JUNE 2001

Federal PROBATION

a journal of correctional philosophy and practice

IN THIS ISSUE:

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PUBLISHED BY
The Administrative Office of the United States Courts

Leonidas Ralph Mecham, *Director*

John M. Hughes, *Chief*
Federal Corrections and Supervision Division

Federal Probation ISSN 0014-9128 is dedicated to informing its readers about current thought, research, and practice in corrections and criminal justice. The journal welcomes the contributions of persons who work with or study juvenile and adult offenders and invites authors to submit articles describing experience or significant findings regarding the prevention and control of delinquency and crime. A style sheet is available from the editor.

Federal Probation is published three times yearly, in June, September, and December. Permission to quote is granted on the condition that appropriate credit is given the author and *Federal Probation*. For information about reprinting articles, please contact the editor.

Subscriptions to *Federal Probation* are available from the Superintendent of Documents at an annual rate of $14.00 ($17.50 foreign). Please see the subscription order form on the last page of this issue for more information.

EDITORIAL STAFF

Timothy P. Cadigan, *Executive Editor*
Ellen Wilson Fielding, *Editor*
Janice G. Barbour, *Editorial Secretary*

Federal Probation
Administrative Office of the U.S. Courts
Washington, DC 20544
telephone: 202-502-1600
fax: 202-502-1677

Postmaster: Please send address changes to the editor at the address above.

THIS ISSUE IN BRIEF

We wish to alert readers to an upcoming change in our publishing schedule. Beginning this Fall, we are inaugurating a third yearly issue of *Federal Probation*. June and December will be reserved for assorted topics associated with corrections and criminal justice. The new issue will feature articles on a special theme. The September 2001 number will be devoted to Technology and Criminal Justice.

Readers of this June issue will note Scott Ballock's contribution to a new occasional column, "A View from the Field." Many of those working in probation and pretrial services find this a time of rethinking, retooling, and redesigning what they are doing and what they hope to accomplish. We hope to encourage this important conversation by publishing thoughtful analyses, written by those active in probation and pretrial services, of where we are and where we should be heading.

DEPARTMENTS

When Prisoners Return to Communities: Political, Economic, and Social Consequences

Joan Petersilia, Ph.D.
University of California, Irvine

IN 1999, STATE prisons admitted about 591,000 prisoners and released almost the same number—about 538,000. If federal prisoners and those released from secure juvenile facilities are included, nearly 600,000 inmates arrive on the doorsteps of communities throughout the country each year.

Virtually no systematic, comprehensive attention has been paid by policymakers to dealing with people after they are released, an issue that has been termed "prisoner reentry." Failure to do so may well backfire, and the crime reduction gains made in recent years erode, unless we consider the cumulative impact of tens of thousands of returning felons on families, children, and communities. In particular, failure to pay attention to parole services is unfortunate, since most inmates, at the point of release, have an initial strong desire to succeed.

Of course, inmates have always been released from prison, and officials have long struggled with how to help them succeed. But the current situation is different. The numbers dwarf anything in our history, the needs of parolees are more serious, and the corrections system retains few rehabilitation programs.

A number of unfortunate collateral consequences are likely, including increases in child abuse, family violence, the spread of infectious diseases, homelessness, and community disorganization. And with 1.3 million prisoners, many more people have real-life knowledge of the prison experience. Being incarcerated is becoming almost a normal experience for people in some communities. This phenomenon may affect the socialization of young people, the ability of prison sentences to scare and deter, and the future trajectory of crime rates and crime victimization.

Parole in the U.S.—Managing More People, Managing Them Less Well

Changes in sentencing practices, coupled with a decrease in availability of rehabilitation programs, have placed new demands on the parole system. Support and funding have declined, resulting in dangerously high caseloads. Parolees sometimes abscond from supervision, often without consequence. Not surprisingly, most parolees fail to lead law-abiding lives and are rearrested.

Determinate Sentencing Means Automatic Release

Parole in the United States has changed dramatically since the mid-1970s, when most inmates served open-ended indeterminate prison terms—10 years to life, for example—and a parole board, usually appointed by the governor, had wide discretion to release inmates or keep them behind bars. In principle, offenders were paroled only if they were rehabilitated and had ties to the community—such as a family or a job. This made release from prison a privilege to be earned. If inmates violated parole, they could be returned to prison to serve the balance of their term—a strong incentive not to commit crimes.

Today, indeterminate sentencing and discretionary release have been replaced in 14 states with determinate sentencing and automatic release (Tonry 1999). Offenders receive fixed terms at the time of their initial sentencing and are automatically released at the end of their prison term, usually with credits for good time. For example, in California, where more than 125,000 prisoners are released each year, no parole board asks whether the inmate is ready for release, since he or she *must* be released once the prisoner has served the determinate term imposed by the court. Most California offenders are then subject to a one-year term of parole supervision.

A parolee must generally be released to the county where he last resided before going to prison. Since offenders overwhelmingly come from poor, culturally isolated, inner-city neighborhoods, that is where they return.

Indeterminate sentencing was abolished because of its discretionary quality. Studies showed that wide disparities resulted when the characteristics of the crime and the offender were taken into account, and were influenced by the offender's race, socioeconomic characteristics, and place of conviction. But most corrections officials believe that *some* ability to individualize is necessary, since it provides a way to take account of changes in behavior that occur after the offender was incarcerated. Imprisonment can cause psychological breakdown, depression, or mental illness, or reveal previously unrecognized personal problems, and the parole board can adjust release dates accordingly.

Most Parolees Have Unmet Needs

State and federal incarceration rates quadrupled between 1980–1996, and the U.S. prison population now exceeds 1.3 million persons. Sentences for drug offending are the major reason for increases in admissions—accounting for approximately 45 percent of the growth. Aggravated assault and sexual assault are also major contributors to growth (Blumstein and Beck, 1999).

State and federal government have allocated increasing shares of their budgets to

building and operating prisons. California, for example, with the largest prison-building program, has built 21 prisons since the mid-1980s, and its corrections budget grew from 2 percent of the state general fund in 1981–1982 to nearly 8 percent in 2000–2001. Similar patterns exist nationwide, and prison spending was the fastest growing budget item in nearly every state in the 1990s.

Increased dollars have funded operating costs for more prisons, but *not* more rehabilitation programs. Fewer programs, and a lack of incentives for inmates to participate in them, mean that fewer inmates leave prison having participated in programs to address work, education, and substance use deficiencies. In-prison substance abuse programs are expanding, but programs are often minimal and many inmates do little more than serve time before they are released. The Office of National Drug Control Policy reported that 70–85 percent of state prison inmates need substance abuse treatment; however, just 13 percent receive any kind of treatment in prison (McCaffrey 1998).

These reductions come at a time when inmates need *more* help, not less. Many have long histories of crime and substance use, are gang members, and lack marketable skills. Deinstitutionalization has also led to a greater number of mentally ill people being admitted to prisons and jails. A recent survey revealed that nearly one in five U.S. prisoners report having a mental illness (Ditton 1999). Psychologists warn that overcrowded and larger "super max" prisons can cause serious psychological problems, since prisoners in such institutions spend many hours in solitary or segregated housing, and those who study prison coping have found that greater time in isolation results in depression and heightened anxiety (Liebling 1999).

Gangs have become major factors in many prisons, with implications for in-prison and post-prison behavior. Racial tensions in prison mean that inmates tend to be more preoccupied with finding a safe niche than with long-term self-improvement. Gang conflicts started (or continued) in prison get settled after release: "There is an awful lot of potential rage coming out of prison to haunt our future" (Abramsky 1999).

Parolee Supervision Replaces Services

Upon release, 80 percent of parolees are assigned to a parole officer. The remaining 20 percent—including some of the most serious—will "max out" (e.g., not have received any credits for good time) and will receive no supervision. The offenders *least* willing to engage in rehabilitative programs are often *not* subject to parole supervision and services. About 100,000 parolees (about 1 in 5) left prison in 1998 with no post-custody supervision.

Parole officers are charged with enforcing conditions of release, including finding and maintaining employment, no drug use, and not associating with known criminals. The number of parole agents has not kept pace with the increased caseloads. In the 1970s, one agent ordinarily was assigned 45 parolees; today, caseloads of 70 are common—far higher than the 35 to 50 considered ideal. Eighty percent of all U.S. parolees are supervised on "regular" rather than intensive caseloads, which means less than two 15-minute face-to-face contacts per month (Petersilia 1999). Supervision costs about $2,200 per parolee, per year, compared to about $22,000 per year, per prisoner. Those arrangements do not permit much monitoring, and the *Los Angeles Times* recently reported that parole agents in California have lost track of about one-fourth of the 127,000 parolees they were supposed to supervise in 1999 (Associated Press 1999). Nationally, about 9 percent of all parolees have absconded (Bonczar 1999).

Most Parolees Return to Prison

Persons released from prison face a multitude of difficulties. They remain largely uneducated, unskilled, and usually without solid family support systems—to which are added the burdens of a prison record. Not surprisingly, most parolees fail, and rather quickly—rearrests are most common in the first six months after release.

Fully two-thirds of all those released on parole will be rearrested within three years. Parole failures now constitute a growing proportion of all new prison admissions. In 1980, parole violators constituted 18 percent of all admissions, but recent years have seen a steady increase to the point where they constituted 35 percent of all new admissions in 1997 (Beck and Mumola 1999).

The Collateral Consequences of Parole Release

Recycling parolees in and out of families and communities has unfortunate effects on community cohesion, employment and economic well being, democratic participation, family stabilization and childhood development, mental and physical health, and homelessness (Hagan and Dinovitzer1999).

Community Cohesion and Social Disintegration

The social characteristics of neighborhoods—particularly poverty, ethnic composition, and residential instability—influence crime. There are "tipping points," beyond which communities are no longer able to exert positive influences on the behavior of residents. Norms start to change, disorder and incivilities increase, out-migration follows, and crime and violence increase (Wilson 1987).

Elijah Anderson vividly illustrates the breakdown of social cohesion in socially disorganized communities. Moral authority increasingly is vested in "street-smart" young men for whom drugs and crime are a way of life. Attitudes, behaviors, and lessons learned in prison are transmitted into the free society. Anderson concludes that as "family caretakers and role models disappear or decline in influence, and as unemployment and poverty become more persistent, the community, particularly its children, becomes vulnerable to a variety of social ills, including crime, drugs, family disorganization, generalized demoralization and unemployment" (Anderson 1990, p.4).

Prison gangs have growing influence in inner-city communities. Joan Moore notes that most California prisons are violent and dangerous places, and new inmates search for protection and connections. Many find both in gangs. Inevitably, gang loyalties are exported to the neighborhoods. The revolving prison door strengthens street gang ties. One researcher commented, "In California… frankly I don't think the gangs would continue existing as they are without the prison scene." (Moore 1996, p. 73). Moore also found that state-raised youth, whose adolescence involved recurring trips to California juvenile detection facilities, were the most committed to the most crime-oriented gangs. She warns that as more youth are incarcerated, earlier in their criminal career, larger numbers of youths will come out of prison with hostile attitudes and will exert strong negative influences on neighborhoods.

Rose, Clear, and Scully (1999) explored the direct effects of offenders going to prison from Tallahassee, Florida, and returning to their home community after one year in prison. Rather than reducing crime (i.e., through the deterrent or rehabilitative effects of prison), releasing offenders into the community in 1996 resulted in increases in crime in 1997,

even after other factors were taken into account. One explanation is individualistic, that offenders "make up for lost time" and resume their criminal careers with renewed energy. But Rose et al. offer another explanation that focuses on the destabilizing effect of releasing large numbers of parolees on the communities' ability to influence its members. They argue that "coerced mobility" (i.e., forced removal from a community), like voluntary mobility, is a type of people-churning that inhibits integration and promotes isolation and anonymity—factors associated with increased crime.

Work and Economic Well-Being

The majority of inmates leave prison with no savings, no immediate entitlement to unemployment benefits, and few employment prospects. One year after release, as many as 60 percent of former inmates are not employed in the regular labor market, and there is increasing reluctance among employers to hire ex-offenders. A survey in five major U.S. cities found that 65 percent of all employers said they would not knowingly hire an ex-offender (regardless of the offense), and between 30 and 40 percent had checked the criminal records of their most recent employees (Holzer 1996). Unemployment is closely related to drug and alcohol abuse. Losing a job can lead to substance abuse, which in turn is related to child and family violence.

The "get-tough" movement of the 1980s increased employment restrictions on parolees. In California, for example, parolees are barred from law, real estate, medicine, nursing, physical therapy, and education. In Colorado, the jobs of dentist, engineer, nurse, pharmacist, physician, and real estate agent are closed to convicted felons. Their criminal record may also preclude them from retaining parental rights, be grounds for divorce, and bar them from jury service.

Simon (1993) notes that these disabilities are inherently contradictory. The U.S. spends millions of dollars to "rehabilitate" offenders, convincing them that they need to obtain legitimate employment, and then frustrates whatever was accomplished by barring them from many kinds of employment and its rewards. Moreover, the loss of a solid industrial base, which has traditionally supplied jobs within poorer inner-city communities, has left urban parolees with few opportunities.

The under-employment of ex-felons has broader economic implications. One reason America's unemployment statistics look so good compared with those of other industrial democracies is that 1.6 million mainly low-skilled workers—precisely the group unlikely to find work in a high-tech economy—have been incarcerated, and are thus not considered part of the labor force (Western and Becket 1999). If they were included, U.S. unemployment rates would be two percent higher. Recycling ex-offenders back into the job market with reduced job prospects will have the effect of increasing unemployment rates in the long run.

Family Stabilization and Childhood Development

Women are about 7 percent of the U.S. prison population, but their incarceration rates are increasing faster than those for men. About 80 percent of U.S. female inmates are mothers with, on average, two dependent children; two-thirds of their children are under 10 (Snell 1994). More than half of incarcerated men are parents of children under 18 years of age. Altogether, more than 1.5 million children have parents in U.S. prisons, and the number will increase as the proportion of female inmates increases.

We know little about the effects of a parent's incarceration on childhood development, but it is likely to be significant. When mothers are incarcerated, their children are usually cared for by grandparents or other relatives or placed in foster care. One study found that roughly half of these children do not see their mothers the entire time they are in prison (because there are fewer prisons for women, women are often incarcerated further away from their children than are men, making family visits more difficult). The vast majority of imprisoned mothers, however, expect to resume their parenting role and reside with their children after their release, although it is uncertain how many actually do (Bloom and Steinhart 1993).

Mothers released from prison have difficulty finding services such as housing, employment, and childcare, and this causes stress for them and their children. Children of incarcerated and released parents often suffer confusion, sadness, and social stigma, and these feelings often result in school-related difficulties, low self-esteem, aggressive behavior, and general emotional dysfunction. If the parents are negative role models, children fail to develop positive attitudes about work and responsibility. Children of incarcerated parents are five times more likely to serve time in prison than are children whose parents are not incarcerated (Beck et al. 1993).

We have no data on involvement of parolees in family violence, but it may be significant. Risk factors for child abuse and neglect include poverty, unemployment, alcohol/drug abuse, low self-esteem, and poor health of parents—common attributes of parolees. Concentrated poverty and social disorganization increase child abuse and neglect and other adjustment problems, which in turn constitute risk factors for later crime and violence.

Mental and Physical Health

Prisoners have significantly more medical and mental health problems than the general population, due to lifestyles that often include crowded or itinerant living conditions, intravenous drug use, poverty, and high rates of substance abuse. In prisons, 50-year-olds are commonly considered old, in part because the health of the average 50-year-old prisoner approximates that of average persons 10 years older in the free community. While in prison, inmates have access to state-provided health care, but upon release, most are unable easily to obtain health care and have the potential for spreading disease (particularly tuberculosis, hepatitis, and HIV) and presenting serious public health risks (McDonald 1999).

In New York City, a major multi-drug-resistant form of tuberculosis emerged in 1989, with 80 percent of cases being traced to jails and prisons. By 1991, the Rikers Island Jail had one of the highest TB rates in the nation. In Los Angeles, an outbreak of meningitis in the county jail moved into the surrounding neighborhoods.

At year-end 1996, 2.3 percent of all state and federal prison inmates were known to be infected with the human immunodeficiency virus (HIV), a rate six times higher than in the general U.S. population. The rate grows faster among prisoners than elsewhere because they live in close living quarters. Public health experts predict that these rates will continue to escalate and eventually make their way to the streets, particularly as more drug offenders, many of whom engage in intravenous drug use, share needles, or trade sex for drugs, are incarcerated (May 2000).

Inmates with mental illness also are increasingly being imprisoned—and being released. In 1998, 16 percent of jail or prison inmates reported either a mental condition or an overnight stay in a mental hospital (Bureau of Justice Statistics 1999). Even when public mental health services are available, many mentally ill individuals fail to use them because they fear institutionalization, deny

they are mentally ill, or distrust the mental health system.

Democratic Participation and Political Alienation

An estimated 3.9 million Americans—one in 50 adults—were in 1998 permanently unable to vote as a result of a felony conviction. Of these, 1.4 million were African American males, representing 13 percent of all black men. The numbers will certainly increase. In 1996, a young black man aged 16 had a 28.5 percent chance of spending time in prison during his life. The comparable figure for white men was 4.4 percent (Bonczar and Beck 1997; Mauer 1999).

Denying large segments of the minority population the right to vote will likely alienate former offenders further. Disillusionment with the political process also erodes citizens' feelings of engagement and makes them less willing to participate in local activities and to exert informal social control over residents. This is important, since our most effective crime-fighting tools require community collaboration and active engagement.

Housing and Homelessness

The latest Census counts about 230,000 homeless in America. In the late 1980s an estimated quarter of them had served prison sentences. The figure is surely higher now, with many U.S. cities reporting a critical shortage of low-cost housing. California officials report that 10 percent of the state's parolees remain homeless, but in urban areas such as San Francisco and Los Angeles the rate reached 30 percent to 50 percent (Legislative Analysis Office 1999).

Transients, panhandling, and vagrants increase citizens' fears, and that ultimately contributes to increased crime and violence. This is because neighborhood crime often worsens when law-abiding citizens are afraid to go onto streets filled with graffiti, transients, and loitering youth. Fearful citizens eventually yield control of the streets to people who are not frightened by these signs of decay, and who often are the people who created the problem in the first place. A vicious cycle begins. Wilson and Kelling illustrate this by describing how a broken window can influence crime rates. If the first broken window in a building is not repaired, people who like breaking windows may assume no one cares, and break some more. Soon, the building will have no windows. As "broken windows" spread—homelessness, prostitution, graffiti, panhandling—businesses and law-abiding citizens move away, and disorder escalates, leading to more serious crime (Wilson and Kelling 1982).

Responding to the Problem

Government officials voice growing concern about the problem of prisoner reentry. Former Attorney General Janet Reno recently called prisoner reentry "one of the most pressing problems we face as a nation" (Reno 2000). Former President Clinton included $60 million in his 2000-2001 federal budget for "Project Reentry," a federal program to encourage responsible fatherhood among offenders, job training for parolees, and establishment of reentry courts. Reentry courts are modeled on "drug courts," which use judges instead of corrections officers to monitor released offenders (Travis 2000). California's Governor Gray Davis, in a "State of the State" address, called for hiring 100 new parole officers to increase surveillance of high-risk offenders and find the 20 percent of California parolees who have absconded.

Initiatives like these may or may not prove useful, but often they are not based on thoughtful analysis and debate. It is safe to say that parole has received less research attention in recent years than any other part of the correctional system. A congressionally mandated evaluation of prevention programs included just *one* parole evaluation among hundreds of recent studies that were examined (Sherman et al. 1997). I have spent many years working on *probation* effectiveness but know of no similar body of knowledge on *parole* effectiveness. Without better information, the public is unlikely to give corrections officials the political permission to invest in rehabilitation and job training programs for parolees. With better information, we might be able to persuade voters and elected officials to shift away from solely punitive crime policies and toward policies that balance incapacitation, rehabilitation, and just punishment.

Parole *release* also needs to be reconsidered. In 1977, 72 percent of all U.S. prisoners were released after appearing before a parole board, but that figure had declined to 28 percent by 1997, the lowest since the federal government began compiling statistics on the subject.

Parole was abolished because it came to symbolize the alleged leniency of a system in which hardened criminals were "let out" early. If parole were abolished, politicians argued, then parole boards could not release offenders early, and inmates would serve longer terms. However, this has not happened. Stivers (2000) shows that, after controlling for offender and offense characteristics, inmates released in 1995 in non-parole states served seven months less, on average, than did inmates with the same characteristics released in states using discretionary parole. Similar experiences in Florida, Connecticut, and Colorado caused those states to reinstate discretionary parole after discovering that abolition resulted in shorter terms being served by most offenders.

Parole experts have been saying all along that the public is misinformed when it labels parole as lenient. To the contrary, through their exercise of discretion, parole boards can target more violent and dangerous offenders for longer periods of incarceration. When states abolish parole or reduce parole authorities' discretion, they replace a rational, controlled system of "earned" release for *selected* inmates with "automatic" release for nearly *all* inmates (Burke 1995). Non-parole systems may sound tough, but they remove an important gate-keeping role that can protect communities and victims.

Parole boards are in a position to demand participation in drug treatment, and research shows that coerced drug treatment is as successful in achieving abstinence as is voluntary participation. Parole boards can also require an adequate plan for a job and residence in the community—and that has the added benefit of refocusing prison staff and corrections budgets on transition planning.

Parole boards can meet personally with the victim. Involving victims in parole hearings has been one of the major changes in parole in recent years. Ninety percent of parole boards now provide information to victims on the parole process, and 70 percent allow victims to be present during the parole hearing.

Perhaps most important, parole boards can reconsider the tentative release date when more information about the offense and offender has been collected, and the offender's behavior in prison has been observed. Over 90 percent of U.S. offenders receive criminal sentences as a result of pleading guilty to offenses and not as a result of a trial. Usually they plead guilty to a reduced charge. Because there is no trial, there is little opportunity to fully air the circumstances surrounding the crime or the risks presented by the criminal. The parole board can revisit the case to discover how much injury the victim really suffered, or whether a gun was involved—even though the offense to which the offender pled, by definition, indicates no weapon was involved. Burke observes: "In a system which

incorporates discretionary parole, the system gets a second chance to make sure it is doing the right thing" (Burke 1995, p. 7).

Ironically, "no-parole" systems also significantly undercut post-release supervision. When parole boards have no ability to select who will be released, they are forced to supervise a more serious parolee population, and not one of their own choosing. Parole officers say it is impossible to assure cooperation of offenders when offenders know they will be released regardless of their willingness to comply with certain conditions (e.g., get a job). And, due to prison crowding, some states are no longer allowing parolees to be returned to prison for technical violations. Parole officers say that parole has lost its power to encourage inmates toward rehabilitation and sanction parole failures. Field supervision tends to be undervalued and, eventually, underfunded and understaffed.

No one would argue for a return to the unfettered discretion that parole boards exercised in the 1960s. That led to unwarranted disparities. Parole release decisions must be principled, and incorporate explicit standards and due process protections. Parole guidelines, which are used in many states, can establish uniformity in parole decisions, and objectively weigh factors known to be associated with recidivism. Rather than *entitle* inmates to be released at the end of a fixed time period, parole guidelines specify when the offender becomes *eligible* for release.

We also need to rethink *who* should be responsible for making parole release decisions. In most states, the chair and all members of the parole board are appointed by the governor; in two-thirds of the states, there are no professional qualifications for parole board membership. While this may increase the political accountability of the parole board, it also makes it highly vulnerable to improper political pressures. In Ohio, by contrast, parole board members are appointed by the director of corrections, serve in civil service positions, and must have an extensive background in criminal justice.

Concluding Remarks

Parole supervision and release raise complicated issues and deserve more attention than they now get. Nearly 700,000 parolees are doing time on U.S. streets. Most have been released to parole systems that provide few services and impose conditions that almost guarantee parolees' failure. Monitoring systems are getting better, and public tolerance for failure is decreasing. A rising tide of parolees is back in prison, putting pressure on states to build more prisons and, in turn, taking money away from rehabilitation programs that might help offenders stay out of prison. Parolees will continue to receive fewer services to help them deal with their underlying problems, assuring that recidivism rates and returns to prison remain high—and public support for parole remains low.

This situation represents formidable challenges to policy makers. The public will not support community-based punishments until they have been shown to "work," and they won't have an opportunity to "work" without sufficient funding and research. Spending on parole services in California, for example, was cut 44 percent in 1997, causing parole caseloads nearly to double (now at a ratio of 82-to-1). When caseloads increase, services decline, and even parolees who are motivated to change have little opportunity to do so.

In 2001, the United States is likely to have two million people in jails and prisons and more people on parole than ever before. If parole revocation trends continue, more than half of those entering prison in the year 2001 will be parole failures. Given the increasing human and financial costs associated with prison—and all of the collateral consequences parolees pose to families, children, and communities—investing in effective reentry programs may be one of the best investments we make.

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The Homeless Pretrial Release Project: An Innovative Pretrial Release Option

Alissa Riker
and Ursula Castellano

THE HOMELESS RELEASE Project (HRP) is a pretrial release and case management program for homeless misdemeanants. HRP, like other recent innovations in community corrections, is modeled on enhanced partnerships between judicial administrators and local providers as an effective method for aiding offenders' transitions back to their communities. HRP seeks to remedy the alienation offenders face from community and family networks (Irwin 1985) by addressing chronic homelessness and concurring court appearances through intensive case management. As such, the Homeless Release Project (HRP) serves dual purposes for a socially vulnerable population. As a pretrial release program, HRP plays an important role in reducing the jail population while ensuring compliance with court mandates; and as a model of community corrections, HRP monitors homeless offenders in the community through supervision and individualized care. In this article the authors describe how HRP functions to enhance individualized justice for offenders that are otherwise at risk for frequent reincarcerations and non-court compliance.

Homelessness in San Francisco

In San Francisco, homelessness has long created burdens for the county jail, hospital facilities, and community social service agencies. A Housing Status Assessment of County Bookings report, written for the San Francisco Sheriff's Department, found that 39 percent of persons booked into the County Jail were either homeless or temporarily housed (Riker 1994). According to the City's Department of Public Health Annual Report (1997–98), San Francisco has disproportionate rates of homelessness, substance abuse, and mental illness, including the highest rate of drug emergency room visits in the nation, the highest suicide rate, and the second highest rate of homelessness.[1] An estimated 30-40 percent of the homeless in San Francisco suffer from serious mental illness (Tuprin and Tate 1997), and upwards of 70 percent have substance abuse problems (Tuprin and Tate 1997; Homebase 1997). During fiscal year 1996–7, there were 9,114 involuntary detentions for psychiatric evaluation, giving San Francisco the highest per capita rate of any California county. Eighty percent of those detained were estimated to have co-occurring substance abuse disorders and fifty percent were estimated to be homeless. The average length of stay in the hospital was only 18 hours, and due to a lack of options, homeless individuals are often simply returned to the streets. Homeless populations are also vulnerable to high-risk health practices, such as needle sharing and unprotected sex, and infectious diseases, including hepatitis and tuberculosis (Wojtusik and White 1997). In 1998, the homeless accounted for 18 percent of all existing TB cases in San Francisco (Northern California Council for the Community 1998).

The effects of de-institutionalization of state mental health hospitals in the 1960s and 1970s is well documented, particularly the burden it placed on jails due to increased arrests and incarcerations of mentally ill persons (Whitmer 1980; Walsh and Bricout 1992).[2] Belcher (1988) concluded that homeless mentally ill offenders are vulnerable to chronic decompensation unless they have a supportive and structured environment. Efforts to integrate mental health services into jails have generated basic services, yet the criminal justice system is further challenged by efforts to ensure continued compliance with follow-up care once the offender is released into the community (Kalinich et al. 1988; see Steadman, H.J. et al. 1989).

Like many jurisdictions across the country, San Francisco has emphasized police enforcement of offenses such as trespassing and public intoxication, increasing the number of homeless defendants. These homeless defendants exhibit a host of mental and medical issues that impede their ability to successfully navigate the judicial system, and must overcome a number of unique challenges beyond the lack of a stable address. The dilemma for all institutional and community actors is how to enable this specific clientele to meet court demands and provide individualized services relevant to their mental, medical, and emotional needs. Challenged by defendants with poor appearance records and obvious psycho-social needs, the Homeless Release Project provides the Court with an effective pretrial release option.

Pretrial Innovation: Alternative Programming in the San Francisco County Jail

Before the implementation of HRP services, The Center for Juvenile and Criminal Justice (CJCJ), a nonprofit organization, initiated

[1] There are an estimated 11,000 to 14,000 homeless persons living in San Francisco (Homebase1997).

[2] Walsh and Bricout (1996) studied how family contacts act as linkages to mental health agencies once the offender is released from jail; this work acknowledges the effectiveness of community ties in ensuring an offender's "continuity of care" (p. 73).

two population-specific pretrial release programs. In the early 1980s, California's fiscal crisis and increasing incarceration rates resulted in serious jail-overcrowding problems throughout the state. At the time, the San Francisco Sheriff's Department was already under a two-decade long consent decree to decrease its jail population and improve confinement conditions. In 1987, in response to this institutional crisis, CJCJ established the Supervised Misdemeanor Release Program (SMRP). SMRP is modeled after other pretrial release programs that emerged during the national bail reform movement in the 1960s (Thomas 1976); however, its targeted subpopulation of offenders is misdemeanants arrested on bench warrants. Persons arrested for new non-violent misdemeanor offenses are regularly released by the Sheriff's Department with a citation, or written promise to appear in court. However, once a bench warrant is issued for failure to appear, an offender cannot be released on his own recognizance without court approval. SMRP staff members screen the entire pretrial population, identify and interview eligible misdemeanants, and submit release recommendations to the Court. If the Court approves the release, SMRP staff members supervise the offender in the community to ensure that they attend all subsequent court dates until the case is disposed. The release of misdemeanor bench warrant offenders has had a substantial impact on the jail population. In 1999, SMRP staff screened over 2,300 cases; 844 were approved for release and 85 percent of these appeared in court.

During the early stages of SMRP's implementation, staff members recognized a growing number of homeless defendants who were not eligible for citation release because they lacked a local address, a basic requirement for consideration. In 1991, CJCJ staff collaborated with the Sheriff's Department to establish the "No Local" Citation Project, which targeted homeless offenders charged with otherwise citeable misdemeanor offenses or infraction warrants. The "No Local" project did not release persons charged with bench warrants, so court approval for the release was not required. Over the next six years, more than 1700 persons were released on their "promise to appear" in court, with a compliance rate of 76 percent. Due to the project's success, the San Francisco Sheriff's Department changed its citation policies in 1997 to no longer exclude homeless persons.

Though homeless persons arrested for new misdemeanor offenses are regularly released on their promise to appear, those arrested on bench warrants were ineligible for SMRP because staff could not maintain contact with the defendants to remind them of subsequent court dates. In 1996, CJCJ received funding from the United Way for a four-year pilot program (HRP) to provide community supervision for these offenders. HRP works to ensure that clients attend court appearances and links them to services that address the underlying issues that led to their arrest and incarceration.

HRP: A Community-Based Treatment Model

The community-based treatment (CBT) model (see appendix 1) serves as the blueprint for providing individualized care to homeless offenders. The HRP caseworker plays an integral role in developing a care plan with the client and providing oral or written progress reports that are distributed to the judge, district attorney, and public defender at all subsequent court dates. Initially, HRP clients are interviewed through SMRP. Once identified, a SMRP staff member conducts a preliminary needs assessment and determines the offender's existing relationships with community providers and collects information on where the offender can be found in the community. This preliminary data is then submitted to the commissioner for a jail release recommendation and participation in the HRP program. If the release is approved, SMRP staff members arrange for temporary housing, possibly including a hotel voucher. The HRP case manager is then notified of the new client and the date of the initial court appearance. HRP staff accompany clients to all court dates and strive to gain their active participation in what can be an alienating and quick-paced process. Immediately following the first court date, the case manager conducts a more thorough needs assessment, collaborating with the client on designing a care plan which includes short- and long-term goals, such as obtaining temporary/permanent housing, entering a substance abuse program, or accessing medical treatment. The case manager often spends the majority of his time outside of court working with clients in shelters, encampments, hotels, and the street. Clients are also invited to drop in at the CJCJ office; staff members strive to make the office as inviting as possible by not requiring appointments and by providing food, clothing, temporary storage, the use of the phone, and the office safe for holding cash.

The implementation of the care plan is often a collaboration between the case manager, judicial actors, and community providers. Beyond pending criminal matters, the majority of HRP's clients are also suffering from medical fragility, mental illness, and/or substance abuse; approximately 85 percent of HRP clients are dealing with substance abuse issues and 50 percent have been diagnosed with a co-occurring mental illness. Because of this, the HRP case manager not only works in conjunction with traditional judicial actors but also collaborates with multiple community actors to provide substantive remedies for homeless clients. A series of case histories will illustrate the diversity and complexity of individual caseloads and how HRP case managers act as mediators and advocates to homeless defendants in court and in the community.

Alex, a 42-year-old white male, was released to HRP after spending three weeks in custody on an assault charge and a motion to revoke his probation. Just prior to the offense, the shelter where Alex had been staying closed, his long-time therapist was transferred, and he stopped taking his psychiatric medication. The case manager presented a detailed treatment plan to the Court and Alex was granted a conditional release. Over the next five months, the HRP case manager collaborated closely with Alex's mental health providers to help monitor his medication; Alex also participated in counseling and anger management groups. Obtaining stable and safe housing is one of the most difficult challenges for the HRP case manager. A critical component of the HRP case manager's responsibilities includes ensuring that clients are enrolled on all appropriate supportive housing wait lists and monitoring their status. Years before, Alex had applied for subsidized housing for multiply diagnosed homeless persons, but the agency could not locate him. HRP staff contacted the wait list administrator and accompanied Alex to a series of interviews with the housing provider. Staff also applied for a grant to assist Alex with the security deposit, and after seven years of homelessness, Alex moved into his own apartment. Once his housing was stabilized, Alex was accepted into an intensive day treatment program. During this five-month period, Alex appeared before the court each month with the HRP case manager who presented a written report on Alex's progress as well as notes from the psychiatric provider. As Alex's case

illustrates, the CBT model seeks not only to accommodate court-mandated diversion requirements, but can also achieve individual long-term goals, such as permanent housing.

HRP is staffed by a full-time case manager/project coordinator and two part-time peer advocates. The case manager plays a crucial role in facilitating the court appearances, social services connections, and other individual needs, such as scheduling medical appointments. Often HRP clients can display disruptive behavior, inhibiting their ability to access services. Therefore, while assistance sometimes entails no more than a referral and a bus token, it often means accompanying a client to an appointment. The peer advocates (ex-offenders who are in recovery) assist the case manager and provide important mentorship to clients by helping them to control their frustrations during social service agencies' complicated intake processes. The use of peer advocates brings a special understanding of client issues to service delivery. The shared experiences of the client and peer advocate facilitate the most positive and successful program outcomes. The peer advocates are recruited to reflect the special needs of target populations within HRP's caseload, such as women, veterans, and persons living with AIDS.

Consider the case of Lou, a white Vietnam Veteran, who was arrested on a misdemeanor shoplifting bench warrant and released into HRP. Lou was an active substance abuser who had recently been diagnosed with AIDS. He missed his initial court date because he had been hospitalized to have a steel plate removed from his jaw. Prior to his hospitalization, Lou had been maintaining his sobriety, but blamed his subsequent relapse on being discharged from the hospital before he had detoxed from the pain medication used in the surgery. Lou was unfamiliar with the support services available to persons with AIDS, and expressed a hopeless attitude regarding his diagnosis. The peer advocate encouraged Lou to enter a detox program reserved for substance abuse users with AIDS, while obtaining a letter of his AIDS diagnosis from the Veterans Association, which would allow Lou to access other services. After Lou left detox, the peer advocate escorted him to a variety of service providers where he received emergency housing vouchers and re-applied for SSI. Lou's efforts to address his substance abuse problems were acknowledged by the Court and the criminal matter was diverted from prosecution.

Some clients have multiple criminal cases pending, so the HRP case manager must effectively coordinate with other judicial actors to ensure a positive outcome. Daniel was released to HRP after being arrested for a bench warrant for possession of stolen property. Daniel, a 26-year-old white male, was diagnosed with schizophrenia and substance dependency and had been homeless for three months after his family demanded that he move out. He was a long-term client in a psychiatric case management program, but due to a history of disruptive behaviors, he was barred from entering the building except to pick up his medication and see his payee. Daniel had been referred to the Adult Probation Department's Drug Diversion Program for a previous offense and had been attending groups in an outpatient substance abuse program. When the HRP case manager confronted him about his sporadic attendance, Daniel confided that due to his learning disability he was unable to complete the writing assignments, and the other participants made fun of his hygiene. It was apparent that Daniel required a program that would accommodate his mental illness and his learning disability. The HRP case manager worked with the public defenders to consolidate Daniel's cases into one courtroom and the judge ordered Daniel to complete a program for the dually diagnosed. Daniel's Clinical Care Manager was skeptical of his compliance because he had a history of walking away from programs, but he agreed to assist the HRP case manager in securing Daniel a bed in a 21-day detox program. After completing detox, Daniel transitioned into a secondary residential treatment program. After months of continued success, Daniel's diversion was deemed complete.

While approximately 50 percent of HRP clients are dually diagnosed, client issues are also gender specific. The vast majority of women clients have a history of domestic violence abuse. Rose was released into HRP after her arrest on a bench warrant for trying to pass a bad check. Rose was a 28-year-old African American woman and, at the time of her arrest, was seven months pregnant. She had been homeless for two years, and was commuting from a temporary winter shelter in a neighboring county that bused people back to San Francisco in the mornings. The HRP case manager initially worked with Rose to ensure that she made her pre-natal appointments at the County Hospital. At her next court appearance, Rose was referred to the San Francisco Pre Trial Diversion Program. Rose moved in with her mother in Oakland and, with the case manager's assistance, transferred her TANF benefits (Temporary Assistance for Needy Families) to Alameda County. Rose returned to San Francisco after the birth of her son and lived with her boyfriend. However, that relationship turned abusive and the case manager used emergency funds to move Rose to a residential hotel. The HRP case manager also worked with the diversion case worker to modify her requirements to include counseling for the domestic violence. After several months of counseling, the case was dismissed and Rose stayed on with the program as a volunteer peer counselor.

Gwen provides another example of the special needs of female clients. Gwen, a 46-year-old white woman, was arrested for failing to complete a community service sentence stemming from illegal discharge of a projectile weapon (bow and arrow). During the initial HRP assessment, Gwen confided that she had been raped 18 months ago and requested assistance accessing mental health services to better cope with the trauma. She had been homeless for approximately six months when she fled an abusive relationship and lost her job as a recruiter for a high-tech employment agency. Although she had a Master's degree in counseling, she worked at odd jobs through a labor program and slept on the street because she was afraid of the shelters. With HRP's intervention, Gwen's case was dismissed on the condition that she seek counseling. HRP staff referred her to a private therapist funded through a victim's assistance program. The case manager also aided her in a job search by supplying her with bus tokens, and gave her the use of his office to work on her resume and make phone calls. HRP also temporarily subsidized her rent at a residential hotel. After a month, Gwen found a full-time position at another employment agency and moved into a shared living arrangement.

These individual case histories represent the kinds of dilemmas that the HRP case manager and peer advocates confront. The Community Based Treatment model seeks to simplify and demystify judicial processes while increasing client access to much needed social services. In sum, HRP functions to address systemic inequalities that plague a population of socially vulnerable offenders: homeless persons.

Conclusion

Homelessness is a multifaceted social problem that is further complicated by the criminal justice system. The primary goal is to remedy the disconnect between external community providers and the criminal justice system. Homeless offenders typically lack ties to community resources, which undermines their ability to comply with court demands. As such, homeless offenders naturally pose a special challenge to pretrial release standards of court compliance, especially for urban jails that process large numbers of misdemeanants.

HRP's "pilot phase" funding from the United Way expired in June of 2000. During the successful campaign to include the program in San Francisco's 00/01 budget, San Francisco's Sheriff Michael Hennessey stated:

> It has been our experience that many of the homeless misdemeanants who are eventually released with no supervision or support services upon disposition of their case by the courts, will soon return, again charged with minor offenses. This cycle of arrest, detainment, release, and re-arrest, creates an avoidable burden on our criminal justice system that can affect the public safety simply because of its unnecessary impact on our resources.

The Homeless Release Project serves as organizational linkage between a homeless person's detainment, subsequent court appearances, and community resources. HRP's unique approach to community corrections can yield a positive long-term impact through reduced re-offense rates and reduced costs of over-detainment.

An initial study comparing HRP graduates from the program's first year with a representative comparison group showed that HRP participants were half as likely to be re-arrested. HRP's work demonstrates that when the individualized needs of homeless offenders are met—needs such as housing, benefits assistance, and mental health and substance abuse treatment—participants are better equipped to avoid future criminal behavior. The Homeless Release Project serves as an example of fiscally and socially sound public policy by increasing public safety while helping homeless people to break the costly cycle of arrest, incarceration, homelessness, and rearrest.

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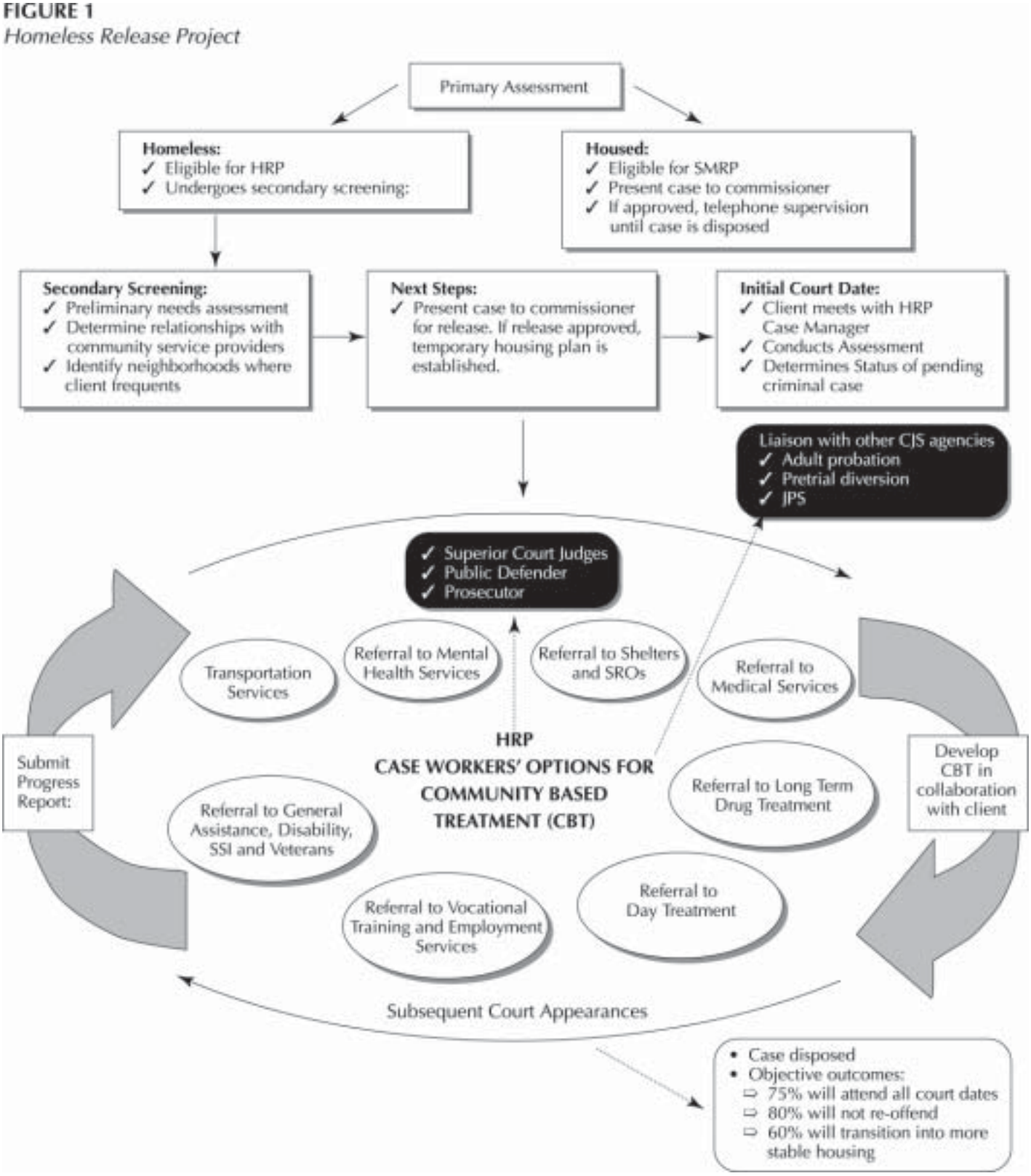
FIGURE 1
Homeless Release Project



The Homeless Court Program: Taking the Court to the Streets

Stephen R. Binder, Deputy Public Defender
Law Offices of the Public Defender of San Diego County

THREE GRAY CONCRETE handball court walls on San Diego High School's athletic field surround fold-out tables and chairs. Desert military camouflage netting shelters them from the sun. The flag of the United States anchors one corner; The State of California's the other. The defendants appearing before this outdoor Homeless Court are veterans who live outdoors on the streets of San Diego, but for three days they are sheltered in tents, and receive employment counseling, housing referrals, medical care, mental health, and other social services.

The Vietnam Veterans of San Diego, sponsors of Stand Down, began sponsoring this temporary tent city in 1988 to relieve the isolation of homeless veterans while assisting their reentry into society. The annual event provides comprehensive services for homeless veterans, including employment, housing, medical, legal (civil and criminal), physical and mental health treatment, and numerous social services. But Stand Down is more than a collection of services. The sponsors concentrate on building community and developing the strengths of the participants as members of the community.

At the conclusion of the first Stand Down in 1988, 116 of 500 homeless veterans said their greatest need was to resolve outstanding criminal cases. Homeless veterans of San Diego inspired the misdemeanor criminal court to leave the courthouse and join the Stand Down effort by holding a special session for homeless veterans at the handball courts.

City Landscape

The Regional Task Force on the Homeless estimates the city of San Diego is home to 7,500 urban homeless with 2,417 emergency and transitional shelter beds available to house them on any given night. The cost of an emergency shelter bed is $5 a night. The average transitional shelter bed with support services costs $40 a day. The cost of incarceration in the city jail is an estimated $60 to $70 a night. If mental health services are required, the cost of incarceration exceeds $400 a day.

Most of the crimes attributed to the homeless are disorderly conduct offenses such as illegal lodging, blocking the sidewalk, jaywalking, drinking in public and urinating in public, misappropriation of a shopping cart, and riding the trolley without paying.

In 1989, it was not unusual for a person who was homeless to carry a pocket full of 20 or more citations. There were more than a handful of people on the streets with 50 to 100 warrants for "disturbing the peace." The police issued citations as an invitation to get out of town, a clear signal the homeless were not wanted in San Diego. In practice, the police and the homeless were engaged in a game of cat and mouse. The police would conduct a sweep of the streets in downtown San Diego, issue citations, and force the homeless into Balboa Park. In an effort to clear out the park, the "crown jewel" of the city, police issued a new round of citations. This action forced the homeless into the canyons until neighbors complained. Another round robin of citations and movement ensued.

In 1991, the San Diego Police Department reported 8,754 citations and arrests for illegal lodging. Illegal lodging is an exclusive homeless-related offense. When police issue a criminal citation for illegal lodging, they give the homeless person a 4-by-7 inch piece of pink paper, demanding a total bail payment of $135 or threat of a maximum penalty of six months incarceration and a $500 fine. The police issued 727 illegal lodging citations in 1999. Most of the homeless who appeared in court are by way of jail, called by some a "state of the art homeless shelter." The court generally handed down a sentence of fines or public work service to those who appeared in court out of custody, expecting that this would resolve their homelessness.

Thousands of homeless never made it to court at all. The court issued warrants when they did not appear. The criminal justice system was pushing the homeless further outside of society, without resolving either the problems of the homeless or the problems caused by their presence.

Frustration and Despair

In 1989, I was working as a deputy public defender in the misdemeanor arraignment department. I was responsible for introducing defendants to courtroom procedures, the charges against them, their rights and possible defenses, and the proposed plea-bargain and sentence. Misdemeanor offenses account for 80 percent of the criminal caseload in the Office of the Public Defender.

The police complained that the people they arrested were released after serving a few days in custody. Judges were frustrated with the backlog of warrants that accumulate when defendants fail to appear for court. These same judges realized the futility of handing out sentences and making orders that would not—indeed could not—be obeyed.

When homeless people did appear in court out of custody, they tried to explain to the

judge the sorry set of circumstances that had taken them from families, homes, and jobs to sleeping in the dirty bedrolls that lay beside us in court. Some were articulate and educated, and even working, yet they were still unable to afford a rent deposit or a room.

"How do you plead to the charge?" the judge would ask.

"Guilty," they invariably answered.

They would come before the court and walk away with a sentence that required them to pay a fine, serve public work service, or spend time in custody. They picked up their court orders at the clerk's office and walked back to the streets, bearing legal burdens on top of their other troubles. Somehow, this was supposed to resolve their homelessness.

The prosecutors, judges, even the police, were uncomfortable and frustrated with the futility of this revolving-door approach. A person who cannot afford a room to rent cannot afford a fine for being homeless. At the time, there were no alternatives. The criminal justice system had an established routine. The frustration of taking part in this ineffectual enterprise drove me to join a group of criminal justice practitioners determined to find a better way of coping with this ongoing problem.

I started attending monthly meetings of the Bar Association Homeless Sub-Committee. One meeting featured Dr. Jon Nachison and Robert Van Keuren, the founders of Stand Down, a yearly effort to assist homeless veterans to link up with people and services that could help them grapple with their problems. They presented a survey, compiled by the Veterans Administration, with findings that intrigued me. The information in this survey provided the foundation for an idea that became the Homeless Court.

Voices From the Street

The homeless veterans of Stand Down recognized that their outstanding warrants were one large roadblock in the way of addressing their problems and achieving independence. They told the sponsors of the first Stand Down of their willingness to take responsibility for outstanding offenses and asked for assistance.

The Stand Down slogan reads, "A Hand Up, Not A Hand Out." The event strives to empower its participants, providing them with support to achieve readily attainable goals, to make the transition from the streets to self-sufficiency.

"There is more to Stand Down than meets the eye," wrote Jonathan Freedman, Pulitzer Prize winning journalist,

> Showers and shaves can wash off the dirt; new clothes can spark a physical transformation. But wounds of a lifetime heal slowly, and the dark night of the human soul is not banished by three days in the sun. Only people who have shared a common experience can overcome the destruction…by coming together. Coming home.

Upon entering the Stand Down encampment, each veteran receives a tent assignment. A tent leader greets each veteran who enters the tent. Welcome home. Each tent houses 22 veterans. The tent leader introduces them to services on site. The tent participants attend meals, showers, and clothing services as a group. Each tent is a community unto itself. The participants come to rely on each other and realize they are not alone. At the end of the first day, each tent chooses its own leader from its ranks.

From this community, the homeless veterans of San Diego seek to reenter society.

Establishing a Homeless Court

In July 1989, the first homeless defendant appeared before the Honorable E. Mac Amos at Stand Down. He entered a plea, and the court sentenced him to complete his chosen activity in a program offered on site. Then he was free to go. He walked away from the handball court to receive his court papers. The great fear of homeless defendants that they would find the whole court session was a sting operation to allow the police to take everyone off to jail did not come to pass. After the first group of homeless court participants returned to the larger encampment, a deluge of homeless veterans rushed the court to seek resolution of their cases

Following this first Homeless Court, the San Diego Court reported 130 homeless defendants had 451 cases adjudicated. The next year, 237 homeless veterans addressed 967 cases. Between 1989 and 1992, 942 homeless veterans resolved 4,895 cases in Stand Down courts.

How It Happened

A meeting with the presiding judge was the first step for establishing an outdoor courtroom at Stand Down. The event sponsors, together with members of the local Bar Association's homeless sub-committee, veterans groups, and court personnel, gathered to discuss the feasibility of taking the court to a tent city. When the meeting started, the judge argued that, "we are open five days a week eight hours a day [at the courthouse]; they are welcome to come here for court."

Representatives from the Vietnam Veterans of San Diego, the founders and sponsors of Stand Down, responded that attendance at a court hearing requires time and planning. Homeless defendants fail to appear, not because of a disregard for the court system, but due to their status and condition. They struggle daily for food, clothing, and shelter. They are not in a position to adhere to short-term guidelines. They do not carry calendars. The participants are scared. In the past, court orders and sentences guaranteed their failure. They could not pay fines. Custody left them, society, and the court, no better off than before they went in.

The Homeless Court provided an opportunity for the court and homeless veterans to resolve a mountain of backlogged cases. The organizers provided a forum to take care of these cases. Playing off the good faith and trust of the event, the court gained access to the participants. The participants gained access to the court.

The clerks assured the judge that a courtroom could be set up and run outside of the courthouse. The judge received assurances from the event sponsors that the event would uphold the dignity of the court. The prosecution and the defense outlined a plea agreement and guidelines for alternative sentencing to facilitate the resolution of cases. The court assured the event sponsors that no one would be taken into custody against their will.

The prosecution and defense met to develop a progressive plea bargain. The plea bargain held defendants responsible for their offenses and recognized that most offenses were a result of their condition. The plea bargain agreement we established anticipated the number and kind of cases the homeless carry. We drew on our experience dealing with homeless defendants at arraignment courts. As mentioned above, most of the crimes attributed to the homeless are public disturbance offences such as illegal lodging, blocking the sidewalk, drinking in public, urinating in public or riding the trolley without paying. Occasionally, someone will arrive with a more serious offense like petty theft or under the influence of a controlled substance.

The guidelines for alternative sentencing drew upon the services offered on site at the event. Involvement with activities that helped

to move participants off the streets and through programs, toward self-sufficiency, became court orders at time of sentencing.

Stand Down

The first day of the Homeless Courts at Stand Down events, Friday, is dedicated for counseling and plea-bargains of cases. Saturday morning is the day to appear before the judge. The homeless veterans can come before the court seeking general information about the cases they have or take the next step and actively seek to resolve these cases.

Defense attorneys counsel the veterans that these cases do not go away. They add that the court is more inclined to work with defendants when they appear voluntarily as opposed to appearing in custody. Prospects of success are best when defendants who appear are already participating in a program, rather than appearing before the court empty-handed.

Many homeless veterans are used to custody being the only option available to them. They have given up on themselves. We have responded by talking to them about Stand Down. We point to the numerous services available on site. We tag team attorneys to counsel them trying different approaches to pull them out of despair and motivate them to act. When this fails, we have introduced them to services on site and even taken them back to their tents to have their peers talk to them before addressing their case.

Advance planning and a strong commitment from all court representatives accounts for the relative ease in resolving these cases under adverse conditions and in a short period. We perform our regular tasks under different guidelines while working outdoors.

The Homeless Court does not address felony charges. However, attorneys from the Office of the Public Defenders help coordinate the surrender of defendants of felonies in the courthouse proper, indicating they have come from the Homeless Court Program. The few who have felony cases usually carry charges such as petty theft with a prior or a drug offense.

The Program Expands

The continued large numbers of homeless participating in the Homeless Court Program, coupled with their efforts to overcome the obstacles their condition represents, fostered the program's expansion from an annual, to a quarterly, then a monthly schedule. Over the years, the HCP expanded to serve battered and homeless women (1990), residents at the city-sponsored cold weather shelter (1994), and the general homeless population served at local shelters (1995). In 1999, the HCP started holding monthly sessions, alternating between two shelters (St. Vincent de Paul and Vietnam Veterans of San Diego), with a grant from the Bureau of Justice Assistance/Department of Justice.

The HCP responded to the shelter's list of residents who were seeking assistance in putting their criminal cases behind them. These lists came on a sporadic basis, averaging four per year. With the production of each list, the court clerks and the prosecution and defense attorneys would meet to discuss the deadlines and dates for the court hearing. We would then set dates for the counseling session and negotiations. We then relayed these dates to the shelter, which passed them on to their residents. The prosecution would prepare the discovery for each case with the proposed plea bargains.

We recreated the wheel with the arrival of each list. In retrospect, this was terribly inefficient and made it difficult for the programs to ensure follow-up with their residents. Still, the response from the residents and the shelters, kept the HCP going with quarterly hearings for five years. In July 1999, 10 years after starting with Stand Down, the HCP received a grant to hold monthly court sessions. This grant funds all the key agencies that comprise the HCP: the Office of the Public Defender, City Attorney of San Diego, San Diego County Superior Court, Vietnam Veterans of San Diego, St. Vincent de Paul, and an evaluation by San Diego Association of Governments (SANDAG).

Over the past year, the HCP has received requests for technical assistance from courts across the nation. In July 2000, the Superior Court of California for the County of Ventura held a pilot project Homeless Court where 17 defendants addressed 55 cases. They completed all sentences nearly one month before they were due. A caseworker from Catholic Charities was impressed by how motivated her clients were and their willingness to extend their efforts beyond the court mandates. The Alameda County Superior Court coordinated a three-county effort to help homeless veterans resolve cases at their Stand Down in August 2000. The Los Angeles Superior Court has visited San Diego to observe the HCP. Courts in New Mexico, Florida, and Michigan are currently studying the feasibility and logistics for implementing a HCP for their communities.

Application

The residents at local shelters come to the HCP with a distinctly different attitude from that of the Stand Down participants. While the Stand Down participants are looking to take their first step off the street, the participants, who are already actively involved and vested in a program, come to court with a pronounced fear of custody. During one session, I counseled the participants at the defense table, on one side of the room. I then moved 15 feet, to the other side of the room, to share their advocacy letters with the prosecution. When I looked up I found that all of the people sitting on my side of the room had shifted to the prosecution side to listen to our negotiations. I came to realize their nervousness stemmed from a fear of losing what they have gained. A respect for the court notwithstanding, these participants feared losing their home at the shelter, which represented a significant step up from the street for them. A sentence to custody would send them back to the streets at term's end, resulting in a loss of the progress they had gained. These participants saw a future and did not want to miss it. They had plans and did not want them interrupted or cut short. The court session provided them with an opportunity to come clean when their cases were resolved.

The HCP recognizes each shelter has its own requirements and guidelines that qualify residents for access to court. Some programs require a qualifying resident to complete an assessment, an initial phase of the program, or attend specified meetings. The court does not interfere with this relationship. The court does need tangible evidence of this relationship, such as an advocacy letter and certificates that it can refer to when making an order. Participants who are well prepared and actively involved with a program are more likely to have their cases resolved in one hearing and have a positive court experience. The level of success a client has in court is often commensurate with the level of participation in a program.

The HCP has found that an official reconciliation of their old ways in court proceedings becomes one more step to an independent life on the road through the rehabilitative process. When the court sentence gives credit for participation in program activities, it gives each person a sense that what they were doing was important, not just for their own well being, but for society.

Access to Court

To sign up for the HCP, a participant must gain the trust and confidence of a homeless shelter or program. Each program has developed its own criteria for entry to the HCP. Some programs require attendance in meetings, others completion of a Phase One in their continuum of care. As the caseworkers develop a relationship with their clients, they simultaneously help resolve the underlying cause or obstacle that homelessness represents and provide the court with independent verification of their clients' accomplishments. The caseworkers from each shelter gather lists of people requesting access to court through the HCP.

Delivery of the shelter sign-up list for the HCP to the Office of the Public Defender occurs on the last Wednesday of the month. After the defense attorney reviews the list, it is forwarded to the court and prosecution. The court then prepares the calendar for the hearing. The prosecution runs each person's criminal record, produces a list of their misdemeanor cases (with discovery), and offers a plea-bargain for disposition on the first Wednesday of the month. The list and plea-bargain is provided to the deputy public defender on the second Wednesday of the month.

The deputy public defender goes to the host shelter one week before the actual court session to prepare the participants for court. The one-week advance in preparation provides a number of advantages for the actual hearing. It demystifies the court process. It helps the person anticipate what will happen in court and mentally prepare to face the judge. It strips away the fear of the unknown. It alleviates the distrust of being set up for certain failure through a sentence they cannot afford. During this advance session we review cases and the plea agreement. We then talk about defendants' activities in the shelter, what part of their program has been most meaningful, and their plans for the future.

The attorney then instructs each participant to return to the caseworker for an advocacy letter, gather any certificates and tokens awarded, and bring them to court. The advocacy letter is symbolic of the relationship between the client and the program while providing an important source of information to the court. These documents are the independent verification the court needs to address and resolve their cases. The court sentence might give "credit for time served" in chemical dependency or anger management classes, training or seeking employment, literacy or computer education, life-skills and more. The participants and the program identified their greatest needs and the tasks necessary to achieve self-sufficiency.

The time spent at the court hearing is the tip of the iceberg for all the preparation undertaken beforehand. Weeks of preparation before the court hearing make the judge's time at the shelter more efficient and meaningful. The information needed to fully address and resolve the cases before the court is at hand. There is no need to set another court hearing to show proof of participation in a program. The prosecution, defense, and defendant have a shared understanding of the position they will take. They have already reviewed and discussed the matters on calendar. They are ready to present themselves to the court for its ruling and orders.

Prior to 1989, the criminal justice system relied on the courthouse and jails to administer justice and order. In the wake of Stand Down, justice and order are found with programs that include rehabilitation, counseling, recovery, life skills, and employment training. Gray concrete walls and shelter meeting rooms house courts that work for the criminal justice system, the homeless, and society. In short, the Homeless Court Program brings law to the streets, the court to the shelters, and the homeless back into society.

Influencing Positive Behavior Change: Increasing the Therapeutic Approach of Juvenile Courts

Michael D. Clark, Director
Center for Strengths in Juvenile Justice

AT THE MOST elemental level, the mission of the juvenile courts is to induce positive behavior change. There are levels to this behavior change effort. First, all juvenile courts work to secure the compliance of probationers to the rules and requirements of their respective programs. This first level generally involves beginning abstinence from illicit drugs and alcohol, lawful behavior, consistent attendance at school, and family stability.

Progressive and more ambitious juvenile courts strive for a second level of change. These programs move beyond compliance by targeting final outcomes that include sustained behavior change—characterized as empowerment and personal "growth."

To "what" and to "whom" do we attribute this behavior change within juvenile court populations? There is a common belief that the catalysts for change (the "what") can be found within the sanctions and supervision delivered by the court and probation department. There are long-held beliefs that change also comes from the efforts of court staff and treatment professionals (the "who"). New research cautions that it is someone else who assumes the lead role in this drama of change.

A Focus on Behavior Change

This article examines the ingredients for human behavior change. New research regarding "what works" in treatment will be reviewed. These findings may be considered provocative—challenging the belief about who induces behavior change and how that change is realized. This same outcome study also offers reassurance—outcome-based research confirms that many conditions and aspects of the juvenile court model are helpful to our adolescent populations.

The Research

The American Psychological Association supported a research initiative that is nothing short of astounding. This work is the culmination of an effort to assemble the leading outcome researchers in the world. The mission of this group was to review 40 years of psychotherapy outcomes and detail the subsequent implications for direct practice. This research and its multiple findings are included in the recent release (1999) *The Heart and Soul of Change: What Works in Therapy.*

Although this research examined psychotherapy outcomes, these findings are critically important to the treatment initiatives of the juvenile court. Regarding this research, Murphy (1999) reports, "...the empirical evidence on the potency of client factors and therapeutic alliance in the process of change has profound implications *for the manner in which practitioners approach clients of any age and in any setting*" [emphasis added] (p.382). Simply put, while juvenile court staff may not all be in the business of therapy, all staff are in the business of behavior change. This article seeks to examine positive behavior change.

The Findings

The initial finding of this research offers relief and encouragement to juvenile court personnel; treatment is effective in helping human problems. Asay and Lambert (2000) state, "These reviews leave little doubt. Therapy is effective. Treated patients fare much better than the untreated" (p. 24). Hubble, et al. (1999) add, "Study after study meta-analysis, and scholarly reviews have legitimized psychologically-based or informed interventions. Regarding at least its general efficacy, few believe that therapy needs to be put to the test any longer" (pps.1 & 2). This unarguable conclusion becomes a strong selling point to enlist greater community support for the juvenile court, which is especially important in an era where the existence of a separate court for youth has been challenged.

Given these findings of effectiveness, intervention models have vied to claim that their model offers the "best remedy" or the "most effective" treatment approach. Duncan and Miller (2000) speak to the headlong rush to claim superiority,

> New schools of therapy arrive with the regularity of the book-of-the-month clubs main selection. Most profess to have the inside line on psychological dysfunction and the best remedies. But which one, pray tell, is really the best? To answer this empirical question, models have been pitted against each other in a great battle of the brands in the hopes that one would prove superior to others. Besides the occasional finding for a particular therapy, the critical mass of data reveals no differences in effectiveness among the various treatments… This finding of no difference was cleverly tagged the "dodo bird verdict" (Luborsky, Singer, and Luborsky, 1975). Borrowed from *Alice in Wonderland,* it says, "Everyone has won and so all must have prizes." Now more than 20 years later and many attempts to dismiss or overturn it, the dodo bird verdict still stands (pg. 56).

These researchers also cite additional welcome findings relevant to the rehabilitative (habilitative) efforts of juvenile court. Data suggests the road to improvement is not long. After as few as 8–10 sessions, 50 percent of clients showed clinically significant change and 75 percent of clients significantly improved with six months of weekly treatment (Asay and Lambert, 1999). With most juvenile court programming averaging 6 to 12 months in length, these findings lend reassurance about the duration of a probation term.

Common Factors

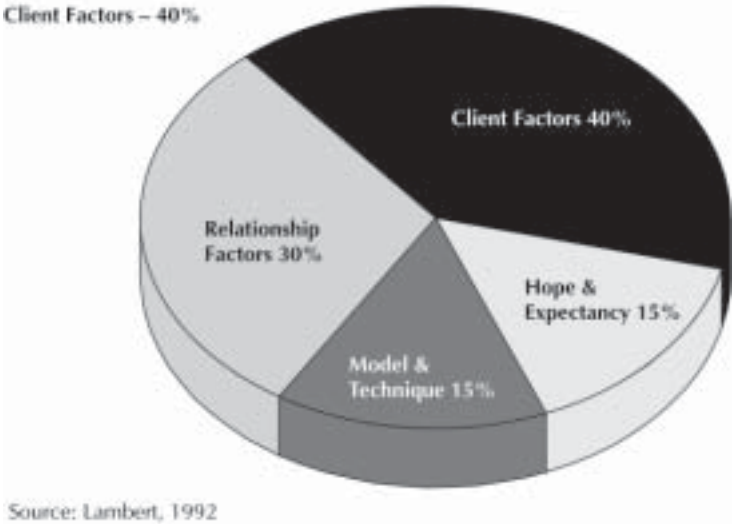
This finding is bewildering—with over 400 treatment models, no one model has proven to be reliably better than any other. Duncan & Miller (2000) report, "Despite the fortunes spent on weekend workshops selling the latest fashion, the competition among the more than 250 therapeutic schools amounts to little more than the competition among aspirin, Advil, and Tylenol. All of them relieve pain and work better than no treatment at all. None stands head and shoulders above the rest" (p. 65). This "dodo bird verdict" first delivered by Luborsky, et al. in 1975, has been repeatedly upheld in subsequent studies: Lambert and Bergin, 1994; Seligman, 1995; Wampold, et al. 1997 (as cited in Duncan & Miller, 2000).

There simply is no "silver bullet" intervention. If no theory or model can claim "better," then what accounts for the overall efficacy of treatment? Researchers (Lambert, 1992; Hubble, et al. 1999) sifted back through four decades of outcome data to postulate that the beneficial effects of treatment largely result from processes *shared* by the various models and their recommended techniques. Simply put, similarities (common factors) rather than differences in the various models seem to be responsible for change. Each of the varied treatment models aid change, by somehow hitting the "target" of these common factors that are the curative powers. These "factors" that raise effectiveness are *transtheoretical*, as they are present and common to all of the treatment approaches. Without intentionally focusing on these factors, all therapies seem to become effective by raising these common factors in their own unique way.

Lambert (1992) concluded from extensive research data that there were *four* common factors. Hubble, et al. (1999) speak to this import research finding:

> In 1992, Brigham Young University's Michael Lambert proposed four therapeutic factors…as the principal elements accounting for improvement in clients. Although not derived from strict statistical analysis, he wrote that they embody what empirical studies suggest about psychotherapy outcome. Lambert added that the research base for this interpretation for the factors was extensive; spanned decades; dealt with a large number of adult disorders and a variety of research designs, including naturalistic observations, epidemiological studies, comparative clinical trials, and experimental analogues (pp. 96–98).

FIGURE 1
Four Common Factors to Change



Source: Lambert, 1992

These four factors are identified as "client factors, relationship factors, hope and expectancy and model/technique." With direct practice in mind, Hubble, et al. (1999) also included Lambert's (1992) earlier work that rated some factors more influential in changing behavior and ascribed a weighting scale to these factors. If positive behavior change were to represent a 100 percent total, these common factors were then ranked and prioritized by their amount of influence. Figure 1 depicts the four factors of change and their percentage contribution to positive outcome.

The largest contributor to change (40 percent) was ascribed to client factors—not what juvenile court staff extend to youth or their families, but what youths possess as they enter the doors of the court. This includes internal factors (hope, optimism, skills, interests, pro-social proclivities, aspirations, past success) and external factors (a helpful uncle, employment, membership in a faith community). Client factors even involve fortuitous (chance) events that are controlled by neither court nor youth—an abusing boyfriend moves out and away from the family, a chance school experience instills renewed interest, a lesson "hits home" as a close friend/peer is seriously harmed by illicit drug use, etc.

Client factors include what juvenile offenders bring to probation and adjunct treatment programs and, just as important, what influences their lives outside these programs. This coin of behavior change is two-sided: one side involves the juveniles' pre-existing abilities, while the other side includes involvement and participation.

The strengths approach has been favored in juvenile court work because it uncovers and makes use of pre-existing abilities (Clark, 1997b, 1998; Nissen & Clark, in press). The strengths approach also encourages a balanced view (weaknesses and strengths) and raising motivation—necessary components for building solutions.

Involvement and participation is difficult. Many treatment programs are not individualized (regardless of their claims) nor do they offer true choices in programming. Further, juvenile court officers often resist offender input. The views and opinions of probationers (adolescents) can be markedly different from the juvenile court staff (adults). This can make adults resist seeking out input and working to integrate probationer ideas about "what works" for the youth individually or more broadly for probation or treatment program revision. Court officers need to make a distinc-

tion—acknowledging and accepting the beliefs and positions of an adolescent is not the same as agreeing or acquiescing with them.

The research is clear and compelling: It is the probationers, not the juvenile court staff or the treatment providers, who make treatment work. Our juvenile court programs "…should be organized around participant resources, perceptions, experiences, and ideas…the data points to the inevitable conclusion that the 'engine' of change is the *client*" (Duncan & Miller, 2000, p. 67). It is the adolescent probationers and their family members who are the real stars in this remedial drama.

Relationship Factors—30 Percent

Relationship factors make up about 30 percent of the contribution to change. By "relationship" is meant the strength of the alliance that develops between youth and staff. Relationship factors include perceived empathy, acceptance, warmth, trust, and self-expression.

Perceived Empathy

Communication studies (Brown & Keller, 1973; Anderson, 1997) consistently report that the information a speaker sends out is not always received in full by the listener. Parts of the intended message are either not adequately articulated, or not understood correctly by the listener. A dialogue between two people resembles listening to a radio that crackles from weak reception—even if one listens closely, much of the transmission will be garbled or missing.

Perceived empathy involves youths' belief that they are listened to and understood. Relationships develop as staff become committed to understanding probationers, making consistent efforts towards "filling in the gaps" of communication that is inherently error prone. Reflective listening is an important technique that constantly checks out what the staff member believes the youth has said. My experience in training staff of both juvenile court and juvenile drug courts is that most personnel, regardless of whether they have previously been trained in reflective listening, seldom (if ever) use this technique. It is simple to understand but tough to use—both consistently and correctly.

Evidence also supports "accurate empathy" as a condition of behavior change. Miller and Rollnick (1991) state,

> Accurate empathy involves skillful reflective listening that clarifies and amplifies the client's own experiencing and meaning, without imposing the therapist's own material… Accurate empathy has been found to promote therapeutic change in general (Truax and Carkhuff, 1967; Truax and Mitchell, 1971) and recovery from addictive behaviors in particular (Luborsky, et al., 1985; Miller, et al., 1980, Valle, 1981) (Pg. 5).

Egan (1994), author of *The Skilled Helper*, reports the two crucial elements of empathy as understanding and communication. Juvenile court staff are considered empathic when they understand the adolescent's world and experiences *and then* communicate this understanding back to the youth. Turnell & Lipchik (1999) take this idea of empathic understanding further, including not only emotions, but thoughts and behaviors as well. They report, "While it is important to join clients where they are emotionally, the therapist can also build understanding in relation to content or description of the problem; the client's judgments and meanings and what the client wants and hopes for" (p.3). Compliance can occur *without* the probationer feeling understood—the same cannot be said if one wants to induce growth.

Perceived empathy is a term that corrects a previous bias in research. Most outcome studies measured empathy and the strength of the alliance by counselor (adult) report. However, it is the juvenile court participant's assessment of the alliance that matters more. Tallman and Bohart (1999) report, "Findings abound that the client's perceptions of the relationship or alliance, more so than the counselor's, correlate more highly with therapeutic outcome (Horvath, 1995; Orlinsky, et al., 1994)" (p.102). Further research by Bachelor (1991) found that client perceptions of the alliance are stronger predictors of outcome than the counselor's views.

This bias of staff evaluations being valued and privileged over the perceptions of the adolescent is rampant in juvenile courts. I am reminded of an example that occurred while I was providing on-site technical assistance to an established juvenile drug court. I had a chance encounter with a group of juvenile probationers who were milling outside their court building awaiting their weekly progress review hearing. I introduced myself and began an impromptu conversation, eventually asking for their views and thoughts about their juvenile drug court program. Their responses were both enthusiastic and numerous. Encouraged, I brought this information to the next staff meeting. I was upset to find that all of this important information was devalued and dismissed very quickly by the program staff members.

Acceptance

Acceptance relates to the extent that any treatment program may fit the adolescent's worldview and beliefs. Kazdin (1980) found client acceptability of a particular procedure is a major determinant of its use and ultimate success. Two recent studies (Conoley, et al., 1991; Scheel, et al., 1998) found a greater acceptance of treatment and better compliance with interventions when rationales were congruent with client's perceptions about themselves, the target problems, and their ideas for change (as cited in Duncan & Miller, 2000).

An acid test for any juvenile court program lies in the question, to what extent are any interventions predetermined? Are probationers turned into passive recipients of prepackaged programming? Progressive juvenile courts will make an effort to instill participation and include the youths. Many are surprised to find there is more leeway to alter and adapt programming than they first believed. Murphy (1999) cites, "The notion of acceptability reflects good common sense: people tend to do what makes sense to them and what they believe will work. It is hardly profound to suggest that the best way to determine what is appealing and feasible for people is to ask them" (p. 370). It is in this "asking" that profound differences in efficacy will be realized. Furman and Ahola (1994) report that the relationship is developed and the alliance is strengthened as court youth and their families are allowed to have a say in problem definition, setting goals, and having a voice in deciding what methods/tasks will be used to reach those goals.

There are extenuating circumstances to consider in allowing a youth's participation at this advanced level. In the mandated arena of juvenile courts, participation is not "voluntary" (at least not in the same manner and context as outpatient therapy or counseling). These types of programs may impose a goal of "abstinence from alcohol and other drugs" on juvenile court youth. This goal will remain in force whether the participant agrees to it or not. However, that is not to say that we cannot seek the youth's thoughts and possible ideas for *their individualized methods* to

achieve that goal. In a new monograph on strength-based practice for the juvenile courts (Nissen & Clark, in press), I argue that juvenile court programs need to stay close to the youth and family's definition of the problem (and their own unique methods), as they are the ones who will be asked to complete the necessary changes. This idea is echoed by Snyder, et al. (1999), who argue that juvenile court staffs must listen closely to program youth. If not, then therapeutic goals will be established "…that are more for the helper than for the helped" (p. 191).

Trust

I have listed (Clark, in press) three major components to establishing trust with juvenile court probationers: faith, reliability, and predictability.

Faith. Juvenile courts would be wise not to replicate the adult court's "learning by example." In most adult drug courts, the majority of a treatment group within a program can watch (and hopefully learn vicariously) from the back of the courtroom as the court "makes an example" of one errant participant. Some adult court arrangements backfire with adolescents. Adolescents believe that if the court ridicules and makes an example of one participant, it can just as easily ridicule them as well. With that belief, faith is broken and the all-important therapeutic relationship suffers. The group will empathize with the transgressor and the hoped-for lessons are lost. Courts would be wise to keep castigations brief and to the point (avoiding long-winded lectures).

Research on adolescent development issues (Offer & Sabshin, 1984) calls on juvenile court staff, whenever possible, to take a teenager aside and *away from the group* to correct and castigate. Because adolescents have a drive for loyalty and an over-reliance on "belonging" with their peers, publicly admonishing them in front of a group will almost certainly evoke a defiant attitude and disrespectful behavior.

Juvenile court staff members are not likely to be the first adults in authority positions to work with probationers. Consider that a majority of our juvenile court populations have run afoul of traditional community institutions. These teens have had a steady diet of angry adults, including many who have weak egos regardless of their age or standing. With their character deficits, these "grown-ups" have often wielded their adult power over adolescents in oppressive or vengeful ways. Because of these prior experiences, establishment of trust is often an uphill battle during the initial phase of treatment. It is also helpful if staff members make all attempts to convince youthful probationers that what is onerous and "must" be done (with them, to them) programmatically, is being done *for them* and is in their best interests. We must take extra time and effort to convince them that our intentions and actions are aligned with their best interests.

Reliability. Due to adolescents' limited ability to think abstractly, juvenile court officers must take care to be as clear and concise as possible. When we make commitments to probationers, it is hard for a youth to sort through any qualifiers we might attach. For example, a juvenile court staff member might say, "*If* I can clear my afternoon calendar and *if* I can reach your mother by telephone at her place of employment, *then* I might stop by later today for a home visit." The qualifiers for the home visit are not heard, as any adult might understand them. The adolescent interprets the statement as; "I'll be stopping by later today for a home visit."

Reliability means it is also important to follow up (and follow-through) on all program directions. I have provided on-site review and consultation to established juvenile courts, and I find that inconsistencies regarding program requirements are common. In one instance, a court frequently mentioned the program requirement that all probationers obtain a "mentor" at the start of their programming. This was listed repeatedly in all printed material and informational handouts passed out to prospective youths and families. However, I found many youths that had reached their third month (or more) in the program but still had not secured a mentor. It became almost "routine" to ask about this program requirement during progress review hearings. Youth would offer a negative shrug, be admonished for their inattention, with the court failing to set up the specific, "who will do what, by when, and checked on by whom" to ensure effective follow-up.

This lack of follow-through is especially troublesome with developing adolescents, even if not debilitating or considered "serious" in the eyes of court staff. Adults, who have developed abstract thought and are more advanced in moral reasoning, can understand this inconsistency but still conclude that though the court may be lax on some requirements, other (and possibly more important) program rules will still be enforced with vigor. However, adolescents' moral reasoning is incomplete and it is highly probable that experiencing discordant rules could well lead them to the idea that "if they don't mean what they say about a mentor, then what about consistent sobriety?"

Predictability. A frustrating aspect of adolescents is that they develop their own values and morals by finding the discrepancies in any of the values espoused by mentoring adults. In short, they find their own values by picking ours apart. Most adults find that having their inequities or inconsistencies pointed out by youth groups is irritating. However, some adults who do not understand this developmental condition or staff members who have weak egos will try to gain revenge. With this developmental issue in mind, "walking the walk" and being predictable have great implications for juvenile court staff members.

A second aspect of this component of trust involves trying not to lecture or place adolescents in a "one down" position that engenders resistance and rebelliousness. When working and interacting with this younger population, framing directions and instructions in more amenable "I" messages is extremely important for trust building. The adage, "disclose, don't impose" is often heard in juvenile courts as it bypasses the adolescent resistance that comes from "being told." Juvenile court staff members have far more latitude than one might first believe to offer their "views" and personal experiences for teaching rather than dictating and strictly listing instructions as traditional roles would advise.

Some may bristle at this request for personal disclosure. Those trained within the legal profession and also those familiar with the adjunct helping professions have been taught that it is unprofessional to "open up" to clients about our personal lives. However, consider a contrasting position taken by Leigh (1998, p. 43). Leigh believes this advice against self-disclosure is a byproduct of the "deficit-based" medical model where staff are considered to be the "experts" and clients are seen as "damaged goods" (sick) and passive recipients (patients) of our expert advice. The status of staff and their ideas/beliefs are considered far superior to those of the client. Leigh considers that a much more open stance toward disclosure will engender true rapport. If we expect a greater level of intimacy from the defendant in our assessments, we should be ready to offer a greater level of intimacy from our lives as well. The treatment field has been taught to deflect a personal question

with a question, while the criminal justice staff has been taught to consider most personal questions as an impertinent affront that needs to be addressed and confronted (i.e., "I'll ask the questions here"). Although professional relationships are not friendships, they are *relationships* nonetheless. Consider how ridiculous people would sound in their personal lives if they answered these types of questions posed by an acquaintance with responses of, "Why is that important to you?" or "We're not talking about me!" How hard it would be to build any type of positive relationship with this kind of nondisclosure and distancing.

Leigh cautions one to be "transparent, not public;" to discern the difference between opening up our lives to *respond* to a situation that arises when interacting with a teen, rather than offering up our experiences in an unsolicited and self-centered fashion. The value of disclosure is found in imparting wisdom and teaching during a time of interactional opportunity, not in self-aggrandizement.

Warmth, self-expression. These two conditions for building relationships are intertwined. Extending warmth (attention, concern, interest) occurs in tandem with allowing a youth's self-expression. All juvenile court staff must understand and embrace a long-held credo from the counseling field—*listening is curative*. Tallman and Bohart (1999) report, "Research strongly suggests that what clients find helpful in therapy has little to do with the techniques that therapists find so important… The most helpful factor was having a time and a place to focus on themselves and talk" (p. 105). Harve, et al. (1991) found that giving traumatized individuals a chance to "tell their story" and engage in "account making" is a pathway to healing. A rather obscure but interesting earlier study by Schwitzgabel (1961) showed that paying juvenile delinquents to talk into a tape recorder about their experiences led to meaningful improvements in their behavior, including fewer arrests (as cited in Tallmon & Bohart, 1999).

It would be wise for the juvenile court staff to critically examine how they build the alliance with probationers, both as a unified program and individually in their personal interactions with youth. Duncan and Miller (2000) state emphatically, "Clients' favorable ratings of the alliance are the best predictors of success—more predictive than diagnosis, approach, counselor or any other variable" (pp. 57–58). It is amazing that when both client and relationship factors are considered, up to 70 percent of positive behavior change has been accounted for.

Hope and Expectancy—15 percent

The next contributor to change (15 percent) is hope and expectancy. This involves the youth's hope and expectancy that change will occur as a result of receiving court services. A more operative explanation involves three conditions: 1) conveying an attitude of hope without minimizing the problems and pain that accompany the youth's situation; 2) turning the focus of treatment towards the present and future instead of the past; and 3) instilling a sense of empowerment and possibility to counteract the demoralization and passive resignation often found in adolescent substance turmoil.

1. Conveying an Attitude of Hope Without Minimizing the Problems and the Pain that Accompany the Youth's Situation

Instilling hope has more complexity than simple encouragement ("You can do it"). Juvenile probationers need to believe that taking part in court programming will improve their situation (expectancy). Testimonials of success and program efficacy occurring early in court services is important. A successful program will move to assert this during the orientation phase of programming. Snyder, et al. (1999) relates that probationers must sense that their assigned probation officers, working in this particular setting, have helped others to reach their goals (p.182).

The duality of instilling hope while also acknowledging problems and pain can be negotiated. There is a strength-based strategy that encourages staff to allow the problem to coexist with the emerging solution. In many instances within juvenile court work, there is a mindset to conquer, eliminate, or "kill" the problem. Oftentimes it is helpful and much more expedient to *allow the problem to remain*—to coexist with the emerging solution or healthy behavior.

An explanation is needed. Consider that problems are not always enemies: They are often experienced as covert friends. For example, perfectionism in extreme measures can produce overwhelming and anxious feelings that can become debilitating. However, one would not want to completely rid people of perfectionism. At levels that are more moderate and healthy, perfectionism leads to positive qualities of organization and attention to detail. So too with drug use. Illicit drug and alcohol use, albeit harmful, extends to many youth feelings of excitement, release and euphoria. Can we help youth to consider that their drug use might be kept around as an "old acquaintance," but one that they've grown past? Can problems stick around for any help or motivation they might offer, but not be given enough power to influence and hurt?

This is not just meaningless play on words. There is a popular slogan in strength-based approaches, "The person is not the problem, the problem is the problem." Strength-based practice takes that a step further to assert that the problem is actually the person's *relationship* to the problem. Consider adolescent substance abuse. Miller and Rollnick (1991) believe that ambivalence lies at the heart of substance abuse problems. These researchers believe the conflicting dichotomies found in drug use—love/hate, enjoyment/pain, want/don't want—are especially bedeviling and hard to resolve. Miller & Rollnick point to the irony that it is this type of ambivalence (good/bad, love/hate) that will be strongly defended if attacked. For staff to jump too strongly against one side of this dichotomy (i.e., "Drugs are bad") will only incur a defensive reaction from youth ("No they're not"). This circular end game is what these practitioners call the "confrontational-denial trap." This "trap" elicits a natural resistance ("psychological reactance") that starts the no-win scenario often experienced between adult staff and adolescent participant: "Drugs are bad" ("No they're not") or, "You have a problem" ("No I don't"). Motivational interviewing strategy suggests allowing the competing sides of ambivalence to remain. This entails a strategy to allow the line of questioning, "What's good about your drug/alcohol use?" Youth are well aware that juvenile court programming moves against drug use, but this type of question acknowledges *both sides* of the dichotomy, and can allow the participant to offer "self motivational" statements (i.e., "I like using drugs but I've been getting in so much trouble lately–maybe I should quit"). A further axiom of the treatment field, and one that speaks to long-term growth vs. compliance states: "We only change those people who give us permission to change."

Juvenile court youth and their families often feel "stuck" in problem states–partly due to limited views that allow no escape (i.e., "I *can't* quit," "You don't understand, I *have*

to hang out with my using buddies"). Bill O'Hanlon (personal communication, October 12, 2000) describes a helpful metaphor that leads to more productivity. A conception is gained from slapstick comedy found in an old Vaudeville routine. In this routine, two ingratiating French waiters approach a single kitchen door. They stop to repeatedly defer to each other to allow the other to enter the single door first. "After you," one offers, "No, please, after you," the other replies, until confusion reigns. At the same moment, they both decide to act and turn into the door simultaneously—only to wedge their shoulders in the small opening. O'Hanlon advises juvenile court personnel to consider the idea of "creating a second door" and allow conflicting feelings and conditions to coexist. A youth can feel scared and hopeless about being able to begin abstinence from drugs and yet marshal the confidence to avoid using "just for today." A painfully shy young female can fear the crowded room and yet find the fortitude to enter. To convince this young female "there's no need to be shy" or that "there's nothing to be afraid of" is an uphill climb with dubious results. The lure of drug use/movements towards sobriety, hesitancy/ action, fear/ confidence, all can coexist. Juvenile court staff need not necessarily eliminate the negative to realize the positive.

2. *Become Future Focused: The Past, and the Focus on Past Failures, Can Open the Door to Demoralization and Resignation—Hope Is Future Based.*

When a probation officer keeps remedial efforts focused on the future, positive outcomes are enhanced. I have detailed future focused questions (Clark, 1998) that help orient both youth and juvenile court staff to solution building. The problem is generally found looking from the present back to the past. The solution, however, is generally found looking from the present to the future. Furman and Ahola (1992) report that the *single, most useful effort* you can make with the time you spend with adolescent offenders, is to get them to look ahead and describe what is happening when the problem is envisioned as "solved" or is not considered to be as bad. These European therapists, using strength-based practice, believe that if goals are to be immediately helpful and meaningful to the adolescent and family, they must first be conceived through visions of a "problem-free future." It is through this looking ahead, a "harnessing" of the future, that goals for the present actions (first steps) become known. Court staff can utilize the Miracle (Outcome) Questions (Berg & Miller, 1992): "What if you go to sleep tonight and a miracle happens and the problem(s) that brought you into the court (detention center) are *solved.* But, because you are asleep, you don't know the miracle happened. When you wake up tomorrow, what would you notice as you go about your day that tells you a miracle has happened and things are different?" "What else?" "Imagine, for a moment, that we are now six months or more in the future, after we have worked together and the problems that brought you (this family) to juvenile court jurisdiction have been solved. What will be different in your life, six months from now, that will tell you the problem is solved?" "What else?"

The miracle question is the hallmark of solution-focused therapy model. A miracle in this context is simply the present or future without the problem. It is used to orient the teen and family toward their desired outcome by helping them construct a different future. Helping an offender and family establish goals needs to be preceded by an understanding of what they want to happen. When (if) workers find no past successes to build on, they can help the family to form a different future by imagining a "miracle." As many justice workers have experienced, it often is difficult to stop a family from "problem talk" and start the search for solutions. The miracle question was designed to allow the adolescent and family to "put down the problem" and begin to look at what will occur when the problem is not present. If court youth are prompted to imagine what a positive future might look like for themselves, they automatically begin to view their present difficulties as transitory, rather than as everlasting. This question is used to identify the youth's goals to reach court dismissal.

This question is followed by other questions that shape the evolving description into small, specific, and behavioral goals. "What will be the smallest sign that this (outcome) is happening?" "When you are no longer (skipping school, breaking the law, etc.), what will you be doing instead?" "What will be the first sign this is happening?" "What do you know about (yourself, your family, your past) that tells you this could happen for you?"

3. *Empowerment and Possibility: Hope and Expectancy Are Encouraged When Juvenile Court Programs Help Youth Establish Goals and Then Move Them into Action*

All programs will list large (macro) outcome/ final goals to reach graduation and court dismissal. Similarly, most juvenile probation plans are established for large issues and long-standing presenting complaints. These plans list large problem behaviors to be resolved by a review hearing date set many months into the future. However, day-to-day goal setting should "think small" and goals should be shaped into little steps that could be consistent with the "one week rule" of strength-based practice—never mutually establish any goal with a youth that couldn't be reached in the next seven days. Some youth staff go beyond this and use a "48 hour" rule to make a goal seem more obtainable and to begin behavior change. Short time frames propel "first steps" and start small incremental movements to change.

Snyder, et al. (1999) call for treatment programming to first induce "personal agency thinking" (e.g., "I *can* do it"), and then set mutual, concrete and obtainable goals to enhance "pathways thinking" (e.g., "here's *how* I do it"). Juvenile courts would do well to focus staff retreats on these two conditions alone for program and practice revisions. They could easily spend a day examining where and how their court programming enhances agency and pathways thinking—ever vigilant to increase these conditions. It is these two conditions that will turn the wheel of behavior change.

Ilardi and Craighead (1994) found a large portion of client improvement occurs in the first three to four weeks of treatment. They point out this improvement happens before clients learn the methods or strategies for change that programs stand ready to teach. How could change occur before program direction and support can be delivered? It is important to consider that the instillation of hope and expectancy of change is not a precondition for change—*it is change.*

Model and Technique—15 Percent

One of the smallest contributors to change (15 percent) is model and technique. This involves staff procedures, techniques and beliefs—broadly defined as our therapeutic

structure and healing rituals. It is humbling to consider that most of what universities and institutes teach and expound constitutes one of the lowest contributions to change. Further, court programs and techniques are deemed helpful only to the extent that they raise the other common factors!

All is not lost. The strategies and methods that juvenile court staff provide to probationers are helpful—yet for reasons that are contrary to popular beliefs. Tallman and Bohart (1999) explain:

> Clients utilize and tailor what each approach provides to address their problems. Even *if* different techniques have different specific effects, clients take these effects, individualize them to their specific purposes, and use them… In short, what turns out to be most important is how each client uses the device or method, more than the device or method itself. Clients then are the "magicians" with the special healing powers. [Staff] set the stage and serve as assistants who provide the conditions under which this magic can operate. They do not provide the magic, although they may provide means for mobilizing, channeling, and focusing the client's magic (pg. 95).

It appears that rather than mediating change directly, techniques used by court programs simply activate the natural healing propensity of adolescent probationers. Youth are not static and passive; they are active and generative. Our techniques and program requirements can be important to guide this process.

Practice Implications

Here are several issues that are raised for juvenile courts when these common factors are considered:

1. All Probation Staff Can Increase Their Therapeutic Approach

This article is written with great compassion for the Juvenile court probation officer and all those in a helping role with youth. For these personnel, the common factor research is encouraging. Duncan & Miller (2000) list several (very) interesting research findings:

> Christensen and Jacobson (1994), in their evaluation of effectiveness, found no differences between professionals and paraprofessionals or between more and less experienced therapists. Strupp and Hadley (1979) found that experienced therapists were no more helpful than a group of untrained college professors. Jacobson (1995) determined that novice graduate students were more effective at couple's therapy than trained professionals (p.66).

Imagine if this research were speaking about cardiac surgeons who were actively engaged in open-heart surgery! To find "no difference" or small differences in effectiveness, regardless of training and experience, would be shocking. But these research findings are not so startling or disheartening when one considers that therapy clients (and especially juvenile court probationers) are not passive recipients of clinical expertise, but active participants in the process of change.

These findings offer a tremendous boon for the youth worker. The mystique or complexity surrounding "therapy" can be worked through and shed. Instead, what is truly "therapeutic" becomes illuminated by these four common factors, and more staff members can begin to build the all-important alliance and work to enhance these factors with youth and family. With the complexity of many presenting problems, professional therapy and substance abuse treatment will always have its place in this specialty court, but what is "effective" can be shared by all.

2. Balance and Sensibility

Balance. As encouraging as this research on the common factors is to some, it may be considered threatening to others. Treatment providers or other juvenile court staff members may feel their treatment experience is being called into question. A balance must be struck. Professional expertise will still be required and in great demand, but the strategies professionals employ will be of great consequence. To be a committed student of change requires a different focus—a focus on the client as the common denominator in behavior change. Duncan and Miller (2000) speak to this change of focus:

> Models that help the therapist approach the client's goals differently, establish a better match with the client's world view, capitalize on chance events, or utilize environmental supports are likely to prove the most beneficial in resolving a treatment impasse (pg. 59).

Sensibility. Court staff must avoid the extremism of "all-or-nothing" thinking. I do not advocate that juvenile court programs be "run" or governed by youthful offenders. Yet, the common factors do suggest that juvenile court programs work *with* the adolescents and families rather than *on* them. The result is a partnership, in the truest sense of the word. It does not mean "going easy" on youth or treating them with Pollyanna-ish indulgence. Rather, this research validates and confirms how rules and expectations—demands for lawful and healthy behavior—are actually part of a therapeutic structure.

In examining rules and how relationships truly "help" a client, Tallman and Bohart (1999) offer several explanations. These researchers describe how juvenile court programming, driven by "common factors," can advance responsible behavior by juvenile court youth. First, the increased interactions and bonding between staff and program youth lend a "corrective emotional experience" that is inherently healing—it mends the damage from toxic relationships in the youth's past. Second, juvenile courts provide an environment in which appropriate behaviors receive reinforcement. Appropriate behaviors must be encouraged and *demanded* by program rules—rules that do not waiver (i.e., reliability and predictability). Common factors programming will prompt staff to place high expectations on incoming youth and will raise the staff's belief in the capabilities and competency of program youth—and in communicating these beliefs to probationers.

It is troubling that the reverse is also true. Court staffs can expect very little and expect the worst. In one on-site juvenile court evaluation, I reviewed the orientation materials distributed to all prospective youth and family beginning the referral process. In brochures detailing the lengthy explanation of court services, I found 12 sanctions listed for breaking program rules, but these were paired with only 5 incentives for successful participation. It was easy to see what this staff was assuming and expecting from new probationers—and just as easy to imagine what first impressions were being communicated to the incoming youth. This experience points out the importance of applying incentives in a balanced ratio (versus a sole reliance on sanctions).

Third, court programs can provide new learning opportunities for youth—fostering the belief that there can be interest, fun, and peer camaraderie without illegal behavior and illicit drug use as the common denominator or raison d'être. Programs need to look be-

yond the reduction of delinquent behavior and facilitate aspirations, vocational interests, and hobbies *as identified by the youth.* Adjunct mentor programs, developed specifically for juvenile court assistance, offer tremendous support along these lines.

4. Becoming Change-Focused

One problem found with the medical model can be found in the issue of diagnosis. To render a diagnosis is akin to taking a "snapshot"—a moment-in-time photograph. The problem is that a diagnosis conveys an idea that conditions/behaviors described by the diagnoses are static and constant–even lending the idea of *permanence* to the youth's presenting complaints. However, Duncan & Miller (2000) offer a different—and a far more productive view:

> …The magnitude, severity, and frequency of problems are in flux, constantly changing. In this regard, clients will report better and worse days, times free of symptoms, and moments when their problems seem to get the best of them. With or without prompting, they can describe these changes—the ebb and flow of the problem's presence and ascendancy in their daily affairs. From this standpoint, it might be said that change itself is a powerful client factor, affecting the lives of clients before, during, and after (treatment) (pg. 68).

I have advocated that juvenile justice staff view court youth through a change-focused lens (Clark, 1996a; Clark 1997a & b). It is helpful when staff pay constant attention to change, listening and making themselves ever alert to how juvenile court youth are changing. Doing so will help illuminate their resources and the strengths that enabled or supported their change. There are two lines of inquiry to find this change:

Questions can be asked about "pretreatment change" (Berg and Miller, 1994; Clark, 1996b).

- After being arrested and petitioned, many people notice good changes have already started before their first appointment here at the court (referral to the juvenile court). "What changes have you noticed in your situation?" "How is this different than before?" "How did you get these changes to happen?"

Numerous studies (Wiener-Davis, et al. 1987; Talmon, 1990; Bloom, 1981) found a majority of clients make significant changes in their problem patterns from the time of setting up their initial appointment to actually entering treatment. Just experiencing some type of "start" or initiation of change can begin positive movement. In single subject research, this author found similar responses from juveniles and families newly assigned to my juvenile probation caseload. The important point is that teens and families rarely report these changes spontaneously. Probation officers must ask to elicit and amplify these changes or they remain obscure. When those that experience them ignore problems, they seem to move underground, where they grow and fester and return even stronger. However, when solutions are ignored, they simply fade away unnoticed, and more important, unused.

The second (and the more constant) search involves pursuing change that occurs between probation appointments. There are questions (Clark, 1998) to employ to expand on instances of change. When change is found, we need to investigate and amplify:

- "How did you do this?" "How did you know that would work?" "How did you manage to take this important step to turn things around?" "What does this say about you?" "What would you need to do to keep this going (do this again)?"

When sitting down with a probationer during a scheduled report time, I have found many court staff will check on issues by using a preformed mental list of questions. These questions asked by staff become routine: Were there any violations of court/probation orders this week? Have all urine drops been "clean"? How is her/his school attendance for this past week? Has s/he made all treatment sessions since last meeting? These questions are important—but they do not represent a full line of inquiry. When inquiries become habitual, they narrow the investigation and bypass many other instances of change. Open-ended questions that search for positive changes can be asked as well.

5. Build the Alliance

Two alliance-building issues for youth workers need to be considered:

1) This article has explained how influential the staff-youth alliance proves to be for inducing positive behavior change. However, a further understanding detailed by this research is that staff *must work fast* to build the alliance. Mohl, et al. (1991) and Plotnicov (1990) point out that the impact of establishing the alliance *early in treatment*, generally by the fourth or fifth meeting, is critical for treatment outcome (as cited in Duncan et al. 2000).

Many courts have an intensive start to their juvenile court programming. One example is found in the juvenile court operated in Santa Clara County, California. The Santa Clara program includes a "Jump Start" as a beginning phase to their programming. New probationers are intensely inducted and programmed for their first 30 days of participation. However, upon close inspection, most courts implement intensive starts as a one-sided orientation. It is solely constructed for the youth to understand and become acclimated to the program structure, schedule, and requirements.

I have seen many courts provide warm greetings to new youth and introduce the staff to them in round-robin fashion. However, this is not enough. What is needed is a corresponding intensive "jump" where adult staff make a concerted effort to meet, quickly become familiar with, and even charm the incoming participant. Some may chafe at the recommendation for staff to court and "woo" incoming offenders—but the research is clear: the *youth's perceptions of the alliance rules when it comes to outcome.* Skeptics need only consider Blatt, et al. (1996) and the largest outcome study ever undertaken (Treatment of Depression Collaborative Research Project), which found the type of treatment received was only minimally related to improvement, but was *heavily determined* by the client-rated quality of the relationship. Even if this study could be somehow ignored, there are approximately one thousand more studies on alliance that detail the same finding (as cited in Hubble, et al. 1999).

- There is a difference between "easy" and "simple." It is simple to understand how important the alliance is to outcome and place a majority of our emphasis here. To say alliance building is *easy* is quite another matter. All youth are different—and due to different personality styles, adolescents will evaluate the conditions of a positive alliance in differing ways. Bachelor & Horvath (1999) found almost half of all clients want to be listened to (empathic reflections) and respected, while another 40 percent wanted more "expert" advice from staff that promotes direction and allows self-understanding (to "make sense"

of issues). A smaller group wanted input and saw the alliance as a "50/50" partnership where they felt the need to contribute as much as the staff (counselor). Duncan and Miller (2000) state, "The degree and intensity of [staff/counselor] input vary and are driven by the client's expectations of our role. Some clients want a lot from us in terms of generating ideas while others prefer to keep us in a sounding board role" (p. 85).

Juvenile courts must not only court and woo new probationers, but survey and poll them continuously on their perceptions and ratings of staff-youth alliance. Simply put—you cannot modify or alter the court's approach to a youth if you don't know what the youth's perception is. Duncan and Miller (2000) cite a critical effort that has profound implications for the juvenile court process, "Influencing the client's perceptions of the alliance represents *the most direct impact we can have on change*" [emphasis added] (p. 75).

Postscript

This common factor research has only recently been published. Presently, many in the field of psychiatry, psychology, and social work are grappling with this direct-practice information. Juvenile court staffs and community treatment providers can begin the process of becoming familiar with these four common factors, and we too, must wrestle with how to become more aligned with these empirically-based findings regarding the pathways to change.

This article does not impeach current probation efforts—only the belief that court staff and treatment providers are the "stars" of change. Researchers have bemoaned the fact that several decades of inquiries of treatment outcome have studied all the wrong elements—the models, techniques and staff—while leaving out the most important contributor to change…the youth and family! Staff expertise continues to be vital and required; but only to guide and raise the three critical ingredients—the "tactical triad" of a youth's resources, perceptions, and participation. Offender and family motivation is not static or fixed, but is found on a continuum as it can be *influenced and increased.* Aligning probation practice to promote these common factors can help advance youth along this motivational continuum.

Most articles, whether research-oriented or practice-based, generally end with a call for further research. While I wholeheartedly support qualitative and quantitative analysis to increase practice wisdom, the call for "further research" occurs as routinely as a signature to correspondence.

I do not end this article with a call for more research. These factors, common to all treatment, have been illuminated from research studies—all counted—that number literally in the thousands. Instead, I implore juvenile court staffs to review this compelling research. Consider the idea of Bergin & Garfield (1994), who assert that rather than argue over whether or not "treatment works," we should address the more important question of whether the "client works!"

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Community Justice Initiatives: Issues and Challenges in the U.S. Context

David M. Altschuler, Ph.D.
Institute for Policy Studies, The Johns Hopkins University

IN AMERICA DURING the 1990s, a so-called "community justice" movement gained popularity. In theory, this movement offers a means to 1) bring less formal justice processes to neighborhoods, and 2) increase citizen involvement in crime control efforts (Barajas 1995; Bazemore and Griffiths 1997; Bazemore and Schiff 1996; Griffiths and Hamilton 1996). Whether referred to as community justice, restorative justice (Zehr 1990), or even community restorative justice, a wide variety of programs are said to illustrate principles that underlie the approach. Depending on the commentator, these programs include victim-offender mediation and reconciliation, conflict resolution, family group conferencing, circle sentencing, reparative probation, restitution, community service, and victim services (Bazemore and Griffiths 1997; OJJDP 1998; Umbreit and Coates 1999). Some commentators include community policing, neighborhood courts, and community capacity-building and revitalization (Barajas 1995; NIJ 1996a).

Bazemore and Griffiths (1997) warn that the term "community justice" may be too broad to properly reflect the specific influence of restorative justice principles. In both Canada and the U.S., for example, community justice sometimes refers simply to the handling of justice decisions by local communities or indigenous groups (NIJ 1996b; Griffiths and Hamilton 1996).

In such cases, the full set of restorative principles and goals may not be embraced. The purpose of this paper is to clarify the goals and values underlying the diverse approaches often categorized in the U.S. as "community justice," to identify inconsistencies and contradictions that may exist among these approaches, and to suggest points of divergence among the approaches that may cast doubt on the usefulness of the term "community justice."

Community justice is often contrasted with a retributive justice and punishment approach (Bazemore and Umbreit 1995), but it also has been framed as a counterpoint to traditional individualized treatment, where the argument goes that there is a lack of concern for crime victims, whether they be individual victims or the community (OJJDP 1998). Viewed by its proponents as a new paradigm that offers an alternative to sanctioning and supervision based on either retribution or traditional treatment assumptions (Bazemore 1994), community justice is sometimes described as a balanced and restorative justice model in which accountability, competency development, and community safety are each addressed.[1] In this instance, the primary goals are 1) to repair the damage or harm experienced by individual victims and the community, and 2) to meet the needs of victims, communities, and offenders (Bazemore and Griffith 1997).

It is immediately clear that depending upon the viewpoint an extremely wide variety of programs can fall under the label "community justice." Umbreit and Coates (1999) argue that community restorative justice is not a particular program, but rather a set of principles. Bazemore and Griffiths (1997) note that defining community justice as a program may serve to limit the vision and practical application of what they regard as a more holistic response to crime. The danger, of course, is that the community justice label becomes so all-inclusive that it ceases to have much meaning and it becomes whatever anyone says it is. As a result, it would be difficult if not impossible to identify, in practical terms, what it is about a community justice intervention that might produce the desired outcomes.

Critical Dimensions and Principles: Old and New Wave Community Justice

Recognizing this danger, scholars, researchers and proponents have specified to various degrees the principles or dimensions that reflect most closely the core values they believe embody community justice. For example, Bazemore and Griffiths limit the focus in their 1997 article on community justice decision-making to those efforts seeking to promote citizen involvement in sanctioning and dispute resolution. Included are victim-offender mediation (VOM) programs, family group conferencing (FGC), circle sentencing (CS), and reparative probation boards. They regard these four types of programs as the "new wave" of community justice initiatives. These can be contrasted with earlier efforts in America in the 1970s to promote community participation in justice through neighborhood-based dispute resolution centers.

A version of this article was presented at the International Conference Youth 2000: Managing a New World in Transit, *in September 2000 in Singapore.*

[1] There is a Balanced and Restorative Justice (BARJ) Project in the U.S. funded by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. It is a joint project of the Community Justice Institute, Florida Atlantic University College of Urban and Public Affairs, and the Center for Restorative Justice & Mediation, University of Minnesota School of Social Work.

Bazemore and Grifftiths (1997) observe that while the earlier efforts may have been designed to increase the public's willingness to seek and receive assistance, these efforts did not establish distinctive roles for citizens to determine the nature of the sanction given and how it could be carried out (see, for example, McGillis and Mullen 1977; NIJ 1996a). The dimensions of interest in these "new wave" community justice initiatives are:

- Who participates and what constitutes the community?
- What is the role and function of crime victims?
- Who are the gatekeepers?
- What is the relationship of the community to the formal justice system?
- What kind of preparation and follow-up occurs?
- How is enforcement and monitoring handled?
- What is the primary outcome being sought?

It becomes apparent from these seven dimensions that "new wave" community justice is essentially restorative justice concerns and priorities attached to approaches seeking more direct involvement of citizens in justice and corrections.

Umbreit and Coates (1999) focus quite explicitly on six restorative justice principles, utilizing these as the means by which several types of community justice programs (e.g., family group conferencing, circle sentencing, victim-offender mediation, reparative probation) can be classified. The principles are:

1) Crime violates social relationships, both personal and those resulting from being members of communities. (Nature of crime)
2) The proper goal of justice is to repair the damage done and restore relationships, personal and communal, to their original state to the extent possible. (Goal of justice)
3) Victims of crime must have the opportunity to choose to be involved in the process of justice. (Role of victims)
4) Offenders committing criminal acts must have the opportunity to accept their responsibilities and obligations toward individual victims and the community as a whole. (Role of offenders)
5) The local community and its resources must be brought to bear on the needs of victims, offenders, and their families as well as in prevention. (Role of local community)
6) The formal justice system must continue to work to ensure victim, offender, and family involvement that engages all participants without coercion. (Role of formal juvenile justice system)

In practice, the multiple goals of community justice along with the specific impacts and outcomes of primary interest being sought by the various participants and interests are not always clear-cut and congruent, which can be problematic and contribute to confusion, if not classic goal displacement. While accountability, competency development, and community safety may be of equal interest in community justice values and principles, it is critically important to determine the extent to which these three often mentioned goals are 1) conceptually consistent, logically related, and not contradictory; 2)specified concretely enough that it is clear what is required for their implementation; 3) actually being pursued (i.e., implemented) as specified; and 4) being met, meaning that the community justice intervention is having the desired result.

Imbalanced Community Justice

Balanced and restorative justice, at least in language, has been incorporated into the juvenile codes (i.e., state law) of states across America (Freivalds 1996; Juvenile Justice Update 1999; Levrant et al. 1999). Just how truly balanced the community restorative justice approach reflected in the codes is and how well the approach is being implemented remains a very open question. This is far from a purely theoretical or academic issue, as a diverse spectrum of often conflicting and adversarial juvenile justice and political interests have jumped on the community justice bandwagon. Such diversity of interest need not signal a new commitment to balanced crime control policy. According to Levrant et al. (1999, pp.5, 6):

> Conservatives and liberals alike support the emphasis on addressing the needs of crime victims and holding offenders accountable for the harm they cause (Clear 1994; Zehr 1990). Liberals, however, are most attracted to restorative justice because of its potentially humanistic and balanced approach to justice. Restorative justice moves away from a state-centered definition of crime to a definition that accounts for the injuries suffered by victims and communities (Van Ness 1986). Thus, rather than blaming or punishing the offender through incarceration, it focuses on repairing the harm done to victims and communities through a process of negotiation, mediation, victim empowerment, and reparation (Bazemore and Maloney 1994)…Restorative justice appeals to conservatives for different reasons. Conservatives see restorative justice as an extension of the victims' rights movement that seeks to involve victims in the criminal justice process and to compensate victims for the losses incurred from crime (Schafer 1976; Van Ness and Strong 1997). Rather than the balanced approach to justice advocated by liberal proponents, conservatives endorse restorative justice as a means of securing more justice for victims. In so doing, they often attempt to increase the punishment of offenders at the expense of restoration.

True to form, the conflicting political views about community restorative justice have found expression in numerous debates across America over what state law should specifically say. It appears in general that the conservative approach to community restorative justice, at least at this point, has prevailed over the liberal approach. Several examples highlight this observation. While the Illinois Juvenile Justice Reform Act of 1998 provides for teen courts and community mediation panels to hear relatively minor offense cases and gives victims in juvenile proceedings the same rights as victims in criminal proceedings, it also establishes new criminal history and finger-printing requirements, limits police authority to resolve certain delinquency cases without court involvement, expands existing provisions automatically transferring certain juvenile cases to criminal court, and authorizes longer detention of youth (Juvenile Justice Update 1999). In short, not unlike changes enacted in 1995 in Pennsylvania (see Table 1), it appears that most of the changes in Illinois law serve community protection and accountability goals. Particularly since the changes involving criminal records and expanded victims rights may have the most immediate impact (Juvenile Justice Update 1999), and since there can be a sub-

TABLE 1

Highlights of Changes to Pennsylvania's Juvenile Act From a Balanced Approach Perspective

New Provisions to Juvenile Act	Protection of Community	Accountability for Offenses	Competency Development
Dissemination of fingerprints and photos for investigation purposes	X	X	
Expansion of offenses excluded from juvenile court jurisdiction	X	X	
Changes in standards for judicial waiver	X	X	
Expanded public access to juvenile hearings	X	X	
Juvenile probation to provide schools with information an adjudicated delinquents	X		X
Court may order parents to participate in child's treatment/ supervision/rehabilitation		X	X
Retention of juvenile court jurisdiction to obtain fines, costs or restitution		X	
Juvenile files and records available for adult bail hearing	X	X	

Source: Juvenile Justice Update, 1996

stantial disconnect between statutory direction and actual practice, the issue of balanced community justice over the longer term should be of considerable concern. These examples are not unique, but rather illustrative of what has been taking place across America. Indeed, so called "get tough" reforms can be found in many of the provisions contained within state-level juvenile codes all over the United States (Altschuler 1999; OJJDP 1997).

Consequences, Contradictions, and Pitfalls

Beyond the issue of balance, several other lines of criticism have emerged regarding unanticipated consequences and pitfalls of community justice. Levrant et al. (1999) argue that community restorative justice should be viewed and implemented with great caution as it possesses the potential to do more harm than good and to have no meaningful effect on offender recidivism. Among the unanticipated consequences contemplated by the researchers are that: 1) it will serve as a means primarily to get tough with offenders; 2) it will not be restorative for victims, offenders, or communities; 3) it will be more of a symbolic than substantive reform; and 4) it will reinforce existing race and class biases in the American justice system.

Perhaps most ominous is the assertion by Levrant et al. that well-established principles of effective offender intervention are at best ignored, and at worse contradicted in the practice of community restorative justice. For example, when the matching of sanctions to offenders is primarily based on the nature and extent of harm caused by the crime, community restorative justice fails to recognize that the seriousness of the offense does not indicate an offender's risk of re-offending (Correctional Service Canada 1989; Goldkamp and Gottfredson 1985). Might low-risk nonviolent offenders be subject to unnecessary sanctions and services because concern about victim restoration outweighs concern over offender recidivism? This is especially troublesome since the application of intensive supervision and services to low-risk offenders can actually backfire and increase recidivism (Altschuler 1999; Andrews et al. 1990; Clear 1988; Clear and Hardyman 1990; Neithercutt and Gottfredson 1974). Levrant et al. further argue that victim-offender mediation and victim-impact panels provide only short-term confrontations with victims that fail to teach offenders pro-social ways of behaving. In short, Levrant et al. (1999, pp.22,23) regard as particularly "…disturbing that advocates of restorative justice have ignored the research on the behavioral change of offenders in favor of the hope–based on a new and unproved criminological theory–that brief interludes of public shaming will change deeply rooted criminal predispositions." They suggest that while merging community restorative justice and rehabilitation would be a daunting task, in no small part because of fundamental inconsistencies, it would still be worthwhile to explore bringing together the two paradigms.

Cultural Complexities

In another line of criticism, Umbreit and Coates (1999) warn that restorative justice efforts, particularly those involving conflict resolution (i.e., family group conferencing, circle sentencing, victim-offender mediation) are greatly influenced by one's cultural milieu, and thus, care must be taken to account for cultural differences that could easily lead to confusion or even disruption of the whole process. Differences in customs, communication styles (e.g., vocal inflections, pace of speech), and body language (e.g., eye contact, physical distance between conversants) can make the practice of community restorative justice exceedingly complex (Sue and Sue 1990). Particularly where great heterogeneity exists, such as in the United States, the potential for misinterpretation, bias, and discrimination cannot be overlooked.

Such concerns are hardly restricted to community restorative justice efforts. Community policing (Berrien and Winship 1999; Community Policing Consortium 1994) and community courts (Rottman 1996) are far from universally perceived as benign and fair in their administration of justice. Some victim rights groups have supported extremely harsh sanctions, favoring strong, tough de-

terrence and punishment over rehabilitation or restorative justice (Bazemore and Umbreit 1995; Elias 1993).

Conclusion

Going to the very heart of community justice is the fundamental question of whether goals and purposes associated with the constituent approaches that comprise community justice are irreconcilable to the point that the term itself has outlived its usefulness. To take one example, when victims or the justice system (i.e., prosecution and courts) in the United States believe that "justice" is synonymous with punishment and deterrence exercised through lengthy incarceration, it is often the case that other purposes, whether they be rehabilitative or restorative, are not of particular interest and may be regarded as a form of "coddling" offenders. "Doing time" in a facility is viewed by some as "justice" precisely because the sanction is seen as harsh, depriving, demanding, and properly retributive; any other purpose such as rehabilitation or restoration only serves to dilute and undermine the intent of punishment. It may be of no concern that the offender emerges embittered, angry, disadvantaged, or even vengeful. Similarly, when community justice exercised through neighborhood panels relies on a community service sanction that alienates or stigmatizes offenders, it can hardly be regarded as restorative even when the victimized party is satisfied with the punishment.

The ultimate issue regarding any of the community justice approaches mentioned is just how balanced each one is with respect to achieving accountability, public safety, and competency development. Given the distinctions and incompatibilities mentioned, one must ask how much of a balance between the three goals is feasible. If equivalency among the three goals is not realistic in practice, which of the goals is more likely to overshadow and dominate the others? Does this overshadowing of one goal at the expense of the others tend to occur more with particular types of community justice, certain kinds of offenses, or particular groups of people on the basis of income, nationality, race, age, etc.? In the final analysis, the potential for each type of community justice to truly provide either balanced, restorative or rehabilitative justice clearly requires close examination and rigorous research. If particular sanctioning approaches offer a more realistic potential to balance the goals of accountability, public safety and competency in a community context, then it would be far more meaningful and coherent to focus on the specific approaches and not on ill-defined, overly ambiguous, and confusing categories that make it virtually impossible to ascertain what specifically can be accomplished through the use of various community-based strategies.

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Restoring Justice to the Community: A Realistic Goal?

Susan Sarnoff
Department of Social Work, Ohio University

THE LAST HALF of the 20th century was the setting for extensive changes in the criminal justice system, many of which were precipitated by the victims' rights movement. Early victims' groups complained, quite accurately, that the criminal justice system had lost sight of victims, redefining and relating to them only as witnesses to "crimes against the state" (Schafer, 1977).

Since the 1960s, much has been done to improve the status of victims in the system, as well as to meet victims' financial and other tangible needs caused by crime (Karmen, 1996; Galaway and Hudson, 1981). Some observers even claim that such efforts are steps toward the development of a restorative justice system (Carey, 1995). Restorative justice is quite different from our present criminal justice system, however, despite isolated efforts to implement programs which reflect restorative justice elements (Zuni, 1992). Superimposing restorative justice components onto a system as adversarial and compartmentalized as our criminal justice system does not result in a restorative justice system. True implementation of restorative justice might require no less than a complete overhaul and reorientation of the justice system. In fact, the concept of a *criminal* justice system suggests the very issue to which victims originally objected: a focus on criminals to the exclusion of other parties affected by crime.

The adversarial nature of the criminal justice system (Dooley, 1995) and the separation of punishment and recompense into respective criminal and civil tort proceedings (Schafer, 1970) exemplify two of the major, longstanding impediments to transforming our *criminal* justice system to reflect a *restorative* justice orientation. A more recent third is the unwillingness of representatives of the victims' rights movement to have victims perceived as anything but completely innocent.

This paper will explore the inherent difficulties in implementing a restorative justice model. It will review instances in which restorative justice has been reflected in the criminal justice system, opposition to the restorative justice model and the requisite attitudinal as well as programmatic changes that would have to occur if restorative justice were to become more than a term applied, often inappropriately, to a range of criminal justice innovations. Finally, it will address the fact that the community is the most-ignored potential participant in restorative justice.

Elements of the Restorative Model

While there is no single definition of restorative justice, and ideas about it differ depending upon whether religious, ethnic, or proscriptive models are used, the concept encompasses several principles. Kurki (1999) observes that these include that:

- crime consists of more than violation of criminal law and defiance of government authority;
- crime disrupts victims, communities, and offenders;
- the primary goals of restitution are the repair of harm and healing of victim and community;
- the victim, community, and offender should all participate in determining the outcome of crime–government should surrender its monopoly over the process;
- case dispositions are based on victim and community needs, not solely on offender needs, culpability, danger or criminal history;
- components reflect a holistic philosophy.

The model used by the Balanced and Restorative Justice Project at the University of Minnesota is "founded on the belief that justice is best served when the community, victim and youth[ful offender] receive balanced attention, and all gain tangible benefits," (Center for Restorative Justice and Peacemaking, 1999). This is an ideal balance, but also limits use of the program to offenders involved in the juvenile justice system.

Restorative justice prioritizes reimbursement to the victim and the community over other forms of punishment, and is generally reserved for nonviolent offenders (Carey, 1995). In some cases, offenders are sentenced to work on projects in local neighborhoods; while in others, court staff link offenders with drug treatment, health care, education and other social services, with community members rather than criminal justice professionals charged with developing sanctions (Kurki, 1999).

The most extensive examples of restorative justice within the borders of the United States are those of indigenous tribes. These systems of justice exist apart from the Anglo-American system, which long disdained and undermined them. They have recently regained attention and respect from outsiders, however.

Indigenous methods of conflict resolution include dispute resolution, peace making, talking circles, family or community gather-

ings, and mediation. These methods are immersed in tradition and religion, and incorporate use of ritual, cleansing, ceremonial sweats, fasting, and purification. It is no surprise, then, that they have as their goal no less than the restoration of mental, spiritual, and emotional well-being and communal harmony. Verbal accountability by the offender and the offender's family, remorse, and face-to-face apology and forgiveness are important aspects of the process, which seeks to renew damaged personal and communal relationships so vital in small, tribal cultures. These processes are used even when there are no identified victims, as in problems between parents and children, individual misconduct, and excessive alcohol consumption. In such cases, anyone concerned with the offender's welfare may participate (Melton, undated).

It is interesting to note that these "primitive" forms of justice recognized centuries before more familiar criminal justice systems that crime, delinquency, and deviance are symptoms of larger problems which can be attributed to families and communities as well as individuals (Melton, undated). Similarly, these forms of justice require a deep understanding of how behavior affects others, a willingness to acknowledge that behavior results from choices that could have been made differently, and action to repair that harm and make changes necessary to avoid such behavior in the future (United States Department of Justice, undated).

Zuni (1992) notes that restorative justice requires an understanding of the difference between vertical and fluid modes of communication. It also requires the promotion of resolution and healing through trust, rather than the use of adversarial and conflict-oriented methods; incorporates representation by family members rather than by strangers; and focuses on victim and communal rather than individual rights (Zuni, 1992). In reality, however, programs operate on a continuum—some strongly reflect restorative justice priorities while others are closer to traditional criminal justice models (Umbreit and Greenwood, 2000a.)

Many religious groups have developed ministries based upon what they refer to as restorative justice principles. These differ markedly from the tribal model, particularly because they do not replace the criminal justice system, but are superimposed upon it, generally after sentencing has occurred. In fact, the Mennonite version of restorative justice, which is undoubtedly the most fully developed, "addresses injustices in the criminal justice system…with a conviction that healing…comes only with truth-telling… emphasiz[ing] accountability by offenders, safety and healing for victims, and hope, the possibility of change, for all people," reflecting more of a reiteration of the criminal justice system, and an emphasis on rehabilitating offenders by encouraging them to confess and repent than on balancing responsibility and restoring relationships among participants. Typical programs provide services to those affected by the criminal justice system, opportunities for community participation in healing, and encouragement to reduce abuses and enhance the effectiveness of the criminal justice system (Mennonite Central Committee, undated). But it is the very nature of the criminal justice system that runs counter to restorative justice principles; so enhancing it, rather than replacing or at least reforming it, is antithetical to restorative justice regardless of the worthy intentions of the program implementers. Even proponents of restorative justice acknowledge that many disparate programs exist that are referred to as restorative justice programs, with some doing so inaccurately (Evers, 1998), and others misapplying restorative justice principles to inappropriate victims, offenders, and crimes.

Restoring Victims or Restoring Justice?

In response to organized efforts by victim groups, many of the previously-unmet needs of victims were satisfied by government during the last third of the 20th century (Karmen, 1996; Galaway and Hudson, 1981). Victims are now better informed about the criminal justice process, and have the right to be heard in regard to sentencing and parole. But these rights can be exercised in only the small proportion of cases in which crimes are reported and criminals are caught and convicted.

Victims have a greater chance of being financially "restored" after crime (or more accurately, being given access to resources that make such restoration possible). But, contrary to restorative justice principles, offenders are often circumvented in that process. Offenders have been assessed fines and fees to support victim compensation (United States Department of Justice 1990), and restitution orders and collection have increased in some jurisdictions (Dooley, 1995)—but only a few, primarily corporate, criminals pay for the bulk of victim compensation (United States Department of Justice, 1990). Restitution also continues to go uncollected, when ordered, more often than not (Victims Assistance Legal Organization, 1996); due primarily to the reality that most criminals are poor (Geis, 1967), and imprisonment makes it nearly impossible for offenders to meet restitution obligations (Elias, 1993).

Historically, restitution was designed to benefit the offender rather than the victim (Edelhertz et al., 1975). Restitution was viewed as less severe, more humane, and rehabilitative toward the offender. It also had benefits for the criminal justice system and society, because it reduced the "need" for vengeance, and resulted in the offender's remaining integrated in society (Galaway, 1977). While restitution is still used for minor crimes or young first offenders in lieu of other punishment, the current victim focus uses restitution less for leniency than for efficiency or added punishment.

Restitution has many potential merits that dovetail with the goals of restorative justice: Garafalo (1975) observed that it can relieve prison overcrowding (when it is used traditionally, that is, in lieu of prison rather than in addition to it); it can place the burden of compensating the victim on the offender (Barnett and Hagel, 1977); and it can arguably offer treatment benefits to both the victim and the offender (Goldstein, 1974). These are theoretical advantages, however. The reality of restitution is far less perfect, because the majority of offenders are never caught or convicted; many offenders who are convicted are indigent, unable to work, or simply unwilling to make restitution payments; and poor collection methods fail to obtain most of the restitution that is ordered by the courts (Galaway and Hudson, 1981). For example, in 1994, restitution was ordered from only 32 percent of the offenders convicted of violent crimes (Maguire and Pastore, 1994), despite increasing restitution mandates. Sometimes, too, restitution is a condition of parole, but parole violation or subsequent crimes lead to reincarceration. And even when it is both ordered and received, restitution rarely arrives in time to actually help with the costs for which it was intended (Elias, 1983). In fact, victim compensation was created to respond to victims' immediate need for assistance whether or not they would eventually receive restitution. Finally, particularly as a result of mandates, restitution does not always involve negotiation between parties.

A study conducted jointly by the New York State Division of Criminal Justice Services and the New York State Crime Victims Board (1988) found that many victims elect not to request restitution because they have received or are eligible for victim compensation, which tends to be more timely, more certain, and better keyed to victims' needs. As the bulk of crimes are committed by criminals while they are young (Wilson, 1975), it is no surprise that so many are indigent, and only a handful of states make parents responsible for restitution ordered from minors. However, no studies have attempted to track criminals to determine how many would be able to pay restitution later if these costs followed them throughout their lives as child support, debts to the IRS, and student loans increasingly do.

This suggests that restitution may be appropriate in more cases than are currently realized, and that practice, rather than policy, is the cause of its underuse. Additional evidence that restitution can be used more frequently is that Vermont, which mandated reparations in all criminal offenses in its state constitution in 1791 (Dooley, 1995), was the last state to develop a victim compensation agency.

For restitution to reflect a restorative justice orientation, however, it must also involve discussion between the victim and offender and some level of agreement on the necessity for the payment, the appropriateness of the amount and payment schedule, and acceptance of satisfaction of the claim once it has been met. In fact, perhaps the greatest examples of restitution as a component of restorative justice are the vast but undocumented number of cases in which offenders privately and voluntarily make peace with their victims to dissuade the victims not to report their crimes. While the criminal justice system generally frowns on such arrangements unless the crimes are very minor and the criminals are juveniles, there has been no systematic study to determine the effectiveness of such private arrangements, or whether they ever produce better results than those formalized by the criminal justice system.

Victim-oriented legislation has also increased victims' rights to sue their offenders civilly. Yet again, offenders are often unknown, victims often cannot afford the time and expense to bring tort actions against them (Wolfgang, 1965); and because perpetrators of crimes are typically poor (Geis, 1967), judgments against them are often uncollectible. Lawsuits against offenders are also antithetical to the restorative justice model because the process is so adversarial.

Opposition to Restorative Justice

For restitution to reflect restorative justice principles, it must enable victims and offenders to come together in a "meeting of the minds" (a face-to-face meeting, while usually encouraged, is not absolutely necessary to effect this). It requires more than restitution: It demands that negotiation of amounts and payment mechanisms address the suffering inflicted and the payer's assumption of responsibility for at least some of that suffering. As noted, this does not always occur, and even when it does, restitution rarely takes into consideration the effects of the crime on people other than the primary victim.

Presser and Lowenkamp (1999) observe that offenders are generally selected for participation in restorative justice programs according to the types of crimes they have committed and their willingness to participate, but that these "screening" mechanisms may be inadequate. They recommend developing mechanisms to determine whether the offender has the cognitive and expressive skills necessary to make the interaction a positive experience for the victim and the community. In this sense, willingness must be defined as willingness to express remorse and accept responsibility, rather than mere willingness to participate in a procedure that may result in a more lenient sentence.

Presser and Lowenkamp (1999) also note that victims should be screened to ensure that they truly wish to participate, rather than being pressured to do so or to express forgiveness to the offender that they do not really feel. It might be added that victims should be screened not only for these factors, but to ensure that their expectations are not unrealistic, which could lead to disappointment if those expectations are not met.

Community attitudes affect many aspects of restorative justice programs, including the types of offenders and victims referred to them, how they are funded, and the backgrounds and qualifications of their volunteers (Umbreit and Greenwood, 2000b). Bazemore (1998) observes that judges commonly act as gatekeepers to restorative justice projects, but that their methods vary and, in the absence of clear selection guidelines, judges may use restorative justice mechanisms inappropriately. In many cases, too, criminal justice personnel are so threatened by alternative methods that they resist them in all cases (Umbreit and Carey, undated). There is also an underlying dilemma regarding whether the purpose of the justice system is punishment or correction (Umbreit, 1998).

Victim-offender reconciliation and mediation programs, because they seek to "reconcile" not only financial accounts, but also emotional ones, are especially effective when the victim knows and still has some positive feelings for the offender, and is therefore reluctant to engage in an adversarial process, as well as when fault is shared. This is common in bar fights between friends, in adolescent-parent disputes and even in some marital altercations.

But victims are often discouraged by attorneys and victim advocates from taking any responsibility for the circumstances that placed them in harm's way. While such cautions may be necessary to win a case in our adversarial system, it does disservice to the healing of victims: It not only thwarts the restoration process, but limits victims' ability to learn from mistakes and change behaviors that place them in danger. This also impedes victims' healing, because it is harder to feel safe when attempts to assess danger are countered with assertions about the randomness of crime.

Karmen (1991) analyzed the "blameworthy" actions of victims and noted that they can be categorized in three distinct ways:

- *victim facilitation*: making the criminal's task easier by neglecting security precautions;
- *victim precipitation*: risk-taking behavior on the part of the victim;
- *victim provocation*: inciting acts that instigate violent responses.

Karmen's analysis is a modern distillation of the more extreme one of von Hentig (1948), who believed that all crime was "caused" by the interaction between offender and victim. Many victims clearly bear no blame for the crimes committed against them, and are ill-served by a system that abandons the constructs of guilt and innocence. But recognizing the victim's culpability, if any, is an important aspect of balancing justice. Some victims do bear some blame for crimes committed against them, such as those who provoke violence by making threats or using racial epithets. Other victims, while not provoking violence, take excessive risks or are careless about security measures. Still other victims are forced into unsafe positions unwittingly (as when expected security devices are absent or malfunction) or due to poverty. In such instances blame might be diffused, even if the victim is blameless. Restorative

justice can address these distinctions and mete out responsibility accordingly, although it is rarely used in this manner.

When they are used at all, restorative justice methods are often used to handle cases defined by the criminal justice system as too "minor" to warrant more traditional treatment—although what is minor to the system may not seem minor to a victim (Karmen, 1996). And this points up another potential pitfall in implementing restorative justice: that it can be misused for inappropriate cases or political purposes.

Perhaps the most useful, but also most controversial, application of restorative justice is with people in ongoing relationships. (This suggests why it is common to tribal, intentional, and other small communities, in which virtually all relationships are ongoing.) Restorative justice is in many ways well-suited to these cases, because it assumes that many past behaviors led up to the incident in question as well as participants' feelings about the incident, that this totality of behaviors affected others in the community as well as the victim and offender, and that settlement must look to future prevention as well as to the incident in question. Victim groups have been reticent to acknowledge that mutual patterns of behavior are ever a factor in violence, particularly domestic violence. And there are clearly cases in which this approach would be wrong. In addition, modern societies are less concerned than are traditional ones with repairing troubled relationships and enabling participants to interact peacefully if not lovingly.

Mediation can also reflect power differentials among parties. People with more negotiating skill—or with less to lose—may always have the advantage in mediation. While some experts claim that mediation is "dialogue driven," rather than "settlement driven" (Umbreit, 1998), this distinction is more dependent on the program and the orientation and skill of the mediator (Umbreit and Greenwood, 2000b.)

Substantive and procedural due process issues, such as avoiding coercion and achieving fundamental fairness, so that efforts and results are acceptable to all parties, participation is voluntary, and all parties understand the implications of their participation, are vital if restorative justice is to be effective (National Institute of Justice, 1998). As noted, restorative justice may be inappropriate for many, and perhaps most such cases, especially if serious violence is likely to recur. However, in cases of minor or mutual violence, and in cases in which an ongoing relationship is desired by both parties and would not pose significant danger, it might offer the best hope. This seeming paradox reiterates the need for further research and screening to determine the factors which make mediation and reconciliation successful. Research does demonstrate that restorative justice programs tend to be isolated from other facets of the criminal justice system, which has a negative impact on program operations (Umbreit and Greenwood, 2000b), and that program staff are not always trained to understand and mediate cultural differences that can contribute to crime or hamper the mediation process, such as misread body language perceived as disrespect (Umbreit and Coates, 2000).

These issues raise two concerns about the types of cases appropriate to restorative justice modalities. On the one hand, it is clear that restorative justice is not appropriate for all offenders, victims, or types of crimes. Power differentials among intimates can challenge the bases for mediation (Presser and Lowenkamp, 1999). On the other hand, the type of crime may be less significant than the willingness of participants to negotiate and the motivation of participants to reconcile their differences interpersonally.

Potential Applications of Restorative Justice

What might benefit victims most, while essentially being what most victims (although not necessarily the most vocal victims) want, is a less adversarial criminal justice process. This would be especially helpful in cases where both participants bear some blame for the altercation or when the participants have an ongoing relationship. However, in all criminal cases the adversarial system discourages offenders from admitting guilt or showing remorse.

Witnessing the offender's guilt and remorse is healing to victims, and helps them forgive the offender and put closure on the crime. Restitution has the best chance of being awarded, and paid, when offenders admit guilt and show remorse. Making the criminal justice system less adversarial, and linking it to restitution, could lead to a remelding of civil and criminal procedures, so victims would not have to go to court a second time to obtain civil damages. However, for this to occur, hard choices would have to be made: Should the strict procedural protections of criminal litigation, the looser requirements of civil procedures, or some combination of the two be used to determine criminal guilt on the one hand and civil fault on the other? Or should a universal benefit, such as victim compensation or even national health care, replace the right and need for victims to sue civilly?

Victims should not be denied the right to obtain damages, but there may be other ways to satisfy victims' need for justice. Our system translates damages into dollars, but a different system might translate "pain and suffering" into healing or forgiveness. (Note that this does not incorporate third-party negligence, which would have to be addressed in a separate forum in any case.)

The criminal justice system has defined crime in terms of offenders' acts, but to victims, other characteristics or circumstances of crimes, such as the relationship of the victim to the offender or the violence of the act, are often more significant. The criminal justice system defines crimes as assaults, sex crimes, and homicides, for example, but these distinctions say little about the victimizations they represent. Was the assault an unprovoked shooting that left the victim paralyzed, for instance, or a punch in the nose that may have been provoked by ethnic slurs or drunken advances?

Forgiveness may be difficult for victims, but it results in better resolution and healing than does revenge (Henderson, 1985). Furthermore, harsh punishments give more power to the government, which is not generally the "friend of victims" it purports to be (Brants and Koh, 1986). One way to encourage forgiveness, or at least reconciliation, is to recognize how both victims and offenders are victims of circumstances that promote injustice, and that both share an interest in preserving human rights (Elias, 1993).

Reimbursement itself can serve as a means of reconciling victims, particularly if the crime was property-based or resulted in only minor injury. Reimbursement demonstrates offenders' willingness to make their victims whole again, which can improve offenders' self-image as well as victims' image of offenders. Of course, failure to comply with a restitution order can result in the opposite reactions.

Changes Necessary to Implement Restorative Justice

Restitution could be improved if methods of apprehending and convicting criminals, performing and paying for prison labor, deter-

mining indigence, and collecting restitution from the non-indigent were improved. One factor that may facilitate this is the increased use of telecommunications in work situations. In theory, some offenders should be able to bring their work to prison via telecommunication, lessening the need for corrections departments to find jobs for all inmates and enabling some workers to earn more than prison wages. This has yet to be tested, although some prisons currently provide telecommunication work for their prisoners. These include the South Ventura California Youth Facility, which operates TWA's reservation operation. But this very system exemplifies the problems as well as the advantages of prison labor—the program was set up to counter a TWA strike (Parenti, 1995).

Requiring restitution to be paid while the offender is in prison is fraught with further problems. A substantial raise in prison wages would be necessary in any system requiring restitution to be paid by incarcerated offenders. In the United States, businesses have opposed this as unfair competition, and labor unions view it as potentially reducing jobs (Jacob, 1977). Therefore, prison labor has been seriously curtailed since the Great Depression.

Alternative sentencing, sometimes called community service or service restitution, is one alternative to traditional criminal justice practices that incorporates elements of restorative justice (Eglash, 1977). One of the benefits of alternative sentencing is that it costs approximately one-tenth of the cost of incarceration (Nassau County Community Services Agency, 1989). Restitution availability might be improved if more criminals were permitted to serve alternative sentences. DiMascio (1995) identified escalating punishments, including probation, intensive probation, community service, day reporting, house arrest, and electronic monitoring and halfway houses, as methods used to punish criminals without incarceration. While these may not be appropriate for violent criminals or nonviolent recidivist criminals, they increase the possibility that some offenders can remain employed at their regular jobs, making it easier for them to pay restitution.

Vermont streamlined its restitution system in 1994 by ordering that restitution that compensates victims already reimbursed by that state's victim compensation program be automatically forwarded to the state program. And California regularly publishes a "Restitution Review" newsletter that provides information on restitution and commends those judges who have ordered the most substantial fines (Crime Victims Compensation Quarterly, 1994).

During the debate on how to improve the collection of cash restitution, some innovators have tried more unusual methods. A judge in Memphis allows victims of property crimes to go to the home of the offender, under guard, to select their choice of the offender's possessions. In one such case, a victim found satisfaction in destroying a photograph of the offender's girlfriend.

A great deal of attention has been paid to restitution and other forms of victim reimbursement, not because they are the only forms of restorative justice, but because they are the most extensive, long-standing, and well-developed. As noted, mediation and reconciliation programs are more controversial because they apply to so few cases and because some individuals find them ideologically repugnant.

Restoring the Community

So far this discussion has focused on the elements of restorative justice that have currently been implemented, even if some are used in only certain locations or for discrete types of crimes or criminals. When the community component of restorative justice is addressed at all, it is most often in using community *members* in roles as mediators, or in community *service* as offender punishment. Few programs reflect recognition of the community as *victim* in any meaningful way. Perhaps this is inevitable, given that victims and offenders have constituencies and advocates, but few if any communities have advocates that enable them to be perceived as victims. This is unlike Eastern European countries, which have traditionally measured the magnitude of crimes by the number of people they affect, and have used this as the primary determinant of harm and punishment (Separaovic, 1985), reflecting a unique recognition of community rights.

Restitution, again, has been found to significantly reduce recidivism among juvenile offenders (United States Department of Justice, 1992), suggesting that its early and consistent use could contribute to crime reduction. Crime prevention is one of the ways that restorative justice can restore communities as a whole. Another form of crime prevention is retraining of criminals who have used crime as their primary means of income. While this is conceptually sound, it is not clear that it is effective in practice. Typical retraining programs train criminals for hard or minimum wage labor, which may not have the desired effect of inducing offenders to turn away from crime, since many criminals commit crimes not because there is no legitimate employment available to them but because the employment that is available to them is harder or less lucrative than criminal activity.

Sentencing circles are a form of restorative justice that rely on community members to establish sentences and see that they are carried out. Yet "community" in this sense is a source of service providers, and limited to those members willing to donate their free time to the process. This may leave out a large number of community members, and more significant, may result in a group that is far from a cross section of the community. (Paying community members as jurors are paid might mitigate the latter concern.)

Sentencing circles often bear responsibility for mentoring offenders to help them carry out their sentences, which may include restitution, community service, letters of apology, drug treatment, or job training (Simon, 1999). Peacemaking circles go to the heart of restorative justice, as they help victims make sense of the offense, help offenders understand the harm done, and help all involved to understand what led to the event, how it might be made right, and how offenders can regain the trust of the community after successful completion of their "sentence" (Pranis, 1997).

A very practical and effective use of community restorative justice is the creation of work crews made up of petty criminals who vandalize property or cover it with graffiti. While this is one of the more common forms of community restorative justice, it also reflects the unusual case in which the community is the actual, primary victim.

It is more unusual for the community to recover damages in cases where there are traditional victims. An interesting example of this is an Iowa case in which the judge granted 25 percent of a $4.2 million civil suit settlement to the victims, and the remainder to the Iowa State Reparations Fund (*Newsday*, 1992). The couple sued for less than $1 million, but the jury was so outraged by the crime (the couple was one of many videotaped through the hotel's mirror) that it more than quadrupled the requested award.

None of these approaches go far enough, however. Consider drunken brawls after professional sports events. While the responsibility of offenders should not be minimized,

society's obsession with sports and tolerance of public drunkenness clearly affect such activities. If the community is to assume the role of victim at times, it must also accept the role of offender at others. Similarly, many crimes affect perceptions about genders, age cohorts, racial and ethnic groups, and so forth. Offenders, and in some cases even victims, need to be held accountable for ways that their behavior affects perceptions of groups to which they belong, and atone to that community.

Communities suffer in many ways from crime—not only from vandalism, but from notoriety, drops in property values, citizen fear, and loss of trust and community. Restorative justice could help in many such cases if, during reconciliation, mediation, or other meetings of victims, offenders, and other affected parties, damages to the community (including damages to infrastructure, values, and perceptions) were assessed and means of restoring the community, or undoing the damage to the degree possible, were determined. In fairness, community responsibility for crime should also be considered.

Conclusions

Full restorative justice is incompatible with our present criminal justice system. Although some elements of restorative justice are in use in isolated areas and cases, this use is not only extremely limited in scope, but is focused on victims, and to a lesser degree on offenders. The community as a whole has not received attention from those implementing restorative justice components. While there could be many benefits to extending such implementation, it would require a major overhaul of our criminal justice system and diversion of attention from victims and offenders alone to the broader causes and effects of crime. Yet this is the only way that true restorative justice can be achieved.

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Prevention Roles for Criminal Justice Professionals

Eric T. Assur
Safe and Drug Free School, Fairfax County Public Schools

TRADITIONAL PROBATION and parole services have rarely played a significant role in providing delinquency prevention services. Instead, criminal justice professionals have worked diligently to rehabilitate the adjudicated or convicted adolescent or adult offender. Their mission has been one of rehabilitation and behavioral modification and control. The parents, assisted by the church, the community, and the school, normally cooperate in raising youngsters. Only when the child-rearing and educating process breaks down do most law enforcement officers or criminal justice representatives get involved. Large caseloads' demands on officers' time have often justified the lack of prevention services–even those that are mandated in the codes of many states or jurisdictions.

But recently this situation has begun to change. The public schools, for example, have recognized the benefit of inviting a broad range of community servants to assist as partners in the field of early childhood education. They have learned from the results of the federal Head Start programs begun for disadvantaged three- and four-year-olds in 1964. Children with the Head Start experience do better in the future than similar youth who lack the Head Start experience. In fact, children with two years of services do better than youth with only one year in the program. The entire family benefits from the parental inclusion, home visits, and parental education that is a part of the program. This family involvement or Head Start model can easily be expanded to create a menu of early childhood services that allow a variety of agencies access to the young children from "at risk" families. Justice system professionals have found a place among these agencies by volunteering mediation, mentoring, tutoring, street law, and similar prevention endeavors with at-risk youth.

Research-based models have demonstrated that early childhood services can ultimately yield fewer future criminal justice clients and perhaps lower future probation caseloads. Many of the early childhood models have been highlighted in a series of Department of Justice (Office of Juvenile Justice and Delinquency Prevention) bulletins on resilience-building through family, school, and justice agency partnerships. Children benefit and participants in multi-agency projects learn a great deal from one another. Police, sheriffs, and probation agencies can often model relationship building and share their special insights with early childhood nurses, teachers, and school administrators. For their part, criminal justice professionals can learn a great deal about the families and communities they serve through the teachers who spend many hours a day with children. Safe Schools and Healthy Students programs, and others funded by federal Justice, Health and Human Services and Education agencies, have sought to benefit needy communities and "at risk" students through a variety of multi-disciplinary service delivery systems. Expanding and translating programs that have proven successful improves the lives of young children and reduces risk factors. The more *resilient* children become the less likely they are to join gangs, quit school, or live a life of delinquency and substance abuse. The children benefit and the agencies benefit from the changes in milieu and the process of collaboration. The approach is similar to that used by Red Cross swimming or drown-proof programs. If very young children can be taught to swim at an early age, they will forever be safer when near the water. Children who can resist the temptations of the streets, who feel better about themselves, who practice conflict resolution skills, and who are law-abiding will both live longer and have better lives.

Criminal justice professionals should become aware of the SafeFutures Initiatives and the 164 current Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Mentoring (JUMP) Programs. Both of these federally supported and initiated research-based projects focus on "at risk" populations. The SafeFutures Program (The SafeFutures Program to Reduce Juvenile Delinquency and Youth Violence) is a five-year demonstration project supported by the U. S. Department of Justice, OJJDP and the Office of Justice Programs. The initiative links research on risk and protective factors for youth with current knowledge of prevention and early intervention in juvenile delinquency. The federal programs generally follow the research findings reported in *Communities That Care* by J.D. Hawkins and R.F. Catalano (1992) on risk and protective factors. Based on what we know about the causes and development of delinquency, the federal government funded a comprehensive array of SafeFutures programs by pooling federal and local funds to provide services in nine areas. Juvenile Mentoring Programs (JUMP) takes up one of the nine approaches. One of the more obvious findings was that many citizens who might be potential volunteers or mentors are repelled by the idea of working with children who have juvenile justice records. Therefore,

deputies, officers, and other justice system employees might best serve in mentor or other prevention roles with young children who are both at risk and difficult to match with volunteers. The research also confirmed the common view that intervention or change is more difficult the more delinquent the child. In other words, early intervention works best when it is very early.

Since 1996 the JUMP programs have sought to provide one-to-one mentoring for youth at risk of juvenile delinquency, gang involvement, educational failure, or dropping out of school. In 2000 there were 164 such federally funded programs. Some of the programs are partnerships between law enforcement and local education agencies. In other models the prosocial mentors were recruited, trained, and directly supervised by law enforcement or corrections departments. The Department of Youth Services in Boston hired adults to mentor youth being discharged from juvenile detention facilities. The Contra Costa, California Volunteers in Probation (VIP) program hired staff to recruit and train volunteers to mentor youth on probation. In a Fairfax County, Virginia Juvenile Court program the local bar association offered Continuing Legal Education (CLE) credits to 25 lawyers who trained as mentors and were matched with young first-time offenders being adjudicated for truancy. In the past several years mentor programs have become valuable tools to prevent delinquency and to support the rehabilitation effort with young adjudicated youth. In some jurisdictions the law enforcement community has taught school social workers and administrators much about delinquency prevention.

In recent years probation and parole agencies have begun learning to use risk assessment instruments to guide their recommendations to the court and to determine service levels. In some states the use of a standardized risk assessment instrument is a required section of the presentence investigation and report. Underlying the use of such an instrument is the empirical belief that past behavior is the strongest predictor of future behavior. The kind of home, neighborhood, and parents a defendant comes from also affect just how likely a defendant is to recidivate. Similar risk assessment tools help substance abuse professionals determine how likely an abuser is to relapse. All such instruments can suggest the level of treatment that is needed. The same risk assessment orientation can be applied to early childhood settings and used to guide prevention services. Some "model" suburban communities—those with low risk assessment scores or ample opportunities for youth—might need no special programs. Poorer communities with poverty, high levels of transition, addictions, domestic violence, single parents, and latch key kids score much higher in risk factors. It is in such communities that justice system professionals can best invest a small amount—perhaps only 20 or 30 minutes a week—of their time.

Some grant-funded programs offer overtime compensation to officers for their extra "volunteer" work in the community. In other programs, the police chief, sheriff, judge, or chief probation officer may recognize the benefit of positive community relations *and* prevention. Such leaders may offer compensatory time or the intangible credit or recognition that helps when performance evaluation or promotional considerations are being addressed. In most programs the criminal justice professionals visit an elementary school or apartment complex while making routine field visits. The once a week tutor or mentor program requires no added compensation, travel expense, or advance preparation. The child receiving the tutoring or mentoring need not even know exactly how this "helper" is employed.

Creative partnerships and meaningful roles with a young child or group of children can boost morale. Active involvement also helps balance realism and optimism. Working with children for even a few minutes at a time offers a nice change of pace, a breath of fresh air, or a short respite from the jail, courtroom, or street pain and pressure. And,there are other personal rewards. Rarely do criminal justice clients thank anyone for arresting them or for offering probation services. Young children, especially those from troubled homes, love to have attention. The firefighters who just drop in for a school lunch with their third grade buddies or the probation counselors who mentor once a week are routinely thanked for their time and attention. Examples of early childhood-criminal justice collaborative projects include individual, group, or class time with children and consulting time with school personnel. One large metropolitan area jurisdiction profiled below offers a number of examples of creative and flexible collaborative projects.

The Sheriffs Department, a group of 550 sworn deputies in a Washington, D.C. jurisdiction of close to a million residents, was one of the first groups to support the two-year *Socially and Academically Resilient Children* Grant in Fairfax County, Virginia. The grant itself was one of 40 awarded to communities, schools, or agencies throughout the nation by the Center for Mental Health Services and Center for Substance Abuse Treatment. The Fairfax County grant application included the law enforcement community and was built around the theme of building resilient children through a community-based multiagency approach. A senior Sheriffs Department administrator agreed to "adopt" a class of children who had already been suspended and transferred to one elementary school for a highly structured alternative, the Intervention and Support Program. The teachers, social worker and psychologist originally asked for an officer to visit weekly to play chess with these very high-risk fourth- and fifth-grade students. The sheriff exceeded all expectations. He set aside the last 45 minutes of the week for the students. The students looked forward to his Friday afternoon visits. He respected them and served as an honest and strong male role model. A theme of social skill teaching developed. The young men were taught to shake hands, speak clearly, and respect each other. The academic and behavioral program of the school was reinforced. The weekly visits also included a few law-related education discussions. Some of the jurisdiction's 30 additional Intervention or alternative schools will benefit from similar programs with other deputies. Female deputies now offer physical education programs and beneficial group sessions with the girls who attend alternative secondary school programs.

As needs have been identified, the department has taken the steps to provide a true community policing and community relations service.

Probation counselors have assisted teachers or counselors charged with offering a peer mediation or conflict resolution program for the elementary school. Probation counselors often have more experience in this field than the professional educator assigned this extra duty. Trained and State Supreme Court certified mediators were recruited to adopt the 10- to 15-student peer mediation teams in the elementary school setting. One school offered a two-day (8 hours total) mini-camp for new peer mediators. These students were trained by court staff and thus were able to offer mediation services when school opened in the fall. In prior years such programs were not operational until the middle of the academic year.

Long before the JUMP initiative, the public and private schools offered student mentor programs. Mentor programs can now be found in most school systems. Youth at any age can benefit from the time and attention of a caring adult. The time spent with a designated student need not be as extensive as that demonstrated in the well regarded Big Brother or Big Sister programs. The expenditure of as little as 30 minutes a week reading with a first or second grader can be helpful. Talking about hobbies, sports, the news, or life plans with an older child can be time well spent. Almost any time spent with a child who already scores high on a hypothetical risk assessment checklist will be of benefit. Visits to the school generally occur before school or during the lunch hour to avoid interfering with the normal academic program.

The Fairfax County Police Department, a 1050 sworn officer agency, first become involved in the *resilient children* grant by providing an after-school enrichment class. Auxiliary and crime prevention officers provided a once-a-week Police Science class for a dozen students. The already streetwise eleven- and twelve-year-old volunteers for this class enjoyed weekly video tapes, mock trials, crime prevention, and substance abuse discussions. Latch-key kids would rather stay after school than go home to an empty apartment. Since this initial class, bike squad, forensic specialists, school resource, and other officers have worked with elementary school populations. The police department also offers a Walk to School Safety Program each fall. Before the opening of school, the school education or safety officers conduct meetings at school with parents and young children. They then model safe walking and the buddy system and have crime prevention discussions as the group actually walks through the community. For many kindergarten children, this is the start of a relationship with the police department.

Court staff have assisted school administrators in dealing with non-attendance or truancy at the elementary school level. A paradigm shift in thinking has occurred in schools. Many communities, both urban and suburban, report a high incidence of daytime residential breaking and entering. Secondary school students often commit these offenses while skipping school. Police departments occasionally can demonstrate a significant decrease in daytime crime when truancy intervention programs are put in place. Court, police, and school personnel also realize that they can begin to prevent future truancy by appropriately responding to school absences at the elementary school level. Schools that ignore parental "failure to send" contribute to the development of attitudes that encourage future non-attendance or truancy. Justice system experts can share the insights they learned by doing social history reports and meeting with delinquent youth or criminal adults with educators. They can share the fact that successful students who regularly attend school rarely are the serious and repetitive delinquents in the criminal justice system. Educators who model or expect maximum attendance even for the kindergarten student establish a foundation for success. The sharing of student interns and consulting roles by court staff can assist elementary school administrators and families. Many of the families with truancy problems have legitimate problems that make school attendance difficult. Probation counselors frequently have a solid knowledge of community services and can assist school personnel in directing families to clothing banks, medical services, and other helping professionals that may not be known to the educators. Resources that are beneficial to youth have been shared with the elementary school educators, who have little experience dealing with services more commonly brought in after crisis or family disintegration. Early identification of problems has led to early treatment in some settings. Such interventions might not have occurred without multi-agency collaboration or application of a comprehensive services philosophy.

The early 2000 federal report, *America's Children: Key National Indicators of Well Being, 2000,* presents a good picture of our nation's youth and families. The profile indicates that 27 percent of our children are in a single-parent household. The overall high school completion rate has recently decreased to 85 percent. This decrease is higher in the Afro-American and Hispanic communities. Teen pregnancy and crime figures have improved in recent years. But poverty, substance abuse, addiction, and hunger remain a reality for millions of children. It is this population that is most at risk and most likely to benefit from early childhood prevention programs. Criminal justice professionals can play an important role in such projects. Both short-term and long-term benefits can be realized.

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A VIEW FROM THE FIELD

By Scott T. Ballock
United States Probation Officer, District of Nevada

Pro-Active Supervision

When those who operate a widget assembly line learn that their products are not being manufactured at an acceptable level of quality, repairs are made to the assembly line.

We work as probation and parole officers. Like the widget maker, we produce a product. The products we mold and shape are of great importance as they have the potential to do much harm or good in our communities, and our work is often far-reaching and long-lasting. Unlike the widget maker, should our end product go bad, we can easily deflect blame; the materials we've been given to work with have imperfections, and we don't have complete control over the manufacturing process, the assembly line.

We do, though, take part in the making of the product, perhaps the most influential part of the entire process. Clearly we believe we have influence, as we are quick to take credit for our successes. Headlines in our newsletters abound: Quick Action Averts Tragedy; Smart Thinking Helps Catch Bank Robber; Probation Officer Helps Prevent Overdose; Busted. So too must we take blame for our failures. It is our product; our assembly line.

Were we to honestly review our work--our product—would we truly be satisfied with what we are producing? Sadly, any independent, legitimate, and fair assessment would point to the obvious: The assembly line is broken and needs to be repaired.

As federal probation officers our marching orders are simple and straightforward. We are directed to enforce the court's conditions, to provide protection to the public, and to make positive changes in our offenders' lives. We are provided with abundant resources, power, and discretion in order to accomplish these objectives. Unfortunately, we have become—in many instances–little more than overpaid biographers. Rather than performing our jobs with passion, attacking the problems placed before us, we sit back and watch…and wait. We watch as our clients make mistakes; move in the wrong direction. We wait for them to stumble just enough so that they can be revoked. We hold out hope that they'll do well, that they'll move in a positive direction. But if they don't, we're there to notate their fall.

We keep journals of our clients' activities, documenting their lives. Joe Smith used drugs today. Jane Doe failed to submit her restitution payment this month. Finally, when our charges frustrate us enough or another agency catches them engaged in wrongdoing, we take them back before the sentencing judge. We watch and wait until something happens. Then we watch and wait for the judge to take action.

We could blame our relative passivity on any number of burdens: our ever-increasing caseloads, time constraints, or the frustrating demands of paperwork. We need to blame it on ourselves. The excuses carry no weight.

We have the ability to be agents of change, to demand progress. In fact, Congress has ordered us to do so. Title 18 of the United States Code, section 3603(3) states that, among other duties, "a probation officer *shall* (emphasis added) use all suitable methods… to aid a probationer or a person …under his supervision, and to bring about improvements in his conduct and condition."

But we have not embraced that mandate. Instead, we have forged an unacceptable alliance with mediocrity. We are permitted to keep writing our offenders' diaries as long as our cases don't blow up on us; don't end up embarrassing us. When an unfortunate incident does occur and case files are finally closely reviewed, we can justify our inaction ("how could the officer have predicted that could have happened?") or we can terminate the "unlucky" officer whose offender goes off the deep end.

To be sure, there are probation officers who do not fit this stereotype. I am fortunate to have met and worked with many of them. However, truth be told, there are many more who fail in our mission. It is for these officers that this article is written. It is also written for their supervisors and their chiefs, those persons in a position to influence change.

If passivity is our failing, then action is our goal. Only through action may we achieve our objectives. We must actively supervise our offenders. Other professionals understand this basic premise and embrace it. Teachers do not effect change if they leave their students to learn for themselves. Police officers do not protect the community if they turn a blind eye to problems or, worse yet, never venture out of the precinct house. Mortgage companies enforce the conditions of their loans, chasing after those who default on payments. No less should be expected of probation officers.

Pro-active supervision requires nothing less than commitment. Sincere commitment to our profession and to those tasks we are uniquely able to achieve. This commitment must be applied universally and routinely. From the very first meeting with an offender, to the last; from the search of an offender's vehicle to the mundane review of monthly supervision reports, supervision must at all times be conducted in a pro-active manner.

A Field Perspective

The first dynamic which needs to be addressed is the importance of conducting our activities from a field perspective. Save for confirming your client knows how to find the courthouse, nothing can be learned at the probation office which can't be confirmed in the field. Granted, there are occasions when an office setting is necessary (e.g., due to safety concerns), but for the most part, officers should be spending their time in the field. We should be visible, speaking with neighbors, employers, friends, counselors, spouses, parents, children, and siblings. We should be

developing these extensive collateral networks for each and every case. With their regular and frequent interactions, this network of individuals will be the first to know of any problems an offender is experiencing. Developing a trusting relationship with these persons will result in their contacting you when troubles arise. The employer will call should your offender fail to report for work. The neighbor will contact you when she observes suspicious activities late on Saturday night. Family members are concerned for your offender's welfare and will report suspicions if you have impressed upon them that your intent is to help the offender.

This concept is not new. Criminal justice scholars and researchers have for years been touting the benefits of pro-active, community-based policing. The central principle underlying this approach is that it involves a full partnership between the community and its police in identifying and ameliorating crime problems. Police agencies, however, have found it difficult to put this philosophy into practice. The overwhelming ratio of citizens to officers makes preventing crime a futile exercise. Predicting where and when crime will occur is impossible. Thus, police serve primarily as a reactive force, responding to problems after they occur. Probation officers, however, are not limited by such constraints. We have a wealth of knowledge about our limited number of offenders. We have a history with our offenders. With the benefit of presentence reports, input from our collateral networks, as well as our own understanding of those we supervise, we know the potential trouble spots and can pinpoint problems with amazing accuracy. Unlike police, we do have the ability to develop a full partnership between the community and our agency in order to identify and prevent problems. If we are doing our jobs correctly and creating this partnership, we should be having to re-order business cards on a regular basis.

Field work can be pro-active, purposeful, and productive, or it can be reactive and wasteful. It is perhaps the most important activity we perform, yet it has the potential to become routine and meaningless. Field work should be accomplished through unannounced home inspections in which the visits are issue-oriented and thorough. Too often we conduct door-step supervision, talking to offenders in the front entryway of their residence. Why are we afraid to venture in to our offender's living area, to thumb through his mail, to ask to see the contents of his wallet, to look in the trash, in his refrigerator or his car? We are his probation officer. We have been directed to ensure he is not engaged in criminal wrongdoing, perhaps not drinking alcoholic beverages, or in possession of certain items. If he is unable to pay restitution, shouldn't we confirm that he has not made any new purchases? That he hasn't been gambling? If he has a history of engaging in computer crimes, shouldn't we boot up his computer and make our way around his files? In sum, shouldn't we be using a common sense, pro-active approach to ensuring the protection of the public and the enforcement of the court's conditions?

We are required by law to "keep informed, to the degree required by the conditions specified by the sentencing court, as to the conduct and condition of a probationer or a person on supervised release, and report his conduct and condition to the sentencing court." (18 U.S.C. § 3603(2)). How can we be confident we know of the offender's situation when we don't look around, when we take the offender's word, when we call first to announce our arrival, or when our field days are so routine that offenders wonder where we are when the third Friday of the month has passed and we have failed to visit them as usual? If we are required to ensure that our offenders remain drug-free, why are we relying upon our in-house or contract drug-testing programs instead of conducting random, unannounced field urine tests? Shouldn't we occasionally conduct surprise back-to-back urine screens to keep our offenders honest? Why are we working bankers' hours instead of obtaining a truer picture of our offenders by visiting with them in the evenings and on weekends? Are we so concerned with quantity over quality that we regularly rush through visits, rather than engaging the offender in meaningful dialogue? In many cases we are—and by doing so we are failing ourselves, the court, the community, and the offenders themselves.

Dealing with Non-Compliance

Monograph 109, *Supervision of Federal Offenders* (pg. 39), states that the "management of non-compliant behavior is *the key* (emphasis added) to enhanced supervision." All too often, however, we take a casual, ineffective approach to non-compliant behavior, as though it were a burden. Often non-compliance is never even addressed. If it is addressed, sometimes it is merely reported to the court, a fact of which the offender may even be unaware.

Offenders are persons who have stood before a federal judge in all the grandeur of a courtroom setting and have been warned that violation of any supervision conditions could result in their being sent or returned to prison. They are then warned again by a federal probation officer, an official of the court who has the power to initiate revocation proceedings. Is it any surprise, then, that when offenders do engage in non-compliant behavior and nothing happens, they repeat the unacceptable behavior? *This is probation for grownups!* Offenders expect consequences, anticipate them, even need them, yet we regularly fail to provide them. We simply notate problems. Our failures may be due to our inability to accurately understand our roles and our objectives.

Effecting Change

Probation officers wear different hats; sometimes we act in a manner befitting a social worker, sometimes that of a police officer. But we are neither; we are probation officers. Probation officers who want to be police officers should go do so. Probation officers who want to be social workers should go do so. Those who want to be probation officers must recognize that we are professionals who should be able to both lend a caring ear and dole out discipline. Both must be done pro-actively in order to achieve any degree of success. If we ignore or give preference to either aspect of the job, we will fail in our basic mission. We must strive to pro-actively correct and modify behavior.

This basic principle requires that we respond to each and every instance of offender non-compliance with actions that serve to both sanction and correct the behavior. Sanctions can range from a simple oral reprimand to revocation of the supervision term. Sanctions serve to remind the offender of the importance of abiding by all conditions of supervision and to make him aware that nothing less than full compliance is acceptable. A pro-active officer will implement creative, appropriate sanctions. An offender who failed to show for a random urine screen and shrugged it off might be required to hand-write two hundred times "The burden is on me to prove I am able to remain drug-free." An offender who says he did not understand the basic supervision requirements could be required to spend a Friday evening attending a "re-orientation" meeting at the local halfway house. The possibilities are limitless.

An officer must not, however, settle for sanctioning an offender. The offender's be-

havior must be corrected as well. This can be accomplished through various means, including again reviewing with the offender what is expected of him (if, for instance, the offender has submitted his monthly report late), or referring him to a counseling program (if, for example, he has used illicit substances). Applying this pro-active two-pronged approach to violation behavior provides many benefits. It makes sense to offenders, who learn that their actions will have predictable consequences. This pro-active response also best allows an officer to effect change in offenders' behaviors. Most important, it results in officers addressing all necessary concerns: enforcing conditions, protecting the public, and helping the offender. Again, the key to success--no matter the endeavor—is being pro-active. We cannot sit back, watch, and hope that our clients will choose to change their behavior. We must take an active part in the process.

Some in our ranks may view this pro-active approach as too time consuming, too overwhelming, or too difficult to implement. They will make the usual complaints of too little time, too much work. They are content with their old, cliched "nice government job." We must vigorously strive to eradicate such complacency. Such officers must be shown that their adoption of a pro-active stance will only serve to increase their success and their job satisfaction, and to decrease their frustrations.

Pro-active supervision is simple, really. It's being committed to engaging in activities designed to help your offenders and to protect the community; not to make your life easier. It is establishing a genuine, meaningful relationship with your offenders, meeting with them at the halfway house before they are even under your jurisdiction. Pro-active supervision is actually reviewing the monthly supervision reports to look for problems, changes, discrepancies. Actually reviewing case plans to ensure that past and future planned activities are appropriate. It's truly listening when your offenders are speaking, and engaging in meaningful dialogue when staffing cases with counselors. It's confirming and verifying information (e.g., making a phone call to an employer after an offender has quit his job to determine the true reason for the termination). It's actually doing what you tell your offenders that you intend to do. It's keeping an eye open for potential job opportunities for your clients. It's demanding that the *offender* do the work, not the officer; setting deadlines for the completion of community service work and other obligations. It's being in control of the case, from beginning to end.

Venturing Out of the Box

If present constraints make it too difficult to engage in pro-active supervision, then the constraints should be broken. Ours is a profession which allows and even calls out for innovation, yet we seem to hold on to and pass down our old, outdated habits. Officers should unleash their minds, be creative, venture out of the box. From the simple to the complex, we have the ability to shape our profession and ensure its continued success. Most impediments to innovation and pro-activity we have placed upon ourselves. I do not mean to give short shrift to the pockets of innovation and pro-activity which do exist. Some officers, for example, have instituted creative team concepts, and many more throughout the nation have begun using laptop computers to allow them greater freedom to perform purposeful, pro-active supervision work. Some districts have adopted creative community service programs and sophisticated intermediate sanctions programs. Unfortunately, many lag behind, spending the majority of their time in the office, reacting to problems rather than attempting to solve them.

Federal Probation and Pretrial Services is currently undergoing a national assessment to review our effectiveness. Some fear major changes. We should welcome them. It is imperative that we take the lead in recognizing and fixing our flaws. If we are unable to do it, someone else may. We must make ours a profession that is useful and necessary. We must all work to make our organization's existence meaningful. We must repair the assembly line.

UP TO SPEED

A Review of Research for Practitioners

EDITED BY RONALD P. CORBETT, Jr.
Executive Director, Supreme Judicial Court, Massachusetts
AND M. KAY HARRIS
Associate Professor, Department of Criminal Justice, Temple University

Practitioners' Guide to Understanding the Basis of Assessing Offender Risk

BY ALEX M. HOLSINGER, ARTHUR J. LURIGIO, AND EDWARD J. LATESSA

The problem of predicting offender risk is fundamental to decision making at various stages of the criminal justice process. It has been addressed in several areas of criminal justice research and practice (Gottfredson & Gottfredson, 1980; Gottfredson & Gottfredson, 1986). The first objective and standardized instrument to predict risk was developed in 1928 by Bruce and his associates and was based on the records of 3,000 Illinois parolees. Then, beginning in the early 1970s and building on the seminal work of Bruce (1928), Glaser (1962), and Gottfredson (1967), investigators constructed quantitative instruments to help decision makers with a variety of judgments, including parole and bail release (Goldkamp & Gottfredson, 1985; Gottfredson, Wilkins, & Hoffman, 1978), sentencing (Hagen & Bumiller, 1983; Kress, 1980; Wilkins, Kress, Gottfredson, Calpen & Gelman, 1978), and prosecution (Williams & Farrell, 1990). In this article, we explore several issues related to the selection and use of risk classification tools, and we discuss the importance of classification systems to the success or failure of correctional judgments.

Use of Risk Classification

Prediction tools are widely used in adult and juvenile probation supervision, and they are a central component of case classification systems in these areas (Baird, 1981; Clear & Gallagher, 1985; Farrington & Tarling, 1985; Petersilia & Turner, 1987). Fifteen years ago, Clear and Gallagher (1985, p. 424) observed that "the vast majority of [probation agencies] have some form of paper-driven offender classification." A recent national survey found that over 81 percent of adult probation and parole agencies use objective and standardized risk classification tools (Jones, Johnson, Latessa, & Travis 1999).

Although risk classification tools are less prevalent in the juvenile probation field, in which much more emphasis is placed on rehabilitation and practitioner discretion, evidence suggests that tools used for risk prediction are being adopted with greater frequency to assess juveniles. For example, Barton and Gorsuch (1989) surveyed juvenile correctional agency officials and found that 47 percent reported using formal risk assessment tools in making classification decisions, 30 percent reported using formal classification procedures without a risk assessment component, and 23 percent reported that they used neither formal assessment nor case classification systems.

Actuarial Risk Classification

To apply actuarial (i.e., data-based) classification systems, probation officers score offenders on a risk scale usually comprised of variables that are statistically related to a criterion or outcome such as rearrest. Officers then apply the scale's composite, or summary score, to categorize probationers into different levels of contact or service reflecting the likelihood that particular cases will fail or recidivate.

Case classification systems assume that what probation officers learn about offenders through intake assessment tools will help them devise effective supervision plans. In addition, they assume that because an individual offender matches a larger group on background characteristics, that individual offender will also match that group's performance on the criterion variable. Actuarial analysis categorizes offenders according to base rates, that is, the proportions or percentages of subgroups that have exhibited the predicted behavior, such as recidivism. It should be noted, however, that recidivism can be measured in many different ways, some more useful than others (see Latessa & Holsinger 1998).

One of the major benefits of case classification systems is that they allow agencies to allocate resources and staff hours more optimally and effectively. Department staff have designed risk scales to identify probationers who require a great deal of surveillance as well as those who require minimal surveillance. In most models, cases assessed as highly likely to fail are placed on maximum supervision and those cases assessed as least likely to fail, on minimum supervision (Bohnstedt & Geiser, 1979; Clear & Gallagher, 1985).

In community corrections, structured risk assessment tools typically focus on the probability that an offender will recidivate. As we indicated earlier, on the basis of that determination, offenders are often placed into supervision categories (e.g., minimum, medium, and maximum risk) that are tied to differential case management strategies dictating the frequency and intensity of monitoring activities (e.g., in-office reports, field visits, arrest checks, urinalysis). High-risk offenders are usually monitored more closely than are medium and low-risk offenders. Simply put, risk classification specifies the quantity of contacts; in more general terms, risk classification "exists to promote the differential treatment" of offenders (Clear, 1985).

Advantages of Objective Risk Assessment

One of the major advantages of standardized and objective classification is that it replaces "gut feelings" with informed judgments. Although most current prediction models consist of standard procedures and guidelines, they might also involve an informal and somewhat haphazard process grounded in decision makers' personal judgments and subjective reactions to cases. A reliance on clinical judgment often leads to "erroneous, inconsistent, and inequitable decisions and lacks accountability as a result of the invisible rationale and criteria used by the decision maker" (OJJDP, 1995, p. 190) (see also Baird, 1984; Clear, 1987; Glaser, 1987).

Statistically based instruments, or scales, have long been touted as more useful and accurate alternatives to officers' subjective judgments. Much research suggests that data-based or actuarial prediction methods are far superior to subjective or clinical prediction methods (Hanson & Bussiere, 1998; Andrews & Bonta, 1998; also see Clear, 1987 and Gottfredson, 1987 for reviews). Specifically, statistical approaches result in more accurate and consistent decisions. Several reasons account for the superiority of statistical methods (Gottfredson, 1987). For example, human decision makers are quite limited in their capacity to use information reliably or to combine information from a variety of sources. Furthermore, because of cognitive errors and perceptual biases, they might give inappropriate weight to factors or might regard them as predictive when they are actually uncorrelated with outcomes. In short, "in virtually every decision-making situation for which the issue has been studied, it has been found that statistically developed prediction devices outperform human judgments" (Gottfredson, 1987, p. 36).

Statistical, or actuarial, assessment tools are based on empirical evidence from large random samples of cases that contain variation on a variety of offender characteristics. Statistically generated tools result in objective and fair decisions that are applicable to entire populations. Statistically based tools standardize and structure judgments by yielding the best (i.e., most valid) set of predictor variables on the basis of quantitative evidence. They allow probation officers to make uniform and reliable decisions about outcomes. "The same factors are taken into account by all decision makers in all cases, creating greater consistency in the assessment process" (OJJDP, 1995, p. 191). Without the guidance of standardized assessment tools, judgments are idiosyncratic (i.e., different officers use different case characteristics to render subjective decisions), are susceptible to officers' biases and preconceived notions about risk indicators, and are influenced by their personal philosophies and experiences (Wagner, 1992). The variables that officers select for risk assessment can be intuitively appealing but bear no statistical relationships to the predicted outcomes. In such instances, officers would be using variables that have, at best, only spurious connections to predictor variables.

Officers are limited in their capacities to consider more than one factor at the same time. Risk scales, on the other hand, are predicated on multivariate frameworks, containing several factors that can be handled simultaneously during the classification process. Finally, because objective risk classification models have clearly stated rationales that make the criteria for each decision explicit and measurable, both probation officers and agencies become more accountable (OJJDP, 1995).

Statistical Risk Assessment Errors

However strong a case we might make for statistical risk assessment, it is not a perfect science. Although statistical risk assessment reduces uncertainty about offenders' future probable conduct, it is subject to errors and should be regarded as advisory rather than peremptory (Clear, 1987). Even with the benefit of large data sets and advanced analytic techniques, the best models are usually able to predict recidivism with about only 70 percent accuracy (Petersilia & Turner, 1987). Moreover, statistical risk assessment devices rarely explain more than 20 percent of the variance (i.e., differences among offenders) in criterion measures (Gottfredson & Gottfredson, 1986).

Officers are invariably susceptible to two types of classification errors: false positives and false negatives. False positives occur when offenders who are predicted to fail actually succeed, whereas false negatives occur when predicted successes actually fail. False negatives are more visible and damaging because they can involve new offenses that cause harm to victims and jeopardize public safety. False negatives are potentially very costly; hence, most classification strategies err on the conservative side and are more likely to recommend supervising closely criminals who pose minimal or no risk of recidivism. This common practice results in unfair constraints being placed on low-risk offenders and wasted departmental resources. Therefore, it is crucial to consider the consequences of false positives and false negatives; both must be controlled to maximize the utility of case classification practices (Farrington, 1987).

Properties of Scales

The essential properties of case classification models are validity, reliability, equity, and utility (Lurigio, 1993; OJJDP, 1995). Validity is a fundamental concept in testing and evaluation and refers generally to the accuracy of a risk assessment tool (i.e., whether it predicts what it purports to predict). A tool designed to predict rearrest while on probation should differentiate between probationers who are actually rearrested and those who are not. In other words, if a risk tool is valid, then the probationers it assigns to category X (high risk) should be—in terms of their likely or actual performance—demonstrably different from those it assigns to category Y (low risk). A valid instrument consists of factors (i.e., predictors scored at another entry point for cases) that are significantly correlated with outcomes (i.e., the behaviors that officers are trying to predict); it also accurately distinguishes among offenders on the predicted criterion.

Reliability refers to the consistency of a case classification tool. A reliable tool results in the same decisions being made about the same kinds of offenders (i.e., those with similar characteristics) irrespective of who is using the tool. The reliability of a system is diminished when "widespread discretion and nonstandardized criteria" are allowed into the procedures (OJJDP, 1995). If an instrument is measuring inconsistently (i.e., unreliably), then it cannot be valid. On the other hand, it can measure traits or characteristics consistently without being valid. That is, a tool can yield similar or identical results on different occasions or among different users without providing accurate or useful findings. For example, an invalid, but reliable, scale might consistently misclassify low-risk offenders as high-risk offenders. Equity refers to the fairness of a case classification scheme. A fair tool does not discriminate against offenders on the basis of enduring personal traits (e.g., race, gender, or age) and permits offenders equal access to services and treatment. Finally, utility refers to the practicality, or "user friendliness," of a case classification system. Tools that contain obscure factors and are difficult, cumbersome, and time-consuming to score

and analyze will be rejected by staff and will result in faulty and inconsistent decisions.

Guidelines for Implementing Case Classification Systems

The following guidelines are considered important when developing and implementing case classification systems. First, corrections staff should regularly explore the criminal justice and criminological literatures to remain current with state-of-the-art risk assessment strategies. Different agencies have different needs and goals. There are likely to be several instruments or tools that can potentially meet those needs. Examining what is known about the use, reliability, and validity of a particular tool or process will be helpful in making a decision about instrument adoption. It might also be beneficial to involve line staff in this process to gain their professional investment and to reduce their resistance. For example, staff involvement could entail joining a risk assessment committee. Staff who are invested in the adoption of a classification system are more likely to adhere to it after it is put into practice.

Second, a classification tool should be validated on the population for which it is being used. There are several widely used actuarial instruments available for the juvenile and adult populations, and as a rule, major risk factors (e.g., criminal history and peer associates) change little from jurisdiction to jurisdiction. Nonetheless, agency staff should analyze assessment results based on the population for which the tool is being used. Validation research will help demonstrate how well an instrument predicts risk in a particular population and will also permit benchmarking (i.e., creating risk categories that are germane to specific jurisdictions or correctional strategies). In addition, changes in sentencing laws and practices can result in changes in the local offender population. Accordingly, classification systems should be validated periodically (e.g., every five years or so) in order to verify that the instrument is providing information in expected ways and is predictive of outcomes.

Third, regardless of the particular classification tool or process, staff should be thoroughly trained on the rationale and use of a risk classification scheme. Proper training will ensure that staff understand the advantages of case classification and that they use the tool in an appropriate and consistent manner. The amount and level of staff "buy-in" (see below) can drastically affect the level of success a program or jurisdiction experiences with a particular classification method.

Finally, classification tools should give staff the discretion to override risk assessment decisions in particular cases that warrant movement up or down because of factors missing from the tool. This will permit officers to retain some control over decision making, which can be a critical factor in overcoming staff resistance to case classification systems.

Static and Dynamic Factors

Various versions of actuarial risk and needs assessment instruments have taken steps to quantifiably separate criminogenic risk from criminogenic needs, most notably the Wisconsin Risk Needs Instrument. On the surface, the reason for doing this appears logical: the risk portion of the instrument instructs practitioners on how often clients should be seen or how secure an environment they should be in; the needs portion of the instrument informs practitioners how assessed clients might benefit from various treatment options offered by the agency, institution, or community-based treatment facility. In practice, agencies often focus on the risk factors and either ignore the needs factors or discontinue assessing the needs factors altogether.

Meta-analysis has shown that assessing needs is actually measuring risk of reoffending or committing antisocial behavior, whether it be a minor technical violation or a serious offense. The criminal justice and criminological literatures have indicated that most useful risk predictors include both static factors, such as prior criminal behavior, and dynamic factors, such as current significant relationships, social support, substance abuse, and thinking patterns. Whether clients have a high number of static risk factors or a high number of dynamic needs factors, or perhaps some of both, they are at a specific and quantifiable level of risk in general. Therefore, both risk and needs factors must be considered when assessing offenders and making classification decisions.

Development of Risk Assessment Tools

Although Clear (1995) is correct to point out that the transferability of risk assessment tools is a problem across jurisdictions, the fault likely lies with factors other than the instruments themselves. One of the more common ways that assessment tools are developed is by using an agency's records to conduct an outcome study to identify factors significantly correlated with criterion measures. This process is used by many agencies to develop their own, custom-made risk instruments. Development is often constrained by the quality and availability of the data that are contained in the files. For example, if the files are missing information on offenders' peer association, then this factor will be missing from the prediction model despite all the evidence showing that negative peer associations are a significant predictor of risk. Similarly, if the files have no information on offenders' attitudes, values, and beliefs, these factors will be omitted from the tool. Because most offender records contain a great deal of information on criminal history, it is easy to understand why many of the "home-grown" tools are so heavily weighted toward static predictors.

Factors that are predictive of criminal behavior have been identified in many different studies employing meta-analysis (Simourd & Andrews 1994; Gendreau, Little, & Goggin, 1996). In turn, these risk factors have become incorporated—albeit in various formats through various methods—into several actuarial risk and needs assessments instruments, including the Correctional Offender Management Profiles for Alternative Sentences (COMPAS) and the Level of Service Inventory-Revised, (LSI-R). Both the LSI-R and COMPAS are based on reviews of research that have identified sets of major and minor predictors. These instruments have been validated on offender populations and have produced higher predictive validity than more static instruments (Northpointe Institute for Public Management, 1998; Motiuk, Motiuk, & Bonta, 1992). Hence, it would appear that the age of the "home-grown" risk assessment tools has passed.

Levels of Supervision

When implemented properly, actuarial case classification drives the level of supervision accorded to specific cases, incorporating the risk principle, which states that the most supervision and intense treatment are reserved for the highest- risk offenders (i.e., those who can benefit most from what an agency or program has to offer). In fact, it is possible to offer a client too much of a "good thing," creating "penal harm" (i.e., doing more harm through the intervention than good) (Clear 1995). The adoption of a system in which supervision is based on actuarial risk assessment might require organizational restructuring to accommodate existing rules such as offense-specific, decision-making mechanisms. In

such instances, actuarial risk and needs assessment will increase but professional discretion will become more structured.

Levels of Treatment

Actuarial risk assessment also concentrates treatment resources for those who will benefit most from services and programs. Correctional treatment programs are frequently squandered on clients who either have no needs or are not ready for the potential benefits of interventions. Actuarial risk and needs assessment instruments often compartmentalize the scores into several areas that target specific criminogenic needs. Based on this compartmentalization, services can be assigned accordingly, and offenders will be directed into programs that they will benefit from, making the correctional continuum more efficient. Again, however, this additional application of the risk principle rests on the assumption that the corrections professional will have the discretionary power to make such decisions, which might necessitate changing the ways in which treatment is mandated (e.g., from the judge's bench).

Implementation Issues

Thorough and consistent training is essential to the implementation of any case classification system or risk and needs assessment tool. On-the-job training or brief orientation sessions are no substitute for comprehensive and professional training sessions. Offender assessment involves a number of skills, including investigatory and interviewing abilities and an understanding of how to score the tool. Agencies that provide inadequate training on case management and classification typically experience a range of problems, including unreliable assessments, staff disillusionment with the tools, and inappropriate offender placements.

Following case classification training, agency administrators should establish some form of quality control regarding the use of risk and needs assessment instruments. Quality control initially could come in the form of follow-up training but ultimately it must go beyond mere retraining. Implementation should involve a strategy to ensure quality and a well-constructed follow-up study designed to test instrument reliability and validity.

The appointment of an in-house quality assurance committee should be considered. The purpose and functions of this committee would be primarily to monitor the implementation of the assessment tool and how it fits into the overall classification scheme. Two procedures are paramount: Consistent review of the actual assessment process and case-file reviews to ensure that proper case planning is occurring with the assessment process.

Staff Buy-In

In addition to training on the use of the classification system itself, efforts should be made to encourage practitioner buy-in. The implementation of an actuarial risk and needs assessment instrument can benefit an agency and a jurisdiction. On the individual case-level, however, each assessment is only as good as the professional conducting it. Agency-wide faith in the system results in practitioner faith in the system, which, in turn, leads to valid and reliable assessments.

Administrator Buy-In

In a similar fashion to staff buy-in, it might be necessary to encourage administrative buy-in. Ideally, supervisors and other administrators should understand and support the case management system. At minimum, supervising officers should know the staff who are actually using the new classification system. The introduction of an actuarial classification system into any jurisdiction or agency regardless of size will probably require at least a reorganization of resources, most notably staff time. Staff should be given enough time to conduct the assessment properly and to obtain collateral information. The failure of administration to support staff's use of a case classification system is one of several causes of breakdowns in instrument reliability and validity.

Final Comments

According to national and international professional corrections organizations, classification is a component of best practices (see NIC, APPA, and ICCA). When done properly and with integrity, actuarial offender classification, using a standardized, objective risk and needs assessment instrument, can greatly enhance the delivery of supervision and treatment services. Decision making undoubtedly is the essence of criminal justice system practice. Wherever possible, objective criteria should be used in decision making to reduce the influence of extra-legal variables. Actuarial risk and needs assessment tools represent one mechanism by which objective criteria can be used to greatly enhance the legitimacy and power of decisions made in correctional programs in both supervision and treatment settings.

The implementation of an actuarial risk and needs assessment tool is a daunting task, particularly in large jurisdictions with many correctional options. The decision of what instrument or process to use can be perplexing enough without the focus on issues of consistency, reliability, and validity, which must be addressed after the system is implemented. The potential benefits of using a classification instrument far outweigh the costs, particularly over a long period of time.

In general, the following components might be considered in a formula regarding the implementation of an actuarial instrument: making an organizational-wide (gaining consensus and buy-in) decision on what to use; conducting initial and follow-up training; ensuring the process is being allowed to drive treatment and supervision (i.e., permitting correctional professionals to make decisions based on the assessment process); and applying periodic and consistent quality control strategies (i.e., ensuring the process is being done properly, according to design, and is indeed having a significant contribution to case planning). Following these steps will increase the probability that valuable resources will be allocated properly, allowing for better management of the offender population. Finally, the offender base as a whole will be exposed to various appropriate correctional options, thereby encouraging their prosocial behavior after release from an institution or community supervision program.

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THE CUTTING EDGE

A Survey of Technological Innovation

EDITED BY CECIL E. GREEK, FLORIDA STATE UNIVERSITY

Where Have All the Probation Officers Gone?

BY CHRISTOPHER HANSEN
SUPERVISING U.S. PROBATION OFFICER

Silence prevails at the previously bustling water coolers at the United States Probation Offices in the Middle District of Florida, one of the nation's 94 federal probation districts. No, the probation office has not solved the nation's crime problem, there is no dearth of offenders left to investigate, and staff are not even tired of talking with each other. The reason for the office's relative quiet—telecommuting! This probation office is realizing what the private sector has known for years—telecommuting works. Is it right for your probation agency?

Telecommuting is usually defined as an employee working at home or other telework facility for at least one day a week during regularly scheduled business hours, supported by the necessary hardware, software, and telecommunications (Dickisson, 1996). In the United States, it has been estimated there are between 30 to 40 million people either telecommuting or working strictly from their homes. Telecommuting is rarely discussed in the corrections arena, but it is having a major impact upon the private sector. Since 1991, AT&T has saved over $550 million by eliminating unutilized offices, consolidating others, and reducing overhead costs. Other businesses are experiencing similar savings (Apgar, 1998).

Surveys conducted on telecommuters in the private sector have found a 90 percent or higher satisfaction rate and an overall increase in productivity (Manire, 1997). In 1996, President Clinton encouraged federal agencies to embark on telecommuting initiatives, setting a goal of 60,000 telecommuters by 1998. Unfortunately, as of 1999, only 1.4 percent of federal employees, or about 25,000 workers, are participating in telecommute programs (Daniel, 1999).

Telecommuting nearly screeched to a halt in early January 2000. The Occupational Safety and Health Administration (OSHA) published an opinion concerning telecommuters which raised ire in the business community. The opinion stated, "All employers, including those which have entered into work at home agreements with employees, are responsible for complying with the (Occupational Safety and Health) Act and with safety and health standards." The opinion further noted, "even when the workplace is in a designated area in an employee's home, the employer retains some degree of control over the conditions of the work at home agreement." Within 48 hours of its publication, OSHA rescinded this opinion and Labor Secretary Alexis Herman called for a national dialogue over workplace safety rules for home-based telecommuters (Hofmann, 2000).

The current expansion of telecommuting in both the public and private sectors is not a reason for probation agencies to jump on the telecommute bandwagon. A study of 150 private companies found 60 percent had reduced their telecommuting initiatives because they had not lived up to their promise of reduced overhead costs and higher productivity (Grensing-Pophal, 1998). The reason for the under-performance is simple: inadequate training before implementing the telecommute program. The majority of companies provide some basic technology training to their telecommuting staff. They do not, however, prepare their employees for the realities of telecommuting. Many telecommuters, for example, miss the face-to-face interaction with peers, managers, and the water-cooler gang. To help counteract these pitfalls, training must be realistic and must include both managers and the telecommuters—preferably training together. At Merrill Lynch, a stock brokerage company, telecommuters participate in a simulation lab prior to actually telecommuting. The lab is a two-week program where potential telecommuters are placed in a large room with all necessary equipment. They are not permitted to leave the lab to have face-to-face contact with their supervisors but may use available communication tools such as email or the telephone. The training addresses potential problems a telecommuter may face. After the two week trial, the employees decide if telecommuting is right for them (Grensing-Pophal, 1998).

The United States Probation Office and Telecommuting

In 1998, the United States Probation Office in the Middle District of Florida was forced to explore the use of alternative work-sites after exhausting physical office space in its Tampa office. After much discussion, it was decided that a small group of experienced probation officers would be solicited to participate in an experimental telecommute group. Probation officers in the Middle District of Florida are functionally distinct, performing one of two main job functions—supervision of offenders in the community

(supervision officer) or the investigation of criminal defendants facing sentencing (presentence officer). Five presentence and two supervision officers were selected. The group's experience with automation technology ranged from novice to highly experienced. The officers had to relinquish their individual offices for shared space in a converted conference room when they were not telecommuting. The group was provided with laptop computers, telephone calling cards, and pagers. The officers had access to electronic investigative databases, Internet access, and remote office computer system linkage. They were expected to become self-sufficient, responsible for the production of all their written work.

Shortly after the experiment began, it became apparent the program was not working for the two supervision officers. When the officers were not traveling in the field seeing offenders, they were needed back in the probation office to handle the needs of their offenders. They were unable to accomplish this from their homes and were causing a burden on their support staff and fellow officers. It soon became necessary to eliminate the supervision officers from the experiment.

The presentence officers excelled in the program. They reported to the office to interview defendants, meet with attorneys, attend court hearings, and perform other routine office duties. The remainder of their time was spent at their residences working on their investigative reports. The officers averaged 2.5 to 3 days per week telecommuting. Several months later, the telecommute experiment was expanded to another group of four officers from the Orlando office, after that office experienced a similar space shortage.

In general, the telecommuters reported an increase in job satisfaction and a higher level of productivity. Managers, on the other hand, initially found a slight loss of control and lack of communication during the first few weeks of the program. This was soon rectified by retraining and improved feedback. Officers and supervisors now communicate in person, by telephone, or email. Work is often transmitted electronically through a secure Intranet mailing system, providing fast and efficient response and action.

Due to the initial success of the experimental telecommute program, the Middle District of Florida has adopted a formal written policy giving all presentence officers in the district the opportunity to telecommute. To participate in the program, officers must have at least two years of experience in the investigation of criminal defendants and above average performance evaluations. Officers can telecommute for up to three days per week. They receive all necessary tools to perform their duties optimally from their residences. A training program has been established, which all officers must complete before telecommuting. The training program touches on both the technical aspects of the program and the social/cultural issues surrounding working from home. Supervisors attend the training sessions to ensure that all parties are working from the same set of instructions.

Not all presentence officers have chosen to telecommute. Officers must be organized, self-motivated, disciplined, positive, and capable of working with little direct supervision. Many officers recognize their need for structure and the comradery of working in the office. Ultimately, they conclude that telecommuting is not right for them and opt not to participate in the program. In rare situations, a supervisor may refuse to allow an officer to participate in the program due to performance or other relevant factors. Supervisors may also terminate officers from the telecommute program if it appears they are not performing satisfactorily.

For optimal effectiveness of the program, supervisors must change their way of doing business. They must learn to include telecommuters in discussions either telephonically or electronically and require their attendance at staff meetings and training events to keep them bonded to the agency. Supervisors must also learn how to spot problems early and to praise telecommuters from afar.

Telecommuting: Is It Right for Your Probation Office?

A major factor of a successful telecommute program is trust. The probation office must trust telecommuters to perform their assigned duties with little direct supervision. If constant oversight is believed necessary, telecommuting is not right for your agency. Even when telecommuting appears compatible with the agency's goals and mission, it should only be considered after careful study and discussion. Each layer of the agency must buy into the program for it to succeed.

Probation offices considering a telecommuting program should begin by analyzing which positions within the organization are compatible with the goals and objectives of telecommuting. Once positions are identified, the agency should develop a formal written policy clarifying the agency's and employee's obligations. Several organizations can provide guidance and direction in developing written policies. The United States Office of Personnel Management, General Services Administration, Department of Transportation, and other state and federal agencies have developed telecommute polices and procedures that can provide some guidance in setting up a telecommute program. The majority of these telecommute policies are available for review on the Internet. Before implementing telecommuting throughout the agency, a pilot program should be formed to test the feasibility of the program on a small scale.

Employees must understand that participating in a telecommuting program is strictly voluntary. Participation does not change the terms or conditions of their employment, and their official duty station does not change while telecommuting. Telecommuting is not a right, but a privilege that can be unilaterally withdrawn or canceled at any time. Employees telecommuting will be covered through workers compensation programs for any injuries occurring while performing official duties at their residences. Employees must be advised that all injuries must be reported in a timely fashion to protect their rights (Bernardi, 1998). Last, potential telecommuters should be advised that their primary motivation in telecommuting should not be to care for a child or elder, although this program offers some degree of flexibility in meeting family responsibilities.

Training and constant evaluation of the telecommute program is necessary to ensure success. Those who have participated in the pilot group are excellent resources to answer questions and explain the program during training sessions. Training on all aspects of the program should be provided simultaneously to all participants, including supervisory staff. This eliminates any ambiguity in the program or policy and all questions can be answered at the same time. The program should be evaluated after a reasonable trial period, revised if necessary, and reevaluated as needed to work out any problems or issues that may arise.

With declining budgets, limited office space, a tight job market, and the need to do more with less, probation offices across the nation are reaching a serious crossroad. It makes sense to explore what the private sector has successfully accomplished for many years. By understanding the benefits and

drawbacks of telecommuting and employing this program where feasible, agencies can gain more satisfied employees, greater job performance, increased productivity, and cost savings on physical office space.

Where have all the probation officers gone? We're still here, we're just standing around the virtual water cooler in our pajamas. Technology has brought the probation office home and we haven't skipped a beat.

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LOOKING AT THE LAW

By Catharine M. Goodwin
Assistant General Counsel, Administrative Office of the U.S. Courts

Update on Selected Restitution Issues

This article provides expanded guidance and updated case law on the principles discussed in two previous *Federal Probation* articles on restitution: 1) the December 1998 article that introduced the five-step analysis for determining victims and harms for restitution,[1] and 2) the June 2000 article on the imposition and enforcement of restitution.[2] In addition, some issues will be discussed arising from questions asked by probation officers in the field and in training sessions.

The Mandatory Victims Restitution Act of 1996 (MVRA)[3] was the most sweeping change to restitution for federal criminal cases in recent decades, and it is gradually changing the restitution landscape in federal criminal law, requiring courts to consider numerous issues involved in imposing restitution in an increasing number of cases. The determination of the restitution amount (i.e. the amount of the compensable harm caused to victims of the offense) must be made in *any* case for which there is an identifiable victim and imposed in all *mandatory* restitution cases in its entirety. However, it must be balanced with a consideration of the defendant's present and future ability to pay, when imposed in *discretionary* restitution cases.[4]

Numerous emerging legal issues are involved in determining the restitution amount, as well as in procedures involved in the imposition and enforcement of restitution. Some of these are updated below.

I. Selected Issues Involving The Five-Step Analysis

The restitution determination, if done correctly, will avoid subsequent litigation, and will maximize the amount of restitution that can be imposed and, it is hoped, collected. Since the introduction in the December 1998 article of the five-step sequential analysis for determining the restitution amount, most probation officers have found it produces generally consistent and accurate results. The five steps, along with selected issues and case law, are summarized below.

A. Step One: Identify the Statutory Offense of Conviction[5]

The determination of restitution begins with the determination of the statutory offense of conviction, because restitution is a *statutory* penalty: the court's authority to impose restitution is controlled by the language and terms in the restitution statutes. The specific offense of conviction must be identified first, because focus on the offense of conviction is necessary to then make three threshold determinations: 1) whether restitution is mandatory or discretionary;[6] 2) whether restitution is available as a separate sentence or only as a condition of supervision; and 3) what the boundaries of the offense of conviction are for purposes of conducting the subsequent steps of identifying victims and harms.

B. Step Two: Identify the Victims of the Offense of Conviction

The scope of the offense of conviction defines the boundaries within which victims and harms can be identified for restitution purposes. This fundamental fact is based on statutory language, interpreted by the Supreme Court, and has not changed.[7] Courts continue to draw very fine lines when determining the boundaries of the offense of conviction for restitution purposes.[8] The one available "expansion" of the offense of conviction was a 1990 amendment, applicable only where the offense of conviction "involves" a scheme, conspiracy, or a pattern of criminal activity.

The "scheme" provision has perhaps generated more litigation and confusion than any other aspect of restitution. It was added in 1990 to the restitution statute (§ 3663), and was replicated (without change) by the MVRA into the new statute for mandatory restitution (§ 3663A). It therefore applies to any case for which restitution is imposed under §§ 3663 or 3663A, and reads: "*…the term 'victim' means … in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.*"

Earlier in 1990, the Supreme Court had decided *Hughey v. U.S.*,[9] in which the defendant was alleged to have stolen and used 21 credit cards in a fraudulent scheme that resulted in a total loss to numerous victims of over $90,000. He pled guilty to one count involving one credit card and $10,000 in loss, but was ordered to pay restitution for the full $90,000. The Fifth Circuit affirmed, finding the restitution statutes at that time authorized restitution for acts which share a "significant connection" with the offense of conviction. But the Supreme Court reversed, holding that the statutory language makes clear Congress' intent to authorize an award of restitution only for the loss caused by the

specific conduct that is the basis of the offense of conviction.[10]

In response, Congress added the "scheme" provision to § 3663(a). It has been described as enlarging the set of victims to whom restitution can be granted,[11] which is true where there are numerous victims, such as in a telemarketing case. However, if the offense involves numerous acts against one victim, such as embezzlement, it enlarges the amount of harm done to that victim by the "offense." While courts have consistently concluded that, even under this provision, restitution is still limited to the offense of conviction,[12] the provision did extend the contours of what is considered an "offense," if the offense "involves" a scheme.[13] This inherent tension has added to the ambiguities surrounding application of this provision.

It may be helpful to view the "scheme" issue in two phases: Does the offense "*involve*" a scheme, and if so, what is its nature and extent? If a conspiracy or scheme is charged, it is usually clear that the offense involves a scheme. The government's charging procedure for mail, wire, or bank fraud has always been to describe the fraud scheme in the indictment, which is then incorporated by reference into each count that represents acts committed "in furtherance" of the scheme. This charging format eliminates the issue of whether an element of the offense involves a scheme, and it also usually defines the nature and extent of the scheme as well. Unfortunately, the government does not use this charging format for other potential "scheme" offenses, such as those discussed below, which are the offenses for which the restitution "scheme" issue arises.

There are two types of offenses in particular for which the issue arises. One type involves an "intent to defraud" for which no "scheme" is described or incorporated into each count, i.e., there is no "element" of the offense that clearly involves a scheme or conspiracy. An example is 18 U.S.C. § 1029, which provides that the defendant "knowingly and with intent to defraud" traffics in or uses one or more unauthorized access devices (usually credit cards). Congress probably intended such offenses to be included among those "involving" a scheme because to "defraud" means to commit fraud (which is conducted by means of a "scheme.")[14] Nevertheless, because of the ambiguous contours of such offenses, courts have struggled with the application of the "scheme" provision in these kinds of cases.[15]

Offenses for which there is not even an element of an "intent to defraud" pose even greater difficulties. For example, in *U.S. v. Mancillas*,[16] the defendant was convicted of possessing counterfeit securities and implements designed to make counterfeit securities with intent that they be used, in violation of 18 U.S.C. § 513 (i.e., he had passed some counterfeit notes, and was caught with some notes and the equipment to make them). To use "counterfeit" securities is by definition to defraud those to whom you are passing them off as non-counterfeit, and, again, fraud, in legal terminology, is conducted by means of a "scheme." But for these offenses the "scheme" is implied and seldom described in the indictment, making its existence and/or nature ambiguous, and producing strained results. For example, in *Mancillas*, the Fifth Circuit reversed the restitution imposed for the defendant having passed the counterfeit notes, holding that restitution could not be imposed for *past* acts of use because the offense was to possess them with the intent to use them—in the future.[17]

Even where the offense of conviction *involves* a scheme, the court must *also* determine the extent or nature of the scheme, in order to know which acts or victims are included for restitution purposes. This is often the most difficult aspect of the scheme issue. In order to make this determination, it is often necessary to look beyond the specific offense of conviction.[18] Some courts have been willing to look at the scope of the facts alleged in the indictment, the plea colloquy, or the proof at trial in order to determine the nature and extent of the scheme. The Eighth Circuit has been particularly willing to do this. For example, in *U.S. v. Jackson*, the offense was conspiracy to possess unauthorized credit cards and ID documents, but restitution was upheld for the theft of identity documents and the cards, because the *evidence at trial* indicated that the thefts were in furtherance of the conspiracy.[19] The Third Circuit, in *U.S. v. Hughey* (Hughey II), vacated restitution for losses that "fall outside the offense as defined in the indictment, and *the trial record* does not otherwise tie those losses to Hughey's fraudulent scheme."[20] In *U.S. v. Martin*, the defendant was convicted of mail fraud and bribery, and the Seventh Circuit held that, in determining the scope and consequences of the scheme, the judge was not limited to the evidence presented at the trial.[21]

Generally, whenever the acts of conviction are of a different kind than those for which restitution is being considered, caution is advised, because some courts will not consider different kinds of acts part of the same scheme unless an element of the offense clearly involves a scheme or conspiracy, or the acts are described as all one scheme.[22] Also, two recent cases have caused some confusion by holding that the dates cited for the scheme in the charging document are determinative of the duration of the scheme.[23] These cases may ultimately be limited to their facts, where the defendant pled to schemes that were inartfully alleged. It is not clear how they can be reconciled with the fact that sentencing factors (i.e. amount of restitution) are determined by the court, and are not generally limited by allegations in the charging document.[24]

Other "Scheme" Issues. While the statutory provision authorizes restitution for "*the defendant's* criminal conduct in the course of the scheme, conspiracy, or pattern," courts have nonetheless generally upheld restitution for harms that result from the acts of other participants as well, so long as they are part of the scheme or conspiracy.[25] Some courts have held that restitution can be imposed for acts beyond the statute of limitations, so long as they are part of the scheme of the offense of conviction, as described in the indictment. For example, in *U.S. v. Bach*, the Seventh Circuit upheld restitution for the entire mail fraud scheme, even though mailings the defendant sent to lull victims were the only ones within the statute of limitations.[26] Also, restitution can be imposed for harm caused by conduct committed in counts which were acquitted, so long as the court determines that the conduct was part of the scheme, pattern, or conspiracy for which there was a conviction.[27] But restitution may not be ordered for victims of acquitted counts *if* the court interprets the acquittal to mean that the conspiracy did not include those acts.[28]

C. Step Three: Identify the Harms to the Victims Caused by the Offense of Conviction

Recent cases continue to illustrate that restitution can only be imposed for harms that are *caused* by the conduct underlying the offense of conviction, in a variety of contexts. For example, the Seventh Circuit, in *U.S. v. Brierton*, held that harms from acts involved in the cover-up of a fraud offense (even though part of the same common scheme or plan as the offense, and thus part of the relevant conduct of the offense) were *not* harms "caused" by the offense.[29] (Note: The sequen-

tial steps can overlap. Here the same result is reached if the cover up acts are viewed as outside the scope of the offense in Step Two.)

Two cases have provided guidance on complex factual situations where there is more than one cause of the victims' harms. First, losses that are caused by related (perhaps unethical, but not illegal) activity should not be included in restitution. In *U.S. v. Martin*,[30] the Seventh Circuit held the defendants could not be held responsible for the total amount of loss ($12.3 million) that resulted from a loan default, because the loan default was only partially caused by the defendants' bribery, and partially caused by their legal (although unethical) conduct. Second, where there is an "intervening" cause for the harm, in addition to the defendant's conduct, restitution is authorized only for harms caused by intervening causes that are *related to* the conduct underlying the offense of conviction. In *U.S. v. Meksian*, the Ninth Circuit compared four different factual situations, in coming to this conclusion.[31]

Routine costs are excluded from restitution. In *U.S. v. Menza*, the defendant was convicted of manufacturing methamphetamine after his homemade meth lab exploded, damaging his apartment.[32] The sentencing court ordered restitution for the cost to the government for disposing of various chemicals, and to the landlord for cleaning the apartment. However, the Seventh Circuit remanded for the court to determine which costs were directly caused by the meth lab offense, and which were routine, for both the landlord and the government. Sometimes an estimation of the harm is all that is possible. "[T]he determination of an appropriate restitution amount is by nature an inexact science."[33] A case that illustrates a creative and successful estimation of the value of "harm" for restitution purposes is *U.S. v. Sapoznik*, in which the Seventh Circuit upheld a restitution order for one year's salary to be paid to the city by the defendant (a former police chief), convicted of taking bribes for four years, as a proper measure of his illegal activities (mixed in with what was agreed to be primarily beneficial, legal services to the city).[34]

The MVRA added the words "directly and proximately" to describe how restitution victims are harmed by the offense of conviction.[35] While there have been no cases focusing on these terms, some courts have occasionally recited as part of the court's holding, without discussion as to whether they contributed to it. For example, in *U.S. v. Checora*,[36] the Tenth Circuit upheld a restitution award for the surviving juvenile children of a victim of manslaughter, where the sentencing court had found the children to be victims "directly and proximately" harmed by a manslaughter offense (despite the fact that they were with foster families, and the deceased victim had been paying child support for them through a state child welfare agency). However, the sentencing court had imposed the restitution payable to the state agency that would now pick up the added support costs for the children, and the Tenth Circuit remanded, for the court to impose the restitution payable to a proper agent for the juvenile victims, as required by statute.[37] On remand, the court named a guardian for the children to receive the restitution.[38]

The courts have generally agreed that prejudgment interest should be included in the computation of restitution owed the victim at sentencing, because it is part of the loss caused to the victim by the defendant's offense conduct.[39] The Eighth Circuit relied on the "full amount of the victim's losses" provision at § 3664(f)(1)(A) to reason that Congress intended courts to impose restitution for interest on the victim's loss in an arson case.[40] As for attorneys fees, there is a general legal premise that attorneys fees are ordinarily *not* recoverable, unless specifically provided by statute. Accordingly, victims' attorneys fees are ordinarily *not* included in the amount of restitution.[41] Attorneys' fees are considered "consequential" (indirect) losses, and restitution is primarily a reimbursement of "actual" (direct) loss.[42] The exception, however, is where the attorneys fees are *directly* related to the criminal conduct for which the defendant was convicted. For example, in the unique case of *U.S. v. Hand*, the Third Circuit upheld some prosecutorial costs (government's attorneys fees), where the (juror) defendant developed a relationship with one of the defendants, causing a deadlocked jury and requiring retrials of all defendants.[43]

An aspect of determining what harm was "caused" by the offense is the determination of how the damaged property should be valued. Two recent cases shed light on this. In *U.S. v. Shugart*, the Eleventh Circuit upheld the sentencing court's valuation of a century-old-church that had been destroyed by arson using the *replacement* value of a new church, identical to the old one on the same property, rather than the depreciated *market* value of the old church at the time of the offense.[44] The court found that the replacement value came the closest to a "restoration" of as many of the values, memories, and benefits of the old church to the victim-congregation as possible. Similarly, in *U.S. v. Simmonds, III*, the Third Circuit held that replacement value (rather than merely fair market value) of personal furniture best compensated for the intrinsic values of, for example, one's favorite chair.[45]

It is not uncommon for victims to require counseling or treatment even after sentencing, for a harm the victim suffered from the offense. If the need and the cost for the treatment is reasonably ascertainable at sentencing, the court not only can, but probably should, impose restitution for the costs at sentencing, based on *U.S. v. Laney*.[46] The defendant was convicted of engaging in the sexual exploitation of a child, and the court ordered the defendant to pay restitution to the child for six years of (mostly future) counseling expenses.[47] In upholding the restitution, the Ninth Circuit concluded that Congress must have intended compensation for harm occurring post-sentencing because § 3664(d)(5) authorizes restitution for losses discovered after sentencing that were not ascertainable at the time of sentencing.[48] It also reasoned that, because expert testimony of the victim's need for the counseling made the expense "ascertainable" at sentencing, the victim might be foreclosed from using § 3664(d)(5) to recover the costs post-sentencing.[49] While *Laney* partially relies on language in § 2259, much of its analysis is broad enough to lend support to such restitution awards in other kinds of cases, so long as the calculation of the future loss can be made with "reasonable certainty" at sentencing.

Child Support Recovery Act (CSRA) (18 U.S.C. § 228). Special rules apply to this mandatory "restitution" offense; the five-step analysis is not applicable. The amount of restitution in these cases is specifically set by statute, i.e. the amount of support obligation that is "due at sentencing." Because § 228(d)(1)(A) defines "past due support obligation" to include support for the parent with whom the child is living, the 11th Circuit upheld a restitution award that included maintenance for the ex-spouse as well as for the child.[50] The Ninth Circuit has held that the amount of past due child support that can be ordered as restitution is not limited to the dates in the indictment because the statutory reference to the amount due "at the time of sentencing" indicates Congress' "desire to charge the parent for all unpaid child support, including support that accrued before the indictment was issued."[51] The statute does not mention interest, but it would appear to be included,

so long as the state law provided for the accrual of interest on past due support obligations. Further, the specific amount due does not have to be alleged in the indictment or proven, because it is a sentencing factor determined by the court at sentencing.

D. Step Four: Identify Which Harms and Costs are Compensable as Restitution

The federal restitution statutes include specific language specifying what harms or costs suffered by victims of the offense are compensable as restitution. Specific compensable harms are listed in the primary restitution statutes, §§ 3663 and 3663A, according to the kind of harm the victim suffered due to the offense, and a more inclusive list can be found in the specific title 18 mandatory restitution statutes. Because restitution is a statute-based penalty, nearly all courts have interpreted the compensable harms listed in the restitution statutes to be exclusive, and have vacated restitution orders compensating harms not tied to the statutory language that are otherwise valid, e.g., "caused" by the offense. Some recent cases have provided further guidance on what harms are compensable as restitution.

The primary restitution statutes provide that, "*In any case, restitution should be ordered for lost income, necessary child care, transportation, and other expenses related to participation in the investigation and prosecution of the offense or attendance at proceedings related to the offense.*"[52] This would presumably include persons who are "victims," even if they did not suffer a pecuniary loss or bodily injury, such as a teller in a bank robbery. This kind of restitution, which is a reimbursement for a "cost," is probably often overlooked. Two Second Circuit cases used this provision in interesting ways. In *U.S. v. Malpeso*, the court combined it with § 3664(j)(1), which authorizes restitution to third parties who compensate victims, to uphold a restitution order to the FBI for the expenses involved in relocating a witness to make the witness available for cooperation with the prosecution.[53] In *U.S. v. Hayes*, the Second Circuit upheld restitution for the victim's costs incurred in obtaining a protective order prior to the offense conduct (i.e., when the defendant crossed state lines in violation of the protection order).[54] The court relied on the "cost" provision as an indication that Congress did not intend that restitution be restricted to only those harms incurred during the actual commission of the offense.

The restitution statutes authorize restitution for lost income where the victim suffered bodily injury.[55] The Third Circuit relied on that provision to uphold restitution to a rape victim for the value of the annual leave she used as a result of the offense, finding the value of the leave to be equal to the value of her wages for that period of time.[56] Where the offense causes the *death* of a victim, while there is no compensable restitution for "pain and suffering" of the survivors, restitution is authorized for funeral and related expenses,[57] and the Ninth Circuit upheld restitution based on this provision.[58]

Specific title 18 mandatory restitution statutes. These statutes, enacted in 1994, appear to authorize a broader scope of restitution than do the principal restitution statutes. They are: §§ 2248 (sexual abuse), 2259 (sexual exploitation of children), 2264 (domestic violence), and 2327 (telemarketing). All four contain "precursor" language to that added to the main restitution statutes by the MVRA two years later. The broad interpretation of that precursor language may ultimately have a carry-over effect onto restitution under the main restitution statutes (§§ 3663 and 3663A). All four special statutes authorize restitution for the "*full amount of each victim's losses.*" In addition to this phrase, § 2327(b)(3) authorizes restitution for *all losses suffered by the victim as a proximate result of the offense.*" Each of the other three (§§ 2248, 2259, 2264) has its own list of specific compensable harms, more inclusive than those listed in §§ 3663 and 3663A, and ending with, "*[and] any other losses suffered by the victim as a proximate result of the offense.*"

These phrases not only are similar to the MVRA terms "*directly and proximately*" added to the definition of victim in the main restitution statutes, but they also are similar to an MVRA provision, § 3664(f)(1)(A), that states: "*In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court.…*" Given that this provision is in § 3664, it applies to *all* restitution orders, and thus represents a possible basis for expanded restitution in all cases. The Eighth Circuit recently partially relied on it to uphold a restitution award in an arson case.[59] As more courts discover this provision, it may ultimately be one of the primary ways the MVRA expanded restitution in federal cases.

Courts generally have upheld broad restitution orders under these special restitution statutes. It should be remembered, however, if tempted to analogize to these cases for support in other kinds of cases, most of these special statutes also have expanded lists of specific compensable harms, as noted.[60] Nevertheless, the case law on these specialized offenses is helpful for those involved in the sentencing of these offenses, and may also provide a potential basis for expansion of restitution elsewhere, given the similar, "precursor" terminology.

§ 2259 (sexual exploitation of children). The Ninth Circuit upheld restitution for future psychiatric counseling costs for the victim in *U.S. v. Laney*, as discussed above,[61] based partially on the "full amount of the victim's losses" language in § 2259, partly on § 3664(d)(5), which provides for restitution for losses discovered in the future, and partly on the costs "incurred" language in § 2259. In *U.S. v. Crandon*,[62] the Third Circuit also upheld psychiatric care, based on the "full amount of the victim's losses" in § 2259(b)(3). The court also found that in-patient psychiatric care of the 14- year-old victim of molestation by the defendant was harm to the victim "proximately resulting" from the offense.

§ 2264 (domestic violence). In *U.S. v. Hayes*,[63] the Second Circuit upheld the lower court's decision imposing restitution for the victim's legal costs incurred prior to the defendant's interstate travel to violate her protection order, as costs "caused" by the offense conduct. It relied on the language in § 2264 that authorizes restitution for the "full amount of losses" caused by the offense, and on § 3663A(b)(4) that allows restitution for costs incurred after the offense (in cooperation with the prosecution of the case).

§ 2327 (telemarketing). In 1994 Congress passed the SCAMS[64] Act (18 U.S.C. § 2325-27), which enhanced the penalties and provided for mandatory restitution for certain "telemarketing" kinds of offenses. In *U.S. v. Baggett*, the defendant challenged application of the Act to his offense, which was committed prior to the MVRA, which made procedural changes to the SCAMS Act, but the Ninth Circuit held that the changes to the Act were merely procedural, and therefore applicable to the defendant's offense.[65] Another recent case involving a telemarketing fraud is *U.S. v. Grimes*,[66] in which the court held that the sentencing court should use § 3664(d)(5), which provides for a 90-day continuance of the restitution determination, in order to be able to identify as many victims as possible, where necessary.

5. Step Five: Effect of Plea Agreement on Restitution Amount

After the restitution amount is determined, based on the analyses discussed above, the plea agreement should be reviewed to determine if it authorizes the court to impose more restitution. There are three statutory restitution provisions authorizing greater amounts of restitution to be imposed, if agreed upon, than could be imposed otherwise (i.e., under the four steps discussed above).[67] In order to be effective, any such agreement must be very specific.[68] Congress directed the government to ensure restitution to all victims of charged offenses in plea agreements, even if the defendant only pleads to some of the counts.[69] The courts have also urged the government to charge offenses,[70] and to make plea agreements[71] with restitution in mind. Restitution imposed pursuant to one of these provisions is probably a separate sentence rather than merely a condition of supervision, because the plea agreement provisions are in the primary restitution statutes, which authorize a sentence of restitution.

Another issue that officers ask about is whether restitution can be imposed where the defendant was not advised of the possibility of restitution being imposed at the plea. The best practice is, without doubt, for the court to advise the defendant at the plea of the fact that restitution could be imposed. The court is required to determine, before accepting a plea, that the defendant understands the penalties of the offense to which he or she is pleading, including "*when applicable, that the court may also order the defendant to make restitution to any victim of the offense.*"[72] However, it is also provided that any failure to adhere to the required procedures under the rule shall be disregarded to the extent such failure does not affect the "substantial rights" of the defendant.[73] Accordingly, the courts have held that, where the defendant was merely advised of any potential monetary penalty, such as a fine, in an amount at least as great as the ultimate restitution imposed, the error was harmless. For example, in *U.S. v. Crawford*,[74] the defendant was advised that he could be required to pay a fine of up to $500,000, but not advised of the possibility of restitution. The Ninth Circuit found that the defendant "could not have been surprised or prejudiced by the imposition of $64,229 as restitution in light of his potential liability for $500,000."[75] The Third Circuit used the same rationale to uphold a $1 million fine.[76]

II. Other Selected Restitution Issues

A. Restitution in juvenile cases

The federal restitution statutes authorize restitution to be imposed for federal "offenses," and would therefore not apply, on their face, to violations of the Juvenile Delinquency Act (JDA),[77] which are not offenses. However, restitution can be imposed in juvenile cases—pursuant to the JDA itself. Section 5037(a) provides that, after the dispositional hearing, if the court finds a juvenile to be a juvenile delinquent, the "court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to § 3556, place him on probation, or commit him to official detention."[78] Such restitution is probably discretionary, because of the word "may." However, it could be argued that it is mandatory, if the kind of violation otherwise fits the criteria for mandatory restitution in § 3663A - because both §§ 3663 and 3663A are referenced in § 3556. Indeed, the only reported case on point recently upheld mandatory restitution in a juvenile case where the offense was a crime of violence.[79]

B. Multiple victims

There are numerous cases discussed in the December 1998 article and elsewhere confirming that there may be more than one victim for restitution. There may be direct and indirect victims, named and unnamed victims. A case that may involve the greatest diversity of victims on record is *U.S. v. Ferranti*,[80] in which the defendant was convicted of conspiracy to commit arson resulting in death, tampering with a witness, and mail fraud. He was ordered to pay restitution of over $1 million to: the residents of the apartments burned, for their lost belongings; an injured firefighter, for both his lost overtime pay and the future cost of his medical expenses; the owner of the building, for the loss in the property value (but not including the loss of rent); insurance companies; and the Fire Department, for medical leave, funeral expenses, and lost earnings of the fire fighter killed fighting the fire.

Many legal and procedural questions arise where there are numerous victims, such as in a large telemarketing or fraud scam. Three recent cases have focused on the MVRA provision § 3664(d)(5) that provides: *"If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing.…"* In *U.S. v. Grimes*,[81] the Seventh Circuit held that Congress intended that courts use the provision (the court "shall") where necessary to provide for as many victims as possible. Two other courts have examined this provision as well. In *U.S. v. Stevens*,[82] the Second Circuit examined the legislative history of the provision and ultimately held that the 90 days can be tolled by the defendant's conduct, and delay beyond that period is not error unless the defendant can show prejudice. The Sixth Circuit held in *U.S. v. Vandenberg*[83] that the court ordinarily must resolve restitution issues within the 90 days, but no hearing is required so long as parties have notice and an opportunity to be heard through pleadings, and delay beyond the 90 days is not error if it is ultimately cured, i.e., the parties are given a full opportunity to be heard.

Victims must be "identified," but not found, by the time restitution is ordered. In *U.S. v. Seligsohn*, the Third Circuit held that, where the victims are numerous and difficult to identify, the sentencing court should name whatever victims it can, and otherwise describe or define the victim class specifically enough to provide appropriate guidance to the government in further identifying them (sufficient to locate them).[84] Similarly, in *U.S. v. Berardini*, the Second Circuit held that the court must determine the amount of restitution owed to each victim, and be satisfied that there is enough information on the victim's identity to reasonably anticipate that the victim might eventually be located.[85] That case is also one of the few on record to address another source of questions: what to do with restitution payments until victims are found. The *Berardini* court set up a fund administered by the clerk, and then the government, as a repository for restitution payments until victims are found.[86]

C. Multiple Defendants

Issues have arisen about apparent contradictions among several MVRA provisions, at least as to how they would relate to a court sentencing more than one defendant. Section 3664(h) provides, "…*the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.*" On the other hand, subsection 3663A provides (for the offenses

listed) that the court shall order the defendant to make restitution to the victim of the offense. Even more significantly, subsection 3664(f)(1)(A) provides (presumably for *all* restitution orders) that, *"In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant."* The issue arises, therefore, in mandatory restitution cases, if courts must impose full restitution on each defendant, or whether they may apportion the restitution among defendants—so long as the aggregate total of all defendants' restitution orders would amount to "full" restitution for the victim(s).

Courts have long had discretion in fashioning a restitution order for several defendants, and joint and severally (described as the first option in § 3664(h)) has been the most common method.[87] It is also no doubt the safest way to ensure compensation for the victim, because it permits payment, as it becomes available from any defendant, until the victim is compensated.[88] However, joint and severally is sometimes difficult to administer,[89] and there is little guidance on how to reconcile the provisions cited above. A pre-MVRA case vacated a restitution order where a less-culpable defendant was ordered to pay the same restitution as other defendants.[90] The only post-MVRA case is *U.S. v. Walton*, a mandatory restitution case, where the Seventh Circuit held the court has discretion to apportion the restitution among the defendants, and indeed should provide reasons where it chooses not to do so.[91] Although prepared prior to the MVRA, *Publication 107*[92] contains some sample imposition language to enable officers to assist their courts in imposing financial penalties, illustrating both joint and severally and by apportionment methods.

D. Changing a restitution order

Section 3664(o), added by the MVRA, lists the ways in which a restitution order can be vacated or amended. For example, it can be "corrected" pursuant to Rule 35, modified or vacated on a direct appeal, amended pursuant to § 3664(d)(5)[93] upon discovery of new losses, or adjusted under § 3664(k) for defendant's changed circumstances. The list does not include a motion to vacate a sentence, pursuant to 28 U.S.C. § 2255; courts have uniformly held that a challenge to a restitution order cannot be brought pursuant to motions to vacate a sentence under § 2255.[94] Nor can an offender challenge the restitution imposed at sentencing under Rule 3583 as a condition of supervision.[95]

A question that arises with some frequency is whether a restitution beneficiary can be changed, post-sentencing, when there is a new beneficiary entitled to receive the victim's restitution. 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 agency, in some manner). The court should be able to make such a change, based on its inherent authority or as a "correction" to the order under Rule 35 (as incorporated in § 3664(o)). Also, because the payment of restitution becomes a standard condition of supervision, the court should be able to make a non-substantive change that does not increase the amount of restitution pursuant to Rule 32.1, as a modification of supervision conditions. The determination of who is a successor in interest to a named beneficiary is a legal one, sometimes involving the application of state law, and should be made by the court, perhaps with notice to the parties, and recorded on the Amended Judgment in a Criminal Case. In one of the rare cases on this issue, *U.S. v. Berman*,[96] the Seventh Circuit upheld a change in payee where the beneficiary of the restitution assigned its right to the restitution to an unsecured creditor (even though the new beneficiary suffered no loss from the offense), based on the victim's statutory right to designate someone to receive the restitution.[97]

E. Civil agreements or settlements

Restitution generally is not limited by 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, and 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.[98] For there to be any potential offset, the defendant must prove that the civil settlement or suit is for the same harms or costs for which restitution was ordered.[99] 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.[100]

Second, such agreements or settlement (or even judgments) are sometimes subsequently changed, appealed, or amended.[101] Third, restitution serves different functions than civil agreements, and cannot be waived by the victims, because it is considered a punitive criminal penalty, meant to have deterrent and rehabilitative effects, beyond the goal of compensating the victim.[102] The penal purposes of restitution are not litigated in the civil case, and the "law will not tolerate privately negotiated end runs around the criminal justice system."[103] The defendant has the burden of proving not only that the civil award covers the same harm as the restitution,[104] but also that the civil compensation satisfies the penal purposes of the restitution award.[105] However, if the defendant proves at sentencing that he/she *has already compensated* the victim for the *same harms* that are covered by the restitution award, it may be appropriate to offset the compensated amount against the restitution amount to be imposed.[106] Finally, while 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.[107] The victim is only paid once, but the restitution order acts as an additional enforcement mechanism for the civil judgment.[108]

Conclusion

This completes a "trilogy" on federal restitution in *Federal Probation,* spanning the better part of three years. It is intended to provide a solid framework from which probation officers can assist their courts in making the best possible determination of the restitution amount that should be imposed in federal criminal cases, in a way that benefits not only the system by avoiding unnecessary litigation, but also victims of crime. Some of these issues are not fully developed by the courts, and new ones will naturally appear, as restitution becomes a greater part of federal criminal jurisprudence.

Endnotes

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

[2]Goodwin, "The Imposition and Enforcement of Restitution," *Federal Probation*, Vol. 64, No. 1, June 2000, pp. 62-72.

[3]Title II of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

[4]Restitution is mandatory for offenses listed in § 3663A(c) (crimes of violence, title 18), and for certain specific title 18 offenses (§§ 2248, 2259, 2264, 2327, 228). It is discretionary (i.e., the court must balance the restitution amount with consideration of the defendant's ability to pay) for offenses listed in § 3663 (primarily all other title 18 offenses), and when restitution is imposed (for any other offense) as a condition of supervision, pursuant to §§ 3563(b)(2) and 3583(d). See the December 1998 article for further discussion.

[5]In the December 1998 article, the first step was to determine whether restitution is mandatory or discretionary. Further experience has clarified that the first step is actually to identify the offense of conviction, which in turn enables one to do three things, only one of which is to determine whether restitution is mandatory or discretionary.

[6]Offenses for which restitution is mandatory are listed in § 3663A (and certain specific title 18 mandatory provisions apply to particular groups of offenses); those for which restitution is authorized as a separate sentence but for which it is discretionary (depending on the defendant's ability to pay) are listed in § 3663.

[7]See discussion of *Hughey*, infra, and in December 1998 article. Two firearm cases illustrate the continuation of this fundamental restitution principle: In *U.S. v. Reed*, 80 F.3d 1419 (9th Cir. 1996), restitution was not allowed to a shooting victim where the defendant was convicted of felon in possession of a gun; however, in *U.S. v. Smith*, 182 F.3d 733 (10th Cir. 1999), restitution was upheld for a credit union robbery that was the basis of the defendant's conviction of using a gun in a crime of violence, § 924(c). The court found the use of the gun was "an integral part and cause of the injury and loss to the credit union." *Id.* at 736.

[8]*See, e.g., U.S. v. Paradis*, 219 F.3d 22 (1st Cir. 2000) (bankruptcy trustee was not victim of defendant's conviction for laundering bankruptcy fraud proceeds).

[9]495 U.S. 411 (1979) (Hughey I).

[10]495 U.S. at 413.

[11]*See, e.g., U.S. v. Akande*, 200 F.3d 136, 139 (3d Cir. 1999).

[12]*See, e.g., U.S. v. Upton*, 91 F.3d 677, 686 (5th Cir. 1996), *cert denied*, 117 S.Ct. 1818 (1997).

[13]Hereinafter "scheme" represents "scheme, conspiracy, or pattern of criminal activity."

[14]*The American Heritage Dictionary*, 2d College Edition, defines "scheme" as "A systematic plan of action; an orderly combination of related parts or elements; a plan, especially a secret or devious one; plot…" Legally, a fraudulent scheme commonly involves causing others to rely on false statements (or acts) to their detriment.

[15]*See, e.g., U.S. v. Akande*, 200 F.3d 136 (3d Cir. 1999); *Hughey v. U.S.* (Hughey I), 495 U.S. 411 (1990); *U.S. v. Hughey* (Hughey II), 147 F.3d 423 (5th Cir. 1998); *U.S. v. Hayes*, 32 f.3d 171 (5th Cir. 1994); *U.S. v. Cobbs*, 967 F.2d 1555 (11th Cir. 1992); *U.S. v. Moore*, 127 F.3d 635 (7th cir. 1997) ; *U.S. v. Blake*, 81 f.3d 498 (4th Cir. 1996); *U.S. v. Stouffer*, 986 F.2d 916 (5th Cir. 1993).

[16]172 F.3d 341 (5th Cir. 1999).

[17]*Id.* at 343.

[18]Possibly lending support to looking beyond the "elements" is the fact that the statutory provision also refers to a "pattern of criminal activity"—a term not easily identified as an "element." This term suggests a series of related acts and appears to invite an examination of the facts (alleged or proven). This is yet another inherent contradiction involved with this provision which makes its application problematic in some cases.

[19]155 F.3d 942 (8th Cir. 1998). *See also, U.S. v. Ramirez*, 196 F.3d 895 (8th Cir. 1999) (looking to the scope of the indictment to determine the extent of the scheme); *U.S. v. Manzer*, 69 F.3d 222, 230 (8th Cir. 1995) (quoting *U.S. v. Welsand*, 23 F.3d 205, 207 (8th Cir.)), *cert denied*, 115 S.Ct. 641 (1994).

[20]147 F.3d 423, 438 (5th Cir. 1998), *cert denied*, 119 S.Ct. 569 (1998).

[21]195 F.3d 961, 969 (7th Cir. 1999). *See also, U.S. v. Savage*, 891 F.2d 145, 151 (7th Cir. 1989); *U.S. v. Obasohan*, 73 F.3d 309 (11th Cir. 1996) (per curiam).

[22]*See, e.g., U.S. v. Blake*, 81 F.3d 498 (4th Cir. 1996); *U.S. v. Hayes*, 32 F.3d 171 (5th Cir. 1994). *But see U.S. v. Moore*, 127 F.3d 635 (7th Cir. 1997) (holding that restitution to use-victims for possession-offense was not plain error).

[23]*U.S. v. Hughey*, (Hughey II) 147 F.3d 423 (5th Cir. 1998), *cert denied*, 119 S.Ct. 569 (1998); and *U.S. v. Akande*, 200 F.3d 136 (3d Cir. 1999).

[24]However, even under this view, charged dates *of the scheme or conspiracy* would define the contours of the offense, *not* the dates of the specific acts charged in the counts of conviction. For example, if the offense of conviction is a scheme that is alleged to have begun in January and ended in August, and the counts of conviction are specific acts in March and April, any acts in the scheme that are within the January-August time frame are included for restitution purposes.

[25]*See, e.g., U.S. v. Nichols*, 169 F.3d 1255 (10th Cir. 1999). *See also, U.S. v. Brewer*, 983 F.2d 181, 185 (10th Cir. 1993) (good discussion of acts of co-participants for restitution).

[26]172 F.3d 520 (7th Cir. 1999); *see also, U.S. v. Welsand*, 23 F.3d 205, 207 (8th Cir. 1994), *cert denied*, 115 S.Ct. 641, upholding restitution for all losses during an 11-year mail fraud scheme, not just those acts within the 5-year statute of limitations.

[27]*See, e.g., U.S. v. Boyd*, 222 F.3d 47 (2d Cir. 2000); *U.S. v. Dahlstrom*, 180 F.3d 677 (5th Cir. 1999); *U.S. v. Chaney*, 964 F.2d 437 (5th Cir. 1992); *U.S. v. Farkas*, 935 F.2d 962 (8th Cir. 1991).

[28]*U.S. v. Kane*, 944 F.2d 1406 (7th Cir. 1991). The government subsequently conceded restitution could not be based on an acquitted count based on *Kane* in *U.S. v. Polichemi*, 219 F.3d 698 (7th Cir. 2000), *cert denied*, 2001 WL 138195.

[29]165 F.3d 1133 (7th Cir. 1999).

[30]195 F.3d 961 (7th Cir. 1999).

[31]170 F.3d 1260 (9th Cir. 1999).

[32]137 F.3d 533 (7th Cir. 1998).

[33]*U.S. v. Teehee*, 893 F.2d 271, 275 (10th Cir. 1990).

[34]161 F.3d 117 (7th Cir. 1998).

[35]The victim is one who is "directly and proximately" harmed, in §§ 3663A and 3663, or harmed as a "proximate result of the offense," in the specific title 18 mandatory restitution statutes. The term "proximately" invokes the legal concept of "proximate cause," which generally includes only "foreseeable" consequences of one's acts, in the law of torts. The effect of this concept here, combined with "directly," is not yet clear.

[36]175 F.3d 782 (10th Cir. 1999).

[37]18 U.S.C. §§3663(a)(2) and 3663A(a)(2).

[38]79 F.Supp.2d 1322 (D.Ut 2000).

[39]*See, e.g., U.S. v. Catherine*, 55 F.3d 1462, 1465 (9th Cir. 1995); *U.S. v. Davis*, 43 F.3d 41, 47 (3d Cir. 1994); *U.S. v. Patty*, 992 F.2d 1045 (10th Cir. 1993); *U.S. v. Rochester*, 898 F.2d 971, 982-3 (5th Cir. 1990).

[40]*U.S. v. Rea*, 60 F.3d 1111, 1114 (8th Cir. 1999).

[41]*See, e.g., U.S. v. Diamond*, 969 F.2d 961, 968 (10th Cir. 1992); *U.S. v. Patty*, 992 F.2d 1045, 1049 (10th Cir. 1993); *U.S. v. Mullins*, 971 F.2d 1138, 1147 (4th Cir. 1992) (attorneys and investigators fees expended finding and repossessing equipment taken by defendant not included); *U.S. v. Mitchell*, 876 F.2d 1178, 1184 (5th Cir. 1989) (victim's attorneys fees expended to recover from an insurance company not included); *U.S. v. Arvanitis*, 902 F.2d 489, 497 (7th Cir. 1990) (insurance company's legal fees expended to investigate defendant's fraudulent insurance claim not included); *U.S. v. Barany*, 884 F.2d 1255, 1261 (9th Cir. 1989) (same).

[42]*U.S. v. Stoddard*, 150 F.3d 1140, 1147 (9th Cir. 1998).

[43]863 F.2d 1100 (3d Cir. 1988). *See, also, U.S. v. Davis*, 176 F.3d 1373 (11th Cir. 1999) (further explaining the result in *Hand*).

[44]176 F.3d 1373 (11th Cir. 1999).

[45]235 F.3d 826 (3d Cir. 2000).

[46]189 F.3d 954 (9th Cir. 1999).

[47]§ 2259(b)(3)(B) specifically authorizes mandatory restitution for psychological counseling. Under Section 3663, psychological counseling is authorized only if the victim suffered physical injury.

[48]Section 3664(d)(5) states: "If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing [determination of restitution may be deferred up to 90 days after sentencing.] If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief."

[49]*Id.* at 967, n. 14. The court also concluded that Congress could not have intended the "strangely unwieldy procedure" of requiring a victim to petition the court for an amended restitution order every 60 days for as long as the therapy lasted. *Id.* at 966-67.

[50]*U.S. v. Brand*, 163 F.3d 1268, 1278 (11th Cir. 1998).

[51]*U.S. v. Craig*, 181 F.3d 1124, 1127 (9th Cir. 1999).

[52]§§ 3663A(b)(4) and 3663(b)(4).

[53]126 F.3d 92 (2d Cir. 1997). If the victim had paid the expenses himself, it would have been compensable under § 3663A(b)(4); besides, the FBI functioned as a third party, compensating the victim for these compensable expenses.

[54]135 F.3d 133 (2d Cir. 1998).

[55]§§ 3663(b)(2) and 3663A(b)(2).

[56]*U.S. v. Jacobs*, 167 F.3d 792 (3d Cir. 1999).

[57]§§ 3663(b)(3) and 3663A(b)(3).

[58]*U.S. v. Crawford*, 169 F.3d 590 (9th Cir. 1999).

[59]*U.S. v. Rea*, 69 F.3d 1111, 1114 (8th Cir. 1999).

[60]For example, §§ 2248(3), 2259(3), and 2264(3) include compensation for psychological counseling, without regard to the kind of harm suffered by the victim, whereas it is only specifically compensable under the main restitution statutes where the victim suffered bodily harm (§§ 3663(b)(2) and 3663A(b)(2)).

[61]189 F.3d 954 (9th Cir. 1999). See discussion under "future harms" above.

[62]173 F.3d 122 (3d Cir. 1999).

[63]135 F.3d 133 (2d Cir. 1998).

[64]The Act was known as the "Senior Citizens Against Marketing Scams Act of 1994."

[65]125 F.3d 1319, 1323, n.5 (9th Cir. 1997). The MVRA, for example, amended the act to incorporate the newly amended § 3664.

[66] 173 F.3d 634 (7th Cir. 1999).

[67]§ 3663(a)(3) (restitution in any case to the extent agreed to by the parties in the plea agreement); §§ 3663A(a)(3) and 3663(a)(1)(A) (restitution to persons other than the victim of the offense); and § 3663A(c)(2) (mandatory restitution for non-qualifying offense, if the parties agree the plea resulted from a qualifying offense).

[68]*See, e.g., U.S. v. Baker*, 25 F.3d 1452 (9th Cir. 1994); *U.S. v. Guthrie*, 64 F.3d 1510 (10th Cir. 1995); *U.S. v. Silkowski*, 32 F.3d 682, 689 (2d Cir. 1994); *U.S. v. Soderling*, 970 F.2d 529, 532-34 (9th Cir. 1992) (providing example of specificity required).

[69]The MVRA added a note to § 3551, stating that the Attorney General shall ensure that, "in all plea agreements… consideration is given to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually pleaded."

[70]The Third Circuit, in *U.S. v. Akande*, 200 F.3d 136, 142 (3d Cir. 1999) (citing *U.S. v. DeSalvo*, 41 F.3d 505, 514 (9th Cir. 1994)), after remanding for correction of a restitution order, stated, "Because the government 'has control over the drafting' of the Information, it bears the burden of 'includ[ing] language sufficient to cover all acts for which it will seek restitution'."

[71]The Second Circuit, after painstakingly analyzing the plea agreement and transcripts of the plea and sentencing to determine the extent of the agreement, said, "the government would be well advised to give greater consideration to the impact of the [restitution statutes] in future plea negotiations…" *U.S. v. Silkowski*, 32 F.3d 682, 689 (2d Cir. 1994).

[72]Rule 11(c)(1), Federal Rules of Criminal Procedure.

[73]Rule 11(h), F.R.Cr.P.

[74]169 F.3d 590, 592 (9th Cir. 1999).

[75]*See also, U.S. v. Pomazi*, 851 F.2d 244, 248 (9th Cir. 1988) (same); *U.S. v. Fox*, 941 F.2d 480, 484 (7th Cir. 1991), *cert denied*, 112 S. Ct. 1190 (1992). *But see, U.S. v. Pogue*, 865 F.2d 226 (10th Cir. 1989), holding that § 2255 relief might be available to a defendant not advised of restitution consequences.

[76]*U.S. v. Electrodyne Systems Corp*, 147 F.3d 250, 253 (3d Cir. 1998).

[77]18 U.S.C. §§ 5031 et. seq.

[78]A corollary issue is how to interpret the "or"; the provision logically was intended to provide for restitution *and* either probation *or* official detention, given the mutual exclusivity of the latter two and the illogical result of a court choosing one from among the three.

[79]*U.S. v. Juvenile G.Z.*, 144 F.3d 1148 (8th Cir. 2000).

[80]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).

[81]173 F.3d 634 (7th Cir. 1999).

[82]211 F.3d 1 (2nd Cir. 2000).

[83]201 F.3d 805 (6th Cir. 2000).

[84]981 F.2d 1418 (3d Cir. 1992).

[85]112 F.3d 606 (2d Cir. 1997).

[86]In that case, the government had identified 62 victims of defendant's scheme, but had only located 20 of them by sentencing, suspecting some had moved or died. The court imposed restitution in the amount the defendant admitted receiving from all 62 victims and set up a fund, managed by the clerk, to receive the defendant's restitution payments, from which the victims could claim the money as they or their estates were found. The Second Circuit upheld the court's plan, noting there was some identification feature for each victim, leading to the belief that they might eventually be found. The court seemed to infer that after the court's supervision ended, the government would become trustee of the fund, and that future problems could be addressed by the court as they arose.

[87]*See, e.g., U.S. v. All Star Industries*, 962 F.2d 465 (5th Cir. 1992); *U.S. v. Caney*, 964 F.2d 437 (2d Cir. 1992); and *U.S. v. Tzakis*, 736 F.2d 867, 871 (2d Cir. 1984).

[88]*U.S. v. Emerson*, 128 F.3d 557, 568 (7th Cir. 1997).

[89]A recent policy change addresses one aspect of these problems and allows accounting of payments to stay in the sentencing district where one of several defendants, imposed joint and severally, is supervised in another district (even where supervision jurisdiction is transferred, as is the recommended policy). *See* memorandum to all clerks, district courts, and chief probation officers, "Joint and Several Restitution Orders for Offenders Jurisdictionally Transferred," November 14, 2000, from the Chiefs of the Accounting and Financial Systems Division and the Federal Corrections and Supervision Division, Administrative Office of the U.S. Courts.

[90]*U.S. v. Neal*, 36 F.3d 1190 (1st Cir. 1994).

[91]217 F.3d 443 (7th Cir. 2000).

[92]*The Presentence Investigation Report: Publication 107*, Administrative Office of the U.S. Courts, Appendix B, pp. 6-7.

[93]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.

[94]*U.S. v. Landrum*, 93 F.3d 122 (4th Cir. 1996) (but construing defendant's pro se motion in old law case as filed pursuant to former Rule 35(a); *U.S. v. Hatten*, 167 F.3d 884 (5th Cir. 1999); *Blaik v. U.S.*, 161 F.3d 1341 (11th Cir. 1998).

[95]*U.S. v. Hatten*, 167 F.3d 884, 886 (5th Cir. 1999); *Smullen v. U.S.*, 94 F.3d 20, 26 (1st Cir. 1996).

[96]21 F.3d 753 (7th Cir. 1994).

[97]§ 3663(b)(5) authorizes the victim to consent to restitution being made to a person or organization designated by the victim or the (deceased) victim's estate. It does not, however, indicate whether such designation could be made after sentencing, but there is no reason to suspect it could not. Besides, legal successions in interest would ordinarily happen after sentencing, during the life of the restitution order.

[98] *U.S. v. Cupit*, 169 F.3d 536 (8th Cir. 1999). *But see, U.S. v. Coleman*, 997 F.2d 1101 (5th Cir. 1993), *cert denied,* 510 U.S. 1077 (1994), recognizing a narrow exception where the government was victim and had also executed the mutual release with the defendant in the civil suit.

[99] *U.S. v. Sheinbaum*, 136 F.3d 443 (5th Cir. 1998); *U.S. v. Parsons*, 141 F. 3d 386 (1st Cir. 1998); *U.S. v. Mmahat*, 106 F.3d 89, 98 (5th Cir.), *cert denied*, 118 S.Ct. 136 (1997).

[100] *U.S. v. Crawford,* 162 F.3d 550 (9th Cir. 1998).

[101] *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).

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

[103] *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).

[104] *See, e.g., Crawford, Sheinbaum, Parsons, Mmahat, supra.*

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

[106] *Sheinbaum*, 136 F.3d at 449.

[107] § 3664(j)(2) (which pre-MVRA was § 3663(e)(2))states, *"(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."* (Note this refers only to compensation by the defendant, not by third parties.)

[108] *U.S. v. Cluck*, 143 F.3d 174 (5th Cir. 1998). *See also, Ahmad*, 2 F.3d 245, 248-9 (7th Cir. 1993), comparing judgment and collection rights of civil judgments and criminal restitution orders.

JUVENILE FOCUS

By Alvin W. Cohn, D.Crim.
President, Administration of Justice Services, Inc.

Child Safety Seats

The U.S. Department of Transportation has developed an Internet search service that will provide parents nationwide with information on where they can have child booster seats fitted for their vehicles. The service can be found on the national Highway Traffic Safety Administration web site at www.nhtsa.gov. According to NHTSA, fewer than 10 percent of children who should use booster seats are doing so, resulting in more than 500 children ages four to eight being killed each year.

Eighth-Grader Achievement

The nation's eighth-graders continue to lag behind 38 other developed countries in math and science, with no significant improvement in their scores since 1995, according to the Department of Education and the Third International Math and Science Study. In science, students in 17 industrialized Asian and European countries out-performed U.S. eighth-graders, while in math, students in 18 other countries out-performed U.S. students. Other studies show U.S. fourth-graders leading most of their international counterparts in science and math. The study also found that eighth-graders were far less likely than those in other countries to have math teachers with mathematics degrees (only 41 percent had such credentials).

Detention in Delinquency Cases

The increase in the number of delinquency cases handled by juvenile courts has driven the growth in the number of juveniles held in juvenile detention facilities. In 1988, juvenile courts handled 1.2 million delinquency cases. By 1997, this number had risen 48 percent, to nearly 1.8 million. This increase in the volume of cases entering the juvenile justice system resulted in a 35 percent increase in the number of delinquency cases that involved detention at some point between referral and case disposition. The number of juvenile delinquency cases detained in 1997 was 85,100 more than in 1988, which has resulted in an increased demand for more detention beds.

In general, the proportion of delinquency cases detained remained relatively steady between 1998 and 1997. Juveniles were detained in 20 percent of the cases processed in 1988, while in 1997, the proportion was 19 percent. However, during that period, the profile of detainees shifted, with a greater proportion of youths charged with person offenses, a greater proportion of females, and a greater proportion of black youth in the detention population. In 1997, 27 percent of delinquency cases involving black youth included detention, compared with 15 percent for white youth. The number of drug offense cases handled by juvenile courts increased 157 percent between 1990 and 1997, while the number of drug cases detained actually declined 16 percent (from 38 to 22 percent) during this period.

For a copy of the full report, Juvenile Court Statistic 1997, contact the Juvenile Justice Clearinghouse at (800) 638-8736, or at www.ojjdp.ncjrs.org.

Juvenile Probation

Courts with juvenile jurisdiction handled nearly 1.8 million delinquency cases in 1997 and probation supervision was the most severe disposition in almost 37 percent (645,600) of all delinquency cases. The number of cases placed on probation grew 48 percent between 1988 and 1997. During that time, the overall delinquency caseload increased 48 percent, according to the National Juvenile Court Data Archive. The analysis is based on data from more than 1,900 jurisdictions containing more than 70 percent of the U.S. juvenile population (youth age 10 through the upper age of original juvenile court jurisdiction in each state). In 1997, adjudicated delinquents ordered to probation accounted for nearly one-half (49 percent) of all delinquency cases placed on probation (nearly 318,700 cases). In the remaining delinquency cases (51 percent), the youth agreed to voluntary or informal probation.

The number of cases that resulted in court-ordered probation rose 67 percent from 1988 to 1997, while the number of informal cases rose 34 percent. In 1997, 69 percent of cases placed on probation involved white juveniles, 28 percent involved black juveniles, and three percent involved youth of other races. However, between 1988 and 1997, the probation caseload of black juveniles grew 50 percent (from 119,500 to 180,000), compared with a 46 percent increase of white juveniles (from 305,400 to 446,200). Most cases (76 percent) in 1997 involved males (492,700); however, the female probation caseload grew in the last decade from 18 percent to 24 percent. The greatest increase in the types of offenses that resulted in probation included person, drug, and public order.

Copies of the full report, Juvenile Court Statistics 1997, can be obtained from the Juvenile Justice Clearinghouse.

Juvenile Executions

Since 1973, 17 men have been executed in the U.S. for crimes committed as juveniles, including four in 2000, according to a report prepared by OJJDP. Currently, 74 other offenders are on death row for crimes committed before age 18. Of the 38 states that have the death penalty, 23 permit the execution of offenders who committed capital offenses before turning age 18, a policy that was upheld by the U.S. Supreme Court in 1988. The United Nations' Convention on the Rights of the Child states that crimes committed by juveniles should not result in execution or life imprisonment without the possibility of parole. The Convention was signed by President Clinton in 1995, but the U.S. Senate has not ratified it. According to the Justice Department, the U.S. and Somalia are the only UN members that have not ratified the accord. Moreover, Amnesty International reports that the U.S. is one of six countries since 1990 that have executed prisoners who were under age 18 at the time of the offense, including Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen.

Broken-Windows Probation—Transforming Probation Through Leadership

"The Broken Windows" Model is a recent publication developed by the Center for Civic Innovation at the Manhattan Institute, the National Association of Probation Executives, the American Probation and Parole Association, and the Robert A. Fox Leadership program at the University of Pennsylvania. This is a second and more comprehensive publication concerned with reforming and reinvigorating probation practices. It presents a framework for reengineering current probation practices, comprehensive strategies, and examples of programs that illustrate the various elements of the "Broken Windows" model of probation in practice. Although the report deals primarily with adult probation, much of the commentary is applicable to the supervision of juvenile offenders.

The publication can be purchased from APPA for $10, at (859) 244-8207, or via e-mail at athreet@csg.org.

Faulty Disabled Label

Many children are being wrongly labeled learning disabled when their problem simply is a lack of curiosity, according to an Ohio State University study. In an analysis of seven separate studies of motivation using questionnaires completed by several hundred adolescents and adults, researchers identified curiosity as one of 16 basic desires "that combine in infinite ways to determine nearly all of our motives" and that there is confirmation that there is a surprisingly low association between curiosity and intelligence. Dr. Steven Reiss reports that children who lack curiosity and do not excel academically are often diagnosed as learning disabled because educators assume they must be having trouble processing information.

Use of Online Time

During an average month, teenagers spend less than one-half as much time online as adults do, according to market trackers at Media Metrix and Jupiter Communications. Those aged 12 to 17 spend an average of 302 minutes online a month, while adults log in for 728 minutes—online time at home and not at work. For younger adults, the time spent averages 656 minutes; for those aged 35 to 49, the time spent averages 804 minutes. Currently, 15 percent of teenagers buy online and are expected to spend $500 million this year, with $4.1 billion more in Web-influenced spending online.

Teen Smoking Addiction

A University of Massachusetts Medical school study of 681 seventh-graders reports that young teens' addiction to cigarettes can be "kicked" within the first few days of smoking. Among the group, 95 reported occasional smoking, but one-fifth of the smokers reported symptoms of nicotine addiction within their first month of occasional smoking. Based on the study responses, the researchers split the students into three categories:

- Love at first sight smokers, who quickly become addicted,
- Slow onset smokers, who report addiction symptoms only a month after beginning smoking,
- Chippers, resistant to dependence on nicotine.

About two-thirds of the smokers fall into the first two categories within a year. The study also reports that 4,800 children try their first cigarette each day. By the end of the seventh grade, 39 percent of the students in the study report they had puffed on a cigarette at least once, but only seven percent report that they are daily smokers.

Juvenile Transfers to Adult Courts

Transfer research in the 1970s and 1980s found that, contrary to conventional wisdom, transfers 1) were not necessarily violent offenders, 2) did not necessarily receive harsher sanctions in criminal court than they would have received in juvenile court, 3) were not necessarily incarcerated, and 4) if incarcerated, did not necessarily receive longer sentences than their juvenile court counterparts. Research in the 1990s that compared the recidivism outcomes of transfers and of youth retained in the juvenile system found that transfers were more likely to recidivate within two years. After a six-year follow-up period, there was no difference between the groups in the proportion of offenders who recidivated, although the transferred youth who reoffended did so more quickly and more often, on average, than delinquents handled in juvenile court who reoffended.

Gang Survey

OJJDP announces the availability of Highlights of the 1999 National Youth Gang Survey, the fifth annual survey. Of the 3,018 survey recipients, 2,603 (86 percent) responded, with 44 percent indicating that gangs were active in their jurisdictions in 1999. From survey data, it is estimated that 3,911 jurisdictions experienced gang activities and that there were 26,000 gangs and 840,000 gang members. Between 1998 and 1999, there was a 27 percent increase in suburban counties and a 29 percent decrease in rural counties.

Copies of the report (FS200020) can be obtained from the Juvenile Justice Clearinghouse at http://puborder.ncjrs.org/ or at (800) 638-8736.

Pupils and High Technology

Second-graders should be using a mouse and digital cameras in school and fifth-graders should be able to ease through online discussions and create multimedia reports according to the National Education Technology Standards for Teachers (NETS). Other suggested standards include: having sixth- through eighth-graders be able to troubleshoot routine hardware and software issues, and ninth- through 12th-graders be able to collaborate online with experts and peers to produce creative works. However, only 24 percent of new teachers believe they are well-prepared to use technology in the curriculum.

Information on this report can be obtained at www.webcommission.org.

Day Care and SIDS

A significant number of crib deaths occur in day care, where caregivers may be less likely to have heard about the importance of putting babies to sleep on their backs, according to a research study conducted by the Children's Medical Center in Washington. In a study of 1,916 cases of sudden infant death syndrome, it was found that about 20 percent—391 deaths— occurred in day care settings. Previous research has shown that compared with babies who always sleep on their backs, back-sleepers switched to their stomachs are 20 times more likely to die of SIDS and habitual stomach sleepers are about five times more likely.

Student Standards

Raising high school graduation requirements may result in a better education and higher-paying jobs for those who can meet the new standards, but it also means higher school dropout rates, according to a Cornell University study. It was found that an increase in graduation standards of an extra 2.5 courses spread over the four years of high school results in a three to seven percent increase in the dropout rate.

Census of Juveniles

The Census of Juveniles in Residential Placement Databook (CJRP Databook) is an online interactive data dissemination tool developed for OJJDP by the National Center for Juvenile Justice (NCJJ). A component of OJJDP's Statistical Briefing Book found on the OJJDP Web site (www.ojjdp.ncjrs.org), the CJRP Databook enables users to access CJRP data quickly and easily without using statistical analysis software. It contains more than 1,700 state and national tables, including such variables as demographics, offense, placement status, and family characteristics of juveniles in residential placement according to 1997 census data. Additional data will be added periodically, including trend tables.

To access the CJRP Databook, locate the Statistical Briefing Book at www.ojjdp.ncjrs.org/ojstatbb/openpage.asp.

Incarcerated Parents

In 1999, state and federal prisons held an estimated 721,500 parents of minor children. A majority of state (55 percent) and federal (63 percent) prisoners reported having a child under the age of 18. Among the parents, 46 percent reported living with their children prior to incarceration. As a result, there were an estimated 336,300 U.S. households with minor children affected by the imprisonment of a resident parent.

Parents held in U.S. prisons had an estimated 1,498,800 minor children in 1999, an increase of over 500,000 since 1991. Of the nation's 72 million minor children, 2.1 percent had a parent in prison in 1999. A majority of parents in state prisons were violent offenders (44 percent) or drug traffickers (13 percent), and 77 percent had a prior conviction. Nearly 60 percent in state prisons reported using drugs the month before their offense and 25 percent reported a history of alcohol dependence. About 14 percent reported a mental illness and 70 percent did not have a high school diploma. One in three mothers in state prison committed their crimes to obtain drugs or money for drugs; this compares with 19 percent of fathers.

School Enrollments

According to the U.S. Department of Education, 26.98 million students were enrolled in grades K-8 in 1985, but by 2010, the enrollment for this group is estimated to be 33.0 million. For grades 9-12, the 1985 enrollment was 12.27 million, with an expected 2010 enrollment reaching 14.07 million. It is also anticipated that the number of annual high school graduates will be 10 percent higher in 10 years and college enrollment will be 19 percent higher. For the decade 2010-2020, overall enrollment is expected to increase by six percent. More information about this "baby-boom echo" report can be found at www.ed.gov.

YOUR BOOKSHELF ON REVIEW

It's Not Just About Gender, It's About Race and Class

Women and the Criminal Justice System. By Katherine Stuart van Wormer and Clemens Bartollas. Boston: Allyn and Bacon, 2000. 244 pp.

Reviewed ny Jolanta Juszkiewicz

Having read the title of this review, a reader might well ask what the "it" is all about. To borrow from what has become an infamous phrase, it all depends on what one's definition of "it" is. The "it" refers to both the subject and the subtext of the book. Historically, men have been the focus in the criminal justice system. The study of crime and criminal case processing has been undertaken from a male perspective. One obvious explanation for this situation is that men account for the overwhelming number of crime victims, "men commit the majority of crimes" (p. 4), and most of the denizens of jails and prisons are men. Moreover, men occupy the majority of positions in the criminal justice system, whether as police or corrections officers, prosecutors or judges. It may be assumed, therefore, that a book about women in the criminal justice system appears because women—and girls—represent the fastest growing population of arrestees and inmates in America's detention facilities and because increasing numbers of women are found in the ranks of criminal justice officials. While acknowledging this reasoning, this book is written with a different purpose. It explores the unique position in which women, whatever their numbers, find themselves, not only in the criminal justice system but in the greater society. Without explicitly stating it, the book argues that the predominant male perspective hampers the understanding of the underlying reasons for the disparities between the genders. The authors do state that "a fundamental theme of this book is that women are subjected to various forms of discrimination, exploitation, and criminalization. The women who are most likely to experience such oppressions are also poor and from minority groups." (p. ix.)

Before understanding women criminals, women as victims and survivors, and women as professionals (the subjects of three of the four parts of the book), the authors argue that one must first understand the female—or more accurately the feminist—framework. The first part of the book discusses various feminist theories and perspectives intended to provide the social context for examining women in the criminal justice system. A myriad of feminist theories notwithstanding, the unifying theme is that women's place in society, whether as criminal offenders or as officials in the criminal justice system, is subject to patriarchal social control. Furthermore, whatever power women hold is bestowed upon them or allowed to them by males. In a word, women are oppressed, especially poor women and women of color. The "it" of my review title, then, refers to the oppression of women expressed by sexism, racism, and classism. (p. 3)

The authors try to tackle quite a lot in the 18-page introduction. To shine the kindest light on this chapter, one can say that the information, insights, and interpretations it imparts about "gender, patriarchy, and social control" are very broad, sweeping, and compact. Besides presenting feminist perspectives, the chapter introduces the empowerment approach. The authors address the issue of women historically, describing their experience in American society as well as in other nations. Using a less favorable light, one might say the discussion sacrifices depth for breadth. The breadth, however, does not extend to the entire criminal justice system. Despite its title, the book fails to address all aspects of the criminal justice system or the variety of roles played by its actors. The discussion about women in the legal profession touches on legal practices and women as judges, but not on decisions made by women prosecutors, defense counsel or criminal court judges. The authors also overlook how female criminal defendants are treated in charging decisions, bail decisions, or sentencing decisions.

The second part of the book consists of two chapters, one focused on the front-end of the criminal justice system, namely crime, and the other on the back-end, the prison environment. Do and can male delinquency and criminology theories explain female adolescent and adult delinquency/ criminality? In response, the authors present conflicting theories and conclude that "both positions are essentially correct." (p. 49) "Considerable evidence supports the finding that female delinquency and female criminality operate through the same sociological factors as male delinquency and male criminality and that more variation exists within each gender than between sexes." (p. 49) Yet, the authors contend "the second position is also justified; new theoretical efforts are needed to examine the 'multiple marginality' of adolescent females and female criminals." (p. 49) The authors conclude this chapter by urging further inquiries into the "multiple marginality" of sexism, racism, and classism in the United States and elsewhere. The tenor of the second chapter is very different. It specifically explores the discrimination women experience in the treatment they receive or do not receive while incarcerated, the attitudes toward women, and the degrading practices. The authors offer a few examples of innovative programs (most from outside the United States) that advance women's empowerment.

The next section is devoted to women as victims and survivors, specifically of rape and wife or partner abuse. In contrast to "victim," the authors prefer the term"survivor," which suggests empowerment. (p. 84) The authors believe rape can only be understood as part of a continuum of sexual aggression, ranging from sexual harassment to acts of violence, which is an extension of patriarchal social control. They present an historical overview of rape as the ultimate male expression of

control over property, namely women. Even today women continue to suffer the stigma of rape victims, often being blamed for the crime committed against them. Different types of rape (acquaintance, mass, and child sexual abuse) are discussed as well as the psychological trauma associated with being a rape victim. The chapter ends with a discussion of the various stages of treatment leading to empowerment. A similar approach is taken in the chapter on wife and partner abuse, highlighting the nature and scope of the crime, the manifestations of the crime (i.e., marital rape, murder-suicide), theories of partner abuse, the criminal justice response, and human rights issues. The discussion of empowerment is more extensive, presenting negative as well as positive examples of efforts to move women from being abuse victims to being survivors of abuse.

The fourth and final part of the book examines the experience of women in professional roles, specifically in law enforcement, the legal profession, and corrections. The criminal justice system is viewed as a male subculture, one which women must "break into." (p. 151) Breaking into this subculture is full of obstacles such as sexual harassment and overt discrimination based on sex and race. A variety of techniques can be used to achieve success in the law enforcement, including defeminizing (i.e., masking femininity by becoming superefficient), deprofessionalizing (i.e., accepting subordinate status) (p. 167), or by using legal protections against harassment. (pp. 169-175) Entrance into the male bastion of law enforcement continues to be difficult for women, especially those of color. While the obstacles for women in the legal profession are similar to those in law enforcement, women have made greater inroads in the former. The authors attribute this to federal laws that removed the barriers against entry of women in the legal field and the creation of professional associations. (p. 203) In terms of entry into the field of corrections, women experience difficulty similar to those of their counterparts in law enforcement and the legal profession. Women choosing some career paths face more difficulties than others. For example, women probation and parole officers suffer less discrimination than those choosing to be corrections' officers. (p. 227) The entrance of women in corrections has had the impact of "humanizing the profession.…There seems to be a consistent difference in how women and men correctional staff approach inmates, handle problems, defuse violence, and respond to crises. These disparities, over time, can make major differences in the quality of institutional life." (p. 227)

Like most final chapters, this one provides a "summary and new directions for the future." The summary aspect of this chapter is particularly important because of the multifaceted themes in this book. Not all of the themes were given equal attention in each of the earlier chapters. Readers would be best served by reading the last chapter before they venture too deeply into the book, preferably after reading the introduction. Perhaps this reader's difficulty in keeping the themes distinct is due to their being intertwined in the authors' presentation. The first theme is "gender, class, and racial analysis" of the experiences of women. (pp. 230-231) Next is "the effects of the multiple oppressions of gender, class, and race." (pp. 231-232) The third theme is the male-oriented social constructionism. (pp. 232-233) The fourth theme is the social context of patriarchal society. (pp. 233-234) The overarching theme is empowerment. (pp. 234-235)

Interestingly, the authors conclude on a topic that they touched on throughout the book: the effect of women's greater role or greater empowerment on criminal justice and indeed in society. They say that "the greatest single factor in producing social change and humanizing the criminal justice system…may well be the voice of female authority." (p. 235) On a grim note, however, the authors caution that "things may have to get worse before they get better," listing as examples "more executions, harsher drug laws, more lethal weapons for police, fewer rights for prisoners…" (p. 235) Whether the road to the former insight must inevitably follow the latter insight will largely depend on how quickly we all, men and women alike, come to the realization that equality of treatment should mean better treatment for everyone. The greatest contribution of this book is that it provides these insights.

Dealing with Addiction

Save My Son. By Maralys Wills and Mike Carona. Center City, Minnesota: Hazelden, 2000. 240 pp. $15.00.

Reviewed by Dan Richard Beto
Huntsville, Texas

According to a number of studies by federal and state agencies, one of America's most pervasive problems is drug abuse. A vast majority of offenders confined in the country's correctional facilities are there for a drug-related crime. Likewise, drug-related offenses have caused an increase in adult and juvenile probation caseloads. One cannot pick up a newspaper or watch a television news program without seeing something about drug trafficking, drug interdiction, drug abuse, or drug treatment programs. So commonplace has exposure to illicit drug use and its consequences become in the American culture that it has been accepted as a natural phenomenon.

Despite the magnitude of this problem, both in personal and financial devastation, the average citizen gives little thought to it until its impact is seen on a close friend or relative. In *Save My Son*, Maralys Wills and Michael S. Carona team up to provide an unvarnished view of drug addiction and its destructive impact on a family. Wills, a writer and a member of a prominent family in Santa Ana, California, describes how her son became addicted to drugs and the impact it had on the family. The contribution by Carona, the Sheriff of Orange County, California, to this effort is his description of his mother's alcoholism and subsequent death and his experiences with drug-involved offenders during his law enforcement career.

The first part of the book is fairly depressing, since it traces the decline of Kirk Wills into addiction, the family's initial reaction and denial, the enabling process most families go through, the realization that the circumstances they face are beyond their understanding and control, and the failure of the criminal justice system to effectively address this problem. The second part of this volume is more encouraging and offers some hope. It provides insights into the problem of drug abuse and offers some strategies for dealing with the drug-involved family member. Successful strategies explored by the authors include therapeutic communities, specific correctional interventions, the drug court experience, community involvement, and re-entry programs.

Drawing from their unique experiences, Wills and Carona have created a book of interest to criminal justice practitioners, policymakers, treatment professionals, and family members confronting similar problems. While some may argue with their conclusions, they cannot argue with the authors' passion for their subject.

Books Received

Forms of Constraint: A History of Prison Architecture. By Norman Johnston. Champaign, IL: University of Illinois Press, 2000, 197 pp.

Uppers, Downers, All Arounders: Physical and Mental Effects of Psychoactive Drugs. Fourth Edition. By Darryl S. Inaba and William E. Cohen. Ashland, OR: CNS Publications, Inc., 2000, 452 pp.

American Penology: A History of Control. By Thomas G. Blomberg and Karol Lucken. Hawthorne, NY: Aldine de Gruyter, 2000, 232 pp.

Criminological Theories. Third Edition. By Ronald L. Akers. Los Angeles, CA: Roxbury Publishing Co., 2000, 256 pp.

The Spiritual Roots of Restorative Justice. Edited by Michael L. Hadley. Albany, NY: State University of New York Press, 2001, 245 pp.

Counseling Female Offenders and Victims: A Strengths-Restorative Approach. By Katherine van Wormer. New York: Springer Publishing, 2001, 392 pp.

Doing Time: An Introduction to the Sociology of Imprisonment. By Roger Matthews. New York: Palgrave, 2001, 287 pp, $21.95.

REVIEWS OF PROFESSIONAL PERIODICALS

Crime and Delinquency

Reviewed by Christine J. Sutton

"Subcultural Diversity and the Fear of Crime and Gangs," by Jodi Lane and James W. Meeker (October 2000)

During the 1990s, criminal policy was driven by fear and gangs. Policy makers and the media blamed gangs for much of the nation's random violence and public fear. The media often portrayed gang violence as random: an innocent bystander caught in a drive-by shooting or in the cross fire of gang warfare. Gang members became the stereotypical criminals of the decade.

The authors of this article examined the fear of crime and gangs in Orange County, California. Their hypothesis was that the fear of crime and the fear of gangs are different, and these fears are affected by subcultural diversity. The subcultural diversity theory is part of the social disorganization tradition, which posits that the fear of crime usually results from individuals' worries about living near people from different cultural backgrounds. In accordance with this view, the manners and behaviors of "these others" are difficult to interpret, leading to uncertainty and ultimately fear. When people fear others, they are less likely to have either the individual or collective efficacy in their neighborhoods to maintain social control and address problems, such as gangs and crime.

The data used by the authors was originally collected by a marketing research firm for a local newspaper. It consisted of a two-phase marketing survey, a 24-minute telephone survey followed by a 16-page questionnaire and a follow-up telephone contact. The "two fears" were the dependent variables. The 1,223 respondents were asked to indicate which day-to-day problems may or may not be a concern. For each concern, the respondents were to determine the degree they worried about them, using a four-point scale. "Fear" was measured as a "worry." The independent variables were the demographic characteristics. Measuring concern about subcultural diversity became the composite variable.

Prior research conducted in Orange County revealed much of the existing concern about subcultural diversity was related to undocumented Latino immigrants, who the residents believed were more likely to participate in local gangs, bringing different moral and behavioral standards, eventually causing the neighborhoods to decline.

The authors used a regression analysis of the data and confirmed both residential location concerns and concerns about subcultural diversity were important predictors of fear of gangs, whereas only the latter is important to fear of crime. Age and income were positively related to the concern about diversity, whereas education was negatively related to diversity concerns. People who were more concerned about diversity were more concerned about gangs than about crime in general. As to the fear of crime without the fear of gangs, age was found to have a direct positive effect and income had a direct negative effect on fear.

Comparing the results to demographic characteristics, income was significantly and negatively related to the fear of crime, but not to the fear of gangs. Essentially, people with more income are more likely to worry about diversity issues, which leads them to worry about crime and gangs. People with lower incomes are more likely to live in lower-income areas, which tend to have greater gang-related crimes. In the subject area, Orange County, the lower-income individuals were more likely to belong to minorities.

Especially interesting was the negative relationship between home ownership and fear of gangs. Due to financial and nuisance problems with graffiti, it was thought that homeowners would be more worried about neighborhood gangs. However, the analysis reflected that renters were more likely to worry about gangs. The authors suggest that renting may be a surrogate indicator for other social disorganization variables, such as single-parent households, larger number of children, greater density, which may be more associated with fear of gang crime.

The survey results suggest relationships between concern about diversity and both fear of crime and fear of gangs, supporting the premise that racial and cultural misunderstandings are the key factors in predicting fear of crime. People's sense of danger is related to their fears of strangers. Racial and ethnic differences accentuate these fears, because people do not understand the behaviors of individuals who belong to different cultural groups.

In conclusion, the data supported the authors' hypothesis that the fear of crime and the fear of gangs are different yet related. The authors also found a direct, independent, and positive connection in the public's mind between concerns about diversity and worries about crime and gangs.

The authors took their findings one step further to suggest important implications for policy makers: policy makers concerned about decreasing fear of crime will have to do more than "just" decrease crime. People's feelings about their neighbors and neighborhoods are just as important as crime levels, and even more important in contributing to fear.

Justice Quarterly

Reviewed by Robert K. Doolin

"The Relationships Between Time in Jail, Time on Electronic Monitoring, and Recidivism: An Event History Analysis of a Jail-Based Program," by Randy Gainey, Brian K. Payne, and Mike O'Toole (December 2000)

In the December 2000 issue of *Justice Quarterly*, authors Randy Gainey, Brian K. Payne, and Mike O'Toole present their findings from research conducted in 1998 on an alternative sanctions program in Virginia. Past researchers have examined the relationship between time incarcerated and recidivism rates, rather than researching the effect that time on electronic monitoring might have on recidivism. The authors also believe that most of the past research into electronic monitoring programs is descriptive in nature and tends to focus on successful program completion versus long-term effects on recidivism. Their findings are interesting and may prove valuable to practitioners; however, they point out a few caveats.

The authors open with a brief discussion of various theories of the effects of incarceration, including *deterrence theory*, where an individual is deterred from future criminal activity due to the punitiveness of a jail term and, deterrence theory's near opposite, *labeling theory*, where an individual continues criminal activity due to the stigmatization of serving a jail term. Because so many studies have been conducted on incarceration alone, the authors decided to focus on the combination effect of time in jail and time on electronic monitoring.

The researchers used program files and National Crime Information Center records to conduct their study of 276 offenders involved in the alternative sanctions program in an urban area of the state of Virginia. The study tracked offenders who participated between 1986 and 1993. One impressive aspect of the study is that the researchers collected their data five to twelve years after offenders had finished their electronic monitoring sentence.

Offenders were to serve one-third of their sentence in jail, one-third in a work release center, and the final third on electronic monitoring (actual time in each portion varied). Offenders had to comply with the standard 19 conditions of the program, which included working, remaining substance free, and paying for the services they received. One problem with the offender group chosen, as the authors point out, was that nearly half of them were traffic offenders (i.e., operating under the influence), while felony offenders composed only one-third of the participants. The participants spent an average of 72 days on electronic monitoring, and more than 90 percent were male.

The authors used *logistic regression* to predict the risk of an offender's rearrest, and *event history analysis* to track the timing of the rearrest. Using these methodologies, the authors discovered what they consider the most important finding of the study: the number of days spent on *electronic monitoring* was statistically significant in both equations. (On the other hand, researchers found that the number of days spent in *jail* was not statistically significant.) The longer an individual served on electronic monitoring, the smaller the likelihood of rearrest and the longer the time until rearrest. Not surprisingly, the odds for rearrest of a felony offender were 157 times greater than those of a traffic offender. Those with more prior arrests were more likely to recidivate and to recidivate sooner. Interestingly, married offenders were more likely, statistically, to recidivate than their unmarried counterparts.

The authors believe their study confirms, to a degree, the theory of "reintegrative shaming" espoused by J. Braithwaite in 1989. Braithwaite suggested that: "*the key to crime prevention…is to simultaneously evoke remorse from offenders for the rules they have violated and reinforce the individual's membership in the community of law-abiding citizens.*"

The authors point to other scholars who have theorized that electronic monitoring "affords offenders respect by trusting them with early release into the community." On the other hand, the authors also see some weaknesses in their study, including 1) the relatively small (n=276) and homogeneous sample (mostly male traffic offenders); 2) the inability to prove causation; and 3) the lack of a comparison sample.

In spite of these weaknesses, however, the authors believe the study reveals the positive effects that an electronic monitoring program can have on offenders. The authors suggest that electronic monitoring can be used effectively as a reintegrative sanction, and conclude their case study with some suggestions for researchers and practitioners. First, practitioners should educate the public about the punitiveness of electronic monitoring sanctions. Such sanctions are often perceived as lenient or lacking in power to deter. The authors believe their case study suggests otherwise. Second, policy makers are encouraged to examine a combination of alternative sanctions to find the "right match" that proves most effective. Third, researchers should focus their efforts on obtaining data on how offender characteristics affect alternative sanctions outcomes. And, finally, the authors suggest that practitioners should be careful to neither overstate nor understate the usefulness of electronic monitoring programs.

This case study certainly highlights the positives that an electronic monitoring program can bring to the criminal justice system. While there were some inherent weaknesses in the study, one strength was that offenders were tracked a considerable length of time following their completion of the program. The authors present their case study with a good mixture of theoretical discussion, research methodology, data presentation, and practical implications.

British Journal of Criminology

Reviewed by James M. Schloetter

"Crime and the City: Public Attitudes Towards Open-Street CCTV in Glasgow," by Jason Ditton (Volume 40, Number 4, Autumn 2000)

Since the early 1990s, Great Britain has embarked on a very substantial public and private investment in open-street closed circuit television (CCTV) surveillance. Part of the justification for this has been the assumed ability of CCTV to reduce both crime and the fear of crime. However, recorded crime in Glasgow, Scotland actually increased after CCTV was installed there. A survey found majority support for the installation of open-street CCTV, and a majority thought CCTV would make them feel safer. However, the author found that when actual feelings of safety are compared over time to prospective feelings, there is no improvement after the installation of CCTV cameras. Further, respondents to the survey believe that CCTV is better than the police in detecting crime, but that police patrolling is more effective than CCTV in making people feel safer.

Three sweeps of the survey were conducted between January 1994 and January 1996. A total of 3,074 respondents were interviewed. Respondents were asked how often they visited a particular location in the city center, how safe they felt there, whether or not they ever avoided certain areas, and whether or not they ever worried that they might become a victim of crime. Last, they were asked whether or not they had, indeed, been a victim of any crime.

The three sweeps of the survey uncovered no evidence that the installation of CCTV cameras in Glasgow's city center had a positive effect on what is generally known as the "fear of crime." Comparing responses before

and after CCTV cameras were installed, the survey showed that the number of people preparing to use the city center did not increase, feelings of safety were lower in the city center than in other locations, the city center was more likely to be avoided, and worries about being a victim remained greater in the city center.

The author found that CCTV did not make people feel safer in the city center of Glasgow. However, a number of puzzling findings emerged. For instance, most respondents were quite happy to walk alone in the city center, even at night; most respondents, even women, felt safe there; more of the younger respondents as opposed to the older respondents were worried about becoming a crime victim; and those who had been victimized before were least likely to feel reassured by the presence of CCTV. This led the author to ponder why CCTV should be the answer to the multiple problems posed by city life. The author then looked upon the role the city plays in the lives of all citizens, which has been the object of serious sociological study in the past. Many of the survey responses will open up new avenues of inquiry, but for this study, one can argue that if society relies on technology rather than on people, there is an inherent risk of worsening, let alone failing to improve the situation. And since crime in the city center of Glasgow increased, perhaps this is an explanation.

"An Analysis of Drug Trafficking," by Rosalyn Harper and Rachel Murphy (Volume 40, Number 4, Autumn 2000)

The authors reviewed a larger report based on the demographic and sentencing characteristics of 1,715 traffickers caught smuggling drugs through Heathrow Airport between July 1991 and September 1997. The authors profiled the socio-demographic characteristics of these traffickers and examined equity in their sentences.

For cannabis traffickers, age, plea, role, nationality, and weight had a statistically significant predictive effect on sentencing. Shorter sentences were given to those offenders who were younger, pled guilty, carried drugs, possessed lower amounts, and were U.K. nationals. Gender and residency had no statistically significant predictive effect on the sentencing of cannabis traffickers.

For cocaine traffickers, gender, plea, role, residency, and estimated street value were statistically significant in predicting sentence length. Before 1994, shorter sentences were imposed on female offenders, and those who pled guilty, carried drugs, or were non-UK residents. Also, the lower the estimated street value of the cocaine, the lower the sentence. Nationality and age were not statistically significant. After 1994 (when courts looked at purity of drugs as opposed to weight), age, plea, and role were statistically significant predictive factors. Shorter sentences were imposed on younger offenders, those who pled guilty, and those who possessed less pure drugs. Gender, nationality, and residency were not statistically significant factors in predicting sentence length.

For heroin traffickers prior to 1994, estimated street value and plea were statistically significant factors in sentencing. Those who pled guilty and possessed lower street-value drugs received lower sentences. Age, gender, role, nationality, and residency were not statistically significant. After 1994, gender, plea, role, and weight were statistically significant. Shorter sentences were imposed on men, those who pled, drug carriers, and those who possessed small amounts. Age, nationality, and residency were not statistically significant.

Overall, factors likely to affect sentence included cooperation with customs, a guilty plea, evidence of genuine remorse, role in importation, and previous drug convictions. More study is needed, but the authors concluded that sentencing guidelines are being adhered to in terms of the weight, estimated street value/purity of the drug, role, and plea. Other variables such as nationality, residency, age, and gender do appear to be having an impact, to varying degrees, on the length of sentence given to drug traffickers.

The Prison Journal

Reviewed by Sam Torres

A review of *The Prison Journal's* special issue on prison sexuality.

The December, 2000 issue of *The Prison Journal* contains eight articles on prison sexuality. Under the guest editor, Christopher Hensley, the authors explore prior prison sex research, sexual coercion among both male and female inmates, correctional officer perceptions of sexual behavior in prison, inmate attitudes (male and female) toward homosexuality in prison, and the changing nature of interpersonal relationships in a women's prison.

The issue opens with "The History of Prison Sex Research," by Christopher Hensley, Cindy Struckman-Johnson, and Helen Eigenberg. The article reviews significant sex research beginning with the classical 1934 study by Joseph Fishman and then summarizing the significant literature from the early 1960s to the present. In 1934, Fishman reported that sex in prison is "shrouded in silence," and almost 70 years later, few, if any, well-known research institutions dare to explore the subject. The article provides statistical data on prison sexual conduct that has been obtained through a review of the studies, but stresses the need for additional research that examines inmate attitudes, consensual sex, and coerced sex in prison.

Richard Tewksbury and Angela West continue the review of research literature on sex in prison in their article, "Research on Sex in Prison During the Late 1980s and Early 1990s." According to the authors, the sex research during these two decades tended to focus almost exclusively on male inmates and generally examined either the consequences of HIV/AIDS in prison or the incidence of sex among inmates. That prison sex research is not a "safe" topic is demonstrated by the fact that most studies produced during this period were produced by young scholars at small or nonacademic institutions. The authors believe that "It should be of concern to institutional administrators to understand sexual expression among inmates that is safe and discreet and to control unsafe and unwanted sexual expression among inmates who use sex as a weapon"(p. 375). The authors conclude that there has been little or no incentive, encouragement, or support for scholars to conduct studies in this subject matter. Perhaps, the authors contend, sex research is viewed as "dirty" or "distasteful," and only of marginal importance, but "refusal or reluctance even to devote research attention to the issue is detrimental to the study of corrections, to the discipline, and to society as a whole" (p. 377).

The third article, "Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men," by Cindy and David Struckman-Johnson, found that 21 percent of the inmates had experienced at least one episode of pressured or forced sexual contact since incarcerated in their state, and 16 percent reported an incident in their current facility. At least seven percent of the sample of 1,788 inmates had been raped while at their current institution, seven percent had experienced sexual coercion, and at least four percent had been raped during the most recent 26 to 30 months. Among the factors that appeared to increase

sexual coercion rates were large population size, racial conflict, barrack-style housing, inadequate security, and having a high percentage of inmates incarcerated for a violent crime. The presence of "motivated" security staff along with tight security measures appeared to limit sexual coercion among inmates. Institutions that used lockdown procedures had a zero rape level. Of major concern is the finding that in the larger prisons, approximately 20 percent of the sexual coercion incidents apparently involved prison staff perpetrators.

Leanne Fiftal Alarid uses a qualitative case study approach to examine "Sexual Assault and Coercion Among Incarcerated Women Prisoners: Excerpts From Prison Letters." Alarid analyzes letters written over a five-year period by ex-inmate Velmarine Oliphant Szabo. The themes identified by Alarid included a) apathy toward sexual coercion and sexual assault; b) the "jailhouse turnout femme" as the sexual aggressor; c) insight to one rape situation; and d) institutional factors contributing to sexual coercion. The study found that sexual pressuring and sexual harassment were much more prevalent than sexual assault in women's prisons. It appears that many women do experience sexual coercion at some point in their incarceration and those who actually participate in homosexual activity, particularly in the dominant masculine role, were much more likely to experience repeated incidents of coercion. An intriguing finding was that the "femmes," the more feminine inmates, seem to have become more sexually aggressive because there are fewer constraints on their behavior. Alarid suggests that heterosexual women possessing feminine qualities are not perceived by officers as posing a threat to institutional security. The author suggests that in areas where sexual assaults are likely to occur, administrators should install and increase the use of cameras.

The fifth article, "Inmate Sexual Assault: The Plague That Persists," by Robert Dumond, a licensed mental health professional, condemns the United States correctional system for failing to develop effective strategies for treating inmate sexual assault victims. Although no inmate is immune from sexual assault, certain categories of inmates appear to be more vulnerable. These include a) the young, inexperienced inmate; b) those who are physically small or weak ; c) inmates who suffer from mental illness or developmental disabilities; d) middle-class, rather than "tough" or "streetwise"; e) inmates who are not gang affiliated; f) inmates known to be homosexual or overtly effeminate; g) persons convicted of sexual crimes; h) "snitches"; i) inmates disliked by staff or other inmates; and j) inmates who have been previously sexually assaulted. Dumond notes that the effects of sexual victimization are pervasive and devastating, with profound physical, social, and psychological components. In addition to the physical harm, there are risks of HIV/STD transmission, medical injuries, post-traumatic stress disorder, depression, suicide, loss of social status in prison, labeling, and stigmatization. Furthermore, once sexually victimized, inmates may be vulnerable to further victimization. The author notes that most institutional health professionals may be more familiar with treating the sexual predators than with understanding and treating the victims of sexual assault. Dumond also addresses inmate sexual victimization by staff. It has become increasingly apparent that female inmates face substantial risk of sexual assault by a small percentage of male correctional officers. The author concludes that correctional staff training is vital to change correctional officers' attitudes about sexual victimization and to increase the ability of staff to identify at-risk inmates. In one study, it was noted that half of all correctional staff engaged in victim blaming.

In "Correctional Officers and Their Perceptions of Homosexuality, Rape, and Prostitution in Male Prisons," Helen M. Eigenberg challenges what she terms the traditional view of homosexuality in prisons that holds that sexuality is a static and permanent characteristic. To avoid the apparent contradiction of this view that occurred when researchers were forced to explain how heterosexual men engaged in homosexual behavior, the literature shifted its focus to rape. Rape victims, prostitutes, and rapists were then defined as situational homosexuals, blurring the distinction between consensual sexual acts and coercive ones. Eigenberg found that, in general, "officers tend to view sexual orientation as dynamic in nature, but they also support the idea that situational homosexuality results when men are deprived of other sexual outlets" (p. 429). The most interesting finding, however, was that the majority of officers viewed prostitutes as willing participants. Officers overwhelmingly demonstrated difficulty in distinguishing between consensual sexual acts and rapes in prison. Most officers have little experience actually catching inmates in the act, and only a few officers report ignoring these violations when discovered. Perhaps the most critical observation was that most officers indicated that they would respond aggressively to any prohibited act whether it was consensual or coercive. But officers also indicated that they were slightly less likely to respond to consensual homosexuality. The author notes that, "This finding is problematic because it may be impossible for officers to determine whether inmates are engaged in consensual or coercive acts merely by observing a sexual interaction" (p.430). Eigenberg is disturbed that so little attention has been given to administrative responses to male rape in prison. She concludes by discussing a number of jurisdictions and organizations that have established protocols to deal with sexual victimization.

The seventh article on prison sexuality, "Attitudes Toward Homosexuality in a Male and Female Prison," is an exploratory study by the guest editor, Christopher Hensley, on differences between male and female inmates' attitudes toward sexuality. Hensley found that not only gender but also race, homosexual behavior during incarceration, and remaining sentence time had significant effects on inmates' attitudes toward homosexuality. Male inmates were more likely than female inmates to have homophobic attitudes, while black inmates were more tolerant of homosexuality compared to white inmates, either male or female. Furthermore, inmates who had been involved in homosexual behavior during their imprisonment were less likely to have homophobic attitudes than those who had not gotten involved in homosexuality. The study also found that those who had longer time remaining to be served on their sentence were more likely to have negative attitudes toward homosexuality compared to those with a shorter time remaining to serve. The author concludes that importation theory more clearly explains why certain groups of prisoners have certain attitudes toward homosexuality.

The eighth and last article of this special issue addresses "The Changing Nature of Interpersonal Relationships in a Women's Prison." Kimberly R. Greer interviewed 35 women imprisoned in a Midwest prison and found evidence that the female inmate's subculture may be changing. The author notes that it is generally assumed that the subcultures experienced by men and women in prison are diametrically opposed, with women prisoners creating more stable interpersonal relationships than male inmates. That is, institutions for women are generally

much less violent, involve less gang activity, and do not encourage the racial tensions that are found in men's prisons. In this study, however, Greer found that female inmates reported that their interpersonal relationships were less stable and less familial than has been reported in the literature. In particular, these female inmates reported a high level of mistrust in their friendships with other female prisoners. While many reasons were cited for engaging in sexual relationships, economic manipulation was given as the primary motivating factor for becoming sexually involved with another inmate. In contrast to prior studies on the female inmate subculture, female inmates interviewed for this study did not report significant or formal family-oriented group formation. The findings from this study suggest that in some ways the experiences of women in prison coincide with those of their male counterparts and suggest substantial change in the interpersonal environment of women's prisons. Greer presents several explanations for the change that may be occurring in female prisons, including the possibility that female inmates incarcerated in the 1990s may be responding to different cultural expectations for women in general and may be much more invested in personal identities rather than their social identities. The most promising possibility, according to Greer, is simply that the nature of prisons is changing. Inmates are no longer completely closed off from the rest of society and prisoners can now maintain contact with significant others and be influenced by the larger culture through television, radio, movies, letters, literature, and visits with family members.

IT HAS COME TO OUR ATTENTION

Reentry Roundtable

The Urban Institute, a Washington D.C. think tank, has inaugurated the Reentry Roundtable, a collection of academics, practitioners, service providers, and community leaders with knowledge and concern about the problems and challenges of handling the reentry of unprecedented numbers of released prisoners into society. Rates of incarceration over the past 25 years have increased fourfold, meaning the number of offenders *leaving* prison each year is also showing a massive increase. Further, money and support for rehabilitative programs within prison has decreased within the past few decades, so prisoners are less prepared for the outside world. The Justice Policy Center at the Urban Institute, led by Senior Fellow Jeremy Travis, formed the Reentry Roundtable in the fall of 2000 to discuss the current state of knowledge about prisoner reentry issues, oversee research initiatives, and serve as a forum for sharing research findings. The Roundtable met in Washington in October 2000 and New York City in March 2001. Among the many scheduled projects and publications are:

- "Returning Home: Understanding the Challenges of Prisoner Reentry"—a research project involving eleven states and exploring individual, family, and community reintegration.
- "Impact of Incarceration & Reentry on Children, Families and Communities." This study funded by HHS will focus on child development, child welfare, family violence, parenting, and service issues. The Urban Institute will commission papers, involve state policy makers and hold a national conference.
- Federal Supervision Study—The Urban Institute is collaborating with PricewaterhouseCoopers to develop with the Administrative Office of the U.S. Courts a strategic plan for better delivery of pretrial and probation services within the federal system. This will include a study of offenders under community supervision.
- Drug Treatment in Prisons—an assessment of our current state of knowledge about the effectiveness of different programs and the problems in implementing them.

Those interested in learning more about the Reentry Roundtable should contact the Urban Institute, Justice Policy Center, at 2100 M Street, NW, Washington, DC 20037 or at their web site: www.urban.org.

Response to Youth At Risk

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has a 75-page publication (Nov. 2000) titled *Comprehensive Responses to Youth At Risk: Interim Findings from the SafeFutures Initiative*. This publication summarizes the first three year's results from pilot projects for juveniles at risk in Boston, MA; Contra Costa County, CA; Fort Belknap Indian Community, MT; Imperial County, CA; Seattle, WA; and St. Louis, MO. The programs variously cover afterschool programs, juvenile mentoring, mental health services for at-risk and adjudicated youth, delinquency prevention, continuum-of-care services for at-risk and delinquent girls, family strengthening and support services, and serious, violent, and chronic juvenile offender programs. By focusing on problems in implementation as well as successes, the report offers a wealth of suggestions for those interested in starting similar programs. This publication is available from the U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. To obtain this and other OJJDP publications and videos on youth corrections and detention, delinquency prevention, gangs, substance abuse, mentoring programs, etc., you may call 800-638-8736, visit them online at www.ojjdp.ncjrs.org or order from www. ncjrs.org/puborder.

Contributors

To This Issue

David M. Altschuler

Principal Research Scientist, Hopkins Institute for Policy Studies, Johns Hopkins University. Previously, Research Associate of the Urban Institute. Ph.D., University of Chicago. Author of "Issues and Challenges in the Community Supervision of Juvenile Offenders," *Southern Illinois University Law Journal* (Winter 1995).

Eric T. Assur

Grant administrator, Safe and Drug Free School, Fairfax County Public Schools. Previously, Director, Central Probation Services, Juvenile & Domestic Relations Court, Fairfax County, VA. M.A., American University. Author of "Student Interns: Are They Worth the Bother?" *Federal Probation* (June 1999).

Scott T. Ballock

United States Probation Officer, District of Nevada. M.A. in Criminology, Indiana University.

Steven R. Binder

Deputy Public Defender, director of the Homeless Court Program, San Diego, CA. J.D., Western State University College of Law.

Ursula Castellano

Graduate student, University of California at Davis. M.S., University of California at Davis.

Michael D. Clark

Senior Partner and Consultant, Center for Strengths in Juvenile Justice. Previously, Senior Juvenile Court Officer, 30th Judicial Circuit Court, Lansing, MI. M.S.W., Michigan State University. Author of "Strength-Based Practice: The ABC's of Working with Adolescents Who Don't Want to Work with You," *Federal Probation* (June 1998).

Christopher Hansen

Supervisor, U.S. Probation Office, Middle District of Florida. Previously, Adjunct Professor, International College, Ft. Myers, FL. M.A., University of South Florida.

Alex M. Holsinger

Assistant Professor, Department of Sociology/Criminal Justice and Criminology, University of Missouri, Kansas City. Ph.D., University of Cincinnati. Author of *Correctional Contexts* (2001).

Edward J. Latessa

Professor and Head, Division of Criminal Justice, University of Cincinnati. Ph.D., Ohio State University. Co-author of *Corrections in the Community* (2000).

Arthur J. Lurigio

Professor and Chair of the Department of Criminal Justice, Loyola University, Chicago. Previously, Assistant Professor of Psychology, Northwestern University. Ph.D., Loyola University, Chicago. Author of *The Prevention of Crime* (with Dennis Rosenbaum and Rob Davis).

Joan Petersilia

Professor of Criminology, Law and Society, University of California, Irvine. Previously, Director of Criminal Justice, RAND Corporation. Ph.D., University of California, Irvine. Co-author of *Prisons*, University of Chicago Press (1999).

Alissa Riker

Director of Jail Services, Center on Juvenile and Criminal Justice. B.A., Georgetown University. Author of "Double Jeopardy: An Assessment of the Felony Drug Provision of the Welfare Reform Act," Justice Policy Institute (August 98).

Susan Sarnoff

Assistant Professor, Ohio University Department of Social Work. D.S.W., Adelphi University School of Social Work. Author of *Paying for Crime*, Praeger (1996).

BOOK REVIEWERS

Dan Richard Beto

Director, Correctional Management Institute of Texas, Sam Houston State University, Huntsville, TX.

Jolanta Juszkiewicz

Deputy Director, Pretrial Services Resource Center, Washington, DC.

REVIEWERS OF PERIODICALS

Robert K. Doolin

U.S. Probation Officer, Northern District of Indiana.

James M. Schloetter

Supervising U.S. Probation Officer, Northern District of California.

Christine J. Sutton

Supervising U.S. Probation Officer, Central District of California, Los Angeles.

Sam Torres

Professor of Criminal Justice, California State University, Long Beach.

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