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Federal PROBATION

a journal of correctional philosophy and practice

IN THIS ISSUE:

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THIS ISSUE IN BRIEF

Regular readers of this journal will note our new appearance. In over 60 years of publication, *Federal Probation* has often been in the forefront of new thinking about corrections and criminal justice, but aside from minor tinkering, it has presented the same face to the world for a half century. We hope our readers will find the new format clean-looking and easy on the eye, as we enter a new century of commentary.

Readers will also find the debut of a new column, "The Cutting Edge," designed to alert them to technological innovations that can assist lawbreakers and law enforcers. The column is edited by Cecil E. Greek, Ph.D., associate professor of criminology and criminal justice at Florida State University in Tallahassee, FL, where he directs distance learning efforts, including an online Masters' degree program aimed at working criminal justice professionals. His new book, *Computers, the Internet, and Criminal Justice*, is published by Wadsworth. Readers are encouraged to contribute ideas for columns and even volunteer their contributions. Dr. Greek's e-mail address is cgreek@mailer.fsu.edu.

DEPARTMENTS

Three Strikes and You're Out: An Investigation of False Positive Rates Using a Canadian Sample

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CALIFORNIA'S VERSION OF the "Three Strikes and You're Out" legislation has been controversial since it became law in April of 1994. Under current California law, offenders who have committed two prior violent or serious offenses ("strikes") are given mandatory 25 year sentences, without the possibility of parole, on their third strike. In California, the third strike does not have to be a serious or violent offense for the Three Strikes law to apply; it may be one of approximately 500 felony offenses. On the second strike, a judge in California must double the length of the sentence that would normally be imposed (State of California, 1994). Most other American states have their own versions of the Three Strikes law, generally more conservative than that of California. California has by far the largest number of inmates incarcerated under any form of Three Strikes legislation.

Introduction

One rationale used to justify this law is that the long-term incarceration of habitually violent offenders will significantly reduce the overall level of violence in society (American Society of Criminology, 1995). California lawmakers have decided that the commission of a third strike is sufficient indication of an habitual violent offender who will continue to re-offend violently. Therefore, it is believed that these offenders require lengthy, preventative incarceration to protect the public. As yet, no study has demonstrated that the Three Strikes law has reduced violence.

False positive errors under the Three Strikes law refer to offenders who were incarcerated after a third strike but, had they not been incarcerated, would not have gone on to commit any more strikes. Incarcerating these offenders does not benefit public safety, but carries a great financial and human cost. Therefore we must estimate the number of false positive errors created by this legislation.

As all offenders in California who commit three strikes are incarcerated for a minimum of 25 years, and as most other American states utilize some form of Three Strikes legislation, it is impossible to use a current American offender population to estimate the rate of unnecessary incarceration created by the Three Strikes law. In addition, there are a number of advantages in using an existing Canadian sample of offenders to estimate the false positive rate over a similar California sample.

All criminal code offenses committed in Canada are reported and entered into a central database maintained by the Royal Canadian Mounted Police (RCMP, a federal police force) after verification of the identity of the offender by fingerprinting. Thus, we can obtain a complete criminal history of our Canadian sample whereas with a California sample, out of state convictions are more difficult to obtain and verify other than charges and convictions for federal offenses. Given the importance of obtaining accurate long-term recidivism data for the three strikes study, there are distinct advantages to using an analogous Canadian sample to evaluate the research question we posed. Therefore, the present study used two samples of Canadian federal male offenders to estimate the false positive rate of California's Three Strikes law. The most conservative assumptions—that is, assumptions that were least likely to overestimate the false positive rate of the Three Strikes law in California—were used in the design of this study.

Methodology

Participants

The first sample consisted of 73 offenders taken from a random sample of offenders from the Canadian federal male offender population (N = 555), based on the criteria outlined in the procedure section below. The mean age at first violent or serious conviction was 20.5 years (SD = 2.6), mean age at data collection date was 44.2 years (SD = 3.6), and the mean follow-up time was 23.8 years (SD = 3.9). A second sample was used for cross-validation. This second sample (n = 84) was selected using the same sample selection

**The opinions expressed are those of the authors and do not necessarily reflect those of the Regional Psychiatric Centre (Prairie) or the Correctional Service of Canada. The authors wish to acknowledge the contributions of Kim C. Wong, whose time and effort in organizing parts of the data greatly assisted us. Jennifer Ondrack's contribution to the review of the historical and empirical background was also appreciated.* *Correspondence can be sent to: Grant Burt, P.O. Box 9243, 2520 Central Avenue, Saskatoon, Saskatchewan, Canada, S7K 3X5, or by e-mail to burtgn@csc-scc.gc.ca.* *Portions of this paper were presented at the 59th Annual Convention of the Canadian Psychological Association in Edmonton, Alberta, Canada.*

criteria from a random sample of male offenders in the Prairie Region of Canada (N = 274). The mean age of the second sample at first violent or serious conviction was 19.4 years (SD = 2.5), mean age at data collection was 46.4 years (SD = 5.0), and the mean follow-up time was 27.0 years (SD = 5.4).

Ideally, American offenders would be used in this study. However, the Canadian federal and American state offender populations are quite similar. Approximately 94 percent of American state offenders are male, as are 97.5 percent of Canadian Federal offenders (Bureau of Justice Statistics, 1989; Solicitor General Canada, 1996). In both the American state and Canadian federal correctional systems, the highest proportion of offenders fall within the 18-24 age cohort at release from custody (Bureau of Justice Statistics, 1989; Statistics Canada, 1996).

General and violent recidivism rates are comparable for both populations. Approximately 47 percent of all American state offenders and 49 percent of Canadian federal offenders are convicted for new offenses within three years of release (Bureau of Justice Statistics, 1989; Canadian Centre for Justice Statistics, 1992). In terms of violent recidivism, 30.4 percent of American offenders incarcerated in state penitentiaries for violent offenses are re-arrested on violent charges within three years of release (Bureau of Justice Statistics, 1989). Similarly, approximately 20 percent of Canadian Federal violent offenders are re-convicted of a new violent offense within three years of release (Motiuk & Belcourt, 1997). Given that re-arrest rates are higher than re-conviction rates, the American and Canadian violent recidivism rates are quite similar. Overall, we would argue that Canadian federal offenders provide an adequate comparison group with which to estimate the false positive rate under the Three Strikes law in California.

Procedure

The criminal records used to follow up the offenders were obtained from an official database of criminal code convictions maintained by the RCMP. This information is verified by fingerprinting, and includes all criminal code convictions accrued by an offender under the Canadian Criminal Code anywhere in Canada.

Canadian Criminal Code offenses that would be considered serious or violent under existing California laws were coded as "true strikes," using Section 667.5. (c) of the California Penal Code (State of California, 1994) as a guide. As there are no direct Canadian equivalents for all section 667.5.(c) strikes, judgments had to be made regarding the set of Canadian Criminal Code offenses that mapped onto section 667.5.(c) (see Appendix for the coding system used in this study). The third strike, as previously mentioned, could be one of approximately 500 felonies, a much larger set of offenses than that found in Section 667.5.(c). To reduce the error involved in judging what constituted one of these 500 felonies, and to err on the conservative side, only violent felonies found in Section 667.5.(c) (i.e., strikes) were categorized as Third Strike offenses.

After Canadian offenses were coded into true strikes and "non-strikes," offenders who had been convicted of at least one true strike were identified. Only offenders who had committed their first strike-equivalent offense at or before the age of 25 were selected, as previous research indicates that the majority of chronic offenders have committed their first offense early in their criminal career (Andrews & Bonta, 1998). Finally, only offenders with a minimum of 15 years of follow-up time were included in the sample.

Very conservative criteria were utilized in this study to code offenses as strikes or non-strikes. This was done to ensure that offenders who were included in the calculation of false positive rates committed offenses that clearly would be included under the California Penal Code Section 667.5.(c). Our selection criteria, therefore, underestimated the false positive rates.

Results

The results of applying the criteria outlined in California's Three Strikes legislation to offenders in both samples who were convicted of three or more strikes are presented in Table 1.

In the first sample, of the 50 offenders who committed three or more true strikes, 15 did not commit any further violent offenses after release from incarceration. A Three Strikes policy would have a false positive rate of 30 percent with this sample.

Of the 45 offenders who committed three or more true strikes in the second sample, 14 did not commit any further violent offenses after release. A Three Strikes policy would have a false positive rate of 31 percent with this sample. As the estimates from the 2 samples did not differ statistically, a combined Clopper-Pearson .95 probability confidence interval (Clopper & Pearson, 1934) was calculated to range from 21.5 percent – 40.8 percent.

TABLE 1

Exact Number of Strikes Committed During Follow-up Period	Sample 1 (N_1 = 73) n	Sample 1 (N_1 = 73) % N_1	Sample 2 (N_2 = 84) n	Sample 2 (N_2 = 84) % N_1	Percent of offenders who committed 3 or more strikes and would receive a life sentence under Three Strikes legislation: Sample 1	Sample 2
3 strikes	15	21	14	17	30[a]	31[a]
4 strikes	10	14	7	8	20	16
5 strikes	14	19	8	10	28	18
6 or more strikes	11	15	16	19	22	35
Total	50	69	45	54	100	100

Discussion

The current findings indicate that almost one third of the studied offenders who would be targeted by California's Three Strikes law do not go on to commit future violent offenses. The incarceration of these offenders would not have an impact on reducing violent crime rates. These findings suggest that California's Three Strikes and You're Out law has a dangerous potential to over-incarcerate. This is especially distressing considering that the estimated false positive rates in this study are likely to underestimate the actual false positive rate.

There are several aspects of the structure and application of this policy that would suggest that the true false positive rate of Three Strikes is higher than our estimate. Most obvious is the over-inclusiveness in defining the third strike under California's Three Strikes law, whereby, if an offender has committed two crimes considered serious or violent, the commission of a large number of possible subsequent felonies can be considered a third strike. Also, the inclusion of offenses such as robbery and burglary as strikable offenses may overestimate many offenders' potential for violence.

We have taken great care to ensure that the Canadian samples are reasonable replicas of American state offender samples. The age ranges and general and violent offending patterns are quite similar between the American state offender population and the Canadian samples. There is no direct one-to-one relationship between the California Three Strikes criteria and the Canadian criminal code offenses. However, by using very conservative criteria to designate what constitutes a strikable offense, especially in the case of the third strike, we have erred on the conservative side and, if anything, underestimated the false positive rate.

Over-incarcerating offenders does not serve the interests of justice or the interests of the taxpayer. Unnecessary and excessive incarceration violates the civil liberties of these offenders and requires that the public sacrifice valuable tax dollars to maintain an expensive correctional and justice system, with no benefit to public safety. A more effective and ethical approach to addressing the problem of violent crime would require a more comprehensive examination of an offender's risk for violence than is provided by the Three Strikes law. As effective correctional treatment has been associated with decreases in violent recidivism (Andrews et al., 1990), allocating funds toward developing and delivering effective correctional treatment programs should provide a more cost effective and humane method of reducing violent crime.

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Appendix A

California's Three Strikes (From California Penal Code—see References above):	Possible Canadian Equivalents:
1. Murder or voluntary manslaughter.	First degree murder; Second degree murder; Manslaughter
1. Mayhem	Aggravated assault; Cause bodily harm with intent; Conspiracy to commit assault causing bodily harm
2. Rape as defined in paragraph (2) of subdivision (a) of Section 261*.	Aggravated sexual assault; Attempted rape; Attempted sexual assault; Party to offense of sexual assault; Rape; Sexual assault; Sexual assault causing bodily harm; Sexual assault with a weapon;
*Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.	
4. Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.	Anal intercourse; Buggery or bestiality;
5. Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.	3. Sexual Interference
6. Lewd acts on a child under the age of 14 as defined in Section 288*.	Attempted sexual intercourse with a female under 14 yr.; Intercourse with a female under 14 yr.; with a female under 14 yr.
*Any sexual act attempted or committed with a child under the age of 14.	
7. Any felony punishable by death or imprisonment in the state prison for life.	Conspiracy to commit murder
8. Any felony in which the defendant inflicts great bodily injury on any per-	Attempt to choke or strangle; Assault, Assault causing bodily harm; Assault a peace officer; Assault with a weapon; Assault with intent to commit an

California's Three Strikes:	Possible Canadian Equivalents:
son other than an accomplice which has been charged and proved as provided for in Section 12022.7[1] or 12022.9[2]on or after July 1, 1977, or as specified prior to July 1, 1977, in Section 213, 164, and 461, or any felony in which the defendant uses a firearm which has been charged and proved as provided in Section 12022.5[3] or 12022.55[4]. [1] Additional sentences would be implemented if great bodily harm resulted from the commission or attempted commission of a felony, provided that the great bodily harm is not an element of the offense. [2]Additional sentences would be implemented for infliction of injury causing the termination of a pregnancy or discharge of firearm causing paralysis or paraparesis. [3]Additional sentences would be implemented for the use of a firearm, assault weapon, or machine gun. [4] Additional sentences would be implemented for discharging a firearm from a motor vehicle.	indictable offense; Assault with intent to wound; Choking; Common assault; Conspiracy to commit assault; Dangerous use of a firearm while committing an indictable offense; Discharge firearm with intent; Overcoming resistance; Prison breech with violence; Use of firearm during commission of an offense; Wounding with intent
9. Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designated for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhibited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022*, in the commission of a robbery. *Any person who uses a deadly or dangerous weapon in the commission or attempted commission of a felony would receive additional punishment, unless use of a deadly or dangerous weapon is an element of the offense.	Attempted robbery; Attempted robbery with violence; Conspiracy to commit robbery; Party to offense of armed robbery; Robbery; Robbery while armed; Robbery with threats of violence; Robbery with violence; Theft with violence
10. Arson in violation of subdivision (a) of Section 451*. *Arson that causes great bodily injury.	Arson; Conspiracy to commit arson
11. The offense defined in subdivision (a) of Section 289* where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. *Anal or genital penetration by a foreign or unknown object for sexual purpose.	Indecent assault on a female; Indecent assault on a male
12. Attempted murder.	Attempted murder
13. A violation of Section 12308*. *Explosion of a destructive device with the intent to commit murder.	Criminal negligence causing death
14.Kidnapping in violation of subdivision (b) of Section 207*. *Kidnapping of a child under the age of 14 for the purpose of commiting a sexual act.	Forcible confinement
15. Kidnapping in violation of subdivision (b) of Section 208*. *Kidnapping of a child under the age of 14 without the intent to commit a sexual act, and excluding biological parents.	Conspiracy to commit kidnapping; Kidnapping
16. Continuous sexual abuse of a child in violation of Section 288.5*. *The engagement of three or more acts of substantial sexual conduct with a child under the age of 14.	Attempted incest; Incest; Sexual contact with a child
17. Carjacking, as defined in subdivision (a) of Section 215[1] , if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022[2] in the commission of the carjacking. [1] The act of taking possession of a motor vehicle from another person who is immediately present, through the use of force or fear. [2] Any person who uses a deadly or dangerous weapon in the commission or attempted commission of a felony would receive additional punishment, unless use of a deadly or dangerous weapon is an element of the offense.	Attempted armed robbery; Armed robbery

Utah Presentence Investigation Reports: User Group Perceptions of Quality and Effectiveness

Michael D. Norman, Weber State University
Robert C. Wadman, Weber State University

Introduction

DESPITE THE MANY CHANGES that have occurred in the provision of probation services during recent years, two essential functions remain at the core of all probation systems. These are the preparation of presentence investigation reports (PSI) and the supervision of offenders granted probation by the courts.

The PSI is typically prepared after conviction but prior to sentencing. Presentence reports are frequently required for any felony offense and are sometimes used in misdemeanor cases as well. Latessa and Allen (1999) estimated that more than 85 percent of states require the report for felony offenses. In other jurisdictions, the preparation of a PSI is discretionary with the court.

Historically, the presentence investigation report developed as probation became a more widely used sentencing practice. Initially, judges used probation officers to gather background information on the accused as a means of individualizing the sentence (Sieh, 1993). Today, the presentence report is usually prepared by a probation officer, although some jurisdictions contract with private agencies for the report. In addition, defense attorneys occasionally commission the preparation of a private presentence report to submit to the sentencing court as an alternative to the probation department report. Private PSIs are allowed in many states and in the federal courts. Available evidence suggests that they are not widely used, however (Granelli, 1983: Kulis, 1983; Hoelter, 1984).

Different groups use the presentence investigation report for different reasons. The primary purpose of the PSI is to provide the judge with relevant information on which to base an equitable sentence. Since most cases are resolved through negotiated guilty pleas, judges typically have very little information about the offender. They rely heavily on the PSI for pertinent information about both the offense and the offender. Additionally, the presentence report can be used by prison officials if the offender is incarcerated, by paroling authorities for consideration in prison release decision-making, and by probation and parole officers as a tool for community supervision. The PSI also provides important data for research purposes (Abadinsky, 2000).

Cromwell and del Carmen (1999) have asserted that historically the presentence investigation report was considered an offender-based document which focused upon understanding as much as possible about the offender's background, the causes of the offense, and the likelihood of rehabilitation. As the popularity of the indeterminate sentence and rehabilitation declined in the 1980s, the traditional offender-based PSI gave way to the offense-based presentence report. The offense-based PSI focused more extensively on the circumstances surrounding the crime, aggravating and mitigating case factors, the offender's involvement, and his criminal history.

In addition, some observers maintain that the PSI today has become a less significant part of the sentencing process for several reasons. First, judicial discretion in sentencing has been reduced since the passage of determinate and mandatory minimum sentencing laws. Second, most convictions occur as the result of plea bargaining. Often, the eventual sentence has been the subject of negotiations between the defense attorney and the prosecutor, thus lessening the need for a sentencing recommendation in the PSI. Finally, statutory language and sentencing guidelines further limit the authority of the judge in deciding sentences (Clear & Dammer, 2000).

This study examined the attitudes of four specific user groups toward the quality and effectiveness of the PSI in the state of Utah. These four groups were judges, prosecuting attorneys, public defenders, and probation/parole officers engaged in the supervision of offenders. Specifically, the 227 respondents identified the strengths and weaknesses of the current report, quantified the relative importance of the various content areas in the document, revealed how they read the PSI, and offered their views on selected PSI issues.

The objective of the study was to provide specific recommendations to the Utah State Department of Corrections for improving the quality and usability of the PSI.

Study Design and Participants

A survey instrument was developed to ascertain the attitudes of 227 publicly employed individuals who are primary users of the presentence investigation report in the state of Utah. The questionnaire consisted of 37 items. Two questions were open-end, one was multiple choice, and the other 34 items were closed-end. A four-point Likert Scale was used for the 34 closed-end items. Experienced members of the Utah Department of Corrections and the Utah State Judiciary tested a draft of the survey instrument. Data collection ensued after revisions were made to the questionnaire.

During April 1999, the questionnaire was distributed statewide to 378 potential respondents representing four distinct PSI user

groups. These included 77 district court judges, 101 prosecutors, 150 adult probation/parole officers, and 50 public defenders. Rather than using random samples, the research team identified the total number of individuals from each of the four subgroups and attempted to include the entire population in the study.

Each survey included a cover letter explaining the study's purpose and assuring confidentiality. Pre-addressed postage-paid envelopes were enclosed with each survey for convenience of return. The respondents were given three weeks to complete and return the questionnaires. Follow-up phone calls were made to ensure that the surveys were received and to answer potential questions.

The participants returned 227 questionnaires providing a response rate of 60 percent. All of the returned surveys contained useable data.

The tables were based on simple frequency analysis. Where the frequency analysis came from cross tabulation, the chi square (.05 or less) test of statistical significance was met to ensure that the relationship was not due to chance.

The population was predominately male (80 percent), between the ages of 31 and 50. Among the four PSI user subgroups judges made up 22 percent of the total respondents, prosecutors 34 percent, public defenders 4 percent, and probation/parole officers 40 percent.

Many PSI Users Do Not Read the Entire Report

One question asked respondents to identify their approach to reading the presentence investigation report. This question stated:

When reading a PSI, I: a) start at the beginning and read the entire report section by section; b) skip over most of the report and focus on the evaluative summary and sentencing recommendation sections; c) skim and scan the entire report; d) other.

We included this question for two reasons. First, some critics have asserted that judges sometimes do not bother to read the report (Cromwell and del Carmen, 1999; Blumberg, 1970). This research quantified not only judicial responses to this question but those of other PSI user groups as well. Second, developing an understanding of how various user groups read the PSI provided a framework for recommending methods of improving the existing document.

Overall, 55 percent of the respondents indicated that they start at the beginning and read the entire report section by section. Among the subgroups, 90 percent of the judicial respondents claimed to read the entire report. Fewer than half (47 percent) of all prosecutors stated that they read the entire PSI. Many of the prosecutors either skim and scan the entire report or ignore most of it and focus on the sentencing recommendation and evaluative summary sections. Probation and parole officers had the lowest percentage (40 percent) of subgroup users who read the entire report and the highest percentage (38 percent) of respondents who skim and scan the document. "Other" approaches to reading the PSI frequently took two distinct forms. Most commonly, respondents who chose the "other" approach indicated that they would read the evaluative summary and sentencing recommendation sections first and then other sections which they deemed most important. In addition, some respondents stated that they chose to read only certain sections of the report they considered important while ignoring the rest. This might or might not have included the evaluative summary and sentencing recommendation sections.

A relatively high percentage of the PSI users (45 percent) acknowledged that they do not read the entire document. While this finding might surprise some, we believe that it is consistent with other communications research on selective reading. As a result of time constraints, working professionals skim and scan documents and read only what they deem important. Given the pressure and time limitations confronting the various PSI user groups, there was no reason for us to assume that they would behave any differently.

TABLE 1
N=277
Lowest Ranked Presentence Investigation Sections

Section Title	Percent of Respondents	Number of Respondents
1. Military Record	87.6%	(198)
2. Physical Health	79.2%	(179)
3. Mental Health	79.1%	(178)
4. Marital History	79.1%	(178)
5. Financial Record	72.8%	(163)
6. Education	68.1%	(154)
7. Plea Bargain	62.6%	(159)
8. Collateral Contacts	59.1%	(133)
9. Custody Status	49.1%	(110)
10. Employment History	47.3%	(107)

Denotes "Extremely Important" and "Very Important" Response Totals

Inaccurate and Unverified Information is a Problem in the PSI

The study asked the PSI user groups two open-end questions. The first question was:

In my opinion, the greatest area(s) of weakness in the current PSI is/are?

Many respondents expressed concern about inaccurate information left uncorrected in the PSI. Two areas were mentioned most often. The first was the accuracy of information contained in the criminal history section of the report. Some respondents stated that the case disposition portion of the criminal history section of the PSI either omitted case dispositions altogether or recorded incorrect case outcomes. In addition, many respondents complained that the information obtained from the defendant and included in the PSI was often self-serving, deceptive, or simply untrue. Perhaps of most concern was the complaint that the probation officer preparing the report frequently made no attempt to verify the accuracy of the information supplied by the defendant. Prosecutors and probation/parole officers were the user group members most likely to make this assertion.

Some respondents indicated that the underlying cause of this problem was the large volume of presentence reports and the time limitations placed on those individuals preparing them.

The second open-end question asked the following:

In my opinion, the greatest area(s) of strength in the current PSI is/are?

The respondents appeared to have more difficulty articulating specific strengths in the PSI than they did weaknesses. The respondents identified two strengths most frequently: They reported that the current PSI provided a broad, comprehensive background history on the defendant, including detailed information related to the present offense. In addition, many respondents reported that the PSI is a useful tool in managing/supervising the offender, regardless of whether the defendant is ultimately incarcerated or sentenced to a community corrections program.

Beyond these two observations, the respondents focused their positive comments on specific sections of the PSI that they believed to be most valuable. These included the past adult criminal record information and the probation/parole supervision history.

Utah's felony Presentence Investigation Report contained 23 separate sections. The respondents were asked to rank the importance of each section using a Likert scale. The four-point scale included the following response choices: Extremely Important, Very Important, Somewhat Important, and Not Important At All.

Lowest Rated PSI Sections Reflect Less Interest in the Offender's Personal Life

Table 1 identified those sections of the PSI deemed "Somewhat Important" or "Not Important At All" by the respondents. Clearly, there appeared to be a pattern reflecting a lower level of interest in those sections of the PSI containing information about the defendant's personal life. These sections included 1. military record; 2. physical health; 3. mental health; 4. marital history; 5. financial situation; 6. education; and 7. employment history.

While it is difficult to understand precisely why some of these sections received such low rankings, several factors might have contributed. First, during the past 20 years or so, the United States has seen a significant philosophical shift in sentencing away from rehabilitation toward a system focused on offender accountability and retribution. This philosophical change has resulted in a variety of public policy initiatives such as the passage of truth in sentencing laws, three strikes legislation, and minimum mandatory sentencing statutes. These changes share at least two common elements. They increased the severity of punishment afforded criminals while reducing the discretion of judges, prosecutors, defense attorneys, and parole boards. Second, they focused more attention on the crime committed and less at-

TABLE 2
N=277
Highest Ranked Presentence InvestigationSections

Section Title	Percent of Respondents	Number of Respondents
1. Adult Record	97.8%	(221)
2. Probation/Parole	96.5%	(218)
3. Victim Impact Statement	92.5%	(209)
4. Pending Cases	88%	(198)
5. Official Version of Offense	72.8%	(193)
6. Drug History	84.9%	(191)
7. Agency Recommendation	83.6%	(189)
8. Alcohol History	80.1%	(181)
9. Gang Affiliation	78.8%	(178)
10. Evaluative Summary	78.3%	(177)

Denotes "Extremely Important" and "Very Important" Response Totals

TABLE 3
PSI Category Rankings by User Group Type
Number ( ) and Percent %

JUDGES	ADULT PROBATION AND PAROLE	PROSECUTING ATTORNEYS	PUBLIC DEFENDERS
Adult Record (48) 100%	Adult Record (82) 96.5%	Adult Record (77) 100%	Adult Record (9) 100%
Probation/Parole History (48)100%	Probation/Parole History (82)96.5%	Probation/Parole History (75)97.4%	Probation/Parole History (8)88.9%
Victim Impact Stmt.(47)97.9%	Victim Impact Stmt.(81)95.3%	Pending Cases (72)94.7%	Background & PLS (8)88.9%
Official V. of Off. (44) 91.7%	Official V. of Off. (80) 94.1%	Victim Impact Stmt.(71)92.2%	Pending Cases (7) 77.8%
Agency Recomm. (43) 83.3%	Drug History (78) 91.8%	Agency Recomm.(70) 90.9%	Agency Recomm. (7) 77.8%
Drug History (40) 83.3%	Alcohol History (75) 88.2%	Gang Affiliation (63) 81.8%	Drug History (7) 77.8%
Pending Cases (40) 83.3%	Pending Cases (72) 84.7%	Evaluative Summ.(62)80.5%	Alcohol History (7) 77.8%
Alcohol History (39) 81.3%	Juvenile Record (69) 81.2%	Official V. of Off.(60) 78.9%	Mental Health (7) 77.8%
Defendant V. of Off.(38)79.2%	Evaluative Summ.(68) 80%	Defendant V. of Off.(60)77.9%	Employment Hist.(7)77.8%
Gang Affiliation (38) 79.2%	Agency Recomm.(66) 77.6%	Drug History (60) 77.9%	Custody Status (7) 77.8%
Juvenile Record (35) 72.9%	Gang Affiliation (66) 77.6%	Juvenile Record (59) 76.6%	Evaluative Summ.(6) 66.7%
Evaluative Summ.(35) 72.9%	Mental Health (56) 65.9%	Alcohol History (55) 71.4%	Defendant V. of Off. (6)66.7%
Custody Status (32) 68.1%	Background & PLS(52)61.2%	Background & PLS(44)57.1%	Gang Affiliation (6) 66.7%
Background & PLS(32)66.7%	Employment Hist. (49) 57.6%	Mental Health (43) 55.8%	Victim Impact Stmt.(4) 44.4%
Mental Health (31) 64.6%	Defendant V. of Off.(45)52.9%	Employment Hist. (39) 50.6%	Collateral Cont. (4) 44.4%
Collateral Cont.(21) 43.8%	Custody Status (38) 45.2%	Custody Status (34) 44.2%	Official V. of Off. (3) 33.3%
Employment Hist. (21) 43.8%	Plea Bargain (36) 43.4%	Collateral Cont.(27) 35.1%	Education (3) 33.3%
Plea Bargain (17) 37.8%	Collateral Cont.(35) 41.7%	Plea Bargain (26) 34.2%	Financial Situation(3)33.3%
Education (18) 37.5%	Education (28) 32.9%	Education (20) 26%	Physical Health (2) 22.2%
Marital History (13) 27.7%	Financial Sit. (27) 32.1%	Financial Sit. (20) 26%	Marital History (2) 22.2%
Financial Sit. (11) 23.4%	Marital History (19) 22.4%	Physical Health (16) 20.8%	Military Record (2) 22.2%
Physical Health (8) 16.7%	Physical Health (19) 22.4%	Marital History (13) 16.9%	Plea Bargain (1) 11.1%
Military Record (4) 8.3%	Military Record (10) 11.8%	Military Record (11) 14.3%	Juvenile Record (1) 11.1%

This frequency distribution includes responses rated "Extremely Important" or "Very Important" by the respondents.

tention on the characteristics of the offender that might contribute to treatment programming.

In addition, while de-emphasizing the rehabilitation of offenders, the justice system has focused increasingly on victims' rights. Many states today (including Utah), require by statute the inclusion of a "victim impact statement" in all presentence reports (Clear & Dammer, 2000).

Highest Rated PSI Sections Reflect Greater Emphasis on the Offense, the Victim, and the Offender's Past Adult Record

Table 2 provides a breakdown of those sections of the PSI deemed Extremely Important or Very Important by the respondents. Again, something of a pattern emerged. Only two of the top 10 rated sections have direct offender treatment planning implications. Those were the Alcohol and Drug History sections. Even those sections might have been considered by the respondents more as indications of the likelihood of re-offending than as elements of a rehabilitation plan.

Most of the highest rated sections of the PSI focused upon the current offense (Official Version of Offense and Pending Cases sections), harm to the victim (Victim Impact Statement), and the offender's prior adult record and supervision history (Adult Record and Probation/Parole History sections).

The high rating of these sections further underscored the shift from a rehabilitation approach to one of punishment and retribution. Moreover, we believe that these rankings reflected the commitment of the Utah Department of Corrections to the goal of public safety through risk assessment and effective offender classification and management.

The ranking outcomes may have been influenced by two additional factors. First, the Utah Department of Corrections has recently gone through an approximate 13-year period in which executive leadership concentrated heavily on a law enforcement philosophy with public safety issues taking precedence over offender rehabilitation concerns. Only in the past two years have we seen new executive leadership in the department attempting to enhance public safety not only through appropriate risk assessment and offender management practices, but by increasing the opportunities for offenders to lead law-abiding lives through treatment programming.

The second issue that might have influenced the rankings is an inherent limitation of this study. While we received excellent participation in the study from judges, prosecutors, and probation/parole officers, the response rate from the public/legal defender community was disappointing. Fifty survey instruments were distributed statewide to public defenders, with only nine returned. Larger numbers of defense attorney participants might well have produced changes in the ranking of the PSI sections.

Table 3 provides a breakdown of how each user group ranked each of the 23 categories of the Utah PSI. Among the four user groups, there was remarkable consistency both in the highest and lowest rated areas. The highest valued PSI sections included the l. adult record; 2. probation/parole history; 3. victim impact statement; 4. official version of the offense; and 5. pending cases. Conversely, the lowest rated sections were fairly consistent across the four groups. These included 1. military record; 2. marital history; 3. financial situation; 4. physical health; and 5. education.

The final part of the study asked the respondents to identify the extent of their agreement or disagreement with five statements. The questionnaire used a four-point Likert scale with the following response choices: Strongly Agree, Agree, Disagree, Strongly Disagree. The statements focused on several different themes. They include:

•What the most important purpose of the presentence report is

•Whether the report presents a fair, objective view of the crime committed and the defendant's background

•Whether the presentence report is factually accurate

•Whether the PSI contains the biases of the probation officer preparing the report

Historically, the PSI has served multiple purposes. Chief among those was assisting the court in reaching an appropriate sentencing choice. However, with the recent expansion of determinate and mandatory sentencing laws, some observers have suggested that the PSI is less important today than it once was in aiding the court in the sentencing process. This study asked the PSI user groups to address this issue by responding to the following statement:

The most important purpose of the PSI is to assist the court in reaching a fair sentencing decision.

Among these respondents, there was overwhelming agreement with this statement. Two hundred nine respondents (92.5 percent) either agreed or strongly agreed with the statement. Only seventeen respondents (7.5 percent) disagreed or strongly disagreed with the statement. Clearly in Utah, the primary function of the PSI remains assisting the court in reaching an appropriate sentencing choice.

In an attempt to gain an overall assessment of the perceived quality of the presentence report, the respondents were asked to agree or disagree with the following statement:

In general, the PSI is an accurate, well-written document that provides a fair, objective view of the offense committed and the background of the defendant.

Again, there was overwhelming agreement with this statement. Two hundred nine respondents (92.5 percent) either agreed or strongly agreed with this statement. Sixteen respondents (7.1 percent) either disagreed or strongly disagreed with the statement. These data would support the notion that the PSI user group members are generally satisfied with the overall quality of the document. Regarding the accuracy of information contained in the PSI, we asked the participants to respond to the following statement:

The presentence investigation report rarely contains factual errors.

One hundred forty-four respondents (63.7 percent) either agreed or strongly agreed with this statement. However, 79 respondents (35 percent) either disagreed or strongly disagreed with the statement.

In order to determine which user groups were more likely to believe that the PSI contained factual errors, the data was cross-tabulated by user group. Public defenders and judges were the user groups who most frequently reported factual errors in the document. Sixty-six percent of the public defenders and 57 percent of the judges believed that the PSI contained factual errors. Probation and parole officers were the user group least likely to agree that the document contained errors (25 percent).

This finding should be a cause for concern given the surprisingly large number of respondents who believed that the PSI does contain inaccurate information. While this is speculative on our part, we believe that if this study included a larger number of defense lawyer respondents, the 35 percent figure would probably be even higher.

An area of concern from defense attorneys in the preparation of the presentence report has long been the issue of bias on the part of the probation officer who prepares the report. In

an attempt to ascertain the views of the PSI user group members, we included in the survey instrument two statements regarding probation officer bias. Again, the responses here should be viewed with caution because of the small number of defense counsel who responded to the survey. The first statement reads:

Probation officers who prepare the PSI usually refrain from including personal biases and opinions in the report.

One hundred seventy-five respondents (77.4 percent) either agreed or strongly agreed with this statement. Forty-eight respondents (21.2 percent) either disagreed or strongly disagreed with the statement. Similar responses were found with the second statement which read:

Probation officers who prepare the PSI are frequently biased against defendants and identify greatly with the interests of prosecutors and police.

One hundred ninety-six respondents (86.4 percent) either disagreed or strongly disagreed with this statement. Only 30 respondents (13.2 percent) agreed or strongly agreed with it. There is very little support from these user group members for the notion that the probation officers preparing the reports are biased against defendants either through over-identification with police or prosecutors or by including personal biases and opinions in the document.

Summary and Recommendations

Clearly, the survey results revealed that many PSI user group members were selective readers. Nearly half (45 percent) of all the respondents indicated that they do not read the entire report and instead use some form of skimming and scanning in order to identify those sections they deemed most important.

The PSI format currently used in Utah contained 23 separate sections. This study quantified the relative importance the user group members placed on each section. The PSI category rankings demonstrated a pattern of preferences on the part of the respondents that favored offense-based sections over those involving offender characteristics such as physical and mental health, education, employment history, financial situation, and marital history. The sections ranked highest by the user group members included factors related to the current offense, the offender's culpability in the crime, harm done to the victim, and risk assessment characteristics such as gang affiliation, substance abuse problems, prior adult record, and probation/parole supervision history.

In significantly large numbers, the user group members expressed concerns about the accuracy of the presentence report. More than one-third of the respondents (35 percent) raised concerns about incorrect information in the PSI. Two issues were raised most frequently. First, errors in the prior adult record section of the report: The respondents asserted that case disposition information contained errors or was sometimes omitted altogether. Second, many prosecutors and probation/parole officers expressed concerns that statements made by the defendant and included in the PSI were often self-serving, untrue, and largely unverified. Many respondents asserted that accuracy problems in the PSI were caused by the pressures of too many PSIs to prepare and too little time to complete them. Not a single respondent attributed this problem to a lack of diligence on the part of the probation officer preparing the report.

Aside from the problem of accuracy in the report, most respondents indicated that the PSI, as currently prepared, provided a fair, objective view of the defendant and the offense committed. Further, there was little support for the notion that the probation officer preparing the report is biased against the defendant or over-identified with the interests of police or prosecutors. As mentioned previously, we believe that had the respondents included a larger number of defense attorneys, the PSI might not have received such glowing reviews.

Regarding specific recommendations to improve the quality and usability of the PSI in Utah, we offer the following recommendations in the spirit of generating further study and discussion by those inside the system who understand the intricacies of this process better than we.

• We recommend reorganizing the report using a "Most Important to Least Important" style. We suggest moving the Evaluative Summary and Agency Recommendation sections to the front, followed by those PSI sections rated most important by the user group members. The evaluative summary section could be significantly improved by including more evaluation or assessment information about the defendant.

• We recommend that representatives from the various user groups meet to consider eliminating some sections of the report and consolidating others. In its present form, the PSI inundates the reader with more information than can be easily absorbed

•We recommend that representatives from the various user groups seriously examine resource allocation, considering both the time necessary to prepare the PSI as well as the large number of reports required annually.

Those responsible for revising the current presentence report should recognize that the sentencing purpose of the document as required by the judiciary may be different from the myriad functions the PSI serves for the Department of Corrections. For example, judges may not want, for sentencing purposes, some of the personal characteristics about the defendant that are important to the department in offender management planning. Revisions to the existing PSI should be made accordingly.

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Mock Job Fairs in Prison– Tracking Participants

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PROTECTING THE PUBLIC by confining inmates in secure institutions and providing opportunities for them to prepare for the transition from prison to their communities as law-abiding citizens are two cornerstones of the mission of the Federal Bureau of Prisons (BOP). These transition opportunities include mandatory literacy to achieve a GED; English as a Second Language for those who need it, and occupational training and work in Federal Prison Industries (FPI) to acquire the skills essential for post-release employment. In addition, BOP policy requires all federal prisons to offer release preparation programs addressing such life skills as parenting, financial management, problem solving, stress management, avoiding substance abuse, and related free-world survival skills.

The BOP also places heavy emphasis on teaching inmates job search and job retention skills, since we know that employment is one of the best indicators for post-release success. Prior to 1996, several federal prisons held job fairs, but they focused on providing job and related employment information, very similar to job fairs held in high schools and colleges. This format did not address the more extensive needs of men and women who had been in prison and out of the labor market for many years. Their long enforced absence from the labor market required additional attention to their job readiness and job search and retention skills.

The Crime Prevention Institute (CPI) is a non-profit organization based in Texas. Under the leadership of its executive director, Robb Southerland, it introduced mock job fairs into Texas prisons to help meet these special inmate employment needs. Mock job fairs were open on a voluntary basis to selected prisoners within a year or less of release. These prisoners participated in job interviews (generally five during the one-day mock job fair) conducted by professional company recruiters from employers operating businesses in nearby communities. A critical ingredient of these mock job fairs was the assurance by CPI that company recruiters were not required or expected to make any job offers. The purpose of the job fair was educational: to help inmates learn and practice job interviewing skills.

Despite these assurances very few companies initially were willing to become involved. Many employer representatives had never been inside a prison and had no intention of doing so. It took many written and telephone invitations followed up by personal visits to company personnel offices and informal contacts with local chambers of commerce and other employer associations to convince a handful of employers to participate in the first mock job fairs in Texas. Based on these early efforts and their modest results, Southerland was able to obtain a $450,000 grant from the Texas Board of Criminal Justice to fund job fairs in additional Texas prisons. By 1995 over 250 companies were participating in the CPI mock job fair program. Apple Computers, Doubletree Hotels, IBM, Wal-Mart and Motorola were among the better known national companies that were joined by many local community employers in these efforts.

National attention was focused on this exciting new program in August 1996 when the National Institute of Justice (NIJ), under the leadership of Marilyn Moses, program manager, published *Project Re-Enterprise: A Texas Program.* This report described in detail the origin and growth of the Texas mock job fair program and highlighted its possible replication by other correctional systems. This was followed up by NIJ's sponsorship of a national conference, *It's Our Business,* in Austin, Texas, September 30 to October 1, 1996. This conference exposed a diverse mixture of employers and criminal justice representatives (including BOP staff) to the potential value of inmate employment assistance programs. Shortly thereafter the BOP decided to strengthen its existing inmate release preparation programs by establishing an inmate placement program branch, which would build on practices already proved successful in other corrections systems and explore new program possibilities.

The bureau had a long history of mandatory literacy programs, and by 1991 had established the General Development Diploma as its literacy standard. Promotion to all institution and prison industry jobs above the entry level was contingent on achieving the diploma. In addition, institutions were required to provide occupational training programs reflecting both the institution's maintenance skill requirements and current free-world employment opportunities. These programs, coupled with the training and work opportunities provided by employment in FPI, helped prepare many federal prisoners for post-release employment.

What was missing was a direct connection between the releasing inmate and potential employers. Many prisoners were not involved in legitimate employment at the time

of their arrest and incarceration, and many also lacked legitimate job skills. These problems, coupled with long absences from the labor market due to their incarceration, presented special challenges to correctional administrators trying to reduce the recidivism rate by connecting released offenders to early employment.

Employment Enhancement Programs

In an effort to focus more attention on post-release employment, the Federal Bureau of Prisons established the Inmate Placement Program Branch (IPPB) in October, 1996. The branch focused on the following activities:

• Holding mock job fairs at appropriate federal prisons to educate inmates in the proper conduct of job interviews and to expose company recruiters to the skilled labor pool available among inmates about to be released;

• Training inmates scheduled to participate in job fairs in resume preparation, the conduct of job interviews, positive coping and related job readiness skills;

• Soliciting from employers lists of job openings to be posted in prisons, and encouraging about to be released inmates to apply for listed job openings;

• Responding to inmate correspondence about post-release employment and encouraging federal prisons to establish employment resource centers to provide on-site information and assistance to federal prisoners.

• Encouraging federal prisoners soon to be released to prepare employment portfolios which include, at a minimum, a certified copy of a birth certificate, a social security card, a resume, an application for a driver's license, a picture identification, education transcripts and documentation of work and related experience while incarcerated, and copies of education/training achievement certificates and diplomas;

• Training staff assigned to inmate employment enhancement programs;

• Serving as a resource and information clearinghouse for similar programs in other federal agencies and in state and local correctional systems.

The Mock Job Fair Experience

Thanks to the energy and commitment of BOP field staff, inmate employment programs in federal correctional institutions have grown impressively in the three years since the IPPB was established. The most impressive growth has been in the mock job fair effort. Federal correctional institutions (FCI) are encouraged to hold annual mock job fairs to assist federal prisoners to strengthen their job search skills.

Similar to the Texas model, company recruiters are invited into federal prisons to provide inmate participants with realistic job interview experiences, followed by immediate one-on-one evaluations of their performance. Each participating inmate is required to enroll in job fair preparation classes ranging from 14 to 25 hours of instruction. Instruction is frequently provided by nearby education and training organizations such as El Camino College at FCI Terminal Island, Metropolitan Detention Center in Los Angeles and Metropolitan Correctional Center in San Diego, Redlands Community College at FCI El Reno, Pima College at FCI Tucson, Eastern Arizona College at FCI Safford, Women and Youth for Self Reliance at FPC Phoenix, Tarrant County Community College at Federal Medical Center, Fort Worth, and Holmes Community College at FCI Yazoo City. In some cases the training is provided by local correctional institution staff who are already involved in substance abuse, release preparation, or some other related inmate education program.

Courses include how to prepare job applications and resumes, the importance of good grooming and proper posture during the interview, how to answer some of the tough questions regarding individual felony records, and how to focus on the positive experiences during incarceration. Institutions are encouraged to hold job fairs that combine scheduled job interviews with information resources. Staff from motor vehicle, social security, employment service, community corrections centers (halfway houses), federal probation, and other agencies that released offenders can expect to contact are invited to staff information desks during the job fair; they may also provide relevant publications. At many of the job fairs, the longest lines of inmates waiting to speak to resource visitors have been in front of the motor vehicle administration, community corrections center, and probation information tables. This may reflect the main areas of anxiety and concern shared by inmates close to release.

A *Mock Job Fair Handbook* has been published by the BOP, which walks involved staff through the many steps that lead up to the job fair day, and tells how to conduct the fair itself. Sample letters to community-based employers and educational and community service agencies are included in the handbook, and the importance of planning and follow-up procedures is also highlighted. Special sections discuss the selection of inmates for job fair participation and pre-job fair training. Over 750 hard-copy handbooks have been distributed not only to federal correctional staff but also to staff in many state and local correctional systems, and the handbook has been translated into French by correctional colleagues in Canada. The handbook is also available on the IPPB web site: www.unicor.gov/placement. This web site, from which the handbook can be downloaded, has received over 9000 "hits" since its establishment in 1997.

The table below reflects the growth of the

Mock Job Fairs

FISCAL YEAR	NUMBER OF FAIRS	NUMBER OF BOP INSTITUTIONS INVOLVED*	NUMBER OF FEDERAL PRISONERS INVOLVED
1997	4	4	305
1998	15	12	715
1999	37	25	1,661
2000 (thru 12/8/99)	14	6	570
Total	**70**	**47**	**3,251**

** Each institution is counted once, even if it had multiple job fairs.*

job fair program in the three years since its inception, particularly in the number of inmates who have participated. The growth is particularly impressive because organizing job fairs is voluntary, as is inmate participation in them. Staff members undertake responsibility for the conduct of the job fairs on a collateral duty basis.

Job Fairs by Reason

As of December 8, 1999, 47 federal prisons had held 70 mock job fairs. Over 3,000 federal prisoners and approximately 1000 company and service agency representatives have participated. Many institutions have held multiple job fairs and now schedule them annually. The numbers in parentheses in the chart below indicate the total number of job fairs held at each institution. Institutions such as Danbury and Lexington, which have held information job fairs for many years, combined their most recent fairs with inmate job interviews. A regional listing of BOP job fairs is shown below.

Consequences

The mock job fairs have had several unexpected results. Foremost perhaps has been their impact on the cooperating company recruiters. Many of these entered a prison for the first time to take part in a job fair, sometimes very reluctantly. They left impressed not only with the professionalism of the staff and the orderly appearance of the institution and its procedures, but also with the skilled labor pool they found among the inmates they interviewed. Education and community service agency representatives also eagerly became partners in the program and, like the company representatives, asked the institution to be sure to invite them back to the next job fair. Although the primary focus of the job fair was the education of the inmates, it soon became apparent that company and community representatives were sharing actively in an educational experience.

Inmates have testified that pre-job fair training coupled with the interview experience increased their self-confidence and taught them the importance of preparing a resume and collecting and safeguarding educational and work-experience transcripts, a social security card, a certified copy of a birth certificate, and other documents critical to post-release employment. They learned that having such documents in hand, preferably arranged in an orderly employment portfo-

Regional Listing of BOP Job Fairs

	Northeast	Mid-Atlantic	Southeast
	FCI Danbury (2)	FMC Lexington (3)	FCI Yazoo City (2)
	FCI Fort Dix	FCI Petersburg	FCI Marianna
	USP Lewisburg (Camp) (2)	FCI Cumberland	FCI Estill
	LSCI Allenwood (2)	FPC Alderson	FPC Coleman
	FPC Allenwood	FCI Morgantown (2)	FCI Talladega
	FCI Fairton	FCI Elkton	
	FCI Loretto	FPC Seymour Johnson	
	FCI Allenwood		
	FCI Schuylkill		
Total: Job Fairs:	**12**	**10**	**6**
Institutions:	**9**	**7**	**5**

	South Central	North Central	Western
	FCI Bastrop	FCI Greenville (2)	FCI Terminal Is. (2)
	FPC Bryan (2)	FCI Pekin (2)	FCI Tucson (2)
	FCI El Reno (5)	FCI Oxford (2)	FCI Phoenix (Camp) (2)
	FMC Fort Worth	FCI Sandstone (3)	FCI Safford
	FCI La Tuna	FCI Florence (2)	FCI Sheridan
	FCI Forrest City (3)	FCI Waseca	FCI Dublin
	FCI Big Spring	FMC Rochester	MDC Los Angeles
	FCC Beaumont (LOW)		FDC SeaTac
	FDC Oakdale		FPC Nellis
			MCC San Diego
Total: Job Fairs:	**16**	**13**	**13**
Institutions:	**9**	**7**	**10**

Grand Total: Job Fairs: 70
Institutions: 47

lio, will expedite post-release job interviews and actual employment. They came away from training aware that readying themselves for a job will help them use their community corrections and probation time more effectively. They are encouraged to line up job interviews before their final days in prison, rather than wait until they have been released to the community.

Most important, their interviews with company recruiters have convinced them that many employers will seriously consider hiring qualified released felons based on what they observe, on an individual case-by-case basis, during structured post-release interviews. Several companies have written to inmates interviewed during a job fair to remind them that the company is interested in their particular qualifications and asking them to apply to them for employment after release. Several companies have reported that they have already hired inmates interviewed during job fairs.Others have probably done so also without reporting it. All these experiences encourage releasing inmates to prepare for a more orderly transition to their families and communities.

The IPPB has made two videotapes of the recent job fairs at FCI's Terminal Island and Yazoo City. Employers, community representatives, and inmates eloquently express their appreciation of the job fair experience. Wardens of both institutions describe the staff enthusiasm for the program and highlight its low cost.

Follow Up and Evaluation

A report evaluating the job fair at the Federal Prison Camp at Bryan, prepared by Dr. Jane M. Tait of Development Systems Corporation (DCS), included the following comments:

• On a scale of 1 to 10 with 1 the lowest and 10 the highest, inmates rated the program at 9.7.

• The program was rated a 9 by the staff.

• All employers responded yes to "would you consider hiring ex-felons after the pilot experience?"

• All respondents would participate in future fairs. Respondents suggested they be held two or three times a year.

The report concluded with the observation that inmates' self-confidence and self-esteem were developed and expanded as a result of participation in the job fair, and that inmates became more aware of community-based services and job opportunities.

Additional evaluations were made of job fairs at FCI Terminal Island, California by El Camino College, at FCI Tucson by the University of Arizona, and at FCI's Phoenix and Big Spring by DSC. All found the same results reported by Dr. Tait: high ratings of the event by all staff, inmate, and company participants. All participants also indicated that they would be willing to participate in future job fairs, and many suggested that job fairs be held more often than once a year.

Many variables, often invisible to the researcher, contribute to human behavior and frustrate any outcome measurements. Successful recidivism studies, for example, which correlate prison programs with post-release success, require the most rigorous research standards, over extended periods of time, and involve the commitment of major resources not readily available for most corrections research. In addition, there is a built-in difficulty in all corrections research, because ex-offenders' fondest wish is to disconnect themselves from any part of the criminal justice system, particularly their former jailers. Correlating inmate employment enhancement programs with post-release outcomes, particularly recidivism, will not be easy. However, one result can be measured empirically, and immediately. Efforts by corrections staff to initiate and implement inmate employment assistance programs remind the men and women in prisons that they will be released some day, and that programs are in place to help them get ready for the transition back to their families and their communities. Most important, the available help includes practical assistance in finding and holding a job. The presence of company recruiters during prison job fairs—talking to the inmates, evaluating their job interview skills on an individual basis, and reassuring them that employers will hire qualified ex-felons—is a behavior-changing experience for most participating inmates. Posting job opening lists is also clear evidence to both inmates and corrections staff that post-release employment is a realistic goal for ex-offenders. The message is unmistakable: Many significant people are serious about connecting the released offender with a job, which everyone hopes will be the terminal point of the corrections experience. The kind of hope this picture engenders may be the most cost-effective option available to corrections managers and their community partners.

It is still too early to evaluate the impact of all BOP inmate employment efforts, but their consistent growth reflects a welcoming acceptance by participants. Approximately a dozen companies now provide job opening lists to be posted on federal prison bulletin boards. And an increasing number of inmates are preparing employment portfolios, in some cases assisted by local institution inmate employment centers. These positive activities contribute to a safer and more normal institution environment, regardless of their impact on recidivism.

Training Offender Employment Placement Specialists

The Crime Control and Law Enforcement Act of 1994 authorized the establishment of an Office of Correctional Job Training and Placement (OCJTP). This new office was created within the National Institute of Corrections and was mandated to encourage and support job training and placement services for both incarcerated and released offenders.

As early as 1995 the OCJTP initiated training programs for offender employment specialists (OES). These programs were designed primarily for state and local corrections staff, whose job responsibilities included job placement of released offenders. Local and state probation and parole, as well as halfway house and work-release center staff, were also eligible to apply for this training, which took place at the NIC Academy in Longmont, Colorado. The staff of federal corrections agencies were also eligible for participation, but their expenses were not covered by NIC. The week-long training covered:

• Reintegration and Transition

• Pre-Employment and Job Readiness Skill

• Job Development and Placement

• Marketing

• Community Resources and Coordination

•Job Retention

Participants generally came in in teams of two from across the entire United States and from such diverse agencies as state and federal probation services, state departments of labor, state and local departments of corrections, community correction centers, nonprofit groups that provided a wide range of services for released offenders, community and technical colleges, and county jails. IPPB

staff have served as instructors focusing primarily on mock job fairs and the overall IPPB mission.

These cooperative efforts with NIC inspired the IPPB to initiate its own OES training program aimed at the preparation of BOP staff to assume offender employment program responsibilities. To date, four BOP training sessions of 30 trainees each have been completed and two more are planned for Fiscal Year 2001. A special task group comprised of BOP staff who have completed OES training and have successfully conducted inmate employment programs at their institutions will be assembled during the week of April 16, 2000 to review the BOP inmate employment program and to consider future directions. They will be assisted by education, employer and community agency representatives that have participated in past and current inmate employment programs. A group of BOP wardens will also join the task group to share their views about the program and its future. This task group may be meeting at a critical juncture in the growing sensitivity of political leaders and the general public to the high cost of imprisonment and to the need to consider effective but less costly options. Certainly changing inmates into taxpayers is a worthy goal.

Clearinghouse Services

The IPPB, in collaboration with NIC's OCJTP, the U.S. Department of Education's Office of Correctional Education, the U.S. Department of Labor, and the National Institute of Justice, has undertaken to serve as a clearinghouse for information about inmate employment programs. This collaboration includes regular meetings with representatives from other government agencies to review and coordinate programs of mutual concern. In addition to a wide distribution of the *Mock Job Fair Handbook*, the IPPB has provided onsite and other assistance to both federal and state prisons and local jails that planned to hold job fairs and engaged in related inmate employment programs. Regional jails in California, Maine, and West Virginia and state correctional institutions in Florida and Minnesota are among the non-bureau corrections agencies that have held mock job fairs with the assistance of the IPPB.

Inmate Correspondence

The IPPB also responds to letters from federal prisoners seeking individual job search assistance, and so far there have been over 700 of these. Correspondents provide a resume, and then receive the names, addresses, and telephone numbers of potential employers in the area where they expect to be released. This information comes from a database contained in the American Labor Market Information System, (ALMIS), housed in five CD-ROM discs. IPPB staff are working with institutional staff to develop this capacity to respond to inmate requests for job search assistance at the institutions where the inmates are located. The ALMIS discs and training in their use are provided by IPPB staff.

Since no security risks are involved in the use of computer-based CD-ROM discs, some institutions are training inmates to provide this service in newly created inmate employment resource centers. An employment resource center handbook is available from the IPPB to guide local staff in the establishment of these centers..

Future Plans

The BOP inmate employment program can point to many accomplishments during its short history. However, events are moving so fast in technology and in all segments of the economy that each day presents new opportunities to connect offenders with jobs more effectively. The IPPB is exploring two new such options to accomplish this. Inmates in six federal prisons—one in each of the BOP six regions—are encouraged to prepare individual resumes which will be placed on "Americas's Job Bank"(AJB), an Internet employment service maintained by the U.S. Department of Labor. Since prisoners are prohibited from access to the Internet, they will put their resumes on discs and place them in special mailing envelopes to be mailed to VQUEST (a company under contract with the BOP), which will then enter the resumes on AJB's Internet web site (http.// www.ajb.dni.us). Interested companies will be able to respond directly to the inmates and post-release interviews and related arrangements can then be made. This new program began at the beginning of federal Fiscal Year 2000, and will run for one year. Each of the pilot federal prisons has adopted procedures to facilitate this new effort, and at the end of the one-year trial period the program will be evaluated to determine its future in the BOP. If the outcome is positive, the BOP will consider offering the opportunity to all exiting federal prisoners at a modest cost—probably about $5.00 per resume placement.

A second pilot involves the possible use of JOBLINE, a job search by telephone. This service was also developed under the auspices of the U.S. Department of Labor, at the request of the National Federation of the Blind (NFB), to permit visually impaired people to access the AJB. The use of the telephone rather than Internet to access jobs listed on AJB may be a viable direct job search option for individual incarcerated offenders. The IPPB is actively exploring this alternative with the NFB and the DOL.

One further effort to expand offender employment programs in all correctional systems is directed to the education committee of the American Correctional Association (ACA). The committee is being asked by its BOP member to recommend that ACA education policy be modified to place greater emphasis on inmate employment programs.

The Bottom Line

The BOP regards its inmate employment program as eminently successful. Inmates who have gone through the program have developed job application and interviewing skills as well as greater self-assurance as they learn that many companies will hire qualified ex-offenders. The partnerships formed with companies and community agencies have forged a shared responsibility for the transition of offenders into employment and more positive life-styles. Probation service staff have expressed the importance of programs that increase inmate job readiness skills, since they realize how these skills contribute to positive post-release experiences.

However, the question that is always asked about prison programs, including inmate employment enhancement programs, is whether they reduce recidivism. We already know from existing research that federal prisoners who participate in substance abuse, academic and occupational education, and also prison industry employment and related programs return to prison at a significantly lower rate than those who do not participate. Common sense suggests that improving job search and retention skills that result in early post-release employment will further reduce the recidivism rate. However, common sense does not satisfy the many who have a stake in correctional programs. The BOP is trying to develop ways to respond to this interest in experiential data in cooperation with field probation staff, who are in a unique position to measure the effectiveness of the job fair participation segment of inmate employment programs.

The majority of federal prisoners leave prison under the supervision of a probation authority. One way to examine how the job fair program affects recidivism would be to track exiting inmates who have participated in job fairs to determine whether or not the program has a positive impact on their success rates. Local probation officers could be a critical source of this information. The desire to support the common-sense conclusion with experiential data led to a meeting in November 1999 of representatives of the Federal Bureau of Prisons and the Federal Corrections and Supervision Division (FCSD) of the Administrative Office of the United States Courts, the division which supervises federal probation. Participants explored ways of tracking the post-release experience of inmates who participated in job fairs to determine if such participation reduces recidivism.

Further discussions are anticipated, and we hope to jointly design a follow-up research plan to test the positive results of this important new correctional effort. In the meantime, the BOP plans to continue its many-faceted offender employment program and to pursue new and expanding options.

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Health Delivery Systems in Women's Prisons: The Case of Ohio

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THE DRAMATIC GROWTH in the women's prison population has contributed to making the particular needs of incarcerated women a prominent issue among practitioners, academicians, and human rights advocates. The October 1998 Amnesty International findings of abuse of women prisoners and of inadequate medical care for them in Michigan, Illinois, California, and Maine evidences this mounting concern.

Introduction

To date, however, very little integrated empirical research has been conducted on systems and processes of health care delivery or on their perceptions by both prison medical staff members and patients. Most of the empirical work has focused on specific issues, such as inmates who are pregnant or are mothers (California Department of Justice 1988; Markovi 1990; Fogel et al. 1992; Woolridge and Masters 1993; Bloom, Lind and Owen 1994); inmates who are battered women (Lindsay 1978; Dobash, Dobash, and Gutteridge 1986; Sargent, Marcus-Mendoza and Yu 1993; Ohio Department of Human Services 1995); inmates who are infected with HIV (Kurshan 1989; Smith et al. 1991; Hankins et al. 1994; Durham 1994); female inmates who have mental health problems (Chonco 1991; Fogel 1992; Singer 1995); and inmates who use drugs (Kassebaum 1994; Maden 1994). Some studies focused on improving existing programs (Belknap 1996), and others have focused on successful programs (Flanagan 1995). None of these studies has approached the health delivery services in women's prisons as an integrated system or provided descriptions and evaluations of the provision of health care in prisons as a whole.

This article examines women's prisons in Ohio as an integrated system and thus fills the void in the current research on health delivery in prisons. Ohio's three women's prisons are used as a case study to enhance the understanding of the issues that confront the prison authorities and the medical staff providing services to prisoners. Specifically, the article focuses on two issues: 1) the structure of health care delivery system in women's prisons; and 2) the medical staff's perception of the structure, including the quality, processes, and ways to improve health care delivery services.

Methodology

The data were collected during visits to the three women's prisons in Ohio: Ohio Reformatory for Women (ORW) in Marysville; the Franklin Prerelease Center in Columbus (FPC); and the Northeast Prerelease Center in Cleveland. In each prison we employed several qualitative methods of data collection: focus groups with medical and paramedical staff members; unstructured interviews with physicians, wardens, and other medical staff members (e.g., nurses or nurse assistants) and observations of actual incidences. In all but one case, conversations were tape-recorded and later transcribed.

The Prisons and Their Populations

The Office of Correctional Health Care in the Department of Rehabilitation and Correction of the State of Ohio is responsible for health care delivery in the state prison system. The system has three major divisions: clinical office, recovery services, and medical care. Our research focuses primarily on the medical care division and on its staff.

The Ohio Reformatory for Women (ORW), which opened in 1916, housed (as of June 1998) 1,787 inmates. They include all security levels of female inmates.

The ORW employs 496 staff members, of whom 43 are corrections officers and 29 are part of the medical/paramedical staff. The prison at Marysville also serves as a reception center, and all female inmates sentenced to prison are sent to the reception center for initial processing and classification.[1] The Marguerite Reilly Hospital at ORW is at the center of the compound, and contains offices for all medical and paramedical staff members except the dentist, whose office is located in a separate building. The hospital also has seven infirmary rooms with single beds and two with showers, toilets, and sinks. The rooms are archaic, and their age is apparent. The hospital houses a pharmacy and also has a mammogram machine, a dental X-ray machine, and a telemedicine room.[2]

Franklin Prerelease Center in Columbus houses minimum and medium security female felons. It opened in 1988, and as of June 1998, it had 459 inmates. The Franklin

This study is part of a larger research project on health issues of women in prison, supported by a grant from the Open Society.

Prerelease Center, in sharp contrast to ORW, is a newer and more modern facility. This prison has 135 staff members, of whom 62 are correction officers and 12 are on the medical/paramedical staff; in addition an OB/GYN comes from the Ohio State University Hospital system on a rotating basis. The physicians at Franklin are all privately contracted through a company that oversees their operation. Unlike ORW, Franklin Prerelease Center is adjacent to the state's prison medical center, and hence does not have a pharmacy or any of the "isolation" infirmary units that are found in ORW. The medical facility itself is also very different from that of ORW. Housed in the cells building, it consists of three rooms and a space with a window for dispensing medicine.

Northeast Ohio Prerelease Center was opened in 1988. It is a minimum and medium security facility. As of June 1998, it housed 624 inmates. The prison employs 173 people, of whom 81 are correctional officers and 13 are on the medical staff (all nurses). The Center's three physicians—a podiatrist, optomologist, and a dentist—are all hired through a private contract, and their operations are organized by a secretary employed by the same corporation. The prison has no pharmacy; a registered nurse dispenses prescribed medicine that is purchased through the private corporation.

The demographics of the women incarcerated in these three prisons shows that 70 percent of the women who enter the prison system are incarcerated for periods ranging from 2 to 15 years and enter the system between the ages of 19-45 (ODRC, Bureau of Research, 1997). Although older offenders in Ohio's women's prisons are not an overwhelming majority, they nevertheless represent 55 percent of the inmate population. Most of these inmates (86 percent) are admitted to prison by or before the age of 50 (ODRC, Bureau of Research 1997). Over half (56.4 percent) of the women in Ohio's prisons are African-American, and Euro-American women form the second largest ethnic group (41.8 percent) (ODRC, Bureau of Research 1997).

The Structure of Service Delivery

Beaumont and de Tocqueville pointed out in the 19th century that "it is because they [female prisoners] occupy little space that they have been neglected" (1833/1964, p.72). This characterization still applies today to all women's prisons in the United States, including those in Ohio. Incarcerated women represent about 5 percent of the entire incarcerated population; the remaining 95 percent are men in male institutions, and a small percentage in coed ones. One of the medical directors said at the very beginning of our conversation with him:

> In the past two and half years the population of the prison increased from 1,400 to 1,800. There is not [an] equal amount of staffing in women prisons as in men prisons. People here are coming sicker than ever before. Staffing of the women prisons follows the male mode: 300 men to three nurses. But women in prison go to doctors two and a half times the rate of men. Women have problems that men do not have—depression, gynecological problems, etc. (Nurse Gregory).[3]

Another medical director at a different prison reiterated this idea that female inmates need many more resources than their male counterparts do in terms of health care:

> Female inmates are more demanding and have far more medical problems. You see an inmate on sick call and she has eight or ten complaints (Nurse Thomas).

Every health professional or group of professionals we interviewed mentioned the multiplicity of health complaints that incarcerated women bring with them to prison. One of the registered nurses noted:

> Most of the women are physically a mess: They have been shot, stabbed, hit in the head, and there are 20 or 30 of them in this institution that we know have HIV. They also have illnesses such as cancer of the breast, throat, brain, ovarian and thyroid, or terminal heart disease (Nurse Burns).

Another registered nurse at ORW stated:

> A third of the inmates are mentally ill, 20 percent are seriously mentally ill, and they go off and are prone to pseudo-seizures. Fewer men are mentally ill and [a] smaller proportion is on mental illness medications. Between 60 percent to 70 percent of the women here have problems with alcohol and drugs. They also have had erratic assessment of mental health and self medicate (Nurse Weller).

The general picture that emerges from the data is that the health care delivery in the three institutions for women in Ohio is managed as "crisis care" (Collins 1997). The system is highly overburdened and its population is very needy. The institutions are overcrowded, and they must overcome bureaucratic hurdles and follow procedures at every juncture, most notably because health care delivery in women's institutions is modeled after male prisons. The latter, however, require far fewer resources and less medical attention to the inmates. The health care professionals in the women's prisons, confronted with this reality, manage the problems they face as a perpetual crisis to which everyone has become accustomed. In the words of one health administrator,

> Health delivery here is like the emergency room. Every thing is noisy, done in a hurry and everyone is overworked. The women-inmates are also used to this environment of heath care (Nurse Wagner).

In one institution, the health workers hurried us into the dentist's office so we could witness the resource problems they face and see first-hand how the female inmates' lifestyle prior to incarceration affects their health care needs. During our visit, the dentist, who works six hours a week and serves more than 600 inmates, was treating four inmates. Two were waiting for the anesthesia to become effective, and one inmate who had a whole row of teeth pulled out was waiting for the next row to be pulled. The dentist showed us a 31-year-old patient with no teeth in the back of her mouth and with tips broken on all of her front teeth. We were told that the woman's teeth had been broken in domestic violence situations. The dentist said that the last time this inmate was in her chair, she had a seizure that frightened the dentist and caused alarm in the office and among the patients waiting to be treated. The dentist later learned that the head injuries that led to the seizure were caused by the battering the woman experienced in her marriage. The inmate was seeing the dentist because the infection in her gums affected her entire left cheek, including the sinus ducts. The dentist explained:

> Such an infection with a person who is prone to seizures of this kind can really hurt her. She had to wait for [a] few days for me to show up, and I

only have 6 hours a week. I need 6 hours to work on her alone. But I will stay here a little longer to finish my work.

This concerned and committed dentist is representative of the staff members we observed, and the ones who would survive in the institution and would not burn out quickly. They are keenly aware of the special needs of their patients, as well as the difficult and at times unpredictably dangerous surroundings in which they work. This description also fits the medical director at ORW, who complained about how difficult it is to hire competent people to work in the prison. In reply to our question concerning the way he manages inmate-patients this physician stated, "I make patients comfortable; I ask her why she is not taking her medicine. I manage female patients by treating them like everyone else" (Dr. Stanley).

Although there are a few commonalities among the institutions we studied — for instance, the crisis mode in which health care takes place and the caliber and dedication of many of the health care staff members— it is difficult to provide a clear-cut topology of the structure of these three institutions. Their differences and unique characteristics can be attributed to variation in size, function, and geographical location of the prisons.

Similarities in Health-Care Delivery

Delivery Routine

Routine health services are handled through sick call and chronic care clinics. Medical request forms, referred to as "kites," are available to inmates needing health services. Inmates fill in their name, identification number, date of birth, unit, the date of request, and the service they are requesting (dentist, podiatrist, gynecologist, optometrist, and medical).

For sick call, the nurses assess patients and then refer them to doctors. The assessment is made on a standardized form provided by the Ohio Department of Rehabilitation and Correction (ODRC). Women stand in line to take their medicine, including psycho-tropic drugs. Since physicals are not available every day, patients are scheduled to see the physicians on the day or days on which they are available. In an emergency, the physician is called/paged, and the nurse consults with her/him.

In all three institutions we visited, the immediate response to our question about "routine activities of medical and paramedical staff" was "There is no such day. There is no typical health problem and no typical day." After spending several days in some institutions, we realized that the medical staff is responsible not only for medical problems but also for evaluating the medical condition of inmates who are not ill. During an interview session in one of the prisons, the medical staff was called to a different building. One of the inmates was in segregation, and she had an emotional outbreak that led her to throw her food tray, an action that resulted in a broken fire sprinkler. After being restrained in the bed of the segregation unit, she was able to sit up in a posture that put an enormous amount of pressure on her wrists. The medical unit was asked to make an assessment of her wrists and to record their findings in a report.

The medical staff also conducts "chronic-care clinics" for diabetic, cardiac, pulmonary, asthma, HIV, TB, and seizure cases. These clinics, intended for inmates with chronic illnesses, were established because the Department of Rehabilitation and Corrections introduced a new system of co-pay in March 1997. This system requires that inmates pay $3 for each sick call they make. For chronic problems, the women are referred to these clinics on a weekly basis. Although we did not conduct a systematic study of the effect of the co-pay on the volume of sick call requests, the opinion of the staff was that it did not significantly reduce the number of women seeking medical help. One medical staff member said, "The volume of requests dropped the first two weeks after the co-pay system was introduced, but it has leveled off now"(Nurse Thomas). Another one commented, "The number of patients has not dropped. Actually, now the inmate wants to take care of all her problems in one visit"(Nurse Gregory). A third medical staff member noted that "the system of co-pay and the system of introducing off-the-counter medications in the commissary to buy has led women inmates to develop new manipulation techniques to reduce their expenditure of health care"(Nurse Weller).

All routine health care is delivered within these two structures. There is, however, other routine care such as prenatal care, dialysis, testing of blood, that is done on a case-by-case basis and is routinized through forms and scheduling.

Shortage in Human and Other Resources

A shortage of both financial and human resources was the major complaint that we heard from medical staff in all three institutions. Despite the differences in the type of inmates that they handle, all three prisons have a shortage of nurses. Ideally, three nurses should be on duty during each of the three shifts in the prisons. Generally, the best scenario that we saw was two nurses during the first two shifts and one nurse during the third. Some of the nurses in all three institutions mentioned this problem. The small pool of nurses, they explained, means that if one nurse becomes sick or cannot show up for work, the nurse on duty is "frozen" and cannot leave because the institution requires a nurse on staff at all times. This unpredictability in working hours was a serious concern, and nurses mentioned having to cancel family or personal plans in the past because they were "frozen." In addition to a shortage of nurses, the length of time that specialized doctors are available is also problematic. The dentist who is only available for six hours a week at one of the prisons noted that she could work at least work 30 six-hour days every month to finish treating all of her patients.

Space seemed to be a concern in terms of health care for the two smaller institutions we studied. Issues of privacy, transmutability, and room to maneuver are critical issues affected by the amount of space available. At ORW (the largest prison), the infirmary was a cause of concern because of its dilapidated condition, its lack of basic amenities in all of the rooms, and its proximity to the unit housing maximum security inmates.

At the time of our visits to ORW, there were seven vacant positions in the medical care unit alone. The problem shared by all three institutions has been the hiring of qualified personnel. According to the medical and nursing supervisors at ORW, qualified candidates for correctional health care need the following attributes:

> First, assessment skills, or the ability to be quick, figure out who is telling the truth and who is manipulating the situation so that they do not have to go to work; second, should be quick at dispensing medicine if they are nurses; third, care itself; and four, see inmates as humans (Nurse Gregory).

The medical administrator at the Franklin

Prerelease Center intimated:

> Correctional nursing is not for every one. There is a unique experience for correctional nursing. Manipulating is a constant issue. All nurses need to have the assessment skill to determine the difference between want and need (subjective and objective complaints). Correctional nursing is a specialty where you stay all rounded. You see problems of all kinds and unlike the outside world, you do not specialize (Nurse Thomas).

Yet, all of the doctors and nurses with whom we talked noted that the advantages of working in health care delivery within the prison far outweigh the problems they encounter. These problems included safety concerns; the perennial need to strike a balance between empathy and distance; the unappreciative inmates; and the lack of opportunities for professional advancement. Most of the staff members, however, found the working conditions satisfying due to the autonomy that the nurses have, flexible hours, and the rewards of seeing people who were "walking dead" improving and becoming healthy. Physicians noted that in view of escalating medical insurance costs and inefficient HMO conditions, prison health care delivery was a very good career opportunity.

In light of the inherent rewards testified to by the medical staff, we wondered about the reasons for the staff shortage in these institutions. In ORW the professionals we interviewed cited the bureaucracy of advertisement. It takes seven months from the day the Ohio Department of Rehabilitation and Correction offers someone a job before this person is actually working. Also, they said that they have had "some bad candidates, and some of the good ones bailed out the last minute."

Differences in Health Care Delivery

The major difference between the women's and the men's prisons in Ohio is that for the women, one parent institution, ORW, functions as a prison, reception center, and residential unit for the severely mentally ill.[4] The three women's prisons we studied differ from each other not only in the size and security levels of their populations, but also in the programs available to their inmates. The parent institution, ORW, has five of Ohio's Penal Industries, while the Franklin and Northeast Prerelease centers have none.[5] Furthermore, the parent institution is not accredited by the American Correctional Association, while the Franklin and Northeast Prerelease centers were accredited in 1995 and 1996, respectively. The institutions have different structures for their health delivery systems.

Level of Privatization

Although the nurses and the health administrators in all three women's prisons in Ohio are employees of the state, and all of the specialty physicians and the medical administrators are on a private contract, the actual "privatization" of the systems varies. At ORW, the medical administrator has a private contract with the state. This administrator is at the institution five days a week (Monday through Friday) and is on call during the weekend. He clearly works closely with the health administrator and the nurses and considers this closeness part of his job. He has no other private practice besides his state job.

In the Franklin Prerelease Center the medical administrator is also on a private contract with the state through a health care agency (ANACHE). He has a private practice in Cincinnati and works three days a week in Columbus for ten hours each day. The state nurses and the health administrator, however, conduct the screening and evaluation of patients in this institution. The physician is also available 24 hours a day by phone and by pager. At Franklin Prerelease, all other services are conducted by the neighboring institution, Correctional Medical Center; hence, Franklin has no pharmacist, podiatrist, dentist, optometrist, or laboratory technicians to test for blood on-site. The OB-GYN at Franklin, the institution where pregnant inmates are sent within the system, consists of Ohio State University Hospital doctors who work on a five-week rotation.

In the Northeast Prerelease Center, the medical administrator (an M.D), gynecologist, dentist, podiatrist, and optometrist are all contracted through a private company, Correctional Health Care Solutions. The company has an office inside the prison where a secretary helps the nurses screen the inmates' complaints. All the nurses are state employees. The medical administrator at the Northeast Prerelease is a retired neurologist who works three days a week. The physician who practices as a gynecologist works two days a week; the dentist works six hours a week; the podiatrist and optometrists work eight hours a month, and six hours every three months for diabetics. All of the medical and paramedical staff members meet bimonthly to coordinate the work and compare cases.

Such differences in the matrix and presence of private and public health care poses questions: Does the private health care company that coordinates health care delivery in the prisons provide the same quality of care as its public counterpart? Has private health care delivery solved some of the resource problems that the state faces? What are the tensions that exist between the state nurses and the private medical doctors? These are important questions that need to be addressed in future research.

Degree of Within-Institution Care

The three institutions also differ in the degree to which they provide care within the institution. The medical and paramedical staff members in the three institutions agree that female inmates prefer to be cared for inside the prisons. The health administrator at ORW said, "The women do not like to go out for clinics or treatment because they have to be shackled. It is demeaning to them"(Nurse Gregory). With the exception of emergency care, ORW provides the most in-house medical (and mental health) care.

ORW has a telemedicine facility in conjunction with the Corrections Medical Center and the Ohio State University Medical Center. This facility was initiated in 1995 as a pilot project by the Ohio Department of Rehabilitation and Corrections at the Southern Ohio Correctional Institution at Lucasville. The system has been expanded to include many prisons in Ohio, and it aims to provide improved access to specialty care. At ORW, the nurses use two-way video equipment as communication links, connecting medical devices to provide evaluation, diagnosis, and treatment.

The Franklin and Northeast Prerelease centers do not use telemedicine. The health administrator at Franklin pointed out that this kind of technology would eventually be used in the institution, but at Northeast Prerelease no one mentioned the technology or plans to use it. Moreover, due to the proximity of the Franklin Prerelease center to the Corrections Medical Center (they are adjacent), most specialty care and the more difficult cases are transferred from Franklin to the Corrections Medical Center. Hence, the Franklin Prerelease Center provides less in-house care than Northeast Prerelease Center.

Specialization in Case Management

The three institutions that house female inmates in Ohio differ in their management of health care delivery. In addition to ORW housing the Residential Treatment Unit (RTU) for the severely mentally ill, all debilitating, severe, and problematic health care cases are sent from the other two institutions to ORW. Terminal cases are often sent "on mercy" decrees to hospices or released to family members. In the Franklin Prerelease Center, we heard stories of the prison staff holding on to inmates with terminal cancers until they could be released. We learned of a case, however, in which an inmate with a terminal cancer and brain deterioration became violent and was sent to ORW.

In their specialization of case management, ORW carries the heaviest burden of severely ill inmates, including those with symptoms of AIDS, while the Northeast Prerelease Center retains only the inmates with average problems. We heard the statement, "We send them back to Marysville [ORW]" more often at the Northeast Prerelease Center than we did at Franklin.

Franklin, on the other hand, specializes in pregnant inmate care. The structure of the care is such that a regular number of inmates come to Franklin from ORW (every Tuesday); most of them are pregnant and some of them are sent after classification at the reception center. The health care administrator at ORW said, "The women who are found to be pregnant do not stay more than a week here, we send them immediately to Franklin Prerelease" (Nurse Gregory).

At ORW, the routine reception of pregnant women affects their staffing and procedures as well as the care they give women. One health administrator noted:

> We have between 20 and 46 pregnancies a month. For OBGYN, we book in priority of pregnancy, especially for the newcomers. OBGYN changes every five weeks, and there is an obstetrics nurse from Sunday to Thursday. On occasion, when the obstetrics nurse is not on-site, and the other nurses have to deliver, the other nurses do not like it because many have no experience in this field (Nurse Thomas).

Such specialization in case management and health care delivery requires specific planning and resource allocation for particular institutions even within the realm of the general category of women's prisons.

The Medical Care Staff's Perceptions

In addition to the adequacy of resources, four other themes emerged from probing into the medical staff concerning their perception of health care delivery. They include 1. the relationship between staff members and inmates; 2. the need for basic health education for the inmates; 3. the impact of security/custody demands on health care delivery; and 4. the pride in the quality of service.

The Relationship Between Staff Members and Inmates

The need to maintain boundaries and strike a balance in the relationship of the medical staff members to the inmates was repeated by all the medical staff with whom we spoke. The difficulty of maintaining such a balance has led to dismissal of a few nurses and doctors. This difficulty has in turn led to the shortage in staff members and overburdening of the overall structure. One health administrator observed:

> The advice is to keep your distance. The hardest thing to working in prison as a nurse is one can be sympathetic and empathetic, but to a degree. Unlike nursing on the outside, you have to protect yourself (Nurse Thomas).

One physician, in response to our question concerning the relationship between staff members and inmates, stated:

> In a prison situation, only the nurses and I are allowed to touch. The patients also have a need to vent personal information. The problem for a doctor in this situation is to balance between professionalism and the things that are beyond personal barriers. For example I want to know when someone has had sex with her friend so I can diagnose, without having them being afraid that I will turn them in. Lots of doctors have difficulty keeping this balance (Dr. Stanley).

In a focus group in which the health administrator and the nurses talked about their perception of health care structure and the relationship with inmates, one of the nurses stated:

> You have to watch out that you don't get involved with prisoners. You should make sure that the medical staff knows to draw the line between caring for someone and becoming over involved, yet not diminishing that person because they are just an inmate. These are unloved people, these are people from abusive relationships, and they do not know how to do relationships. It is something about unconditional respect. These women have never had this, and when they get it they don't seem to understand it and think you have some hidden agenda, that you want something from them. And that woman (referring to someone we met on the way to our focus group) as nice as she was and as nice as she is to me, when I said no to her, then she becomes abusive, and she will go out of her way to try to make the medical staff and the medical service here look terrible. So understand that is the kind of situation we get with this clientele. And I truly love these ladies. I want you to know that. I truly do, but you do have to remember that they are here for a reason. They're not just here because they are here. You have to remember that (Nurse Gregory).

Keeping a balance between professionalism and compassion in health delivery services within a prison was also perceived as an essential part of the administrator's job as well as something that affects the overall morale of the overall staff. One health administrator said:

> The effect of this need to balance your compassion with your professionalism is that you have to always watch out for your staff, keeping track, making sure they are OK and keeping their boundaries well, and they are staying safe and the inmates are not becoming overly involved with anyone or thinking that because so and so is nice to them, that means something else. This watching and telling staff affects their morale (Nurse Thomas).

The physician in one prison noted that this need to balance professionalism with compassion affects his job because:

> I get accused if I see someone too often for having something going with this inmate if I schedule a follow-up. I have not been able to see you for two months, but I see her twice in a week. But for example, in a case where

> the person has had a real emergency, she had a sore throat, then we discover she has throat cancer, then I have to prescribe radiation therapy and follow-up, then she loses her voice, and I have to follow up. In this case, I develop a close relationship with this inmate because of her sickness, but there is always talk about underlying relationships between me and an inmate (Dr. Stanley).

A related concern raised by the medical staff in all institutions was the continuous need to be on guard against being manipulated by the inmates who often use the staff or the delivery of health services for their own ulterior motives. For instance, inmates may ask the medical staff to provide medically based prerogatives (such as sleeping on a lower bunk bed in the room because one suffers from back problems and cannot climb to a higher bed), or receiving prescriptions for various medications (which in prison become valuable commodities that can be exchanged in the inmates' informal market system). Nurse Gregory noted how

> the women are nice to you today, they say good morning and ask you how you are doing. After a little while they tell you about how they can't climb on their bed and need an upper bunk. They fill a kite, and with the doctor the same complaint, not because they are in pain, but because they want a lower bunk.

This commodification of health-related services and products, and the exchange economy developing around them in prison, is closely related to the lack of basic health education among inmates, discussed in the next section.

The Need for Basic Health Education for Inmates

One issue that emerged from our focus group discussions and interviews with the medical staff was the need to educate the women inmates about basic health practices, and how to become better patients and prevent disease. Since most of the women in the three prisons have preexisting conditions, such as high blood pressure, seizures, diabetes, HIV, and gynecological problems, the staff repeated the notion that to improve health delivery services, education is essential. The health administrator of one of the prisons stated:

> You know half of our patients' level of education is like sixth grade, and they do not comprehend simple things, such as they need to wash their hands after they go to the bathroom. Simple things of how to prevent colds, how to treat colds, how to treat STDs [sexually transmitted diseases], what is immunization, and what should your child get. Just what you and I take for granted as givens, they do not know. They don't know what head lice are and how it spreads. They think they jumped into too many beds. They are a very poorly educated people when it relates to health issues. And that is the only way to deliver good health care, to educate them about their health. But at this point in time, we cannot provide this basic education because we do not have enough staff (Nurse Gregory).

A nurse at one of the prisons observed:

> We need to have smoking cessation classes for the women in here since more than 75 percent of them smoke. They need to know how to quit and what smoking does to them. But we do not have the staff. If some of these women quit smoking, we will reduce sick calls and "kite" writing (Nurse Graham).

The need for health care education was raised in all three prisons. In the Northeast Prerelease Center, they used to have nursing students teaching inmates health education. According to the secretary of the private health company, "We have not seen these people for a while"(Ms. Flora).

The Impact of Security/Custody Demands on Health Care Delivery

The way security needs affect health care delivery services was a primary concern to most medical and paramedical personnel with whom we conducted interviews and focus groups. This issue was of great concern, particularly for the professionals we interviewed at ORW. One person stated:

> It [security] does impact you, and we do have counts. And if they are here for sick call, and they're doing a count, they have to go back if they are here for their medications, and they may miss their medications (Nurse Burns).

Another person commented:

> I imagine if I were in a fire, I would approach it differently from a fireman. But imagine I was in a fire with a fireman, and I am ordering the fire marshall. That is how it feels when you deliver health care in prison (Dr. Stanley).

The same person expressed a frustration in managing the tension between health care dictates and custody concerns:

> There is also the problem of correctional officers (CO's). Working with this population, everything becomes right or wrong. An inmate is crying and runs to see the psychologist. The CO sees her out of place and gives her a ticket. The issue is not what can we do to help her, but that she is out of place. A lot of this is [being] uneducated. For COs, the medical needs are not as important as safety. Making sure an inmate takes her medication or not is not as important. I have someone who has recurrent chest pain. Soon, she will have a heart attack. I call, make an appointment with a cardiologist, make attempts to transport her, and in two days, she can see a specialist. Her appointment with the cardiologist is on Thursday. On Friday I ask her how was the visit. She says, "I did not go." I ask the CO, [who says] "There was fog, and we were understaffed. We will take her next week." There is a lack of education and appreciation of what is at stake here. The need for preventive care and critical thinking is lacking. We constantly fight with the limited vision of security. There are, for example, three or four people lined up, the warden wants X person right away to be seen. I interrupt my priority for the day because the warden is "God," and the warden has been approached by an inmate or (someone) and sees this as an immediate problem, and her priorities are more important (Dr. Stanley).

Pride in the Quality of Service

Pride in the quality of medical care delivery in women's prisons was a major theme among the people we interviewed and with whom we conducted focus groups. Medical care delivery, according to one prison nurse, is "excellent." This registered nurse continued, "I

would challenge you to find anyone from this group of women [that when on] the outside has the quality of care that they can get here on [a] daily basis." Our interviewee and focus group participants shared a general perception that the health care that women inmates receive inside the prisons is immediate and lifesaving. From the focus group at ORW, for instance, participants made such statements as: "Where would you find anywhere else a person complaining of chest pain being attended to within 5 minutes, except in a residential or nursing home?" "We are really able to do some good work with these women who were self-mutilating and using drugs" and "it is really good to see these women come back from the walking dead."

The staff reiterated that the inmates enter prisons without having seen a physician in years, emphasizing that the women suffer from prolonged neglect and abuse of their bodies and minds. Health care delivery at this point is assessed against a background of societal problems and economic hardships and not simply in terms of the delivery of services to heal physical ailments. One of the doctors described a woman who was diagnosed with uterine cancer for three years before her incarceration. However, she had eluded the authorities since her diagnosis, and as soon as she entered prison, she announced her sickness.

One nurse told the following story about a woman who grew up in Appalachia:

> She was sold to her husband when she was 13 and lived in a very violent domestic situation for many years, and ended up in prison. I think she assaulted her husband or maybe shot him and ended up in here. And she said to me once that this was the best place she had ever lived in her whole life. It was the first time that she started to learn to take care of herself, to be free from people abusing her, to be able to go to school, to be able to be cared for and not to be abused. So there are some success stories. It is sad to think that a reformatory is the best place that she ever lived, and there are more than a few who think that way, because it is the best place for many of them (Nurse Green).

In addition to a relatively higher job satisfaction level, the professionals also expressed their pleasure with the higher degree of job autonomy and quality of medical care they can offer patients in prison. One of the nurses commented, "We have a little bit of leeway. You know, there are no HMOs saying we can't do a blood test or whatever" (Nurse Mullin).

Working with female inmates also makes medical care service delivery more rewarding than it is in some other environments because women can be better rehabilitated. As one of the nurses observed:

> I am the quality assurance nurse, so I go down to central office and meet with many of the other quality assurance nurses in male facilities. There is the idea that a woman can be more rehabilitated than a man can. If a woman has a family on the outside, children, this gives them a goal to do their time and get out and be a mother again. This is not the case in male prisons. Men do not have the bond usually that the women have with their children. Yes, women do become repeaters, but not like men. I guess there [are] quite a few repeaters in men's prison. I've only seen a handful return in the two years I have been here (Nurse Peters).

Another nurse commented:

> Like I said, I've worked in a male facility. What is unique about a female prison is you get them here, you dry them out, you get them off the drugs, the alcohol, get them on their mental health meds. When you walk out there, it's like a college campus. These people say "hi" and "bye." A lot of the time they won't make eye contact because they are told not to, but these people are very respectful by and large. You'd be surprised how nice they are (Nurse Gregory).

Health care delivery in women's prisons is also easier, according to the medical professionals, because women are usually less violent than men. As one nurse stated, "Male inmates flare up. They hit each other and cause chaos, whereas here, it is just constant bickering, maybe some battering. But that is all" (Nurse Green). Another nurse commented, "Men lash out, while women lash in. They abuse themselves; they cut themselves" (Nurse Peters).

Working in women's prisons, however, is not always easier in terms of health service delivery. Women's problems are often of an emotional rather than physical nature. As one nurse observed:

> We have women that come here who just delivered a baby, and they just had it for a week or two. At least 80 percent of our population [has] been molested, so we have a lot of people with emotional baggage. A woman will come once, twice, and three times complaining about something hurting when really, it is an emotional issue she needs to deal with (Nurse Green).

Summary and Conclusions

The qualitative data collected through interviews and focus groups of medical health personnel in the three women's prisons suggest that Ohio women's prisons exhibit both similarities and differences in their health care delivery structures and processes. The prisons used similar routine health care delivery and all institutions experienced shortages of human and other resources. They differed in the level of privatization of the health care services—some included private medical companies in the decision-making process as well as in rendering services, while others kept privatization at the level of specialty care. They also differed in the degree to which they offered full care within the institutions, ranging from offering almost all services on-site (except for emergency care), to offering most services, except delivery of routine care, outside the institution. Proximity to the Correctional Medical Center and the use of telemedicine contributed to the variance in on-site service delivery. Lastly, specialization in service delivery also differed among the three health care delivery systems. The Ohio Reformatory for Women (ORW) specializes in the more difficult medical cases—the terminally ill, and the severely mentally ill—while Franklin Prerelease Center provides care for all pregnant inmates in the state. It is probably correct to assume that the differences between the institutions, and the division of specialization among them in terms of services rendered to specific populations or for certain medical problems, is related to the shortage in resources that is characteristic of the correctional field. Conserving resources and avoiding duplication of expensive services to a relatively small population of offenders has probably contributed to this division of labor. The attempt to privatize services is also related to strategies for keeping costs at a minimum while providing optimal services.

The similarities in the perceptions of the

health care staff of these institutions, however, are much more important and deserve attention. The health professionals in these institutions experienced common challenges and were presented with the same dilemmas in providing services to the inmates. Of major concern were the paradoxical demands imposed on the prison medical staff, including striking a balance between professionalism and compassionate care, and reconciling custodial and medical needs in an environment in which safety is a paramount consideration in setting daily routines and priorities. Overcoming problems that arise from the lack of basic health education among the inmates and the unique aspects of working with female populations also seemed to affect health care delivery of services to a considerable degree. These issues, together with other factors that preceded the inmates' entry into the system, were major concerns beyond "pure" medical issues which weighed heavily in the staff's delivery of services. This study confirms that, particularly with regard to this population of inmates, the social ills that affect women's lives spill over to the prisons that house them, and shape the kind of problems they present and the services they need. Women's social histories and experiences prior to prison strongly affect their health needs, which in turn affect the manner in which the medical staff delivers its services.

In designing effective policy for delivering health care in women's prisons, those responsible need to address the tensions inherent in the provision of health care services in custodial settings. Similarly, attention should be given to the social history or background of the populations women's prisons serve, and the intricate interaction of these characteristics with professional aspects of health care delivery. Addressing these concerns may be a worthwhile endeavor because, as the current study suggests, the value of professional health care in prison extends above and beyond attending to women's specific health problems or illnesses while they serve their time.

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Endnotes

[1] The men's prison system in Ohio has two reception centers from which inmates are later transported to their receiving prison.

[2]The telemedicine room connects patients to the Ohio State University medical care facilities via television screens.

[3] Pseudonymous is cited in the text.

[4] Ohio has one reception center for men separate from the other 30 institutions that handle men and two male Prerelease centers that house prisoners six months prior to their release. The rest of the male prisons are specialized in terms of security levels.

[5] ORW has the following OPI's: (a)sign shop making directional signs, name tags, all signs and plaques; (b) optical shop making eyeglasses for all the prisons in the state; (c) flag shop making U.S. and Ohio flags; (d) tent shop making tent floors; and (e) telemarketing

Probation and Pretrial Chiefs Can Learn From the Leadership Styles of American Presidents

Michael Eric Siegel, The Federal Judicial Center

MANY MANAGERS AND leaders, including probation and pretrial chiefs, fantasize about having more power—power equivalent, say, to that of the president of the United States or a federal judge. These wishful thinkers believe that if they had more power they could overcome obstacles and move their organizations forward the way a president can move the nation forward.

Introduction

There is no doubt of the president's power. Though the office was created by men who "had their fingers crossed," hoping that it would not become too powerful (Koenig,1981), it has evolved into a substantial institution of considerable power, overseeing an enormous budget and a personnel system of some three million people. The president is able to shape the nation's agenda, gain regular access to the airwaves, command a huge military operation, and even oversee a nuclear arsenal. It is no wonder that Americans sometimes have a "John Wayne" image of the presidency— the notion that a man can ride into town on a white horse and correct all of the nation's problems (Smith, 1988).

And yet, those who have served in that office have quite a different view of the extent of the president's actual power.

• A frustrated Lyndon Johnson remarked, "The only power I have is nuclear, and I cannot use it."

• Harry Truman talking about Eisenhower said, "Poor Ike. He'll think it's like the military. He'll say do this or do that, and nothing will happen."

• And a realistic John Kennedy said, "The president is rightly described as a man of extraordinary power. Yet it is also true that he must wield these powers under extraordinary limitation."

The limitations on power are painfully obvious to presidents; they include the constitutional provisions of separation of powers and checks and balances. The limitations on power also include political realities of Congressional power, interest groups, the media, and the electorate itself. Recent examples include the Supreme Court forcing Richard Nixon to surrender the Watergate tapes and the Monica Lewinsky incident almost bringing about the political demise of Bill Clinton.

Given the constraints, the question essentially becomes: How can a president exert a powerful, positive influence and lead effectively?

In answering this question, I will draw upon a framework developed by two executives of the Carter presidency, Ben Heinemann and and Curtis Hessler. In their book, *Memorandum to the President* (1980), Heinemann and Hessler develop four components of a strategic presidency. I will use the Heinemann-Hessler framework to:

• Compare three recent presidents regarding their ability to conduct the office in a "strategic" fashion.

• Extend the "lessons" of the presidents to leadership generally, including managers and leaders in probation and pretrial services.

• Illustrate the critical role of context for leadership—how a leader's behavior is powerfully influenced by the behavior of the person he or she is replacing.

First a caveat. I do not intend this essay as a partisan document in any way. I will praise and criticize Republican and Democrat presidents. The effort is not intended to enhance or detract from the reputation of any recent president but rather to educate managers and leaders about strategic and effective leadership. There is, after all, a widespread interest in improving the quality of leadership, which, according to James MacGregor Burns, is one of the "most often observed and frequently misunderstood phenomena on earth" (Burns, 1985:3). Heinemann and Hessler agree that to be a "strategic president" an occupant of the White House must master four things:

Policy (Vision)

The issue of "vision" gets at the heart of a president's objectives and goals. Questions a presidential candidate might ask under this dimension include: Why am I running for president anyway? Where do I want to lead the nation? What do I want to accomplish during the next four years? What are my most important goals? Values? Once elected, a president must continue to ask these questions, as he can otherwise easily lose control of his agenda and, by extension, his purpose.

Readers familiar with the recent plethora of management and leadership books on vision will immediately recognize the theme embedded in these questions. The literature is voluminous, but the point is simple and expressed eloquently by Warren Bennis: "The first ingredient of the effective leadership is a guiding vision. The leader has a clear idea of what he wants to do—professionally and personally—and the strength to persist in the face of setbacks, even failures" (Bennis 1989).

Vision is a powerful instrument of political leadership—consider the force of John Kennedy's vision of "sending a man to the moon and returning him safely to the earth"—and an equally powerful contributor to corporate success. According to the excellent research of Porras and Collins, visionary companies that are clear on their "core ideology" consistently outperform their competitors (1997).

Probation and pretrial chiefs have been hard at work developing mission/vision statements for their offices. Consider this one from the Probation Office, Middle District of Florida (US Probation M/FL Office Annual Report, December, 1999):

"Our mission is the protection of society through submission of comprehensive reports to the Court and improvement of the conduct and conditions of the offender. We accomplish this through the contributions of all those who perform or support investigation and supervision services."

"Our vision is to be an agency which:

Shows respect to all offenders and recognizes their ability to change;

Values each staff member and shows appreciation for his or her contribution to our shared work;

Responds to changing needs and opportunities with flexibility, responsiveness, and responsibility;

Garners systematic feedback regularly to guide our work…"

Politics (Strategy, Political Savvy)

"Politics" captures the leader's ability to transform vision into reality, to get things done. Mario Cuomo once said, "You can campaign in poetry, but you must govern in prose." This aspect of leadership requires the leader (in this case, the president) to develop a strategy. Management expert Peter Block asserts, "We become political at the moment we attempt to translate our visions into actions" (Block, 1991: 58). According to a 1999 report published in *Fortune* magazine (June 21, 1999), the reason many CEO's fail in the corporate world is due to "bad execution…not getting things done, not delivering on commitments."

Relevant questions a president must ask here include: Who will I rely on to relay my message? Who will work with the congressional leadership? What strategy will I use to influence members of the opposition party, or even members of my own party who may have their own political agendas? How will I lead the executive branch of government? How will I manage the complex world of lobbying and influence pedaling? How will I work with the media? Will I rely on amateurs or professionals, friends or experts to get the work done? How will I stay true to my agenda, fulfill my campaign promises, and still have time to reflect on and assess what I am doing? How many issues will I tackle at one time?

Again, those who toil in the vineyards of organizational management and leadership or are familiar with recent literature will quickly appreciate the value of the political skills suggested here. For example, persuasion and negotiations skills must be used effectively by any leader to get things done. This is especially true in an era when the command mentality has fallen by the wayside. In their book, *The Manager as Negotiato*r, authors David Lax and James Sibinius contend that, "Negotiating is a way of life for managers, whether renting office space, coaxing a scarce part from another division, building support for a new marketing plan, or working out next year's budget. In these situations and thousands like them, some interests collide. People disagree" (Lax and Sibinius, 1986:1).

Negotiating, influencing, building coalitions, enlisting the support of competent deputies—all of these are critical skills of a strategic leader. Any chief of probation or pretrial services will agree about the importance of negotiation as a leadership tool in daily organizational life and in the special moments when change management is required (Vernon and Byrd, 1996).

Structure (Management–Organization)

This aspect of leadership deals with issues of organization and structure. The best leadership intentions can go awry when frustrated by cumbersome organizational structures.

Questions here include: How will I organize the White House? Who will manage? Will I have a chief of staff? Will I have an open or closed White House operation?

Here again, there is much current discussion about organizational design. Starting in the 1970s and continuing through today, management consultants, professors, business leaders, public administration practitioners, scholars, and even government commissions have sounded a louder and louder drumbeat for the improvement in the way we *manage* organizations and people. What was a fairly lonely cry by Tom Peters and Charles Waterman in their 1982 pathbreaking book, *In Search of Excellenc*e, has become a deafening critique of the slow, plodding, confused, and inefficient bureaucracy that we allegedly serve in all our organizations today. In their 1980 *Harvard Business Review* article, "Managing Our Way to Economic Decline," authors Robert Hayes and William Abernathy said:

> American management, especially in the two decades following World War II, was universally admired for its strikingly effective performance. But times change. An approach molded and shaped during stable decades may be ill suited to a world characterized by rapid and unpredictable change, scarce energy, global competition for markets, and a constant need for innovation (1980).

This same critique of government bureaucracy underscores a good deal of the work of the more recent National Performance Review launched by President Clinton and Vice President Gore in March 1993 to help reshape and rethink our approach to public administration (Siegel, 1996).

In probation and pretrial services, chiefs and their colleagues have begun aggressively exploring alternative management structures for their operations, structures built around total quality management concepts or team-based management views (See Hendrickson, 1996).

Process (Decision Making)

This dimension relates to the methods a president or a leader uses to make and announce decisions. He must consider whether he wants a great diversity of opinion, or a more narrowly drawn range of options. Relevant questions include: How will I make and announce decisions? Will I deliberately encourage dissenting opinions? How will I handle conflict among my own advisers? How will I apply "damage control" when needed?

Again, there are many compelling management and organization dynamics studies in the general area of management and leadership around these themes. The fascinating research on "group-think," about how groups can quickly form consensus and block out any dissenting opinions, has actually been applied to presidential decision-making by psychologist Irving Janis (1982). Robert Kennedy's

account of the Cuban Missile Crisis, published in the book *Thirteen Days*, provided a compelling description of the deliberation of the 13 members of the Executive Committee during the Cuban Missile Crisis. A technique employed by President Kennedy was to leave the room so the other members could have an open and honest debate.

Chief probation and pretrial services officers have sought assistance from The Federal Judicial Center in developing sound decision-making processes in their offices, at times seeking ways to diversify the sources of input they consider in reaching decisions and at other times seeking means to verify the viability of alternative options presented to them.

With these four aspects of presidential leadership in mind, let us review the performance of four recent presidents to derive "lessons" of leadership.

Jimmy Carter

First a word about context, which is one of the points I mentioned. It is my contention that the leadership style of a president (or a manager) is in some important ways a reaction to the leadership style of his predecessor. Thus, President Carter's style was strongly influenced by the experience of Richard Nixon and Watergate (Gerald Ford only had a short time in the office, though he undoubtedly contributed a great deal in a calming manner to the nation). In the same way, Reagan was a reaction to Carter, and Bush to Reagan, and Clinton to Bush!

Policy

In 1976, we elected a former Georgia governor named Jimmy Carter. A year earlier, Democratic activists would not have named Carter as their presidential candidate. In fact, the popular refrain at the time of Carter's announcement was "Jimmy who?" Carter was considered a "woodwork" candidate, meaning he came out of the woodwork and suddenly appeared on the national scene. How/why did he become the Democrats' choice?

Because of Watergate. Carter was the perfect candidate to attract voters in the years following Watergate. He was an outsider, not part of the Washington Establishment; he was a man of the people, not an elitist; a farmer, an engineer, and most important, a person of integrity. Pollster Patrick Caddell persuaded Jimmy Carter that these were outstanding qualities for a presidential candidate to project in the wake of Watergate. Americans wanted a political leader who would not lie to them, who would not spy on them, who would not develop an enemies list, who would not, could not become an "imperial president." Jimmy Carter fit the bill perfectly.

Carter's 1976 campaign for presidency echoed the themes suggested by Caddell. He campaigned heavily and effectively on the themes of "honesty," "integrity," and giving America a "government as good as the people." He raised issues of unemployment and related economic affairs; however, his campaign was largely "thematic," based mostly on Carter's lack of Washington experience and his honesty and openness. He did not truly elaborate a "programmatic" campaign of action that he would implement if elected (we will see how Ronald Reagan did precisely that in his 1980 campaign for the presidency). Of course, we will never know if Carter would have been elected in 1976 had President Ford not pardoned Richard Nixon. But Ford did that, and Carter did achieve a victory in 1976.

Politics

"Now what?" is the last line of the movie "The Candidate," a film that depicts Robert Redford as a candidate without a real vision who manages to get elected due to the savvy of his campaign managers and political consultants. While the analogy is not perfect, the same movie could be written about Jimmy Carter.

Without a guiding vision, without an animating purpose for his presidency, Jimmy Carter never established policy priorities for himself or for members of his staff. A former White House aide in the Carter years described the early meetings of Carter's senior advisors as follows: "We all looked at each other and asked, who should lead the first meeting? Maybe Bob Lipshitz because he is the oldest among us" (Smith). James Fallows, Carter's speechwriter, described Carter's presidency as "passionless," due to the president's lack of devotion to any single issue or set of issues and his resulting inability to inspire passionate commitment among his staff (Fallows, 1979).

Carter surrounded himself with Washington amateurs. The Georgia Mafia, Carter's political colleagues from his days as governor of Georgia, did not really understand how to influence Capitol Hill. Carter, a Democratic president, had considerable trouble getting his legislative program approved by a Democratic Congress for several reasons. He did not establish priorities. Carter was personally involved in as many as 35 issues. His involvement was intense in terms of studying the issues and mastering the details, but not in terms of convincing others to go along. No one has the capacity to lobby Congress on 35 issues at one time. Heinemann and Hessler suggest that a president should not be involved *at the presidential level* in any more than three to five issues at any one time. Carter's 35 also lacked a hierarchy of priority.

He personally undervalued the importance of persuasion. A telling example comes from a book by Speaker of the House Tip O'Neil. O'Neil recounts the 1977 energy speech that Jimmy Carter delivered on national television in a cardigan sweater. Carter eloquently explained to the nation how the energy crisis demanded sacrifices of all Americans and that the White House was no exception. He told Americans that he had ordered all the thermostats at the White House to be set at lower temperatures, and that was why he was wearing a sweater. He also mentioned that he had an energy bill before Congress and that he would appreciate Congress acting on it. It was a great speech.

Five minutes after the speech, Carter's phone rang and Speaker O'Neil was on the line. The Speaker complimented Mr. Carter on his speech and then asked the president to call all the chairpersons of the committees who would be dealing with the energy bill. Carter responded that he did not feel that was necessary, as all the committee chairs had heard the speech. This missed opportunity was symptomatic of the president's style (O'Neil, 1988).

Carter's White House aides were mostly from Georgia, lacked Washington experience, and were not respected by the congressional leadership. Carter's director of congressional liaison, Frank Moore, was a novice in dealing with Congress. He and his colleagues were ineffective at persuading a Congress still controlled by the Democratic Party.

Structure

Carter was determined to eschew any appearances of being an imperial president. He greatly reduced limousine service for White House aides and other perks for White House staff. He enrolled his daughter Amy in public school, and he walked down Pennsylvania Avenue after his inauguration. Carter stopped the playing of "Hail to the Chief" when he made public appearances, thinking this too regal a practice for the American democracy.

In managing the White House, Carter decided not to have a chief of staff. Again, he felt that eliminating that position would make the president more accessible. Mr. Carter had been influenced by Stephen Hess' book on the presidency, which argued for a "spokes-of-the-wheel" management style—the president in the center and his staff radiating out from the center as spokes on a wheel. No hierarchy, just access would typify the Carter presidency. Unfortunately, the lack of hierarchy resulted in the president being inundated with requests for visits by all kinds of staff members. Carter's proclivity for micromanagement exacerbated the situation even more, and the story is told that Mr. Carter even got himself involved in the scheduling of the White House tennis courts!

Process

In an unusual attempt to build diversity into his foreign policy apparatus, Jimmy Carter named two wildly different men to the highest foreign policy posts in government. Cyrus Vance, an accomplished Wall Street lawyer, a conciliator and mediator by temperament and training, was appointed Secretary of State by Carter. And Zbigniew Brzezinski, irascible by nature and tempered by a horrific personal experience with the Soviet Union, was appointed National Security Adviser.

On almost all policy decisions that arose during the Carter Presidency, Vance and Brzezinski took diametrically different positions. Typically, Vance favored negotiating with the Soviets, working out compromises in international conflicts, relying on the United Nations and other international organizations to resolve regional disputes.

When a boss is confronted with two aides who constantly disagree, he or she must find ways to resolve tough issues; frequently this means having to side with one person over the other, or at least with one idea over the other. Not so with Jimmy Carter. He tried to blend both positions—Vance and Brzezinski—into a compromise position. Out of this amalgam, Carter presented numerous schizophrenic proclamations on foreign policy issues; the speeches and pronouncements were half Vance and half Brzezinski. Only when the Soviets invaded Afghanistan did Carter finally decide to side with Brzezinski, and shortly thereafter, Vance left the administration (after opposing the Iranian hostage rescue mission).

Overall, then, we can say that Jimmy Carter was not a strategic president as construed here. He did have his accomplishments. He was directly responsible for mediating a peace process between Israel and Egypt and for getting those adversaries to sign the Camp David Peace Treaty in 1978. Carter was successful in negotiating the Panama Canal Treaty, a feat that several presidents prior to him had failed to accomplish. He definitely placed the issue of human rights on the international agenda, and perhaps his influence led to the release of political prisoners in Argentina and other countries. Carter was responsible for nominating more women and minorities to the federal bench than any other president before him. But this Democratic president had trouble leading a Democratic-controlled Congress, did not establish clear policy objectives, presided over a huge economic downturn (interest rates reached 17 percent), and failed to rally the nation in many respects. His practice of telling the nation the truth—that there was a "malaise" in the nation and our children's lives might be worse than ours—was unsuccessful.

Ronald Reagan

With Ronald Reagan, things were almost totally different, at least in his first administration (1980-1984). In terms of context, the public perceived Reagan as Carter's opposite. Where Jimmy Carter was seen as vacillating—one member of Congress described him to the author as having both feet "firmly planted in mid-air"—Reagan was seen as resolute. Where Carter was seen as incapable of executing even a relatively minor military operation, to rescue the hostages from Iran, Reagan was seen as a competent defense advocate who would be willing to use force where necessary. Overall, the public perceived a sense of consistency in Reagan's policy pronouncements and little equivocation on the issues of the day. They found these traits admirable in a leader. He won a decisive victory over Jimmy Carter in 1980.

Policy

Reagan had been a tireless advocate for the conservative movement in American politics ever since he made the 1964 Republican nomination speech for Barry Goldwater. The major pillars of "Reaganism" were solid: government needed to cut taxes, cut domestic spending on social welfare and "entitlement" programs, increase military spending, and deal with moral decay in American society. Government also needed to cut itself, to shrink its role and its encumbrance on American business and productive enterprise. Reagan was effective in articulating these themes using his talents as the "Great Communicator," uniting disparate constituencies to whom each pillar had a different appeal. He succeeded in getting elected and showed impressive coattails, as six liberal Democratic senators were defeated in their re-election bids in 1980.

Though Ronald Reagan was not sophisticated in understanding all of the details of his own policy recommendations, he was passionate about the general ideas and more than willing to fight for the implementation of these ideas (tax cuts, increases in military spending, cuts in social welfare spending, etc.). Americans admired him for being resolute and for the ease and comfort with which he communicated his belief in these ideas.

Politics

Because his aides knew what Reagan's priorities were, they were prepared to sell his program to Congress even before the president was inaugurated. David Stockman, former congressman from Michigan who would be named the director of the Office of Management and Budget, had thoroughly prepared a plan to cut domestic spending. In the months between Reagan's election and inauguration, Stockman raced around Capitol Hill soliciting congressional approval of cuts in domestic social welfare spending and increases in defense spending. Reagan appointed Max Friedersdoorf, an experienced Washington politico representing the Rockefeller wing of the Republican Party, as his director of congressional liaison. Jim Baker, the chief of staff, was another seasoned Washington politician (and not an ideologue). Ed Meese, the president's counsel, would represent the purity of the right wing, but would also be a team player.

Unlike Carter, Reagan was able to focus on a few key issues and avoid becoming distracted from his agenda. The president's staff pursued Reagan's objectives—cutting social welfare spending, cutting taxes, and increasing defense spending—vigorously and almost single-mindedly. The president's energies were focused on these major initiatives. Threats to the agenda, such as Secretary of State Alexander Haig's efforts to get the United States involved in El Salvador, were muffled through a deliberate strategy of damage control.

With the focus and resolve on three or four key issues, Reagan and his staff were able to

mount an efficacious congressional persuasion strategy. A Republican president convinced a Democratic House (and Republican Senate) to pass most of his legislation, accomplishing a seven percent cut (in real dollars) in spending on domestic welfare programs, a 30 percent tax cut, and a ten percent increase in military spending.

The Reagan team was consistent in claiming to have gained a "mandate" for these kinds of policy changes from the American electorate. Even Tip O'Neil, the Speaker of the House, told his Democratic colleagues, "We better give this guy what he wants; he's so popular!" A closer look at the election results, however, reveals the fact that only 27 percent of the eligible voters voted for Ronald Reagan! This situation adds meaning to the concept that perception is more important than reality. It also gives us another insight into leadership strategies—people respond well to positive interpretations of events!

Structure

Reagan was not interested in making significant changes in the structure of the White House the way that Jimmy Carter was. He kept things fairly simple and somewhat traditional. As mentioned, he had a highly competent chief of staff in the person of James Baker. He routinely deferred to his staff in the development of policy initiatives and in the completion of legislative details. Reagan presided over a more traditional White House operation characterized by energy and efficiency among the president's deputies. Reagan ran a "9-to-5" presidency and was able to enjoy a relaxing horseback ride or other leisurely activities while his aides slugged through the details and morass of policymaking.

Process

We find a more limited amount of diversity among the Reagan appointments. Characteristically, Reagan delegated a great deal of power to his deputies and senior staff to manage brewing conflicts or to quell policy debates before they reached the press. The troika of Meese, Baker, and Deaver was adequately representative of the differing factions that competed for the attention of the president for him to feel that his constituencies were satisfied. One particularly daunting need in any presidency is that of "damage control." Things are bound to go awry. A president is in constant danger of losing control over his agenda. We find that in his first administration, President Reagan was able to exert this kind of damage control by putting a lid on the pronouncements of Secretary of State Alexander Haig about U.S. intervention in El Salvador.

Overall, the first Reagan administration may be judged successful by the criteria used here. Reagan articulated a clear vision, worked hard to get the vision implemented as policy, limited himself to a few key issues and goals, exercised "damage control" when needed, surrounded himself with highly capable political operatives, and managed big picture issues capably.

Of course, damage control did not work perfectly for Ronald Reagan, and in his second administration (1984-1988) there were several policy and political failures, including Budget Director David Stockman's damaging revelations about the economic program to William Grieder of *The Atlantic Monthly*. Stockman confessed that Reagan's economic program promising that we could cut taxes, increase defense spending, cut social spending, and still balance the budget was based on notably optimistic assumptions about economic growth. Stockman thought these discussions with Grieder were "off-the-record." However, his comments were printed in *The Atlantic Monthly*. Although President Reagan took Mr. Stockman "to the woodshed," the damage was done, and serious doubt had been cast upon the viability of the Reagan economic program. Then the Iran-Contra episode heated up, throwing the second Reagan administration into a tailspin (See Mayer and McManus, 1998 for a summary of the second Reagan administration).

George Bush

Policy, Politics, Structure, and Process

Mr. Bush was cynical about vision, referring to this idea sarcastically as "the vision thing." In his campaign against Massachusetts Governor Michael Dukakis, Bush represents another candidate who did not really understand the importance of vision. Mr. Bush campaigned largely on the strength of his resume, and a great resume it was. He had held almost every important position in American government: vice president, ambassador to the United Nations, ambassador to China, member of the House of Representatives. He knew government inside and out and clearly possessed the competence needed to be president. Yet he lacked a vision, a purpose, a rallying cry for the American public. Like Jimmy Carter, George Bush resorted to a thematic campaign; however, in this case, it was largely a negative one. Bush accused his opponent, Governor Dukakis, of being "soft on crime." The state of Massachusetts had a furlough law (which ironically had been enacted under Republican Governor Frank Sergeant). The law enabled convicted felons serving life sentences to have weekend passes (furloughs) away from prison. Willie Horton, serving a life sentence with no chance of parole, traveled to the state of Maryland and viciously raped Angela Barnes and beat her husband at gunpoint (Germond and Whitcover, 1989).

The Bush campaign developed a TV ad depicting prisoners leaving jail through a revolving gate while a narrator described the Massachusetts furlough experience:

> Governor Michael Dukakis vetoed mandatory sentences for drug dealers.
>
> He vetoed the death penalty. His revolving door prison gave weekend furloughs to first-degree murderers not eligible for parole. While out, many committed other crimes like kidnapping and rape and many are still at large. Now Michael Dukakis says he wants to do for America what he has done for Massachusetts. America can't afford the risk (Germond and Whitcover, 1989:11).

Bush conducted a thematic campaign that highlighted him as "tough on crime"and his opponent as "soft." He presented himself as an experienced government official who could be trusted with the stewardship of the nation. He never truly enunciated a vision of what he would do if elected president (Rockman, 1991: 30-31). Largely due to the inadequacy of the Dukakis campaign on many levels, Bush was elected by a solid majority.

Because of his long years of government experience, Mr. Bush was able to bring professionals to the White House and to the agencies. He included seasoned professionals like James Baker, Richard Darman, and others in his administration. But his lack of vision hampered him in leading the nation. Let us look at a telling example.

While Bush was in the White House, Saddam Hussein invaded Kuwait and threatened not only to take over that country but to endanger vital American interests by controlling as much as 40 percent of the world's oil supply. President Bush reacted quickly and

decisively, stating on national television that Hussein's actions "will not stand." Indeed, in this instance President Bush's resume did work for him. He was able to call world leaders and on a personal basis align them with the cause of resisting Mr. Hussein's aggression against Kuwait. So adroit was Bush in the diplomatic process that he aligned Israel, Saudi Arabia, and Syria on the same side of this conflict, against Saddam Hussein. He was also able to convince the Israelis not to intervene, in spite of the Iraqi Scud missiles being launched into their population centers and cities.

Our military intervention proved successful, and we achieved quick and certain victory in a high-tech war effort displayed on national television. American casualties were lower than predicted, and the operation to drive Hussein out of Kuwait was over in a matter of days.

At the end of this episode, George Bush had an approval rating of 90 percent, a level of approval that most leaders, managers, and presidents can only fantasize about. Yet, because Mr. Bush lacked a vision, an animating purpose for his administration—especially in the domestic policy arena—he squandered this unusual groundswell of popular support and did virtually nothing in terms of a policy agenda. He lost a golden opportunity to build on the momentum of his "victory" in the Gulf War.

What It Means for Chiefs

The comparative descriptions of these presidents, along the adumbrated leadership dimensions, suggests the following lessons for probation and pretrial chiefs:

Be Clear About Your Purpose

It does not matter if you consider yourself a "visionary"— most leaders do not. Yet your position requires that you have purpose, and that you find ways to inspire those who work for or with you to strive to achieve that purpose. Without a vision or a guiding purpose, your staff members will feel adrift and lacking direction. Consider this apt analogy from Kouzes and Posner's outstanding book, *The Leadership Challenge* (1997: 110):

> ….Imagine watching a slide show when the projector is out of focus. How would you feel if you had to watch blurred, vague, and indistinct images for an entire presentation? We've experimented with this in some of your leadership programs.
>
> The reaction is predictable. People express frustration, impatience, confusion, anger, even nausea. They avoid the situation by looking away. When we ask them whose responsibility it is to focus the projector, the vote is unanimous: "the leader—the person with the focus button." Some people get out of their chairs, walk over to the projector, and focus it themselves, but this doesn't change how they feel: they're still annoyed that the person with the button—the leader—wouldn't focus the projector.

Whether your office is small or large, in transition or not, vision helps set the agenda and give purpose to the enterprise. Many probation/pretrial services offices debate whether they are in the business of "law enforcement" or "social work," whether they have independent authority or exist at the mercy of the whims of a chief judge. You may not be fully in control of all the answers to these questions, but you should try to imagine a future that can excite and animate your staff and the public. A good place to start is the article titled "Guiding Philosophies in the 21st Century," published in the June 1994 issue of *Federal Probation* (Sluder, Sapp, and Langston, 1994).

Have a Political Strategy

You may not consider yourself a politician, and you may have never read or even heard of Machiavelli! Nonetheless, you will have trouble succeeding as a leader in the absence of a political strategy. A newly appointed chief pretrial services officer, for example, will need to lobby for her vision, to sell it, to convince others to go along with it. She will need to consider the important people whose support she needs—like the chief judge—and the methods available to persuade those people. She will need to learn the agenda of these important people and determine which parts overlap with her own agenda and where there are differences. She will need the courage to confront the differences, and perhaps the patience to wait for better times.

Leadership will be easier for the new chief if she knows her purpose clearly and can focus on the accomplishment of five or six major goals, not 25 or 30 at one time. She will be better off doing five or six things well, like President Reagan in the early days of his presidency, instead of pursuing 25 goals haphazardly, the way Mr. Carter tried to do. By limiting the number of goals she pursues at one time, the chief will be able to maximize her resources more effectively and set clearer expectations for her staff.

The new chief will also need to enlist her own staff in the implementation of her programs and policies. She will need to have open, honest discussions with them about things that will be the same and things that she would like to change. It's important at this stage in a leadership transition for the new leader to be open to hearing concerns and anxieties among staff members about potential changes. All too often managers and leaders misinterpret tough questions as resistance. Sometimes those asking the toughest questions are the ones who will be the strongest supporters.

Another part of implementation or execution is that the leader might have to have what are called "difficult conversations" with organizational colleagues. In a recent book titled *Difficult Conversations* (1998), authors Douglas Stone, Bruce Patton (from the Harvard Negotiation Project) and Sheila Heen discuss the inevitability of having difficult conversations in our lives, but the availability of better techniques than we usually employ to have these conversations. They stress the importance of learning from the other side about alternative perceptions, ideas, and approaches to a subject before imposing your own view.

Finally, in this area, you will need to consider how to recruit, retain, promote, or reassign staff within your office. While central administrative policy limits your options to some extent, you can display creativity and imagination in the way you carry out the staffing situation in your office. Give careful consideration to the human resources you have to carry out your vision, and do not become caught up in the less impressive questions of who your "friends" are or who is owed a favor.

Be Deliberate about Your Management Style and Structure

You have more choices than you think about how you manage your office and structure your operation. Be aware of a temptation to simply implement "management fads" without adequate attention to the workability of these schemes in your own environment. Like Jimmy Carter's easy embrace of the "spokes-of-the-wheel" concept of management, yours may be overly influenced by recent books or

even conversations with colleagues. While these activities are invaluable, they should influence but not dictate the direction you choose for your own operation.

You do need to consider the positioning of your staff, your own accessibility, and how you want to be perceived by all of your staff up and down the hierarchy. Facile pronouncements about an "open-door" policy or about "participatory management" will not do the trick, because staff will not really know what these phrases mean….until they see them in action.

Use All Resources to Make Decisions, Anticipate a Need to Manage Conflict

Finally, as chief you need to understand your own decision-making style and the available resources to help you make the best decisions possible. You need to resist the temptation to surround yourself with "yes" men and women who will not and even cannot challenge you at appropriate times. There will, of course, be times when your best advisers, your closest confidants, are deadlocked. This is a lonely position to be in, but you will have to be the one to make the decisions.

Leadership is not easy. But by using these four areas of performance, we can all learn from the experience of American presidents and from our own colleagues past and present.

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The Addition of Day Reporting to Intensive Supervision Probation: A Comparison of Recidivism Rates

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THE DAY REPORTING CENTER

has gained recent popularity as an intermediate sanction. It provides rehabilitation for offenders through intensive programming, while retaining a punishment component by maintaining a highly structured environment. It joins control-oriented community punishments, such as intensive supervision probation (ISP), house arrest, and electronic monitoring, as a viable sentencing option. As an intermediate sanction, the day reporting center shares the common goals of providing punishment in a cost-effective way while still ensuring community safety.

A "day-reporting center" is an intermediate sanction that requires the offender to be supervised by a probation officer and assigned to a "facility to which offenders are required...to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skill training, or employment training" (Clarke, 1994, p. 6). Proponents of these nonresidential centers boast that day reporting satisfies several ends of punishment—incapacitation, retribution, and rehabilitation. The retributive and incapacitative components derive from the requirements of daily contact with the center, curfews, and substance abuse screening. Day reporting centers differ from other intermediate sanctions, however, by a marked concentration on rehabilitation. Staff assess the individual offender's needs and offer him or her various types of in-house treatment and referral programs including substance abuse treatment, education, vocational training, and psychological services.

Little empirical research has been done to compare recidivism rates of day reporting centers with those of other intermediate sanctions. There are two main reasons for this. First, the day reporting center is still relatively new. Day reporting centers originated in Great Britain in the early 1970s and by the mid 1980s they were widely utilized to manage probationers. In the United States, however, the first day reporting center did not open until 1986.

Second, day reporting centers vary greatly in terms of the target population, eligibility criteria, services offered, monitoring procedures, and termination policies (Diggs & Pieper, 1994). The heterogeneity of programs has hindered a clear understanding of the viability of day sentencing centers as an effective intermediate sanction.

This study compares rates of rearrest from a sample of individuals sentenced to intensive supervision probation only with a sample of offenders sentenced to intensive supervision probation plus the day reporting center. The North Carolina Structured Sentencing grid identifies both the day reporting center and intensive supervision probation as intermediate punishments. This quasi-experimental design permits one to assess whether, controlling for personal and legally relevant characteristics, the addition of day reporting to intensive supervision probation affects recidivism rates. This analysis will help us understand whether day reporting is a significant deterrent to future offending.

Issues in Day Sentencing Center Research

History

When day reporting centers emerged in Great Britain in the 1970's, probation officials were seeking a sanction that allowed the offender to maintain family and social ties and secure or continue employment. Judges used the original four Day Treatment Centers as a condition of probation. More than 80 day centers were implemented by the 1980s. Absent central planning, however, the programs at these centers were quite diverse with respect to types of cases, administration, operation, caseload, and program content (Parent, 1990).

Day treatment in the United States began in response to prison crowding and was strongly influenced by British day centers. Day reporting centers were envisioned to offer enhanced supervision and provide a wide range of treatment services to the offender. The model of day reporting also has antecedents in programs for de-institutionalized mental patients and juvenile offenders (Parent, 1990). The first site, in Hampden County, Massachusetts, opened in 1986. It was used as an early release option for sentenced inmates but later accepted pre-trial detainees (Larivee, 1990; McDevitt, Pierce, Miliano, Larivee, Curtin, & Clune, 1988). Like the British system, there is extreme diversity in type of offender, number of clients served, and length of time to be spent at day reporting centers in this country (Parent 1990).

Goals

The goals of day sentencing centers vary as well. Support for intermediate sanctions comes from diverse sources, such as judges, prosecutors, defense attorneys, and correctional personnel (see generally, McGarry & Carter, 1993). In general, intermediate sanctions have been endorsed by both liberal and conservative policymakers.

One major goal is *cost effectiveness*. High revocation rates of offenders under surveillance-oriented programs such as intensive supervision probation undermine the goal of cost effectiveness. Because such programs require many contacts with probation officers, they are more "at-risk" than those offenders sentenced to regular probation. When revoked, the offender typically goes to prison. Considering high revocation rates, Tonry and Lynch (1996) conclude that most intermediate sanctions are not cost effective. Day reporting centers require even more surveillance than intensive supervision probation and may actually increase the likelihood that an individual fails during treatment at the day reporting center.

Mechanisms to Achieve Treatment Compliance

Some suggest that successful programs can be traced to the establishment of informal social controls. A body of literature (Brasswell, 1989, Byrne, 1990) suggests that establishing informal social controls may more effectively deter future offending than simply increasing the number of surveillance contacts. Byrne (1990, p. 32) suggests, "IPS programs may be important *not* for the surveillance and control afforded offenders but for the relationships that develop as a result of closer contact." A close bond with a probation officer or case manager may reduce recidivism because the offender does not want to disappoint the case manager who motivates him or her to achieve. The offender's attitudes and behavior change to become more prosocial. The structure of most day reporting centers facilitates the development of informal social controls to potentially increase treatment compliance. The average caseload is relatively low, at about 25.

Petersilia and Turner's (1990) work suggests that probation programs that offer offenders treatment as well as intensive surveillance can reduce recidivism by about 15 percent, compared to intensive surveillance probation programs that offer no special offender treatment. In reviewing evaluations of intensive supervision probation (ISP) programs in general, Turner, Petersilia, and Deshenes (1992) suggest, "These cumulative results lend serious doubt to the claim that increased supervision, in and of itself, will reduce recidivism, decrease prison crowding, or save public funds."

Description

The Creation of the Day Reporting Center

The southeastern North Carolina day reporting center in this study was created using state funds designated for the development of intermediate sanctions in the state of North Carolina. The money was allocated through the State-County Criminal Justice Partnership Act, the goal of which was to establish community-based corrections for counties that applied for funding. This act accompanied the 1994 North Carolina Structured Sentencing Act.

Structured sentencing in North Carolina links sentencing guidelines with the development of intermediate sanctions (Tonry, 1997). The punishment grids for both felony and misdemeanor offenses are based on two criteria—offense seriousness and prior record. The felony and misdemeanor punishment charts show the minimum length of time in months that an individual could serve in prison for each grid cell (see Figure 1 and 2 at end of article).

Active (prison) sentences ("A" cells) are reserved for serious and/or repeat offenders. Judges *must* sentence the offender to active prison time in the presumptive, aggravated, or mitigated range, if he or she falls in an "A" cell. Intermediate sanctions, such as intensive supervision probation, electronic monitoring, split sentence (shock incarceration followed by probation) and day reporting ("I/A", "I", and "C/I/A" cells), are the mid-range punishment. These sanctions target the otherwise prison-bound offender. Community punishments ("C" cells) are given to offenders who have committed less serious offenses and who have little or no prior record. Examples of community punishments include regular probation and TASC.

The judge may use discretion in imposing intermediate and community punishments under certain circumstances. For example, if an offender falls in an "I/A" cell, the judge may either activate the prison sentence or suspend the active prison term and impose an intermediate sanction. An offender who falls in a "C/I" cell will receive a suspended sentence and either intermediate or community punishment, at the discretion of the judge.

Structured sentencing was developed in response to widespread prison overcrowding and a prison cap that was in place at the time of the legislation. This cap required prisons to release inmates when prison capacity ex-

TABLE 1
Means and Standard Deviations for Independent Variables in Model

Independent	ISP only			ISP + DRC		
Variable	**Mean**	**SD**	**N**	**Mean**	**SD**	**N**
Proportion Male	.823	.38	875	.808	.40	151
Age	29.219	9.01	869	28.556	9.57	151
Proportion Nonwhite	.554	.50	871	.649	.48	151
Proportion not Married	.832	.37	865	.854	.35	151
Proportion Working	.466	.50	721	.560	.50	150
Years of Education	11.429	1.78	755	10.77	1.76	150

ceeded 98 percent for more than 15 days. Intermediate sanctions are, by law, to be used mainly for offenders who otherwise would have gone to prison. Intermediate sanctions were to be expanded under the State-County Criminal Justice Partnership Act.

About half of the offenders sentenced to the Day Reporting Center were sentenced directly by a judge. The other half were probation intensifications. These clients were on regular probation and committed a technical or legal violation of their probation conditions. Their probation officer revoked the probation and brought them back to court for resentencing. Consequently, the sample of Day Reporting Center clients includes both "diversion" as well as "enhancement" offenders, as described by Petersilia and Turner (1993).

Operation

The Day Reporting Center is a four-phase program lasting approximately 12 months. Offenders must check in between one and six times per week, depending on what phase they are in. Day Reporting Center clients must be employed or engaged in a concentrated job search. If they are unemployed, they must be at the center participating in treatment activities when they are not actively seeking employment.

The Day Reporting Center also serves the offender by assessing substance abuse, educational/vocational, and mental health needs and making appropriate referrals. The center offers GED classes, literacy training, anger management, adult basic skills, parenting, Alcoholics Anonymous, Narcotics Anonymous, drug education, and individual counseling. All offenders must develop and submit daily itineraries to their case managers. In addition, they must submit to random drug tests at the center.

The center operates on a three-strikes system, so that once an individual accrues three strikes, he or she is terminated from the program. Behavior qualifying for strikes or points toward strikes includes late or missed appointments, swearing, assaulting a case manager, and positive drug screens. Note that an offender may be terminated if he or she accrues three strikes or if his or her probation officer discovers a technical or legal violation and initiates revocation procedures.

The Day Reporting Center is a special condition of probation. All offenders are on either regular probation or intensive supervision probation. Approximately 75 percent of the Day Reporting Center clients were on intensive supervision probation. Offenders sentenced to ISP must follow several stringent conditions: 1) a curfew from 7 p.m. to 7 a.m.; 2) contact with their probation officer five times per week; 3) submission to warrantless searches; 4) submission to random drug tests; 5) performance of community service; 6) work or school attendance. The focus is primarily on surveillance, not treatment, although the offender's probation officer may require the client to participate in drug treatment, upon assessment.

Hypotheses

It is hypothesized that offenders sentenced to the Day Sentencing Center in addition to intensive supervision probation will have lower recidivism rates than those sentenced to intensive supervision probation alone. The strong emphasis on rehabilitation through intensive programming should lessen the rate of rearrest, as the offender is resocialized to living a law-abiding lifestyle. In addition, because of a relatively small caseload (25), a close relationship between the case manager and offender should help reduce reinvolvement in crime (Byrne, 1990).

Data

Data collection yielded a data set of 1026 cases. This included the entire population of the intensive supervision probation (ISP)-only cases (n=875) sentenced between October 1, 1995 and May 31, 1998. The rest of the sample was comprised of the 151 cases that were sentenced to the Day Reporting Center plus intensive supervision probation during this time period. Information about criminal history, background information, and client status was obtained through case files at the center. In some cases, the original court judg-

TABLE 2

Coefficients and Standard Errors from Logistic Regression Analysis (N=720)

Independent Variable	Maximum Likelihood Estimate	Standard Error	Significance
Day Sentencing + ISP	.119	.223	.594
Male	.573	.240	.017
Age	-.012	.010	.249
Non-white	.307	.178	.084
Not Married	.297	.245	.225
Working	-.196	.177	.267
Education	.034	.049	.481
Log of Months	.694	.130	.000
Constant	-3.58	.753	.000

ment, obtained from the Clerk of Courts, was needed to complete the case file. The minimum sentence length for all Day Reporting Center clients is one year. The dependent variable was whether the offender was rearrested for a non-traffic offense as of May 31, 1998. Arrest was chosen as the measure of recidivism partly because there was a long lag in follow-up time between arrest and conviction. It would take up to a year before a reconviction would show up in court records. Of course, rearrest does not necessarily mean reconviction, and therefore is not a perfect indicator of reinvolvement in crime. A measure "log of months" was included in the logistic regression equation to represent time at risk for rearrest. This was simply the log of the number of months since the offender's date of sentence.

Table 1 lists descriptive statistics for those offenders sentenced to the Day Reporting Center (DRC) plus intensive supervision probation sample and those sentenced to intensive supervision probation (ISP) only. The two groups were similar on most measures. The majority of both ISP (82 percent) and DRC/ISP (81 percent) clients were male. The average age of DRC/ISP clients was approximately 29 and the average age of ISP clients was 28.5. Approximately 55 percent of the ISP clients are non-white (black or Hispanic), whereas about 64 percent on the DRC/ISP clients are non-white. About 82 percent of the ISP clients were not married, compared to 85 percent of the DRC/ISP clients. Forty-six percent of the ISP clients were employed, compared to 56 percent of the DRC/ISP offender. The average years of education for ISP clients is about 11.4, whereas the average years of education for DRC/ISP clients is about 10.7.

Analysis

If a case was missing data on any variable in the equation, it was deleted. Listwise deletion yielded a sample of 720 cases from the initial sample of 1026. Table 2 shows the results from the logistic regression model.

The only variable that is significantly related to rearrest is sex. Males have a higher likelihood of being rearrested than females. This is consistent with career criminal work that documents males' longer criminal careers and overall greater involvement with crime.

Age is statistically insignificant. Older offenders are no more likely than younger offenders to be rearrested within the follow-up period. The effect of race is substantively significant ($p < .084$), although not significant at the $p < .05$ level. African Americans are more likely to be rearrested than whites and Hispanics. This parallels a body of research that documents black males' disproportionate involvement in crime and the criminal justice system's response to African-American men (Mauer, 1999).

Marital status has a statistically insignificant effect on rearrest. Whether the offender is employed at the time of sentencing is not a significant predictor of whether he or she is rearrested. In addition, years of education is an insignificant predictor of rearrest.

The effect of day sentencing plus ISP is statistically insignificant. This means the likelihood of being rearrested is not significantly different for offenders who are sentenced to DSC plus ISP, compared to those sentenced to ISP only. They are neither more nor less likely to recidivate.

Discussion

This study examined the predictors of rearrest among a sample of offenders sentenced to intermediate sanctions. The results of the analysis show that the addition of a Day Reporting Center to ISP does not significantly reduce the rate of rearrest. It is possible that any rehabilitative effect that the Day Sentencing Center has may be counterbalanced by increased surveillance of those sentenced to both day reporting and intensive supervision probation. Those who are sentenced to the Day Reporting Center are under the surveillance of both probation officers and day reporting staff. The "piling up" of sanctions discussed by Blomberg and Lucken (1994) increases the likelihood of "the offender's exposure to numerous forms of control and scrutiny culminating in frequent violations of the terms of sentence." So the effect of bonding with the case manager and the rehabilitative component of the day sentencing center may be counterbalanced by increased surveillance of day sentencing clients to yield a negligible effect on rearrest rates.

One could interpret these findings in different ways. From a cost-effective approach, one could argue that since adding Day Reporting to ISP doesn't reduce recidivism, it is a waste of money to enhance the ISP sanction. On the other hand, Day Reporting provides rehabilitation programs well beyond what ISP has to offer. Regardless of effect on recidivism, DRC empowers the individual offender by offering him or her literacy courses, GED, substance abuse counseling, and anger management classes.

Extant evaluations on intermediate sanctions have yielded less than enthusiastic support for their widespread use (Tonry & Lynch, 1996). There are contingencies under which some of these programs have been successful, including offender amenability and prior record. It is important to ascertain what the desired outcome of intermediate sanctions, such as day reporting are—whether it be pure cost effectiveness and prison diversion or whether it be evidence of rehabilitation. Until these issues are sorted out, it is difficult to conclude the effectiveness of day reporting or any other intermediate sanction.

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FIGURE 1.

North Carolina Felony Punishment Chart.

	Prior conviction levels		
Offense Class	**I** *No prior convictions*	**II** *One to four prior convictions*	**III** *Five or more prior convictions*
AI	1 - 60 days C/I/A	1 - 75 days C/I/A	1 - 150 days C/I/A
1	1 - 45 days C	1 - 45 days C/I/A	1-120 days C/I/A
2	1 - 30 days C	1 - 45 days C/I	1 - 60 days C/I/A
3	1 - 10 days C	1 - 15 days C/I	1 - 20 days C/I/A

Note: A - Active Punishment I - Intermediate punishment C - Community Punishment

FIGURE 2.

North Carolina Misdemeanor Punishment Chart.

Offense Class	Prior record level I 0 pts.	II 1-4 pts.	III 5-8 pts.	IV 9-14 pts.	V 15-18 pts.	VI 19+ pts.	
A	Death or life without parole						
	A	A	A	A	A	A	Disposition
	240-300	288-360	336-420	384-480	LWOP	LWOP	Aggravated range
B1	*192-240*	*230-288*	*269-336*	*307-384*	*346-433*	*384-480*	*Presumptive range*
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated range
	A	A	A	A	A	A	
	157-198	189-237	220-276	251-313	282-353	313-392	
B2	*125-157*	*151-189*	*176-220*	*201-251*	*225-282*	*251-313*	
	94-125	114-151	132-176	151-201	169-225	188-251	
	A	A	A	A	A	A	
	73-92	100-125	116-145	133-167	151-188	168-210	
C	*58-73*	*80-100*	*93-116*	*107-133*	*121-151*	*135-168*	
	44-58	60-80	70-93	80-107	90-121	101-135	
	A	A	A	A	A	A	
	64-80	77-95	103-129	117-146	133-167	146-183	
D	*51-64*	*61-77*	*82-103*	*94-117*	*107-133*	*117-146*	
	38-51	46-61	61-82	71-94	80-107	88-117	
	I/A	I/A	A	A	A	A	
	25-31	29-36	34-42	46-58	53-66	59-74	
E	*20-25*	*23-29*	*27-34*	*37-46*	*42-53*	*47-59*	
	15-20	17-23	20-27	28-37	32-42	35-47	
	I/A	I/A	I/A	A	A	A	
	16-20	19-24	21-26	25-31	34-42	39-49	
F	*13-16*	*15-19*	*17-21*	*20-25*	*27-34*	*31-39*	
	10-13	11-15	13-17	15-20	20-27	23-31	
	I/A	I/A	I/A	I/A	A	A	
	13-16	15-19	16-20	20-25	21-26	29-36	
G	*10-13*	*12-15*	*13-16*	*16-20*	*17-21*	*23-29*	
	8-10	9-12	10-13	12-16	13-17	17-23	
	C/I/A	I/A	I/A	I/A	I/A	A	
	6-8	8-10	10-12	11-14	15-19	20-25	
H	*5-6*	*6-8*	*8-10*	*9-11*	*12-15*	*16-20*	
	4-5	4-6	6-8	7-9	9-12	12-16	
	C	C/I	I	I/A	I/A	I/A	
	6-8	6-8	6-8	8-10	9-11	10-12	
I	*4-6*	*4-6*	*5-6*	*6-8*	*7-9*	*8-10*	
	3-4	3-4	4-5	4-6	5-7	6-8	

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment
Numbers shown are in months and represent the range of minimum sentences.

Parole Officers' Perceptions of Juvenile Offenders within a Balanced and Restorative Model of Justice

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BALANCED AND RESTORATIVE Justice (BARJ) is a model of justice that has much of its roots in the work of Zehr (1990) and has most recently been researched and promoted by Bazemore and Umbreit (1997). It is presented in much of the literature as a well-rounded and pragmatic model of justice. BARJ takes into account both the risks and the needs of individual offenders without sacrificing the needs of victims. In this respect, BARJ can be understood as less retributive and less offender-centered than more traditional models of justice. The guiding principle of BARJ is the restoring of victims and their respective communities at large, while at the same time maintaining a focus on the risks and needs of the offender. The basic precepts of BARJ are classified into three general areas: 1) offender accountability–the obligation of each offender to restore the harm done to victims; 2) offender competency development–the need for each offender to become a capable and productive member of society; and 3) community protection–the right of each person to be safe and secure within his or her respective community environment. The basic notion of BARJ is that both effective and pragmatic justice can best be achieved when a balance of criteria related to restoring both the offender and victim is afforded. These criteria relate to members of the community, to victims of crime, and to the risks and needs of offenders (Maloney, Romig, and Armstrong 1989).

The Ohio Department of Youth Services (ODYS) is a leading agency in funding and in providing services to the juvenile justice population in Ohio. The general direction of the ODYS has been and continues to be to integrate a balanced system of justice into many of its programs and services. Parole, Courts, and Community Services (PCCS) functions as a division of the ODYS, having a principal responsibility for assisting in the reintegration of incarcerated juvenile felons into the community from the institution. A juvenile offender is typically placed on parole for a period ranging from four to nine months, with specific goals being established in the three areas of BARJ, that is, in the areas of offender accountability, offender competency development, and community protection. The parole officer assigned to a juvenile offender on parole monitors the youth's progress or lack of progress in meeting specific established goals. A juvenile offender's discharge from parole is often linked to the satisfactory completion of these specific goals.

The present study began as a result of a dialogue between the authors, who inquired as to how one might quantify and measure balanced and restorative justice within the provision of aftercare services (i.e., parole supervision) to adjudicated offenders. The authors thought that the relationships and perceptions that parole officers have with juvenile offenders on their caseload are often the closest link that the juvenile justice system has to the juvenile offender. These relationships and perceptions, therefore, may provide a good basis on which to quantify and measure the components of balanced and restorative justice. The ongoing dialogue of the authors became the catalyst for the development of the Balanced and Restorative Justice Evaluation Screen (BARJES).

The authors conducted the study presented here at a regional, community-base juvenile parole office. They designed and implemented the Balanced and Restorative Justice Evaluation Screen (BARJES). The BARJES was designed as a rating system to be completed by parole officers working with juvenile offenders. The BARJES was designed to measure parole officers' perception of the paroled juvenile offenders on their caseloads within the context of BARJ. The authors believe that parole officers' perceptions of juvenile offenders on their caseloads constitute valuable information that might be made more useful if such perceptions were quantified and measured. The purpose of this study was to demonstrate that reliable and valid rating instruments could be developed to quantify and measure the perceptions of parole officers about their juvenile offenders. This information could then be utilized to predict outcomes and to monitor a juvenile offender's progress with respect to parole services.

Method

Subjects

Parole officers (P.O.'s) at a regional juvenile parole office completed the BARJES for juvenile offenders (J.O.'s) on their caseload for a two-month period. A total of 72 BARJES were completed by 15 P.O.'s. The demographic composition of those participating in the study is outlined in the following table (see Table 1).

Instrumentation

The Balanced and Restorative Justice Evaluation Screen (BARJES) is made up of fifteen items designed to quantify and measure, within the context of BARJ, the perceptions

TABLE 1

Study Demographic Composition

	Age		Gender		Race		
	Mean	**SD**	**Male**	**Female**	**Black**	**White**	**Mixed**
J.O.'s	16.9	1.2	62	10	33	36	03
P.O.'s	40.1	8.4	09	06	07	09	00

of parole officers concerning youth on their caseloads. The BARJES was designed to reflect the three basic areas of BARJ (i.e., offender accountability, offender competency development, and community protection). The BARJES is comprised of three item-pools made up of five items in each item-pool (see Table 2). The instructions provided to parole officers for completion of the BARJES were: *Read each item and select one response to the right of each item. Indicate in a clear manner the response that you select for each item. Answer all items according to your present knowledge of the youth.* The possible available rating responses to the right of each item were 0 = never, 1 = seldom, 2 = average, 3 = mostly, 4 = total. The direction of scoring was identical for all items.

Results

The results of administration of the BARJES are presented here from a sample of juvenile offenders (n=72) and includes (1) single-item mean scores and standard deviations, (2) item-pool mean scores, standard deviations, and item-pool coefficient alphas, (3) inter-item correlation coefficients, and (4) a test-retest coefficient from a smaller sub-sample from the study population (n=20).

Means and standard deviations were calculated for each of the fifteen items of the BARJES (see Table 3). Item-pool means, item-pool standard deviations, and item-pool coefficient alphas were also calculated for the designated item-pools of offender accountability (OA), offender competency development (OC), and community protection (CP) (see Table 4). The mean of all fifteen items for the study sample was 25.4 with a standard deviation of 11. A coefficient alpha of .91 for the study sample, inclusive of all fifteen items, to measure internal reliability (i.e., item consistency), was obtained. A test-retest (M = 12.1 days, SD = 3.7 days) coefficient of .88 for a sub-sample (n=20), inclusive of all fif-

TABLE 2

Item-pool Composition

Accountability of Offender

1. To what degree *has the youth restored* as much as is possible the losses to society or victim(s) that resulted from his or her criminal activity, etc.

4. To what degree has the youth *expressed an understanding* and *had appropriate feelings of remorse* for the damage or hurt caused.

7. To what degree *have victims* of the youth's criminal activity *been involved* in the justice process dealing with the youth.

10. To what degree has the youth been *compliant with the conditions (i.e., rules)* that were given to him or her to follow.

13. To what degree has the youth *met and completed the established conditions or agreements* that were given to him or her.

Competency of Offender

2. To what degree has the youth *made beneficial gains in opportunities* provided him or her, e.g., education, training, counseling, groups, etc.

5. To what degree are the youth's skills and abilities now sufficient *in his or her present environment* to meet basic needs, e.g., food, clothing, shelter, etc.

8. To what degree has the youth *been successful* in positive conventional activities, e.g. recreation, school, work, etc.

11. To what degree has the youth *been involved in programs or services* that are able to help aid in increasing his or her competencies.

14. To what degree is the youth free from the need for *adjunctive mental health services,* e.g., for depression, anger, anxiety, etc.

Protection of Community

3 To what degree is the youth's *present environment,* i.e., home or institution a support and a help in discouraging future criminal activity.

6. To what degree is the youth free from the need for *supportive supervision* to avoid involvement in criminal activity.

9. To what degree has the youth demonstrated a *freedom from* any type of participation in *criminal activities.*

12. To what degree *is the community* (i.e., institutional or non-institutional) *involved* with the youth to aid the youth in a non-criminal agenda.

15 To what degree do you consider the youth to be *free from the risk of* becoming involved in *criminal activity* and *re-offending.*

teen items, to measure external reliability (i.e., temporal stability), was also obtained.

Inter-item correlations for each of the fifteen items of the BARJES were calculated and evaluated at a two-tailed level of significance. There were 58 correlations significant at the .01 level and 17 correlations significant at the .05 level (see Table 5). In all, there were 70 significant inter-item correlations beyond what would be expected to occur by chance $p \geq .05$.

A follow-up study was conducted after six months for seventy-one of the initial juvenile offenders for which a BARJES had been completed. Written requests were sent to all respective parole officers asking them to categorize each juvenile offender for whom they had initially completed a BARJES. The parole officers were asked to classify juvenile offenders into one of seven categories. These categories were: (1) adjudicated delinquent of a new offense, (2) revoked for technical violation of parole, (3) committed or recommitted while on parole for a new offense, (4) bound-over to the adult system, (5) convicted of an offense as an adult, (6) still on juvenile parole status, (7) and completion and discharge from parole. Juvenile offenders were considered to be *successful* only if they were categorized as having met the criteria of *completion and discharge from parole*. In all, thirty-three juvenile offenders were designated meeting the criteria as successful in completing parole. Juvenile offenders were considered to be *unsuccessful* if they were categorized as other than having met the criteria for *completion and discharge from parole* with exception of those *still on juvenile parole status*. In all, thirty-one juvenile offenders were designated as unsuccessful in completing parole. Follow-up information on one of the initial 72 juvenile offenders was not received, and therefore, was not included in the analysis. A total of seven juvenile offenders remained on parole and were not considered as successful or unsuccessful. A t-test was calculated between the two groups of juvenile offenders (i.e., successful vs. unsuccessful) for the individual item-pools of offender accountability ($t=3.76$, $df=62$, $p<.001$), offender competency development ($t=2.39$, $df=62$, $p<.01$), community protection ($t=3.71$, $df=62$, $p<.001$), and for the fifteen item total score of the BARJES ($t=3.53$, $df=62$, $p<.001$). The mean total score on the BARJES for the *successful* juvenile parolees completing parole was 29.4 with a standard deviation of 10. The mean total score on the BARJES for the *unsuccessful* juvenile parolees completing parole was 20.4 with a standard deviation of 10.2. This produces a substantial magnitude in the difference between these two designated groups, that is, an effect size of .88.

TABLE 3

Item Means and Standard Deviations

Item	Mean	SD	Item	Mean	SD	Item	Mean	SD
1	1.06	.96	6	1.47	1.07	11	1.94	1.12
2	1.71	1.18	7	.89	1.06	12	1.75	1.12
3	2.17	1.09	8	1.69	1.03	13	1.74	1.07
4	1.60	1.07	9	1.74	1.19	14	1.99	1.17
5	2.44	1.10	10	2.44	1.10	15	1.44	1.11

TABLE 4

Item-Pool Means, Standard Deviations, and Coefficient Alphas

Item-Pool	Mean	SD	r_{xx}
OA	7.12	5.27	.77
OC	9.77	5.60	.76
CP	8.57	5.58	.74

Discussion

In this study, the BARJES was demonstrated to be a reliable and valid rating instrument capable of quantifying and measuring parole officers' perceptions of juvenile offenders within the context of the three basic concept areas of BARJ. The pragmatic applications of providing information to further guidance and development of broader agency-wide policy criteria, and also, of predicting individual success and non-success of juvenile parolees are far-reaching. The fundamental hypothesis on which this study was based was that those juvenile offenders who completed parole and were discharged were more likely to score higher on the BARJES than those who did not complete parole. In fact, the ability of the BARJES to predict group membership of juvenile parolees into categories of successful (i.e., categorized as having met the criteria of *completion and discharge from parole*) versus non-successful (i.e., categorized as other than having met the criteria for *completion and discharge from parole* with exception of those *still on juvenile parole status*) was excellent. In all, a breakdown into categories into which parole officers had classified juvenile offenders showed that 5 juvenile offenders were adjudicated delinquent of a new offense, 4 were revoked for technical violation of parole, 12 were committed or recommitted while on parole for a new offense, 1 was bound-over to the adult system, 10 were convicted of an offense as an adult, 7 were still

TABLE 5

Inter-item Correlations

	01-A	02-C	03-P	04-A	05-C	O6-P	07-A	08-C	09-P	10-A	11-C	12-P	13-A	14-C	15-P
01-A	1														
02-C	**.52	1													
03-P	.07	.19	1												
04-A	**.50	**.62	**.41	1											
05-C	.22	.13	**.46	**.30	1										
06-P	**.55	**.53	*.25	**.71	**.36	1									
07-A	.01	-.14	.21	.00	.03	-.10	1								
08-C	**.54	**.78	*.23	**.69	**.32	**.60	-.06	1							
09-P	**.54	**.71	*.25	**.69	*.26	**.71	-.09	**.68	1						
10-A	**.59	**.83	*.27	**.76	*.23	**.69	-.08	**.80	**.85	1					
11-C	**.50	**.78	*.27	**.70	*.23	**.60	-.06	**.76	**.75	**.81	1				
12-P	.22	*.24	.18	.22	*.25	.10	-.11	.21	.21	*.23	**.30	1			
13-A	**.61	**.82	*.24	**.75	.17	**.71	-.04	**.75	**.80	**.93	**.82	.22	1		
14-C	*.25	**.33	.18	*.28	.11	**.47	-.15	*.27	**.43	**.40	**.31	*.24	**.34	1	
15-P	**.53	**.62	.21	**.77	*.23	**.72	.03	**.65	**.82	**.74	**.64	.20	**.74	**.35	1

Note. Item number followed by A = (offender accountability), C = (offender competency), and P = (community protection) and df = 70, .23 for p = .05, and .30 for p = .01**.*

on juvenile parole status, and 33 had completed and were discharged from parole.

The large number of significant inter-item correlations (with exception of one item) and the high fifteen-item (total score) coefficient alpha strongly suggests that the BARJES functioned in an overall homogeneous manner, that is, measuring, with excellent internal consistency, items of the same general composition. This was more the case with the fifteen-item total score of the BARJES than with the three smaller five-item scores for each of the three designated item-pools of offender accountability, offender competency development, or community protection. The three smaller five-item scores, however, also had good to excellent coefficient alphas, and therefore could be considered internally consistent and homogeneous. The single exception to the homogeneous fifteen-item (total score) of the BARJES was item 7 that asked for a rating of a victim's participation in the justice process. Interestingly, item 7 had no significant relationship with any other item. This was more than likely due to the reality that, at the time and within the jurisdiction of this study, no program existed for mandating victim notification or for encouraging victim participation in the justice process. New legislation in Ohio, however, now allows for victim notification in some circumstances and for participation of victims in the process of juvenile justice. The BARJES demonstrated excellent test-retest stability (i.e., reliability) and substantial validity in its ability to differentiate (i.e., predict) group differences.

A few important precautions are in order in the interpretation of the results of this study. The study provided data from only a small sample of juvenile offenders rated by parole officers on a fifteen-item instrument. The study design and method are somewhat limited. The data, for example, are comprised of correlations, which limits the interpretation of cause and effect relationships. The design (i.e., a number of parole officers rating juvenile offenders) also presents issues, in that more elaborate analysis of data is required to deal with the complication of multi-level (e.g., nested) data. The potential also exists for raters (i.e., parole officers) to

TABLE 6

Item-Pool Correlations
**p<.10*

Item-Pool	OA	OC	CP
OA	1		
OC	*.62	1	
CP	-.58	*-.69	1

respond in ways common to these type of instruments (i.e., acquiescence, social desirability, indecisiveness, or extreme responding); this would breach the intended purpose of the instrument itself. However, with all of the possible routine criticisms that could be leveled against it, this study demonstrated that the BARJES was able to provide a useful quantification and measure of parole officers' perceptions of juvenile offenders on their caseloads within the context of BARJ.

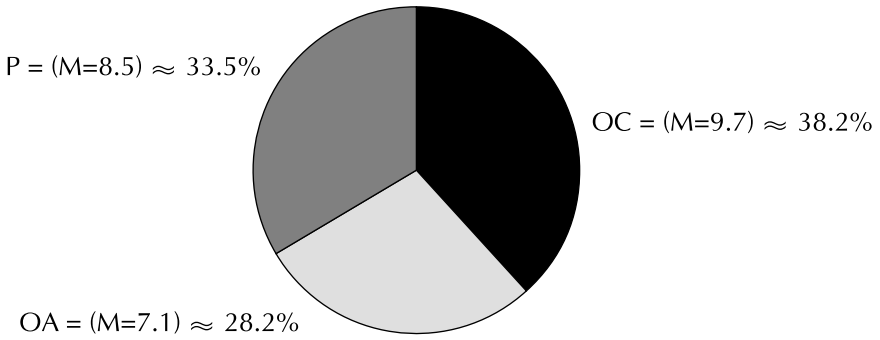

Figure 1. Minimal differences in item-pool mean scores and total score percentages of the BARJES (also see Table 4).

Parole officers perceived and rated an overall "balance" with respect to BARJ concerning paroled juvenile offenders at the regional level. This balance can be seen by mere visual inspection of existing minimal differences in the item-pool mean scores and total score percentages of the BARJES occurring between the three item-pool areas of offender accountability (OA), offender competency development (CD), and community protection (CP) (see Figure 1).

The combined percentages of the three item-pools of the BARJES, that is, the total (fifteen-item) mean score percentage were only equal to 42.4% (M = 25.45 ÷ 60) of the total possible available score. This percentage is rather low and might suggest that participating parole officers were willing to respond irrespective of how their low responses might reflect on them, in an open and honest manner in their evaluation of juvenile offenders on their caseloads. The overall low percentage, however, might also indicate a substantial need to target for improvement each of the three item-pool areas of BARJ with respect to more specific agency policy criteria. In more pragmatic terms, this means that a number of possible agency policy criteria, in the three areas of offender accountability, offender competency development, and community protection might be enhanced to increase the probability of success for paroled juvenile offenders.

Offender accountability might be enhanced (1) by programs or strategies that encourage more stringent compliance with conditions (i.e., rules) of aftercare, (2) by programs or strategies that encourage offenders to make restitution directly to victims or to the respective community, (3) by programs or strategies that encourage opportunities for victims to become more involved in the judicial processes that deal with offenders, and (4) by programs or strategies that encourage the development of empathetic awareness in offenders for their victims. Offender competency might be enhanced (1) by programs or strategies that encourage the assurance that the basic needs of food, clothing, and shelter of offenders are met, (2) by programs or strategies that encourage the development of increased competencies for offenders (e.g., education, training, or employment opportunities, etc.), and (3) by programs or strategies that encourage the provision of necessary and supportive mental health services.

The protection of the community might be enhanced (1) by programs or strategies that encourage a greater degree of community involvement and participation with offenders, (2) by programs or strategies that encourage community-based, community-participatory supervision of offenders, and (3) by programs or strategies that encourage residential placements of offenders into supportive (i.e., noncriminogenic) environments.

The relationship between the two item-pool ratings for offender accountability (OA) and offender competency (OC) with that of the item-pool rating for community protection (CP) is a noteworthy trend. This relationship, being inverse (see Table 6), may be interpreted to suggest that an increase in compliance with criteria, in both the areas of offender accountability and offender competency development, is associated with a decrease in compliance with criteria in the area of community protection. That is, an increase in the criteria related to offender accountability and offender competency (e.g., by the provision of educational or employment opportunities; by the provision of mechanisms for victim participation; or by the provision of mechanisms for offender restitution, etc.) is well associated with a decrease in the criteria required for community protection (e.g., the need for more intense offender supervision; for more intense offender monitoring, or for more intense structured environments, etc.). This trend may be interpreted to suggest that when a focus is placed not only on the *risks* of juvenile offenders but also on the *needs* of juvenile offenders, it can benefit not only the offender but also the victim and the community at large.

This study was an initial attempt to demonstrate the potential ability and pragmatic usefulness of quantifying and measuring, in a systematic manner, parole officers' perceptions of paroled juvenile offenders, on their caseloads, within the context of BARJ. The intention in developing the BARJES was not to present it as a ready-to-use tool, but to establish that mechanisms for systematic appraisals of parole officers' perceptions of juvenile offenders could be developed, and as a result, could provide useful if not vital information. The BARJES may well serve as a model amenable to revision as well as a guide in the development of similar tools. This study was completed with the hope that it might encourage practitioners in the field of juvenile justice administration to seek to continue to understand the meaning and practice of juvenile justice. How juvenile justice is now perceived and interpreted (in theory) and how it later becomes implemented (in practice) has much to do with its ultimate determined meaning. That is, the way crime and justice are conceptualized will greatly affect the selection of the outcome variables considered to be overall relevant to it (Zehr, 1990). The problem is that it is easy to become sidetracked from a larger context into routine ideas and practices. The authors hope, however, that

this study will encourage individuals to think about the administration of juvenile justice with greater rigor, to find innovative avenues to explore, and to incorporate the dimensions of offender accountability, offender competency development, and community protection into various programs and services. The authors also hope that this study will encourage continued research of balanced and restorative juvenile justice.

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Selecting the Substance Abuse Specialist

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IN RECENT YEARS, THE supervision of offenders in the community, either on probation, parole, or supervised release, has become tantamount to the care and control of the drug and alcohol abusing offender. In a major study, the National Center on Addiction and Substance Abuse (CASA) at Columbia University (1998) concluded that drug and alcohol addiction are related to the offenses committed by 80 percent of inmates in jail and prison in the United States. At the time this report was released in 1998, there were approximately 1.7 million men and women in jail or prison, and of this number, fully 1.4 million had a history of substance abuse. Research reflects that drug and alcohol abuse is highly correlated with criminal behavior (Deschenes, Turner, and Clear, 1992; Speckart and Anglin, 1986; Wish, 1987, Wish, Brady and Cuadrado, 1986). A national survey of state prison inmates found that 54 percent of those serving time for violent offenses admitted they were under the influence of drugs when they committed the crime. This survey also found that nearly 25 percent of all prisoners in local jails are there for drug crimes (Clear & Cole, 2000, p.119). In a study of pretrial detainees in New York during two months in 1986, Wish (1987) found that 92 percent of all suspects, arrested, booked, and charged with robbery, and 81 percent charged with burglary, tested positive for cocaine use. Atmore and Bauchiero (1987) found that 87 percent of inmates participating in a pre-release program in Springfield, Massachusetts, had significant substance abuse problems prior to the instant offense that led to their incarceration and that a large majority had committed crimes while under the influence of alcohol or drugs.

In a recent study conducted in Canada, Zamble and Quinsey (1997, pp.54-56) found that fully 89 percent of a group of parole recidivists used alcohol or drugs 24 hours before the offense violation that resulted in a return to prison. Zamble and Quinsey report that along with other events in the period, there appears to have been an increase in already high levels of alcohol and drug usage in the day immediately preceding the violation. The study concluded that for the majority of offenders, substance abuse is so entangled with other maladaptive behavior that they may be inseparable and the use of intoxicants is certainly an important part of the antecedents of re-offending. To a significant degree, therefore, substance abuse and crime are intricately related. Developing an effective strategy to address the substance abuse problem of probationers and parolees is a critical challenge to community-based corrections.

Since parolees are released from prison we can conclude from the CASA study that 80 percent or about 470,000 have substance abuse problems. While the research on probationers and substance abuse is less clear, it is known that nearly 60 percent of all probationers have been convicted of a felony. Seventeen percent are on probation for driving while intoxicated or under the influence of alcohol and another 24 percent have been convicted of drug-related offenses. Therefore, approximately 41 percent of the probationer population are on supervision for driving while intoxicated, being under the influence of alcohol, or committing a drug-related crime. Of the remaining 59 percent of crimes committed by probationers, a significant percentage are likely to have been committed while under the influence of drugs and/or alcohol, possibly approaching the 80 percent figure cited by the CASA study.

While one can interpret these statistics in a number of ways, two things are clear. Substance abuse among criminal offenders in this country is a major problem and historically, treatment programs have not had high success rates. As the social movement against heroin grew in the 1950s and 1960s, support for treatment of addiction also grew, and special facilities were developed to house addicts as a special population of incarcerated offenders. Civil commitment procedures were frequently utilized to commit the drug abuser to such facilities, where the incarceration term often exceeded what they would have otherwise received. Evaluations of these programs, however, showed very poor results (Clear & Cole, 2000, p. 121).

Since the 1980s federal policies have sought to combat drug abuse by providing harsher penalties. Punishments for drug possession and sales were made considerably more severe, especially in the federal courts, where sentences of ten years or more became common. There has also been a renewed interest in treatment for drug addiction, and some of the prison-based programs, especially those based on the therapeutic community model, are showing better results than the earlier civil commitment programs (Clear & Cole, 2000, p. 122).

An Effective Supervision Strategy

In a previous article entitled, "An Effective Supervision Strategy for Substance-Abusing

Offenders," (Torres, 1997) the history and development of a method utilized by the U.S. Probation Office in the Central District of California (CDC/Los Angeles) was described. In its approach to supervising the substance-abusing offender, the Los Angeles Federal Probation Office opposes the traditional view of addiction, in which drug use is regarded as a matter of pathology rather than choice. The district follows a policy of total abstinence with predictable consequences for drug use. Although the individual officer retains the discretion to determine the appropriate sanction or course of action, the policy clearly requires that some consequence follow any incident of drug use; the preferred action is placement in a therapeutic community. A sophisticated drug detection program is considered critical in identifying offenders who are using drugs, in order to intervene as early as possible and to prevent new criminal conduct. Surveillance is a major component of the L.A. approach, but the probation officer is also expected to focus his attention on other needs the client may have (Torres, 1997a:41).

Two separate government studies supported the effectiveness of the intensive surveillance-treatment total abstinence approach of Los Angeles' Federal Probation Office. A Federal Judicial Center study found that the number of positive drug tests differed considerably across the districts studied ranging from a low of 25 percent of caseloads with one or more positive drug tests in the Los Angeles office to a high of 69 percent in District 5. Thus, one may reasonably conclude that a total abstinence policy, coupled with an aggressive and sophisticated detection program leading to certain sanctions and/or mandatory treatment for drug use, deters many offenders from using drugs (Torres, 1997a:43).

The study's conclusions on arrests of offenders participating in aftercare were even more compelling. According to the Federal Judicial Center's study, 27 percent of the sample were arrested at least once during the period of study; the proportions varied considerably across districts, however. Two districts were well above the average at 44 percent (District 2) and 38 percent (District 5); *at the opposite extreme, only 15 percent were arrested in District 10 (Los Angeles)* (Eaglin, 1984).

A follow-up study conducted by the Federal Judicial Center 2 years later confirmed that the Los Angeles' Central District of California (CDC) was much stricter than other districts in charging offenders with technical violations during the period studied. In contrast, most other districts did not appear to routinely charge offenders with technical violations in response to positive urine tests (Eaglin, 1986, p.54). In summary, the Los Angeles strategy has proven effective in deterring drug use and preventing new criminal conduct.

Selecting drug officer specialists, however, is an area that has frequently been neglected by probation and parole agencies. Because the drug caseload is extremely demanding and replete with violations, major confrontations, and frequent court or parole board appearances, the selection of the specialist is often based on who "wants it," rather than who might have the most suitable temperament. However, the drug offender's personality traits and characteristics, along with the agency's philosophy, are vital considerations in selecting the drug specialist.

Personality Traits of the Substance-Abusing Offender

An assessment of the personality traits and deficiencies of the substance-abusing offender is critical in determining the probation or parole officer style or typology that is most likely to motivate and contribute to behavioral change. This is an area surrounded by significant disagreement and controversy based largely on the theoretical orientation that an agency embraces. The supervision strategy described above provides a departure point for agencies willing to challenge the disease model approach to substance abuse.

The personality deficiencies exhibited by substance abusers require a directive and firm approach. Personality traits displayed by addicts tend to immobilize them from seeking treatment on their own. Even if they somehow muster up the motivation and energy to enter treatment, most will leave if they are not constrained by the threat of violation (Torres, 1997b, p.13).

Martin et al. (1977) postulated that alcoholics and opiate addicts are characterized by high basic needs, impulsivity, egocentricity, sociopathy, and hypophoria. Various definitions of hypophoria have included elements of lack of confidence, low energy, joylessness, and self-perceived unpopularity. Martin hypothesized that hypophoria was a state that occurred with increased frequency or intensity in drug users. Other studies have supported the idea that drug abusers also suffer from low self-esteem (Vanderpool, 1969; Berg, 1971).

That substance-abusing offenders exhibit sociopathic or psychopathic traits argues strongly in support of the strategy that is presented here. Psychopathic traits place them at extremely high risk for continuing drug use and criminal behavior. Some of these traits that are highly resistant to change and require a highly directive or authoritative approach include: superficiality, egocentricity, lack of remorse or guilt, lack of empathy, deceit and manipulativeness, impulsivity, shallow emotions, poor behavioral controls, need for excitement, irresponsibility, and criminal behavior (Hare, 1993, pp. 33-70). Offenders with these traits do not readily respond to the non-directive approach of the social worker who seeks to effect change through establishing rapport in order to encourage the substance abuser to see the error of his ways and seek help.

Cowan et al. (1979) felt that drug abusers might suffer from some distinctive pattern of pathologic feelings, particularly defeated ones, which can lead to or result from chronic drug use. They go on to say that it is not clear whether feelings of defeat or other elements of a psychopathic state are relatively constant or if they occur in episodes similar to anxiety states. This underlying psychopathic state may occur in drug abusers even when they are not using drugs.

According to Nathan and Lisman (1976, pp. 479-577), psychoactive drugs such as alcohol and opiates may be used to relieve persistent or episodic feelings of defeat. An increase in substance abuse tended to occur when the person's self-esteem was threatened. Smart (1977, pp. 59-63) has reported that opiate addicts had numerous psychological problems before their addiction developed. They include impulsivity, psychopathic or sociopathic traits, low tolerance for frustration, borderline schizophrenia, depression, and alienation. Smart agrees with the authors of the prior studies that opiate addiction and other types of drug use are a mechanism for coping with these psychological problems.

Smith (1980, pp. 50-58) finds that the match between the needs of the user and the changes the user attributes to the substance is important in determining whether use will continue. The individual who places a high value on feeling strong, alert, decisive, and masterful is apt to find amphetamine or cocaine much more satisfying than does a person seeking tranquility or physical relaxation. The better the match between the perceived

substance effects and the user's needs, the more likely use is to continue. He suggests that it is possible for drug use to produce changes in personality that are more or less enduring, for example, increased sociability and improved social skills in a person who is very shy. If such changes are highly valued by the drug user, the probability of continuing use will be increased substantially.

A wealth of scientific evidence confirms that substance abusers display a myriad of personality deficiencies. This brief overview illustrates that traits such as *impulsivity, sociopathy or psychopathy, depression, low energy, egocentricity, low self-esteem, anxiety, and a low tolerance for frustration,* in combination, do not readily respond to the disease model, social-worker method of dealing with substance-abusing criminals. These offenders tend to display severe forms of maladaptive behavior that are not easily modified. Substance abusers, regardless of the approach used, do not change their drug-using behavior in large numbers (Torres, 1997, p.13).

Hence the need for authoritative personality traits in the drug specialist. A probation or parole officer who displays authoritative traits would be described as imposing, dominant, decisive, and definitive. This is not the same as authoritarian characteristics, which tend to be negative and describe a person who is tyrannical, dictatorial, harsh, inflexible, and a strict disciplinarian. Generally, we use the term authoritative to refer to a probation or parole officer who is not reluctant to rely on his or her power and authority to effect change in the substance-abusing offender. The authoritative approach relies heavily on our law-enforcement, control agent role, and is necessary, in our view, because the personality traits described above tend to immobilize the addict from seeking treatment on his own. This approach, like any other, can certainly be a negative style if utilized in an extreme or excessive fashion. Agencies should select officers willing to use their authority decisively to direct the offender toward services and programs that will address drug abuse issues and other problem areas. Because of the personality traits described above, when the substance abuser relapses, the drug specialist must be decisive, definitive, and explicit in dealing with substance abuse violations. Depending on the offender's substance abuse history it may be necessary to coerce, threaten, and otherwise pressure him or her into treatment before the offender reverts to prior patterns of criminal behavior. If the substance abuser refuses to participate in treatment or does not respond, the authoritative officer will take decisive action, up to and including arrest. When drug use violations occur, a confrontation with the offender frequently follows, and few officers are well-suited for this type of demanding and stressful and confrontational situation. Clearly, while the drug specialist position must be able to use his or her authority effectively and not shy away from confrontation, neither should he or she be inclined toward excessive and abusive use of authority. The drug specialist should possess authoritative personality traits, yet not exhibit the tyrannical traits of the authoritarian personality.

Agency Philosophy and Probation Officer Styles

The type of probation or parole officer selected for the drug specialist position will largely be determined by the philosophical orientation of the agency or department. If an agency subscribes to a deterministic, medical model approach to substance abuse, it will see the substance abusing behavior and resulting criminality as caused by heredity, socialization, mental processes, or the economic and opportunity structures in a society. These elements operate on the individual and drive him or her toward conforming or nonconforming behavior. Because internal and external forces cause the deviant behavior, a person cannot be held fully responsible or culpable for his or her actions. Thus the appropriate correctional response should be to expose the underlying causes and provide correction or rehabilitation (Torres, 1996, p. 18). The agency that endorses this explanation of substance-abusing behavior will seek an officer with a social work orientation toward supervision, perhaps possessing a Master of Social Work (MSW) degree.

According to the rational choice, classical explanation, crime is the result of choice or free will wherein the offender considers the cost and benefits of the behavior before acting. This model is based on the pain-pleasure principle, which maintains that if the potential pleasure outweighs the potential pain, the probability of the behavior will be greater. Some of the principles of the classical school model are similar to those found in the social learning principles of positive and negative reinforcement. In the classical school, because people exercise free will, the appropriate crime control strategy is a punishment suited to the severity of the offense. Retribution, incapacitation, and deterrence through punishment are major objectives of this school of thought. The rational choice model ultimately rests on the belief that people have the ability to control their behavior, whether speeding, robbing a bank, or using drugs or alcohol. Individual responsibility is a fundamental ingredient of this correctional philosophy (Torres, 1996, p.18). An agency that supports an antideterministic, rational choice model will be more inclined to select an officer with the authoritative traits described above. Clearly, there are degrees on the continuum between the left-leaning social worker and the right-leaning law-enforcement style, and even the latter must possess the ability to switch to a helping role when necessary.

According to Clear and Cole (1997, p.193), officers face role conflict in virtually all areas of their job. Most of this conflict has its origins in these two contradictory responsibilities: (1) enforcing the conditions of supervision and (2) assisting the offender. Klockars (1972, pp. 550-557) expanded the two basic roles when he developed a typology of four probation officer work styles. The "law-enforcer" or "probation-is-not casework" style would be placed at the extreme right of a continuum, representing a classical, conservative perspective. This officer, emphasizing the "cop" nature of the job, stresses surveillance, enforcement, and community protection. The "law-enforcer" is more inclined to violate and recommend revocation for probation violations. At the other extreme is the "therapeutic agent," or social worker, who stresses casework and treatment. This officer generally is reluctant to violate, choosing instead to continue counseling and attempt to modify the offender's violating behavior (Torres, 1997b, p.12).

A third category or style identified by Klockars is the "time-server," who has little commitment to his or her career and does the bare minimum to get by. The final style is that of the "synthetic officer," who strives to integrate both treatment and enforcement components. This officer endeavors to encourage the offender to obtain treatment while balancing the need for community protection (Torres, 1997b).

Tomaino (1975, pp. 41-46) describes the "five faces of probation supervision" as: help-him-understand, have-it-make-sense, let-him-identify, it's-up-to-him, and make-him-do-it. Tomaino gravitates toward the "have-it-make-sense" face in which the officer attempts to integrate the social-worker and law-

enforcer roles. In this respect, Tomaino would favor what Klockars has called the synthetic officer. While none of these fit neatly into an ideal approach for supervising the substance abuser, it is possible to extract elements from three of the five faces described by Tomaino to develop an effective strategy. In the "have-it-make-sense" face, probationers keep the rules when it is credible to do so because this better meets their needs. With the "it's-up-to-him" face, probationers know exactly what they have to do, what happens if they don't, and that it's up to them to perform. The law-enforcer, "make-him-do-it" face holds that probationers keep the rules only if you take a hard line, exert very close supervision, and stay completely objective in your relations with them. These three "faces" can be integrated into an effective style as a means to encourage or coerce a substance-abusing offender into treatment. The consolidation of the three "faces" might approximate a Klockars' right-leaning synthetic officer (Torres, 1997b).

In summary, probation officers have a range of styles into which they fall, based in part on their philosophical orientation, personality traits, view of the job, and the agency's theoretical approach to corrections. Most authors clearly suggest that the most desirable style is that of the synthetic officer, in which the social-worker and law-enforcer roles are integrated and balanced. However, while a kind of integration is desirable, a "balance" may not be the most effective approach with the substance-abusing offender. The law-enforcer, "make-him-do-it" style, at least at the outset, is more likely to be effective in setting limits, which is of critical importance in supervising a substance abuser caseload (Torres, 1997b). This type of officer does not recoil from maximizing the coercive power of the criminal justice system to encourage–and compel, if necessary–an offender into treatment. It is a style that does not fit neatly into the above typologies but instead draws heavily on the law-enforcer, "make-him-do-it" role in order to accomplish what the social worker seeks to attain through a supportive, warm, and nonjudgmental relationship. The authoritative officer will use community resources and services extensively to assist the offender while at the same time monitoring abstinence with intensive surveillance and drug testing. We believe, therefore, that the drug specialist should be a *right-leaning synthetic officer,* able to identify, locate, and refer to community resources while at the same time setting and enforcing limits, and decisively encouraging, coercing and threatening an offender into treatment if he or she continues to abuse drugs or alcohol. The drug specialist must remain alert to the potential threat posed by the offender who continues to use drugs and/or alcohol and must move quickly to remove him or her from the community if the offender poses a threat to anyone.

Conclusions

The magnitude of the drug/crime correlation problem in the U.S. requires a proactive, aggressive supervision strategy. In this article, we have briefly described the strategy that we implemented in the federal probation office in the Central District of California at Los Angeles, which can best be described as an intensive surveillance-treatment approach that requires total abstinence and holds offenders accountable for *their decision* to use drugs or alcohol. While incarceration as a consequence for violating the terms and conditions of probation, parole, or supervised release always remains an option, the threat of custody is used primarily to motivate offenders to participate in a treatment program.

It has further been suggested that the personality traits exhibited by substance abusers do not readily respond to the nondirective, social worker approach. Traits such as impulsivity, sociopathy or psychopathy (a cluster of problematic and high risk traits), depression, low energy, egocentricity, low self-esteem, anxiety, and a low tolerance for frustration, in combination, do not readily respond to the disease model approach. We have emphasized that the probation officer drug specialist, should possess authoritative personality traits such as dominance, being imposing, decisive, and definitive. These desirable authoritative traits were also differentiated from the less desirable authoritarian traits like tyrannical, dictatorial, and harsh. Needless to say, excellent organizational skills are important in probation and parole generally, but even more so with a drug offender caseload due to the high level of activity which occurs.

Lastly, we have described the various styles or typologies found in the probation literature and have concluded that the authoritative traits needed to effectively supervise the substance abusing offender are most likely to be found in the law-enforcer, "make-him-do-it" style. The social-worker approach, while well meaning, simply will not be effective with the substance abusing offender and will only reinforce manipulative, game-playing behavior. The strategy described here has served us well in the Central District of California and has resulted in a low positive rate and a low rate of new criminal conduct, while also motivating a significant number of offenders to participate in drug treatment. We believe that our approach has contributed toward community safety while also serving the best interest of the substance abusing offender.

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United States Probation/ Pretrial Officers' Concerns About Victimization and Officer Safety Training

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RESEARCH ON victimization and safety concerns for probation and parole officers is sparse. Parsonage's (1997) literature review concluded that research on the topic was nonexistent prior to 1987. Both Parsonage's (1997) research and Bigger's (1993) victimization study combined numerous jurisdictions of probation and parole officers. The hazardous incident reports submitted to the Administrative Office of the U.S. Courts by U.S. Probation/Pretrial Services officers have often been reviewed for trends in victimization rates. These statistics, however, represent only those hazardous incidents reported, and the current study shows inconsistent reporting practices and policies. This research focuses on U.S. Probation/Pretrial Services officers' concerns for job safety, rates of victimization, satisfaction with the safety training received, high-risk activities performed, and the relationship between these issues and ideological orientation.

On-the-job safety has become a growing concern of U.S. Probation/Pretrial Services officers. Officers are currently expected to perform more intrusive activities while supervising a more dangerous population than in the past (DelGrosso,1997). The war on drugs and numerous crime control acts passed during the mid-eighties and early nineties have changed the face of federal offenders on supervision. Officers now supervise three times as many drug offenders as in the past and twice as many offenders who have histories of incarceration (U.S. Department of Justice, 1997).

Paul Brown, formerly of the Administrative Office of the U.S. Courts, noted that the traditional role of U.S. Probation/Pretrial Services officers was that of social workers. Accordingly, their education, training, and background were in line with treatment models. Officers were viewed by both the offenders and the community as social workers. Their predominate activities were providing counseling and brokering referrals to various social service agencies for offenders and their families. These referrals often included substance abuse treatment, mental health treatment, employment, welfare, and an endless list of other social services (Brown, 1994).

Monograph 109, the Supervision of Federal Offenders manual (first published in 1991), addressed supervision of more difficult caseloads by requiring more intrusive activities to verify compliance with court-ordered conditions and to ensure protection of the public. These activities include inspections of offenders' homes, searches, seizures, surveillance, monitoring criminal associations and other intrusive activities. The role of the U.S. Probation/Pretrial Services officers has changed from predominately that of a social worker to an enforcement agent of the court(Lindner and Bonn 1996). The shift to a more dangerous caseload and new intrusive activities increases the risks to officers; however, the monograph did not include national policies and standards for officer safety training. Officers should not have to go to work each day uncertain of how to protect themselves from serious bodily harm, personal liability, or death. Officers who do not receive adequate safety training have the undue burden and stress of knowing that their safe return home each day may be left to the discretion and mercy of an attacker rather than to their own ability to protect themselves.

This research clearly indicates that both officers and administrators have expressed significant concern about safety issues. Many individual districts provide substantial training to their officers, while others do not. The reasons that some districts lack training range from limited resources to the heated philosophical debate between social work and law enforcement ideological orientations (DelGrosso, 1997).

Methodology

In 1999, a national survey was conducted by the District of Nevada to study U.S. Probation and Pretrial Service officers' concerns for on the job personal safety, experiences with victimization, levels of satisfaction with the training they currently receive, and effects of orientation to these issues. The research involved a systematic random sample of 539 names from the officers listed in the national directory, which includes all 94 districts of the U.S. Courts. Of the 539 surveys sent, 300 were returned for a response rate of 56 percent. The respondents ranged from chief probation/pretrial services officers to probation/ pretrial services officer aides. The survey questions were tailored from new officer safety issues identified and partial wording from questions used in prior studies, by Parsonage (1997), Bigger (1993), DelGrosso (1997), and Lindner and Bonn (1996).

Analysis

The responses were loaded into the SPSS statistical research program for analysis. The key variables in this study were measures of victimization experiences, concern for personal

safety, training satisfaction, high-risk activities performed, and officer orientation (law enforcement vs. social work). The analysis involved the examination of univariate and bivariate relationships between these variables. All of the relationships discussed in this study were found to be statistically significant to an accuracy level of $p<.05$.

Results

The research revealed that 96 percent of all respondents are concerned for their personal safety when making field contacts and over 75 percent of all respondents believe that field work has become more dangerous in the past five years. Over 60 percent of all respondents reported that they have been intimidated by the threat of violence or by other means during their careers. Of those respondents, 75 percent reported being threatened on more than one occasion.

Due to the changes in our offender population, no threat can be taken lightly. Threats may be a major source of stress for an untrained officer. Since any threat can quickly turn into a life or death situation, the numerous incidents reported by officers show that their concerns about safety have merit. Equally significant, 46 percent of all respondents reported that the lack of safety training and equipment has a negative effect on their productivity. These findings substantiate both that officers are concerned for their personal safety while performing their duties and that the current lack of training reduces work productivity. This research did not measure the negative effects that undue stress may have on the officers' personal lives.

Respondents' levels of concern were compared to the types of training being provided, ideological orientation, and high-risk activities being performed, to determine whether they would reduce or increase officers' concerns or perceptions of danger. No type of training was found to reduce officers' concerns for personal safety or reduce levels of perceived danger. Scenario-based training was actually associated with greater perceptions of danger. This relationship is probably because most safety training develops a heightened sense of awareness (Brown, 1994).

Levels of Victimization

The survey results revealed that almost 9 percent of all respondents were victims of physical assaults during their careers as U.S. Probation/Pretrial Services officers and over one-third of those were victimized on more than one occasion. Over 60 percent of the respondents were victims of threats of violence or intimidation and more than two-thirds of those being victimized reported multiple incidents. Bivariate comparisons were made between the frequency of officer victimization and the types of training provided, ideological orientation, and high-risk activities performed. We expected that training would reduce victimization, and that law enforcement ideology and high-risk activities would increase victimization. The study revealed that training, ideological orientation, and high-risk activities have no statistically significant relationship to victimization or threats of violence.

The levels of assault victimization in this study are somewhat lower than those found in previous national studies. Parsonage, for example, found that half of all probation officers were assaulted during their careers (Parsonage and Bushey, 1988). Several factors may explain this difference. The drastic differences between the national average of victimization and the lower rates for federal officers could result from how recently enforcement duties have been performed by federal officers. In time, research may find that the performance of high-risk activities will increase victimization, but this has not been the case thus far. State or county probation officers have greater chances of victimization because they often have double or triple the caseload of federal officers. They often have a higher percentage of drug and violent offenders, though these are now becoming more prevalent in federal caseloads. State or county officers are often more likely to perform law enforcement activities, while federal officers have a more balanced approach between law enforcement and social work activities. This balance between enforcement and social work may also explain lower rates of victimization among federal officers. The recent growth in the number of officers in the federal system could also have reduced officer victimization rates. This study revealed that the longer officers are on the job the more likely they are to be victimized. Each of these possible explanations will require future research.

The level of officer concern revealed in this study may diminish in time, or it may be validated if victimization rates increase. Officers do not want to be among the 9 percent who are physically assaulted, nor do they want to be part of any future increase in victimization resulting from changes in offender population or enforcement activities. Both prior research and the current study show that Probation/Pretrial Services officers risk victimization during their careers. The Federal Probation and Pretrial Officers Association's National Committee on Safety Training noted that between 1984 and 1997, there was a 237 percent increase in hazardous incidents reported. This information further validates officer's concerns for on-the-job personal safety.

Reporting Practices

Respondents were given a list of words and asked to select those that best describe the common reporting practices for hazardous incidents in their districts. The respondents described their districts' reporting practices as about 65 percent mandatory, 40 percent encouraged, with only 12 percent of the respondents indicating that reporting of critical incidents in their districts is consistent. This information further complicates the issue of accurately assessing officer victimization. It appears that hazardous incidents are under-reported and victimization rates may be higher than currently estimated.

Treatment of Victimized Officers

As a side issue, the survey asked respondents how officers who have been victimized are treated. About 69 percent of respondents reported that victimized officers are supported, about 20 percent thought victims were treated as if they had done something wrong, and about 11 percent thought victims are treated like everyone else. These responses indicate that over 30 percent of victimized officers may not receive the support they need. It is hard to get a concrete measurement on issues like these; however, some districts have taken precautionary measures to ensure that their officers feel supported by forming critical incident response teams. These may provide peer counseling to victims and even refer victims to professional counseling services if necessary. Of the respondents, 36 percent reported that their districts currently have such teams available to officers, with 64 percent reporting they do not have support teams available. The number of districts with teams available may be even lower than the response rate indicates, because some respondents who report that their districts have teams are actually referring to officer-involved shooting response procedures. Use of force policies and procedures often do not include counseling for officers involved in critical inci-

dents. We hope this lack of victim support is an unintentional oversight due to the rapid changes in the job and not the result of the philosophical debate between social work and enforcement approaches to carrying out our job responsibilities.

Officer Satisfaction with Training and Equipment

Almost half of all respondents reported that the lack of safety training and equipment has a negative effect on their job productivity. In addition respondents were asked to rate the usefulness of the training they received as U.S. Probation/Pretrial Services officers for dealing with altercations or threats of altercations. Approximately 20 percent rated their training as excellent, about 44 percent rated their training as good, and close to 36 percent rated their training fair or poor. When respondents were asked how satisfied they were with the safety training/practices in their districts, over 27 percent were very satisfied, slightly over 45 percent were satisfied, about 21 percent were dissatisfied, and approximately 7 percent were very dissatisfied. Respondents were asked to note the types of training provided by their districts. The table below indicates the percent of respondents who received each type of training.

73.8	Defensive Tactics
65.8	Judgmental/Scenario
20.5	Search Tactics
30.9	Escape Tactics
53.7	Firearms Simulator
20.1	Safety Academy (one week)
38.6	Fitness Program
85.2	Firearms
26.5	Crisis Prevention
4.7	Suicide Prevention

Comparisons were made between the different types of training provided and officers' satisfaction ratings for safety training. Respondents who received scenario training, safety academy training, and defensive tactics training were significantly more likely to report being satisfied or rate their training as excellent, and less likely to report being dissatisfied or rate their training as poor. The following are ten specific descriptions of statistically significant relationships uncovered by the research questions of this study.

Scenario Training

1. Among respondents who received scenario training, almost 11 percent believe field work has become more dangerous over the past five years. Some might say that the training increased paranoia, but the main theme of safety training is heightened awareness for personal safety (Brown 1994). Officers who received scenario training seem to be more conscious of the dangers that exist around them.

2. Respondents who received scenario training were almost three times as likely to rate their training as excellent as those without the training. Those who did not receive scenario training were almost three times more likely to rate their training as poor.

3. Respondents who received scenario training were over 20 percent more likely to report being satisfied with their district's training/practices. Officers without scenario training were more than twice as likely to report dissatisfaction with their districts' training/practices.

Taken together, these findings suggest that scenario-based training increases officers' awareness of danger, increases ratings of satisfaction with training practices, and reduces negative evaluations of training. The Administrative Office and Federal Judicial Center have provided districts with a how-to course on scenario-based training. Our research indicates that scenario training has resulted in increased officer satisfaction with the training they receive, but the system lacks a national policy standard that would ensure that all officers are provided with such training. According to the survey results, over one-third of the officers in the nation do not receive this type of training.

Safety Academy Training

Safety academy training significantly increased respondents' ratings of the training they receive.

4. Respondents who participated in safety academies were over three times as likely to rate their training as excellent for dealing with altercations as those without the training. Those without training were over four times as likely to rate their training in dealing with altercations as poor.

5. Respondents who received safety academy training were approximately 25 percent more likely to report being satisfied, while respondents without the training were about four times as likely to report being dissatisfied with their district's training/practices. These results reveal that safety academy training significantly increases officer satisfaction ratings for the training they receive.

Defensive Tactics

The next type of training examined was defensive tactics.

6. Respondents lacking defensive tactics training were about 15 percent more likely to indicate that the lack of safety training had a negative effect on their work productivity. This suggests that defensive tactics training can increase job satisfaction and work productivity.

7. Respondents who received defensive tactics training were about 20 times more likely to rate their training in dealing with altercations or threats of altercations as excellent, and twice as likely to rate their training as good, compared to those who did not have the training. Those without defensive tactics training were twice as likely to rate their training as fair and over eight times as likely to rate their training as poor. Defensive tactics training significantly increases respondent's positive ratings of training.

8. Respondents who received defensive tactics training were approximately 45 percent more likely to report being satisfied with their districts' training/practices. Those without the training were approximately four times more likely to report being dissatisfied with their districts' training/practices.

Defensive tactics training appeared to be the most significant in raising ratings for training satisfaction. As noted above, respondents who received defensive tactics training were about 20 times more likely to rate their training in dealing with altercations as excellent. Defensive tactics training reduced the number of respondents who reported that the lack of safety training had a negative effect on their work productivity. Finally, respondents who had defensive tactics training were over twice as likely to report being satisfied with the safety training/practices of their districts, while those who did not have the training were four times more likely to report being dissatisfied.

This research identifies which types of prevalent training increase satisfaction with safety training and job productivity. Officers' high levels of concern for personal safety and increased ratings for these types of training indicate a substantial need for the Administrative Office of the U.S. Courts to provide national standards and training in this area. A significant number of officers report that the lack of safety training has a negative effect on their work productivity, and this supports the need for national standards and training.

During August 1998, Chief Larry P. Wiley of the Western District of North Carolina surveyed the 103 chiefs of the federal system about creating a national defensive tactics policy. Of the 65 respondents, 92 percent supported the development of a national defensive tactics policy and training. These findings support the need for a national defensive tactics policy and training, especially because defensive tactics are mandated as part of the national firearms policy (Wiley, 1998).

Ideological Orientation

For years there has been heated debate over the proper role of probation officers. Many believe that the officer should be an offender's friend and that the primary goal is rehabilitation. Others believe that protection of the community should be the first priority of officers (Lindner and Bonn, 1996). In 1852, when John Augustus began his probation services, he attended court hearings and chose the clientele that he felt could be rehabilitated (Abadinsky, 1982). Today, a majority of offenders supervised by Probation/Pretrial Services officers have extensive criminal histories and drug abuse problems. Chief David Sanders of the District of Nevada affirms that officers today face the difficult challenge of managing risk to the public and providing correctional treatment with a more difficult offender than in past decades.

This philosophical conflict appears to have hindered the advancement of training. To some, officer safety training is a guise for law enforcement training, which offends those from the social work school. Others contend that officer safety training has nothing to do with one's philosophy about the primary role of officers. Safety training simply provides officers with a practical plan for surviving threats of serious bodily harm or death during the normal course of duties (Kipp, 1996).

As a component of this research, officers were asked where the primary role of U.S. Probation/Pretrial Officers should lie between law enforcement and social work. They were given a scale of 1 to 10, with 1 being the extreme for law enforcement orientation and 10 being the extreme for social work orientation. The variable scale of law enforcement and social work orientation was coded into three groups, with law enforcement comprising 1-4, the middle between both orientations 5-6, and social work 7-10. Based on this coding, 34 percent of the respondents fell on the law enforcement side, 50 percent fell in the middle group between both orientations, and 16 percent were located on the social work side.

These three categories of officers were compared to the variables that represent concerns for on-the-job safety, victimization and training satisfaction. The results revealed no statistically significant relationships between these variables. These findings refute arguments by those who oppose officer safety training on the basis that safety training is a guise for law enforcement training. Often the assumption is that this type of training will result in increased "cowboy" or "cop" mentality, therefore increasing the possibility of violence. This is poor justification for not providing officers with a tactical plan and equipment to escape altercations without serious bodily harm or death. A possible explanation for these findings is that the vast majority of respondents became probation officers to be involved in a helping profession and few possess a pure law enforcement mentality. It is probable that officers only want safety training to avoid injury or death while performing intrusive activities with dangerous offenders.

Some who oppose safety training say that officers should run at the first sign of trouble and that many types of safety training will only increase the risks officers take. The survey results revealed that 72 percent of all respondents have been taught that they are to withdraw from any hazardous situation they encounter, yet only about 31 percent receive training in escape or withdrawal tactics. In addition, no prior types of safety training were shown to increase officer victimization or threats of violence.

High Risk Activities Performed

Officers were asked what types of high-risk activities are performed on a monthly basis in their districts. It was expected that officers who are required to perform high-risk activities would be more likely to be victimized and more dissatisfied with the training they are currently receiving, , and would have higher rates of concerns for on-the-job personal safety.

The two high-risk activity variables used were the performance of searches and the seizure of contraband. Each of these was compared with victimization, concerns with on-the-job safety, and satisfaction with safety training. Two statistically significant relationships were found. First, respondents who perform searches were about 13 percent more likely to report being satisfied with their districts' training/practices. Officers who do not perform searches were approximately twice as likely to report being dissatisfied with their districts' training/practices.

Second, respondents who perform seizures are approximately 25 percent more likely to report being satisfied with their districts' training/practices. Respondents who do not perform seizures were over three times more likely to report being dissatisfied with their districts' training/practices.

The research revealed that the districts where the high-risk activities of searches and seizures are performed do not experience increases in victimization or rates of concern for officer safety. Moreover, the districts that perform searches and seizures had ratings of satisfaction for their districts' safety training/practices and lower rates of dissatisfaction. (Only about 25 percent of all respondents reported that their districts perform seizures and only 18 percent perform searches.) One possible explanation for the increased satisfaction rates is that the districts that perform searches and seizures provide more training than districts that do not. Some districts may neglect the enforcement expectations for supervision of offenders and also neglect training. Finally, some districts may omit safety training to justify the lack of high-risk enforcement activities, to which they are philosophically opposed. The information currently available does not allow for any further comparisons.

Conclusions

Major changes have taken place in the roles of United States Probation/Pretrial Services officers. The population now being supervised has changed drastically from the white collar probationers of the past to more dangerous recidivists of today. To remain effective officers must perform more enforcement duties than in the past. These changes have created a gap between the dangers officers are now exposed to and the safety training they receive. The reasons for the current gap in training may range from lack of resources to the philosophical debate between the law enforcement and social work ideological orientations (DelGrosso, 1997). The only way to ensure that all officers receive the training they need to safely perform their job duties is to establish national officer safety training, standards, and policies.The current research shows that a vast majority of officers are concerned for their personal safety while on the

job. Our study has demonstrated that certain types of safety training are directly related to improving levels of satisfaction with safety training among U.S. Probation/Pretrial Services officers. Respondents who receive training in defensive tactics, scenario-based training, or at a safety academy were far more likely to rate their training as excellent and less likely to rate their training as poor. These types of training should be provided to all officers across the board to increase officer satisfaction with training and overall job performance.

Many districts have taken the initiative to provide training rated as excellent by their officers. Other districts have not provided training, and have received poor ratings from their officers. Whether this results from a lack of resources or philosophical conflicts, the system should provide national training, standards, and policies. According to a staggering 93 percent of the respondents, officer safety training should be provided at the onset of an officer's career.

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UP TO SPEED
A Review of Research for Practitioners

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Probation Officer Stress: Is There An Organizational Solution?

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Stress has become a buzz word within the criminal justice system (Finn, 1998; Leeke, 1983). Most of the research on job stress within the criminal justice system has focused on police officers and correctional officers, with very little attention paid to probation officer stress (Simmons, Cochran and Blount, 1997; Whisler, 1994; Patterson, 1992). Therefore, explorations into stress levels within the field of probation have often relied on stress research from other occupations. Some researchers have recommended continuity in stress research to facilitate comparisons across occupations, exploring, for example, whether criminal justice practitioners are truly among the most highly stressed types of employees (Cullen et. al., 1985).

There are three possible methods of alleviating stress: 1) eliminating causes of stress, 2) increasing a person's ability to cope with stress, and 3) helping the stressed person. Terry (1981;1983) has found that the first method is the most effective for reducing stress, but has received the least emphasis. The typical organizational focus tends to be on individuals rather than on the source of the problem – the stress of the job itself. Maslach (1982) has considered such an approach ludicrous, noting that the focus should not be on "bad people" but on the "bad situations" good people find themselves in. She likens the process to "investigating the personality of cucumbers to discover why they had turned into sour pickles without analyzing the vinegar barrels in which they had been submerged" (1982:10). Likewise, Pecukonis (1991) has maintained that focusing on individuals as opposed to the organization is akin to bailing out the boat without plugging the leak. The negative effects of unchecked organizational stress are bound to keep recurring.

Instead of trying to change people to fit working environments, some have recommended that organizations be modified to fit people (Newman and Beehr, 1979). However, professionals and clinicians appear more comfortable with interventions that strive to change people instead of organizations (Ivancevich, Matteson and Richards, 1985).

In the research literature, stress has been linked to health problems (Cooper and Watson, 1991; Johnson and Johansson, 1991; Karasek and Theorell, 1990). For example, occupational stress is related to heart disease, hypertension, upper respiratory infections, peptic ulcers, reduced immunity, migraines, alcoholism, depression, suicidal tendencies, anxiety, and other mental disorders (DeCarlo and Gruenfeld, 1989; Ivancevich, et al., 1985; Muntaner, 1991). Researchers at Cornell University Medical College have determined that exposure to job strain increases the likelihood of high blood pressure (Schnall et al., 1990) and increased heart mass (Schnall, 1990). Furthermore, workplace stress is associated not only with morbidity rates but also with mortality rates (Brandt and Nielsen, 1992; Falk et al., 1992; Homer, Sherman and Siegel, 1990; Johnson, Hall and Theorell, 1989; Palmer,1989). As evinced in a review of the research literature, the damaging effects of stress are pervasive. Some researchers have estimated that approximately 50 percent of all absences from work and 75 to 85 percent of all accidents in the workplace involve stress (DeCarlo and Gruenfeld, 1989). Certainly, the personal effects of stress can be debilitating to individuals, but organizations can also be adversely impacted. Decreased performance and increased health care costs, disability payments, sick leave, absenteeism, and turnover are all part of the potential organizational costs associated with workplace stress. Over 54 percent of the estimated 550 million work days lost to absenteeism in American industry can be linked to stress (Elkin and Rosch, 1990). American organizations incur an annual cost in excess of $150 billion a year due to stress manifesting itself in the workplace (Karasek and Theorell, 1990), with an estimated 40 percent of job turnover considered stress-induced (DeCarlo and Gruenfeld, 1989).

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Stress Defined

The pioneer in stress research is Dr. Hans Selye, who defined stress as a nonspecific response of the body to any demand (Selye, 1976). Thus, even while asleep, our bodies are under a small amount of stress–as our heart, brain, etc. continue to work. The only way to eradicate stress completely is to die. Selye also emphasized that even positive circumstances can produce stress. Prolonged, extreme stress can lead to withdrawal from work, burnout, and emotional exhaustion (Whitehead, 1981).

Exploration of Probation Officer Stress

One of the early researchers into probation officer stress, J. T.Whitehead (1985), found that organizational sources of burnout include boredom, role ambiguity and conflict, and inadequate participation of line personnel in decision-making. In a study of both state and federal probation officers, out of a total of 968 total surveys completed, no meaningful comparisons of state and federal officers could be undertaken because only 33 federal agents responded. Whitehead (1981) found that burnout was lowest for recently hired officers and for the most experienced agents, with burnout greatest for those who had been on the job from six months to three years. Thus, the relationship between on the job experience and burnout was curvilinear.

Using data gathered from this sample of 968 respondents, Whitehead (1986) compared the burnout rate of probation managers to that of line officers and found that burnout was not as extensive among supervisory personnel as it was among line officers. Rationales offered by Whitehead (1986) for this finding included: managers have more input into decisions within the agency, their work is more challenging and thus holds their interest, and they interact less with probationers. Whitehead noted a direct correlation between occupational level and job satisfaction. Consistent with previous findings, the majority of supervisors cited the role conflict in probation as a source of stress, and also expressed dissatisfaction with pay scales and promotional opportunities (Whitehead, 1986).

Brown (1987) cited role conflict, bureaucratic red tape, excessive paperwork, communications problems and the lack of participatory management as factors in burnout. Brown also noted the linkage of stress to chronic health problems.

In the largest study uncovered to date of federal probation officer stress, Thomas (1988) covered 17 districts across 12 Western states and Guam for a combined response rate of 252 officers and supervisors. The most significant causes of stress were: unnecessary paperwork, lack of time to accomplish the job (the most frequently reported cause of stress), financial concerns, uncertainty about retirement benefits, insufficient mileage reimbursement, and family matters (Thomas). Female supervisors exhibited higher stress levels than male supervisors, while male managers depersonalized probationers more. Thomas also stated that several causes of stress deserved greater scrutiny: on the job political pressure, lack of union representation, dangers of the job, and having to make case disposition recommendations which may include custodial sentences. Among Thomas' sample, burnout was a function of seniority rather than age. In other words, Thomas did not find burnout early in a career; instead it was linked to seniority and perceptions of how fairly supervisory personnel within the organization were selected. Those who had been around for some time and perceived that managers were selected based on politics, seniority, or favoritism were more apt to exhibit higher stress and burnout levels than those who felt supervisory selections were founded on ability and pertinent managerial experience (Thomas). According to Thomas, the meticulous selection process for federal probation officers and the diverse nature of the work are responsible for low turnover throughout the federal probation system. What heightens conflict for officers are things outside the control of individual offices, such as dictates from the Administrative Office of the U. S. Courts and the Sentencing Commission, and these, coupled with the selection of supervisors, escalate stress levels (Thomas).

Thomas also found pretrial service officers less stressed than officers handling probation/parole responsibilities. Like Whitehead (1986), Thomas reported that supervisors were less stressed and burned out than line officers and tended to exhibit more job satisfaction. Managers also had a less dehumanizing attitude toward clients (Thomas). Another interesting finding by Thomas was that the more religious an officer reported himself to be, the lower the officer's burnout rate. Officers reporting a decrease in contact with their clients had higher levels of burnout than other officers, prompting Thomas to question the widely held belief that reductions in workload will reduce stress and burnout.

Simmons, Cochran and Blount (1997) explored the impact of occupational stress and job satisfaction on probation officer inclinations to quit their jobs. Organizational and societal costs of high turnover rates include increased expenditures for recruiting and training and increased caseloads, resulting in lax supervision of offenders, which leads to more probation violations and can culminate in greater opportunities for recidivism (Simmons et al.). Approximately 50 percent of the 186 probation officer respondents from the state of Florida reported that they agreed or strongly agreed with the statement that as soon as they could locate better employment they would quit their jobs. Likewise, 45 percent reported that they often contemplate quitting, and Simmons et al. found a significant portion of probation officers who were experiencing stress were also dissatisfied with their work and had a strong inclination to end their employment. More senior officers and those specializing were less likely to express thoughts of quitting, whereas entry-level probation officers exhibited much more of a propensity to quit their jobs (Simmons et al.). Furthermore, better educated officers and minority probation officers reported a greater inclination to quit than other officers in the Simmons et al. study. Simmons et al. discovered that married and older probation officers were more prone to reflect both occupational satisfaction and lower occupational stress. Those with prior police experience were less apt to find probation work satisfying, while those with prior correctional experience were more likely to be satisfied with probation work (Simmons et al.).

Simmons et al. reported that female probation officers in the study demonstrated greater levels of occupational stress than their similarly situated male counterparts. Other significant findings uncovered by Simmons et al. included: four-fifths of the respondents reported stress due to inadequate salary; inadequate promotional opportunities were also cited as a stressor; almost everyone cited insufficient raises as a primary stressor; excessive paperwork was linked to stress and job dissatisfaction; over half the officers reported suspense dates on reports as stressful; approximately three-fourths of the respondents cited a lack of support from superiors as stressful; and almost nine out of ten respondents disliked their supervisors – with roughly eight out of ten surveyed reporting they perceived their supervisor as incompetent.

In a sample of both adult and juvenile probation officers in the Washington, D.C. metropolitan area, Tabor (1987) generated a usable data set of 144 respondents. Using a research instrument that allowed for comparisons of stress levels across occupations (Slate and Vogel, 1997), Tabor found both adult and juvenile probation officer stress levels higher than those of the general population, with adult probation officers exhibiting higher levels of stress than juvenile agents. Supervision of a special adult caseload, such as alcohol offenders, was determined to be significantly stressful (Tabor). Adult probation officers between the fifth and seventh years of employment appeared most likely to experience high levels of stress, perhaps due to being passed over for promotions and experiencing the increasing malaise generated by career anxiety (Tabor).

The most highly stressed juvenile probation officers were more likely to report treating their clients like impersonal objects, and juvenile probation officers who were married exhibited significantly fewer signs of stress (Tabor). Also, according to Tabor, juvenile probation officers who were highly stressed were more likely to be in financial difficulties. Adult probation officers reflected higher stress levels as the number of monthly violation reports increased (Tabor).

Adult probation officers also experienced heightened stress if they invited more and more clients to their domiciles, if they increased their personal involvement with probationers, and if they concluded that more and more of their clients would never become productive citizens within society. Conversely, job stress for adult probation officers declined as the percentage of probationers under their supervision that they trusted increased and as the belief that they could positively impact the lives of their clients increased (Tabor).

In a study of 146 probation officers, Patterson (1992) discovered a curvilinear relationship between stress and work experience similar to Whitehead's (1985) earlier findings. Patterson found the lowest stress levels among probation officers with the least and the most on-the-job experience.

Whisler's (1994) study of Florida probation officers resulted in 55 usable surveys and focused on stress perceptions of those surveyed. The most significant causes of probation officer stress identified by Whisler included: excessive paperwork, insufficient salaries, inadequate opportunities for advancement, court leniency, job conflicts, limited opportunity for employee input in decision-making, failure to recognize accomplishments at work, and lack of managerial support. In essence, most sources of stress for probation officers were the result of internal, organizational dynamics.

Possible Organizational Remedies to Probation Officer Stress

As noted by Maggio and Terenzi (1993:15), "'[t]he greatest investment an organization can make is in its human capital.'" Beto and Brown (1996) have pointed to the importance of cooperation in the probation work environment, with Wiggins (1996) touting decentralization in decision-making as a way of empowering employees and enhancing morale and job satisfaction. 'Likewise, Siegel (1996) has advocated the creation of a team environment, and Alston and Thompson (1996) have delineated the positive aspects of Total Quality Management (TQM) in the probation literature, with Janes (1993) providing a guide for the implementation of TQM in the probation work environment. Study after study emphasizes participatory management as a means of reducing probation officer stress and/or burnout (Whitehead, 1981; Whitehead and Lindquist, 1985; Brown, 1986; Whitehead, 1986; Brown, 1987; Simmons et al., 1997; Whisler, 1994; Tabor, 1987).

Dr. W. Edwards Deming, a pioneer of TQM, has maintained that over 90 percent of organizational problems are endemic to the system and not the fault of the workers (Janes, 1993). As previously noted, according to Terry (1981; 1983), the elimination of stressors from the work environment is considered more effective than attempts to improve an individual's ability to cope with stress or provide help to the stressed individual [such as is seen with employee assistance programs, (Hardaway et al., 1996)]. Thus, future probation officer stress research should logically examine the relationship between employee input into decision-making and stress, burnout, job satisfaction, thoughts of quitting, and other pertinent variables.

Implications for Future Research

It is time for more detailed explanations of probation officer stress. For example, while researchers find that role conflict exists in probation work, further distinctions need to be made. Who is more stressed: those officers who are more control/law enforcement oriented or those who primarily act as counselors, encouraging their clients toward rehabilitation? If role conflict is such a problem, should probation officers be dissuaded from a dual or diverse role into a more single-oriented focus?

More methodological rigor is needed in future research into probation officer stress. Just asking questions of probation officers and reporting frequencies will not uncover the multifaceted forces affecting probation officer stress levels. Ideally, especially since participatory management has been identified as a pivotal variable, probation agencies that have implemented participatory management should be compared with similarly situated organizations that have not done so. A study comparing probation officer stress levels prior to implementation of participatory management and after implementation would also be beneficial. Ultimately, longitudinal studies of probation officer stress could prove informative.

Overall, federal probation officers have been severely neglected in the stress research. More attention needs to be paid to this area, with the hope that eventually sufficient numbers of respondents can be garnered to produce meaningful results and comparisons with state probation officers. Standardization of research instruments is also needed so that studies can more readily be replicated and comparisons across studies and even occupations can be made. Finally, as noted by Brown (1987), government usually lags behind the private sector in a number of ways and the use of participatory management styles proves to be no exception. It is time for further, more sophisticated investigation of the relationship between participatory management and probation officer stress, and the impact of these variables on organizations, individuals, and society.

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THE CUTTING EDGE

A Survey of Technological Innovation

By Cecil E. Greek, Florida State University

AS WE ENTER THE 21st century, one of the most important issues facing criminal justice is the role that technology is going to play. This is true whether we think about the new types of crimes that networked computers will make daily occurrences, or the many changes to the criminal justice system that technology is engendering. Finally, concerns about the loss of privacy and the possibility of a technology-utilizing government emerging as "Big Brother" continue to be raised.

This new column in *Federal Probation* is open to address any and all of these topics. As column editor, I will be writing the first few to get things started. However, contributions will be welcomed, including descriptions about emerging technologies, legal and ethical concerns about their use, successful (and failed) attempts to integrate technology within criminal justice, and new crimes made possible via technology.

Positive and Negative

As with any new technology, the emergence of computers and the Internet as everyday "appliances" offers opportunities to do either good or ill. On the positive side, computers are being used for everything from in-the-field report writing, spreadsheet preparation, data collection and analysis, personnel management, scheduling, courtroom presentations, to facility security, including jails and prisons. The Internet has created the potential for local, state, and federal law enforcement agencies to share information much more easily and for citizens to interact with their local police agencies through Web sites and other online communication tools. The use of these technologies is still in its infancy. Within the bibliography at the end of this column are Web site addresses discussing a number of examples of recent technological innovations in criminal justice, including: shared access to database resources, use of wireless technologies, law enforcement agency Web pages, computerized fingerprint efforts, graphics software that assists sketch artists in reconstructing suspect faces, Pennsylvania's integrated criminal justice database system (JNET), computerized management of prison security, and remote sensing satellite systems for use in community corrections.

Communications Solutions

A good example of a comprehensive solution to the problem of communication between individually maintained agency databases can be seen in Pennsylvania's JNET. The system's goal is to enhance public safety by providing a common on-line environment where authorized state, county, and local officials can access offender records and other criminal justice information from participating agencies. Agencies include police, courts, prisons, and probation and parole. While agencies maintain their proprietary databases, new offender information need only be entered once as subjects proceed through the criminal justice process. Using XML to create common database elements, the JNET system links information from diverse hardware/software platforms under a common web-browser interface. Each participating agency controls what information it shares and who is authorized to see it. As security is essential in such a system being used by thousands, network firewalls, secure communication protocols, data encryption, and authentication based on digital signatures and certificates protect information on the JNET system from unauthorized access. Encrypted, authenticated e-mail also provides a secure channel for inter-agency messaging. Fewer criminals slip through the cracks in Pennsylvania.

Crime Enhancement

On the negative side, computer and Internet technology provides new tools resourceful criminals can use to commit the same old crimes and also creates entirely new types of crime. For example, telemarketing fraud can be carried out by computer as easily as by telephone. If the company sets up the Web site in another country, tracking and apprehending the wrongdoers may be quite difficult, and victims are unlikely to get their money back. New computer crimes include hacking, creating computer viruses, and carrying out infrastructure attacks. Actually, attempts to categorize digital crimes intelligently are just beginning. Grabosky and Smith's (1998) list includes:

- Illegal interception of telecommunications
- Electronic vandalism and terrorism
- Theft of telecommunications services
- Telecommunications piracy
- Pornography and other offensive content
- Telemarketing fraud
- Electronic funds transfer crime
- Electronic money laundering
- Telecommunications in furtherance of criminal conspiracies

This is the inaugural column for "The Cutting Edge," a survey of new things happening in technology that will either enhance or complicate the lives of those in corrections and criminal justice. The editor of the column, Cecil E. Greek, Ph.D., is Associate Professor of Criminology and Criminal Justice at Florida State University in Tallahassee, where he directs distance learning efforts, including an online Masters' degree program aimed at criminal justice professionals. His new book, Computers, the Internet, and Criminal Justice*, will soon be published by Wadsworth. Dr. Greek's e-mail address is: cgreek@mailer.fsu.edu.*

One only has to read the daily news to find out about stolen credit card registries, denial of service bombardments, or fears of terrorist attacks on critical infrastructure. Yet government efforts to centralize responses to network crimes are not looked upon favorably by the Internet community, which has a strong privacy constituency. Any criminal justice system response is going to take time to implement. Meanwhile hackers and other computer criminals find new ways to cause costly mischief.

Controversial Issues

Controversies regarding privacy, government tracking of citizen behaviors, and access to public records will grow louder as technology improves in these areas and more and more information can be made available online.

As those under criminal justice supervision have fewer privacy protections than ordinary citizens, systems that track many aspects of their lives such as their whereabouts, access to computers, or financial records may become commonplace. One can imagine a convicted Internet seller of child pornography whose movements are being monitored via satellite, his computer use tracked via biometric devices, and financial database records searched periodically to see if he has illegal sources of income.

Who has the right to access which records? Both court and correctional records databases are moving to the Web, but not without some controversy. The practical difficulty of outsiders getting at court and corrections documents kept the question a nonissue until the Internet changed the world. The law has always recognized that court documents are public, but the practical difficulty of reviewing those documents kept them effectively private. Forcing citizens to come to the courthouse to look up information and then charging outrageous copying fees deterred most. Technology now makes those documents "in fact" public and instantly accessible. How citizens will use this information only time will tell. Potential employers, rental agents, and creditors would certainly want this data. I often tell my students they can use the local county clerk's database to screen potential dates as all misdemeanor and felony convictions dating back to 1984 are listed. Some states are blocking commercial use of court information and/or making the uncovering of information so difficult that most can't get to what they want.

Many states already maintain searchable online databases of convicted sexual predators and sexual offenders, since public access to these was mandated as part of legislation such as Megan's Law. Although the law did not actually require online access to the records, states decided to provide it. These databases contain current addresses and photos of convicted offenders. In 1999, a group of Oregon convicted sex offenders sued to block the opening of that state's registry. The Florida Department of Corrections offers online databases that include all inmates and those under probation or parole supervision.

Predicting Terrorism

A controversial example of the use of new software tools to predict future criminal behavior is Mosaic-2000. In the post-Columbine era, Mosaic-2000 is being used to compile profiles of students who might be deemed dangerous.

Mosaic-2000 was developed by Gavin de Becker Inc., a private security and software company in California. For the past 10 years, the company has tailored risk-assessment programs for special law-enforcement programs, dealing with problems from domestic violence to terrorism. The Mosaic school program consists of questions carefully crafted from case histories by 200 experts in law enforcement, psychiatry, and other areas. The questions will be answered by school administrators and will cover a variety of concerns beyond alarming talk, ranging from the availability of guns to reported abuse of domestic pets.

School administrators have welcomed Mosaic-2000 while critics refer to it as "geek profiling." As one critic said: "The deployment of sophisticated new profiling software — the kind used to spot assassins and terrorists — in America's public schools is a radical evolution in the use of dubious technology to attack social problems." The software raises enormous issues relating to privacy, freedom of speech and thought, and confidentiality. Among students, fears are that kids who are online a lot, who game, listen to the wrong music, wear the wrong clothes, reject sports and other reigning social conventions, or engage in rebellious, defiant or "inappropriate" speech or dress will be targeted. In any other context, a government-sponsored computer program offered by a law-enforcement agency and a private security firm to enter school systems and track down certain types of students in schools would trigger howls of protest.

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LOOKING AT THE LAW

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Imposition and Enforcement of Restitution

A previous article in the December 1998 issue of *Federal Probation* discussed the determination of the restitution amount (i.e., harms to victims caused by the offense that are compensable as restitution).[1] Aside from that determination, however, there are additional legal and practical issues involved in imposing and enforcing restitution orders. How should a restitution order be imposed? What is the legal standard for determining a defendant's ability to pay? Which financial resources and assets can be included in the computation of what a defendant can pay? What, if any, assets might the court order to be liquidated to pay restitution? How can the court enforce restitution orders at sentencing and during supervision? What options are available to the court when a defendant does not pay restitution during supervision?

Although the Department of Justice (DOJ) has primary responsibility for the collection of criminal monetary penalties, officers can be very helpful in enforcing payment during periods of supervision of offenders. In 2000, the Judicial Conference will be asked to distribute, if approved by the Committee on Criminal Law, new *Monograph 114*, which will address policies and practices in the imposition and enforcement of criminal monetary penalties. This article is intended to provide the legal framework to assist officers in the imposition and enforcement of restitution.

I. Determining the Defendant's Ability to Pay Restitution

A. Relevance of Defendant's Ability to Pay

Once the court determines the restitution amount, that amount is what the court must impose as restitution in mandatory restitution cases.[2] In discretionary restitution cases,[3] the restitution amount imposed is the result of balancing the harm with the defendant's ability to pay restitution for that harm. In deciding whether to impose discretionary restitution, the court must consider the statutory "factors" at § 3663(a)(1)(B)(i): "The court, in determining whether to order restitution under this section, shall consider — (I) the amount of the loss sustained by each victim as a result of the offense; and (II) the financial resources of the defendant, financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate."

Determining the defendant's ability to pay is also relevant in determining the amount of a fine to impose, and in determining the *manner of payment* of *any* restitution order, pursuant to title 18 U.S.C. § 3663(f)(2).[4]

B. Importance of the Presentence Report (PSR)

The PSR is the crucial first step in determining a defendant's ability to pay. It is the court's primary source of information for making the determination of the amount of discretionary restitution or the manner of payment for any restitution order. The Mandatory Victims Restitution Act of 1996 (MVRA)[5] made changes that strengthened the authority of courts (and officers working on behalf of the courts) to obtain financial information from and about the defendant, making the PSR even more important.

Section 3664(a), as amended by the MVRA, specifically requires that the PSR include, "*... a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant.*" In order to assist officers in providing this information to the court, new § 3664(d)(3) directs the defendant in unprecedentedly specific terms to provide detailed financial information to the probation officer and the court:

"*Each defendant shall prepare and file with the probation officer an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets* owned or controlled by *the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents,* and such other information *that the court requires relating to such other factors as the court deems appropriate.*" (emphasis added)

The reference to assets "*owned or controlled by the defendant*" is new with the MVRA, and indicates that the court may have authority to reach assets controlled but not owned by the defendant, such as those, perhaps, in family members' names. The last phrase ("*and such other information...*") provides very broad discretion for the court to require the financial information needed to make the necessary imposition and/or payment determinations regarding restitution.

Section 3664(f)(2), added by the MVRA, also refers to "jointly controlled assets," in describing what the court must consider in deciding the method of payment of any restitution order: "*... (A) the financial resources and other assets of the defendant, including whether any of these assets are* jointly controlled*; (B) projected earnings and other income of the defendant' and (C) any financial obligations of the defendant; including obligations to dependents.*" (emphasis added)

In addition, another MVRA provision authorizes the court's collection of more information on the defendant's finances, where necessary, after the presentence report is completed. New § 3664(d)(4) provides, "*After viewing the report of the probation officer, the court may require additional documentation or hear testimony.*" The court can receive such evidence in camera, if necessary to protect the privacy of the records.

The MVRA also made changes to Rule 32, Federal Rules of Criminal Procedure[6] that reflect an increasingly important role for the presentence report in the imposition of restitution. While pre-MVRA, Rule 32 had required the presentence report to contain a victim-impact statement (still present, at Rule 32(b)(4)(D)), the MVRA added two provisions to Rule 32 relating to restitution: a) Rule 32(b)(4)(F) requires that the PSR contain, *"in appropriate cases, information sufficient for the court to enter an order of restitution;"* and b) Rule 32(b)(1) directs the probation officer to prepare *"... a presentence investigation and report, or other report containing information sufficient for the court to enter an order of restitution, as the court may direct, shall be required in any case in which restitution is required to be ordered."* Therefore, in mandatory restitution cases, Rule 32 authorizes the court to ask the probation officer to submit a report regarding restitution, even where the presentence report has otherwise been waived.

C. The Presentence Report as "The Record."

The presentence report is crucial to ensuring a sufficient record for potential challenge on appeal, and it provides the necessary information upon which the court can base its findings.[7] Or, where the defendant does not object, the court's adoption of the presentence report can provide the necessary record that the court has "considered" the defendant's financial resources.[8]

However, the courts have set out varying requirements for what the record must show regarding the court's consideration of the defendant's ability to pay. Some circuits have required the court to articulate special findings on the defendant's ability to pay,[9] while others have taken the position that so long as the "record reflects" the court considered the defendant's financial resources, no special findings are required.[10] Still other courts have taken a middle position - requiring findings only if the record does not otherwise provide an adequate basis for appellate review;[11] or only where the defendant objected to the restitution order at sentencing.[12] And in *U.S. v. Ahmad*, the Seventh Circuit applied a reverse-special findings rule, holding that because restitution is the norm, the court that *declines* to order full restitution must make explicit findings.[13]

A recent Fourth Circuit case, *U.S. v. Aramony*, further illustrates the importance of the presentence report. The court held that special findings are not necessary (although they are otherwise required in that circuit) if the court adopts the presentence report and the report contains adequate information on the defendant's financial resources to allow effective appellate review of the fine (the same standard would apply to discretionary restitution).[14] Unfortunately, the Aramony presentence report was inadequate, and the appellate court vacated the fine and remanded for the officer to prepare an updated presentence report reflecting the defendant's financial resources. The importance of the presentence report is dramatized even further by the fact that, as the dissent noted, there was evidence of the defendant's significant financial resources on the record, but because the presentence report did not incorporate that evidence, and the court made no special findings, the fine was remanded.[15]

Finally, where there appears to be insufficient information in the presentence report for the restitution determination, there is now explicit authority for the court to require additional information, pursuant to §§ 3664(d)(4). This authority was no doubt inherent before, as illustrated by a Second Circuit case in which the court asked for additional information from the defendant on how she spent the proceeds of the offense.[16]

D. "Future Ability to Pay"

Where the defendant has any assets, the officer should consider recommending that full or partial payment of restitution be made immediately or soon after sentencing. However, even if the defendant is currently indigent the court may still impose discretionary restitution, because indigence is but one factor the court must consider.[17] The case law indicates that the court is authorized to impose discretionary restitution based on an analysis of the defendant's "future ability to pay." The record must show *some indication* of the defendant's future ability to pay.[18] For example, the Tenth Circuit, in *U.S. v. Kunzman*, said, "the fact that a defendant is without financial resources at the time of sentencing is not a bar to a restitution order."[19]

There are two aspects to the analysis of future earnings: a) the length of "future" time that is at issue, and b) the degree of certainty required in estimating a defendant's resources over that period of time. The cases have not discussed the length of time to be computed, focusing primarily on the period over which the sentencing court has jurisdiction (imprisonment plus any supervision). However, the analysis of a defendant's future earnings should take into account the period of time the defendant will be obligated to pay the monetary penalty. While circuits split on how long this period was pre-MVRA, as discussed below, the MVRA clarified that financial penalties last for the later of either 20 years after sentencing or 20 years after any period of incarceration.[20] The government and the victim can enforce the obligation long past the sentencing court's jurisdiction. Therefore, where the amount of restitution depends on an ability to pay, the court should impose the amount the defendant is likely to be able to pay over the full life of the obligation. On the other hand, payment schedules should be set with the period of time in mind that the court can enforce those schedules (i.e. the period of supervision).

As for the degree of "certainty" of determining a future ability to pay, the cases have been highly fact specific and have produced variable results. While the court need not find the defendant's future ability to pay to a certainty, some degree of probability is required, and the imposition of discretionary restitution or a fine cannot be based merely on chance.[21] However, varying standards have been applied, even within the same circuit. For example, in *U.S. v. Atkinson*, the Second Circuit held that full restitution may be ordered even though "there may be little chance that it will ever be made,"[22] but in *U.S. v. Porter*, it held that there is no authorization for courts to impose "amounts that cannot be repaid without Hollywood miracles."[23] Further, several courts have applied a presumption for full restitution where the defendant's inability to pay is not clear, or there is some doubt on the issue.[24]

Some specific examples may illustrate courts' handling of the issue. The Ninth Circuit held it was not an abuse of discretion to impose restitution where the defendant was indigent but had an education and marketable job skills.[25] Where an indigent defendant had appointed counsel and the presentence report recommended no restitution or fine, the Sixth Circuit nonetheless upheld a fine and full restitution because the court found the defendant was probably concealing assets, and because the defendant's spouse earned income.[26] The Eighth Circuit upheld a large restitution order based on the defendant's high earning potential and proven business skills.[27] A restitution order for $944,055 was upheld by the Tenth Cir-

cuit where the court considered the value of the defendant's business, vacation homes, stocks, and liquidation of the husband's assets in bankruptcy.[28] The Seventh Circuit held that a restitution order against a defendant "who is currently unable to pay restitution" will not be vacated "if 'there is some likelihood' that he will acquire sufficient resources in the future."[29] Similarly, in another case the Seventh Circuit held that the defendant's ingenuity and capabilities in the fraud scheme justified a $5 million restitution order, where the defendant had a net worth of $17,000 and was working on a computer science degree in prison.[30] And the First Circuit upheld a $1 million restitution award against a defendant with a negative net worth of $900,000, because the defendant had talents that could be directed to lawful activities.[31]

E. Spouse and Other Family Assets and Resources.

It is not uncommon for courts and officers to be confronted with defendants who claim no assets in their names, but who enjoy the benefits of, and access to, assets in family members' names. Based on new MVRA provisions, there should no longer be any ambiguity about the court's authority to order detailed financial information involving such assets from the defendant and/or family members. Moreover, even under pre-MVRA authority, when most restitution was discretionary, full restitution was upheld where defendants failed to provide financial information or provided false or misleading financial information.[32] This is consistent with the allocation of the burden on the defendant to prove his or her inability to pay, as well as with the new financial disclosure provisions introduced by the MVRA.

As discussed above, the MVRA expanded the description of what financial information the defendant is required to disclose to the court and the probation officer, and what financial "resources" the court can consider in imposing restitution or determining the manner of payment. Examples include new § 3664(d)(3) that directs the defendant to provide an affidavit *"fully"* describing *"all assets owned or controlled by the defendant as of the date on which the defendant was arrested..."* (emphasis added), and new § 3664(f)(2) that directs the court to consider (among other things) in determining the method of payment of a restitution order, *"... the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled..."* (emphasis added).

The statutes require the court to consider the *"financial needs and earning ability of the defendant and the defendant's dependents ..."* both in determining whether to order discretionary restitution under § 3663,[33] and in obtaining financial information from the defendant for the imposition of any restitution order.[34] Therefore the earning ability of the defendant's dependents also is relevant now. There are a few pre-MVRA cases that discuss how much a court can include family assets along with the defendant's in computing the defendant's ability to pay. One Sixth Circuit case concludes that spousal assets should be included. In *U.S. v. Blanchard*, the indigent defendant had appointed counsel and the presentence report recommended no restitution or fine. However, the court imposed a fine and full restitution, based partly on the court's finding that the defendant was probably concealing assets, and partly on the spouse's earned income, and the orders were upheld.[35]

When assets are fraudulently transferred to family members, courts can reach the assets for restitution. For example, in *U.S. v. Lampien*,[36] the Seventh Circuit upheld a contempt order imposed because the defendant did not pay restitution during the pendency of the appeal, and fraudulently tried to transfer an inheritance to his son. However, the court also reversed that part of the order requiring the defendant to execute a quitclaim deed to her homestead in order to pay restitution, holding that the court is limited to those enforcement means provided in the restitution statutes. This part of the *Lampien* holding may no longer be valid, because the Seventh Circuit later held that the authority of the court to order the surrender of real property or other assets was broadened with the passage of the MVRA. In *U.S. v. Hoover*, it concluded that its prior case of *Lampien*, above, might not produce the same result (of reversing the order to quitclaim the property) under the MVRA. The *Hoover* court approved a restitution order to surrender savings bonds that were in the defendant's son's name to pay restitution to a university to whom the defendant was convicted of making false statements, pursuant to § 1001.[37]

It should be noted, however, that not all family assets are automatically available for paying the defendant's restitution order. One court has held that if funds belong in whole or in part to the defendant's spouse, and the defendant had no entitlement to them other than as a bailee, it would be inappropriate to use the spouse's funds to discharge the defendant's restitution obligation.[38] Care should be taken to determine whether the defendant has access to the assets, control of them, and/or enjoys the benefit of them before considering family assets to be among the "resources" available to the defendant. However, even if the joint- or family owned-assets are not directly reached by the court, they often can be considered in computing the defendant's ability to pay. For example, the court cannot make the wife use her salary to pay for her husband's restitution, but the wife's salary can be included in calculating their necessary living expenses.

F. Computation of, and Possible Liquidation of, Tangible Assets

A number of the provisions of the MVRA add or strengthen the means by which the Department of Justice and the court may enforce financial penalties. Officers should be aware of these enforcement tools because they are 1) relevant in determining ability to pay, and 2) relevant in assessing sanctions for failure to pay during probation and supervised release. First, as discussed above, §§ 3664(d)(3) and 3664(f)(2) provide authority for the court to order *disclosure* of "jointly owned or controlled assets." At a minimum, this authority should permit the court to include the assets in the computation of the defendant's net worth and ability to pay.

Other new MVRA provisions have provided support for the court's authority to directly reach specific assets, particularly when the defendant is in default of payment of restitution or a fine. The MVRA created § 3613A, which lists the options available to the court when a defendant is in default. Most, if not all, of these options were arguably previously part of the court's inherent authority to enforce its orders. The newly consolidated list of options includes not only the court's authority to revoke supervision or modify its conditions, but also the court's authority to:

"... resentence a defendant pursuant to section 3614, hold the defendant in contempt, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution."

Taken together, these provisions indicate Congress's intention that the court exercise broad authority in assessing a defendant's

ability to pay a criminal monetary penalty and in ordering compliance with its orders.[39] It is logical that if a court can reach assets in these ways upon the defendant's default, it can probably do so earlier, at sentencing or during supervision, to prevent the subsequent dissipation of the assets.

Case law, even before the MVRA, also indicates strong court authority to enforce its monetary penalties. For example, in U.S. v. Porter, the Second Circuit upheld a large restitution order imposed on a seemingly indigent defendant, based on her inability to account for the proceeds of her crime and the possibility of her selling some of the "durable goods" she had purchased with the proceeds. The court concluded, "There is nothing wrong with ordering a criminal to divest herself of the fruits of her crime in order to make her victims whole."[40]

Even though the court may have the authority to reach specific assets, the probation officer is best advised to concentrate on considering the following kinds of assets when assessing the defendant's ability to pay restitution (or a fine). The application of liens, the ordered liquidation of property, injunctions, and the like are collection measures that the government may seek from the court, either at sentencing, or during or even after supervision. The case law is indicative of the court's authority, nonetheless, regarding the following types of assets.

Real Property. In *U.S. v. Gresham*, the Fourth Circuit held that the value of a defendant's home could be taken into account in determining his ability to pay a *fine*, even if the government could not enforce the judgment against the home.[41] (Even though this was a fine case, the factors that the court must consider are substantially the same as those relevant to the defendant's ability to pay restitution.)[42] In *Gresham* the defendant argued that a creditor judgment under Maryland law could not reach his home because he and his wife held it as tenants by the entirety. The appellate court noted with approval that the sentencing court had not ordered the defendant to sell his home, but rather had considered the value of the home in its determination of whether the defendant could pay a fine.[43] The Fourth Circuit held, "Regardless of whether the United States is now or ever will be entitled to Gresham's interest in proceeds from the liquidation of the residence, Gresham's concurrent interest is a 'financial resource' that the court may properly consider under section 3572(a)(1) because it is presently a vested interest with value to him."[44]

One court has suggested that the MVRA provisions have broadened a court's authority to enforce a restitution order. In the pre-MVRA case of *U.S. v. Lampien*,[45] the Seventh Circuit reversed a sentencing court's order that the defendant execute a quitclaim deed to her homestead in order to pay restitution. But the Seventh Circuit later concluded, in *U.S. v. Hoover*, that the order to quitclaim deed the property might now be supportable under the expanded MVRA provisions.[46]

One of the few cases to indicate a court's specific orders to enforce payment of a restitution order is the district court case of *U.S.v. Ferranti*, where the defendant's assets were largely in real estate holdings. The district court ordered him to liquidate his holdings to satisfy the restitution and fine penalties imposed,[47] and to supply the government with documentation of the sale or mortgage of his property within 48 hours of the event. The net proceeds would be maintained in an escrow account by defendant's counsel, under a protective stay obtained by the government.[48]

Pension Plans and IRA's. One kind of asset that sentencing courts probably cannot reach is an employer pension plan. Many employer pension plans are covered by the anti- alienation provisions of ERISA,[49] which might protect the plan from forced liquidation.[50] However, as the Fourth Circuit recently held in *U.S. v. Aramony*, even where pension benefits cannot be ordered to be surrendered, the court can take such benefits into account in assessing a defendant's overall income and prospective ability to pay.[51]

Individual retirement accounts (IRA's) do not involve the same implications as a vested, employer-provided pension plan,[52] and should be available for liquidation to the extent that any savings account would be. For example, in *U.S. v. Hoover*, the Seventh Circuit upheld the sentencing court's order that the defendant surrender savings bonds to pay restitution to a university and to pay fees for his court appointed attorney and expert.[53] In an unpublished case, the Sixth Circuit noted with approval that the sentencing court had referred to the defendant's IRA in calculating his unencumbered assets, and that the court did not specify that the restitution be paid from those funds.[54]

If the assets are reachable by the court for restitution purposes, it does not matter when the defendant acquired the assets. The court can consider assets obtained prior to the offense; there is no *ex post facto* issue regarding the acquisition of net worth resources. When and how the assets were acquired or used are issues relevant to *forfeiture*, not the computation of the defendant's net worth for purposes of paying a criminal monetary penalty. A restitution order can be based on any "resources" of the defendant or the defendant's dependants, subject to the consideration of the needs of the defendant's dependants.[55]

II. Effect of Other Proceedings on the Restitution Amount Imposed

A. Civil Agreements or Settlements.

Generally, the court should not offset the amount of restitution imposed because of a civil suit or settlement agreement between the defendant and the victim, for several reasons. First, such suits or agreements often do not cover the same harms (or costs) that are the subject of the restitution order. A defendant is not entitled to a reduction in the calculated restitution amount for monies owed to him by the victim on entirely unrelated claims.[56] For there to be any potential offset to the amount of restitution imposed, the civil settlement or suit must be for the exact same harms or costs for which restitution was ordered.[57] For example, in *U.S. v. Crawford*, the defendant failed to prove the civil suit award was intended to cover funeral expenses, for which restitution was ordered.[58]

In addition, restitution should not be offset for civil judgments or agreements because such judgments and agreements are sometimes subsequently changed, appealed, or amended.[59] Finally, some courts conclude that restitution serves different functions than civil agreements. For these same reasons, restitution cannot be waived by the victims, primarily because it is considered a punitive criminal penalty, with deterrent and rehabilitative effects beyond the goal of compensating the victim.[60] The penal purposes of restitution are not litigated in the civil case, and, as one court said, the "law will not tolerate privately negotiated end runs around the criminal justice system."[61]

The Fifth Circuit, in *U.S. v. Coleman*, recognized a narrow exception to the above rule where the government was a victim and had executed a mutual release with the defendant in a civil case.[62] The court allowed offset of the civil agreement against the restitution under those circumstances, but it later refused

to extend its "Coleman rule" to a case where the government sought restitution for *third parties* rather than for itself in a criminal suit, despite a civil settlement or agreement between the third party and the defendant.[63]

The only time it might be appropriate to offset the compensated amount against the restitution amount proposed would be where the defendant proves at sentencing that he/she *has already compensated* the victim for the *same harms* that are covered by the restitution.[64] The defendant has the burden of proving he or she has already provided the compensation under the civil award, and that the civil award covers the same harm as the restitution.[65] The defendant also has the burden of convincing the court that the compensation satisfies the penal purposes of the restitution award.[66] However, a mere release of civil liability, without more, is not enough to cause an offset against restitution.[67]

Although there is generally no offset against the *imposition* of restitution based on civil proceedings or agreements, an offset against *payments* toward the restitution award *is* statutorily authorized in order to avoid double recovery by the victim, pursuant to § 3664(j)(2).[68] The victim is only paid once, but the restitution order and civil judgment are back-up enforcement mechanisms for each other, in case one is later modified or vacated.[69]

B. Forfeiture

Questions arise regarding the interplay of restitution and forfeiture. There is an inherent tension between the two, simply because both often compete for the defendant's finite financial resources. The MVRA provided that "community restitution" (in victimless drug offenses) should not interfere with forfeiture,[70] but the statutes are otherwise silent on the interaction of forfeiture and restitution. Forfeiture and restitution are clearly distinct concepts in purpose and function. An asset is forfeitable in certain offenses if it was used in furtherance of the offense or if it was purchased with proceeds from the offense. Restitution, by contrast, seeks to repay the victims of crime for their out of pocket expenses. Accordingly, the Ninth Circuit has noted, for example, that while extraordinary restitution may constitute a viable ground for departure, civil forfeiture does not.[71]

Forfeiture of visible assets does not automatically mean that the defendant will owe less discretionary restitution, because the defendant may have other resources available. But there are situations where forfeited assets will affect the determination of a defendant's ability to pay, and thereby impact the amount of discretionary restitution imposed or the manner of payment set for any restitution order. When restitution is mandatory, however, forfeiture is irrelevant to the amount of restitution imposed. Recently, in *U.S. v. Alalade*,[72] the Fourth Circuit did not allow an offset for the value of fraudulently obtained property the government had seized from the defendant and retained in administrative forfeiture. The Fourth Circuit held that the court had no discretion under the MVRA to order the defendant to pay restitution in an amount less than the full amount of each victim's loss. The defendant tried to rely on a pre-MVRA case, *U.S. v. Kahn*, 53 F.3d 507 (2d Cir. 1995), which had allowed an offset to discretionary restitution for forfeited funds, but the Fourth Circuit found that the MVRA denied the court such authority, and requires the court to order full restitution for each victim. Similarly, in *U.S. v. Emerson*, the Seventh Circuit held that the sentencing court has statutory authority to impose both restitution and forfeiture, and there is no authority to offset one from the other.[73] The court also held that even where the restitution is going to a federal government agency, there is no double punishment or windfall to the government, because restitution and forfeiture serve different purposes.[74] Nor does a court lose its discretion to impose restitution merely "because a defendant must also forfeit the proceeds of illegal activity."[75] The determination of the defendant's ability to pay would still be conducted.

C. Bankruptcy

The MVRA added § 3613(e), which states that restitution is not dischargeable in bankruptcy. This may have clarified this issue, but it is still beyond the function of the probation officer to be expected to provide detailed guidance to the court. Historically, restitution could generally not be discharged in bankruptcy.[76] However, bankruptcy is fraught with numerous difficult legal issues that should be briefed by the parties and determined by the court. If it arises during the supervision stages, the probation officer is advised to seek the court's advice on whether collection should be continued or stayed pending the bankruptcy proceeding, or perhaps the court's determination of whether the restitution order is discharged or not.

It is also prudent for the probation officer to coordinate and communicate with the Financial Litigation Unit of the United States Attorney's Office whenever there is a possibility that the defendant will be declaring bankruptcy. The government may have to participate in the bankruptcy proceeding and file a complaint to determine dischargeability of the restitution order. Or, the matter might be litigated before the sentencing court, especially if the defendant asks the court to block enforcement of the restitution order.

III. Imposition Procedures

Two statutes have been the source of much litigation over the manner of payment for restitution (or a fine). A recent article discusses in detail the legal difficulties sentencing courts are encountering in some circuits in imposing criminal monetary penalties in an effective manner.[77] Also, a new judgment will be considered by the Committee on Criminal Law this year, which may provide added guidance. Therefore, this discussion is shortened to provide the legal backdrop of some of the imposition issues currently being litigated.

A. Immediate Full or Lump Sum Payment Preferred

The ideal way to impose a criminal monetary penalty is, wherever possible, to require actual payment in full, or as substantial a portion as possible in lump sum, either immediately or at a date certain. Any remaining portion not paid up front would ideally be imposed "due immediately," for which payment could continue during incarceration and supervision. The court might, in addition, set a payment schedule for the supervision period, or indicate its intention to do so once the defendant is released to supervision, pursuant to § 3664(k), which permits the court to change the manner of imposition of restitution (with notice and the right to a hearing presumed) whenever there is a material change in the defendant's financial circumstances.

By imposing payment in full or lump sum portion due immediately (at sentencing) or by a date certain soon thereafter, where possible, the court accomplishes part or all of the collection process, avoiding subsequent difficult collection efforts after assets have perhaps been transferred or dissipated. Naturally, the court must first find that the defendant has sufficient resources to comply with the order. The case law and statutory provisions discussed above regarding disclosure of

information about jointly owned or controlled assets, the potential liquidation of assets, and the court options for defendants in default provide the legal framework within which the officer and the court can compute the defendant's financial resources, in order to determine how to impose restitution (and a fine).

B. "Due Immediately"[78]

In most cases, however, the defendant does not have sufficient resources for the court to order full or lump sum immediate payment at sentencing or by a date certain soon thereafter. In the few cases in which the defendant is being sentenced to probation, a payment schedule would be immediately relevant and appropriate. But where the defendant is sentenced to prison prior to any supervision period, the most practical and flexible approach is to impose the criminal monetary penalty on the judgment form, "due ... in full immediately," with no time or method of payment specified (where circuit law permits, as discussed below).[79] The reasonableness and practicality of this approach was endorsed by the Seventh Circuit in *U.S. v. Ahmad*,[80] and reaffirmed in *U.S. v. Trigg*.[81] The *Ahmad* court stated, "*If the sentence specifies the amount of restitution, without elaboration, ... the probation officer will assess the defendant's progress toward satisfaction of his debt. ... Everything works nicely without any effort to establish installments on the date of sentencing and without delegating a judicial function to the probation officer*".[82]

There are several significant benefits to imposing financial penalties "due" or "payments to begin" immediately. First, this method avoids the impractical task of setting a realistic payment schedule where there is an intervening period of incarceration before supervision. Second, any schedule set by the court must be changed by the court, and there are inherent delays in getting court action, especially if a hearing is necessary. This results in much less flexibility in adapting enforcement of the monetary penalties to the often changing financial resources of the defendants. Naturally, if problems develop during supervision the court can always set a schedule, pursuant to § 3664(k), based on a material change in the defendant's financial circumstances.

Imposition in full due immediately also permits the Bureau of Prisons (BOP) to collect to the maximum extent possible during the defendant's incarceration through its Inmate Financial Responsibility Program (IFRP). (It is unnecessary to reference collection by the Bureau, as there is standard language on the Judgment (bottom of Sheet 5, Part B) referencing the BOP's collection—so long as the penalty is imposed in such a way that it is "due" during incarceration.) But if only a supervision payment schedule is specified in the judgment, the penalty is technically not "due" during the incarceration period, and the inmate is excepted from the IFRP. This minimizes collection and results in disparate treatment of inmates.

Ultimately, an amended judgment form and, even more importantly, a possible legislative change to sections 3572(d) and 3664(f)(2) may extricate sentencing courts from this difficult situation.

C. Payment Schedules

However, the imposition of monetary penalties in full "due immediately" is not currently possible in the Second, Third, and Fifth circuits, which now require the sentencing court to set a payment schedule at sentencing, but for different reasons. The Second Circuit, in *U.S. v. Mortimer*,[83] read the then-current Judgment language "payable immediately" literally. It held that monetary penalties cannot be so imposed unless the court finds the defendant can actually *pay* the entire amount immediately. This requires sentencing courts to try to anticipate a payment schedule for supervision, even if years in the future, and does not permit collection during imprisonment. The Second Circuit addressed the latter problem in *U.S. v. Kinlock*, allowing the court to also set a minimal payment schedule for the period of incarceration.[84] However, an inmate's earning capability is difficult to anticipate at sentencing; also a minimal schedule minimizes collection and results in disparate treatment of inmates under the IFRP.

Meanwhile, a provision added by the MVRA has increasingly been interpreted as requiring payment schedules to be set at sentencing in every case. Section 3664(f)(2) provides, after the court determines the amount of restitution, "*... the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid in consideration of [the defendant's financial resources].*" The Third Circuit, in *U.S. v. Coates*,[85] interpreted this provision to require the court to set a payment schedule at sentencing in all cases sentenced pursuant to the MVRA procedures (which are virtually all cases).[86] The court in dicta even found that, to the extent that § 3663(f)(2) conflicts with the BOP's authority to implement the IFRP, the MVRA provision would override the IFRP.[87]

The Fifth Circuit, in *U.S. v. Myers*, now also may require payment schedules at sentencing, based on both of the above two rationales. That is, the court read "due immediately" literally and held it was plain error for the sentencing court to order the defendant to pay $40,000 in restitution immediately where the record did not indicate he had the ability to pay the full amount immediately,[88] and it remanded for the court to consider the defendant's financial resources in determining the manner of payment pursuant to §3664(f)(2)(A), which it interpreted as requiring a payment schedule.[89]

The Eighth Circuit has also recently interpreted § 3664(f)(2) in two cases. It reads the provision to require that, if a schedule is set it must be realistic,[90] but if no schedule is set, it is harmless error until the defendant is released to supervision, at which time the court can set a schedule.[91] This is a realistic and pragmatic rationale, because even reading "due immediately" literally, the defendant suffers no effect until released to supervision. This rationale warrants greater consideration by courts litigating this issue, and would, if adopted, save much litigation.

The Fourth Circuit recently upheld a judgment imposing a special assessment and restitution "immediately due and payable in full" in *U.S. v. Dawkins*.[92] The judgment also set a payment schedule for supervision and directed the probation officer to notify the court of any needed changes to the payment schedule. However, the Fourth Circuit remanded for the court to make the required special findings regarding the defendant's ability to pay because this was a pre-MVRA discretionary restitution case.[93]

On a different, but related, topic, most courts have held that the court cannot state in the judgment that the defendant is to pay according to a schedule determined by the probation officer.[94] The First Circuit allows the court to order that payments be "directed by" the probation officer, but not "determined" by the probation officer, so long as the court also expressly states that it reserves the final authority to determine the payment schedule.[95] On the other hand, the Ninth and Eleventh Circuits have allowed courts to order payment according to a schedule set by the officer, recognizing that it is always ulti-

mately the court that determines whether the defendant is willfully failing to pay.[96]

Some probation officers in "non-delegation" circuits ask whether they can use some sort of "schedule" in enforcing the financial penalties imposed by the court. As a practical matter, officers need to be able to use some sort of working schedule, perhaps better called a "plan," in monitoring offenders' payment of monetary penalties. The "non-delegation" cases apply only to the court's formally ordered judgment, and do not apply to the informal supervision practices, strategies, and plans that an officer uses in monitoring supervision and payment of financial penalties. Only the court can ultimately determine whether the defendant is willfully not paying a monetary penalty, even if there is a court-set schedule.

IV. Post-Sentencing Adjustments to a Restitution Order

Section § 3664(o), added by the MVRA, lists the ways in which a restitution order can be vacated or amended. The restitution order might be "corrected" pursuant to Rule 35, F.R.Cr.P; stricken or modified on direct appeal, pursuant to § 3742; amended, pursuant to § 3664(d)(5)[97] for discovery of new losses; adjusted under § 3664(k) for a defendant's changed circumstances; subject to default or delinquency, pursuant to § 3572, et. seq.; or the enforcement options listed at § 3613A, upon default, might be employed; or the defendant can be resentenced, pursuant to § 3565 (violation of probation, or § 3614 (for failure to pay). Section 2255 is missing, because a restitution order cannot be challenged on a motion to vacate or correct a sentence.[98] Nor can an offender challenge the restitution imposed at sentencing under Section 3583, as a condition of supervision.[99]

Some of the potential changes are general, and apply to any sentence. Others are newer and apply specifically to restitution. The most significant restitution provisions that probation officers should be aware of are the following.

Reduction of restitution amount on government motion (§ 3573). A restitution order generally cannot be changed, once imposed. Only the government can petition to reduce a fine (or restitution), and this is done very rarely.[100] For two years, between 1994 and 1996, statutes mandating restitution for sexual exploitation of children permitted modification of the restitution order "at any time" and "as appropriate in view of the change in the economic circumstances of the offender."[101] However, the MVRA repealed those provisions, and added § 3664(d)(5).

Increase of restitution amount: Discovery of new losses (§ 3664(d)(5)). Section 3664(d)(5) provides, if the victim discovers further losses subsequent to sentencing, "the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order," which shall be granted upon a showing of good cause why the loss was not included in the initial claim for restitution. It is not clear whether "the "victim" would include a newly discovered victim, as well as a previously named victim discovering new losses. This provision may be the first codification of the right of a victim to directly petition a court in a criminal proceeding. Note that the defendant's right to notice and a hearing is probably inferred, and is, at any rate, the best practice.

Receipt of Resources in Prison (§ 3664(n)). Section 3664(n), added by the MVRA, provides that, if a person obligated to pay restitution or a fine receives "substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed." This is further evidence of congressional intent to collect every bit of restitution possible from defendants. The policy is clear and well-intentioned, but there remain questions of how such a receipt of "resources" would be detected and enforced while the defendant is incarcerated. The court probably would have a basis for revocation of supervision if the court learns the defendant received such resources, did not apply them to the restitution or fine, and continues to do so while on supervision.

Defendant's Changed Circumstances (§ 3664(k)). Section 3664(k), added by the MVRA, provides that the defendant is required to notify the court and the Attorney General of any material change in economic circumstances which might affect his or her ability to pay restitution. Victims and the government may also notify the court of any change in the defendant's economic condition. The Attorney General must then certify to the court that all of the victims have been notified, and then the court may on its own or on motion of any party, adjust the repayment schedule, or require payment in full, "as the interests of justice require." It should be noted that, even though the court may adjust the manner of payment "on its own motion," it is good practice to afford the defendant the opportunity of a hearing before it changes the manner of payment, pursuant to Rule 32.1, because payment of restitution becomes a condition of supervision.

Changes in Named Beneficiary of Restitution. While there is no specific provision addressing a court's authority to change the named beneficiary of a restitution order, such authority is no doubt inherent, and there is no authority to the contrary. Because the payment of restitution becomes a standard condition of supervision, a non-substantive change that does not increase the amount of restitution owing should be possible pursuant to Rule 32.1, F.R.Cr.P. regarding modification of supervision conditions. It is, indeed, not uncommon for the beneficiary of restitution payments to change during the life of the restitution obligation. This happens, for example, when a victim dies and the estate receives the payments, or, more frequently, when the victim sells the debt or assigns it to another, or an agency becomes the successor in interest of the previous victim agency.

The determination of who is, in fact, a successor in interest to a named beneficiary is a legal one, often involving the application of state law and/or the determination of the authenticity of documents claiming the interest of the victim. Such determinations should be made by the court, perhaps with notice to the parties, to allow them to challenge the validity of the change. The clerk or the probation officer should not make such determinations. Once the determination is made, it is hoped that courts will use the Amended Judgment in a Criminal Case (245C) to make the change of beneficiary.

V. Enforcement of a Restitution Order

How long can a restitution order imposed as a separate component of the sentence be enforced? Prior to the MVRA, three circuits issued opinions that implied that restitution might only last for the 5 years specified in now-repealed § 3663(f).[102] Most other circuits have concluded, however, that even pre-MVRA restitution was to be collected as a fine,[103] and fines have been collectible for 20 years plus any period of imprisonment.[104] This has also been the advice of the Adminis-

trative Office of the U.S. Courts. The MVRA made it even clearer that the liability to pay a fine or restitution lasts 20 years plus any period of incarceration, or until the death of the defendant, pursuant to § 3613(b).[105]

However, when restitution is imposed solely as a condition of supervision, its life is the same as that of the term of supervision: when the supervision ends, expires, or is revoked without reimposition of supervised release, the order of restitution expires as well.[106] This is a huge drawback, but for offenses for which restitution is not statutorily authorized as a separate sentence, this is the only way restitution can be imposed.

It is a fundamental principle of criminal law that a defendant cannot be incarcerated for a mere inability to pay a financial penalty. The Supreme Court held that a court must find that the defendant "willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay" restitution in order to incarcerate the defendant.[107] Willful failure to pay can be measured not only by income and assets, but also by a defendant's failure to acquire or utilize available resources to pay.[108] "Resources" is a broader term than "income" or "assets" and invites consideration of any kind of financial "resource" to which the defendant has access.

Section 3664(f)(2) specifies that the court, in determining the manner of payment, can consider: "*(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled; (B) projected earnings and other income of the defendant; and (C) any financial obligations of the defendant; including obligations to dependents.*" As discussed above, the court can potentially reach resources controlled or used by the defendant, even if not in the defendant's name.

It is crucial for the officer to reassess the adequacy of any payment schedule set at sentencing when the offender is released to supervision. If none was set, in the Second, Third, and Fifth Circuits, the officer probably should ask the court to set one. Otherwise, the officer can assess the defendant's ability to pay and monitor the payment accordingly. If a dispute arises over what the defendant is able to pay, the court could be asked to set a payment schedule. Throughout supervision, the determination of a defendant's ability to pay must be an ongoing process, even where a schedule has been set by the court, in order to adequately adjust the payment of monetary penalties to the changing financial circumstances of the defendant.

Many options are available to the court to enforce the payment of monetary penalties. Some are legal collection devices, appropriate for the government to pursue (e.g., injunctions, liens, garnishments, ordered property sales). The probation officer may want to work with the Financial Litigation Unit of the United States Attorney's office in seeking other options to enforce a restitution order during the period of supervision. Officers should think in terms of a graduated scale of sanctions, with revocation reserved for the last resort. Sometimes an option that keeps the defendant employed rather than imprisoned is in the best interest of the victim, and also facilitates the rehabilitation of the defendant.

As noted previously, the MVRA created § 3613A which provides a consolidated list of possible options for the court in enforcing monetary penalties when the defendant is in default of payment. These options were available before as part of the inherent power of the court to enforce its orders, or they were previously codified elsewhere (e.g., repealed §§ 3663(g) and (h)), or they were inferred from case law. For example, re-sentencing for default was previously available under § 3614, but has been used infrequently.[109] And the Seventh Circuit has upheld a sentencing court holding a defendant in contempt, where the defendant disclaimed his interest in an inheritance, rather than paying his restitution obligation while the case was on appeal.[110]

In considering what sanction to impose when the defendant has defaulted on payment of restitution or a fine, the court (and hence the officer) must consider the factors in § 3613A(a)(2). These include "*... the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the ... restitution order, and any other circumstance that may have a bearing on the defendant's ability or failure to comply with the order.*" A defendant who knowingly fails to make payment or for whom "alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence," may be resentenced pursuant to 18 U.S.C. § 3614(a) and (b), but "[i]n no event shall a defendant be incarcerated ... solely on the basis of inability to make payments because the defendant is indigent."[111] These options are discussed in the recent Ninth Circuit case of *U.S. v. DuBose*.[112]

One of the few reported cases that illustrate the specific steps a court can take to enforce a restitution order is *U.S. v. Juron*.[113] The defendants were convicted of conspiracy, misapplication of bank funds, and mail fraud, and were ordered to pay full restitution in six figures. The defendants made minimal restitution payments after being released from custody, and the government filed a motion asking for a proposed schedule of payments. At the hearing, the court concluded that, "At the present payment rate, defendants will not extinguish their obligations, until midway through the next century."[114] The court also concluded that the defendants had substantial resources available to them, while not making bona fide efforts to meet their restitution obligations. One defendant had conveyed his home to his wife, but the court considered the home a valuable asset available to the defendant because he was living there rent-free. Therefore, the court ordered the defendant to submit an appraisal of his home's fair market value for computing his financial resources. The court also ordered the defendant to pay the victim the premiums he had been paying toward a life insurance policy, and ordered the defendant to liquidate two Keogh retirement accounts and his stock holdings, with the funds being paid to the victim. It also ordered the defendant to assign over his interest in an accounts receivable to the victim. The court concluded that the defendant had "access to substantial outside funds," and increased the monthly restitution payments by $2,774. Finally, the court ordered the probation office to investigate whether the defendant's expenses exceeded his income; if they did, the court would consider it an indication of still more outside resources that should go toward restitution.

The *Juron* court was taking steps that had a good chance of recovering substantial amounts of money toward the restitution penalties, while the court still had jurisdiction over the defendants and while the assets were still identifiable. It did not have the advantage of the new MVRA provisions that are now available to officers and courts. The authority is now even more explicit for officers to rely on in conducting a continuing investigation into the defendant's financial resources, and in seeking these kinds of enforcement measures from their courts, wherever the defendant is able to pay more toward restitution than he or she is paying.

Footnotes

[1]Goodwin, "The Imposition of Restitution in Federal Criminal Cases," *Federal Probation*, Vol. 62, No. 2, December 1998, pp. 95-108.

[2]Offenses which mandate the imposition of the full restitution amount are those listed in § 3663A, and those for which the four specific title 18 mandatory restitution statutes are applicable (those statutes are §§ 2248, 2259, 2264, and 2327).

[3]Discretionary restitution is authorized as a separate order for any offense listed in § 3663. Discretionary restitution can be imposed only as a condition of supervision for *any* offense, pursuant to §§ 3563(b)(2)and 3583(d), so long as the restitution conforms to the other statutory criteria of restitution involving victims and harms, discussed in the December 1998 article.

[4]All section (§) references henceforth refer to title18 unless otherwise indicated.

[5]The Act included amendments to §§ 3663 and 3664, to the Debt Collection Act (§ 3571 et.seq.) and to Rule 32, Federal Rules of Criminal Procedure.

[6]Hereinafter "Rule 32."

[7]The Second Circuit recently analyzed the purpose and function of the presentence report and the MVRA provisions requiring defendants to provide financial information to the probation officer and the court, in *U.S. v. Conhaim*, 160 F.3d 893 (2d Cir. 1998).

[8]See, e.g., *U.S. v. Newman*, 6 F.3d 623, 631 (9th Cir. 1993); *U.S. v. Riebold*, 135 F.3d 1226 (8th Cir. 1998).

[9]See, e.g., *U.S. v. Tortora*, 994 F.2d 79 (2d Cir. 1993); *U.S. v. Logar*, 975 F.2d 958, 961 (3d Cir. 1992); *U.S. v. Graham*, 72 F.3d 352 (3d Cir. 1995); *U.S. v. Plumley*, 993 f.2d 1140 (4th Cir. 1993); and *U.S. v. Jackson*, 978 F.2d 903, 915 (5th Cir. 1992) cert denied, 113 S.Ct. 2429 (1993); *U.S. v. Owens*, 901 F.2d 1457, 1459-60 (8th Cir. 1990; *U.S. v. Korando*, 29 F.3d 1114 (7th Cir. 1994); *U.S. v. Hairston*, 888 F.2d 1349, 1352-3 (11th Cir. 1989).

[10]See, e.g., *U.S. v. Neal*, 36 F.3d 1190, 1199 (1st Cir. 1994); *U.S. v. Savoie*, 985 F.2d 612, 618 (1st Cir. 1993); *United States v. Gelb*, 944 F.2d 52, 56 (2d Cir.1991); *U.S. v. Blanchard*, 9 F.3d 22, 25 (6th Cir. 1993); *U.S. v. Riebold*, 135 F.3d 1226 (8th Cir. 1997); *U.S. v. Smith*, 944 F.2d 618 (9th Cir. 1991) cert denied, 112 S.Ct. 1515 (1992); *U.S. v. Kunzman*, 54 F.3d 1522, 1532 (10th Cir. 1995); and *U.S. v. Fuentes*, 107 F.3d 1515 (11th Cir. 1997).

[11]See, e.g., *U.S. v. Patterson*, 837 F.2d 182, 183-4 (5th Cir. 1988); *U.S.v. Gabriele*, 24 F.3d 68 (10th Cir. 1994).

[12]*U.S. v. Riebold*, 135 F.3d 1226 (8th Cir. 1998) (reh. and suggestion for reh. den.).

[13]2 F.3d 245, 246-7 (7th Cir. 1993). But see *Korando*, supra.

[14]166 F.3d 655, 665 (4th Cir. 1999) (citing *U.S. v. Castner*, 50 F.3d 1267, 1277 (4th Cir. 1995) for a similar result).

[15]Id. at 666. The dissent would have upheld the fine based on the record.

[16]*U.S. v. Porter*, 90 F.3d 64, 66 (2d Cir. 1996) ("Porter II").

[17]See, e.g., *U.S. v. Trigg*, 119 F.3d 493 (7th Cir. 1999).

[18]See, e.g., *U.S. v. Stoddard*, 150 F.3d 1140, 1147 (9th Cir. 1998); *U.S. v. Ahmad*, 2 F.3d 245 (7th Cir. 1993).

[19]54 F.3d 1522, 1532 (10th Cir. 1995) (summarizing cases on ability to pay).

[20]See, e.g., § 3613(b).

[21]*U.S. v. Seale*, 20 F.3d 1279, 1286 (3d Cir. 1994) (citing *U.S. v. Logar*, 975 F.2d 958 (3d Cir. 1992), involving a fine).

[22]788 F.2d 900, 904 (2d Cir. 1986).

[23]41 F.3d 68, 73 (2d Cir. 1994) ("Porter I"). This discrepancy and others were noted in *U.S. v. Porter*, 90 F.3d 64, 69 (2d Cir. 1996) ("Porter II").

[24]See, e.g., *U.S. v. Porter*, 90 F.3d 64, 69-70 (2d Cir. 1996), reciting at length the practical and legal benefits to the victim when restitution is imposed in full, and concluding there is a "... strong presumption in favor of full restitution." See also, *U.S. v. Mattice*, 186 F.3d 219, 231 (2d Cir. 1999); *U.S. v. Ahmad*, 2 F.3d 245, 247 (7th Cir. 1993) ("When there is doubt about ability to pay, the court should order restitution").

[25]*U.S. v. Sablan*, 92 F.3d 865, 871 (9th Cir. 1996). See also, *U.S. v. English*, 92 F.3d 909, 916-917 (9th Cir. 1996) (defendant was successful in the past and would likely be again).

[26]*U.S. v. Blanchard*, 9 F.3d 22 (6th Cir. 1993). See also, *U.S. v. Lively*, 20 F.3d 193 (6th Cir. 1994) (defendant capable of gainful employment at flea markets).

[27]*U.S. v. Manzer*, 69 F.3d 222, 229 (8th Cir. 1995).

[28]*U.S. v. Rogat*, 924 F.2d 983, 985 (10th Cir. 1991), cert denied, 499 U.S. 982.

[29]*U.S. v. Viemont*, 91 F.3d 946, 951 (7th Cir. 1996) (quoting *U.S. v. Simpson*, 8 F.3d 546, 551 (7th Cir.1993)).

[30]*U.S. v. Boula*, 997 F.2d 263 (7th Cir. 1993).

[31]*U.S. v. Springer*, 28 F.3d 236 (1st Cir. 1994).

[32]See, e.g., *U.S. v. Gelais*, 952 F.2d 90, 97 (5th Cir. 1992) (upholding $12 million restitution order because court had "no choice" but to impose full restitution, in that the defendant had not met his burden of proving an inability to pay the restitution); *U.S. v. Porter*, 90 F.3d 64 (2d Cir. 1996) ("Porter II") (upholding full restitution of $169,000 where court was not satisfied with defendant's accounting of fraudulently obtained funds); *U.S. v. Blanchard*, 9 F.3d 22 (6th Cir. 1993) (upholding full restitution partly based on the defendant's apparent concealment of assets); and *U.S. v. Merritt*, 988 F.2d 1298 (2d Cir. 1993) (upholding upward departure based on fraudulent transfer of assets in order to avoid payment of restitution).

[33]§ 3663(a)(1)(B)(i).

[34]§ 3664(d)(3).

[35]*Blanchard*, supra. See also, *U.S. v. Lively*, 20 F.3d 193 (6th Cir. 1994) (defendant capable of gainful employment at flea markets).

[36]89 F.3d 1316 (7th Cir. 1996).

[37]The court also reversed a restitution order to surrender the bonds to pay a tax liability, because restitution is not authorized for non-title 18 offenses.

[38]*U.S. v. Gomer*, 764 F.2d 1221 (7th Cir. 1985)(pre-MVRA).

[39]The MVRA provisions are expressly applicable to all convictions after the MVRA was effective (April 24, 1996). In addition, to the extent that they are procedural (rather than substantive), and therefore retroactive pursuant to *Teague v. Lane*, 489 U.S. 288 (1989), or were previously included among the inherent powers of the court. If retroactive, they are applicable to cases sentenced prior to the enactment of the MVRA, as well.

[40]90 F.3d 64, 69 (2d Cir. 1996) ("Porter II").

[41]964 F.2d 1426 (4th Cir. 1992).

[42]§ 3572(a) lists seven factors that a court "shall consider" in determining whether to impose a fine and the amount and method of payment. These include income, earning capacity, and financial resources.

[43]The sentencing court said it would consider the residence "at least to the extent that he has an interest in it ... were it to be sold... and that the imposition of a fine "will not do anything to the house ... unless [the defendant] proposes to sell it to obtain a stake for himself." Id. at 1430.

[44]Id.

[45]89 F.3d 1316 (7th Cir. 1996).

[46]175 F.3d 564. 569 (7th Cir. 1999). While the *Hoover* court did not specify which provisions it was relying on, the two provisions requiring information on jointly owned or controlled assets, discussed above, would be relevant, as would the new codification of options for the court when the defendant is in default of payment at § 3613A, as discussed above.

[47]*U.S. v. Ferranti*, 928 F.Supp. 206 (E.D.N.Y. 1996), aff'd sub nom *U.S. v. Tocco*, 135 F.3d 116 (2d Cir. 1998), cert denied, *Ferranti v. U.S.*, 523 U.S. 1096 (1998) (citing *U.S. v. Serrano*, 637 F.Supp. 12 (D. Puerto Rico 1985), ordering real estate property seized).

[48]928 F.Supp at 224.

[49]29 U.S.C. § 1056(d)(1).

[50]See, *Guidry v. Sheet Metal Workers National Pension Fund*, 493 U.S. 365 (1990), finding that the anti-alienation provision of ERISA prohibited the imposition of a constructive trust for restitution on pension benefits of the defendant. And see e.g., *U.S. v. Comer*, 93 F.3d 1271 (6th Cir. 1996); *U.S. v. Smith*, 47 F.3d 681 (4th Cir. 1995); *U.S. v. Aramony*, 166 F.3d 655 (4th Cir. 1999); and *U.S. v. Gaudet*, 81 F.3d 585, 588 (5th Cir. 1996).

[51]*Aramony*, *supra*, 166 F.3d at 655.

[52]The anti-alienation provisions apply to employer pension plans, not to individual annuity accounts. *U.S. v. Infelise*, 159 F.3d 300, 304 (7th Cir. 1998)(holding that the defendant's life insurance annuity was subject to forfeiture under RICO's substitute assets provision).

[53]175 F.3d 564 (7th Cir. 1999).

[54]*U.S. v. Miller*, 91 F.3d 145 (Table), 1996 WL 426135 (6th Cir. Tenn.).

[55]*U.S. v. Gomer*, 764 F.2d 1221 (7th Cir. 1985).

[56]*U.S. v. Cupit*, 169 F.3d 536 (8th Cir. 1999).

[57]One reason for requiring the sentencing court to specifically identify victims and determine the restitution amount due to each, is to allow the court (or a court in a subsequent enforcement proceeding) to be able to determine when and if offset for a civil judgment might be appropriate. *U.S. v. Miller*, 900 F.2d 919, 922-924 (6th Cir. 1990) (noted in *U.S. v. Stover*, 93 F.3d 1379 (8th Cir. 1996).

[58]162 F.3d 550 (9th Cir. 1998)

[59]*U.S. v. Cloud*, 872 F.2d 846 (9th Cir. 1989), cert denied, 493 U.S. 1002 (civil settlement between the victim and the defendant does not limit restitution); *U.S. v. Savoie*, 985 F.2d 612 (1st Cir. 1993).

[60]*Kelly v. Robinson*, 479 U.S. 36, 55 (1986).

[61]*U.S. v. Savoie*, 985 F.2d 612, 619 (1st Cir. 1993); see also, *U.S. v. Parsons*, 141 F.3d 386 (1st Cir. 1998).

[62] 997 F.2d 1101 (5th Cir. 1993), cert denied, *Perry v. U.S.*, 510 U.S. 1062 and *Coleman v. U.S.*, 510 U.S. 1077 (1994).

[63]*U.S. v. Sheinbaum*, 136 F.3d 443 (5th Cir. 1998).

[64]Id.

[65]*U.S. v. Crawford*, 162 F.2d 550 (9th Cir. 1998); *Sheinbaum*, *supra*; *U.S. v. Parsons*, 141 F.3d 386 (1st cir. 1998); *U.S. v. Mmahat*, 106 F.3d 89, 98 (5thCir.), cert denied, 118 S.Ct. 136 (1997).

[66]*U.S. v. All Star Industries*, 962 F.2d 465, 477 (5th Cir.), cert denied 506 U.S. 940 (1992).

[67]Id. at 449.

[68]Section 3664(j)(2) provides that, "... (2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in– (A) any Federal civil proceeding; and (B) any State civil proceeding, to the extent provided by the law of the State." Prior to the MVRA this provision was codified at section 3663(e)(2).

[69]*U.S. v. Cluck*, 143 F.3d 174 (5th Cir. 1998). See also, *Ahmad*, *infra*, 2 F.3d at 249, comparing judgment and collection rights of civil judgments and criminal restitution orders.

[70]§ 3663(c)(4).

[71]*U.S. v. Crook*, 9 F.3d 1422 (9th Cir.1993), cert. denied, 511 U.S. 1086 (1994)

[72]2000 WL 220316 (4th Cir. 2000).

[73]128 F.3d 557, 567 and n.5 (7th Cir. 1997)

[74]Id. The court noted that the forfeited funds go to the Department of Justice, whereas the restitution was going to go to the U.S. Postal Service, the victim in the case.

[75]Id. at 663-664 (cited in *Emerson*, *supra*, 128 F.3d at 567).

[76]Pre-MVRA, it was held to not be discharged in Chapter 7 proceedings (*Kelly v. Robinson*, 479 U.S. 36 (1986)), nor in Chapter 13 (11 U.S.C. § 1328(a)(3) (1990). It is probably not dischargeable in Chapter 11, either. In *re Amigoni*, 109 B.R. 341 (N.D. Ill. 1989).

[77]The issues involving the manner of imposition of a restitution order, and the circuit conflicts on whether such an order can be imposed "due immediately" or a payment schedule must be set at sentencing, are discussed more comprehensively in a recent article in which the author was joined by U.S. District Judge Royal Furgeson,W.D.Texas, and Stephanie Zucker. See, Furgeson, Goodwin and Zucker, "The Perplexing Problem with Criminal Monetary Penalties in Federal Courts," *Review of Litigation*, University of Texas School of Law, Spring 2000 iss ue.

[78]"Due immediately" is used herein, but the Judgment form prior to August 1996 used the words "payable immediately." Note: The proposed revised 2000 judgment reads "payment to begin immediately."

[79]The Second, Third, and Fifth circuits currently require the court to set a payment schedule, as discussed below.

[80]2 F.3d 245, 248-9 (7th Cir. 1993).

[81]119 F.3d 493 (7th Cir. 1997).

[82]*Ahmad*, *supra*, 2 F.3d at 249.

[83]52 F.3d 429, 436 (2d Cir. 1995).

[84]174 F.3d 297 (2d Cir. 1999).

[85]178 F.3d 681 (3d Cir. 1999).

[86]The MVRA specified it was effective for all convictions after April 24, 1996, to the extent constitutionally permissible. Procedural provisions are generally not subject to *ex post facto* restrictions, and are presumably effective to all such convictions, regardless of when the offense was committed.

[87]This is extraordinary, given that the IFRP is separately statutorily authorized and has universally been upheld by courts, including the Third Circuit. See, e.g., *James v. Quinlan*, 866 F.2d 627 (3d Cir. 1989); *Cooper v. U.S.*, 856 F.3d 193 (6th Cir. 1988); *Dorman v. Thornburgh*, 955 F.2d 57 (D.C.Cir. 1992).

[88]198 F.3d 160 (5th Cir. 1999).

[89]Id. at 165 (citing *U.S. v. Coates*, 178 F.3d 681 (3d Cir. 1999) and *U.S. v. Rea* (below), in agreement. Payment "to begin immediately" may not be interpreted as literally requiring full payment immediately.

[90]*U.S. v. Rea*, 169 F.3d 1111 (8th Cir. 1999).

[91]*U.S. v. Gray*, 175 F.3d 617 (8th Cir. 1999).

[92]202 F.3d 711 (4th Cir. 2000).

[93]Id. at 715. It also remanded for findings to justify the particular payment schedule, citing § 3664(f)(2).

[94]See, e.g., *U.S. v. Porter* ("Porter I"), 41 F.3d 68, 71 (2d Cir. 1994); *U.S. v. Graham*, 71 F.3d 352, 356-57 (3d Cir. 1995), cert denied, 116 S.Ct. 1286 (1996); *U.S. v. Miller*, 77 F.3d 71, 78 (4th Cir. 1996); *U.S. v. Albro*, 32 F.3d 173, 174 (5th Cir. 1994); *U.S. v. Ahmad*, 2 F.3d 245, 248-9 (7th Cir. 1993). These are clearly statutorily based opinions, but the Fourth Circuit may have implied a constitutional basis of non-delegation of payments in *U.S. v. Johnson*, 48 F.3d 806, 809 (4th Cir. 1995), holding that decisions about the amount of installments and their timing is a "judicial function and therefore is non-delegable."

[95]*U.S. v. Merric*, 166 F.3d 406 (1st Cir. 1999); see also, *U.S. v. Lilly*, 80 F.3d 24, 29 (1st Cir. 1996).; *U.S. v. Dawkins*, 202 F.3d 711 (4th Cir. 2000).

[96]*Montano-Figuero v. Crabtree*, 162 F.3d 548 (9th Cir. 1998); *U.S. v. Fuentes*, 107 F.3d 1515, 1528-9, n. 25 (11th Cir. 1997).

[97]The statute erroneously refers to § 3664(d)(3), which involves the procedure for the defendant to provide financial information to the sentencing court. Section (d)(5), discovery of new losses, was the obvious intended reference.

[98]See, e.g., *U.S. v. Hatten*, 167 F.3d 884, 886 (5th Cir. 1999); *Blaik v. U.S.*, 161 F.3d 1341 (11th Cir. 1998).

[99]*Hatten, supra*; *Smullen v. U.S.*, 94 F.3d 20, 26 (1st Cir. 1996).

[100]Until 1987, § 3573 still allowed the defendant to ask for a reduction in a fine for changed circumstances. Some courts used this provision to justify imposition of full restitution, relying on a possible later reduction, if needed. See, e.g., discussion in *U.S. v. Broyde*, 22 F.3d 441 (2d Cir. 1994). After 1987, with defendants no longer being able to seek later reduction of a fine or restitution, the courts' job of determining the defendant's ability to pay must be more thorough. *U.S. v. Seale*, 20 F.3d 1279, 1286, n.8 (3d Cir. 1994).

[101]§§2248(d), 2259(d).

[102]*U.S. v. House*, 808 F.2d 508, 511 (7th Cir. 1986); *U.S. v. Soderling*, 970 F.2d 529, 535 (9th Cir. 1992); and *U.S. v. Berardini*, 112 F.3d 606, 611 (2d Cir. 1997).

[103]Former § 3663(h)(1), provided that "An order of restitution may be enforced by the United States in the manner provided for the collection and payment of fines... or in the same manner as a judgment in a civil action." Subsection (h)(2) provided for collection by a victim named in the order "in the same manner as a judgment in a civil action." (repealed in 1996)

[104]See *U.S. v. Rostoff*, 164 F.3d 63 (1st Cir. 1997) (excellent discussion of the issue).

[105]The debt collection statutes (§ 3571 et. seq.) were amended to specify restitution as well as fines, and new § 3664(m)(1)(A) provides, "An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 [§§ 3571 to 3574] and subchapter B of chapter 229 [§§ 3611 to 3614] of this title; or by all other available and reasonable means."

[106]It is an open issue whether, once imposed solely as a condition for the initial term of supervision, the court can reimpose the restitution as a condition for a term of supervision that would be reimposed, pursuant to § 3583(h) upon revocation. Arguments could be fashioned either way.

[107]*Bearden v. Ga.*, 461 U.S. 660, 672 (1983).

[108]See, e.g., *U.S. v. Boswell*, 605 F.2d 171, 175 (5th Cir. 1979).

[109]See, e.g., *United States v. Payan*, 992 F.2d 1387 (5th Cir. 1993).

[110]*U.S. v. Lampien*, 89 F.3d 1316 (7th Cir. 1996).

[111]18 U.S.C. § 3614(c).

[112]146 F.3d 1141, 1144 (9th Cir. 1998).

[113]1991 WL 222225 (N.D.Il.).

[114]Id. at 1.

JUVENILE FOCUS

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Unequal Education

The Applied Research Center reports that minority students are at a serious disadvantage on every key indicator studied at a dozen U.S. school districts. Among the findings: Black, Hispanic, and Native American students are suspended or expelled disproportionate to white students; minority students have less access to advanced and gifted programs; and the racial makeup of a teaching corps rarely matches that of the student body.

Juvenile Waivers

The number of youths under age 18 who are sentenced to adult state prisons more than doubled between 1985 and 1997—from 3,400 to 7,400—announced the Bureau of Justice Statistics (BJS). At the end of 1997, approximately five percent of incarcerated offenders under age 18 were serving time in state prisons; however, for those sentenced to one year or more, the rate has remained constant at two percent.

State laws determine the maximum age of juvenile court jurisdiction. Three states (CT, NY, NC) exclude all defendants 16 and older from their juvenile systems. In 10 other states, all defendants 17 and older are automatically sent to adult courts. In the remaining states and the District of Columbia, all persons age 18 and older are processed as adult defendants.

BJS reports that 61 percent of those under age 18 were sent to state prisons in 1997 as a result of committing violent offenses, including 32 percent for robbery, 14 percent for aggravated assault, seven percent for murder, 11 percent for drug offenses, and four percent for sexual assault.

From 1992 through 1997, legislatures in 47 states and DC enacted laws that made their juvenile justice systems more punitive.

Dispositions

Juvenile court dispositions were traditionally based on the offender's individual characteristics and situation. They were frequently indeterminate and generally had rehabilitation as the primary goal. As many states have shifted the purpose of the juvenile court toward punishment, accountability, and public safety, the emerging trend is toward dispositions based more on the offense than on the offender. Offense-based dispositions tend to be determinate and proportional to the offense; retribution and deterrence replace rehabilitation as the primary goal.

Health Insurance

An estimated 44.3 million people in the U.S., or 16.3 percent of the population, had no health insurance in 1998—an increase of about one million people since 1997, according to the U.S. Census Bureau. The status of children's health care coverage, however, did not change significantly from 1997 to 1998, with 11.1 million or 15.4 percent of all children under age 18 uninsured. Children 12-17 years of age were slightly more likely to lack health care coverage (16.0 percent) than those under age 12 (15.1 percent).

About one-half (47.5 percent) of poor full-time workers did not have health insurance in 1998, while the Medicaid program insured 14.0 million poor people. One-third of all poor people (11.2 million) had no health insurance.

Food Stamps and Child Support

A proposed Food Stamp Program rule allows states to require food stamp recipients to cooperate with child support as a condition of food stamp eligibility and to disqualify individuals who are in arrears in court-ordered child support payments.

The Food Stamp Program estimates that in FY 1999, a total of 8,000 custodial and non-custodial parents will be disqualified due to sanctions for noncompliance; an estimated 3,000 persons will be disqualified as a result of being in arrears in court-ordered child support payments; and 68,000 custodial parents will have their benefits reduced due to non-compliance and increased child support income.

Juvenile Executions

Fifteen of the 607 people executed since the death penalty was restored in 1976 were under the age of 18 when they committed their crimes. Twenty-three out of 38 states that permit capital punishment allow juveniles to receive the death penalty, and these state laws have been upheld as constitutional by the U.S. Supreme Court. According to Amnesty International, five other countries permit executions of offenders who committed their crimes prior to age 18: Nigeria, Yemen, Pakistan, Saudi Arabia, and Iran. About 70 of the estimated 3,630 prisoners on U.S. death rows committed murder before age 18.

Future Income

Researchers from Princeton University and the Andrew W. Mellon Foundation report that those who think going to an elite college is crucial to their financial success are wrong. They reviewed the earnings of people who were accepted at top colleges in 1976 (most of them Ivy League schools), but chose instead to go to less selective colleges. Twenty years later, those graduates had a slightly higher average salary than a group of their

EDITOR'S NOTE: Please send information about new resources, developments, and programs in juvenile justice and delinquency to Alvin W. Cohn, President, Administration of Justice Services, Inc., 15005 Westbury Road, Rockville, MD 20853.

peers who went to the selective colleges: $77,700 versus $76,800 per year. The study involved 14,239 graduates and 30 colleges. The average freshman SAT score was 1200 at the selective schools and 1000 at the less selective ones.

A Gang's Revenue

According to Columbia University researcher Sudhir Vankatesh, the financial books kept by a large, now-defunct street gang reveal that the gang sustained a lucrative operation. The gang consisted of several hundred members, including a leadership class (typically a leader and three officers), a foot soldier class that sold drugs (ranging from 25 to 100 members aged 16 to 25 years); and rank and file members who were not allowed to conduct entrepreneurial activities (usually 200 members younger than high school age). More than 70 percent of the gang's total revenue of approximately $280,000 was generated from the sale of crack cocaine. Dues and extortion accounted for an additional 30 percent income.

After-School Crime

Based on the FBI's National Incident-Based Reporting System (NIBRS) data, 57 percent of all violent crimes by juveniles (i.e., murder, forcible rape, robbery, and aggravated and simple assault) occur on school days (which total approximately half the year). Nineteen percent of all juvenile violent crimes occur in the four hours between 3:00 and 7:00 p.m. on school days, and 21 percent occur during the standard juvenile curfew hours of 10:00 p.m. to 6:00 a.m.

However, the annual number of hours in the curfew period (i.e., eight hours every day) is four times greater than the annual total in the 3:00 to 7:00 p.m. period on school days (i.e., four hours on one-half of the days in the year). Therefore, the rate of juvenile violence in the after-school period is four times the rate in the juvenile curfew period.

The NIBRS also reports that juveniles are at highest risk of becoming victims of violent crime in the four hours immediately following the school day (roughly 2:00 to 6:00 p.m.). Time patterns for serious violent victimizations were similar for white and black juveniles, with one-half of all these victimizations occurring between noon and 6:00 p.m. In contrast, a greater proportion of simple assaults of black juveniles occurred during the evening hours. Compared with city and rural areas, suburban areas had the greatest proportion of violent juvenile victimizations between noon and 6:00 p.m.

Adolescent Girls

Homicide is the third leading cause of death for African-American girls (ages five to 14), the leading cause of death for African-American women aged 15 to 24, the fourth leading cause of death for white girls, and the second leading cause of death for young white women, according to data developed by the National Girls' Caucus. For all other races/ethnic groups, homicide is the fourth leading cause of death for girls and the second leading cause of death for young women.

Other reported data include: Girls are sexually abused almost three times more often than boys; victims of rape are disproportionately children and adolescent girls; nearly one million teenagers in the U.S. (10 percent of all 15-19-year-old females) become pregnant yearly; and eating disorders are more prevalent among girls, with 80 percent of high school girls reporting unsafe dieting practices.

Justice Expenditures

Federal, state, and local governments in the U.S. spent more than $112 billion in fiscal year 1995 for criminal and civil justice, an increase of nine percent over 1994, according to the Bureau of Justice Statistics (BJS). Between 1985 and 1995, expenditures for operating the nation's justice system went from almost $65 billion to $112 billion—an increase of about 73 percent in constant 1995 dollars. In 1995, the nation's justice system employed almost two million persons, with a monthly payroll of $5.8 billion.

Juvenile Suicide

Jail Suicide/Mental Health Update (Vol. 8, No. 2) has a special focus on a model suicide prevention program, as well as articles on how a suicide prompted the closing of a private juvenile facility, how rural Southern jails cope with mentally ill offenders, and how one municipal court deals with defendants with co-occurring mental health and substance abuse disorders.

The *Update* is published quarterly and available at no charge. Contact Lindsay M. Hayes, 401 Lantern Lane, Mansfield, MA 02048, at (508) 337-8806.

Drug Treatment Availability

The Center for Substance Abuse Treatment reports that a collection of surveys, studies, and demographic analyses consistently points to a gap between the demand for substance abuse treatment and its availability. For example, in 1996 the National Household Survey on Drug Abuse (NHSDA) estimated that 5.3 million persons aged 12 and over and living in households were diagnosed as needing drug treatment, but only 37 percent of that number received it in the same year. The "treatment gap" increases dramatically when alcohol treatment is indicated; an additional 3.6 million persons need alcohol treatment, pushing the total estimate up to seven million people.

Alcohol and Domestic Violence

According to nationwide research conducted by UCLA and USC physicians, alcohol abuse and shaky employment status are among the most important factors in domestic violence against women. The research has also found that ethnicity plays virtually no role in domestic violence, while alcohol abuse increases the risk by more than three times. Women appear to be most at risk of assault from former partners. One in five women are at risk of injury from domestic violence during their lifetimes, and one in 10 risk serious injury.

Three Strikes Law

A new study of the effect of California's Three Strikes Law calls into serious question the law's effectiveness. A total of 26 states and the federal government have enacted various versions of the law, but the California statute is considered the broadest and the most widely enforced. Approximately 90 percent of all three-strikes sentences in the U.S. have been in California; a person with two previous convictions for serious or violent felonies who gets a second strike can receive 25 years to life if convicted of **any** third felony (strike).

According to researcher Franklin Zimring, the five-year-old law has had little effect on the overall drop in crime over the past several years. The general drop in crime began in 1991 and the downward slope did not change after Three Strikes became law.

College Prep

Even though approximately 72 percent of high school graduates now go on to continue their educations, fewer than one-half of these students have taken the rigorous courses expected by colleges and employers, according to a report by the Education Trust. About 47 percent of graduates have taken college prep courses such as intermediate algebra. However, this figure shrinks to 43 percent for African Americans, 35 percent for Hispanics, and 28 percent for low-income students.

Nearly one-third of all college students have needed at least one remedial course. The number of high school students going on to further education is expected to soar from that 72 percent figure to 80 percent by the time today's sixth graders finish high school.

Issues for the 21st Century

Scholars and practitioners in criminal justice are exploring sentencing and correctional policies in a series of ongoing Executive Sessions sponsored by the National Institute of Justice (NIJ) and the Office of Justice Programs' Corrections Program Office. The results are being published in a set of up to 16 papers. Each paper presents an overview of the complex and often conflicting issues in sentencing and corrections, including intermediate and structured sentencing, the "reentry process," and the role of rehabilitation.

"Are Goals Being Achieved?" can be obtained free of charge through NCJRS, at (800) 851-3420, P.O. Box 6000, Rockville, MD 20849-6000, or at askncjrs@ncjrs.org; or downloaded at http://www.ojp.usdoj.gov/nij/pubs.htm.

Teenager Drinking and Sex

Teenagers who drink or take drugs are much more likely to have sex and at a younger age than those who do not in the same age group. The Center on Addiction and Substance Abuse at Columbia University found that teenagers who are 14 and younger and drink are twice as likely to have sex as those who abstained from alcohol, while the risk is doubled for 14-year-olds using drugs. Other teenagers who drink are seven times as likely to have intercourse as non-drinking teens, and twice as likely to have it with four or more partners. Drug-using older teens are five times as likely to have sex as non-users, and three times as likely to have it with four or more partners. All in all, 63 percent of teenagers who use alcohol have had sex, compared with 26 percent of teens who do not drink. About 72 percent of teens who use drugs have had sex, compared with 36 percent who do not use drugs.

YOUR BOOKSHELF ON REVIEW

Monitoring Home Confinement

Alternative Sentencing: Electronically Monitored Correctional Supervision (2nd edition) By Richard Enos, John E. Holman, and Marnie E. Carroll. Bristol, IN: Wyndham Hall Press, 1999. 225 pp.

Reviewed by Darren Gowen
Washington, DC

Perhaps one of the reasons that home confinement as an alternative sentence is not as fashionable as it could or should be lies in the use of inconsistent terminology. This book uses the term *electronic monitoring* or *EM* as a catchy reference for a correctional program that is referred to as house arrest, home confinement, home detention, home curfew, home monitoring, home incarceration, etc. All of these terms refer to the same thing. The offender's sanction is to stay home as an alternative to a stay in prison.

Electronic monitoring refers to the technology used by officers to verify the offender's presence while at home. So while the authors use EM or electronic monitoring, it is only a subterfuge to canoodle your attention toward the appropriate programmatic framework in which to view this alternative program.

To give background and context, the authors first cover the historical development of probation. This includes recent expansions in probation services, such as intensive supervision, shock incarceration, boot camps, and day reporting centers. A third chapter covers the perspectives and issues related to community supervision and electronic monitoring.

After canvassing the necessary groundwork, the authors set forth a hypothesis that electronically monitored correctional supervision not only provides the necessary punitive sanction intended by the ordering authority, it also presents an opportunity for rehabilitation of the participant. Officers who supervise pretrial defendants and post-conviction offenders in the home confinement program understand this precept. Absent firsthand experience, however, the intervention component of home confinement can be difficult to grasp.

Chapters five and six will transport you back to your college days and enrollment in Social Work 101. Here the authors discuss the theoretical nature of correctional case management with scenarios of the case manager assuming various counseling roles appropriate to the type of offender and present supervision issues.

Though scenarios are used to reference the different counseling roles, one gets the impression at this point that the authors have pushed the theoretical envelope a little too far. If I find this part boring, might there be a college freshman who will find it quite interesting? Should I stop now and bow out of writing this book review?

Alas, chapters seven and eight suddenly resurrect my interest with the presentation of three quantitative studies that validate the aforementioned theories. This is not a rehash of something done previously. It is innovative. It is provocative. Wow!

The analysis of data on the effects of home confinement using electronic monitoring is indeed the real gem of this book. It is like the proverbial needle in the haystack. Suddenly, I am overjoyed that this book is less than 300 pages and that the needle was found by page 135.

Assessing offenders with two psychological inventories and scales before and after their participation in the home confinement program, the authors show that this alternative positively affects offenders. The analysis results shed light on the social dynamics of family members in the household. The electronic monitoring intervenes as a control for others residing in the home. While many assume that home confinement with electronic monitoring is intrusive to all members of a home, the results from these studies show otherwise. It alleviates some stress incurred by, for example, a wife who wants her husband to be a productive member of the household and to stay out of legal trouble. From this perspective, staying home when not at work is key.

The final chapter briefly covers some future issues for home confinement. One issue is the proportionality of the offense seriousness to the degree of punishment. This is often referred to as net-widening—where persons are placed in the home confinement program when, for example, the seriousness or type of their offense warrants only probation supervision with a fine. Although net-widening has not been a significant problem with home confinement generally, the authors foresee that it could be in the future. The second issue of concern is the intrusiveness of the program as a measure of its punitive nature. The authors imply that as this program evolves with innovative technologies, Fourth Amendment rights and other ethical concerns should be considered. Offenders are not entitled to the same rights that ordinary citizens enjoy. But the possible infringement upon fundamental human rights and dignity should always be a part of evaluating future programs.

Community-based programs like home confinement with electronic monitoring affect the daily lives of family members and should also be a concern when considering a person for this program.

Home confinement programs sprang up over two decades ago as a result of monitoring technology. Little thought was put into the program itself. Advancing technology drove the program forward but in many instances programmatic concerns fell by the wayside. This is implied by the authors as they advocate results-driven orientation to program designs. Finally, outside pressures and influences, such as prison overcrowding, can thwart the best intentions advocated in this book. For that, there are no simple solutions.

Defining Leadership

Lessons from the Top: The Search for America's Best Business Leaders. By Thomas J. Neff and James M. Citrin. New York: Doubleday,1999. 432 pp. $24.95.

REVIEWED BY DAN RICHARD BETO
HUNTSVILLE, TEXAS

Despite volumes written on the subject of leadership, it is difficult to arrive at a clear definition of this term on which all can agree. In his essay "In Search of Leadership" that appeared in the Winter 1999 issue of *Corrections Management Quarterly*, Ronald P. Corbett, Jr., Deputy Commissioner of Probation for the Commonwealth of Massachusetts and a member of the Editorial Advisory Committee of *Federal Probation*, provided a thoughtful view of the problem of defining leadership:

> What is leadership? More discussed than understood, more invoked than practiced, few concepts in public administration are so elusive, so abstract, and near mystical after so much study and writing. While we all seek the mantle of leadership, its essence defies capture through clear definition, leaving us in search of the apt metaphor. Leadership is poetry where management is prose. Leadership is tomorrow, not today–dreams not realities. "What if...," not "yes, but..." Leadership means risk and danger, not safety and security. It inspires; it does not mollify. It's jazz, not classical–hard rock, not easy listening. Leadership will scare you, worry you sick, infuriate you, make you crazy but never bore you and at the end of the day, take you places management has never visited and is not curious about. It is hell bent, over the top, and in your face. It takes no prisoners. It is all high wire, no net. It is a contact sport and when you win, you win big. It is the big dance. It is a lot more.

When discussing the subject of leadership, perhaps the best way to define it is to provide examples of how this particular quality is manifested in individuals. Yet another method is to examine the values and views of those who have been identified as leaders. These two approaches were embraced by Thomas J. Neff and James M. Citrin in their highly instructive book *Lessons from the Top: The Search for America's Best Business Leaders.*

The authors have recorded several successful decades in the search for chief executive officers. Neff, who possesses a master of business administration degree from Lehigh University, is chairman of Spencer Stuart in the United States; his consulting practice focuses on chief executive officer recruiting, board of director searches, and succession counseling for corporations. Citrin earned a master of business administration degree from Harvard Business School and is the managing director of Spencer Stuart's Global Communications and Media Practice; he has extensive experience recruiting executives in the entertainment, publishing, and hospitality industries.

Lessons from the Top is divided into three major sections. In Part I, comprised of three chapters, the authors provide a discussion of the methodology employed in the course of their project, which commenced in April 1997, during which they identified and subsequently interviewed 50 of the nation's top business executives. Factors considered in selecting the top 50 were: 1) long- term financial performance; 2) visionary and strategic skills; 3) ability to overcome challenges; 4) organizational and people leadership; 5) integrity and strength of character; 6) entrepreneurial or pioneering spirit; 7) demonstrable impact on business, industry, or society; 8) track record of innovation; 9) exemplary customer focus; and 10) commitment to diversity and social responsibility.

Part II of the book consists of 50 very readable profiles of America's successful business leaders, many of whom are mentioned with regularity in *The Wall Street Journal* and *Forbes.* While the interviews were somewhat structured, the executives were encouraged to talk about what they thought people should know about leading organizations today. A brief vita of the executive and an overview of the company he or she leads accompanies each profile. This section provides the reader considerable insight into the thought processes and values of these business giants.

In the concluding section the authors devote a chapter to Peter Drucker, whose influence over good business practices is unparalleled. The second chapter of Part III defines business success—based on the thorough examination of the business leaders interviewed and profiled—as "doing the right things right." The six "core principles" necessary to achieve this success are: 1) living with integrity and leading by example; 2) developing a winning strategy or "big idea"; 3) building a great management team; 4) inspiring employees to achieve greatness; 5) creating a flexible, responsive organization; and 6) tying it all together with reinforcing management and compensation systems.

In the final chapter of the book Neff and Citrin summarize ten common traits that have made these 50 executives successful business leaders. These are: 1) passion; 2) intelligence and clarity of thinking; 3) great communication skills; 4) high energy level; 5) egos in check; 6) inner peace; 7) ability to capitalize on formative early life experiences; 8) strong family lives; 9) positive attitude; and 10) a focus on "doing the right things right."

Also included in this book are several appendices that better describe the research methods applied to produce this extraordinary work. Of particular interest is Appendix 3, which contains a list of the questions used during the interviews of these business leaders.

Lessons from the Top, while written about the corporate world, has application as well to the criminal justice system. This book falls in the "must read" category for correctional administrators and for persons aspiring to assume leadership roles.

Books Received

Race to Incarcerate. By Marc Mauer. New York: The New Press, 1999, 208 pp., $22.95.

To Serve and Protect: Privatization and Community in Criminal Justice. By Bruce L. Benson. Oakland, CA: The Independent Institute, 1998, 416 pp., $37.50.

Punishment in America: Social Control and the Ironies of Punishment. By Michael Welch. Thousand Oaks, CA: Sage Publications, 1999, 319 pp.

The Soul Knows No Bars: Inmates Reflect on Life, Death, & Hope. By Drew Leder. Lanham, MD: Rowman & Littlefield, 2000, 176 pp., $23.95.

Working with Sex Offenders in Prisons and through Release to the Community. By Alec Spencer. London and Philadelphia: Jessica Kingsley Publishers, 1999, 252 pp., $32.95.

The Role of Police in American Society: A Documentary History. By Bryan Vila and Cynthia Morris. Westport, CT: Greenwood Publishing Group, 1999, 312 pp., $49.95.

IT HAS COME TO OUR ATTENTION

Bureau of Justice Statistics Report

The Bureau of Justice Statistics has issued a Special Report, dated Feb. 2000, entitled "Survey of DNA Crime Laboratories, 1998," which catalogs the immense backlog of DNA analyses in publicly operated forensic crime labs around the country. Sixty-nine percent of such labs reported backlogs as of the end of 1997, totaling 6,800 subject cases and 287,000 convicted offender samples. Forty-four percent of labs had resorted to hiring additional staff to handle the crush of cases, 34 percent used overtime, and 13 percent were contracting out work to private labs. These findings emerged as part of the National Institute of Justice's DNA Laboratory Improvement Project, as a way to identify workload and technology problems. The1994 Crime Act established the FBI's Combined DNA Index System (CODIS), a national database program. All 50 states currently require collection of DNA samples from certain categories of offenders, most commonly sex offenders but also those convicted of murder, manslaughter, assault, robbery, carjacking, home invasion, stalking, and endangering children. Three quarters or more of the labs surveyed about DNA testing also conduct controlled substance analysis, firearms/toolmark/tireprint examination, and trace analysis. About two-thirds also perform crime scene investigation and fire debris analysis. State police operated 42 percent of the labs and local police or sheriffs operated an additional 25 percent. Slightly over half the labs were accredited by an official organization at the start of 1998, and 18 percent had applied for or were in the process of receiving accreditation. This report also contains other information on lab sizes and procedures. Single copies can be obtained from the BJS fax-on-demand system at 301/519/5550, selecting document number 189, or by calling the BJS clearinghouse number: 1-800-732-3277. The BJS Internet site is: http://www.ojp.usdoj.gov/bjs/. Additional criminal justice materials can be obtained from the Office of Justice Programs homepage at: http://www.ojp.usdoj.gov.

Youth in Adult Prisons Statistics

Another February 2000 report issuing from the Bureau of Justice Statistics finds that the number of under-18-year-olds sentenced to adult state prisons each year more than doubled between 1985 and 1997 (from 3400 to 7400). Five percent of imprisoned offenders under 18 were serving in state prisons by the end of 1997 (such prisons hold mostly adults sentenced to a year or more following felony convictions). However, the overall percentage of below-18 inmates entering prison with sentences of more than one year has remained at about 2 percent.

Currently, three states–Connecticut, New York, and North Carolina–exclude all defendants 16 and older from their juvenile systems. Ten other states automatically send defendants 17 and older to adult court. The remaining 37 states and the District of Columbia process those 18 and older as adults. The BJS Study found about 61 percent of the under-18-year-olds in state prison were sent there for a violent offense, 22 percent for property crimes, 11 percent for drug offenses and 5 percent for public order offenses. At this time, every state has at least one provision for transferring juveniles to adult court. Twenty-eight states automatically exclude certain types of offenders from juvenile court jurisdiction, 15 permit prosecutors to file some cases directly to adult criminal courts and 46 allow juvenile court judges discretion on whether to send cases to adult courts. Copies of this report, titled "Profile of State Prisoners under Age 18, 198501997," written by BJS statistician Kevin J. Strom, may be obtained through the BJS fax-on-demand by calling 301/519-5550, listening to the complete menu, and selecting document number 191, or calling the BJS clearinghouse number at 1-800-732-3277. The document can also be accessed from the BJS Internet site, listed at the end of the preceding item.

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