission was looking to extend the privilege granted federal offenders in community corrections to offenders under state or local jurisdictions.[32]

As critical as employment was to the rehabilitative model of the time, federal probation officers still encountered some offenders who did not want to take advantage of full employment. Federal probation officers needed to be aware that some offenders would have "difficulty in adjusting" to wartime sacrifices. "In this group," wrote Milton Lessner, an adult probation officer from Oakland, California, "is the selfish, egocentric probationer with individualistic and antisocial tendencies" who will simply not work with others.[33] In addition to general offender obstinance, federal probation officers had to keep in mind that some maladjustment would arise from the unfamiliar territory in which offenders were finding themselves. Where finding work was continuously difficult for some, full employment meant these hard-luck cases not only had jobs but more money than ever before.[34] Consequently, securing an offender a job became the first part of the federal probation officer's task.[35] They needed to remain involved.

Federal probation officers kept in contact with employers about the conduct of offenders under their supervision and made sure those offenders kept working. In some cases, federal probation officers went so far as to arrange for transportation to and from work to reduce absenteeism. Others helped offenders manage their finances by urging them to buy war bonds or to start savings accounts or to find proper investments for their excess funds.[36] The types of problems federal probation officers encountered because of employment were diverse. In addition to financial matters, long work hours or reloca-

tion caused strain in offenders' lives and federal probation officers reported having to provide "on-the-spot" counseling for harried offenders, their spouses and their families.[37] Probation officers also had to make worktime adjustments—longer work hours for more offenders meant officers changed their own work schedules to be accommodating.

A general philosophy adopted by many correctional officers was not only to relate an offender's work to the war effort but to understand that what they themselves were doing for their offenders was helping win the war.[38] Beyond this general sense of patriotic duty, how were these efforts measured? One approach taken by the Administrative Office was to regularly report how much federal offenders were earning. In the first fiscal year following Pearl Harbor, approximately 35,000 offenders were under federal probation supervision. Of these, 17,500 reported they were working and earned a total of $17.3 million by July 1942. By 1944, federal offenders had earned nearly $25 million. Chandler qualifies these substantial figures by stating that "[these] earnings cannot include the value of compensation in other forms than money for certain kinds of labor, such as the living of farm workers, and undoubtedly therefore fall short of the true total."[39]

The war created an employment boom, but correctional officials at the time were realistic enough to know that it would not last forever.[40] Subsequent economic demobilization "brought sharp dislocations" which translated into considerable unemployment.[41] In fact, within months of Japan's formal surrender on September 2, 1945, practically "every war contract [had] been canceled or terminated."[42]

By the fall of 1945, there were serious fears that millions would once again find themselves without work. There were also concerns about decreased wages and lowered standards of living.[43] Things looked bleak for federal offenders and once again it would be their probation officers who would have to help them through this time. Fortunately for everyone, the federal government had instituted what Tindall called economic "shock-absorbers" such as "unemployment pay and other Social Security benefits" to prevent America from slumping into a postwar depression.[44]

Prostitution

During the Second World War, the quarterly correctional journal *Federal Probation* continued to provide corrections professionals with timely articles concerning such important issues as juvenile delinquency and drug abuse.[45] However, there was another crime that concerned those within criminal justice as much as it worried military, medical and social services. Prostitution and the transmission of venereal disease during the war were recognized early on as problems not confined to the military and criminal justice agencies but bearing significance for the general community.[46] In the spring of 1943, *Federal Probation* devoted an entire issue to these related topics. The editorial preface to the issue stated that prostitution and venereal disease were "costing the country millions of hours of service on both the war and industrial fronts. Large amounts were being paid by the taxpayer for the treatment of those infected. But the greatest cost of all was the breakdown in health, happiness, and self-respect of those who are victims" of these problems.[47]

During the First World War, it was reported that 338,746 U.S. service men were treated for venereal disease—100,000 more than those killed and wounded in combat. With these many men infected, it was calculated that over seven million "man-days" of service were lost during that conflict.[48] To avoid a repeat of such a calamity, local, state and federal agencies responded during World War II with a variety of tactics to combat prostitution. A few that impacted federal probation will be reviewed here. First and foremost, the federal probation service was directly involved with the war on prostitution with the passage of Public Law 76-163 on July 11, 1941.[49] Commonly referred to as the "May Act," the law granted the Secretaries of War and of the Navy authority to designate specific military installations as locations where the Act would be in force. Upon doing so, it became a federal offense punishable by imprisonment to engage, solicit in or aid and abet prostitution. Furthermore, the Army and Navy were directed by Congress to actively suppress prostitution by seeking assistance from local and state authorities.[50] This meant federal probation officers would have to prepare presentence reports on any violators and subsequently supervise any offender given a suspended sentence and probation or released on parole.

In the space of two years, over five hundred people had been convicted of violating the May Act.[51] This number included not only prostitutes but "panderers, madams, taxicab drivers and property owners who made prostitution possible."[52] Of the total number arrested, over a hundred women had been incarcerated within 24 months of the law's passage.[53] These are astonishing figures given that by 1943 only *two* military bases had invoked the provisions of the May Act: Fort Bragg in North Carolina and Camp Forrest in Tennessee. The Director of the FBI, J. Edgar Hoover, reported that in one town alone, 25 of 27 people charged with violating the May Act were infected with venereal disease.[54] When details were gathered about these violators, particularly about the prostitutes themselves, even Hoover seemed surprised by what was found.[55]

In one survey of the first 100 women imprisoned under the May Act at the Federal Reformatory for Women in Alderson, West Virginia, federal probation officers learned that most of these women were younger than 25, had less than an eighth grade education and many had less than an I.Q. of 70. In keeping with the location of the military bases, federal probation officers were told that all but nine of the first 100 prisoners grew up in rural areas and came from poor families "replete with recitals of domestic difficulties."[56] The survey also revealed high rates of divorce and numerous children born out of wedlock. Furthermore, 64 out of the 100 women studied had been previously arrested. More surprising to researchers was that of the women incarcerated for prostitution, a majority were not involved in prostitution prior to the war.[57] It was this last finding that guided federal agencies in developing strategies in combating prostitution and venereal disease.

Experts in disease control were very conscious during the war of the futility of trying to eliminate prostitution altogether.[58] One researcher put it succinctly in 1943: "No one will contend that sexual promiscuity and vice are produced by . . . war. They were here with us before Pearl Harbor; they will remain with us after the peace is signed."[59] Instead, victory would be declared in decreasing the incident rates of venereal disease among men and women.[60] Federal probation officers were instructed to view prostitution as a "social disease" which required a multi-lateral approach and the assistance of public health organizations at every level of government.[61] More important, the literature of the period argued that to effectively reduce prostitution, and consequently venereal disease, attention had to be given to more than just the prostitute. Law enforcement and correctional strategies had to focus on the solicitor and the "facilitator" or "pimp."[62]

In 1941, the Office of Defense Health and Welfare Services created the Social Protection

Section, whose wartime director was none other than former organized crime-fighter Eliot Ness. Ness noted the Social Protection Section was "concerned with promoting legal repression of prostitution by local authorities, and with attendant problems of prevention and redirection."[63] Combining the May Act with the Mann Act (which prohibited the "interstate and international traffic of women"), as well as with the Bennett Act (which prohibited the "importation of aliens for prostitution"), the federal government provided local governments additional resources to become more aggressive in fighting organized prostitution.[64]

The Army's Venereal Disease Control Branch concurred with Ness. Lieutenant Colonel Thomas Turner, who was the Branch Chief, stated that to severely curtail prostitution, concerted efforts had to be made against the profiteer of this crime.[65] Eliot Ness called for a crackdown on "commercialized prostitution" by clamping down on "dance halls and taverns, cheap hotels, taxicabs, and other 'third party channels of assistance for prostitution activities.'"[66] Meanwhile, there was strong community activism for local ordinances barring "red-light" districts. Of all the different suggested programs for prostitution repression, community involvement attracted the greatest consensus as the strongest weapon.[67] "Citizens must be convinced," Walter Clarke of the American Social Hygiene Association wrote, "that it is desirable at all times, in peace as well as in war, to reduce prostitution to a minimum and keep it there."[68] By the end of the war, police administrators were adopting early styles of community-oriented approaches in dealing with the problem of organized prostitution.[69]

As for the individual prostitutes who found themselves under presentence investigation by federal probation officers for violating the May Act, sociologist Walter Reckless ventured to guess in the special 1943 issue of *Federal Probation* that prostitutes were women "with previous sex experience who lack resources and respond to prostitution as a vocational opportunity by way of suggestion or help of [other] prostitutes."[70] Sixty years of subsequent research may paint this impression as simplistic and sexist, but Reckless defends his position by claiming that "in the absence of a body of reliable information on prostitutes, it might be pardonable to make [such] observations."[71] Prior to the Second World War, Reckless asserted that the rehabilitation of prostitutes was particularly difficult because "American social work [had] paid little attention" to prostitution.[72] Furthermore, there were simply fewer "rehabilitative resources" at the time that supposedly could convince a prostitute to end her career.[73]

We have already looked at suitable employment as an important strategy in rehabilitation and the federal government advocated that probation and parole agents stress this strategy in supervising prostitutes in the community.[74] In fact, general rehabilitative treatment approaches used with other criminal offenders were extended to prostitutes.[75] A "complete program of prevention" normally included educating prostitutes about sexuality and health, finding prostitutes adequate housing, "suitable and wholesome recreation," and addressing such psychological issues as self-esteem.[76] For rehabilitation to succeed with women convicted of violating the May Act, federal probation officers were also urged to involve "the school, the family, the church, industry, commerce and [the] government."[77]

Likewise, federal probation officers were required to be sensitive to what issues men convicted of the May Act brought with them. Police captain Rhoda Milliken of the DC Metro Police Women's Bureau reminded correctional professionals that prior efforts to curb prostitution often accomplished little more than to "persecute" women, "forgetful of the great network of which their activities are a part."[78] During the war, the Army made it an important strategy "to keep the number of extramarital sexual exposures to a minimum by emphasizing the importance of adhering to the established moral code and practicability of continence."[79] This was to be accomplished by "hard work, athletics, entertainment, and other recreational facilities, and by supporting such measures as will decrease the availability of sexually promiscuous women."[80] The Army also stressed the use of condoms and regular medical testing for those who engaged in sex.[81] Education was the key factor stressed in preventing men from soliciting prostitutes.[82]

When all was said and done, rehabilitation for the federal offender involved in prostitution was based on inclusion rather than isolation.[83] It is certainly a valid argument that prostitution will continue to plague society, but correctional professionals during World War II were urged to educate and inform the public in "reasonable and practical" approaches in repressing prostitution. As prostitution and venereal disease ultimately reduced the military's ability to fight the war and industry's efforts to support it, the federal government's overall philosophy was to urge "law enforcement agencies to repress the facilitator [of prostitution], and let the health and welfare workers take care of the girl."[84]

Selective Service Violators

Prostitution on or near a military installation was one of among many war-related crimes that required the involvement of the federal probation service during World War II. Others included "espionage, sabotage, failure to register as an alien, violation of selective service, violation of OPA (Office of Price Administration) regulations, theft of government property [and] illegal wearing of uniforms."[85] In fact, the Chief U.S. Probation Officer of the Eastern District of New York calculated in 1943 that investigating offenders of these specific offenses increased workloads by at least 25 percent in the preceding year.[86] We will conclude this review of federal probation's activities during World War II by looking at violators of the Selective Service Act and the impact they had on the service.

Public Law 76-783 was enacted on September 16, 1940, only days before Japan formalized its alliance with Germany and Italy.[87] The act specifically provided for the build-up of the country's military personnel, noting that "in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service."[88] Before America entered the war, its army stood at 1.4 million. As a result of mobilization efforts, including the Selective Service Act of 1940, the U.S. Army grew to 8 million by the end of the war.[89] Among the many provisions the Act covered were age limitations and quotas for induction, fitness requirements, notification procedures, pay, promotions, deferments, conscientious objectors, job retention and restoration, and the organization and structure of the national, state and local registration boards.[90]

Section 11 of the Selective Service Act of 1940 provided, in part, that those who failed to register or report for induction could be imprisoned for up to five years or fined up to $10,000.00.[91] The law specifically directed that any violations thereof were to be tried in U.S. district courts "unless such person has been actually inducted," in which case the person was tried by a military court.[92] Nonetheless, compulsory service has always met with some resistance. In fact, one author contends that "draft resistance is one of the largest, longest

and most successful campaigns of civil disobedience in American history."[93] On the other hand, the importance of ensuring that eligible men complied with the law was taken very seriously during World War II. With as many as 36 million men subject to registration and 10 million actually inducted throughout the war, "there was too much at stake to countenance violation."[94]

Whenever a local selective board believed an individual was delinquent in his responsibilities to either register or report for induction, detailed regulations dictated what had to be done, including notification to U.S. district attorneys.[95] While enforcement was taken seriously, the Selective Service System promoted a philosophy of "persuasion" rather than "penalizing."[96] It was the official position of the Selective Service System to take every possible measure to convince a willful violator to enlist rather than face prosecution and conviction; and this tact was urged upon the numerous U.S. attorneys offices across the country.[97] A foundation of this philosophy is found in the Selective Service Act of 1940, as amended. In addition to compulsory service, it provided alternatives to military duty, such as specialized work camps, for legitimate conscientious objectors, and contained other provisions for deferments, exceptions and emergencies.[98]

Nevertheless, in some cases prosecution became necessary. A circular prepared by the Department of Justice on January 9, 1942, advised all U.S. attorneys that "while every effort should be made to secure compliance with the provisions of the law and to maintain intact the availability of service for those persons having obligations to discharge, willful violators should, of course, be vigorously prosecuted." Whenever cases were prosecuted, the U.S. district courts and the federal probation service as a component thereof supported the general philosophy espoused by the Selective Service, that "every effort" be made "to persuade such offenders to accept their duty of military service rather than convict them and send them to prison."[99] As opposed to other federal offenses, however, federal probation officers were reminded that violators of the Selective Service Act were "not ordinary criminals." Many had "never committed a criminal offense before" their violation.[100] This common factor functioned as leverage in coopting compliance. The personal opinion of the Director of the Administrative Office of the U.S. Courts was echoed by many federal probation officers: "The country gains a soldier and the man is saved from a criminal record" when a violator is persuaded to register or report for induction.[101]

During the war years, federal probation officers were more involved in investigating Selective Service violators than in supervising them.[102] Federal probation officers entered the judicial process shortly after the district U.S. attorney was informed of the crime.[103] Federal probation officers assisted by conducting background investigations of the defendants and provided the U.S. attorneys and district courts with courses of action. In one "metropolitan district" during 1943, there were as many as 150 Selective Service violation cases a *month*.[104] In this particular district, federal probation officers investigated "more than half" of those cases. Fortunately, the majority of these violators often agreed to serve in the military and have their charges dismissed.[105] A year after America entered the war, federal probation officers had completed 2,839 presentence and 791 postsentence investigations of Selective Service cases across the country.[106] By the end of the war, the Selective Service System reported that there were nearly 16,000 convictions under the Selective Service Act of 1940.[107]

The investigations made by federal probation officers also benefitted the military by pointing out which Selective Service violators were actually unfit for service.[108] Early in the war, the federal probation service aided the Federal Bureau of Prisons in determining that many Selective Service violators "were of such mental makeup that they could not be cared for by the regular institutional authorities."[109] This made the information contained in presentence reports very important and required federal probation officers to make extra efforts to obtain any and all "medical and psychiatric information" available on an individual violator.[110] For those who truly had mental health problems, charges were often dismissed and the individuals released to state hospitals or other local agencies.[111] Midway through the war, almost 300 Selective Service violators required psychological evaluation and approximately one in four was actually impaired to the point that he could not serve.[112]

Aftermath

The war ended as dramatically as it had begun for America and offenders and federal probation officers alike eventually returned home.[113] Some of the war's aftereffects on the federal probation service were discussed in my previous article, particularly the pardoning of federal offenders who served in the war. Public and criminal justice professionals, however, shared a real concern that the war's end would spell disaster for American society. Prominent researchers predicted that "trigger-happy" soldiers would come home and lead displaced workers in an unparalleled crime wave to compensate for a crumbling economy.[114] Others, like James V. Bennett, Director of the Federal Bureau of Prisons during the war, dismissed such claims as "mirage[s] created by a few sensational crimes and a hysterical press."[115] Bennett hoped the war would lead people to realize what they could accomplish for themselves and their society.[116] The hope of the Director of the Administrative Office of the U.S. Courts was that through the activities of federal probation officers, society would "come to realize that men with criminal records are not all bad; [and] that many of them given a chance can correct their mistakes."[117]

The Second World War gave federal probation an opportunity to demonstrate how well a probation agency could accomplish its mission of protecting society and rehabilitating offenders during times of historic challenges. With federal probation's 25th anniversary approaching in 1950, post-war America would pose internal challenges for federal probation and corrections in general.[118] Federal probation standards were still not what its advocates had hoped for after 20 years, and caseloads were still viewed as being too high.[119] In fact, the end of the war would see caseloads building still higher. Nevertheless, the reputation of the federal probation service had been significantly strengthened through the work of individual federal probation officers with induction boards, employers, the military, treatment agencies and the community, and would become the standard by which other community corrections agencies would be judged for decades to come.[120]

Notes

[1] United Nations, Department of Social Affairs, *Probation and Related Matters* (New York: United Nations Publications, 1951), 23.

[2] Herbert Johnson, *History of Criminal Justice* (Cincinnati: Anderson Publishing, 1988), 295.

[3] Todd R. Clear and Harry R. Dammer, The Offender in the Community (Belmont, CA: Wadsworth, 2000), 12-13; National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Washington, DC: GPO, 1973), 3.

[4] See Moore, Joel, "Early Reminiscences," *Federal Probation* 14, no. 2 (1950): 22.

[5] Conrad Printzlien, "Meeting War Problems in Probation and Parole," in *Delinquency and the Community in Wartime: Yearbook of the National Probation Association, 1943,* ed. Marjorie Bell (New York: National Probation Association, 1944), 18.

[6] Victor Evjen, "The Federal Probation System: The Struggle to Achieve It and Its First 25 Years," *Federal Probation* 39, no. 2 (1975): 15.

[7] F. Emerson Logee, "Federal Probation and Parole in Wartime," in *Delinquency and the Community in Wartime: Yearbook of the National Probation Association, 1943,* ed. Marjorie Bell (New York: National Probation Association, 1944), 34.

[8] Chandler, Henry, "Wartime Activities of Federal Probation Officers," *Federal Probation* 7, no. 1 (1943): 6.

[9] Printzlien, 26.

[10] George Tindall, *America: A Narrative History, Vol. 2,* 2d ed., (New York: Norton & Co., 1988), 1189.

[11] Bryon Fairchild and Jonathan Grossman, *The Army and Industrial Manpower, vol. 7 of United States Army in World War II: The War Department* (Washington, DC: GPO, 1959; reprint, 1970), 155; Tindall, A36.

[12] Logee, 32; Chandler, 6; see also Susan Hirsch, "No Victory at the Workplace: Women and Minorities at Pullman During World War II," in *The War in American Culture: Society and Consciousness During World War II,* edited by Lewis Erenberg and Susan Hirsch (Chicago: University of Chicago Press, 1996), 241. Though this work primarily focuses on probation and parole, prisons were also particularly active in war production. See the annual reports of the Bureau of Prisons between 1941 and 1945 for detailed reports regarding federal prison industries.

[13] Gary Gerstle, "The Working Class Goes to War," in *The War in American Culture: Society and Consciousness During World War II,* edited by Lewis Erenberg and Susan Hirsch (Chicago: University of Chicago Press, 1996), 105; see also Tindall, 1190-1191. In 1940, the GNP stood at $100.6 billion, by 1945, it reached $213.6 billion.

[14] Chandler, "Wartime Activities of Federal Probation Officers," 6.

[15] Logee, 32.

[16] Pauline Young, "Some Probation Techniques in Rehabilitation: A Case Study," *Federal Probation* 4, no. 4 (1940): 17.

[17] Joseph Sanford, "Where Does the Institution's Responsibility for the Prisoner Begin and End?" *Federal Probation* 7, no. 3 (1943): 27.

[18] F. Lovell Bixby, "Probation and Parole: A Career Service," *Federal Probation* 4, no. 2 (1940): 25.

[19] Chandler, "Wartime Activities of Federal Probation Officers," 6.

[20] Joseph Murphy, "Preparation for the Post-War Period," in *Proceedings of the Seventy-Third Annual Congress of Correction* (New York: American Prison Association, 1943), 96.

[21] Tindall, 1190.

[22] Fairchild and Grossman, 130; Hirsch, 245.

[23] Chandler, "Wartime Activities of Federal Probation Officers," 7.

[24] Chandler, "Wartime Activities of Federal Probation Officers," 6.

[25] Tindall, 1190.

[26] Chandler, "Wartime Activities of Federal Probation Officers," 7.

[27] Printzlien, 18.

[28] John Landis, "News from the Field," *Federal Probation* 6, no. 3 (1943): 75.

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Federal Government's Program in Attacking the Problem of Prostitution

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[This article was originally published in the April-June 1943 issue of* Federal Probation, *which was entirely devoted to the wartime-fueled challenge of containing and reducing prostitution. The author, former Prohibition-era crime-fighting "Untouchable" Eliot Ness, headed a wartime office established to combat the spread of venereal disease, with particular concern for its effect on armed forces manpower.]

AT ALL TIMES the health and welfare of the American people must be considered as factors which are vital to national well-being and progress. Now that we are engaged in a total war, the measure of our success depends to a large extent upon the most effective use of our Nation's manpower and womanpower. The threat of spreading venereal disease thus has become a major concern of the Federal agencies responsible for the health and well-being of military personnel and workers in war industries.

During the First World War, 7,000,000 man-days of service were lost to the United States Army because of venereal disease. A total of 338,746 men—the equivalent of 23 divisions—received treatment. The number of men infected with syphilis and gonorrhea exceeded those killed and wounded in action by 100,000. That these figures, large as they were, represented a lower venereal disease rate than that of any other army is due to stringent control measures which were enforced by our military authorities.

More recently, examinations of men under Selective Service have provided the Public Health Service with the basis for a new estimate on the national prevalence of syphilis. Their calculations indicate the startling fact that 3,200,000 persons in the United States have the disease *now*. That is 1 in every 42. And gonorrhea is known to be three to five times as infectious as syphilis.

The efficiency of men and women in factories and plants turning out the materials of war is menaced by venereal disease. Vital, essential production is being slowed down today because 1,200,000 men and women workers are having to take time off from their jobs to receive treatment for syphilis and gonorrhea.

To combat this menace to health and welfare, national resources have been mobilized for a direct, concerted, and continuous attack on its most prolific source—prostitution.

In September 1939 representatives of the Army and Navy and the Federal Security Agency met and formulated a program designed to control the incidence of venereal disease in military and industrial areas. This program, called the Eight-Point Agreement, declares the policy of the Federal Government in favor of prostitution repression. Responsibility for this part of the program is placed in the hands of local law-enforcement officers.

The Eight-Point Agreement was endorsed in May 1940 by the Conference of State and Territorial Health Officers. Since that time it has received the support of the International Association of Chiefs of Police, the National Sheriffs' Association, the American Bar Association, the American Medical Association, and other professional and civic organizations.

In the spring of 1941 Congress passed public Law 163, know as the May Act. Under its terms, prostitution becomes a Federal offense in areas within a reasonable distance of Army or Navy establishments, when the Secretary of War or the Secretary of Navy believes this step is necessary to protect the health of the men in uniform. To date, the May Act has been invoked only twice—in areas adjacent to Camp Forrest, Tenn., and Fort Bragg, N.C. The policy of the Government recognizes repression as primarily a local responsibility, to be enforced as far as possible by the community. Where Federal action becomes necessary for adequate enforcement, however, not only the May Act, but also the Mann Act and interstate quarantine regulations, are legal means which can be used as stringent regulatory measures.

In order to make the Government's repression program more completely effective, Federal Security Administrator Paul V. McNutt, in his capacity of Director of the Office of Defense Health and Welfare Services, established the Social Protection Section early in 1941. This Section is concerned with promoting legal repression of prostitution by local authorities, and with attendant problems of prevention and redirection. Twelve regional supervisors, and 25 field representatives in States and Territories of the United States, help to explain and clarify the Federal program in relation to local situations, coordinating the work of national agencies with that of civic and police officials.

Repression Necessary for Effective Control of Venereal Disease

That prostitution repression is necessary for effective control of venereal disease has been proved by military reports, medical history, and years of trial-and-error methods. Toleration of segregated districts, with periodic medical examination of professional prostitutes, is not only inadequate, but dangerous. Public health records show that from 50 to 90 percent of women in houses of prostitution are infected with syphilis, or gonorrhea, or both. These diseases are not easily discernible in the early stages. Certainly diagnosis is unreliable when based only upon such ineffective and superficial examinations as those usually given to known prostitutes. Even if such examinations were thorough and diagnosis accurate, however, the prostitute who is pronounced free from disease at one time may become a carrier of the infection immediately thereafter. She can transmit the germs of syphilis or gonorrhea to as many as 30 or 40 customers each night, until such time as her infection is discovered.

In the national program of repression, therefore, the first point of attack is against commercialized prostitution—the "red light" districts and segregated areas.

The second phase of the program focuses emphasis on the unorganized channels of prostitution. Since many localities have now closed the "red light" districts, clandestine prostitutes and promiscuous girls and women have become the chief source of venereal infection. At present, the Navy Department's Bureau of Preventive Medicine estimates that 65 percent of venereal disease among its personnel is attributed to "pick-ups."

Increased juvenile delinquency poses a further problem in repression and prevention. Mistaken ideas of patriotism or desire for advantage and excitement have influenced many 'teen-aged girls to become promiscuous with members of the armed forces. Every such contact is a potential threat in the spread of venereal disease.

Responsibility of Law-Enforcement Officials

Police and law-enforcement officers have a direct responsibility in dealing with the problem of prostitution. The elimination of segregated districts depends largely on intensive police action. During the past year, the excellent work of local law-enforcement officers has resulted in the closing of houses of prostitution in more than 350 communities. Proof of the importance of this activity is shown by the corresponding decrease in the military venereal disease rates. Such action must be continued.

Repression of clandestine prostitution, in which emphasis shifts to the second phase of the national program, is no less a law-enforcement problem. It involves regulation of dance halls and taverns, cheap hotels, taxicabs, and other "third party" channels of assistance for prostitution activities. Vagrant women, delinquent girls, prostitutes who solicit in taverns and on the streets, must be apprehended. Unwitting "third parties" must be advised by the police of their responsibility for assisting the repression program. Where managers of cheap hotels, taverns, tourist camps, or other establishments prove to be recalcitrant, it is a police job to report them and to recommend license revocation or other effective action. Taxi drivers who are uncooperative may be made to face restrictive action by local rationing boards.

Importance of Adequate Laws and Community Cooperation

Because of the unorganized status of clandestine prostitution, special methods of attacking the problem are necessary to insure effective control. In June 1942 Director McNutt invited a number of outstanding police officials in the country to serve on a National Advisory Police Committee on Social Protection. A recent report sent to Mr. McNutt evaluates past accomplishments of law-enforcement officers, and suggests techniques for attacking the unorganized channels of prostitution. Copies of this report have been sent to sheriffs and police chiefs in all parts of the country.

These techniques can be applied in every locality. They can best be applied, however, where law-enforcement action is supported by adequate laws and ordinances, the active cooperation of judges and prosecutors, local public health and welfare departments, and awakened, enlightened public opinion.

Prostitutes cannot be arrested, and thus prevented from spreading disease, unless there are adequate laws and ordinances that can be invoked against their activities. Such arrests, even when made, are more or less ineffectual if court judges and prosecuting attorneys do not stand ready to back them up with suitable fines and sentences. In some communities political pressure from organized vice rings has been allowed to nullify the work of law enforcement. In others the program has been seriously hampered by lack of quarantine and medical treatment facilities. These factors must be combated before repression of prostitution can be totally effective.

In a number of localities where present laws do not permit efficient repressive action, officials are tightening up the restrictive clauses in existing legislation. New ordinances also are being passed which will better control local situations. The American Bar Association and the Council of State Governments is cooperating with the Social Protection Section in working out various legal phases of the problem.

Organized vice racketeers have had their activities definitely curtailed by the closing of houses of prostitution. This first and most important phase of the Federal program is taking the profit out of prostitution.

Need for Quarantine Facilities and Program for Redirection

Lack of detention facilities in many sections of the country has caused a serious situation to arise. Often the only place provided for detention of the large number of arrested prostitutes is the already overcrowded city jail. Girls in the younger age groups, and women who are inexperienced first offenders, have had to be grouped with hardened prostitutes and criminals. Necessary quarantine regulations for those needing treatment for venereal disease often cannot be enforced because of these inadequate facilities.

In a number of critical areas, Federal funds have been made available under the Lanham Act for operation of detention hospitals to relieve the situation. Constructive consideration must be given to this problem, however, and given promptly. If it is not, hundreds of diseased women and girls will have to be released to spread venereal infection in communities and centers of military activity.

Increasing attention is begin given to measures for protection of girls and women from prostitution and related hazards, and for redirection of those who have become involved in prostitution. In this phase of the program, properly effective action must stem from a knowledge and consideration of the individual problems these girls and women present. Sympathetic supervision during periods of quarantine or probation, leading to social readjustment and constructive living, must be a primary consideration in any program for prevention and redirection. This phase of repression is discussed more fully by Raymond F. Clapp, Associate Director, Social Protection Section, elsewhere in

this [1943] issue.

Public opinion is a force that should be utilized effectively in every phase of the repression program. But in order to accomplish this, the citizens of the Nation—quoted in a recent Gallup Poll as being 55 percent in favor of venereal disease control in the Army by segregation and medical examination of prostitutes—need to know that such a program does not work. More than that, they need to know why. If the public has actual understanding of the facts behind the Federal Social Protection program, civic clubs and organizations will be enlisted for service. The way will be smoothed for obtaining necessary facilities. Active community support will be given to the work of law-enforcement officials and to the legal action of the courts.

This summary of the program of the Federal Government in attacking the prostitution problem indicates that considerable progress has been made. A great deal, however, remains to be done. Statutes need to be strengthened, law-enforcement methods must be modernized, and adequate programs for prevention and redirection must be established. Only by attacking on all fronts can this demoralizing and devitalizing menace be controlled.

Doing Justice for Mental Illness and Society: Federal Probation and Pretrial Services Officers as Mental Health Specialists

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AT THE BEGINNING of this century, approximately 6.6 million people were on probation, in jail or prison, or on parole in the United States. Of this population, over 2 million were incarcerated in the nation's jails and prisons (Bureau of Justice Statistics, 2003A). In fact, the number of those incarcerated in the United States has quadrupled since 1980 (Bureau of Justice Statistics, 2003B).

It is estimated that roughly 5 percent of Americans in society have a serious mental illness, and Americans with mental illnesses are significantly overrepresented in the criminal justice system (Council of State Governments et al., 2002). Mental health problems are notably common among correctional populations, including community corrections populations. However, it is difficult to obtain meaningful data on the prevalence of mental illness among correctional populations (Pinta, 2000; Clear et al., 1993). A variety of efforts have been made to attempt to understand the rates of mental illness among different correctional populations, the role of mental illness in propelling individuals into the correctional system, and the importance of collaboration between mental health and correctional professionals in managing persons with mental illness.

An estimated 16 percent of inmates in jails and prisons, or 284,000 individuals, reported suffering from mental health problems or having been admitted to a hospital for mental health reasons (Ditton, 1999). This finding, while subject to criticism because it relied primarily on the self-report of the correctional populations surveyed, fairly closely reflected previous research findings (for instance, see Steadman et al., 1987; Teplin, 1990; Teplin et al., 1996; Pinta, 1999). Statistics such as these fuel the concern, noted by Petersilia (1999), that the majority of these persons with mental illness who are currently incarcerated will return to the community under some type of supervised release.

The prevalence of mental illness among the community corrections population is less well studied. However, about 16 percent of probationers, or approximately 548,000 individuals, are estimated to have mental health needs (Ditton, 1999). According to Lurigio (2001), no studies have measured the number of parolees with serious mental illnesses in the United States, but he estimates that 5 to 10 percent of those on parole have serious mental illnesses. This discrepancy between the percentage of persons with mental illness who are incarcerated or on probation (about 16 percent) versus those on parole (5-10 percent) may stem in part directly from those individuals' mental illness. Many mentally ill people in correctional environments may not receive adequate or optimal treatment and may therefore be unable to comply with institutional rules and regulations. The symptoms they display may thus prolong their incarceration and reduce the likelihood of their receiving parole.

Despite these large numbers, the criminal justice system appears ill equipped to meet the special needs of persons with mental illness who are incarcerated or on custodial release in the community. For example, only 15 percent of probation departments nationally acknowledged operating a special program for mentally ill probationers (Lurigio, 2000). Likewise, Lurigio (2001) indicates that most parole agents lack the exposure and foundation to handle those who are mentally ill under their supervision. A national survey reflects that fewer than 25 percent of parole administrators report operating specialized programs for mentally ill clients; Camp and Camp (1997) found no parole agencies that reported providing any specialized mental health services for offenders with mental illness.

Criminalizing Mental Illness

A number of rationales have been offered to explain the criminalization of the mentally ill. Deinstitutionalization—the release of persons with mental illness from state hospitals under the erroneous assumption that adequate treatment programs would be put in place in the community to serve this popula-

tion—is one common explanation for the criminalization of the mentally ill (Kalinich, Embert, & Senese, 1991; Winfree & Wooldredge, 1991). Primarily because of a lack of funding, community treatment programs generally never emerged (Jerrell & Komisaruk, 1991; Sargeant, 1992; Torrey, 1995). The deinstitutionalization movement has shifted more than 400,000 people, from 500,000 persons in 1960 being housed in state hospitals to fewer than 60,000 patients being housed in such public hospitals today (Sharfstein, 2000). Note, however, that a recent study of inmates with mental illness found that only about half of them had ever been in a psychiatric hospital at all (Fisher, et al, 2002). The authors compared this to findings from the National Comorbidity Survey (which can be accessed at http://www.icpsr.umich.edu:8080/SAMHDA-STUDY/06693.xml) that about 18 percent of a similar control group had been hospitalized. Thus, those in jail were three times as likely to have been hospitalized. The implication of this study is that access to inpatient care may not be the issue at all. However, it is possible that ***at the time of the incident leading to arrest***, lack of access to inpatient care may result in an individual being detained in the correctional setting. Hogan (2000), the Director of Mental Health for Ohio and the chair of President Bush's New Freedom Commission on Mental Health, cautions that to suggest that deinstitutionalization alone is responsible for the criminalization of the mentally ill is an oversimplification and may mistakenly imply that somehow reinstitutionalization is the proper solution.

Some suggest that managed-care companies sometimes invoke penalties against primary care providers and front-line mental health service providers who make too many referrals to psychiatrists (Miller, 1997), and Stone (1997) maintains that fewer persons with mental illness would wind up in jail if they had adequate insurance coverage. Similarly, "medication reimbursement caps, capitation, restricted formularies, preferred pharmacy networks, copayment plans, 'economic credentialing,' and the use of nonmedical professionals to screen mentally disordered patients" (Miller, 1997: 1207-1208) have been identified as impediments to adequate treatment for persons with mental illness. In an era of managed care, some psychiatrists face conflicting responsibilities to the patient and to the payer, and patient care may suffer as a result (Miller, 1997).

Three strikes laws have also likely contributed to institutionalizing the mentally ill within the criminal justice system as well, in part because those with mental illness may, when the illness is not effectively treated, be less able to follow the rule of law. They may thus be more vulnerable to long-term incarceration for minor crimes than are those without mental illness. Other explanations for the criminalization of the mentally ill are offered by Goldkamp and Irons-Guynn (2000) and include the growing homeless population, co-occurring disorders (whereby mental illness often co-exists with a substance abuse problem), law enforcement crackdowns as part of the war on drugs, and police focus on quality of life and ordinance violations.

Some law enforcement officers refer to locking up persons with mental illness as mercy bookings, believing that at least shelter, food, and safety will be provided for those in need while detained (Sargeant, 1992). Unfortunately, the treatment for their illness encountered in jails is often nonexistent or woefully inadequate (Butterfield, 1998; Kerle, 1998). According to Walsh and Bricourt (1997) over 20 percent of jails offer no formal access to treatment for the mentally ill, and Kerle (1998), in a study of more than 3,000 jails nationwide, found only 35 with mental health treatment models worth replicating. As for treatment of the mentally ill, Ditton (1999) in a self-report survey found approximately 60 percent of state and federal prison inmates and 41 percent of jail inmates/detainees indicating that they had received some sort of mental health service.

Whatever the reasons, the criminal justice system has become the social service system of last resort. "With 3,500 and 2,800 mentally ill inmates respectively, the Los Angeles County Jail and New York Rikers Island Jail are currently the two largest psychiatric inpatient treatment facilities in the country" (Sharfstein, 2001:3).

Probation Officers as Resource Brokers

Even an inmate fortunate enough to receive some semblance of mental health treatment while incarcerated will find that discharge planning, particularly from jails, is often nonexistent (Steadman and Veysey, 1997). This deficiency can result in persons with mental illness being released into the community with no medication, follow-up appointments or any assurance of contact with the mental health treatment community (Osher, Steadman and Barr, 2003). Mental health courts have been one mechanism for enlisting probation officers to assist in establishing this vital link of mental health treatment upon release from custody into the community (Slate, 2003). Griffin et al. (2002) have found that such courts rely upon probation officers, community treatment providers or mental health court staff, or on teams made up of both probation and mental health treatment personnel, for monitoring and assisting in linkage to community services. Probation officers have played integral roles in status hearings before the court (Lurigio and Swartz, 2000; Petrila, Poythress, McGaha and Boothroyd, 2001) and can serve as resource brokers or boundary spanners in navigating and linking clients to mental health treatment, housing, benefits, and vocational/employment opportunities (McCampbell, 2001; Steadman et al., 2001). Probation officers also play a pivotal role in providing the court with a comprehensive history of the client's background when a presentence or pre-release investigation is ordered.

Unfortunately, unless symptoms of mental illness are overtly obvious at the time of offense or manifest themselves at sentencing, such specialized attention from the criminal justice system rarely is available to the person with mental illness who encounters the criminal justice system. As noted by Veysey (1994), probation officers typically do not have the background and experience to deal with persons with mental illness effectively. However, specialized programs are emerging, with an influx of more resources and better training for probation officers. With these fiscal, training and personnel resources, mental health treatment can be mandated as a condition of release (Lurigio and Swartz, 2000; Roskes and Feldman, 1999; Roskes and Feldman, 2000). For example, specialized programs have emerged for probationers with mental illness in the Cook County Adult Probation Office in Chicago (see Lurigio and Swartz, 2000), for parolees under the supervision of five outpatient clinics and a conditional release project within the California Department of Corrections (Lurigio, 2001) and for those under probation, parole, supervised release or conditional release supervision with the U.S. Probation Office in Baltimore (Lurigio, 2001; Roskes and Feldman, 1999, 2000). Broward County, Florida, which established the nation's first mental health court for misdemeanants (Slate, 2000), has now implemented 32 hours of specialized training for probation officers who supervise in the community felons who are mentally ill (E. Miller, personal communication, May 12, 2003).

Assertive community treatment (ACT) is also a team approach to care that can provide coordinated treatment and supervision options to individuals with mental illness who encounter the criminal justice system. ACT models include psychiatrists, substance abuse specialists, housing procurement specialists, rehabilitation and vocational counselors, clinicians, nurses, and peer counselors who offer necessary services and assist in monitoring the client in jail if necessary (Lurigio and Swartz, 2000; Allness and Knoedler, 1999; Kondo, 2000; Edgar, 2001). These practitioners follow the client into the community to assist in psychosocial rehabilitation and facilitate community living, with the goal of eliminating or reducing institutionalizations (Allness and Knoedler, 1999). Although recipients of ACT services typically receive such services voluntarily, probation officers have at times ended up as members of ACT teams because of court-ordered conditional releases (Sheppard, Freitas and Hurley, 2002; Herbert, Conklin and Keaton, 2002).

Recidivism

Probation officers sometimes feel torn between the conflicting roles of law enforcement agent and social worker, and this can be particularly true when called upon to supervise persons with mental illness in the community. There is some research focusing on the criminal recidivism of the mentally ill offender. Participation in mental health treatment for those under conditional release in the community has been found to be correlated with a lower risk of incarceration for technical violations; however, those who were revoked for a technical violation have been found to be six times more likely to have been the recipients of intensive supervision (Solomon et al., 2002). While these researchers noted that the jail system being studied had a comprehensive mental health treatment system in place that made it easier to re-incarcerate violators, they indicated that results appear mixed on whether intensive case management services lessen the risk of imprisonment. The researchers concluded that: "providing services that emphasize monitoring tends to increase the risk of incarceration for technical violations of criminal justice sanctions. However, any participation in treatment and motivation to participate in treatment appears to reduce the risk of incarceration" (2002:50).

A recent study (Harris and Koepsell, 1998) found that a group of mentally ill offenders had an equivalent recidivism rate when compared to a matched control group of non-mentally ill offenders. However, the same group has reported that the introduction of pre- and post-release interagency coordination significantly reduced the recidivism risk in a pilot group (Harris et al., 1998). Another study recently reported that the introduction of case management services led to a significant decrease in the recidivism rate of mentally ill offenders (Ventura et al., 1998), and previous research has demonstrated that judicially monitored treatment resulted in good outcomes during a one-year follow-up phase (Lamb et al., 1996). Taken together, this work indicates that the mentally ill offender has a high likelihood of having ongoing contact with the criminal justice and correctional systems, and there are clinical interventions that may be able to positively affect the recidivism rate.

Probation Officers as Part of the Discharge Planning Process

Of all services provided to inmates, discharge planning for persons with mental illness being released from jails has been found to be least likely to be offered (Steadman and Veysey, 1997). Recently, *Brad H. v. City of New York* (1999), which was the first class action suit ever initiated for mentally ill jail or prison inmates, resulted in the New York City jail system being ordered to arrange discharge planning services for mentally ill inmates being released into the community (Barr, 2003, complaint is available at www.urbanjustice.org/litigation/PDFs/BradHComplaint.pdf; settlement document is available at www.urbanjustice.org/litigation/PDFs/BradSettlementMHP.pdf). Osher, Steadman and Barr (2003) maintain that probation officers can be cross-trained with mental health professionals and work hand-in-hand with clinicians in supervising those with mental illness released into the community, relying on graduated sanctions that rise to include hospitalization instead of incarceration.

Therapeutic Jurisprudence

Therapeutic Jurisprudence has been described as an assessment of how "substantive rules, legal procedures and the roles of lawyers and judges produce therapeutic or antitherapeutic consequences" (Wexler and Winick, 1991:981). It is argued that lawyers engaged in the adversarial process of law have a tendency to ignore the long-range consequences of their decisions for both their clients and society (Finkleman and Grisso, 1994; Miller, 1997).

> The traditional criminal justice system tends to look backward finding fault and assessing blame, carrying out a punishment upon someone for perpetrating a criminal act, without much, if any, consideration of the consequences of the imposition of the penalty on the perpetrator or society. …Decisions within the therapeutic jurisprudence framework are made with consideration of future ramifications for individuals, relationships and society long after a person's contact with the criminal justice system has ceased (Slate, 2003:15).

Probation officers are strategically located within the criminal justice system to assist with dispensing therapeutic jurisprudence, and their actions can benefit not only those under their supervision but society as well. Armed with carefully crafted conditional and supervised release plans, appropriate monitoring, adequate resources and proper training, probation officers can function as therapeutic jurisprudence change agents, helping people change their lives for the better. The remainder of this article will focus on how the Federal Probation and Pretrial Services System is grappling with effectively supervising persons with mental illness on their caseloads.

Federal Probation & Pretrial Services Data

As of September 30, 2002, a total of 34,880 cases were receiving pretrial supervision from United States Pretrial Services, and a total of 108,792 cases were under the supervision of the United States Probation Office (Administrative Office of the U.S. Courts [data on file], 2003, February 25). These latter cases include individuals on probation, on parole, and on supervised or conditional release.

Of the cases on supervision, 14 percent (n=4,720) of those on pretrial release and 18 percent (n=19,731) of those on probation (this category refers to those on parole and supervised or conditional release as well) had a special condition for mental health treatment (Administrative Office of the U.S. Courts, 2003, February 25). Of these cases, 31 percent (n=1,454) of those on pretrial release and 47 percent (n=9,340) of those on probation supervision received contracted services. Congress appropriates funds for the federal judiciary annually. The funding pays for employee salaries as well as a myriad of pro-

grams for defendants and offenders [including mental health treatment] (Administrative Office of the U.S. Courts, *Court and Community, January 2003*). Certainly, those not receiving contracted services may be rendered assistance from Medicaid, Medicare, the Veterans Administration, private insurance carriers, and/or via free or sliding fee community-based programs. The total mental health expenditures for contracted services for fiscal year 2002, according to the Administrative Office of the U.S. Courts (2003, February 25), was $10,731,324, or an average of $994 per contracted case.

Data is not available for the clinical or legal breakdown of individuals under the jurisdiction of U.S. Probation or Pretrial Services on a national basis. Roskes and Feldman (1999) published a pilot study examining some of this information. They found that their shared cases primarily had psychotic illnesses: 44 percent (7 of 16) were diagnosed with schizophrenia and 50 percent (8 of 16) with severe mood disorders, including major depression and bipolar disorder. In addition, 94 percent (15/16) of the cases had co-occurring substance abuse or dependence. Finally, 44 percent (7/16) were also diagnosed with a personality disorder, six (38 percent) of whom met criteria for antisocial personality disorder. Each of these co-morbidities is relevant for both treatment and supervision agencies, as they make both treatment and supervision much more complicated and make collaboration all the more relevant.

Roskes and Feldman (1999) also examined the crimes that had been committed by their cases. Bank robbery was the most common index offense, occurring in 44 percent (7/16) of the cases. One (6 percent) of the index offenses was a serious personal crime (kidnapping, rape, assault with intent to murder). One of the individuals convicted of bank robbery subsequently killed a correctional officer while incarcerated. Another 44 percent of the index offenses were a variety of property crimes.

Mental Health Specialists

Some officers within the federal probation and pretrial services system have been classified as mental health specialists (Administrative Office of the U.S. Courts, 2003, January). As with probation officers who serve as substance abuse specialists (Torres and Latta, 2000), agency philosophy can have a significant impact on the style of supervision rendered by mental health specialists and whether or not someone is designated as a mental health specialist in a particular district.

Typically these mental health specialists have a solid foundation in mental health education, and in a number of instances they are licensed/certified clinical social workers, counselors or psychologists (Administrative Office of the U.S. Courts, 2003, January). While there is no standardized national mental health training program currently in effect, officers are routinely exposed to and participate in local, regional or national specialized mental health and/or substance abuse treatment conferences (such as regional or circuit trainings, annual district trainings, and specialized training sponsored by the Federal Judicial Center (FJC) and/or the Administrative Office of the U.S. Courts via the Federal Judicial Television Network [FJTN]). Included among the topics covered during such training sessions are discussions of mental health, substance abuse, domestic violence, dual disorders and assessment, and treatment and supervision of sex offenders. For instance, in May of 1999, the Administrative Office of the U.S. Courts hosted a national mental health and substance abuse conference, at which the former U.S. Surgeon General David Satcher served as the keynote speaker. Because of specialized training opportunities such as this one, mental health specialists or line officers working with mental health cases are adept at recognizing the signs and symptoms of mental illness and can coordinate required services in the community, often using contractual agreements (Administrative Office of the U.S. Courts, 2003, January). Often, the U.S. District Court or the U.S. Parole Commission orders a defendant and/or offender to participate in a mental health evaluation and/or treatment. In these cases, mental health specialists often serve as contractual brokers to ensure such services as counseling (individual, group or family), psychological/psychiatric testing and assessment, medication, transit to and from mental health treatment, and even money for food and clothing in emergencies (Administrative Office of the U.S. Courts, 2003, January). These officers also play an integral role by being keenly aware of issues related to non-compliance with court-ordered conditions of release and are equipped to monitor problems that require a proactive response.

Discussion

The finding that 14 percent of individuals on pretrial release and 18 percent of offenders on probation, parole, supervised or conditional release in the federal system have mental health conditions is remarkably consistent with existing research indicating prevalence rates of mental illness in correctional populations. This provides some reassurance that the evaluators recommending such conditions and the judges imposing these conditions are (in a statistical sense, at least) imposing the most appropriate special conditions to foster strategies not only aimed at stabilizing mental health symptoms that may present a danger to a defendant/offender, the officer, and/or other third parties, but also to maximize the individual's potential for living and functioning effectively in the community. At the most basic level, therefore, the needs of the population are being met. Clearly, more research is needed in this important area. Nonetheless, the state of our science suggests that these interventions can be helpful, and are common sense as well.

In our experience, it is clear that several attitudes and skills are required for the most effective community-based treatment of the offender with mental illness. First and foremost, all should recognize that this collaboration can increase the likelihood of a successful community reintegration for an offender with mental illness. Many clinicians and supervising personnel are unaware of the body of research demonstrating that clinical interventions can help mentally ill offenders successfully re-enter the community.

Next, all involved must be willing to view each other as important team members in the management of these individuals. This willingness does not necessarily come easily, and in many instances we have experienced that one party is for some reason unable to develop a working relationship with another party in the management team. It is all too easy to find mental health providers who are unwilling to work with individuals who have legal entanglements; conversely, many probation agents and officers, particularly those with large caseloads, find themselves unable to deal with the complexities of the person with mental illness and prefer not to maintain them on their caseloads. Thus, to effectively manage mental health cases, particularly chronic and/or severely mentally ill individuals, a strong case can be established to ensure that officers with specialized mental health duties be allowed to carry significantly smaller caseloads than the average officer. Officers working with mental health cases (particularly severe or chronic mentally ill individuals) more often than not make intensive field (community) contacts, and maintain active collateral contacts with

treatment providers, local law enforcement officials, and family/community support systems. Additionally, they are responsible for ongoing assessment of third-party risk issues, treatment referrals and/or proactively fostering strategies to address uncooperative behaviors (such as non-compliance with court-ordered conditions).

These relationships work best if a team approach is developed that makes use of each team member's strengths and skills. Ideally, these should complement one another, to minimize the likelihood of someone falling through cracks in the safety net. Thus, in establishing a collaborative partnership, we envision the roles of the probation officer (primarily public safety in orientation) and of the clinical providers (primarily concerned with the psychiatric well-being of the individual client) as part of a "whole picture" rather than as competing with each other.

A final crucial factor is the ability to speak and understand each other's language (Roskes and Feldman, 1999). The jargons of the criminal justice and mental health systems are sophisticated codes that allow practitioners to easily communicate but often keep non-practitioners in the dark. Our experience together has convinced us that the ability to communicate and respect each other's roles is a key to the successful treatment of the defendant and/or offender with mental illness.

Examples of collaborative models offering comprehensive services to mentally ill offenders in the community can be found in Milwaukee, Wisconsin and Multnomah County, Oregon (see Roskes et al., 1999). However, there are numerous barriers to the development of such collaborative models. Managers of probation offices and other supervising agencies do not always understand the prevalence of behavioral disorders and the added layers of complexity presented by these cases; therefore, the need for specialized services for such individuals is not always clear to the managers of these agencies. Given the minimal understanding that many agencies have about the role of mental illness in the genesis of criminal behaviors, supervising agents are unable to effectively manage these cases. For instance, the ability of an individual with mental illness to adhere to even standard conditions of supervision may be far inferior to that of the average case. Given such lack of understanding, it is not surprising that managers of probation offices seldom encourage (or pay for) the development of specialized expertise in the area of mental illness. Instead, they may conclude that people with mental illness are doomed to a high level of recidivism and therefore fail to invest the required time and energy in maintaining such cases in the community.

Mental health providers also have a reluctance to work with patients who are under the jurisdiction of the criminal justice system. Most providers of care have a very limited understanding of the role of the supervising agency in the management of a case in the community. The supervisory agent's preference for maintaining cases safely in the community is poorly understood by the average mental health professional. In addition, mental health providers are (rightly or wrongly) afraid of clients who are involved in the legal system. At times, the referred client may not meet the so-called "target population requirements" or "medical necessity criteria" of the Medicaid or other payment system. Thus, providers have concerns about who is responsible for payment for services. While the federal probation system can pay for at least some services, this is not generally the case for state supervising agencies. Finally, providers may be concerned with liability issues surrounding the care of this population. Thus, rather than learning how fruitful it can be to work in a collaborative fashion with supervising agencies, many mental health providers simply refuse to accept these cases.

Conclusion

It has been the experience of the authors that collaborations such as these can work and can greatly benefit the clients involved in the collaboration, enhancing their community adjustment in a way that less integrated service cannot. Several such cases are described in the literature (see Roskes et al., 1999), and we have seen a number of other such cases. Such collaborations take work to maintain, as with all relationships. It is not clear that we are able to justify such work in a "bottom-line" oriented fashion. Rather, we focus on the mission of the probation office to help offenders transition back into their communities as participating citizens. For the offender with mental illness, competent and collaborative mental health care is a part of that mission. What better way for probation and pretrial services officers to aid in this process than by assisting persons with mental illness to become responsible for their actions to the ultimate benefit of all?

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Community Supervision of Sex Offenders—Integrating Probation and Clinical Treatment

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THE COMMON REACTION to the criminal acts committed by sex offenders includes disgust, anger, and a feeling of increased vulnerability. Not surprisingly, many people feel that convicted sex offenders should be locked up indefinitely, castrated, or put to death. In reality, however, nearly 60 percent of convicted sex offenders live in our communities under conditional supervision.[1] The inherent problem with releasing convicted sex offenders into the community is the likelihood that they will repeat their crimes. To address this problem, intensive treatment programs for sex offenders have been developed to be used in combination with traditional measures such as incarceration, probation, and parole. These programs are continually evolving and require re-evaluation to assure sex offenders are not as dangerous when they are released into communities as they were at the time of their arrest.

Research on the success of sex offender intervention has proven problematic for many reasons. The label "sex offender" represents a heterogenous mix of individuals. Sex offenders can vary from the 19-year-old statutory rapist of a 16-year-old victim, to the sexual predator who carefully plans his offense, stalking and grooming his young victims in public playgrounds and parks. In classifying these various types of sex offenders into a single group, differing elements that relate to recidivism will be masked, potentially creating inconsistent results across studies. Similarly, there are a variety of operational definitions of recidivism, ranging from re-arrest to conviction for a subsequent sex offense. This can be problematic because it assumes that the offender will be caught and reported after committing a subsequent offense. In reality, sex offenses are not reported to the authorities in 85 percent to 90 percent of cases.[2] Further, in the United States, the lack of a national reporting requirement for sex offenders has made it difficult to track offender recidivism, particularly if an offender moves from one state to another.

Despite these limitations in sex offender research, several studies have attempted to determine and compare the recidivism rates of sex offenders who have undergone treatment to those who have not. In one study, Janus and Meehl estimated that a "20 percent base rate for sexual recidivism seems reasonable as a low-end estimate" for a group of sex offenders set to be released from prison.[3] This study reported that 45 percent was an accurate upper estimate of untreated sex offender recidivism.[4] In a randomized controlled study, Marques and colleagues reported data from sex offenders who volunteered for "treatment" and "no treatment," finding higher recidivism rates for untreated sex offenders.[5] A survey of this and other studies supported the finding that treatment decreases recidivism among sex offenders, indicating that in one study, nearly three-fourths of untreated sex offenders re-offend, compared to one-eighth of offenders receiving treatment.[6] In more recent research, Lowden and colleagues found that sex offenders who did not participate in treatment were 8.5 times more likely to be arrested for a violent crime in the first twelve months after release from prison or discharge from parole. This study also found a correlation between severity of criminal history and eventual recidivism, and reported that offenders who were re-arrested tended to be younger on average, more likely never to have been married, and more often non-Anglo.[8]

This paper will describe one model program specially designed to provide intensive supervision of conditionally released sex offenders in Illinois, and will discuss how theories of rehabilitation are concurrently enacted into treatment and balanced with public safety concerns.

How Did We Get Here? Illinois' Evolving Sex Offender Laws

As early as the 1930s, American criminal laws began to acknowledge that certain sex offenders needed specialized treatment. In 1938, the Illinois legislature enacted a civil commitment statute for sex offenders known as the Criminal Sexual Psychopathic Persons Act.[9] As an alternative to traditional imprisonment, this law and similar statutes in other states allowed indefinite hospitalization for repeat sex offenders, as well as allowing for detention and supervision.

By 1960, twenty-six states and the District of Columbia had some form of sexual psychopath statute allowing for the treatment of sexual offenders in lieu of punishment.[10] In the decades to follow, however, treatment of sex offenders was found to be largely ineffec-

tive, and growing numbers of persons convicted of sexual offenses were reincorporated into the general prison system. In 1977, the Group for the Advancement of Psychiatry publicly called for the repeal of sex offender treatment statutes due to their reliance on questionable predictions of dangerousness, and the lack of effective treatment.[11] As a result of these concerns, as well as civil rights issues, half of the states that had sexual psychopath laws in 1960 had repealed them by 1990.[12]

In the early 1990s, the attention of the nation was drawn to the risks of harm posed by individuals convicted of sexual offenses once again. Following the much publicized rape and murder of seven-year-old Megan Kanka in 1994, the New Jersey legislature passed the first sex offender registration and public notification statute in the United States.[13] Federal legislation, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, was passed soon after, encouraging individual states to adopt "Megan's Laws" to mandate sex offender registration.[14] Subsequently, all 50 states enacted registration acts requiring sex offenders to register with the state, and to provide certain personal information to law enforcement officials and ultimately, to other members of the community in which they live and work.[15] Recently, a Connecticut sex offender registration statute was challenged as violating the right to procedural due process for sex offenders. On appeal, the United States Supreme Court upheld the sex offender registry law.[16] In his concurring opinion, Justice Scalia asserted that even if registration requirements infringe on a sex offender's liberty interest, "the categorical abrogation of the liberty interest by a validly enacted statute suffices to provide all the process that is due—just as a state law providing that no one under the age of 16 may operate a motor vehicle suffices to abrogate that liberty interest."[17] Based on this reasoning, a sex offender has no right to establish that "he is not dangerous [any more] than…a 15-year-old boy has a right to process enabling him to establish that he is a safe driver."[18] Overall, the publicity surrounding Megan's Law and related legislation triggered American society's newly found sensitivity to and awareness of individuals who violate the law by committing sex offenses. Currently, there is greater concern for public safety interests. Recognizing that incarceration by itself does not guarantee that sex offenders will not re-offend once released, state legislatures have shown a renewed interest in enacting treatment statutes for sexual offenders over the past decade.

On January 1, 1998, Illinois revised what was formerly the Criminal Sexual Psychopathic Persons Act, renaming it the Sexually Dangerous Persons Act.[19] Across the country, the Sexually Dangerous Person (SDP) laws targeted violent recidivism, and differed from the earlier sexual psychopath laws in that they allowed for indefinite involuntary commitment after completion of the criminal sentence if the sexual offender is found to have a mental abnormality and to be dangerous.[20] The Act allows sexually violent persons to be detained indefinitely in order to prevent violent recidivism. Despite this change, the goal of the Illinois SDP Act continues to be the treatment instead of the incarceration of persons suffering from mental disorders.[21]

The Illinois SDP Act and similar laws applicable to other states have been at the center of considerable controversy. Criminal justice and mental health professionals, along with members of the public, have been unclear whether to focus public funds on punishing, treating, or detaining sex offenders in order to prevent post-release criminal behavior. Opponents of SDP statutes challenge that these laws violate constitutional guarantees of due process, and amount to double jeopardy and *ex post facto* lawmaking. The U.S. Supreme Court rejected these arguments in 1997, upholding the Kansas SDP law by a narrow margin.[22] In a five to four majority opinion, the Court decided that indefinite hospitalization was constitutional as long as treatment was provided.

The tension surrounding confinement, supervision, and treatment of persons convicted of sexual offenses has been even more intense in the assessment of probation programs. Program officials must find ways to respect the rights of offenders, enable effective, ongoing treatment, and maintain public safety. These programs often must function at the center of competing demands and under the weight of decades of controversy. By the time of the Supreme Court's decision, the Cook County Adult Probation Department in Chicago had already begun restructuring its programming for sex offenders.

Theory Guiding Practice: Cook County Adult Sex Offender Program

A 1993 study by the probation division of the Administrative Office of the Illinois Courts reported that more than 2,500 adult sex offenders were on probation in Illinois.[23] Recognizing that traditional probation was insufficiently rigorous to supervise sex offenders, the Cook County Adult Probation Division developed and implemented a specialized program of intensive probation for sexual offenders, the Adult Sex Offender Program (ASOP). The Illinois Criminal Justice Information Authority provided much of the funding for the development and implementation of the ASOP program. The targeted offender group for the ASOP program consisted of offenders convicted of aggravated criminal sexual abuse or criminal sexual assault against a family member.

Over the past five years, ASOP program officials have recognized that probation officers often have to manage the competing demands surrounding the treatment of sex offenders. They are asked to ensure public safety while coordinating the delivery of essential services. In order to function effectively, probation officers need to understand the mental health and criminal justice systems, the demographics and clinical criteria that predict violent recidivism, and therapeutic techniques that can facilitate engagement in treatment. In the following pages, we will elucidate the lessons that have been learned during the past five years and offer suggestions for training probation officers to work amidst such competing demands.

The primary objective of managing sex offenders in the community is to prevent future victimization. With that goal in mind, the ASOP program follows the framework of the national containment model for the supervision of sex offenders as defined by English and colleagues.[24] The containment model provides a comprehensive approach to sex offender management. English contends that a key to the successful implementation of the containment approach is to adopt a multidisciplinary, multiagency strategy that proactively counteracts the fragmentation that is inherent in systems incorporating several diverse agencies.[25] The containment model is centered around five core components: a) a consistent multi-agency philosophy focused on community safety, b) a coordinated multidisciplinary implementation strategy, c) an individualized case management and control plan for each offender, d) consistent multi-agency policies and protocols, and e) program quality-control mechanisms.[26] The ASOP program follows the containment model by providing a comprehensive and integrated system of services to provide intensive supervision of offenders through home searches and other modes of monitoring, weekly group ther-

apy supplemented by individual counseling, and institutionalized communication between probation officers and treatment providers.

The following outlines several basic elements of the ASOP model that are necessary for the successful implementation of the containment model.

Communication and Interagency Cooperation

Sexual offenses themselves are shrouded in deception, and perpetrators typically resort to dishonesty, deceit, and secrecy when pursuing their victims. Because of this, it is essential that those charged with the supervision and treatment of sex offenders go beyond relying on the self-reports of sex offenders when monitoring adherence to the conditions of their probation. All parties involved in the supervision of the sex offender, including probation officers, treatment providers, prosecutors, defense attorneys, and the judge, must stay in regular communication concerning the offender's current status, risk factors, and progress in treatment. Each party provides essential information that must be reviewed and updated to continually re-evaluate the offender's progress and potential for recidivism. It is the role of the probation officer to coordinate the flow of information between all parties, and to act as the point person to be contacted when new facts emerge concerning the sex offender's status. The probation officer must not only integrate reports about the offender, but must also keep open the dialogue about whether modifications should be made in the offender's treatment and supervision plan based on new findings.

Delineation of Roles

While communication and cooperation are essential to successfully supervise and reduce the risk posed by sex offenders, it is also essential to clearly define the roles of these two professions (treatment providers and probation officers) as being distinct from one another. The therapist is charged with providing the offender with a treatment program designed to decrease denial and minimization, increase victim empathy, increase appropriate social skills, develop an individualized relapse prevention plan, as well as addressing secondary issues such as offender substance abuse or anger management problems. In order to successfully do this the therapist must be able to create a rapport conducive to treatment. This includes maintaining a difficult balance, however, as the therapist must provide some degree of confidentiality while reminding the offender that certain treatment information is communicated back to probation and the court. Additionally, the therapist is a mandated reporter of child abuse and must break confidentiality in the event that any additional sexually abusive acts are discussed or if the offender reports any illegal activity in therapy.

The role of the probation officer differs in that his or her job is to closely monitor the behavior of the offender while at home, at work, and in the community. The probation officer's task is to gather as much information as possible and to continually re-assess the potential risk posed by the offender. Many of the offenders in the ASOP program have expressed the view that their probation officers serve as an external conscience. The probation officer is seen as being critical of the offender's non-compliance with the expectations of the program and serves to constantly remind each probationer of the consequences for re-offense. Over time, the offenders in the ASOP program appear to internalize the expectations of their probation officers and eventually earn some degree of trust from those charged with their supervision. It appears that probation officers who familiarize themselves with the treatment goals and theory behind the sex offender specific therapy are best able to manage the delineation of roles while seeing themselves as working in conjunction with the therapist.

Collaborative Needs

Therapists and probation officers rely on one another to better provide services and supervision to the sex offenders with whom they work. Therapists need external information about the offender's life to supplement what the offender says in treatment, as well as to corroborate the veracity of what the offender discusses in sessions. The offender may at times lose motivation for treatment, as is typically evidenced by poor attendance, minimal engagement, and failure to complete assigned tasks. When this occurs, the therapist can rely on the probation officer to remind the offender that therapy is a condition of probation, and to strongly encourage a reevaluation of the probationer's motivation for treatment. Probation officers receive regular reports of attendance and treatment progress from the therapists, including an evaluation of the offender's level of participation, willingness to disclose sexually inappropriate thoughts and behaviors, compliance with assignments, and understanding of consequences for re-offense. Weekly reports of attendance as well as monthly reports of treatment progress occasionally need to be supplemented by longer reports to the court addressing specific questions raised by the probation officer, state's attorney, defense attorney, or judge. Examples include reports by the therapist addressing an offender's potential risk of harm when deciding on issues of visitation with children, removal of curfews, or continuation of specialized sex offender probation. Therapists must be able to provide this information to probation and court officials in both writing and in oral testimony, if necessary. In addition, therapists need to receive feedback about the treatment program from the probation officers, whose first-hand view of the offender's behavior in the community is essential to treatment success. Anecdotal reports of how certain interventions are understood and implemented by the offender in the real world are invaluable in fine tuning the content of the therapy program.

Accountability

Successful treatment and community supervision of the sex offender requires all parties to take full responsibility for their part of the process. True collaborative relationships depend on trust, respect, and responsibility. Programs whose culture is marked by constant vigilance and fear of accusations and attributions of liability by other agencies cannot succeed in effectively addressing the supervision and treatment needs of the sex offender. It is only when probation officers and therapists take full responsibility for the role they play in the program that interagency trust can be established. Sex offenders often employ defensive strategies such as splitting, and typically rely on elaborate systems of cognitive distortions in order to continue their cycle of offending. It is likely that the offender will, at times, pit probation officers against therapists, reporting select information to each in order to create interagency conflict. When each agency openly accepts responsibility for its shortcomings, and is accountable for its share of the treatment and supervision, the likelihood of splitting is diminished, thereby maintaining the focus on the offender.

ASOP Probation Officer Survey

In order to better understand what is necessary to successfully supervise sex offenders in the community, a brief survey was administered to probation officers in the Cook County ASOP program. The survey specifically asked questions to assess their views of

what makes a good probation officer, what makes a good therapist, how important empathy is, and what aspects of their training were most beneficial to their work with adult sex offenders.

When asked how they perceive their role from a systematic standpoint, the probation officers surveyed unanimously indicated that they viewed probation as an extension of the criminal justice system. Many of the probation officers went on to explain that they are part of the larger court system and that they see themselves as working for the presiding judge. In this role, probation officers reported that they attempt to facilitate the rehabilitation of offenders as an alternative to incarceration, and work closely with the state's attorney and public defenders. They see themselves as empowered by the court system to monitor and enforce the conditions of probation.

In answer to the question of what personality characteristics are desirable for a probation officer working with sex offenders, the overwhelming majority of responses emphasized the importance of maintaining a professional stance marked by an ability to put personal feelings aside in order to continuously deal with difficult cases. Self control was stressed as a means of dealing with the challenges presented by sex offenders who become oppositional or manipulative toward their probation officers. Nearly all of those surveyed indicated that a good probation officer must be able to maintain a firm stance with probationers, with common responses including "stand strong," "put your foot down," and "be tough." Other factors that were considered desirable characteristics for probation officers included having a good sense of humor, good communication skills, confidence, patience, and being open minded. In addition, most probation officers denied that their role is at all therapeutic to the offenders. The majority of respondents stated that probation officers leave the therapy to the clinicians, and they are reluctant to see their interactions with probationers as being at all curative.

When asked about the need for probation officers to possess empathy with the offenders they supervise, the majority indicated that there is no place for empathy in their work. Some respondents went on to explain that the sex offender will use empathy to manipulate the probation officer, ultimately defeating the purpose of the conditional supervision. Other respondents indicated that empathy may be a necessary quality in the probation officer, but only secondary to providing community safety and ensuring compliance with the terms of probation. One respondent stated that empathy, like trust, must be earned over time only after the offender has consistently been compliant with the terms of probation. Another explained that it is difficult to find empathy for the sex offenders because of the strong tendency to feel empathic towards the victim. It may be that some of the probation officers surveyed equated empathy with sympathy when responding to this question.

Probation officers indicated that, in general, their view of sex offenders is overwhelmingly negative. The view of most probation officers seems largely influenced by the offenses committed by individual probationers. Nearly all surveyed used terms like "repugnant," "perverted," and "disgusting" in describing the behavior of their clients. Still others stated that they viewed sex offenders with great caution, listening to what they say with some degree of skepticism and distrust. Another respondent indicated that sex offenders are viewed as "lawbreakers" lacking remorse and responsibility for their criminal behavior. The probation officers surveyed emphasized, however, that they don't let their negative reactions toward their clients' offending behaviors interfere with the performance of their job.

Finally, survey respondents were fairly positive in describing their perceptions of and working relationships with the clinicians who provide sex offender-specific treatment. The clinicians with whom probation officers interact when working with sex offenders were described as "well informed," "knowledgeable," and as generally being aware of limitations of treatment. The majority of respondents stated that they work well with therapists, viewing their relationship as collaborative and helpful. When asked about distinguishing the roles of the probation officer from the clinicians, a typical response indicated that communication is essential, including being explicit about the differing roles of all parties involved, including the sex offender. Specifically, the role of the clinician was seen as treating, managing, and changing undesirable behaviors in the offender. The probation officer, on the other hand, was described as being responsible for supervising and monitoring the offender's behavior, as well as reporting to the court and enforcing the conditions of probation.

The same survey questions discussed above were reviewed by the two first authors, as clinicians, in an attempt to ascertain characteristics desirable for a therapist working with sex offenders. The responses to these questions indicate that the most important characteristics of clinicians working with sex offenders include using a structured approach, a specific model for treatment, well articulated treatment goals, ways to measure treatment outcome, and an ability to combine a psycho-educational approach with more traditional group process style. Clinicians must have some degree of empathy when working with sex offenders, but must also be cautious not to allow themselves to be manipulated by their clients. In general, a good therapist working with sex offenders will view their clients as impaired individuals with a range of emotions and needs similar to the rest of the population, but lacking the appropriate internal resources for expressing their affect and satisfying their interpersonal needs. Rather than viewing them as monsters or disgusting individuals, clinicians should recognize their clients as having severe functional limitations. Typically, the clinicians working with sex offenders recognize that without a compelling mechanism such as arrest and probation, these individuals would likely never seek help nor focus on necessary change.

Clinicians should view themselves as part of a team with probation officers. Other members of that team include the client, the judge, and other treating professionals involved with the case. In our experience, probation officers are extremely knowledgeable of the client and their problems, and share common goals and similar observations as the clinicians orchestrating the treatment. Clinicians in our program hold the probation officers in high regard and respect their input in tailoring the treatment towards the individual offender's needs. Oftentimes, the probation officer's role is to confront the offender about his or her denial and to ensure that conditions of the court are fully satisfied. The clinician in turn works with the offender to break through denial, and help them see how to re-shape their behaviors in order to comply with the law without exacerbating their existing mental health issues. Together, the clinician and the probation officer provide the offender with complementary styles that serve to facilitate progress in treatment, and decrease the risk of re-offending.

Integrating Theory, Practice, the Individual, and the Court: Sample Cases

Thus far, this paper has provided an overview of legal history, the theory behind the ASOP program, and the role of the probation officers and clinicians in facilitating community supervision of sex offenders and providing treatment to change maladaptive behavior patterns. Even when all of these elements are balanced, however, there may still be obstacles to successfully integrating sex offenders into the community. The following case examples illustrate instances in which the theory behind community supervision of sex offenders is put into action as well as obstacles that may be encountered when implementing such a program.

Case 1

J.R. is a middle-aged, African-American man who has been employed as an auto mechanic for the last seven years. J.R. dropped out of high school, has been married twice, and is separated from his current wife. One evening, after returning from the bar, J.R.'s teenaged daughter walked in on him while he was changing. Partially clothed, J.R. requested that his daughter enter the room and touch his penis. The next morning, J.R. told his wife about the incident and turned himself in to the police at the nearest station. Prior to adjudication he enrolled on his own in individual counseling at his local community mental health center. He also began to attend and participate in Alcoholics Anonymous (AA) meetings. This continued for about a year at which point he was court-ordered into an ASOP treatment group as a condition of probation. He resisted, insisting that he had been involved in his own treatment, and had received great benefit. When asked about his relapse prevention plan, however, J.R. responded with a confused blank stare. With reluctance he left individual therapy and AA, and joined the ASOP. J.R. participated in weekly sex offender-specific group therapy. When asked about his actual offense, J.R. admitted that his judgment was impaired from heavy drinking and that he felt immense guilt when he sobered-up the following morning.

About six months into treatment, his wife initiated couples and family therapy sessions which eventually included his daughter, the victim. The family therapist, a doctoral level psychologist, engaged in this treatment with great zeal, acting as advocate, ombudsperson, case manager and therapist, to the point of advising them legally as well as appearing in court to testify on their behalf. Unfortunately, this new therapist failed to communicate with the ASOP court-appointed therapist and probation officer until immediately prior to court dates. Rather than enhancing J.R.'s sex offender treatment, the independent work of the family therapist hindered J.R.'s progress in sex-offender specific treatment, including a period during which he removed himself from ASOP treatment only to later return, exhibiting many regressive behaviors and cognitive distortions.

In *Case 1,* the goals of the ASOP program were hindered by the work of an outside therapist. While believing that his actions were in the best interests of the client and his family, the therapist's intervention, combined with his failure to understand the unique treatment needs of sex offenders, caused a setback in the offender's treatment. The offender in this case believed he would expedite his recovery and eventual reunification with his family by pursuing the additional therapy services. By not collaborating with the therapists and probation officers providing the sex-offender specific services, the family therapist in this case reinforced the offender's pattern of cognitive distortions that contributed to the commission of his original offense. Outside services such as family therapy may assist in the treatment of sex offenders in the community, but only when they are integrated with the already existing structure for the supervision and treatment of the offender.

Case 2

B.T. is a single, Caucasian man in his late twenties who has been unemployed for several years. He has a history of abusing alcohol and cannabis dating back to high school. While babysitting an 11-year-old neighbor girl, B.T. entered her room while she slept, placed his hand beneath her clothing and fondled her genitals. Several weeks later, the girl reported the incident to her counselor at school. B.T. was subsequently charged with aggravated criminal sexual abuse of a minor and sentenced to 24 months of specialized sex offender probation.

As part of his probation through ASOP, B.T. participated in weekly, sex offender-specific group therapy. At the start of treatment B.T. vehemently denied the charge against him, and argued that he signed his probation agreement under duress. After several weeks of confrontation by the other group members, B.T. admitted to the offense, but blamed his behavior on "being too high" that night.

B.T. continued to attend group meetings for almost one year and was superficially compliant, glib, and always upbeat in his responses. He was marginal in terms of meaningful internalization of the material and process, vaguely referring to various life situations regarding his relationships with adult girlfriends and their children. Despite concerns of the clinician and probation officers involved with B.T., the judge entered an order discontinuing his treatment and probation without any indication or communication to the treatment program or probation. Within two months following discharge, B.T. re-offended and was arrested and incarcerated for aggravated criminal sexual assault of a minor.

In *Case 2,* the community supervision of the offender was terminated prematurely, to the detriment of a subsequent minor victim. In this case, the offender was able to convince the judge that he was successful in treatment, without ever supporting his claims with the opinions of the therapist. Had the judge postponed his decision pending a report from the therapist, an assessment of B.T.'s true risk of reoffending would have been made available to the court. By trusting the offender to accurately report his current progress in treatment, this case resulted in an illustration of a worst case scenario when dealing with the manipulative behavior of sex offenders.

Case 3

C.J. is a single, Latino man in his early twenties. Over the past several years, C.J. has maintained intermittent employment in various fast food restaurants. As a teenager, C.J. was in foster care following his mother's death. C.J. never completed high school, where it was determined that he had a learning disability and a borderline IQ. While watching television at his aunt's home one afternoon, C.J. encouraged his six-year-old nephew to disrobe and climb onto his lap. He was subsequently arrested for aggravated criminal sexual assault, and sentenced to a term of four years of intensive probation including a sex offender treatment program. C.J. was initially enrolled in a sex offender treatment program for two years and was terminated unsuccessfully. According to this agency, C.J. apparently stole a watch and a knife from an unlocked office. When confronted about the theft on the following day, C.J. returned the watch but was ejected from the program. Probation requested that the ASOP program consider him for inclusion in their program. During his assessment interview, C.J. seemed appropriate for treatment, and was accepted into the ASOP program. Treatment records and a discharge summary were requested from the former program, but never received.

In the new program, C.J.'s attitude was that he had already learned what he needed to know

during his prior treatment. As a result, his progress, despite persistent and creative attempts at intervention, was negligible. Due to several impulsive and aggressive episodes of violent behavior in the workplace, it was determined that C.J. posed significant risk of harm to self and others and was terminated form the second treatment program from which he was deriving little, if any, benefit. The clinicians from the second agency testified concerning C.J.'s current status, including the results of an Abel assessment indicating that he actually posed a greater tendency toward sadistic pedophilia than when he was first arrested prior to treatment. Unable to find a facility willing to treat C.J. on an outpatient basis, the judge decided to allow C.J. to continue serving his term of probation without requiring any treatment.

Case 3 represents a lack of available services to meet the varied needs of different offenders. In this case, C.J. deteriorated over time, and actually posed a greater risk after treatment in the community. The judge felt that C.J. had been complying with the services to the extent that he should not be incarcerated in prison. An ideal alternative for a client like C.J. would be to provide sex offender-specific residential treatment, in which he could receive more intensive supervision and treatment services outside of prison. At the time of writing, this type of treatment was not available. It is likely that there are many sex offenders similar to C.J. who require more intensive treatment than is available within the community, but whose behaviors would likely worsen if sent to the penitentiary.

Case 4

R.M. is a single, forty-year-old Caucasian male, who has been married and divorced twice. Following his second divorce, R.M. started in a live-in relationship with a similarly aged woman and her fifteen-year-old daughter. This relationship lasted for several years. For most of R.M.'s adult life, he worked as a landscaper and was a self-described "loner," who was uncomfortable interacting with others. R.M. actively discouraged others from approaching him in part because of his "short fuse," marked by his tendency to launch into an explosive verbal onslaught without apparent provocation. R.M. committed his sexual offense against his paramour's daughter. On two separate occasions R.M. entered the fifteen-year-old's bedroom during the night, and fondled her genitals underneath her clothing. The victim was aware of these assaults and eventually reported them to her mother. The police were called and R.M. was arrested and convicted of aggravated criminal sexual assault with a sentence of four years of intensive probation including participation in ASOP.

When treatment began, R.M.'s appearance was disheveled, he exhibited poor hygiene, and was dressed in what appeared to be the same set of dirty clothes he had worn to work. During the first several months of group sessions, R.M. was quiet and withdrawn, appearing somewhat frightened. When asked during his initial evaluation, R.M. admitted to committing the offense. In group, R.M. quietly responded to questions posed to him by stating that he was not comfortable speaking in groups. He stammered and was visibly nervous. As R.M. progressed in treatment, he became less anxious and more participative, eventually contributing to the group process.

R.M. saw his probation officer as a stern, symbolic conscience and extant moral compass. The group context provided a structured support system that allowed R.M. to make the necessary behavioral changes. R.M.'s treatment goals included managing and resolving his depression, improving anger management, and developing and applying appropriate social skills and non-deviant sexual behavior. Over the course of treatment, each of these goals was addressed. Additionally, R.M. also developed and demonstrated improved self esteem, trust, and respect of others over the course of treatment. After approximately 13 months of treatment, R.M. became a peer group leader, confronting and supporting the recovery of other offenders. Following a two-year treatment regimen he was successfully discharged, and at one-year follow-up, has not re-offended.

In *Case 4,* R.M. was able to benefit from probation because his perspective that the treatment group was safe and supportive balanced his experience that his probation officer was ever vigilant and would be intolerant of his noncompliance with the terms of probation. R.M., like many sex offenders, had undiagnosed mental health problems and lacked the necessary social skills to engage in appropriate relationships with others. Rather than voluntarily seek services to help him address his deficits, R.M. tried to meet some of his unsatisfied needs through committing a sex offense against a minor. Fortunately, R.M. was caught, placed on probation, and succeeded in treatment that addressed both his mental health problems and his lack of appropriate social skills. It is unlikely that R.M. would have resolved his difficulties and attained these skills if he had been incarcerated rather than placed on probation. Similarly, it is doubtful that R.M. would have succeeded in treatment without the strong influence of his probation officer. It is clear that R.M required the services of both probation and mental health treatment providers to resolve his clinical and interpersonal problems and to address the problems that contributed to his offending behavior. Through collaboration with the therapists and probation officers providing the sex-offender specific services, R.M. was able to correct his deviant cognitions and behaviors, greatly decreasing the likelihood of committing subsequent sex offenses.

Case 5

S.B. is a single African-American male in his mid-twenties. He had a history of special education and unemployment. While babysitting his four-year-old niece, he "took a nap with her" which resulted in S.B. sexually molesting this young girl. S.B. was convicted of aggravated criminal sexual assault and was sentenced to a term of five years of intensive probation including completion of a sex offender treatment program. It was apparent early on that S.B. was cognitively limited (exhibiting borderline intellectual functioning) and was socially maladjusted. S.B. initially denied the offense. During the post conviction polygraph, S.B. admitted the offense, although he minimized his responsibility.

Throughout treatment, S.B.'s participation was limited, despite always completing all assignments to the best of his ability. His responses both in group and to the written assignments were brief and concrete, but accurate as to the core issues at hand. His regularly scheduled individual sessions were productive, allowing S.B. a greater opportunity to express himself verbally and emotionally, and permitting him to reveal more aspects of himself than he was able to discuss in the group setting. Throughout the course of treatment, S.B. revealed family dynamics of abuse and rejection, his own lack of social skills, and a deep dependency on others.

The most significant turning point of S.B.'s treatment program, however, occurred during the few sessions in which his probation officer participated. The officer carefully confronted S.B. with facts of his daily life that were not known to the group or the therapist. These events were crucial in bringing secrets into the open and pointing out stressors and challenges that had to be reckoned with in order to facilitate S.B.'s positive behavior change. In part, S.B. didn't raise these issues voluntarily because of his limited cognitive abilities. It is likely that he

was unaware how these outside issues could possibly help him in his treatment as a sex offender. Examining these issues, however, was a crucial part of S.B.'s treatment.

S.B. was required to extend his treatment and probation to allow him to make the necessary changes in his behavior. Eventually, S.B. completed the treatment program, created a personal relapse prevention plan, and passed the discharge polygraph examination.

During the last half of the treatment process, S.B. was employed as a stock clerk at a food mart in his neighborhood and later attained a supervisory position. He also initiated and maintained a long-term relationship with an age- appropriate female. Through combined treatment and probation, S.B. worked through the interpersonal problems cited above and developed many other positive coping skills, and correcting other deficits. One year following discharge, S.B. has not re-offended.

Case 5 illustrates the unique problems posed by sex offenders with limited cognitive abilities. S.B. was able to succeed with probation and his treatment, but only after the group leader recognized his limitations during group sessions. By supplementing S.B.'s treatment with individual sessions, treatment providers were able to help S.B. more fully understand his personal issues, and usefully engage in the group sessions. If the treatment component included solely group sessions with a rigid curriculum, S.B. would likely have continued to struggle, superficially completing assignments while never coming to understand how his personal issues related to his offending behavior. It would be dangerous to lower the expectations of probation and treatment for cognitively limited offenders like S.B. By providing additional individual sessions and lengthening the time spent in treatment, S.B. was able to fully benefit from treatment and decrease his potential to re-offend. Such flexibility by both probation and clinical staff is necessary to ensure that offenders receive the maximum benefit of probation and treatment, and to reinforce the skills and insights necessary to protect society from future sex offending by these individuals.

Conclusion

The Cook County ASOP program was designed and implemented as a unique approach to the supervision and treatment of sex offenders in the community. This program represents a successful integration of the prevailing theories of sex offender treatment with quality supervision by probation. The extensive collaboration between probation officers and therapists lends itself to the success of such a program. Even when probation and treatment providers closely communicate with each other, outside forces need to carefully consider the recommendations of this treatment team when deciding the disposition of the legal cases of convicted sex offenders on probation.

Based on our collective experience of working with sex offenders on probation, the authors assert that treatment within the context of the "containment model" indeed works. Although it is not a panacea, we have seen numerous offenders change their offending behavior with abatement in re-occurrence rates and lifestyle changes that manifest effective problem-solving skills and pro-social and productive lives. The research data supports this contention and is encouraging in this regard.

As the field continues to evolve, three major issues must be addressed before they pose more prominent impediments to successfully ameliorating this destructive social problem: 1) legislation needs to be amended to avoid the exceedingly punitive effect of generalizing punishment while ignoring differences in offenses and perpetrators; 2) individuals within the justice system need to be better informed and educated of the epidemiology, dynamics, and responsiveness to treatment of this at-risk population; and 3) the front-line criminal justice and clinical treatment professionals need additional support in their collaborative efforts.

As has been cited elsewhere, particularly in the literature on adolescent sex offenders, the punishment must fit the crime. A clear focus on the individual act and contingent penalty is needed. Lifetime registration may not be an adequate societal safeguard where lifetime parole would be more appropriate for some offenders. Additionally, mandating treatment immediately upon case disposition and incorporating it into an offender's sentencing to a detention facility may provide a more proactive solution, as opposed to proceeding with civil commitment after the fact. Extended probation sentences must be considered and used to provide ample time for the offenders to engage in treatment as well as to comply with the structured requirements of counseling. By ordering offenders to financially contribute to their treatment through payment of probation fees and a portion of counseling costs, offenders are more likely to feel committed to fully participating in treatment, and can also help to partially defray the costs of providing these rehabilitation services.

More recently, special training events on treatment of sexual offenders have been made available to the legal and criminal justice communities. Professionals need to take advantage of these educational opportunities so that they can make informed decisions when working with sex offenders in their practice, and can better protect former and potential victims. Similarly, training programs should be continually revised and updated to reflect the latest empirical findings and advances in treatment practices. The importance of educating and updating the judiciary and attorneys cannot be overemphasized. Obviously, judges are the engines of ensuring a safer society and empirical data concerning best treatment practices can provide the fuel needed to achieve that goal.

The challenge faced by front-line criminal justice and clinical staff in dealing with the sex offender population on a daily basis is both daunting and dangerous. In order for them to stem the frightening social epidemic of deviant and predatory sexual behavior, people working with sex offenders must be supported and recognized for their difficult work. Imposing fair, reasonable, and consistent standards for dealing with sex offenders will facilitate this task.

Facilitating partnerships between probation and clinical professionals should further develop and advance the continually evolving field of sex offender assessment and treatment. Both clinicians and probation officers share the ultimate goal of rehabilitating offenders and enhancing community safety. Collaborative ventures such as the ASOP need to be continually assessed and adjusted so that they may continue to function effectively. These efforts can then contribute to the repair of a social fabric too often damaged by adults committing sexual offenses against children.

Endnotes

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[9] Ill. Rev. Stat. ch. 38, para. 820 (1938). This statute stated: All persons suffering from a mental disorder, and not insane or feebleminded, which mental disorder has existed for a period of not less than one (1) year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, are hereby declared to be criminal sexual psychopathic persons.

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[26] *Id.*

A Theoretical Basis for Handling Technical Violations

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ONE OF THE MAIN features of community supervision is the importance attached to rules governing the behavior of the offender. The probationer's performance, movements, and attitudes are measured against the conditions of probation.

In 1973 the federal probation system used various generic requirements as conditions of probation, including: not breaking the law, associates, work, leaving jurisdiction, changes of address, following instructions, and reporting. By the 1995 things had changed. Federal statute (Section 5B1.4) provides a current list of recommended conditions for probation and supervised release. The court can impose a condition that the defendant not commit another federal, state or local crime during the term of probation. The court can also impose a condition that the defendant not possess illegal controlled substances. The court may impose other conditions that 1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing and 2) involve only such deprivation of liberty or property as are reasonably necessary to effect the purposes of sentencing (USCA 1994 P.P. 5B1.3). If a term of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: a fine, an order of restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the conditions set forth under 18 U.S.C. Sec. 3563(b)(11). These conditions include not leaving the jurisdiction, reporting, honest reporting and following instructions, meeting family obligations, regular work, changes in employment or residence, substance abuse, associates, field visits, notification of arrest, working as an informer, and notification of inherent risk accompanying record.

Further conditions can be placed on the offender concerning possession of a firearm, payment of restitution, payment of fine, access to financial records, halfway house residency, home detention, community service, occupational restrictions, treatment, and electronic monitoring.

Ethical and legal problems arise when the probationer's behavior reaches the point that a violation is filed with the court (Smith and Berlin, 1979). The technical violation is a transgression against the conditions the probationer was ordered to live under. A technical violation is the most difficult to handle because of the discretion granted the officer, the prosecutor, and the court in the matter. If the probationer has rejected every available community resource and continues to pose a threat to the community, there is reason enough to bring the probationer back into court. It is assumed the offender cannot be managed in the community and should be sent to jail. If the probationer refuses to report, the officer needs to understand the reason for this failure. The problems could be related to work, transportation, substance abuse, the officer's attitude toward the probationer, or a breakdown in communication. Further investigation is warranted to sufficiently address the problem. It may be necessary for the probationer to report to another officer.

Findings

Many probation officers are hesitant to bring a probationer to court for a violation. First, a new charge may be unfounded and dismissed by the court, which would mean a waste of time. Second, the officer may seek time to develop an alternative treatment plan. This is important if the officer wishes to maintain the relationship with the probationer and is concerned that a hearing will reverse the process. Third, the officer may feel somewhat responsible for the client's failure. This opinion certainly can develop out of recognition of the lack of time available for each case with rising caseloads and greater numbers of presentence reports.

Interviews conducted by the author with over 50 probation officers reveal that not all officers are likely to be concerned with violating the probationer and that something else might be happening. Officers report that by the time the violation has been brought to court, numerous instances have occurred in which the probationer chose to act contrary to the law and conditions of probation. Most officers take violations very seriously and only bring them to court after an administrative hearing has been held and other warnings have been issued. Often there appears to be no other alternative. One juvenile officer said: "Sometimes we have kids who are placed on probation who should never be on probation. You can also be fooled by it because the ones who you think should have gone away to jail sometimes work out and the ones that you think have everything going for them fail." Another added: "If I violate the probationer, it is not because I

don't like him. This is the responsibility that we both have. If we meet these responsibilities we won't have any problems."

One adult officer spoke of the frustrations of violations:

> Violations are the most frustrating part of this job. It is extremely time consuming. When he violates probation he is violating the judge's order and yet the judge says we have a probation officer who is accusing you of having violated your probation. He gets a lawyer and we go to trial. The DA prosecutes and I am the witness for the prosecution. The judge is trying to decide if I am telling the truth or the probationer is telling the truth. So a lot of times arrangements have been made beforehand. Then it is a question of what will we do. Fifty percent of the time or more the defense attorney talks the judge into continuing him on probation. The defense attorney's thinking is just the opposite of mine. His thinking is, that if the judge didn't lock this guy up for his original crime, why would you even consider locking him up for something as insignificant as not reporting to a probation officer. They make me look like a schmuck.

And finally one ISP officer had this to say:

> I almost never violate on "just not reporting." It is a bullshit technical violation. If he has a consistent record of failing to report, usually he will become an absconder, and I will get him with a warrant. If they are not reporting they are not going to counseling, they are not going to the clinic, they are not following up any other conditions of probation. Sometimes a violation is the only way to get their attention. He has a couple missed reports, he has a few positive urine tests for cocaine, marijuana, and you go into court for a violation on all of these things. That process will take you a month and a half. By the time that you get an arraignment, lawyer is assigned, you come back, conduct a hearing, adjournments, usually he is out because they set bail. Now in that month and half process, if you chose to refer him back to the clinic, you start working with a pre-existing relationship with the clinic, you know some of the counselors and you ask what do you think of this guy's chances? If I get some positive feedback from the counselor, even if I am in a violation process on the guy, I will send him back there. If during that violation he does pretty well, you have got some options open to you.

Further elaboration on the conditions of probation is found in the Survey of Adults on Probation (SAP), a survey conducted by the Bureau of Justice Statistics on over 4000 probationers. Probation conditions are an important feature of probation supervision. The SAP data indicate that 82 percent of probationers are given three or more conditions, which often include monetary penalties, drug testing, employment requirements, and mandatory treatment. Monetary requirements were the most common condition (84 percent). We find that 61 percent were required to pay supervision fees, 56 percent were to pay a fine, and 55 percent were to pay court cost. Another 33 percent are required to pay victim restitution. One in ten probationers were restricted from any contact with the victim. One in four were required to perform community service, two of every five were required to maintain employment, to enroll in an employment or educational program. Ten percent of the probationers were under some form of monitoring or restriction of movement. Since so many probationers were convicted of public order offenses, especially those related to alcohol abuse, it is not surprising that two out of five probationers (40 percent) were required to enroll in substance abuse treatment. Alcohol treatment is required more frequently for misdemeanants than for felons (41 percent, compared to 21 percent), while drug treatment is required more often for felons (28 percent compared to 15 percent). Nearly a third of all probationers were subject to mandatory drug testing (Bonczar, 1997: 9).

Probationers who violate a condition of probation and are arrested for a new offense are called before court to review the circumstances of their violation. Such occasions may call for the issuance of an arrest warrant for the probationer who has absconded, imposition of a jail sentence, or reinstatement of probation with or without new conditions. It is estimated, using the SAP data, that of 18 percent of all adults on probation had experienced one or more formal disciplinary hearings. The data also indicate that of probationers who had served 36 months or more on probation, 38 percent had at least one formal hearing, compared to the 5 percent who had served less than 6 months on probation. Disciplinary hearings were more common among probationers who were unemployed and those with prior sentences. Failure to maintain contact was the most frequent reason for the hearing. Despite what might be expected with violations, over 40 percent of the probationers received new conditions rather than incarceration (40 percent vs. 29 percent). (Bonzcar, 1997: 9-10)

The rates of recidivism of probationers were historically low due to the selection of persons who were likely to succeed on probation. Today, however, we find felons on probation who have much higher rates of recidivism (Petersilia et al., 1985). Based on federal data alone, there were 20,956 probation terminations: 81 percent had no violations, 10 percent experienced technical violations, 3.5 percent were charged with new crimes, and 5 percent had administrative case closures (Bureau of Justice Statistics, 1996). At the federal level, we are dealing with 2,900 technical violations during any one year. Some officers violate as many as 25 probationers per year, some of whom are absconders.

In a record check of over 4000 cases in the SAP data there were a reported 2,172 technical violations. With the recent history of getting tough on offenders, one would expect violators to be given jail time when they fail to comply with the conditions of probation. This is not true. It seems clear that probationers are given new conditions when they have problems during supervision. If the offender is convicted of a new offense, we find that offenders are likely to be given a new condition (37 percent) more frequently than incarcerated (28 percent). Those arrested for a new offense are more likely to receive new conditions over jail time, too. Of offenders who abscond, 25 percent received jail time, but slightly more (28 percent) were given new conditions. We see a reluctance to put offenders in jail for their noncompliance. To some degree we see a sizeable proportion of offenders who experience no new conditions in response to their technical violations. This pattern continues with positive drug test, failure to appear, failure to pay fines, failure to attend and complete program, and other technical violations. This data indicates that the courts are approaching violations not as a means to discipline the offender but as a means to gain the offender's compliance with the law.

PROBATION REVOCATION HEARINGS OUTCOMES

Reasons for Hearing	Outcome Incarcerated	Outcome Charges Not Sustained	Outcome New Conditions	Outcome No New Conditions	Outcome Hearing Continued	Outcome Other Outcome	Outcome Still Pending	Totals
Convicted New Offense	44 (28 percent)	1 (.0001 percent)	58 (37 percent)	20 (13 percent)	6 (.04 percent)	15 (10 percent)	11 (.07 percent)	155 (100 percent)
Arrest for New Offense	73 (21 percent)	25 (7 percent)	120 (35 percent)	38 (11 percent)	19 (5 percent)	54 (16 percent)	11 (3 percent)	340 (100 percent)
Absconded	39 (25 percent)	1 (.006 percent)	44 (28 percent)	31 (20 percent)	5 (.031 percent)	21 (13 percent)	16 (10 percent)	157 (100 percent)
Positive Drug Test	20 (18 percent)	0 (0 percent)	35 (31 percent)	16 (14 percent)	10 (9 percent)	17 (15 percent)	14 (13 percent)	112 (100 percent)
Failure to Appear	62 (16 percent)	3 (.007 percent)	94 (25 percent)	76 (20 percent)	22 (6 percent)	61 (16 percent)	61 (16 percent)	379 (100 percent)
Failure to Pay Fines	57 (12 percent)	9 (2 percent)	126 (27 percent)	97 (21 percent)	26 (5 percent)	88 (19 percent)	65 (14 percent)	468 (100 percent)
Failure to Attend and Complete Program	43 (17 percent)	2 (.008 percent)	52 (21 percent)	53 (21 percent)	16 (6 percent)	40 (16 percent)	43 (17 percent)	249 (100 percent)
Other Technical Violations	46 (15 percent)	3 (1 percent)	64 (20 percent)	64 (20 percent)	16 (5 percent)	70 (22 percent)	49 (16 percent)	312 (100 percent)
Totals								2172

PO Authority

The American Probation and Parole Association believes officer authority to impose conditions of supervision is valid and deserves support, to promote consistency in the response to violations. In a recent survey (APPA, 2001) of APPA members, fewer than half (46 percent) of the respondents indicated that field officers have the authority to modify conditions of supervision. However, a substantial number (69 percent) felt that officers modified conditions informally. It is apparent in some jurisdictions that line officers feel justified in altering some aspects of an offender's supervision strategy, regardless of whether this is a matter of policy. Two states, Oregon and South Carolina, have programs that provide specific guidelines for the officer to increase imposed sanctions. In South Carolina, for example, field officers have a range of options that include: placing the offender in a halfway house, placements in a treatment facility, restructuring the plan of action, increasing contacts, and ordering additional community service. As is noted, the primary purpose here is to increase punitive sanctions. There appears to be little interest in lessening the severity of conditions of supervision without some type of judicial review. It is believed that by permitting the officer to react quickly by modifying supervision conditions, the officer avoids the time-consuming task of obtaining a warrant and scheduling a case before a judge. It also gives the officer some flexibility to explore treatment options that hold the offender accountable and increase the officer's effectiveness. On the other hand, some argue that granting the officer additional authority only confuses the offender as to who has jurisdiction. There is also some belief that court-imposed sanctions have a greater impact. Moreover, there is concern that such a system will lead to abuses of discretion and greater liability for the officer. Last, there is concern that such activities will only diminish the existing relationship with the judiciary. The current practice of agent-imposed sanctions on an informal basis can result in vague, misunderstood, and often misapplied discretion instead of a policy-driven, risk-based violation process (Stroker, 1991).

Forces at Work

As a result of the Comprehensive Crime Control Act of 1984, probation is considerably different from the dichotomous enforcement-social welfare model put forward by others earlier (Hughes and Henkel, 1997). Sentencing guidelines and mandatory minimum sentences now set the tone and the probation officer-as-caseworker role is no longer predominant. At the state level, the recent language of the performance-based measures emphasizes risk assessment, resource allocation, and internal assessment.

Regulation

Crime control is achieved through a combination of three forms of social regulation: self (internal processes), group (family, clan, gang, clique, workgroup, etc.), and state regulatory mechanisms. Self-regulation is manifested in the personal acceptance, through socialization, of various norms, customs, values, and traditions which were designed to reinforce conventional social practices (Nadel, 1953). Group regulation is the imposition of social control over the behavior of group members through the establishment, enforcement and punishment of group normative behavior. State regulation, as exemplified in criminal justice system, is a tertiary social control mechanism that becomes necessary after self-regulatory and group regulatory mechanisms have failed

Tomaino (1975) has offered a paradigm of probation supervision that considers rehabilitation on one axis and control on the other axis. The "let-him-identify" position places

the offender at the midpoint of both rehabilitation and control. Sentiments for rehabilitation and control are neither very high nor low. Probationers are thought to keep the rules if they like the probation officer and identify with him/her and his/her values, i.e., if the probation officer presents himself as a good role model. More important, the PO must work out compromises in his relations with the probationer. These compromises are manifested in negotiations between the probationer and the officer, within the context of organizational and environmental uncertainty and the officer's need to use discretion. Regulation, therefore, is affected by concerns for loose coupling, uncertainty, discretion, and compliance.

Loose Coupling and Uncertainty

Hagan, Hewitt, and Alwin (1979) point out that one source of loose coupling is the historical shift from classical to positivist philosophy of crime and punishment. Moreover, they argue that the goals of court efficiency and individualized justice of probation are contradictory. To resolve the problem, the probation system is decoupled from the court system. Probation agencies, as loosely coupled organizations operating in a field of uncertainty, are characterized by structural elements that are loosely linked to each other, rules that are often violated, decisions that go unimplemented, technologies that are problematic, and evaluations that are subverted or rendered so vague they provide little coordination (Meyer & Rowan, 1977: 343). It is often difficult to identify what tasks are actually related to the accomplishment of specific goals in coping organizations (Stojkovic, Kalinich and Klofas, 1998: 202).

The perception of uncertainty in the environment is the result of three conditions: a lack of information about environmental factors important to decision making; an inability to estimate how probabilities will affect a decision until it is implemented; and a lack of information about the cost associated with an incorrect decision (Duncan, 1972). In other words, there is a great deal of important missing information, and there is little understanding of what will actually happen, and how much it will cost.

A high degree of uncertainty about the mission and how it is to be applied offers clear evidence of the social construction of the problems addressed by the agency (Hawkins & Thomas 1984, 17-18). Social constructionists focus primarily on the interpretation of reality according to individual bureaucrats. Under circumstances of high caseloads, complicated offender treatment needs, and harsh and seemingly unfair sentences, there are few objective indicators of successful performance. Again, the officer's application of individualized punishments leaves some rules enforced and others not.

Discretion

Public service workers who interact with citizens in the course of their jobs and who have substantial discretion in the execution of their work are called street-level bureaucrats (Lipsky, 1980:4). The concept of regulatory uncertainty implies a forced tolerance for individual conduct. This tolerance is exhibited in the choice of harmful activity subject to control. For example, a probation officer is not able to completely restrict all of the possible illegal activities available to a probationer. Second, regulatory agencies are charged with a particular policing mission. However, there is still the question as to the objective: Should the mission be eradication or the repression of the problem? If the behavior is not considered serious, is it to be repressed and handled with a measure of discretion? How much attention each violation receives depends on the resources available (Kagan, 1978:11). It would seem that officers use their discretion not so much to deter the offender but to regulate the offender's behavior, done in full recognition that rehabilitation may not be needed or always possible and that acceptable levels of incapacitation can only be achieved within certain limits. Rules, however, may be impediments to effective supervision, in that individualized justice would indicate a different course of action than the one called for by policy.

Compliance

The principal objective of a regulatory system is to secure compliance with the law. Compliance systems are premonitory, they attend to a set of conditions prior to any violation in order to induce conformity. The idea is to prevent the violation rather than punish it. Bargaining and informal negotiations are central. The regulatory model of probation, furthermore, requires elaboration of the compliance concept. Maximization of the regulatory process is achieved by applying Garland's (1990, 132) concepts essential to the regulatory process: inspection, discipline, and normalization under conditions respecting human dignity.

Inspections

Officer inspections of the clients are accomplished by field visits at home and work, blood and urine tests for drugs and alcohol, and checks conducted with various collateral sources who have knowledge and responsibility for the offender. Inspections, with the aid of technology, are conducted for the purpose of seeing if the offender is in compliance with the conditions set by the court.

Discipline

Discipline is achieved in meeting the obligations our daily routines impose on us. What this means is that probationers are disciplined by the daily routine they are expected to live by, including: work, treatment, family obligations, etc. Discipline is maintained through inspections to determine whether compliance is achieved. The actual sanctions tend to bring conduct "into line" and help make the individual more self-controlled (Garland 1990:145). The goal is to be self-disciplined or self-regulated.

Normalization

The real work of normalization is to further the reintegration process. Normalization is achieved by providing the offender with a combination of employment, job training, schooling, or counseling. It is hoped that through these skills the offender will become more self-controlled, self-motivated, compliant, and, once again, a full-fledged member of the community.

These three components of regulation provide the means for supervising the offender according to the reordered emphasis given to control, supervision and management. They allow the officer who desires to do so to treat the probationer as something more than a mere object of punishment, as someone who does command respect, support and understanding; as someone deserving dignified treatment.

Conclusion

In dealing with their clients, probation officers have become regulators. They deal with the client in terms of compliance and bargaining in a field permeated by uncertainty. These street-level bureaucrats (Lipsky, 1980:5) are the essence of the criminal justice system, and how these employees are supervised and evaluated is one of the most pressing issues facing the criminal justice administration into the next century: Probation has entered a period

of post-modern maturity where it might consider becoming more aware of the realities of supervision and spending less emphasis on providing measures intended to restrict officer performance.

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Pretrial Services in Lake County, Illinois—Patterns of Change over Time, 1986-2000

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IT SEEMS REASONABLE that local pretrial services programs commit themselves to research and evaluation of their own agency's procedures, programming, and effectiveness. Research allows a program to "take a look at itself;" a process of discovery and generating knowledge about the functional operations, changes, and impact of a pretrial service agency. Besides providing an overall statistical "picture" of pretrial services activity, the results of research may have important theoretical consequences and practical applications, including policy and operational implications, finding out what works and what doesn't, and making adjustments to improve a program's practices and effectiveness. Thus, *the purpose of this paper is to demonstrate the utility and value of "in-house" research at the local, single-jurisdiction level—in this case using a county-based program as the object of analysis.* This particular study describes various patterns of change over time, from 1986 to 2000, in the Pretrial Services Program in Lake County, Illinois. Although the emphasis here is on describing trends over time, there will be some attempt to *explain* the empirical findings.[1]

Workload Trends

Our research illustrates the dynamic growth and changing nature of Lake County's Pretrial Services Program. In reference to our data analysis, the number of bond reports and the use of bond supervision have significantly increased over time. In regard to bond reports, by the end of the year 2000, the number of bond reports completed by Pretrial Services (PTS) increased by nearly 50 percent, with the average number of bond reports completed per year totaling 2,025.[2]

The annual number of defendants released to Pretrial Services for supervision from 1986 through 2000 *increased by 935 percent,* which represents an average increase of 62 percent per year. Also notable is that, after showing increases in every year since 1986, the number of defendants released with supervision declined by 34 percent in 1993. This may be related to the rotation of judges in Bond Court, where PTS receives most of its clients. In 1993, for example, there was a change of judges in Bond Court as well as in 1995 (a 79 percent increase from the previous year) and in 1998 (a 42 percent increase from the previous year). It could be hypothesized that judicial rotation may account for some of the change, since it's quite possible that when judges rotate, so does "the Court's" perspective on bond and the use of supervised release.[3] It also appears that starting in the mid- to late-1990's and continuing onward more defendants who posted a cash bond were also being placed on PTBS.[4] Indeed, although it began as an alternative to a cash bond, PTBS now appears to be used many times *in conjunction with* a cash bond. Increases in misdemeanor and traffic defendants (primarily DUI and domestic violence cases) placed on PTBS would also account for some of the overall increase.

PTBS Evaluations and PTBS Recommendations

From 1986 through 2000, the number of defendants formally evaluated for bond supervision increased by 357 percent. Over the entire 15-year period, of the total number of defendants who were evaluated for PTBS, 43 percent were recommended for supervised release, or, in other words, about four out of every ten defendants. A truly interesting observation, however, is that the proportion of defendants that Pretrial Services recommended for bond supervision substantially decreased over time (see Figure 1). From 1986 through 1991, the Recommended/Evaluation Ratio (R/E Ratio) remained fairly stable, hovering around 70 percent and peaking in 1991, when three out of every four defendants evaluated were recommended for PTBS. However, after 1991 a steady and precipitous decline in PTBS recommendations began, leveling off in 1995, when only three out of every ten defendants evaluated were recommended for PTBS. This proportion remained fairly stable over the next three years, whereupon, in 1999, the R/E Ratio dropped to 20 percent. Clearly, the overall trend since 1992 has been one of significant decline in the number of PTBS recommendations made compared to the number of defendants evaluated.

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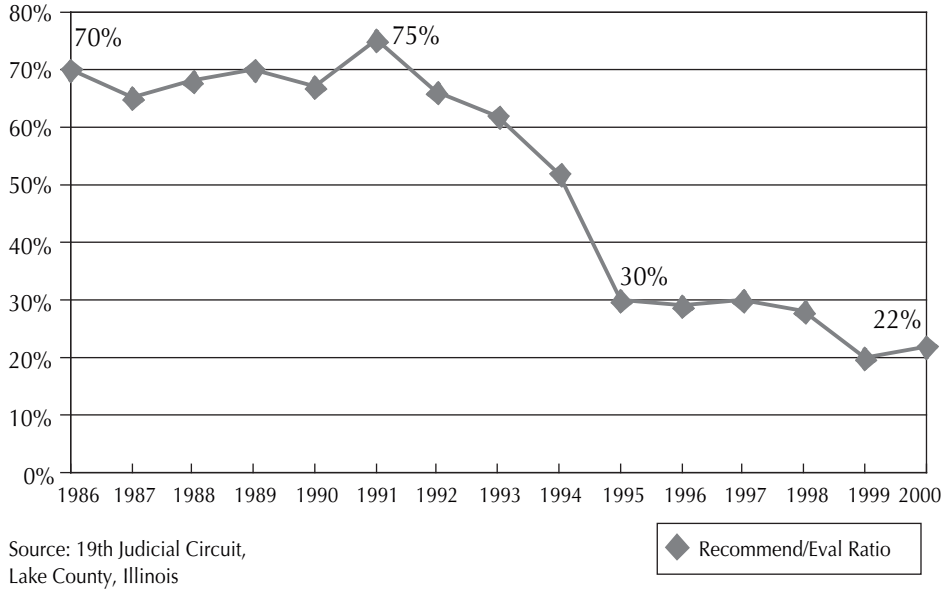
FIGURE 1

PTBS Recommended/Evaluation Ratio
1986-2000



Source: 19th Judicial Circuit,
Lake County, Illinois

Given casual observation, experience, and historical perspective, one explanation for this decline in PTBS recommendations during the 1990s was the type of felony defendant we were evaluating for supervised release during this time period. Many of the potential felony clients were chronic recidivists, either in terms of prior criminal record and/or failure-to-appear history. The lower recommendation rate also may be tied to having greater computerized access to national and state criminal history, warrant, court, probation, and parole databases that, in effect, identified those defendants not eligible or suitable for a non-financial release recommendation. Furthermore, many clients evaluated for release had already been on PTBS before, sometimes more than once, and failed to comply in some capacity (e.g., FTA'ed or rearrested), which would tend to preclude a release recommendation.

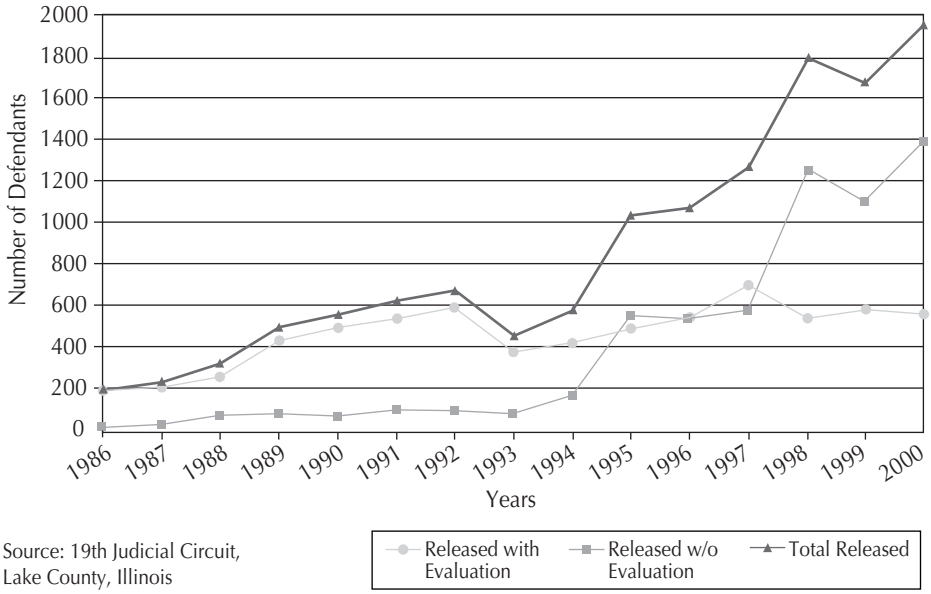
In addition, defense attorneys and judges may request a bond supervision evaluation even though there is little chance or actual intention that the defendant will be released (or recommended for release) due, in part, to the factors noted above. Furthermore, the court may be releasing onto PTBS the "easy decision" defendants without need of evaluation and referring to Pretrial Services for evaluation the more difficult "hard decision" cases that are less, or not at all, qualified for the Pretrial Bond Supervision Program, thus affecting the PTBS recommendation rate. The "easier" decisions can be defined as those defendants charged with a less serious crime and the "harder" decisions represent those defendants charged with more serious crimes. *Our data indicate that the court will tend to order PTBS evaluations for those defendants charged with more serious crimes and as the seriousness of the crime decreases, so does the probability of being evaluated.* For example, for all defendants charged with a Class X felony that were placed on PTBS, 79 percent were evaluated and 21 percent were not; for Class 4 defendants 56 percent were evaluated and 44 percent were not; and for misd/traffic defendants 10 percent were evaluated and 90 percent were not.[5] Similar differences were also found for type of offense (violent, drug, property, etc.). It appears then that 1) class of crime and 2) type of offense affects whether or not the court will ask for a PTBS evaluation or just release the defendant on PTBS without an evaluation, thus suggesting that a defendant who receives an evaluation is not a random event in the judicial decision-making process but is affected by the perceived seriousness of the offense.[6]

Clearly though, this has had no impact on the use of PTBS, since the number of defendants released to PTBS has tended to steadily increase since 1994 and, by 1998, more defendants were being released onto PTBS without an evaluation than were being released with an evaluation. Most of the increase in the number of defendants placed on PTBS can be attributed to the large increases of defendants who were placed on supervised release—usually without an evaluation—charged with either Class 4 felonies or misd/traffic offenses.

Figure 2 represents the breakdown of PTBS defendants into two categories: defendants who were evaluated for PTBS participation before their release from jail custody and those who were not. A bond supervision evaluation, primarily done for persons charged with felony crimes, represents an integral part of the pretrial release screening process. For those defendants evaluated before their release, the rules and conditions of PTBS are thoroughly explained to the defendant, the defendant's willingness and commitment to

FIGURE 2

Number of Defendants Supervised by Lake County P:
With and Without An Evaluation, 1986-2000



Source: 19th Judicial Circuit,
Lake County, Illinois

comply with the conditions of supervised release are assessed, the consequence(s) of compliance and noncompliance is explained, and a defendant's prior (or current) performance on bond and on other forms of community-based supervision is evaluated, including any previous PTBS participation. However, as one can see, not every defendant who is supervised by Pretrial Services is evaluated before their placement on the program.

Generally speaking, over the entire 15-year period, 53 percent of the defendants supervised were evaluated before their release and 47 percent were not. Perhaps the most significant finding is the large increase over time in the number of defendants who were placed on PTBS without an evaluation. In 1995, for the first time, there were more defendants released to PTBS without an evaluation (488) than there were released with an evaluation (438). In 1998, the number of defendants released without an evaluation was twice as large as the number of defendants released with an evaluation. Indeed, from 1998 through 2000, the ratio of non-evaluated defendants to evaluated defendants was slightly more than two to one. *In other words, for every one defendant released with an evaluation, two were released without an evaluation.* In summary, whereas defendants were much more likely to be formally evaluated for PTBS participation from 1986 through 1993 (87 percent evaluated compared to 13 percent with no evaluation), from 1994 through 2000 this pattern significantly changed (41 percent evaluated compared to 59 percent not evaluated). The data strongly indicate that in more recent years a judge may be more inclined to release a defendant onto PTBS without a bond report or PTBS evaluation, whereas in the nascent years of bond supervision judges were more inclined to request that a bond report be completed before a release decision was made.

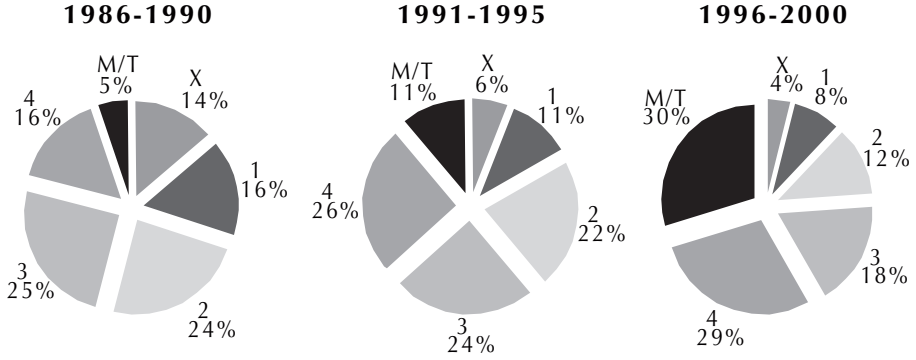
Possible explanations for this trend include that as pretrial services has systemically matured as an integral part of the judicial system, it has established credibility and an "environment of trust" with the judiciary in regard to the work that it performs. Over time, the judiciary as a whole has become more knowledgeable of and comfortable with PTBS as a pretrial release option and, as a consequence, judges may be more apt to release a defendant onto PTBS without an evaluation. Second, the composition of the PTBS population has changed over time, currently reflecting a greater proportion of PTBS defendants charged with less serious crimes than in the past. As noted earlier, the court is less likely to order a PTBS evaluation for defendants charged with less serious crimes before placing them on supervised release. A third possible explanation is the judge's independent access to information about the defendant, especially as it pertains to the defendant's prior criminal record. Given access to the clerk of the circuit court's criminal record database "on the bench," the judge making a bond decision can "rule out" the need for a bond report and proceed to place a defendant on PTBS without the need for Pretrial Services' intermediation.

Distribution of PTBS Clients by Crime Class and Crime Type

Figures 3 and 4 represent a condensed summary of the 15 years of data into three five-year intervals: 1986-1990, 1991-1995 and 1996-2000. As can be seen, the percentage of persons placed on PTBS charged with either a Class X, 1, 2, or 3 felony decreased during the 15-year period, whereas persons charged with either a Class 4 felony, misdemeanor, or traffic offense increased substantially since 1986. Indeed, during Time Interval III, class 4 felony, misdemeanor, and traffic defendants accounted for nearly six out of every ten defendants placed on PTBS. In the type of crime category, the percentage of property, violent, and sex defendants placed on PTBS consistently went down, while the percentage of drug and public order[7] defendants consistently increased, the latter two groups comprising almost four out every ten defendants in the PTBS population by Time Interval III. Adding misd/traffic defendants,

FIGURE 3

Five-Year Interval Comparisons of Defendants Placed on PTBS by Class of Crime

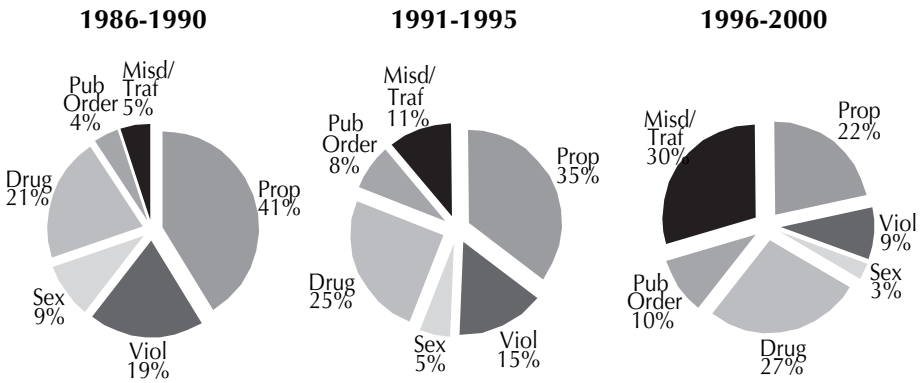


Source: 19th Judicial Circuit, Lake County, Illinois

Percentages do not always add up to 100 due to rounding.

FIGURE 4

Five-Year Interval Comparisons of Defendants Placed on PTBS by Type of Offense

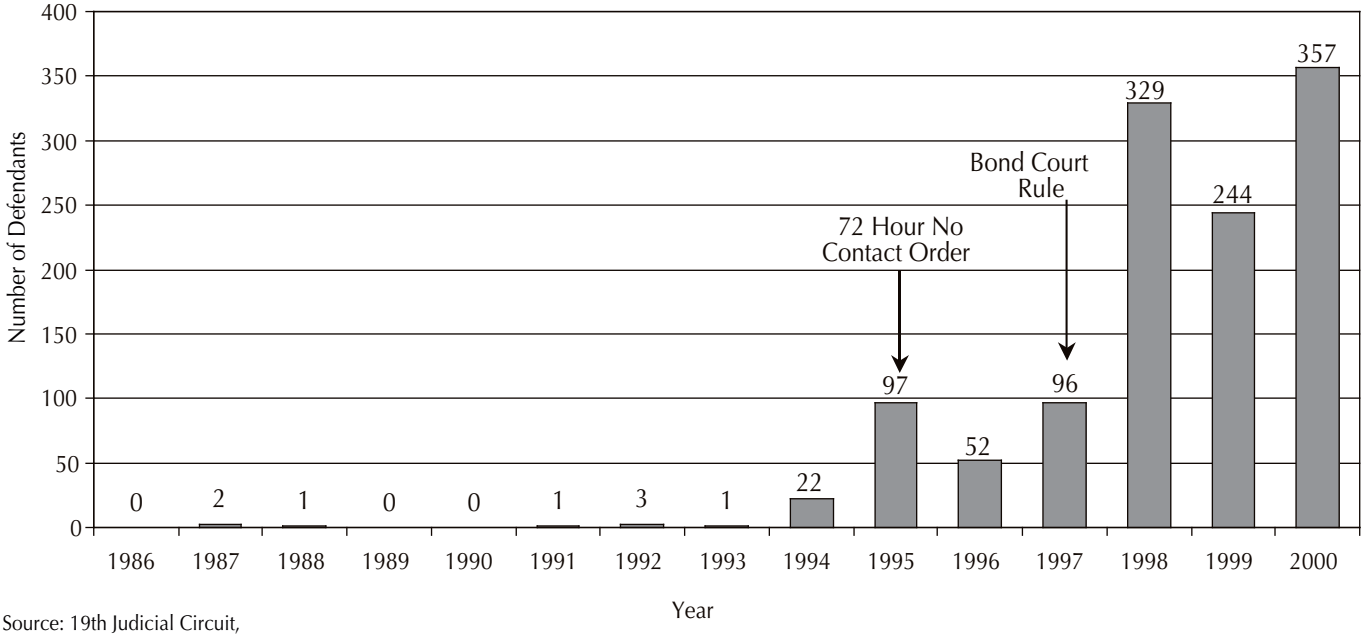


Source: 19th Judicial Circuit, Lake County, Illinois

Percentages do not always add up to 100 due to rounding.

FIGURE 5

Number of Misdemeanor Domestic Violence Cases Placed on PTBS, 1986-2000



Source: 19th Judicial Circuit, Lake County, Illinois

almost 70 percent of defendants placed on PTBS from 1996 through 2000 were either charged with a drug crime, a public order crime, or a misd/traffic offense.

It appears, then, that the make-up of the PTBS population is a function of time. Chi-square tests of statistical significance indicate statistically significant relationships between time period and class of crime (chi-square = 1247.75; p = .001) and also with offense type (chi-square = 1134.28; p = .001). In other words, the data suggest that there is a strong probability that the increases and decreases observed in the aforementioned crime categories are related to a time factor. Clearly, this suggests significant patterns of change over time in the class of crime and type of offense "composition" of the PTBS population, but this still begs the question: What explains these variations over time?

To account for these changes, we must first recognize that who gets placed on Pretrial Bond Supervision is in part a function of what kinds of crimes are being committed in the community and who ends up in bond court. An indicator of what types of crimes are being committed in the community is the number of crimes reported to the police and for what kinds of offenses. As we have seen, the percentage of persons placed on PTBS for property, violent, and sex crimes has steadily declined over the 15-year period. Some of this decline could be correlated with decreases in violent and property index offenses reported to the police in Lake County as well as to the decline in the total index crime *arrest* rate in Lake County (Illinois Criminal Justice Information Authority 2000).[8]

On the other hand, the number and proportion of drug defendants placed on PTBS has tended to increase over time. After some initial wide fluctuations from 1986 through 1988 (11 percent, 26 percent, 16 percent, respectively) and stabilization from 1989 through 1991 (23 percent in each respective year), the trend has been generally upward. By the end of the 15-year time period, one out of every four PTBS defendants (or 25 percent of the total PTBS population) were charged with a felony drug offense. Some of this increase in the number of PTBS drug defendants may be related to a 72 percent increase in the number of drug-related arrests in Lake County since 1994 (Illinois Criminal Justice Information Authority 2000). The so-called "War on Drugs" and the concurrent emphasis on dealing with the social problem of drug abuse from a law enforcement orientation may help to explain the rise of drug-related arrests and, consequently, more defendants charged with drug crimes being placed on PTBS.

A Special Note on Domestic Violence and DUI

The number and proportion of misdemeanor/traffic cases placed on Pretrial Bond Supervision has dramatically increased over time. The vast majority of misd/traffic defendants who were placed on PTBS were charged with either domestic battery (48 percent of the total misd/traffic cases) or misdemeanor DUI (Driving Under the Influence of Alcohol—14 percent of the total misd/traffic population). Together, misdemeanor domestic battery and DUI cases account for six out of every ten misd/traffic defendants placed on PTBS. Clearly, the rise over time in the number of misdemeanor cases that Pretrial Services has supervised is linked to the large increases in misdemeanor domestic violence and DUI cases being placed on Pretrial Bond Supervision.

Three factors can help explain the increase in domestic violence cases: first, the 72-hour "no contact" law that went into effect in Illinois in 1995 that prohibits the defendant from having any contact with the complaining witness for 72 hours *after* his or her release from jail. It is quite possible that in some instances the court feels it necessary for someone to monitor compliance with this bond condition; thus a referral to Pretrial Services for supervision. Second, and perhaps more significant, is the 1997 Illinois statute that made it mandatory that all persons arrested for misdemeanor domestic battery and violations of orders of protection *cannot* "bond out" from the arresting agency, but rather are required to appear before a judge in bond court for their initial appearance and bond hearing. This increases the possibility that any given defendant may be placed on PTBS, since this bond option is only available at the bond court and not at the police station. It would appear that these two changes in the bail bond statutes relating to domestic violence might produce a

"legal effect," which could explain in part the increase in the PTBS misdemeanor population (see Figure 5). Finally, a third possible explanation of the jump in domestic violence cases on PTBS is the national, state, and local attention paid to domestic violence as a serious social problem and the legal and criminal justice system's responses to that problem, such as the implementation of mandatory arrest laws and policies (Ohlin and Tonry 1989; Wallace 1999; Brownstein 2000). In Illinois, for example, existing laws allow police officers to make warrantless arrests if the police have probable cause to believe that a person has committed a domestic battery, even if the crime was not committed in the presence of the police (Illinois Criminal Law and Procedure 2001).

In a similar vein, the problem of drunk drivers and the dangers they pose to community safety has become a national, state, and local issue. The success of the 1980s anti-drunk driving movement, spawned by Mother's Against Drunk Drivers (MADD), created a "crackdown" on drunk driving, which resulted in "zero-tolerance" laws, reduction of blood/alcohol content levels at which a driver is considered to be "under the influence," the creation of felony DUI's, and sobriety checkpoints (Reinarman 1998). The State of Illinois has implemented many of these kinds of measures (DUI Fact Book 2001).

In both cases, what may appear to be a trend towards "net widening" may be in reality a legitimate societal and criminal justice response to the social problems of domestic violence and driving under the influence. If "social control" is defined as the capacity of a society to regulate itself in relation to its values (Janowitz 1978:3), then the values of public and personal safety and security—of being safe in one's home and being secure on the highway—may be the impetus behind the increased societal and criminal justice scrutiny applied to drunken drivers and domestic batterers. Consequently, judges may recognize the potential danger to the community that domestic violence and DUI offenders represent and therefore order supervised release of these defendants to enhance community safety.

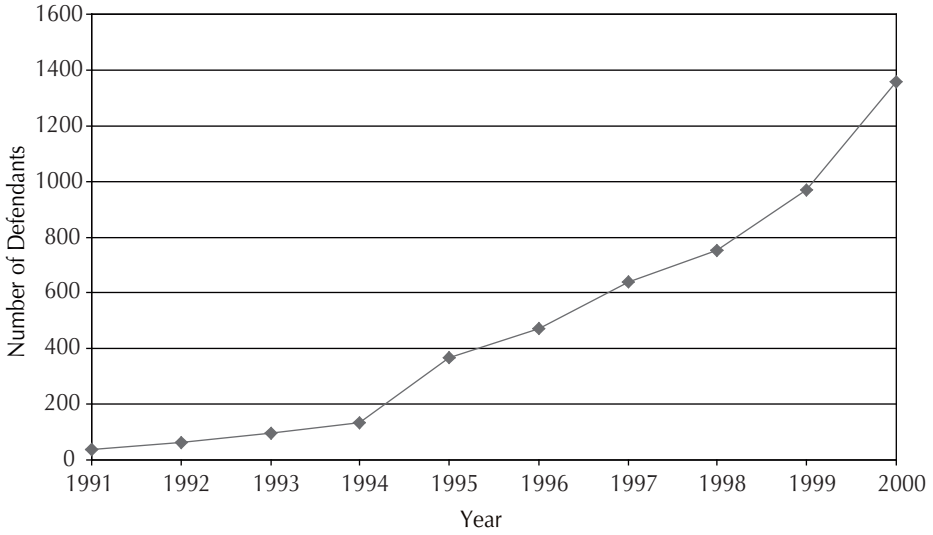
Drug/Alcohol Testing and Curfew Restrictions—The Trend Upward

There has been a steady rise in the number of PTBS defendants subject to drug and alcohol testing since 1991 (see Figure 6). Moreover, relative to the total number of defendants placed on PTBS in any given year, with the exception of a decline in 1998, the proportion of defendants with drug/alcohol testing ordered has also continually increased over time. By 2000, almost eight out of every ten defendants supervised by PTS had drug and alcohol testing imposed upon them as a condition of their release. Over the entire 10-year period, nearly half of all defendants supervised had drug/alcohol testing ordered as a condition of their pretrial release.

Although not as profound as the drug/alcohol testing increase, the imposition of curfew restrictions on PTBS defendants also has tended to increase over time (see Figure 7). Since 1991, the number of PTBS defendants released with a curfew restriction increased by 180 percent, and, on average, 50 percent, or one out of every two defendants, had a curfew restriction imposed over the ten-year period. The most substantial annual increase in the number of defendants placed on PTBS with a curfew occurred in 1995, when 73 percent more defendants were given a curfew when compared to the previous year. This is particularly interesting in light of the fact that the largest annual increase (179 percent) in drug/alcohol testing also took place in 1995.

FIGURE 6

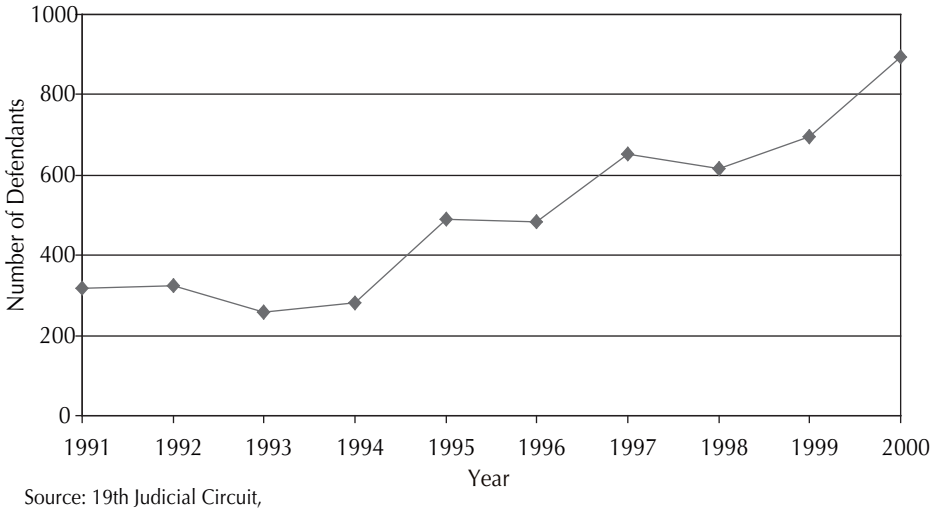
Drug/Alcohol Testing Imposed as a Condition of PTBS Release, 1991-2000



Source: 19th Judicial Circuit, Lake County, Illinois

FIGURE 7

Curfew Restrictions Imposed on PTBS Defendants, 1991-2000



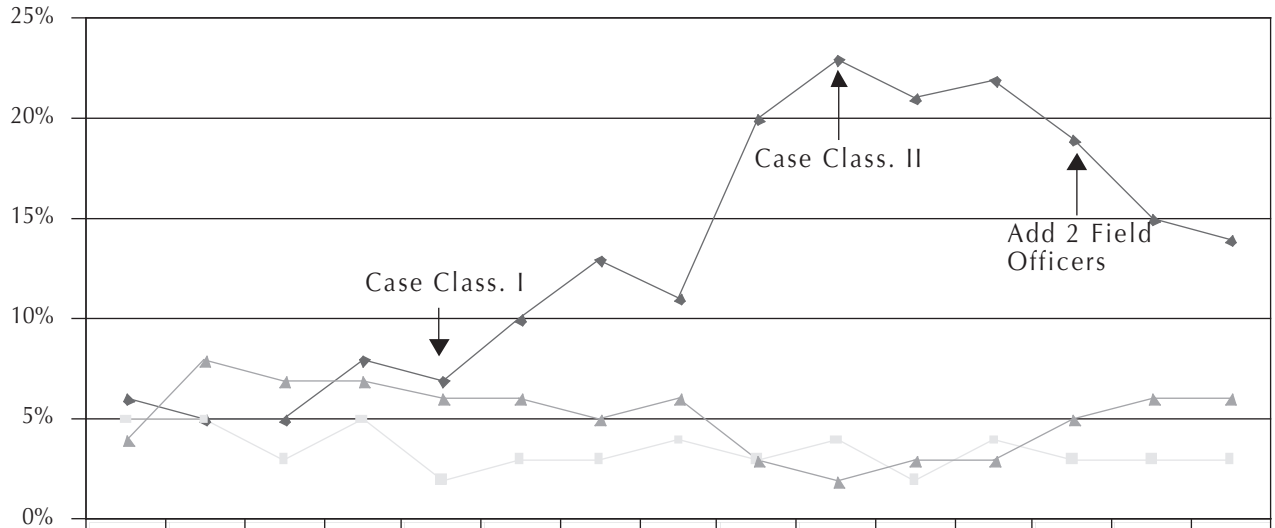
Source: 19th Judicial Circuit, Lake County, Illinois

Violation Trends

From 1986 through the year 2000, the annual violation rate averaged 24 percent, or in other words, nearly one out of every four

FIGURE 8

PTBS Violation-specific Rates,
Lake County, IL 1986-2000



	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
FTA	6%	5%	5%	8%	7%	10%	13%	11%	20%	23%	21%	22%	19%	15%	14%
ARREST	5%	5%	3%	5%	2%	3%	3%	4%	3%	4%	2%	4%	3%	3%	3%
TECH VIOL	4%	8%	7%	7%	6%	6%	5%	6%	3%	2%	3%	3%	5%	6%	6%

Source: 19th Judicial Circuit,
Lake County, Illinois

defendants supervised violated in some capacity that resulted in an unsuccessful termination. Since 1992, the overall violation rate has consistently exceeded 20 percent, ranging from 21 percent to 29 percent. Note, however, that during the last three years of the 15-year period, the annual violation rate has been declining, from 27 percent in 1998 to 22 percent in 2000.

Examining violation-specific rates indicates that, on average, over the 15-year period, 16 percent of the defendants supervised failed to appear for their court dates, 3 percent were rearrested on new charges and returned to jail custody, and 5 percent committed technical violations (e.g., curfew violations; positive drug tests). Over time, the arrest violation rate remained fairly stable and low, ranging from a high of 5 percent to a low of 3 percent; the technical violation rate also remained fairly low, but the range was greater: from a high of 8 percent to a low of 2 percent. On the other hand, the FTA rate had the highest amount of variation, ranging from a low of 5 percent in 1987 and 1988 to a high of 23 percent in 1995 (see Figure 8). *Most of the increases (and decreases) in annual total violation rates can be attributed to increases and decreases in the FTA violation rate. The data clearly indicate that of the three categories of violations, FTA's represent the primary violation problem.* Indeed, of the total number of violations (N=2660), the greater proportion were FTA's (66 percent of the total), followed by technical violations (20 percent of the total) and new arrests (13 percent of the total).

Some of the increase in the failure-to-appear rates may be attributed to the implementation of a case classification system in November 1990 and the corresponding reduction in expected field contacts by 37 percent (see Figure 8).[9] A revised version of case classification was implemented in January 1995 that reduced the number of required field contacts by another 53 percent. Research has shown that "contact" is related to pretrial misconduct, especially FTA violations (D.C. Bail Agency 1978; Clarke, Freeman, and Koch 1976; Austin, Krisberg, and Litsky 1984). In other words, the less contact a defendant has with the supervising authority, the greater chance that he or she will fail to appear.

Another factor that could help explain the higher FTA violation rates over time is that PTBS defendants have become more "at risk" in terms of failing to appear, such as persons charged with less-serious crimes, a category of defendants who are more likely to fail to appear for their court dates. As we have already seen, the composition of the PTBS population has changed over the years and is composed of a much larger proportion of defendants charged with less serious crimes than in previous years. And, as we will see later, defendants charged with less serious crimes are more likely to FTA than defendants charged with more serious crimes.

It should be pointed out, however, that since it peaked at 23 percent in 1995, the FTA violation rate declined to 14 percent by the end of 2000, which represents the lowest FTA rate since 1993. *Note that the FTA rate started to consistently decline in 1998, the year in which Pretrial Services added two new field supervision officers.* It could be hypothesized, or at least reasonably argued, that the addition of two new staff, which gave Pretrial Services a total of six supervision officers, contributed to more effective supervision of PTBS clients (smaller caseloads that, in effect, translated into more contacts), and thereby helped to reduce the failure-to-appear rates in 1998, 1999, and 2000.

The addition of two field supervision officers also may explain the slight rise in the technical violation rates beginning in 1998. Adding two supervision officers provides more surveillance and monitoring of bond conditions, such as curfew verifications and drug testing, with any and all violations being reported back to the court.[10] Another potential explanation for higher technical violation rates is the possibility that there is

more judicial *intolerance* of defendants violating court-ordered technical conditions of pretrial release, resulting in a return to pretrial detention.

Success on Supervision: Do Evaluations Matter?

Another avenue of analysis represents a breakdown of the aggregate success and failure rates of PTBS defendants into two groups: evaluated vs. non-evaluated defendants. The evaluated group represents those defendants who were prescreened and formally evaluated for PTBS *before* being placed on bond supervision and the non-evaluated group represents those defendants who were not. One would intuitively think, and reasonably hypothesize, that the evaluated group would have higher success rates and lower violation rates than the non-evaluated group. However, this is not the case: both groups have identical overall success and failure rates, 76 percent and 24 percent, respectively. *It appears, at least in this study, that being evaluated beforehand does not necessarily increase the probability of a successful outcome on PTBS.* Chi-square test of statistical significance confirms this conclusion, i.e., the data do not indicate that prescreening evaluations are related to PTBS outcomes. This does not suggest, however, that prescreening evaluations are ineffective screening devices or have no value. On the contrary, one must remember that bond supervision evaluations not only have the effect of getting defendants out of jail, but also have the consequence of keeping people in jail. In this sense, they could be more effective in identifying those defendants who pose the greatest violation risk and thus need to be kept in jail custody (pretrial detention).

The finding of identical success and failure rates suggests that it is likely that other factors are more relevant in determining success and failure on PTBS than a prescreening evaluation, variables such as failure-to-appear history, rearrest history, offense seriousness, judicial reactions to pretrial misconduct, the type, quality, and quantity of supervision, the defendant's level of compliance with supervision conditions, and client characteristics (e.g., age, family and community stability, out-of-county vs. in-county residence, and employment status). *But it still begs the question: What does explain the aforementioned identical outcomes?*

It could be suggested, regardless of the fact that one group of defendants is not formally evaluated by Pretrial Services before release, that some sort of judicial assessment of the defendant is most likely being made at the time when the pretrial release option is decided. So there is, if you will, some form of "quasi-evaluation" being made and one could suppose that the judge is basing his or her PTBS decision on some, if not most, of the same kind of criteria that Pretrial Services uses when making its evaluation-based PTBS recommendation.[11] Given similar outcomes, this would seem to indicate that judges' release assessments are comparable to the bond supervision evaluations done by Pretrial Services.

In addition, there is a constant that applies to all defendants placed on bond supervision: a complete and thorough intake-orientation to the "rules" of bond supervision upon their release from jail custody. Evaluated beforehand or not, every defendant placed on PTBS is instructed to the terms, conditions, and expectations of supervised release. In a sense, the process of orientation could have an "equalizing" effect, with everyone "starting off on the same foot." It may even be suggested that a "quality" orientation could have more impact on a defendant's pretrial release conduct than a prescreening evaluation done while the defendant is in jail custody. Supposing equivalent orientations and an "orientation effect," this may help to explain, to some extent, the identical success and failure outcomes of the two groups of defendants. Given these plausible explanations, it is not a foregone conclusion that the identical findings can be attributed to chance; it seems feasible that certain factors are operating here to produce the identical outcomes, factors not related to chance or randomness.

When comparing violation-specific proportions between evaluated PTBS defendants and non-evaluated PTBS defendants, we found that the greater bulk of violations for both groups were for failing-to-appear. However, for the non-evaluated group FTA's consisted of 71 percent of their total number of violations whereas for the evaluated group 62 percent of this group's violations were for failing-to-appear. The differences between the two groups were not as large in the other two categories of violations: new arrests and technical violations. In the evaluated group, the new arrest proportion consisted of 15 percent, compared to 12 percent in the non-evaluated group; and for those who were evaluated the proportion of technical violations totaled 23 percent compared to 17 percent in the non-evaluated group. Given the above observations, it could be argued that evaluations are an important tool for identifying FTA risk and, to a lesser but still relevant extent, identifying rearrest risk. Possible explanations for the larger number of technical violations in the evaluated group include: 1) more conditions and restrictions of bond may be imposed on prescreened, evaluated defendants than on non-evaluated defendants, thus allowing or creating more opportunity for violating behavior to occur; 2) a more "at-risk" client is recommended for and released onto PTBS than those defendants not evaluated; and 3) given the fact that evaluated defendants tend to be charged with more serious crimes, the court's level of tolerance towards violating behavior may be lower and its response to the violation thus harsher (e.g., a return to jail custody as opposed to a verbal admonishment) than it would be for persons charged with less serious crimes.

Violation Rates by Class of Crime and Type of Offense

This section examines the relationship between bond violations and class of crime as well as by type of offense (property, violent, etc.) using chi-square analysis to determine if there are any statistically significant differences between the aforementioned crime categories and types of violation. In Table 1, a statistically significant relationship was found between class of crime and failing to appear (chi-square = 125.052; p = .001). Of

TABLE 1
DISTRIBUTION OF VIOLATION RATES BY CLASS OF CRIME, 1986-2000*

Type of Violation	*X*	*1*	*2*	*3*	*4*	*M/T*
FTA	32 (5%)	104 (9%)	229 (12%)	365 (15%)	592 (19%)	446 (18%)
ARREST	11 (2%)	29 (3%)	60 (3%)	76 (3%)	105 (3%)	72 (3%)
TECH VIOL	38 (6%)	72 (6%)	109 (6%)	115 (5%)	149 (5%)	56 (2%)

*Includes Evals And No-Eval Cases; N=11,596.
Source: 19th Judicial Circuit, Lake County, Il.

all those defendants who were placed on PTBS charged with a Class X felony (N=656), only 5 percent failed to appear. On the other hand, 19 percent of all defendants charged with a Class 4 felony (N=3085) failed to appear, *nearly a fourfold increase when compared with Class X defendants.* As the row percentages indicate, *defendants charged with more serious crimes (Class X being the most serious crime category) are less likely to FTA than defendants charged with less serious felony crimes.* It appears that in this study there is a strong probability that a relationship exists between crime seriousness and failing to appear.

The fact that defendants charged with more serious felonies are less likely to FTA could be related to the notion that a defendant charged with a more serious crime has a greater "stake in conformity." In other words, they have more to lose and less to gain if they do fail to appear—whether it's in terms of remaining in the community on bond or possibly influencing the final disposition of their case. In addition, it is possible that persons charged with more serious felonies have retained a paid private attorney, which tends to correlate with a lower probability of failing to appear (see Toborg 1981; U.S. Bureau of Justice Statistics 1985). In reference to supervision strategies to reduce the rate of FTA, *it appears that supervision strategies should be intensified (e.g., more contacts) or redesigned (e.g., reporting in person to the Pretrial Services Office) for those defendants who fall at the less-serious end of the crime spectrum.*

Analyzing the relationship between class of crime and new arrests indicates no statistically significant differences between the two variables at the .05 level of significance. Whether one is charged with a serious felony crime or a less serious crime, the data suggest that offense seriousness is not related to rearrest violations. In the final violation category—technical violations—a statistically significant relationship was found between class of crime and technical violations (chi-square = 45.664; p = .001). *Interestingly, misd/traffic cases are less likely to violate a technical condition of release, which, in effect, is producing the statistically significant association.* If we remove the misd/traffic cases from the chi-square analysis, no statistically significant differences were found. In other words, there is no statistically significant association between felony crimes and technical violations.

Possible explanations for the misd/traffic finding include 1) fewer "technical" restrictions are imposed upon these defendants, consequently reducing the opportunity for technical violations to occur, and/or 2) judges are less likely to revoke a person's bond for a technical violation because the charge is deemed less serious, and/or 3) the "margin for error" given to a misd/traffic violator may be larger than the allowance given to, e.g., a person charged with a Class X felony.

TABLE 2
DISTRIBUTION OF VIOLATION RATES BY TYPE OF OFFENSE, 1986-2000**

Type of Violation	*Prop*	*Viol*	*Sex*	*Drug*	*Public Order*	*Misd/ Traf*
FTA	564 (17%)	120 (9%)	22 (4%)	470 (16%)	146 (15%)	446 (18%)
ARREST	111 (3%)	40 (3%)	6 (1%)	84 (3%)	40 (4%)	72 (3%)
TECH VIOL	188 (6%)	70 (5%)	25 (5%)	160 (5%)	40 (4%)	56 (2%)

*Includes Evals And No-Eval Cases; N=11,596.
Source: 19th Judicial Circuit, Lake County, Il.

The data in Table 2 indicate a statistically significant relationship between type of offense and failing to appear (chi-square = 99.258; p = .001). Most of this effect is produced by persons charged with violent and sex crimes: both of these groups had much lower observed frequencies compared to their respective expected frequencies and, in terms of percentages, these two groups had the lowest FTA violation rates (9 percent and 4 percent , respectively). When we remove violent and sex crimes from the analysis, no statistically significant differences were found. In short, *persons charged with either a sex-related offense or a violent offense are more likely to make their court dates than defendants charged with other types of offenses.*

Assuming that contacts are related to failing to appear—the more contacts, the less likely a defendant will FTA—then theoretically we could reduce the number of contacts or change the nature of the contacts with defendants charged with violent and sex crimes. However, given the nature of these offenses, a pretrial program may be reluctant to do such a thing. Furthermore, one may ask: Are violent and sex defendants less likely to FTA simply because they are charged with such types of crimes, have stronger community ties, or is there a contact or "surveillance effect" that keeps them coming to court? At best, this is a rhetorical question for now, but certainly it is an interesting hypothesis for a possible future "effect-of-supervision" experiment.

When analyzing arrest violations, there is a statistically significant relationship with type of offense (chi-square = 11.369; p = .001). However, it should be pointed out that the critical value of chi-square in this analysis is 11.070, thus suggesting that the association found is just barely significant. In other words, there is some association but not much. In reference to technical violations, a statistically significant relationship was found with type of offense (chi-square = 44.289; p = .001). But as was indicated earlier, most of this association is produced by misd/traffic defendants: These defendants were less likely to violate a technical condition of release than defendants charged with one of the other offense types. Remove the misd/traffic cases from the analysis and there is no statistically significant difference between offense type and technical violations.

Discussion and Summary

An important value attached to the development of pretrial services is program evaluation and empirical research of program operations, whether it is on a national level or at the agency-specific level. Basic "descriptive" research questions that ought to be addressed include, for example, the number of defendants supervised, the composition of the supervised population by type of offense and seriousness of the charges, failure-to-appear and rearrest rates, and success rates. Describing variables of interest is an essential part of almost any research investigation (Bachman and Schutt 2001). Hence, the objective of the present research has been primarily descriptive in nature. Specifically, its goal has been to *describe* patterns of change over time. Although we have offered explanations and policy implications for some of our findings, descriptive research has been the central focus of this paper.

It appears that after 17 years of providing pretrial services to the judiciary in Lake County, the characteristics of this evolution can be summed up briefly: change, adaptation, and

growth. Highlighting some of our findings to support this observation include besides a nearly 1000 percent increase in the number of defendants supervised by Pretrial Services (PTS): the number of clients placed on supervised release (PTBS) during certain time intervals that may be related to a judicial rotation effect; the number of defendants recommended for PTBS relative to the total number evaluated substantially decreased over time, from 70 percent to 20 percent; the number of defendants formally evaluated and then released to PTBS remained fairly stable over time as did the number of defendants who were released to PTBS without an evaluation, i.e., until 1998 through 2000 when for every one defendant released with an evaluation, two were released without an evaluation; significant patterns of change occurred over time in the composition of the PTBS population by offense seriousness and type of offense; and the proportion of defendants supervised with drug testing increased from10 percent of the total PTBS population to almost 80 percent. Other pertinent observations include the findings that the aggregate success and failure rates of evaluated and non-evaluated defendants are identical; that court referrals for PTBS evaluations are influenced by the seriousness of the charge(s); failing to appear represents the primary violation problem—both in terms of volume and rates; and defendants charged with more serious crimes are less likely to fail-to-appear than defendants charged with less serious crimes.

As noted in an earlier paper (Cooprider 1992; see also Henry 1991; Segebarth 1991), the anticipation of growth in a pretrial services program should be assumed, and Lake County has certainly fulfilled that prophecy. In both the bond report and the bond supervision areas, increased workloads and the expansion of the duties and functions that pretrial services performs has been the general norm. It can only be expected that the specific functions that pretrial services provide to the Lake County judiciary and to the community will continue and probably expand in the 21st century as unfulfilled needs are discovered and pretrial release options and supervision strategies become more progressive and relevant in order to meet the demands of "criminal justice" in Lake County.

This study also should demonstrate the practical value of localized, in-house research. With just a handful of variables, ongoing data collection, and a fairly simple descriptive and comparative method of analysis using rates, percentages, and proportions, a pretrial services program can provide a "statistical picture" of its functional operations, how much it delivers in services to the judiciary, and the outcome of those services. Creating such a body of knowledge has fundamental importance for a pretrial services program: with it, we may discover things we need to know; without it, we may never discover things we need to know.

Endnotes

[1] We generate as much data for analysis as possible given our limitations (e.g., lacking full automation capabilities; no formal research position or division). Thus the amount and kind of data, and consequently the research questions we can answer, are limited since we collect and analyze the data manually. Most of the data we collect and analyze pertain only to defendants placed on Pretrial Bond Supervision (PTBS). Much more data and research would be needed to approach the information and research standards proposed by the National Association of Pretrial Services Agencies (1998) and by Mahoney et al. (2001).

[2] Note that the "number of bond reports" includes "standard" bond reports (no PTBS evaluation done), bond reports that include a bond supervision evaluation, and a relatively small number of criminal record checks submitted to the court without a bond report interview being done.

[3] For example, a judge with a prosecution background may be more inclined to use supervised release (as compared to unsupervised release) than a judge with a "private defense attorney" background. Preliminary 2001 data also lend continued credence to a possible judicial rotation effect. In 2001 there was a change in the "bond court" judge. In that year, 1257 defendants were placed on supervised release, representing a 29 percent decline from the previous year.

[4] This trend seems to be continuing to the extent that in 2000 we started to systematically keep data on the number of defendants released on PTBS with a cash bond or without a cash bond.

[5] In Illinois, felonies range from Class X, the most serious kinds of felony crime to Class 4, the least serious.

[6] It should be noted that there was no policy change or criteria change in determining who is suitable for a PTBS recommendation; we basically have followed the same guidelines and criteria in recommending defendants for PTBS in the 1990's as we did in the 1980's. It should also be noted that as of 1998 judges have had immediate and direct computerized access to the Circuit Clerk's criminal record database, thus allowing a judge to examine a defendant's county-based criminal record and failure-to-appear history, or lack thereof. This technology and availability of information "on the bench" may influence a judge's decision to 1) release someone onto PTBS without an evaluation or 2) request a bond report for a more-detailed and informative background investigation before a release decision is made.

[7] Examples of felony public order crimes include felony DUI, Mob Action, firearm offenses, Obstructing Justice, Resisting a Peace Officer, nonviolent Hate Crime, and Fugitive from Justice.

[8] The indicator used is the FBI's Crime Index, which consists of the following felony offenses: murder, criminal sexual assault, robbery, and aggravated assault (violent Index Crimes) and burglary, theft, motor vehicle theft, and arson (property Index Crimes). Clearly these crimes alone do not account for all the crimes reported to the police, arrests made by the police, and who ends up on PTBS. Unfortunately, data are not available detailing the specific offenses for which defendants are being held in the county jail (Illinois Criminal Justice Information Authority 2000).

[9] Case classification (i.e., differential levels of contact) was initiated in November 1990 to deal with a growing PTBS population and to effectively allocate our resources so that the increased caseload volume could be better managed without sacrificing the Unit's mission and objectives.

[10] Our most recent data would support this observation. Preliminary analysis of 2001 and 2002 data indicate that the technical violation rate increased to 10 percent in 2001 and was 9 percent in 2002, the highest yearly technical violation rates since PTBS started in 1986 and still much higher than the 15-year average of 5 percent. When compared to FTA's and new arrests, technical violations are more a function of the officer's surveillance and monitoring of the defendant's conditions of release.

[11] It should be noted that in some cases the court has access to a "standard" bond report, which supplies the court with information on the defendant's background; but the standard bond report does *not* incorporate within it a PTBS evaluation or PTBS recommendation. This is especially true for misdemeanor and traffic defendants who get placed on PTBS, defendants who normally are not evaluated for PTBS because PTBS is primarily a pretrial release option that targets persons charged with felony crimes.

Justifications for the Probation Sanction Among Residents of Virginia—Cool or Un-cool?*

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PERHAPS AS EVIDENCE of a growing cultural gap between our students and ourselves, one of the authors was recently amused when a student asked whether probation was a "cool" sanction. In this study, we begin an investigation into how cool the probation sanction is in the eyes of residents of the Commonwealth of Virginia. Specifically, we use data from a telephone survey of 840 registered voters to explore three questions. First, how often would they recommend the probation sanction in comparison to other sanctions? Second, how do they justify the sanction relative to justifications for other sanctions? Finally, are their justifications and sentencing recommendations consistent across crimes? We address these questions in this study to see whether the sanction is "cool or uncool." In the review of literature, we discuss punishment justifications in general and probation as a punitive experience.

Sentencing Justifications and Probation

A number of researchers have examined how the public perceives and justifies sanctions. Research on public attitudes toward different sanctions has centered on an examination of how the public perceives various sentencing alternatives. Do they support the death penalty? Is incarceration preferred over probation for certain types of offenders? Do they support specific alternative sanctions? (Brown and Elrod, 1995; Durham, 1993; Payne and Coogle, 1998; Sandys and McGarrell, 1995; Sigler and Lamb, 1995; Zimmerman et al., 1988). These and other questions have been addressed by researchers interested in how the public perceives criminal justice sanctions.

In contrast, punishment justification research has centered on how various sanctions are justified. Much of this literature focuses on justifications for incarceration. In this area, scholars point to five related punishment justifications: specific deterrence, general deterrence, incapacitation, rehabilitation, and retribution. Though these justifications are most commonly linked in the literature with incarceration, they are also applicable to alternative sanctions such as probation.

Specific Deterrence

Specific deterrence can be traced back at least to Cesare Beccaria's classic *On Crimes and Punishments (1963[1764])*. This short manuscript contains Beccaria's views on the importance of punishment—if offenders are punished in a certain, swift fashion with sanctions just outweighing the pleasure of the crime, then offenders will be less likely to commit future criminal acts. The specific deterrence ideal views punishment as a pragmatic, rational instrument that keeps offenders from committing future offenses. The ability of a sanction to deter misconduct is difficult to assess (Bagaric, 2000), but specific deterrence remains among the more popular sentencing justifications (Whitehead and Blankenship, 2000).

General Deterrence

In contrast to specific deterrence, the idea behind general deterrence is that punishing offenders should prevent other members of society from offending. General deterrence is even more difficult to measure than specific deterrence. In theory, however, some see the most basic purpose of punishment as its role as a general deterrent to others. Those advocating a general deterrence approach to controlling crime argue that the application of the law through punishment is needed to demonstrate societal disapproval and reenforce societal norms (Moneymaker, 1985).

Incapacitation

Incapacitation is another important function of the criminal justice system. Incapacitation refers to the degree that crime is reduced, and society is kept safe, by keeping offenders away from the general public. Public safety as a justification for punishment is commonly heard, for example, among proponents of the death penalty and increased use of incarceration. According to Zimring and Hawkins (1995), support for incapacitation as a punishment justification emerged in the seventies and eighties, not because of any solid beliefs about its benefits, but out of frustration with other forms of punishment and their justifications.

Policies that keep offenders in prison for offenses they might commit (e.g., selective incapacitation, sexual offenders being kept in prison past their release dates, and "three strikes, you're out") are examples of policies justified on incapacitation grounds. It might be suggested that the sanction does not apply to community-based sanctions; however,

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research shows that some alternative sanctions, such as electronic monitoring with house arrest, are controlling and may meet the ideals of incapacitation (Payne and Gainey, 2000). Moreover, an analysis of the goals of state legal codes for community-based sanctions revealed that states expect sanctions to control offenders in a way that maintains public safety (Johnson et al., 1994).

Rehabilitation

As a punishment justification, rehabilitative ideals are similar to specific deterrence ideals in that the focus is on altering the future behavior of the offender. The difference presumably lies in the strategies used to change the behavior. Deterrence is believed to be achieved strictly through punitive means, while rehabilitation is theoretically achieved through therapeutic and supportive approaches.

A number of studies have considered the rehabilitative potential of various sanctions. Generally, researchers agree that rehabilitation is less likely in prison environments, and more feasible in community settings (Palmer, 2002). The assumptions underlying community-based sanctions with a rehabilitative orientation are that individuals are able to maintain employment, enhance bonds with family members and friends, and avoid the criminogenic prison environment. However, rehabilitation is often not feasible because many probation agencies, with their heavy caseloads, are under-staffed and overworked. They are then forced to resort to serving as supervisors rather than counselors (Lynch, 2000).

Retribution

A final justification for punishment is retribution, which one study has found to be the most popular punishment justification (Warr and Stafford, 1984). Justifications based on retribution are based on the belief that offenders deserve punishment and society has a moral obligation to punish them (Von Hirsch, 1986). One study, for example, suggested that retributive ideals are more about revenge than about "just deserts" (Finckenauer, 1988). Some moral philosophers go so far as to suggest that the desire for retribution is a natural human emotion. Alternatively, the German philosopher George Hegel argued that criminals have a right to be punished. Through punishment, criminals are redeemed (Tunick, 1992).

For the most part, research on punishment justifications has focused on how sanctions such as the death penalty and incarceration are justified by members of the public. To our knowledge, no research has considered how members of the public justify the probation sanction. A full understanding of these justifications promotes a better appreciation of the degree of support the public has for probation and why. Before examining how the public justifies this sanction, attention must be given to how the sanction is actually experienced by offenders.

The Probation Experience

Authors have described probation as a process, a status, and a sanction. It is a process in that offenders proceed through the probation stage of the criminal justice apparatus. It is a status, in that offenders are "on probation" and under stricter scrutiny by the criminal justice system than is the average citizen. It is a sanction, in that offenders experience the range of emotions that come along with any type of criminal justice punishment—there is a degree of control over offenders; offenders experience certain losses while on probation; offenders are expected to refrain from certain behaviors legal for other citizens, such as the freedom to move from one jurisdiction to another, while experiencing this sanction.

Historically, it has been assumed that probation was a less severe punishment than incarceration. Recent investigations, however, call into question this assumption. Research has begun to find that some forms of probation, especially when combined with other sentencing alternatives, are experienced by offenders in punitive ways (Crouch, 1993; Payne and Gainey, 1998; Petersilia and Deschenes, 1994; Spelman, 1995; Wood and Grasmick, 1999). In fact, these studies have found that some offenders prefer incarceration to certain types of probation.

For example, a study of 415 inmates in Oklahoma revealed that many of the inmates preferred remaining in prison over being placed on certain alternative sanctions (including probation), because they could limit the amount of time they would be under the control of the justice system (Wood and Grasmick, 1999). In a similar study, two-thirds of 1,027 sampled Texas inmates indicated that they would rather serve one year in prison than be on probation for ten years, and half of them indicated that they would choose one year in prison over five years on probation (Crouch, 1993). Another study of 128 Texas inmates also showed that many inmates preferred prison to community-based sanctions (Spelman, 1995). In a similar vein, research by Petersilia and Deschenes (1994) suggests that inmates find intensive probation to be the "more dreaded penalty" as compared to incarceration.

There are several reasons why inmates often prefer incarceration to probation. The two main reasons are time and control. In terms of time, sentences served on community-based sanctions tend to be longer. Thus, those offenders placed on probation are likely to spend more time under the control of the criminal justice system. In terms of control, offenders supervised in the community recognize that probation officers have a great deal of control over the offender's fate. This control can be an especially unnerving situation for inmates who face the uncertain risk of revocation and institutionalization for minor violations such as missing an appointment or having substances detected in their urine screening. In the end, it appears that inmates perceive the sanction as a punishment.

While inmates experience probation as a punishment, policy makers tend to select incarceration as the sanction that meets punitive ideals and probation as the sanction that meets rehabilitative ideals (De Luca et al., 1991; White, 1989). Research has yet to be done, though, on the public's perception of probation and the justification for using it. The current study examines whether members of the public hold similar beliefs.

Why Study Punishment Justifications for Probation?

Three reasons warrant an examination of punishment justifications offered for the probation sanction. First, as Warr and Stafford (1984) point out, a great deal of cultural awareness can be found through empirical examinations of punishment justifications. Individuals from different backgrounds tend to have different punishment philosophies (Gordon, 1999). Also, the primary reasons individuals think others should be punished have shifted over time, and these shifts are related to broader cultural values, beliefs, mores, and norms. The age of Reformation, for instance, was characterized by general rehabilitative values, whereas the age of Enlightenment called for punishment proportionate to the harm created by one's misdeeds. Generally, these punishment rationales have been considered for broader sanctions. Punishment rationales for the probation sanction, however, can be just as telling about our culture and the diversity within it.

Second, it is important for proper program evaluation to determine whether societal goals for use of a sanction are being fulfilled. While any sanction would include among its goals reduction of crime and increased public safety, other goals vary across sanctions. For example, if society thinks a punishment should be primarily rehabilitative, evaluators should use rehabilitation as a measuring stick. Beyond reduction of crime and increased public safety, goals might well include such indicators of rehabilitation as increased job stability, improved relationships and reduction in dependency on drugs. Conversely, if the sanction is justified on primarily retributive ideals, then evaluation criteria might include a measure of the proportionality of the sentence to the crime, and the perceptions of victims. The point is that one must know what the goals of the sanction are in society's eyes in order to determine if the sanction is fulfilling societal expectations.

Third, probation is a growing sanction across the United States. In 1990 there were nearly 2.7 million persons on probation, in 2001 there were nearly four million—an increase of approximately 47 percent (Bureau of Justice Statistics, 2002). The use of probation has thus greatly expanded and that expansion is expected to continue. One might say that probation is the "sanction of choice" among judges for many less serious offenders. In fact, the sanction is pivotal to the justice system's effectiveness. It is imperative then to come to some understanding of the way that probation goals are perceived by the public and determine how those goals fit in with the broader goals of the justice process.

The current study focuses on how individuals perceive the goals of the probation sanction in comparison to goals of other sanctions. The questions include: how often do residents of the Commonwealth of Virginia recommend probation in comparison to other sanctions? How do residents of the Commonwealth of Virginia justify the probation sanction relative to other sanctions? Do their justifications vary across offense types? Addressing these questions will shed some light on strategies to evaluate the probation sanction, and help us understand the role of the probation sanction in the criminal justice system.

Methods

As part of a broader political poll, a telephone survey was conducted to assess support for probation and determine how respondents justified the probation sanction. The survey instrument consisted of five crime scenarios (See Table 1). The political poll was commissioned by a newspaper (*The Virginian Pilot*); thus, we had to select offenses that were "newsworthy." These scenarios were chosen because they represented events that were receiving widespread news coverage at the time.

TABLE 1. Crime Measures

Crime	*Scenario*
Drunk Driving (Death)	An individual driving under the influence crashes a car and a passenger is killed.
OSHA Violation (Death)	A manufacturer violates occupational safety and health standards causing the death of an employee.
Marijuana Distribution	An offender sells 100 pounds of marijuana.
Heroin Distribution	An offender sells 2.2 pounds of a substance containing a detectable amount of heroin.
Drug Possession	An offender is found in possession of illegal drugs for personal use.

TABLE 2. Punishment Justification Measures

Justification	Measure (Why do you support this sentence? Because…)
Specific Deterrence	It will keep the offender from committing another crime.
General Deterrence	It will keep other people from committing that crime.
Retribution	It punishes the offender.
Rehabilitation	It treats or punishes the offender.

Scenario 1 (drunk driving) asks respondents how they would sanction an offender who killed someone as the result of a drunk driving accident. Scenario 2 (OSHA violation) asks respondents how they would sanction an offender whose workplace actions resulted in the death of an employee. Scenarios 3 (marijuana distribution) and 4 (heroin distribution) assessed how respondents would punish offenders distributing these drugs. The scenarios for these two drug offenses were based on drug kingpin legislation promoted by former Governor James Gilmore in 1999. Specifically, the governor recommended changing Virginia law so that those convicted of possession of 100 pounds of marijuana or 2.2 pounds of heroin would receive life sentences. Scenario 5 (drug possession) asked respondents how they would sanction an offender in possession of drugs for personal use.

After each of these scenarios, respondents were asked to indicate the sanction they preferred. Options for scenarios 1-4 included the death penalty, life in prison without parole, 10 years in prison, and probation with treatment. Options for scenario 5 included life in prison without parole, 10 years in prison, 5 years in prison, 1 year in prison, and probation with treatment. The life in prison without parole option was the sanction recommended in the drug kingpin legislation. Ten years in prison was roughly the equivalent sentence provided by the state sentencing guidelines at the time the survey was conducted.

After indicating their sanction preference for each offense, respondents were asked, "Why do you support this sentence?" Close-ended response options included specific and general deterrence, retribution, and rehabilitation (see Table 2).

Sample

Table 3 describes the demographic characteristics of the sample. Just over 80 percent of the respondents were white and over half were female. Respondents came from a variety of socio-economic classes, as indicated by the substantial variation in education and income. The average age of respondents was just over 50 years. Though they were slightly older than Virginia residents as a whole, this is not uncommon in telephone surveys.

Results

The first question addressed asks how often probation is recommended as an appropriate sanction for the crimes described in the five scenarios. Table 4 provides descriptive statistics regarding the recommended sanctions for each of the crime scenarios. As shown in the table, the Virginia residents tended to be

TABLE 3.
SAMPLE DEMOGRAPHICS

	#	%
Gender		
Male	341	40.6
Female	499	59.4
Race		
White	678	80.7
Black	125	14.9
Other	37	4.4
Education		
< high school	37	4.4
High school/GED	128	15.2
Vocational	58	6.9
Some college	260	31.0
College degree	214	25.5
Graduate degree	142	16.9
Family Income		
< $20,000	79	9.4
$20,000-$33,000	124	14.8
$33,001-$49,000	150	17.9
$49,001-$72,000	179	21.3
over $72,000	179	21.3
Age		
Mean	52.2	
Standard Deviation	16.9	

somewhat punitive, although they did not generally support life sentences for the drug offenses. A small percentage of the respondents recommended the death penalty for each crime scenario. The order of punishment preferences was the same for the drunk driving, OSHA violation, and marijuana dealing scenarios—ten years in prison was the most commonly supported sanction, followed by probation, life in prison, and then the death penalty. For the scenario describing heroin dealing, ten years in prison was the most common sanction supported, followed by life without parole, probation with treatment, and the death penalty. In the marijuana possession scenario, probation was the most commonly supported sanction, with over half the sample recommending this sanction. Probation was followed by five years in prison, ten years in prison, and life without parole. As might be expected, we found that probation is a fairly common recommended sanction, though its popularity varies across crimes.

Cross-tabulations were conducted to address the second questions: how is probation justified, relative to other sanctions.[†] Those few who selected the death penalty were omitted from the analysis because their justification could not theoretically be characterized as for rehabilitation and including those respondents would have biased the results. Table 5 outlines the results of these analyses.

For each crime scenario, punishment preference was strongly related to punishment justification. Across the board, those choosing life in prison without parole were most likely to justify that sentence based on specific deterrence ideals. Percentages ranged from 33 percent for the OSHA violation to 62.5 percent for the possession of drugs. As might be expected, people who chose life in prison without parole were least likely to support the goal of rehabilitation.

Interestingly, those recommending 10 years of prison tended to base that decision on retribution or simply punishment of the offender. Percentages ranged from 33.8 for the drunk driving scenario to 42.6 for the scenario concerning the marijuana dealer. However, if specific and general deterrence were combined into a general deterrence category, this would also amount to a strong justification, suggesting that Virginia residents may be more pragmatic than retributive in terms of their justifications for punishing offenders. That is, they support sentences of 10 years in prison because they think they are effective, not simply to punish deserving criminals.

Finally, and across the board, those endorsing probation were most likely to base that sentence on rehabilitative goals. Percentages were large, ranging from 51.5 percent for the OSHA violation to 82.1 percent for the scenario involving the possession of drugs. Clearly, people who support probation as an important sanction available to the criminal justice system tend to support the goal of rehabilitation.

TABLE 4. Recommended Sanctions

Offense	*Punishment*									
	Death Penalty		Life w/o Parole		10 years in prison		Probation w/ treatment		Don't know	
	N	%	N	%	N	%	N	%	N	%
Drunk driving (death)	27	3.2	136	16.2	382	45.5	240	28.6	55	6.5
OSHA Violation (death)	18	2.1	92	11.0	373	44.4	196	23.3	161	19.2
Dealing Marijuana	19	2.3	156	18.6	427	50.8	181	21.5	57	6.8
Dealing Heroin	25	3.0	188	22.4	437	52.0	137	16.3	53	6.3

Drug Possession	Life w/o parole		10 years in prison		5 years in prison		1 year in prison		Probation w/ treatment		Don't know	
	N	%	N	%	N	%	N	%	N	%	N	%
	24	2.9	70	8.3	112	13.3	159	18.9	436	51.9	39	4.6

Discussion

The first finding of this study is that probation is a sanction that, even in a state where the public is seen as punitive, is often supported, though levels of support vary across type of crime. The results further indicate that punishment preferences are strongly related to punishment justifications. Probation is justified by and large by rehabilitation. On the other hand, those who supported life sentences, such as those called for in the drug kingpin legislation, tended to offer specific deterrence ideals, while those supporting probation tended to offer rehabilitative ideals. Critics might dismiss these findings as obvious. However, we believe our findings have important implications for policy and research.

Three policy implications arise from our study. First, given that past research shows that probation and other community-based sanctions are experienced as a punishment by offenders (Payne and Gainey, 1998; Petersilia and Deschenes, 1994; Spelman, 1995), with some seeing it as more punitive than incarceration, it seems necessary to educate the public about the punitive nature of the probation sanction. As it is, probation tends to be justified primarily on rehabilitative grounds, and rarely on punitive grounds. Expanding societal understanding about the punitive nature of probation would likely increase support for the sanction. Others have recommended education as a strategy to increase the use of certain sanctions (Lane, 1997; Whitehead and Blankenship,

[†] Because of small cell sizes these analyses were replicated excluding the persons who responded "don't know" and "other." The substantive findings were consistent.

TABLE 5. SANCTIONS BY PUNISHMENT JUSTIFICATIONS

	Life W/O Parole		10 years prison		Probation		Chi Square	Significance
	N	%	N	%	N	%		
Drunk Driving (Death)							**322.22**	**.000**
Specific Deterrence	54	39.7	87	22.8	15	6.3		
General Deterrence	25	18.4	68	17.8	4	1.7		
Retribution	38	27.9	129	33.8	21	8.8		
Rehabilitation	4	2.9	66	17.3	183	76.3		
Other	12	8.8	26	6.8	13	5.4		
Don't know	3	2.3	6	1.6	4	1.7		
OSHA Violation (death)							**217.69**	**.000**
Specific Deterrence	30	32.6	74	19.8	27	13.8		
General Deterrence	14	15.2	98	26.3	14	7.1		
Retribution	32	34.8	149	39.9	26	12.2		
Rehabilitation	5	5.4	26	7.0	101	51.5		
Other	9	9.8	19	5.1	24	12.2		
Don't know	2	2.2	7	1.9	6	3.1		
Dealing Marijuana							**376.01**	**.000**
Specific Deterrence	83	53.2	113	26.5	18	9.9		
General Deterrence	29	18.6	73	17.1	2	1.1		
Retribution	32	20.5	182	42.6	25	13.8		
Rehabilitation	3	1.9	34	8.0	120	66.3		
Other	7	4.5	24	5.6	16	8.8		
Don't know	2	1.3	1	.2	0	0.0		
Dealing Heroin							**335.30**	**.000**
Specific Deterrence	97	51.6	139	31.8	13	9.5		
General Deterrence	30	16.0	68	15.6	2	1.5		
Retribution	43	22.9	176	40.3	35	12.4		
Rehabilitation	4	2.1	35	8.0	89	65.0		
Other	12	6.4	17	3.9	15	10.9		
Don't know	2	1.1	2	.5	1	.7		

Possession of Drugs											**321.05**	**.000**
	Life w/o		**10 yrs prison**		**5 yrs prison**		**1 yr prison**		**Probation w/treatment**			
	n	**%**	**n**	**%**	**n**	**%**	**n**	**%**	**n**	**%**		
Specific Deterrence	15	62.5	23	32.9	27	24.1	20	12.6	29	6.7		
General Deterrence	3	12.5	8	11.4	8	7.1	10	6.3	2	0.5		
Retribution	4	16.7	25	35.7	37	33.0	50	31.4	24	5.5		
Rehabilitation	1	4.7	8	11.4	30	26.8	17	44.0	358	82.1		
Other	0	0.0	6	8.6	7	6.3	9	5.7	22	5.0		
Don't know	1	4.2	0	0.0	3	2.7	0	0.0	1	.2		

2000; Gainey and Payne, 2003), so this recommendation has some merit.

Second, and on a related point, legislators, policy makers, and practitioners should consider ways to enhance the general deterrent potential of the probation sanction. As the most common community-based sanction, the probation sanction should ideally help to fulfill multiple goals of the justice process. So long as the public does not see it as punitive, and does not justify it on general deterrent ideals, the versatility of the sanction is minimized. It is not uncommon for incarcerated offenders and correctional officers to serve as speakers in classrooms in an attempt to help young people steer clear of crime (Bravin, 2000; Brown, 1998). It is certainly plausible that probation officers and probationers could play a similar role in spreading the word about this sanction. In fact, some argue that it is the role of criminal justice professionals to educate the public about the system's applications (Andring, 1993; Hawk, 1994; Kniest, 1998). Better

awareness of the sanction should increase general deterrence.

However, there is another way to think about the findings of the study that relates to a third and final implication. This implication concerns the apparent widespread support of rehabilitation as a sentencing ideal. Public attitudes toward criminals are usually described as primarily punitive, retributive, and pro-incarceration, without drawing distinctions in public attitudes according to the nature of the crime. Indeed a large proportion of the sample did favor lengthy prison terms and some based their sentencing decision solely on retribution. Characterizing the public as purely interested in retribution or deterrence is misleading, however, because a substantial proportion of Virginia residents supported probation and justified this on rehabilitative ideals. Indeed a majority based their sentencing decision in the marijuana possession scenario on the goal of rehabilitation.

What this means is that the public attitude can be seen as punitive for offenders committing serious offenses, but rehabilitative for less serious offenses. The simplicity of this finding potentially undermines its import in terms of policy implications. However, it needs to be stressed that the public will support rehabilitative sanctions such as probation in some circumstances (Shichor, 1992). What does it mean that the public justifies probation in terms of rehabilitation while many offenders seem to see it as punitive? We can increase public awareness of the punitive aspects of probation as suggested above. This strategy fits well with trends towards mere supervision in probation fostered by high caseloads and few resources. On the other hand, we can work to actually increase the rehabilitative aspects of probation.

Furthermore, if it makes theoretical sense to combine the general and specific deterrence responses, and we believe it does, then "deterrence" would be the most frequent justification by respondents to this survey and would suggest that the public is more pragmatic than retributive. However, research shows that length of sentence is not strongly related to recidivism and the relationship is not always in the expected negative direction (Gainey, Payne and O'Toole, 2000; Song and Lieb, 1993). The public should be made aware that lengthy jail and/or prison terms are not the only answer and that incarceration can have many deleterious consequences (Clear and Rose, 1998). The main point, however, is that basing criminal policies on the belief that the public is primarily retributive is a dangerous and costly strategy.

Our findings also have important implications for theory. In particular, recall that the relationship between justifications and punishment preferences is largely consistent across crimes. Behaviors do not cause justifications, but the sanctions appear to do so. If someone thinks a certain type of offender should be punished to achieve deterrence, that individual will likely think other types of offenders should be punished for the same reasons. This tells us a lot about our culture and the way norms are defined, enforced, and promoted. It is not the violation of specific rules that evokes a response from society, but rule-breaking in general.

A number of questions remain for future research. Our sample came from just one state and it is not clear whether the relationships uncovered in this study would be found in other states. Furthermore, we focused on a handful of offenses and it may prove fruitful to examine other sanctions and justifications for other types of crime. We also did not include the "just deserts" and incapacitation justifications, although retribution comes close to "just deserts." Finally, research needs to determine which comes first—the sanction recommendation or the punishment justification. We know that they are related, but we cannot say for sure that there is a causal relationship between the two.

In the end, were our student to ask us again, "Is probation cool?" we would tell him that it is absolutely "cool" in some circumstances and that the sanction has widespread rehabilitative appeal to members of the public. The task at hand is to better educate the public and policy makers about the versatility of the probation sanction.

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Drug Use or Abstinence as a Function of Perceived Stressors Among Federally Supervised Offenders

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THE DRUG EPIDEMIC in American society does not escape persons under criminal justice supervision in the federal system. In fact, persons on probation, parole, or supervised release supervision often violate the conditions of their supervision by using drugs (Mecham, 2000). According to Mecham, almost 28 percent of persons revoked from federal supervision during 2000 committed technical violations of supervision, the most serious of which was drug use. The Administrative Office of United States Courts (2002) reported that 17 percent of offenders under federal supervision were revoked or removed from supervision in 2001 due to technical violations involving drug use.

In 1998, the Administrative Office of the United States Courts conducted research to identify drug issues relevant to persons in the federal criminal justice system in hopes of responding to the needs of drug abusers at the earliest point of contact, thereby breaking the relationship between drugs and crime. The first part of the research involved over 7,000 federal defendants who were asked to submit to drug testing prior to their initial appearance in court. These defendants consisted of those in custody as well as those appearing of their own volition in response to the issuance of a summons. The results of this exploration revealed a positive drug test rate of 29 percent. Even with such a high incidence rate of positive tests, this percentage may underestimate the scope of drug abuse among federal offenders, since 23 percent of all requested defendants failed to submit to testing.

The second part of the research required drug testing of nearly 2,000 federal defendants who were released on bond supervision pending trial. This part of the study excluded defendants who were in custodial status. The rates of positive drug tests were high, ranging from 12 percent to 38 percent of all tests. The average positive rate across all districts was 17 percent. Relatedly, Gurley (1999) found that 35 percent of federal offenders in the Northern District of Alabama's drug treatment program reverted to drug use following completion of treatment. The majority (5 percent) of offenders who reverted to substance abuse did so with cocaine. Marijuana accounted for another 30 percent of the drug use violations, while amphetamine/methamphetamine-using offenders comprised 5 percent of the total violators.

Preventing drug use could positively impact the quality of life for many persons under criminal justice supervision, as well as their families (National Institute on Drug Abuse, 1999). Consequently, American society would benefit by circumventing the crimes that often accompany drug use, thus reducing the increasing costs of incarceration. The Administrative Office of the United States Courts (2002) provided figures that show disparities between the costs of incarcerating or supervising federal offenders. Specifically, annual costs for incarceration were estimated to be $22,176.18, whereas those for supervising an individual in the community were estimated to be $3,247.10. The large gap between these amounts provides ample room for prevention and intervention efforts. The National Institute on Drug Abuse (1999) reported that offenders who participate in treatment are 70 percent less likely than non-participants to return to drug use or to be rearrested.

Stress and Substance Abuse

Stress, perhaps the most common of human experiences, acts as a defense mechanism to protect against emotional or physical danger. Stress, however, is often a prelude to substance abuse. The National Institute on Drug Abuse (2001) reported that stress contributes to both the initiation and continuation of substance abuse. Even after extended periods of abstinence, stress is a powerful trigger for relapse (Agnew & White, 1992; Maisto, Pollock, Lynch, Martin, & Ammerman, 2001). Many authors (Boardman, Finch, Ellison, Williams, & Jackson, 2001; Bruns & Geist, 1984; Hawkins, Catalano, & Wells, 1986; Newcomb and Harlow, 1986; Snell, Belk, & Hawkins, 1987; Young, Boyd, & Hubbell, 2000; Vaux & Ruggiero, 1983) concluded that drug use often results from inadequate attempts to deal with stress.

Several researchers have explored the relationship between stress and substance abuse in attempts to understand how various domains of stress may influence substance abuse. Dembo, Blount, Schmeidler, and Burgos (1985) concluded that the causes of substance abuse occur in four domains: a) personal, b) intrapersonal, c) interpersonal, and d) environmental/contextual. Within these dimensions are issues pertaining to family, peer, and social stressors, which have been linked to substance abuse by other researchers. For example, Vaux and Ruggiero (1983) found that increases in social, peer

group, employment, and financial stressors resulted in increased risk for substance abuse. This finding was supported by Bruns and Geist (1984), who found that as perceived stress increased, so did the likelihood of substance use. Muncer, Epro, Sidorowicz, & Campbell (1992) concluded that interpersonal problems and desire for acceptance by peers also contribute to substance abuse.

Veneziano, Veneziano, & Fichter (1994) found that DWI offenders are more likely to experience certain stressors, and more total stressors overall, during the year preceding the DWI incident than the average person in the population. Furthermore, over one-third of the DWI offenders studied by Veneziano et al. shared common stressors relating to employment, financial, family, and interpersonal difficulties with family and friends. Koch and Denman (1987), Lachance (1994), and Bempechat (1989) offered the observation that problem drinkers are often inundated with family stressors. Kilpatrick et al. (2000), in a study of adolescents and substance abuse, determined that increased negative affect following exposure to stressors could lead to drug use as a coping mechanism. Ames and Janes (1987) added that job-related stress is also strongly correlated with substance use.

Lang and Belenko (2000) advised that treatment must address substance abuse issues as well as factors pertaining to employment, financial, family, and social aspects of participants' lives. Dembo et al. (1995) studied drug use among juvenile offenders in order to evaluate the effectiveness of a family empowerment intervention program and found that improvement in the family atmosphere reduced drug use and accompanying criminal activity, such as drug sales. Carr and Vandiver (2001) reported that counteracting stress through improvements in the quality of familial and peer relationships can act as protective barriers to substance abuse, thus differentiating between juvenile offenders who succeed and those who reoffend. Probation officers were advised to become involved in the family support system of offenders. The National Institute on Drug Abuse (2001) concurred by adding that support from family and friends plays an integral role in the recovery process.

The National Institute on Drug Abuse (1999) reported that a central element of any drug treatment regimen is to proactively identify and anticipate the difficulties or stressors that participants are likely to face. Once these stressors are identified, the goal is to help treatment participants develop effective coping strategies. The purpose of this study was to determine if federal offenders who either used drugs or refrained from drug use while under supervision differed when compared by levels of financial, family, employment, peer, and social stressors experienced within the six months preceding participation in the study.

Methodology

Participants

Participants were criminal offenders under federal supervision in the Northern District of Alabama who were subject to drug testing. The Probation and Pretrial Services Automated Case Tracking System (PACTS) showed approximately 900 offenders under federal supervision in the district at the time of the study. Of these, approximately 375 were subject to drug testing. Offenders were excluded if they had been under supervision for more than one year. The remaining offenders were identified as either refraining from (no positive drug tests in the last 6 months) or using drugs (at least one positive drug test in the last 6 months). The primary researcher had access to all drug test results, which were positively matched to specific offenders by following standard chain-of-custody procedures.

One hundred and eighteen (118) offenders participated in the study, 59 of whom had refrained from drug use and 59 of whom had used drugs. Offenders who tested positive for at least one controlled substance were purposively selected for participation. Royse (1995) argued that purposive sampling is justified when respondents must have something in common to be selected for participation. In this instance, the commonality was a minimum of one positive drug test within the last six months. The comparison group of offenders who had refrained from drug use was randomly selected, using a random digit table, from the total number of offenders subject to drug testing who met the one-year exclusionary criterion and who had no positive drug tests.

Data regarding characteristics of the participants were gathered from presentencing reports. The participants were predominately male (81 percent), with African Americans (64 percent) comprising the largest racial group. Whites (35 percent) and Other (1 percent) accounted for the remaining racial composition. Fifty-two percent (52 percent) of the offenders had received prior drug treatment at the time of sentencing. The primary drugs used at the time of sentencing were marijuana (43 percent), cocaine (25 percent), amphetamines (4 percent), and opiates (3 percent). Twenty-five percent (25 percent) of the offenders reported no drug use at the time of sentencing.

A majority of the sample (46 percent) was over 36 years of age. Specific age categories and the corresponding percentages were ages 18 to 25 (11 percent), ages 26 to 30 (24 percent), and ages 31 to 35 (19 percent). Types of offenses resulting in supervision were, in decreasing order, drugs (59 percent), fraud (24 percent), other (14 percent), and violence (3 percent).

Instrumentation

Data was gathered from the offenders using the Stress in My Life survey, which was developed by the primary researcher (see Table 1). This instrument assesses five dimensions of stress: a) family, b) financial, c) employment, d) peer, and e) social stress. All items were grounded in the professional literature pertaining to stressors, drug use, and the criminal justice system. Further, the items in each dimension appear to represent their respective domains.

Originally cast as a 25-item survey, the psychometric properties of the Stress in My Life instrument were assessed as part of a pilot study completed in the fall of 2001. The participants in the pilot study were 25 federal offenders. Internal consistency was confirmed using item-to-total correlations. Twenty-two of the items correlated significantly ($p < .05$) with total instrument scores, resulting in three items being deleted from the instrument. Reliability analysis of the final 22-item instrument yielded a reliability coefficient of .93.

Participants respond to each item of the survey using a Likert-type scale ranging from 1 (*definitely disagree*) to 5 (*definitely agree*), with higher responses indicating greater agreement that the item was a source of perceived stress during the past six months. The instrument is summative, with possible total scores ranging from 22 to 110. Possible scores for the employment and family dimensions range from 5 to 25, and possible scores for the financial, peer, and social dimensions range from 4 to 16.

Procedures

Following identification of selected participants, the researcher, along with assistance from fellow probation officers, asked offenders to complete the Stress in My Life survey

during the summer and fall of 2002. Office contacts were used in most instances, since this minimized any inconveniences for the offenders who are required to visit the office on a routine basis anyway. Participation was strictly voluntary; no sanctions were imposed or liberties withheld for refusal to cooperate.

Participants were assured of the confidentiality of their responses. Signatures were required on the surveys to acknowledge that informed consent information was read and understood. These signatures were subsequently used to gather data from presentencing reports pertaining to each offender's gender, race, primary drug of abuse at sentencing, history of treatment, current age, and type of offense resulting in supervision. To protect the identities of the offenders, surveys were secured in a locked file in the researcher's office and were destroyed once the data had been coded and saved to a computer file.

Results

The data were analyzed using Multivariate Analysis of Variance (MANOVA). According to Hair, Anderson, Tatham, and Black (1995), MANOVA is an appropriate statistical technique to use when a researcher wishes to make comparisons across multiple dependent variables using a single, categorical, independent variable. Offenders who refrained from drug use and those who used drugs were compared across the five dimensions of stress measured by the Stress in My Life survey.

Six cases were removed from the analysis because of missing data. The MANOVA indicated overall significant differences between the two groups (Wilks Lambda = .857, $F(5,106) = 4.15$, $p < .05$). Univariate analyses revealed significant differences between offenders who refrained or used drugs while under supervision on all five dimensions of stress (see Table 2).

Offenders who used drugs reported higher levels of family stress (M = 10.80, SD = 4.69) than did offenders who did not use drugs (M = 8.57, SD = 3.89). Higher levels of financial stress were reported by drug users (M = 11.73, SD = 4.84) than by offenders who refrained from drug use (M = 8.17, SD = 3.77). Offenders who used drugs perceived more employment-related stressors (M = 11.03, SD = 4.60) than to those offenders who did not test positive while under supervision (M = 8.71, SD = 3.47). Peer-related stressors were more evident in drug-using offenders (M = 10.16, SD = 4.33) than in those who did not use drugs (M = 7.87, SD = 3.49). Social stressors were perceived as more evident in the lives of drug-using offenders (M = 9.75, SD = 4.12) than in the lives of offenders who refrained from drug use while under supervision (M = 7.89, SD = 4.00).

Discussion and Recommendations

The offenders participating in this study who used drugs while under supervision appeared overwhelmed with stress in comparison to offenders who did not use drugs. With this knowledge in hand, probation officers can search for resources to help address specific issues in the lives of offenders who may be experiencing stress in the dimensions assessed by the Stress in My Life survey. Improving coping skills and developing stress and anger management techniques and marketable employment qualities may all help reduce stress in the lives of offenders.

Probation officers are encouraged to proactively identity and address stress in the lives of offenders, using the Stress in My Life survey, in hopes of preventing drug use and possibly recidivism. Training offenders how to cope effectively with stress may help to prevent drug use while under supervision.

Since this study utilized some nonrandom selection of participants, the generalizability of the results is limited. Replications of the study should be conducted in other districts to affirm or disaffirm the results found in the present study. Furthermore, the fact that the present study attempted to limit the canvassing of stress perceptions to the last six months of offenders' lives may have unintentionally affected the results of the study. Some offenders may have reported residual stressful perceptions pertaining to events experienced in the distant past, while other offenders may have lacked the insight to address perceptions more than several weeks in the past. Further studies should attempt to discern the lasting impact of stressful events on federal offenders' perceptions of stress at various intervals of the supervision term.

Finally, the present study restricted the sample to offenders who had completed one year or less of supervision. This restricted sample may have affected the results since it is possible that the first year of supervision may present unique stressors for offenders in and of itself. During the first year of supervision, offenders acquaint themselves with numerous supervision requirements, while establishing a relationship with their supervising probation officer. Further research initiatives should examine the full range of the supervision period to determine the effects of different stages of supervision on perceptions of stress. In this regard, future studies should also explore the actual impact of the supervision process on offenders' perceptions of stress.

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Table 1

Items of Stress in My Life Survey

Family Stress	I often argue with a member(s) of my family.
	My family just does not understand me.
	I have recently quit speaking with a family member(s).
	My family does not go to great lengths to support my goals.
	I am upset with a particular family member(s).
Financial Stress	I have difficulty paying my bills on time.
	I cannot seem to find an adequate source of income.
	No matter what I do, there is never enough money to make ends meet.
	I am currently in a bad financial situation.
Employment Stress	I have trouble finding stable employment.
	Employers often look down on me due to my conviction.
	I find it difficult to get along with my coworkers.
	I am passed over for promotions at work.
	I do not get paid adequately for the work I perform.
Peer Stress	My friends fail to understand the requirements of my federal supervision.
	I find it difficult to meet new people whom I can trust.
	My friends do not listen to my opinions.
	I am often tempted by friends to do things that could get me in trouble.
Social Stress	Most people look down on me due to my conviction.
	Other people will just not give me a chance to prove myself.
	I cannot convince others that I have changed.
	Society seems to want me to fail.

TABLE 2

Differences by Dimensions of Stress

Dimension	*df*	*F*	*p*
Family	1	7.51	.007*
Financial	1	18.76	.000*
Employment	1	9.09	.003*
Peer	1	9.45	.003*
Social	1	5.86	.017*

*$p < .01$

An Internet Training for Juvenile Justice Professionals

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FROM THE TIME that the first juvenile court was established by the Illinois Juvenile Court Act of 1899 with the intention of creating a special court for pre-delinquent and delinquent youth, the juvenile justice system has been based on the concept of "pariens patriae," or "in the best interest of the child." By design, the juvenile court was meant not only to be a new and innovative legal institution, but a social service organization charged with protecting and solving the problems of children experiencing various kinds of trouble in their daily lives. This concept has accorded the juvenile court wide discretionary power to serve as a "guardian" over the welfare of the child; namely, those who were abused, neglected, dependent, or in need of supervision, especially when it was clear that neither the natural parents nor other guardians would or could attend to these interests themselves.

For the juvenile court to operate in this capacity, it was not as important to generate a climate based on the adversarial nature of the typical adult court (the state is the victim, punish the offender, etc.). Rather, the juvenile court was designed to intervene through attention to the ways that a given adolescent's engagement in illegal activity was linked to a set of more global needs that included families, peer associations, neighborhood influences, etc. Youthful offenders appearing before the juvenile court thus were to be insulated from the stigma associated with crime and delinquency so that they might correct their behavior and return to society as a rehabilitated and productive citizen. Since the time that the first juvenile court was established, juvenile justice efforts have been affected by many factors, including most notably, rulings of the U.S. Supreme Court such as *Kent v. United States 1966, McKeiver v. Pennsylvania* 1971, *in re Gault* 1967, and *in re Winship* 1970, as well as acts of Congress such as the Juvenile Justice and Delinquency Prevention Act of 1974. Over time, such acts have led to the emergence of several unique features that keep the modern juvenile court separate and distinct from its adult counterpart. Most notably, juvenile records are to be kept strictly confidential, hearings are to be conducted in an informal manner, the need to treat and rehabilitate takes precedence over the need to establish guilt or punish, juveniles are to be kept strictly segregated from adult offenders, and the court holds a broad discretionary power in the disposition of cases (Yarcheck, Gavazzi, & Andrews, 2001).

In addition to the impact of lawmaking efforts, the characteristics of the modern juvenile court reflect the tension that exists in current public debate about the relative balance that should be struck between the desire to punish and the need to rehabilitate. In order to create a sense of balance between these competing agendas, juvenile and family courts have spent considerable resources developing and administering a "continuum" of programs that accomplish two tasks. First, there is achieving public safety by holding youthful offenders "accountable" for their harmful actions. Second, there is rehabilitating these youth in the hopes of reintegrating them back into their homes, schools, and communities (Yarcheck et al., 2001).

Thus was born the concept of accountability-based sanctions. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) defines accountability-based sanctions as "any service, sanction, or juvenile offender option that juvenile offenders are subject to and whose goal is to hold adjudicated juvenile offenders responsible for their delinquent conduct" (Matese, 1997). This has culminated in a rather broad definition of sanctioning that encompasses a wide continuum of services and interventions commonly utilized by juvenile courts today. Additionally, this definition has become associated with compelling evidence that suggests these sanctions and/or treatments are best conceptualized and implemented on a continuum known as the "OJJDP Comprehensive Strategy." This continuum incorporates two key principles: 1) to prevent delinquency in youth through a focus on prevention programming for at-risk youth; and 2) to improve the court's response to delinquency through a continuum of sanctions and treatment options (Howell, 1995).

Accountability-based sanctions become administered on such a continuum of care at the local level through effective case management (Howell, 1995). Here, juvenile justice professionals and other direct service providers are thought to be most effective when their case management responsibilities include, but are not limited to: the administration and review of risk and/or needs assessments; case planning and referral to appropriate programs; monitoring service delivery; and troubleshooting/reassessing cases when services are proven to be either ineffective or no longer necessary. Further, the

key to effective case management is thought to be two-fold: a) professionals must have access to affordable programs that are based on sound research evidence; and b) they must be trained in processes involved with proper assessment, referral, and monitoring procedures needed to effectively work with these programs (Howell, 1995).

Our efforts have been concentrated on the latter of these two keys to successful case management. In essence, we have sought to meet the needs of those direct service staff who must be provided with opportunities for ongoing training on the most current case management tools available in juvenile justice and related fields. Unfortunately, the task of providing adequate training opportunities for these professionals at the same time that they are attempting to meet the intense demands of their individual caseloads can be and often is a daunting task. Additionally, information on the development and implementation of effective programming evolves without respite. Hence, it is important for direct service staff to have a practical and easily accessible format for gaining the most current and comprehensive information on available treatment options. Thus, a compelling argument is made here for the creation and implementation of a wider range of training options for juvenile justice professionals beyond those typically offered.

While the concept of accountability-based sanctions has become an integral part of how the juvenile justice system operates, the academic literature on such efforts is still in its infancy. While ground-breaking work has been done in such areas as restitution (Schicor & Binder, 1981; Armstrong, Hofford, Maloney, Remington, & Steenson, 1983; Roy, 1990; 1995), diversion (Decker, 1985; Fisher, 1986; Polk, 1986; Kammer, Minor & Wells, 1997; Gavazzi, Yarcheck, Wasserman & Partridge, 2000), drug/alcohol programming (Downs, 1990; Torres, 1997; Greenwood, 1992), multisystemic therapy (Henggeler & Bourduin, 1990; Henggeler, Cunningham, Pickerel, Schoenwald & Brondino, 1996), and mentoring (Mecartney, Styles & Morrow, 1994; Tierney, Grossman & Resch, 1995), service delivery has preceded much of the theoretical and empirical work that would provide a justification for what could be deemed a "best practice" in the ABS realm.

As a result, juvenile justice professionals often are given little more than anecdotal evidence of the effectiveness of a given ABS option and/or its effective use with other treatment efforts. Additionally, the widely scattered nature of more recent theoretical and empirical work often leaves the developers of training curricula at a loss to present a unified and inclusive picture of what is occurring in the ABS literature. Alternatively, curriculum developers unaware of these rather isolated efforts can be forced into a unwitting reliance on an overly narrow literature base.

A unique set of training options that focus attention on a accountability-based sanctions is described below. The current paper is divided into two sections. First, the paper discusses "distance learning" as a means of disseminating the most current and comprehensive information on accountability-based sanctions to juvenile justice professionals. Second, the paper describes the development and piloting of one particular distance learning effort known collectively as The Ohio State University Accountability-Based Sanctions Internet Training Project.

Distance Learning

Advanced use of technology increasingly has become an important instructional component in the efforts of universities and other institutions of learning. Of particular note is the increased use of "distance learning," an educational technology that incorporates the use of computers and the World Wide Web to offer courses and other training opportunities to those individual learners seeking alternatives to the more traditional educational environment.

Significant institutional issues have contributed to the rise in distance learning, including a steady growth in waiting lists for high-demand courses, a slow deterioration in available faculty to teach courses, inadequate classroom space, and the desire to create more uniformity in the way that given courses are taught. At the same time, career advancement increasingly has been tied to the attainment of advanced education, either through professional development (continual education) or the obtaining of an advanced degree. More often than not, however, professionals already in the workplace are faced with the practical considerations of how to balance current work responsibilities with what is demanded by the standard classroom or training environment.

For the learner, there are many advantages to a distance learning environment. In practice, virtually anyone may participate in a distance learning/training course, assuming that the individual has a computer with internet access. There is usually greater flexibility in how and when course-related materials can be obtained and class assignments completed. Participants can learn at their own pace and in a convenient location.

Of course, there are limitations as well. Distance learning does not permit the more typical interaction with one's instructor and peers. This type of face-to-face contact typically is replaced by e-mail and chat-room use. Also, the student needs to be able to work independently and with substantial personal motivation to complete tasks. The daily contact with instructors that a typical student becomes used to often is highly structured and with markers that measure the student's progress. In a virtual classroom, responsibility to create and maintain academic momentum is delegated primarily to the learner.

The Ohio State University Accountability-Based Sanctions Internet Training Project

The inadequate transfer of information on sanctioning orientations and the implications for case management and aftercare planning have hampered the development and administration of sanctions that hold juvenile offenders accountable for their harmful behavior. Often as not, probation and parole officers are mandated to follow a certain sanctioning model (i.e. Restorative Justice or Community Justice) prescribed by their individual court or agency without full knowledge of how that model relates to their personal beliefs and professional responsibilities. Addressing this problem, the Ohio State University Accountability-Based Sanctions Internet Training Project was created to provide information on how the development and use of accountability-based sanctions is affected by the specific model that is being employed.

The material that was developed out of this effort relates most directly to case management and aftercare planning issues affecting juvenile justice professionals in the State of Ohio. However, most of the content should be applicable to juvenile justice professionals employed in any of the states that follow similar statutes. To date, two primary vehicles have been used to transmit this material: 1) a hardbound copy of the ABS Handbook, and 2) an ABS Internet training site.

The hardbound version of the ABS handbook was researched and written by project staff in the College of Human Ecology at the Ohio State University between September 1999 and June 2001. The handbook is divided into five sections. Each section describes a

particular domain deemed essential to the overall understanding of the accountability-based sanctioning endeavor. The five sections of the handbook are: 1) the history and characteristics of the modern juvenile court; 2) accountability and sanctioning orientations; 3) the models: Restorative Justice, "What Works," Retributive Justice, and Community Justice; 4) common practices, promising approaches, and issues related to their use with special populations; and 5) future directions in juvenile justice practice.

The Accountability-Based Sanctions (ABS) website serves as a companion training platform to the ABS handbook. Here, the content of the handbook is presented in two formats. First, it exists in a web-based "read only" format that can be accessed by any and all interested individuals with Internet access. The second web format is a companion training platform that, in addition to the handbook content, contains case examples, video footage, sample versions of risk assessments, community and victim impact statements, and links to the Ohio Revised Code. Additionally, the second web format has a testing component that includes both a pre-test and post-test of overall knowledge on ABS-related issues (for purposes of documenting knowledge gain, as is described below), section quizzes, and case examples connected to short answer essays that required an application of learned material to case planning issues. Further, this second format contains a sanctioning model profile that allows juvenile justice professionals to better understand how their personal and professional opinions about offenders, victims, crime, and sanctioning are related to sanctioning decisions.

In addition to the training materials, trainees receive access to a full-time teaching assistant at the Ohio State University, who monitors course progress via the Internet and through phone contact, as well as as-needed contact with a technical support staff member who provides individualized assistance with computer and technical issues surrounding the use of WebCT (the distance learning tool used in the creation of this platform).

Pilot Training Efforts

A first pilot training of the Accountability-Based Sanctions Internet site took place beginning in July 2000 at The Ohio State University. Although this was mid-way through the writing and development effort of the handbook materials, project staff saw this as an important opportunity to gain feedback from juvenile justice professionals about the format and direction of the content and, as well, the level of comfort they felt with using an Internet-based training tool.

The trainees were selected by the Ohio Department of Youth Services to reflect a combination of different departments (probation, parole, administrative), levels of staff experience (new employees vs. established), and computer skills and Internet experience (ranging from no experience to a great deal of experience). Trainees were divided into groups of 15 and assigned to one of four training dates. The small group size allowed project staff to have more individual contact with the trainees and to provide some initial "hand-holding" for those who had little or no prior experience using the computer and/or the internet. A total of 60 individuals took part in the initial pre-pilot training.

One additional objective associated with the pilot training was to assess participant comfort levels regarding the use of the Internet-based ABS Handbook. This was based on the understanding that the vast majority of field staff would have had very little prior experience with Internet-based training, and would report lower levels of overall Internet usage. Our pre-training survey of the training participants generated information that backed up those assumptions. Participants reported to us that they had limited or no access to the Internet at work. In addition, approximately 50 percent of the participants had access to the Internet at home, where they averaged about 1-2 hours of time on-line in a given week. Further, the participants generally reported that they were most excited about the potential access to training information in a time-unlimited manner vis-à-vis the Internet, while their greatest apprehensions concerned security and privacy issues.

In order to assess comfort levels with the use of the ABS Handbook Internet site, a series of questions were asked immediately following the training. These questions covered a number of areas concerned with the training and its connection to the trainee's increased comfort level. The questions were scaled on a continuum from 0 to 100, and were connected to statements that ranged from "strongly agree" to "strongly disagree." In every case, group average scores reflected participant beliefs that they "strongly agreed" that the training had increased their comfort levels with the internet-based ABS Handbook.

Based on feedback gained from the participants of the first pilot training, project staff began to work on making changes to the training platform in order to reflect content revisions in the final print version of the hard-bound text (released in July 2001), and to include the comments and changes suggested by the experimental pilot training group and the focus group participants. In addition, with the positive support generated from the pilot and focus group participants, project staff was given the go-ahead to initiate a second pilot training effort at the beginning of the next calendar year (January 2001).

Participants were initially identified and contacted via a memo distributed state-wide by the Ohio Department of Youth Services to juvenile courts, parole offices and treatment facilities. A total of 204 individuals representing 26 county probation agencies, 9 juvenile parole offices, and 2 residential treatment facilities responded to an announcement of this next pilot training, and subsequently were assigned a username and password. However, 90 individuals actually started the training, as indicated by their completion of the internet-use survey.

In addition to the standard registration, trainees were asked to identify a supervisor or administrator in their agency who would act as an on-site teaching assistant (TA) in the course. The rationale for the TA was twofold. First, it provided supervisors with access to the trainee's progress, thus increasing the accountability of the trainees to complete the course and show knowledge gain on the course content. Second, it provided an extra layer of assistance to OSU project staff in monitoring trainee progress, insofar as the training group was quite large. Also, this strategy simplified reporting requirements to counties/agencies with a large constituency enrolled in the course, as progress reports could be sent to the on-site TA to be distributed to individual trainees. Counties and agencies were given the option of assigning more than one TA to monitor larger groups of trainees in their county. The majority of the participating agencies had between one and three on-site teaching assistants.

A full-time teaching assistant at OSU (OSU-TA) was assigned to monitor the course to grade tests/quizzes and provide additional clarification on the content to trainees. In addition, a technical support person was also identified to provide assistance to trainees on the use of the Internet and/or distance learning technology. Trainees who were comfortable with the technology and content were also able to access directions and tips on using the WebCT distance learning tool inside of the ABS training. Help pages

were inserted throughout the content for trainees to access.

Thematic Analysis of Data from the Second Pilot Sample

In terms of the results of the Internet training evaluation, 95 percent of the participants indicated that the ABS website contained information that was useful to them in their professional work, and 82 percent believed that the material contained in the ABS training had helped them perform their job more effectively and/or would be helpful to them in the work they do in the future. Additionally, 82 percent agreed that the availability of an Internet-based training tool was helpful to them as professionals, and 70 percent believed that their agency/organization should invest in more Internet-based trainings for juvenile justice professionals.

At the same time, however, only 38 percent of the respondents agreed that the Internet was a better way to receive information than the typical trainings they were used to receiving. One possible explanation for this result lies in the relative "newness" of using technology in the court systems in the state. Many local and state agencies were reliant on a "paper-driven" system of operation, and hence did not typically offer regular computer use to the line staff. This notion was confirmed subsequently with the release of the hardbound version of the companion ABS handbook in the summer of 2001. Here, project personnel were surprised to discover that the provision of the bound copy of the ABS Handbook seemed to increase Internet participation and completion of the training, and as a result created the situation of a book selling the concept of distance learning.

While the preliminary feedback from those who took the training was positive, project staff identified a number of difficulties in providing the ABS training. First, some difficulties were related to the use of the Internet, including lack of access to the basic computer hardware and a general discomfort with using the required software and hardware. Technical support was offered at relatively high levels of sophistication and at no cost to counties, yet at times there was a reluctance to act on the advice and direction given by our support staff in order to initiate and/or rejoin participation in the training. While there was no data to support the reason for this reluctance to use technical support, project staff derived some basic themes for this phenomenon from records of phone and e-mail contacts with trainees. In some instances, project staff thought it was born out of the sheer frustration with using the Internet software, as outlined above. Another possible explanation was the level of difficulty experienced by some of the participating agencies in adjusting their computer systems and Internet settings to allow for the transfer of the ABS information into their office sites (this includes so-called "firewall" issues). This was also a common problem for individuals using their home computers, as many trainees were using outdated software incompatible with the training platform.

A training hierarchy was set up to provide some local monitoring of trainee progress using Teaching Associates to assist trainees at the local level. This plan displayed limited success in terms of impacting completion rates. At the same time, those counties that did not have Teaching Associates in their local hierarchy seemed disadvantaged in terms of the fragmented way that ongoing participation could be monitored at these sites. Finally, the level of accountability for training completion proved uncomfortable for certain trainees. The extensive monitoring that occurred through log-in records, testing results, and related tracking efforts was not something that trainees were used to in terms of training participation. Some evidence of this seems to come from the fact that while 82 percent of the trainees believed that availability of an Internet-based training tool was useful to them, 62 percent did not believe that internet-based training was a better way of receiving information than the typical trainings they had received. Friction was created between our desire to constantly update material on the website, where we sought to take advantage of the ease with which content may be edited via Internet-based tools, and our efforts to publish the more traditional and static print version of this material.

The Context of Training in the Juvenile Justice Field

Depending on the type of jurisdiction, the majority of training efforts for juvenile justice professionals takes place at either the local level or the state level. Local training efforts are provided for reasons that include, but are not limited to, the training of current staff and new hires in policy and procedure that pertain to their individual agency; providing a cost-effective alternative to state and/or federal training that may require travel and related expenses; and cutting down on the amount of time workers are away from their caseloads.

At the same time, there are disadvantages to many of these local training efforts. The argument may be made that the most necessary knowledge line workers need revolves around their ability to interview youth, provide case management, and make effective presentations in court. However, in order to be effective in these more practical aspects of the job, the worker must understand the historical context and the theoretical orientations that provide the foundation for the hands-on work. Often, due to time and financial constraints, local training efforts sacrifice such historical and theoretical orientations to make room for additional work on the "practical" end of things. As a result, trainers and trainees narrow the focus of their learning to basic core concepts, and thus miss the opportunity to advance their knowledge beyond the most cursory level.

While more costly, statewide training efforts often contain more theoretically intense material, and offer the added incentive of providing a link between service professionals from multiple jurisdictions that may share common experiences in the pursuit of new ideas. In Ohio, one such training opportunity of this kind that has sought to "bridge the gap between theory and practice" (NCJFCJ, 2002) is known as the *Fundamental Skills for Juvenile Justice Professionals.* Developed by the National Council of Juvenile and Family Court Judges and funded through the Office of Juvenile Justice and Delinquency Prevention (OJJDP), this training is intended to facilitate the application of juvenile probation theory to the everyday practice of working with court involved youth.

Because fundamental skills training currently is an option for probation and parole officers working in the jurisdictions targeted by our own training efforts, and given the conceptual overlap regarding the historical background of the juvenile court and certain more general materials concerning theoretical orientation, we believed that those who had taken fundamental skills training would have greater knowledge about similar basic subject matter contained in the ABS material. At the same time, we thought that the ABS training was robust enough to allow those who had not taken this prior training to "catch up" in this overlapping general material while concurrently learning more specific content related to accountability-based sanctions. Hence, we hypothesized that our training efforts would indicate differential gains made through participation in the ABS training as a function of prior exposure to fundamental skills training when we more rigorously examined knowledge gain.

Full-Scale Training

A full-scale training effort was offered in January of 2002. Participants were selected in a similar fashion to the second pilot training described above. The Ohio Department of Youth Services distributed a training memorandum to all 88 county courts. A total of 70 training slots were provided. Due to the limited space, counties were restricted to a maximum of 5 training slots per county. Individuals who did not register in time were given the option of being placed on a wait-list.

Participants in this second training sample initially were identified and contacted in a similar fashion to those individuals in the first training sample. Interested parties voluntarily sent/faxed in registration forms to ODYS and were enrolled in the training on a first-come, first-served basis. For this training, no on-site supervisor TA positions were used. Instead, a full-time teaching assistant at the Ohio State University was assigned to monitor the course in order to grade tests/quizzes and provide additional clarification on the content to trainees. In addition, a technical support person also was identified to provide direct assistance to trainees on use of the Internet and our distance learning technology.

Trainees received a syllabus that included specific timelines for completion of the training. The total length of time trainees were given to complete the course was 10 weeks (or the equivalent of 1 university quarter), broken down into four modules (A-D). Each module lasted approximately 2 weeks. Extra time was given on modules that had lengthy reading assignments or more involved testing procedures (essay or case example). The teaching assistant monitored progress of the trainees throughout the course. Completion of the course was denoted by the submission of the final post-test and the ABS course evaluation.

Hypotheses Related to the Full-Scale Training Effort

There were three main hypotheses related to the implementation of this full-scale training effort. These were:

1. Scores on a measure of pretest knowledge regarding course material will be significantly related to prior training on related content. More specifically, having prior exposure to comparable training will be significantly related to greater ABS knowledge.

2. Scores on a measure of post-test knowledge will be significantly different from pre-test scores for both those individuals who received prior training and those that did not. More specifically, both groups will experience significant gains in ABS knowledge.

3. Scores on a measure of post-test knowledge and overall knowledge gain regarding course material will not significantly differ between those individuals who had prior exposure to related content and those that did not. More specifically, the ABS training will allow the two groups to become equivalent in ABS knowledge.

Full-Scale Training Sample

In all, 67 individuals completed the training. The total sample represented 17 counties (including large urban, mid-size and small rural) and included professionals working in probation (94 percent), parole (1.5 percent), adult corrections (1.5 percent) and residential/community treatment (3 percent). There were 36 males (54 percent) and 31 females (46 percent). The age range of participants was distributed fairly evenly among categories; age 21-25 (10 percent), 26-31 (25 percent), 32-38 (10 percent), 38-45 (13 percent) and 45+ (42 percent). In terms of job experience, 18 percent (n=12) reported that they had been in their current position for 15 or more years, 25 percent (n=17) of the trainees reported they had been in their current position for between 5-14 years, 52 percent (n=35) reported having been with their job between 1-4 years and only 5 percent (n=3) had been in their current position for less than 1 year. Education attainment for the sample indicated that 8 percent (n=5) had a high school diploma, 15 percent (n=10) had some college or a technical certificate/associate degree, 53 percent (n=36) had a four year college degree, and 24 percent (n=16) had a master's degree or above.

In addition to the basic demographic information, trainees were also asked to fill out an Internet-use survey. Results of the survey showed that similar numbers of the trainees had Internet access at both home (81 percent) and work (70 percent) and the top reasons they were most interested in participating in this type of training format was accessibility and convenience (42 percent) and the ability to work at their own pace (18 percent). In terms of Internet usage, only 10 percent (n=7) of the sample had any formal instruction on Internet use before the ABS training. Additionally, 24 percent (n=16) of the trainees reported that prior to beginning the training, they had never spent any time using the Internet, 10 percent (n=7) reported that they used the Internet for less than one hour per week, 42 percent (n=29) reported using the Internet for an average of 1-5 hours per week, 7 percent (n=5) reported 6-9 hours of use per week and 15 percent (n=12) used the Internet 10 or more hours per week. Finally, trainees were asked about previous training that they had received related to fundamental skills. A total of twenty-four (36 percent) participants reported that they had acquired fundamental skills training, while the remainder (64 percent) did not.

Results

In support of the first hypothesis, a two-tailed t-test revealed that participants exposed to similar content in previous trainings, M = 104.6, SD = 24.8, scored higher than did those not receiving such prior training, M = 89.5, SD = 35.1, on the pre-test knowledge examination; $t(65) = 2.04$, $p < .04$. Paired-sample t-tests generated support for the second hypothesis concerning the significant increase in knowledge gain for all participants. This support was reflected in post-test scores both for those with training experience in related material, $M = 147.5$, $SD = 32.6$; $t(23) = 5.83$, $p < .0001$, and those participants who did not receive such prior training, $M = 143.5$, SD = 28.1; $t(42) = 9.65$, $p < .0001$. Finally, a two-tailed t-test revealed support for the third hypothesis concerning the lack of a significant difference between the post-test scores of these two groups; $t(65) = 0.53$, *ns.*

Discussion

The results of our training efforts to date have laid a foundation for the enhancement of the juvenile justice professional's knowledge of sanctioning models and their impact on case management and aftercare planning. Data gathered from training participants support the ABS Project's use of distance learning tools as an effective means of transferring information about accountability-based sanctions.

Clearly, other training efforts using more standard instructional media cover material that overlaps in some fashion with the ABS Project's curriculum. Recognition was given to this factor in the collection of demographic information from training participants, and its potential to impact the knowledge gain of trainees subsequently was examined in the first hypothesis of this study. Results of the data analyses supported this first hypothesis insofar as scores on the measure of pretest knowledge regarding course material were significantly higher for those individuals exposed to prior training on fundamental skills. Here,

the data indicated that individuals with prior exposure to other training received a basic framework of knowledge that benefited their pre-test scores; likewise, those who did not have the same exposure were at an initial disadvantage because they had not been given access to a similar training protocol.

The results of the present empirical effort also supported the second hypothesis, because scores on the measure of post-test knowledge were significantly different from pre-test scores, regardless of prior exposure to other training material. More specifically, analyses indicated that all participants experienced significant gains in ABS knowledge. As the desired result of any training or learning experience is to gain knowledge in the specific subject area that is being examined, we believe that the ABS learning objectives were achieved. Therefore, preliminary evidence supports the use of the ABS training platform for those juvenile justice professionals interested in acquiring knowledge concerning accountability-based sanctions.

Finally, this study reported that post-test knowledge scores for those with prior exposure to other training efforts would not differ significantly from those for people without such prior exposure. As hypothesized, the ABS training allowed all participants to become equivalent, at least in terms of knowledge of our accountability-based sanctions curriculum. ABS is an effective Internet-based training platform that provides information in a more independent learning environment (i.e., here is material that you need to master individually), even if the distance learning medium used is anything but customary.

The ABS site provides an interface between knowledge gain and practicality, insofar as trainees are asked to take the learned material and apply it to case examples. However, it does not allow trainees to work together or provide feedback to one another directly. Thus, the ABS training concentrates on providing more "nuts and bolts" knowledge about theory and practice concerning accountability-based sanctions to the individual learner. On the other hand, other training efforts typically focus more on applying such "nuts and bolts" information to everyday practice through use of collective activities (small group, brainstorming, role playing etc.) that support using important information in the juvenile justice workplace. Characteristically, however, such trainings do not assess the extent to which trainees are actually taking the time to read this material prior to face-to-face contact, and concurrently have no mechanism in place to hold these individuals accountable for their having learned that material sufficiently.

In the final analysis, therefore, the ABS internet training platform may be complementary to more traditional juvenile justice training efforts, and even better results might be achieved through a blending of the two forms of instruction. For instance, before any face-to-face training, each participant could be held responsible for reading all important "nuts and bolts" information (history, theory, models of sanctioning, basic treatments and sanctions, and issues pertaining to specialized populations) that would be accessed on the ABS internet site. Simultaneously, the website would allow these individuals to be tested on their potential knowledge gains. Those who achieved a pre-set passing score then would be allowed to move forward to the advanced training that covered the practical (and face-to-face) application of this material to such issues as community supervision, courtroom presentations, ethics, and case management.

Such a strategy would significantly cut down on the amount of time trainees spent in the actual classroom, as they would be able to complete the first portion of their training via the internet. In addition, combining training methods would ensure that trainees were learning the basic knowledge necessary to be truly successful in the practical aspects of their jobs vis-à-vis the examinations taken on the ABS website. Finally, the use of face-to-face training methods regarding the application of these materials mastered through use of these distance learning tools would provide trainees with the most comprehensive preparation for the everyday situations these professional face in courts, homes, schools, and beyond.

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LOOKING AT THE LAW

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The HIPAA Privacy Rule at a Glance

I. Background

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA")[1] was enacted in part to enhance the efficiency of health care transactions by requiring the U.S. Department of Health and Human Services ("HHS") to establish national standards for electronic health care transactions.[2] Enhancing the electronic digital storage, transmission, and receipt of health information also increased opportunities for misuse of private health records. To forestall such abuse, HIPAA also required HHS to adopt regulations that would increase the security and privacy of health information.[3]

HHS first published health information privacy regulations on December 28, 2000.[4] These regulations, collectively referred to as the "Privacy Rule," were implemented on April 14, 2003. While the Privacy Rule does not apply directly to probation and pretrial services officers, health treatment vendors are obliged to comply with the new regulations. The Privacy Rule's novelty and vendors' uncertainty about their obligations under the Privacy Rule have created trepidation among officers and vendors. Because the Privacy Rule has an impact on officers' dealings with offenders and vendors (but not on the officers' handling of health information once it is received from vendors), this article aims to provide interpretive guidance.

II. Covered Entities

The Privacy Rule establishes individual rights regarding covered health information, defines and limits the circumstances in which "covered entities" may use and disclose "protected health information" ("PHI"),[5] and requires "covered entities"[6] to implement safeguards to protect the confidentiality of PHI. Covered entities include health plans, health care clearinghouses, and health care providers. The judiciary is not a covered entity under the Privacy Rule, so the Privacy Rule does not apply to it. Vendors who have contracted with the judiciary to provide mental health care and drug treatment services, however, are covered entities. Accordingly, they must comply with the Privacy Rule's strictures regarding the handling of PHI, which includes giving offenders access to this information upon their request and providing this information to probation and pretrial services offices when authorized by offenders.[7]

III. Authorized Disclosures of PHI

The Privacy Rule specifies mandatory, permissible, and authorized disclosures of PHI. The judiciary has always received offenders' medical information from vendors pursuant to the offenders' written consent. The Privacy Rule sets forth required elements of an authorization,[8] and HIPAA imposes civil and criminal penalties on health providers who disclose PHI without receiving a valid authorization.[9] The Privacy Rule requires that a valid written authorization 1) describe the information to be used or disclosed; 2) identify the persons or class authorized to disclose or use the PHI; 3) identify the persons or class entitled to the disclosure; 4) set forth an expiration date or event; 5) advise the individual of the right to revoke the authorization in writing and identify the process for doing so; 6) inform the individual that the PHI to be released may be subject to redisclosure without the benefit of the Privacy Rule; and 7) contain the individual's signature and the date the form was signed.[10] Probation and Pretrial Services forms authorizing the release of confidential health information previously stated that there was no right to revoke consent; HIPAA no longer permits this limitation. In response, the Office of Probation and Pretrial Services has revised the forms to comply with the Privacy Rule.

An offender's right to revoke an authorization is neither unqualified nor without consequence, however. If a health provider has already acted in reliance on the authorization, a revocation does not rescind information that has already been disclosed.[11] If an offender revokes an authorization, a court may deem this a violation of the obligation to cooperate with whatever treatment the court has ordered. The Privacy Rule thus gives offenders the right to withhold an authorization or to revoke it at any time, but it does not allow an offender to remain on release without effective treatment. Unmonitored treatment is ineffective treatment. Accordingly, the officer may report a revocation of authorization to the court as a technical violation, and the Privacy Rule provides no refuge against a sanction for such revocation.

An authorization that complies with the Privacy Rule entitles the recipient (probation and/or pretrial services officer) to confidential health care information, but the offender retains the right to revoke the authorization

and prevent the disclosure of further information. The revised authorization forms therefore no longer include phrasing that suggests that an offender is giving an "unrestricted" consent to release of PHI. The Privacy Rule (which pre-empts state privacy law if a conflict exists and the state law is less stringent than the HIPAA Privacy Rule) also requires notice that information disclosed pursuant to an authorization may be redisclosed by the recipient without the protections of the Privacy Rule.[12] Finally, as will be discussed in more detail below, the Privacy Rule gives individuals a qualified right of access to their health records.

On June 13, 2003, the Office of Probation and Pretrial Services published amended authorization forms that comply with the Privacy Rule requirements. Some officers have considered combining these forms with other disclosure forms. While reduction in the number of forms is often more efficient, it is not recommended in this situation. Vendors may not want to accept a multipurpose form that will make their new record-keeping responsibilities under the Privacy Rule even more confusing. A form that relates to both mental health and drug treatment might be revoked by the defendant or offender as to one type of treatment, but not the other. A vendor may be more likely to construe an offender's revocation of authorization for one treatment as a revocation of the authorization for both, since the vendor faces criminal and civil penalties if the vendor mistakenly discloses records without a valid authorization. In addition, the Privacy Rule generally counsels against using "compound" authorizations.[13]

Similarly, vendors may be more likely to treat an offender's general request for access to treatment records as a request for *all* treatment records if the authorization form treats mental health and drug abuse treatment as a unit. If any of these contingencies arises, the district will have to revert to the standard form or amend the local form. In such a case, the number and types of forms could multiply needlessly and result in inconsistent interpretations by vendors and offenders. These forms are legal documents carefully designed to comply with the complexities (and ambiguities) of the Privacy Rule. Of course, improvements to the forms might be possible and feedback regarding issues that arise over time is welcome. After a period of time has passed and experience with the forms in all districts is understood, changes certainly will be considered.

IV. Offenders' Qualified Right of Access to Their PHI

Access by offenders to vendors' records, without the concurrence of a court, is one of the most significant changes effected by the Privacy Rule. The Privacy Rule gives offenders a qualified right of access to their PHI.[14] Previously, treatment records were protected from disclosure absent authorization by statute, district policy, or court order by contractual agreement and the legal fiction that vendor records were an extension of probation or pretrial services records.[15] By contrast, the Privacy Rule focuses on the nature of the records and the entity managing the records, and ignores a third party's contractual characterization of health records.

The Privacy Rule lists certain exceptions to an individual's right of access, however. In the event that a vendor determines that one of the exceptions applies, an individual can seek review of the decision in some instances by "a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny."[16] In the criminal justice context, the Privacy Rule allows correctional facilities[17] or health care providers acting at the institutions' behest to preclude an inmate from accessing his PHI if doing so would jeopardize the health, safety, security, custody, or rehabilitation of that individual or other inmates.[18] The correctional facility exemptions, however, do not apply to individuals on pretrial or post-incarceration supervision.

Other unreviewable exceptions to the right of access are psychotherapy notes,[19] litigation work product, and information subject to, or exempted by, the Clinical Laboratory Improvements Act of 1988.[20] Drug treatment counselor and mental health counselor notes most likely meet the definition of "psychotherapy notes" because they are "notes recorded…by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session."[21] These notes should also be "separated from the rest of the individual's medical record" in order to be deemed nondiscloseable psychotherapy notes under the Privacy Rule.[22] In any event, the vendor is responsible for resolving all disclosure issues, including whether treatment notes fall within the "psychotherapy notes" definition. While the Privacy Rule does not preclude a probation or pretrial services office from sharing its opinion with a vendor about the characterization of certain documents, the Privacy Rule makes the health provider the decision maker on PHI access requests.

In drafting the Privacy Rule, HHS was aware that other federal laws address the privacy of health information. For example, the existing HHS drug aftercare confidentiality regulations ("drug aftercare regulations"), governing the confidentiality of drug treatment records of federally-assisted drug aftercare programs, merely *permitted* patient access to the patient's own records.[23] The drug aftercare regulations prescribe no standards for patient disclosure; they merely provide that disclosure is "not prohibited." The Privacy Rule, by contrast, gives an individual a qualified right of access to inspect and copy his own PHI.[24] The Privacy Rule was not intended to override other confidentiality provisions of federal law. Because disclosures under the drug aftercare regulations are permissive and not mandatory, there is no conflict between those regulations and the Privacy Rule.[25]

Finally, if an offender requests information that was "obtained from someone other than a health care provider under a promise of confidentiality[,] and the access requested would be reasonably likely to reveal the source of the information[,]" the vendor may deny access without providing an opportunity for review of the decision.[26] The presentence report and other probation or pretrial services documents that may have been provided to a vendor (other than health care information obtained from other covered entities) are not likely to be deemed PHI subject to the Privacy Rule because they do not fall within the PHI definition. Nonetheless, given their confidential nature and the possibility that a vendor will mistakenly regard them as PHI, it would be prudent to label such documents as "confidential, provided to the vendor under a promise of confidentiality, and not subject to disclosure." This designation may add the protection of the Privacy Rule's promise of confidentiality exception to these sensitive documents and will remind the vendor of the documents' special nature when the access request is considered. Some districts have included this prohibition against disclosure in their local "Request for Bids."

Reviewable grounds for denial of access include a licensed health care professional's decision that access is reasonably likely to endanger the life or physical safety of the individual receiving treatment or another person,[27] or a licensed health care professional's judgment that the requested access is reasonably likely to cause substantial harm to

a person referred to in the records.[28]

In sum, unless one of the above exceptions to the right of access applies, a vendor must allow an individual to review his PHI. As with the determination of discloseability, the determination of whether an individual is entitled to review his PHI must be made by the health care provider.

V. "Business Associate" Agreements

When drafting the Privacy Rule, HHS determined that simply regulating "covered entities" would not adequately protect the privacy of PHI.[29] Covered entities frequently rely on other entities that are not covered entities to provide services on their behalf. Because these services require access to PHI, HHS created the concept of the "business associate" and decided to regulate the relationship between covered entities (such as probation and pretrial services' mental health and drug treatment vendors) and their business associates.

Since the Privacy Rule was implemented, some vendors have erroneously requested that probation offices execute a "business associate agreement." The Privacy Rule requires covered entities to insure that their business associates assume responsibility for also complying with the Privacy Rule with respect to PHI. The Privacy Rule business associate provision was designed to protect records that a business associate obtained in the course of, and because of, the business relationship with the health care provider. Under the Privacy Rule, "business associate" is a term of art for those doing work for the vendor (such as attorneys, billing services, and accountants) that requires access to confidential information to complete the tasks.[30] By contrast, the common vernacular understanding of "business associate" is simply a person or an entity engaged in a business transaction with another. An entity that qualifies as a "business associate" under the Privacy Rule definition may receive PHI without obtaining the patient's authorization. To protect the patient's privacy in such instances, the contract between the provider and the business associate must provide that the business associate will treat the information as confidential, and will only use such information for the service it is performing on behalf of the covered entity.[31]

Because probation and pretrial services offices do not perform services for contract health providers, but instead expect providers to perform services at *their* request, they do not fall within the Privacy Rule's definition of "business associate." Hence, they have no obligation to sign "business associate" agreements. By signing such an agreement, a probation office would contractually assume unnecessary legal obligations and restrict its ability to redisclose protected information when it would otherwise be appropriate. Furthermore, a probation office obtains an offender's PHI from a provider as a result of the offender's written authorization. The Privacy Rule requires that authorization forms advise patients that once protected health information is released it "may be subject to redisclosure by the recipient and no longer be protected."[32] It would be anomalous for a probation office to contractually agree to keep the information confidential when the Privacy Rule anticipates that such information may be redisclosed if obtained through the patient's authorization.

Endnotes

[1] Pub. L. No. 104-191 (1996).

[2] These electronic data interface ("EDI") standards were adopted on August 17, 2000.

[3] *See* 42 U.S.C. §§ 1320d-2(d) & 1320d-3(a) (2000) (authorizing regulations to protect the privacy of medical records).

4 *See* 65 Fed. Reg. 82462-82478, *codified as*, 45 C.F.R. Parts 160 & 164.

5 "Protected Health Information" is health information that a health care provider, health plan, or health care clearinghouse creates or receives and that identifies (or can be used to identify) the individual, and that relates to the past, present, or future physical or mental health or condition of the individual, the provision of health care to an individual, or the past, present, or future payment for providing health care to the individual. 45 C.F.R. § 160.103.

[6] "Covered entities" are health plans, health care clearinghouses, and health care providers who transmit health information in electronic form in connection with any transaction covered by the Privacy Rule. *Id.* at § 160.103.

[7] Disclosure is mandatory in two circumstances: if the "individual" requests PHI or the Secretary of HHS requests PHI to investigate a covered entity's compliance with HIPAA. *Id.* at § 164.502. "Individual" is defined as "the person who is the subject of protected health information." *Id.* at § 164.501. Defense counsel or others purporting to represent an offender receiving treatment have no right to review and copy an individual's PHI. Of course, nothing precludes an individual from disseminating copies of PHI that he legally receives. Likewise, an individual may provide a written authorization allowing disclosure to another individual. *Id.* at § 164.502.

[8] The Privacy Rule uses the words "consent" and "authorization" as terms of art. A "consent" is an individual's written agreement that a health care provider may use or disclose PHI to carry out treatment, payment, or health care operations. *Id.* at § 164.506. An "authorization" is an individual's written agreement authorizing any uses or disclosures of PHI unrelated to treatment, payment or health care operations (for example, authorizing disclosure of PHI to a probation office to supervise compliance with a drug treatment program). *Id.* at § 164.508.

[9] *See* 42 U.S.C. §§ 1320d-5 & 1320d-6.

[10] 45 C.F.R. § 164.508(c)(1).

[11] *Id.* at. § 164.508(b)(5).

[12] *Id.* at § 164.508(c)(vi).

[13] *See id.* at § 164.508(b)(3) ("An authorization…may not be combined with any other document to create a compound authorization [with specified exceptions].").

[14] *See id.* at § 164.524. The Privacy Rule also gives the individual the right to ask the covered entity to amend the PHI, but the covered entity may deny such a request for specified reasons. Two significant bases for denial are that the PHI is accurate and complete, and the allegedly erroneous portion of the record was not created by the covered entity (unless the individual shows that the originator of the PHI is no longer available to act on the requested amendment). Id. at § 164.526.

[15] *See United States v. Asia*, No. 00 CR 967, 2003 WL 403132, at *6-7 (N.D. Il. Feb. 20, 2003); Memorandum from David N. Adair, Jr., Assistant General Counsel, to Ronald Dyson, Drug Program Administrator, Probation and Pretrial Services Division (December 1, 1992) (on file with the Administrative Office of the U.S. Courts, Office of General Counsel). Treatment records generally were considered to be analogous to confidential probation files.

[16] 45 C.F.R. § 164.524(a)(4). Unreviewable grounds for denial are set forth in § 164.524(a)(2), while reviewable grounds are enumerated in § 164.524(a)(3).

[17] "Correctional institution" is defined as,

> any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody.

Id. at § 164.501.

[18] *Id.* at § 164.524(a)(2)(ii).

[19] "Psychotherapy notes" are defined as:

> notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

Id. at § 164.501.

[20] *Id.* at § 164.524(a).

[21] *Id.* at § 164.501.

[22] *Id.*

[23] 42 C.F.R. § 2.23(a).

[24] 45 C.F.R. § 164.524.

[25] The preamble to the first publication of the Privacy Rule discussed the relationship of the Privacy Rule to other federal laws concerning confidentiality. *See* 65 Fed. Reg. 82481-82486 (2000). The Privacy Rule allows a health care provider to disclose information in a number of situations that are not permitted under the substance abuse regulation. *See* 45 C.F.R. 164.512. For example, disclosures are allowed without patient authorization under the Privacy Rule for law enforcement, judicial and administrative proceedings, public health, health oversight, and as required by other laws would generally be prohibited under the substance abuse statute and regulation. *See* 42 C.F.R. § 2.13. Because these disclosures under the Privacy Rule are permissive and not mandatory, however, the Privacy Rule does not conflict with the drug aftercare regulations. Likewise, provisions in the substance abuse regulation provide for permissive disclosures in case of medical emergencies, to the FDA, for research activities, for audit and evaluation activities, and in response to certain court orders. *See id.* at § 2.51-66. Because these are permissive disclosures, programs subject to both the Privacy Rule and the drug aftercare regulations can comply with both rules even if the Privacy Rule restricts these types of disclosures. *See* 65 Fed. Reg. at 82482-83.

[26] 45 C.F.R. §164.524(a)(2)(v).

[27] *Id.* at § 164.524(a)(3)(i).

[28] *Id* at § 164.524(a)(3)(ii).

[29] *See generally* 65 Fed. Reg. 82475-82476 & 82503-82507.

[30] The Privacy Rule defines "business associate," in relevant part, as:

> A person who:…*[o]n behalf of such covered entity…performs, or assists in the performance of…*[a] function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit, benefit management, practice management, and repricing; or…[a]ny other function or activity regulated by this subchapter; or…provides…legal, actuarial, accounting [or] consulting…services to or for such covered entity.

45 C.F.R. § 160.103 (emphasis added).

[31] *Id.* at § 160.504(e).

[32] *Id.* at § 164.508(c)(vi).

JUVENILE FOCUS

By Alvin W. Cohn, D.Crim
President, National Juvenile Court Services Association

NCJRS Online Thesaurus

The NCJRS Abstracts Database can now be searched online using the National Criminal Justice Thesaurus of more than 5,500 terms. This powerful, fully researchable tool allows users to search precisely the indexed contents of more than 175,000 abstracts. The thesaurus can be accessed directly at: http://abstracts-db.ncjrs.org/content/Thesaurus/ThesaurusSearch.asp(NCJRS)

Bullies

Federal researchers, funded by the National Institute of Child Health and Human Development, analyzed the results of a survey of 15,686 students in grades six through 10 in public and private schools. Researchers found that children who had bullied others or were bullied themselves were much more likely to engage in violent behavior, such as carrying a weapon, fighting, and being injured in a fight. Bullies, however, were more likely than their victims to engage in this behavior. Of boys who admitted that they had bullied others at least once a week in school, 52.2 percent had carried a weapon the past month; 43.1 percent had carried a weapon in school; and 38.7 percent were in frequent fights. The percentages for those who were bullied were substantially less. For those who had never bullied others, the percentages were drastically lower.

Mental Illness Treatment

Thousands of American parents are turning their children over to social workers or the police because it is the only way for the children to receive treatment for mental illnesses, reports the General Accounting Office. More than 12,700 children were placed in the child welfare or criminal justice system in 2001, which was the first year the government attempted to assess the scope of the problem. The GAO report said 32 states, including the largest five, did not provide data on how many children with mental illness were sent to child welfare agencies to receive treatment. Data on the number who ended up in the criminal justice system were based on just 30 counties nationwide. The report states that adolescent boys with mental illnesses are more likely to "act out," and adolescent girls with similar conditions tended to "act in" and become withdrawn. The GAO report found that communities that were able to lower the incidence of mental illness and keep troubled children and families intact were those that focused on prevention and flexibility.

Child Support Training

The Federal Office of Child Support Enforcement (OCSE) has developed a series of training materials called "brown bags." To date, OCSE has released three training packages with plans to issue several more in the coming months. As each "brown bag" is released, it is posted on the OCSE website at: http://www.acf.hhs.gov/programs.cse.pubs/training/index.cfm. The "brown bag" series is designed so that the training can be conducted by local child support staff within a one-hour time frame. Issues covered include child support, security awareness, and family violence.

Youthful Offenders in Adult Corrections

The National Institute of Corrections (NIC) is offering a training program that discusses successful interventions for juveniles in adult correctional settings. The live, 32-hour satellite/internet distance learning training program will air *September 8-12, 2003.* To complete an application, see www.nicic.org or contact Ed Wolahan at the NIC Academy, (800) 995-6429, ext. 131.

Disabilities and Paraprofessionals

A shortage of qualified special education teachers and rising numbers of children with disabilities prompts America's public schools to use paraprofessionals increasingly to assist special education students. In some states, standards for paraprofessionals have been lax, and paraprofessionals are not adequately prepared to serve the students. "No Child Left Behind" (the Elementary and Secondary Education Act), the law which provides most of the federal K-12 funding in the U.S., addresses the qualifications and roles of paraprofessionals in public schools. Annually, it affects 12.5 million students in more than 90 percent of schools across the nation. Title I of the Act requires that paraprofessionals must:

- Complete at least two years of higher education study; or
- Obtain an associate or higher college degree; or
- Meet a rigorous standard of quality and demonstrate knowledge of and the ability to instruct in math, reading, and writing.

Schools and Emergency Plans

Public schools will be eligible for $30 million in federal grants to prepare for terrorism and other emergencies. The money will come from the Department of Education's Safe and Drug-Free Schools program. A school preparedness web site has been created: www.ed.gov/emergency plan. The site is designed to help schools develop crisis plans for emergencies.

U.S. Pupils and Literacy

Fourth-graders in the U.S. score better in reading than many of their peers around the world, but the nation's poor and minority students still lag behind other U.S. learners, according to a study known as Progress in International Reading Literacy Study of 2001. Students in U.S. public schools outperformed those in 23 of 34 other countries, ranging from top scorers, including Sweden and England, to such lower performers as Iran and Kuwait. Among the highlights:

- 65 percent of U.S. students received more

than six hours of reading instruction a week, compared with the international average of 28 percent. Almost all U.S. students attended schools that emphasized reading, while 78 percent of students internationally did.
- Girls scored higher than boys in reading in all countries.
- Within the U.S., white and Asian students led blacks and Hispanics. Each U.S. racial and ethnic group scored above the international average except blacks.
- U.S. students in private schools scored significantly higher than those in public schools. Also, U.S. students in high-poverty schools scored lower than their counterparts in low-poverty schools.

Children and Obesity

The quality of life for severely obese children and adolescents is roughly equivalent to that of pediatric cancer patients undergoing chemotherapy, according to a study conducted by the University of California-San Diego. The research compared very overweight children to ones who were healthy and others who had cancer and found that obesity colored nearly the entire spectrum of physical, emotional, and social activities. Most very overweight children have at least one medical complication and miss as much as four times as much school as normal-weight children. They are also more likely to report feeling socially isolated even though they aren't clinically depressed or anxious, which most of them aren't. The fraction of children ages six to 19 who met the definition of overweight ranged from four percent to about seven percent in the 1960s and 1970s. It jumped to 11 percent in the 1980s and 15 percent in the late 1990s. The average 12-year-old in the study, for example, was five feet, one inch tall and weighed 175 pounds. By comparison, the average 12-year-old boy is four feet, 11 inches and weighs 90 pounds, while a 12-year-old girl is one inch taller and two pounds heavier.

Tribal Web Page

A tribal web page for the Tribal Youth Program has been added to OJJDP's Web site at: http://ojjdp.ncjrs.org/typ/. The program is part of the Indian Country Law Enforcement Initiative, which is designed to improve law enforcement and juvenile justice practices for American Indian and Alaska Native youth and assist them with mental health and substance abuse services. Contents include such issues as frequently asked questions, grants and funding, grantees, publications, research and evaluation, training and technical assistance, upcoming events, and other resources.

Drug Courts Assessment

Drug Court Monitoring, Evaluation, and Management Information Systems: National Scope Needs Assessment (NCJ 195077) provides the results of an assessment conducted by the National Drug Court Training and Technical Assistance Program and is designed to help capture the best practices of current programs to ensure that future drug courts achieve the same success rates. The full text (online only) can be obtained at: http://www.ncjrs.org/pdffilesl/bja/195077.pdf.

Additionally, *Public Domain Drug Court Software: Functions and Utility* (NCJ 197258) reviews four public domain drug court management information systems (MISs) to help jurisdictions identify and select software that can support their information management needs. The information presented includes basic system elements, acquisition requirements and costs, and contact information. Available (online only) at: http://www.ncjrs.org/pdffiles/bja/197258.pdf.

Also, *Juvenile Drug Court: Strategies in Practice* (NCJ 197866) offers 16 strategies or recommendations for a juvenile drug court that are meant to be adapted to the unique characteristics of each court and the community it serves. Available (online only) at: http://ncjrs.org/pdffiles/bja/197866.pdf.

Young Offender Programs

Treatment, Services, and Intervention Programs for Child Delinquents is a recent OJJDP Bulletin that describes treatment, services, and intervention programs and their efficacy for juvenile offenders younger than age 13. It can be obtained at: http://ojjdp.ncjrs.org/pubs/delinq.html#193410.

Reentry Web Site

The Office of Justice Program's (OJP's) Reentry Web site has been redesigned and is the primary source of online information for and about grantees of OJP's Serious and Violent Offender Reentry Initiative. The site now provides additional information about reentry that is appropriate for a more general audience. New selections include state activities and resources and training and technical assistance. The Web site can be accessed at: http://www.ojp.usdoj.gov/reentry.

Fruit and Cancer Relationship

People who were fed plenty of fruit when they were children are less likely to suffer from certain types of cancer, according to a study by the Medical Research Council of London.. A study of nearly 4,000 men and women showed that the more fruit that they ate when they were young, the less likely they were to suffer from lung, bowel, and breast cancer later. All of the adults in the study had filled in a food inventory during the 1930s for a study of eating habits. Researchers then studied the medical records of the group up to July 2000, by which time 483 cases of cancer had been diagnosed. In addition to fewer cases of cancer, a high consumption of fruit was associated with a lower death rate from all causes. Individual antioxidants such as vitamins C, E, and beta carotene were not as protective as fruit.

Hyperactivity and Snoring

Some hyperactive children thought to be suffering from attention deficit disorder may just be overtired because they are bad sleepers or heavy snorers, reports researchers at the University of Louisville. Researchers report that about one-quarter of five-to-seven year-old children with mild symptoms of attention deficit/hyperactivity disorder (ADHD) also snored. In some cases, the breathing problems reached the level of sleep apnea, where breathing is blocked repeatedly through the night and sleep is disturbed. As many as five percent of American children, a majority of them boys, are believed to be affected by ADHD, which is characterized by inattention, impulsiveness, and overactive behavior.

Medical Errors and Children

Children with serious medical problems are more likely to experience medical errors in hospitals, reports the Children's National Medical Center in Washington. The researchers indicate that nationwide, children with serious problems such as cystic fibrosis or cancer experience three times as many medical mistakes as children with more benign problems. Most of the mistakes involve medical procedures—doctors using devices such as breathing tubes or diagnostic scopes during surgery or with anesthesia. It is not clear whether the error rates are higher because very sick children spend more time in hospitals, thereby increasing the risk of mistakes, or because their care is more complex. The study also found that boys, children from wealthier households, and those treated in urban hospitals had higher rates of medical errors.

Student Morale

Ill-mannered pupils, demoralized teachers, uninvolved parents, and bureaucracy in public schools are greater worries for Americans than the standards and accountability that occupy policy-makers, a study by Public Agenda reports. Teachers, parents, and students said they were concerned about the rough-edged atmosphere in many high schools. Only nine percent of survey respondents said the students they see in public are respectful toward adults. High school students were asked about the frequency of serious fights in schools, and 40 percent said they occur once a month or more; 56 percent said they hardly ever happened; and four percent had no opinion. Only 15 percent of teachers said teacher morale is good in their high schools. Superintendents and principals want more autonomy over their schools, with 81 percent of superintendents and 47 percent of principals saying talented leaders most likely will leave because of politics and bureaucracy. Teachers said their views generally are ignored by decision-makers, with 70 percent feeling left out of their district's decision-making process.

Federal Research Service

The federal government has pulled together efforts from multiple agencies to create a free public search service called *FirstGov for Science*. The Web site lets people run a combined search against technical reports, journal articles, conference proceedings, and Web pages from 10 federal agencies and 14 scientific organizations. See www.science.gov.

Special Ed

States that use per-student funding for special education had higher growth in the number of special-ed students than those states that use a lump-sum approach to special-ed funding, reports the Manhattan Institute. The study indicates that from 1990-91 to 2000-01, special education enrollment in states with lump-sum funding rose from 10.5 percent to 11.5 percent; enrollment rose from 10.6 percent to 12.6 percent in states that adjust funding depending on the number of students enrolled in special education.

Youth Confidence

A Communities in Schools, Luntz Research, and Strategic Services survey of 601 youths provides the following breakdown of students ages 12-17 who say they will be extremely or very successful in 20 or 30 years:

- Students with a strong adult presence – 84 percent
- Students with a weak adult presence – 57 percent

Teacher Dissatisfaction

Every summer, school districts nationwide worry over how they will replace the estimated 16 percent of their teachers who quit, transfer, or retire. A study by the National Commission on Teaching and America's Future, however, suggests that school districts instead should focus on why these teachers leave the system. The study reveals that one in three new teachers quit during the first three years of teaching and nearly half leave within five years. Turnover is worst in schools serving low-income, urban children. Many teachers start their careers in urban schools, then leave for suburbs, where they find better pay and better cooperation from parents and administrators. Overall, teaching has a slightly higher turnover rate than other professions, which lose about 12 percent of their workers annually. More than a quarter million teachers leave their jobs each year. Retirees account for nearly one-fourth of those, and others simply quit. Another one-quarter leave one school for another.

Drug and Alcohol Abuse

Girls and young women are more easily addicted to drugs and alcohol, have different reasons from boys for abusing substances, and many need single-sex treatment programs to beat back their addictions, reports the National Center on Addiction and Substance Abuse at Columbia University. The report indicates that girls get hooked faster using lesser amounts of alcohol, drugs, and cocaine, and they suffer the consequences faster and more severely. With some exceptions, the substance abuse prevention programs have been designed with a unisex, one-size-fits-both-sexes mentality, the report states, even though it is known that girls are different from boys. The study, based on a three-year survey of female subjects ages eight to 22, found the gender gap was narrowing between girls and boys who smoke, drink, and use drugs. Approximately 45 percent of high school girls drink alcohol, compared with 49 percent of boys, and girls outpace boys in the use of prescription drugs. While boys often experiment with cigarettes, alcohol, and rugs for thrills or higher social status, girls do so to reduce stress or alleviate depression, the study found.

Inmate Educational Attainment

According to the Bureau of Justice Statistics (BJS), the educational attainment of state prison inmates include:

- 39.7 percent – some high school or less
- 28.5 percent – GED certificate
- 20.5 percent – high school diploma
- 9.0 percent – post-secondary/some college
- 2.4 percent – college graduate or more

The BJS report describes the availability of educational programs for inmates in prisons and jails and their participation in educational and vocational programs since admission. The full text can be obtained at: http://www.ojp.usdoj.gov/bjs/abstract/ecp.htm.

Youth Violence

OJJDP announces the availability of *Trends in Juvenile Violent Offending: An Analysis of Victim Survey Data,* which presents information on trends over the past two decades. It is based on data collected from the victims of those offenses by the National Crime Victimization Survey. The text can be obtained at: http://www.ojjdp.ncjrs.org/pubs/delinq.html#191052.

Safe Learning Environment Guidebooks

OJJDP announces the availability of a series of eight guidebooks that provide local school districts with information and resources to assist them in developing a comprehensive strategy to create a safe learning environment:

Guide 1: *Creating Schoolwide Prevention Strategies*

Guide 2: *School Policies and Legal Issues Supporting Safe Schools*

Guide 3: *Implementing Ongoing Staff Development to Enhance Safe Schools*

Guide 4: *Ensuring Quality School Facilities and Security Technologies*

Guide 5: *Fostering School-Law Enforcement Partnerships*

Guide 6: *Instituting School-Based Links with Mental Health and Social Service Agencies*

Guide 7: *Fostering School, Family, and Community Involvement*

Guide 8: *Acquiring and Utilizing Resources to Enhance and Sustain a Safe Learning Environment*

The guidebooks are available at http://ojjdp.ncjrs.org/pubs/delinq.html#ss. To obtain a free CD containing all eight guides, call (800) 268-2275.

The Future of Children

Printed copies of the most recent issue of *The Future of Children Journal*, "Children, Youth, and Gun Violence" (Vol. 12, No. 2, Summer/Fall 2002), along with other back issues of the journal from the David and Lucille Packard Foundation, can be ordered from the Web site at: http://www.futureofchildren.org/cart2869.htm.

OJJDP Publications

The following publications can be ordered free of charge:

Juvenile Residential Facility Census, 2000: Selected Findings. http://ojjdp.ncjrs.org/pus/correction.html#196595

Violent Victimization as a Risk Factor for Violent Offending Among Juveniles – http://ojjdp.ncjrs.org/pubs/violvict.html#195737

Juvenile Arrest: 2000 – http://ojjdp.ncjrs.org/pubs/general.html#191729

Juvenile Gun Courts: Promoting Accountability and Providing Treatment – http://ojjdp.ncjrs.org/pubs/court.html#187078.

Best Practices in Juvenile Accountability: Overview – http://ojjdp.ncjrs.org/pubs/general.html#184745.

Race as a Factor in Juvenile Arrests – http://ojjdp.ncjrs.org/pubs/general.html#189180

Highlights of the 2001 National Youth Gang Survey – http://ojjdp/ncjrs.org/pubs/fact.html#200301.

Prevalence and Development of Child Delinquency – http://ojjdp.ncjrs.org/pubs/delinq.html#193411.

Child Maltreatment 2000 – http://www.acf.hhs.gov/programs/cb/publications/cmreports.htm.

Responding to Gangs: Evaluation and Research – http://www.ncjrs.org/pdffiles1/nij/190351.pdf.

Safe Harbor: A School-Based Victim Assistance/Violence Prevention Program – http://www.ojjdp.usdoj.gov/ovc/publications/bulletins/safeharbor 2003/

BJS WEBSITES – BJS has established new Web sites, including:
Crime & Justice Data Online
www/ojp/usdoj.gov/bjs/dataonline/

This new interactive application provides quick access to comprehensive and easy to use crime and justice data.

Reentry Trends in the United States
www/ojp.usdoj.gov/bjs/reentry.htm/

This new section summarizes the latest data concerning inmates returning to the community after serving prison time.

To subscribe to *JUSTATS* and get e-mail notices of all new and updated statistical materials from:

- Bureau of Justice Statistics
- Federal Bureau of Investigation
- OJJDP

Send an e-mail to listproc@ncjrs.org and leave the subject line blank, and in the message, type "subscribe JUSTATS" and your name.

Lead and Nicotine-Related Chemicals

Levels of lead and nicotine-related chemicals in humans have been sharply reduced over the past decade, reports the Centers for Disease Control and Prevention (CDCP). However, researchers found that levels of a nicotine-related chemical called cotinine in young children were more than twice the levels found in non-smoking adults. Levels of tobacco-related chemicals in non-smoking adults dropped by 75 percent from the early to late 1990s, but decreased by 58 percent in children and 55 percent in adolescents. Experts said the discrepancy is the result of physiological differences in adults and children. The study found that the proportion of young children with elevated levels of lead dropped by half during the past decade—from 4.4 percent to 2.2 percent of children five and younger. As many as 20 percent of young children living in poverty suffer from levels of lead high enough to affect their nervous systems and intellectual growth.

High Rate of Hispanics Quit School

According to the Pew Hispanic Center, Hispanic children (21 percent) quit school at a rate of almost three times that of whites (8 percent) and twice that of blacks (12 percent). Among the reasons:

- Poorly designed reading programs and research on how to teach a child whose primary language is not English.
- Many school districts fail to track the academic success of their students by race and ethnicity; therefore, little data are available on the performance of Hispanic students. Schools also fail to verify dropout rates.
- Many schools have low expectations for Hispanic students and don't steer them toward college.
- Surveys show that only 38 percent of Hispanic parents believe schools give them the information they need to help their children succeed in the classroom.

Gun Homicides by Teens

Homicide Trends in the United States: 2000 Update is a recent BJS publication that reveals that gun homicides by teens and young adults in the United States have fallen since 1993. The report outlines the primary findings, which are based on the FBI's Uniform Crime Reporting Program. The text can be found at: http://www.ojp.usdoj.gov/bjs/abstract/htus00.htm.

Sex on TV

Some findings found in the Kaiser Family Foundation's 2003 report on the amount of sexual content on television:

Among all shows with sexual content involving teen characters, the percentage that also contain safer sex references:

1997-1998 = 18 percent

1999-2000 = 17 percent

2001-2002 = 34 percent

Percentage of shows with sexual content, by type of show, in 2001-2002:

Among all shows = 64 percent

Among prime time broadcast shows = 71 percent

Among top 20 teen shows = 83 percent

Binge Drinking

The problem of binge drinking begins well before teenagers set foot on a college campus, reports Columbia's National Center on Addiction and Substance Abuse. The study found that America has an epidemic of underage drinking that germinates in elementary and middle schools. More than five million high school students admit to binge drinking at least once a month. The two-year study concluded that youths are trying their first drinks at younger ages. For the class of 1975, 27 percent of the high school graduating class began using alcohol in the eighth grade or earlier. In 1999, that number had risen to 36 percent, the study said. Underage drinkers consumed as much as $27 billion worth of alcohol in 1998—$15 billion on beer alone.

That figure represents about one-fourth of all alcohol sold in the U.S. that year. A liquor industry spokesperson disputed the study

findings, saying that the figures are greatly exaggerated. While the study did not conclude that the overall number of student drinkers is on the rise, it did establish that alcohol is the Number One drug of choice for teenagers. By their senior year in high school, 80 percent of teenagers had tried alcohol, compared with 47 percent who had experimented with marijuana, and 29 percent who had tried another illegal drug. However, alcohol was a contributing factor in the top three causes of death among teens: accidents, homicide, and suicide.

Narcissism and Violence

Researchers recently have found that there is no clear link between low self-esteem and many violent and risky behaviors assumed to be related to it, including delinquency, violence against others, suicide, eating disorders, and teenage pregnancy. However, high self-esteem was positively correlated with drunken driving, racist attitudes, and other risky behaviors. In another study, these same researchers compared men imprisoned for murder, rape, assault, and armed robbery with groups of men the same age. They found that those convicted of violent crimes did not differ in self-esteem from those who did not. But they did dramatically differ in narcissism. The research suggests that batterer programs should not be focusing on abusers' self-esteem, but rather on their narcissism and self-control.

Babies and Sleep

It has been 11 years since the American Academy of Pediatrics began recommending that parents place their infants on their backs or sides at bedtime to reduce the incidence of sudden infant death syndrome (SIDS). By 1998, the percentage of parents complying with that advice rose from 30 percent to 83 percent, and the incidence of SIDS declined 40 percent. Researchers used surveys to track the sleep positions and more than a dozen health measures for 3,733 infants, from one month to six months of age, with regard to such symptoms as fever, cough, trouble sleeping, stuffy nose, vomiting and diarrhea, and visits to doctors' offices. Compared with infants placed faced down, those on their backs or sides were not at increased risk for any of these symptoms, nor did they have more visits to the doctor. Further, infants on their backs or sides had fewer fevers at one month and fewer instances of trouble sleeping and stuffy noses at six months.

REVIEW OF PROFESSIONAL PERIODICALS

The Prison Journal

Reviewed By Sam Torres

"A Grounded Look at the Debate Over Prison-Based Education: Optimistic Theory Versus Pessimistic Worldview," by C.B.A. Ubah and R.L. Robinson, Jr. *(Vol. 83, No. 2, 2002), 115-129.*

As the title suggests, the ongoing debate about prison-based education has not been resolved, and continues to divide scholars, policymakers, correctional practitioners, and the general public. The article's title, in my view, tends to confuse this critical correctional issue by utilizing terms not usually associated with the ideological views presented in the criminological and correctional literature. In using these value-laden terms (optimistic versus pessimistic), the authors, perhaps inadvertently, reveal their bias early on in their discussion of this debate, for few readers would choose to side with a "pessimistic" view of crime control. The "optimistic" and "pessimistic" views presented here by the authors are, in fact, simply what are more commonly referred to in the criminological literature as the "positivistic" and "classical" theories or philosophies of crime causation. Other references to these approaches in the criminological literature include deterministic and antideterministic, conservative and liberal, and rehabilitative versus punishment models. The "optimistic" theory refers to the positivistic, deterministic, liberal explanations, while the "pessimistic theory" refers to the classical, antideterministic, conservative criminological perspectives. While Ubah and Robinson describe these two perspectives as contradictory, the Criminal Justice System (CJS) has historically attempted to integrate them. However, depending on the particular social and political era, the system or elements in it have clearly emphasized one approach over the other. That is, judges in their sentencing practices frequently attempt to achieve the competing goals of rehabilitation, retribution, deterrence, and sometimes incapacitation when imprisonment is deemed appropriate.

In their discussion of the "idealism/optimism" model or the "rehabilitative ideal" (positivism), the authors note that there are "several" theories that hold that rehabilitation, and specifically exposure to education, can cause lower recidivism rates. In fact, there are a multitude of sociological, biological, psychological, and economic deterministic theories that have as their basis the belief that by uncovering and/or determining the "causes" of criminal behavior we can implement treatment/rehabilitative programs to change or correct the behavior. These theories, the authors note, can be collectively referred to as theories of individual change. The implication seems to be that those who support such theories can be considered optimistic or idealist since they hold that the Criminal Justice System possesses the capacity to effect behavioral change through implementation of a wide variety of treatment programs, including educational and vocational.

Although there are literally dozens of positivistic theories, a disproportionate number are sociological, followed by psychological explanations of crime causation. The authors briefly examine three socio-psychological theories that they believe might explain potential reductions in recidivism through educational programs. First, the "Moral-Development Theory" hypothesizes that prison systems that provide classes in the liberal arts such as philosophy, sociology, history, or literature can be rehabilitative because they seem to strengthen prisoners' consciences as they confront the moral dilemmas addressed in many of these courses. Courses in the liberal arts provide inmates with role-taking opportunities, role-taking contributes to the development of empathy, and the development of empathy will make it less likely that offenders, upon release, will further victimize others.

The Social-Psychological Development theory is the second "optimistic" model presented model. This Social-Psychological Deterministic perspective suggests that cognitive processes play a major role in the acquisition of new behavior patterns acquired through exposure to certain types of treatment such as educational programming. Education, according to this perspective, will enhance psychological well-being through the development of cognitive abilities like relaxation, improved ability to express oneself, and improved self-esteem, all of which will contribute to a crime-free lifestyle. Although education cannot be considered a panacea for all the problems inmates experience, it can set in motion the developing of inmates' social psychology, which in turn will help them address some of their specific problems. Thus the authors suggest that improving inmates through education will ultimately benefit society.

The third and final theory presented as one of the "optimistic" models is Cloward and Ohlin's (1960) social deterministic Opportunity Theory, which holds that because most crimes are committed by poor, uneducated, and disenfranchised people, therefore crime can be explained by a lack of viable, legitimate means to attain economic opportunities. The origins of the theory lie in Robert Merton's (1938) Strain Theory. This theory suggests that acquiring a college education will provide inmates with marketable skills that can open up better job opportunities. This in turn can build and strengthen the social bonds which insulate a person against further criminal behavior.

The three social-psychological deterministic theories presented by the authors form what they describe as the Optimistic or Rehabilitative Ideal, which suggests that the idea of prison-based college education is the proper course to pursue because such programs can promote change in some inmates, improve their psychological well-being, and offer them marketable skills for the labor market.

The "pessimistic reaction" to individual change theory forms the antithesis of the

rehabilitative ideal of prison-based educational programs. The proponents of the pessimistic view argue that education programs in prison do not work and suggest their elimination. In providing support for this pessimistic view of behavior change, the authors rely exclusively on the work and influence of Robert Martinson and his colleagues (1975), who, according to the authors, assessed "several" rehabilitative studies and concluded that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism"(p.120). Martinson's study was interpreted to mean that "nothing works" with respect to rehabilitation, hence fueling the shift to a retributive punishment model with its emphasis on deterrence and incapacitation as major crime control strategies. Pell grants, which were the primary source of funding for prison-based college programming, were subsequently eliminated in 1993/1994, due in large part, the authors argue, to the shift to a pessimistic, classical, anti-deterministic model.

At this point the authors' strong bias against what is called the pessimistic, anti-education, anti-change model becomes quite evident. In their discussion of the pessimistic perspective, the authors seem to give Martinson almost unequivocal credit for the criminal justice system's shift to a conservative crime control philosophy. Although Martinson's study clearly had a major impact in fueling the shift to the right, prior to his study, the ingredients were already present for the pendulum's shift to a more conservative approach to dealing with offenders due to a disenchantment with the rehabilitation model. It should be noted that although the authors seem to imply that Martinson's conclusions were based on a few studies, in reality, Martinson and his colleagues examined 231 studies.

The "pessimistic" view described by the authors falls under what today is termed "rational-choice" theory—classical, anti-deterministic, free-will, or accountability models that emphasize a person's ability to choose whether or not to commit crime based on a cost-benefit analysis. Such models hold firmly to the belief that most people are rational beings possessing the ability to make choices, the ability to choose to commit a crime or not to commit a crime. If someone chooses to commit a crime, according to this perspective, then the offender should be held accountable and responsible for the choice he/she makes. Punishment is the logical consequence for an individual's decision to violate the law. Crime, according to this view, is best controlled by holding offenders responsible for their actions, imposing punishment to fit the crime, and controlling criminality by emphasizing the goals of retribution, deterrence, and incapacitation.

Although the authors would have us believe that Martinson singlehandedly created the climate that eliminated Pell grants, this view minimizes the influence of major conservative criminologists like James Q. Wilson (*Thinking About Crime*, 1975), Andrew von Hirsch (*Doing Justice*, 1976), Ernest van den Haag (*Punishing Criminals*, 1975), Willard Gaylin (*Partial Justice*, 1974) and David Fogel (*We Are the Living Proof: The Justice Model for Corrections,* 1975). Conservative criminologists, along with many politicians and with considerable support from the general public, opposed the rehabilitative principles of indeterminate sentencing, parole, maximum discretion (by judges and parole boards), sentencing disparity, rehabilitative program participation tied to parole release, and liberal good-time policies. Interestingly, prisoners and prisoner advocacy groups also opposed many of the practices associated with the rehabilitation model. These issues form the basis of much of the debate on the topic. The authors, however, fail to address most of the issues that resulted in the dramatic philosophical shift to conservative crime control strategies.

Clearly, the shift to a more conservative crime control strategy has been excessive, contributing to the movement to eliminate many of what were considered prisoner "perks," including prisoner access to Pell grants and a college education. However, treatment and education per se have not been opposed by the pessimists. Instead, most think that such program participation should not be linked to parole or release from prison, nor should prisoners receive services not generally provided to the law-abiding citizen. The "principle of least eligibility" is a forceful view held by the general public, and impacted Congress' decision to eliminate Pell grants, yet the authors fail to mention or discuss this principle.

Although this writer agrees with the authors' conclusion that money invested in higher education for prison inmates is money well spent, the discussion supporting this conclusion appeared to lack objectivity and clarity, and simply did not provide sufficient information for an adequate consideration of the topic. The title describing optimistic and pessimistic perspectives was problematic, the discussion of the rational-choice perspective (pessimistic view) was inadequate and overly simplistic, and Martinson was given disproportionate credit for the shift to a conservative crime control strategy at the expense of major conservative criminologists who also played a crucial role in the shift to the right.

Furthermore, studies on the specific issue of college educations and recidivism should have been included. Does the research provide support for a lower recidivism rate for those prisoners who have taken college courses, received an associate of arts degree, a bachelor's degree, and/or a graduate degree? Does existing research support the authors' conclusion that prison-based education programs do indeed result in positive behavioral change (optimistic ideal), which in turn leads to reduced recidivism? Finally, it should be noted that 1) the general public tends toward conservative attitudes when it comes to handling criminal offenders, and 2) the general public, while increasingly frustrated with the criminal justice system's inability to adequately control crime, is not "hostile to the rehabilitative approach" (p.126). Above all else, the public wants to be protected from criminal offenders, *and*, once protected, it wants offenders to be given the opportunity to be rehabilitated. Needless to say, the principle of least eligibility plays a significant role in the attitudes of the general public and legislators, who feel that free tuition and books should not be provided to those who violate the law, as long as they are generally not provided to law-abiding citizens.

Crime and Delinquency

REVIEWED BY CHRISTINE J. SUTTON

"Does the Presence of Casinos Increase Crime? An Examination of Casino and Control Communities," by B. Grant Stitt, Mark Nichols, and David Giacopassi

In the last 20 years, America has experienced a gambling boom. In 1975, Nevada was the only state to have casino gambling and only 13 states had lotteries. Between 1982 and 1998, consumer spending on gambling increased $10.5 billion, from $43.9 to $54.4 billion. Of the $54.4 billion, 41 percent or $22.3 billion was from casino gambling. As of 1999, 30 states have casino gambling (including Native American casinos) and 37 states and the District of Columbia have lotteries.

As gambling has grown, so has the belief that casinos cause crime. Sixty-eight percent of Americans approve of gambling in resort areas. Nearly the same percentage of Americans believe gambling is associated with

negatives for society; 61 percent of Americans associate gambling with organized crime and compulsive gambling and 67 percent believe gambling encourages people who can least afford it to squander their money.

The effects of gambling on individuals and the surrounding communities became such a concern that in 1996 Congress authorized a commission to study the effects of all types of gambling on society. The commission called for a moratorium on new gambling jurisdictions, due to the need for additional research.

To determine the effects of casino gambling on crime and the quality of life in new casino jurisdictions, the authors conducted an analysis of crime in six casino communities and compared them to the crime rates in six non-casino communities. The respective police agencies for the casino communities and the control communities provided the crime data.

The casino communities selected had casino gambling for a minimum of four years. The authors examined traditional crime rates, as well as those of at-risk populations (tourists).

Fifteen demographic, economic and social variables, such as age, median household income, unemployment rate, race and education, amongst others, were used in the comparative analysis process.

Overall, the pattern of crime in the test and control jurisdiction, the analysis of index and nonindex crime rates for casino and noncasino communities, resulted in no definitive conclusion confirming the effect of casinos on crime. For example, crime rates increased significantly in 23.4 percent (11 of the 47) of the comparisons for the index offenses, but decreased significantly in 25.5 percent (12 of 47) of the comparisons. When nonindex offenses were examined, 36.2 percent (17 of 47)of the nonindex offenses increased, whereas 25.5 percent (12 of 47) decreased significantly.

When the crime rates were calculated based on population at risk, 28.2 percent (11 of 39) of the index offenses increased and 20.5 percent (8 of the 39) significantly decreased. The comparable population of at-risk crimes for the nonindex offenses were 27.7 percent (10 of 36) and increased, whereas 33.3 percent (12 of 36) decreased.

The findings of this study also negate the belief that casinos constitute hot spots, areas where crime will increase. Factors suggested since casinos are located in more open and respectable locations and are tightly regulated, as well as being viewed as entertainment and tourist attractions whose success is important to the the community's economic wellbeing, greater community protection is provided by private casino security and public law enforcement agencies. Another aspect of casino security likely accountable is "the eye in the sky," or monitoring cameras.

However, it was clear that two casino communities, Biloxi and Peoria, did experience increases in crime relative to their respective control communities.

In summary, the authors conclude no definitive statement can be made about the effect casinos have on crime and that there are likely to be some contextual factors operating in some communities, that allow for casinos to positively affect crime under certain as yet unknown circumstances. At the same time, there is also no way of knowing whether the apparent casino effect, when present, is a direct one. When a casino opens in a community, it often changes the nature of the community in a multitude of ways, both positive (stimulating the economy and adding employment and entertainment) and negative (adding traffic congestion and introducing large numbers of non-residents). The authors found it is the interplay of these and other factors, such as location, size, number of casinos, state gambling regulations and law enforcement policies, that may determine the effect of the casino on crime in the community. If crime has increased, is it due to casino-related factors or increased tourism (which has been linked to increases in crime in other studies)?

YOUR BOOKSHELF ON REVIEW

Parole, Probation and Prisoner Reentry

When Prisoners Come Home: Parole and Prisoner Reentry.
By Joan Petersilia. New York: Oxford University Press, 2003, 278 pp. $29.00 cloth.

Rethinking What Works with Offenders: Probation, Social Context and Desistance from Crime.
By Stephen Farrall. Portland, OR: Willan Publishing, 2002, 248 pp. $55.00 cloth.

Probation: Working for Justice (2nd Edition). Edited By David Ward, John Scott, and Malcolm Lacey. New York: Oxford University Press, 2003, 420 pp. $34.95 paper.

Reviewed by Russ Immarigeon
Hillsdale, New York

Something happens when offenders start probation supervision or leave prison confinement. They either stop committing crimes (desistance) or they continue committing them (recidivism). Increasingly good data and empirical research exists to tell us the extent to which these things happen. However, we know considerably less about how these things occur. Many years ago, the sociologist Ned Polsky wrote that criminologists fail to get at the behavioral roots of crime because they rarely study criminals in their natural environment. Instead, they talk to offenders behind prison bars or in probation offices, where the picture of what happened is decidedly different. In recent years, a few more criminologists have entered the natural environments of those who commit crime, but few have ventured into the settings where offenders and their helpers or punishers interact. Accordingly, we really have insufficient knowledge about how offenders help themselves, with or without official community corrections or rehabilitative assistance.

California criminologist Joan Petersilia begins her important new study, **When Prisoners Come Home: Parole and Prisoner Reentry,** with a clear declaration, "Never before in U.S. history have so many individuals been released from prison." This statement sufficiently frames the central issues of this report—the promises, prospects, and problems inherent in prisoner reentry practices and policies in this country.

But the size of the prison release population in the United States comes as a consequence of other equally egregious trends—record-breaking trends in arrests, convictions, prison sentences, prison sentence lengths, probation conditions, and even the incarceration of women. Petersilia is on target in suggesting that limitations on judicial and other criminal justice decision-making authority, such as mandatory sentencing and non-discretionary parole, have contributed seriously to the size of our prison population and, as a result, the size of our prisoner reentry population.

All of these trends are part and parcel of a punitive "law and order" campaign—over three decades long—that may be punishing ordinary, working citizens and their communities as much as the men and women subject to its fury. Petersilia does not miss the importance of this trend, so characteristic of much that has occurred in the field in recent years.

The first three-quarters of this book make an important series of presentations covering:

- demographic and crime history details of returning prisoners, including racial, gender, literacy, education, health, mental illness, marital status, parenting relationship, and substance abuse characteristics;
- the origins and evolution of modern parole practices;
- the changing nature of parole supervision and services;
- practices that prepare the incarcerated for release;
- declines in prisoner participation in work, treatment, and education programs;
- the growing impact of increasingly public criminal records on ex-prisoner voting rights, public welfare benefits, and parental practices;
- prisoner release practices and increasing levels of parolee recidivism; and
- invigorated efforts to include victims in reentry decisions and practices.

Petersilia rounds this volume out with 12 recommendations that are "grouped into four areas: the in-prison experience, prisoner release and revocation, post-prison services and supervision, and reentry partnerships and community-based collaborations." She states the following recommendations:

- prison administrators should embrace the mission of prisoner reintegration;
- rehabilitate reentry through the implementation of treatment, work, and education tracks in prison;
- encourage prisoner responsibility through making life inside prison as much like life outside prison as possible;
- prisoners should participate in comprehensive prerelease planning;
- reestablish risk-based discretionary parole release;
- encourage victims to be notified of prisoners' release (including special parole conditions);
- support increased monitoring of high-risk violent parolees;
- provide treatment and vocational training to motivated released prisoners;

- parole offices should embrace neighborhood parole supervision strategies;
- develop and evaluate reentry courts and community partnerships;
- establish goal-oriented parole terms; and
- start allowing prisoners to regain and use full citizenship rights.

In this volume, Petersilia, for many years a prominent researcher at the Rand Corporation and now a professor of criminology at the University of California, Irvine, exposes her investigative and policy background to good effect. In the current penal climate, Petersilia's arguments—plainly stated and soundly grounded in the empirical evidence on program failures and successes—provide an aggressive agenda for practices that could meaningfully change the way criminal justice is implemented in the United States. The time has long since arrived for such changes. Not all of Petersilia's proposals are certain to improve matters (and some may prove as little helpful as other past efforts), but she has provided much to talk about and to do.

The two big criminal justice policy matters of the past few decades have been correctional crowding and prisoner reentry. The failure of "remedies" applied in response to the first of these gave way to the problems inherent in the second. If we are to get beyond additional failure, we would do well to pay close attention to Petersilia's discussion of reentry issues. It is well worth the investment in time, especially as states and counties are increasingly seeking ways to ameliorate the high cost (and the overuse) of incarceration-based practices and policies.

In another important volume, **Rethinking What Works with Offenders**, British criminologist Stephen Farrall examines the intersection of offender and probation officer actions and interactions. He finds, through interviews with nearly 200 probation officers and approximately 200 offenders, that some things work, but they work in ways that differ from our expectations about how they might or should work.

The road to going straight, he finds, is hardly straight at all. In fact, it's rather convoluted, especially when offenders are matched with probation officers aiming to help. The gist of Farrall's argument goes something like this: Officers and probationers acknowledge that there are obstacles to be overcome, but they disagree about which obstacles and how to overcome them. Nonetheless, obstacles are routinely overcome by the end of probation terms, but the solutions imposed successfully, especially by offenders, are rather *ad hoc* rather than focused or sustained on specific effective interventions. Even in cases where probationers and their officers agreed about the obstacles to be overcome, directly addressing them through "probation talk" or other means was less likely to succeed than a range of factors generally outside the control of either party.

Farrall suggests that neither specific interventions nor "working together" seem effective. Offender motivation, by itself, was hardly a factor, but *personal and social context* seems more central to the task. Therefore, he argues, particular conditions are important to prepare the grounds for success. Positive social contexts, for example, at both the start and end of supervision are more likely to result in less criminal behavior. The two factors most favorably reported—by both probationers and offenders—are employment status and family formation. In the end, obstacles were generally, successfully overcome when probationers, rather than officers, initiated actions that led to improved employment and family situations. However, increased probation assistance associated with these particular cases was found to enhance the economic and familial improvements that eventually overcame obstacles.

Farrall concludes, "If probation work became more desistance-focused rather than offending-related, officers may feel they had a clearer mandate to help probationers tackle family (or economic) problems. This may in turn result in a greater involvement of officers in the attempts to tackle such obstacles and greater success in actually resolving them."

Finally, **Probation: Working for Justice** is a collection of 23 articles that were commissioned in the aftermath of two important British reform measures, the Human Rights Act 1998 and the Criminal Justice and Court Services Act 2000, which incorporate provisions of the European Convention on Human Rights into British law. As the editors note, these articles also build upon criminologist Barbara Hudson's "Positive Rights Agenda" mediation of due process and crime control concerns. Hudson's agenda is built on three fundamental principles: offenders remain part of the community; justice consists of fair punishment as well as risk control; and community justice enables principles of equal freedom and equal respect.

The articles in this volume are written by a healthy mix of academics and practitioners, who have all been actively involved in these recent challenges to everyday probation practice. Specific articles cover such topics as the challenge of human rights to probation practice, the role of mercy and citizenship, risk and public protection, race, dangerousness, case management, training and standards, professional performance and accountability, the role of probation inspectors, modernization, and the role of probation in civil society. Other articles also cover the program effectiveness literature, community service and reintegration, the use of probation for women and mentally disturbed offenders, and the role of victims in the probation process.

The editors conclude in a general but critically important vein, "[I]t is crucial that the right volume and quality of concrete resources are invested, that they are targeted to the right places and that their deployment is managed efficiently." (xxvii)

Books Received

Introduction to Crime Analysis. By Deborah A. Osborne and Susan C. Wernicke. Binghamton, NY: The Haworth Press, Oct. 2003. 156 pp., paper, $17.95; hardcover, $49.95.

Crime and Justice: A Review of Research, Vol. 30. Edited by Michael Tonry. Chicago: The University of Chicago Press, 2003. 506 pp. plus index, hardcover.

Kids Who Commit Adult Crimes: Serious Criminality by Juvenile Offenders. By R. Barri Flowers. Binghamton, NY: The Haworth Press, 2002. 243 pp., softcover.

Male Crime and Deviance: Exploring Its Causes, Dynamics, and Nature. By R. Barri Flowers. Springfield, IL: Charles C. Thomas Publishers, July 2003. 353 pp., $49.95 softcover; $70.95 hardcover.

IT HAS COME TO OUR ATTENTION

Women Offenders Report

The National Institute of Corrections' three-year study on gender-relevant management and intervention with women offenders has resulted in a report issued by NIC titled *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders.* The study was prompted by the growth in both female offenders and female employees in corrections; the explosion in criminological, psychological, and sociological research on women offenders; and demand from public policymakers for thorough and updated information. The study team conducted an exhaustive search of published and unpublished literature, hosted focus groups with practitioners from all sectors of the criminal justice field, and collaborated with a Practitioner Advisory Group. The NIC team's intent was to clarify critical differences between male and female offenders to improve management, services, and hence outcomes for women offenders.

The 133-page report is organized in chapters titled "Characteristics of Women in the Criminal Justice System," "Women Offenders and Criminal Justice Practice," "The Context of Women's Lives: A Multidisciplinary Review of Research and Theory," and "A New Vision: Guiding Principles for a Gender-Responsive Criminal Justice System." In the last chapter, the implications for the criminal justice system of the following key findings are discussed:

- "An effective system for female offenders is structured differently from a system for male offenders;
- "Gender-responsive policy and practice target women's pathways to criminality by providing effective interventions that address the intersecting issues of substance abuse, trauma, mental health, and economic marginality;
- "Criminal justice sanctions and interventions recognize the low risk to public safety created by the typical offenses committed by female offenders;
- "When delivering both sanctions and interventions, gender-responsive policy considers women's relationships, especially those with their children, and women's roles in the community."

For further information, or to find out how to obtain a copy, you may visit the NIC Web site at www.nicic.org.

BJS Incarceration Statistics

The nation's correctional population reached a record of more than 6.7 million adult men and women by the end of 2002, according to the Justice Department's Bureau of Justice Statistics (BJS). As of last December 31, about 3.1 percent of the U.S. adult population, or 1 in every 32 adults, were in prisons or jails or in the community under correctional supervision, compared to 2.7 percent of the population in 1995.

The press release in HTML and report in Adobe Acrobat Portable Document Format (PDF) for Probation and Parole in the United States, 2002, are located on the BJS website at http://www.ojp.usdoj.gov/bjs/abstract/ppus02.htm

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