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This Issue In Brief

[An Introduction to the Supervision of the Cybersex Offender](#)

Advanced technologies such as computers, scanners, digital cameras, and the Internet are opening up new avenues of crime for the "cybersex offender," and new challenges in supervising this often ingenious class of offender. The authors describe what to look out for and how to deal with it.

Art Bowker, Michael Gray

[Training Federal Probation Officers as Mental Health Specialists](#)

The rate of mental illness in the offending population is estimated at about three to four times that of the general population. The authors suggest the establishment of a certified training model for mental health specialists in federal supervision, and describe the necessary components of such a program.

Risdon N. Slate, Richard Feldman, Erik Roskes, Migdalia Baerga

[Restorative Justice Systemic Change: The Washington County Experience](#)

Restorative justice policies and programs are developing in nearly every state and nearly every judicial system. The authors provide a detailed look at the dynamics of system change in Washington County over many years as an example of long-term, durable change involving both the Washington County Court Services and the community.

Robert B. Coates, Mark S. Umbreit, Betty Vos

[Treatment Retention: A Theory of Post-Release Supervision for the Substance Abusing Offender](#)

In recent years the parole population in the U.S. has increased substantially, with a large portion of this population comprised of substance abusing offenders. In contrast to recent research on supervising substance abusing offenders that focuses on the agency level, the author argues for specialization and formulates a theory for post-release supervision of this population.

Benjamin Steiner

[Experiences and Attitudes of Registered Female Sex Offenders](#)

Sex offender registration was widely implemented in the 1990s to promote community safety. This study is the first examination of the collateral consequences of sex offender registration from the perspective of female offenders, showing a significant minority experiencing social stigmatization, economic losses and daily living challenges.

Richard Tewksbury

[Assessing the Inter-rater Agreement of the Level of Service Inventory Revised \(LSI-R\)](#)

The Level of Service Inventory Revised (LSI-R), one of the third generation of risk assessment tools, is tested in this study for inter-rater reliability by presenting a series of vignettes to 167 trainees in the LSI-R and analyzing them for level of agreement in how they estimated risk.

Christopher T. Lowenkamp, Alexander M. Holsinger, Lori Brusman-Lovins, Edward J. Latessa

[Planning for the Future of Juvenile Justice](#)

Change in general and in the juvenile justice system in particular is inevitable, but it takes a competent and skilled manager to provide clear and explicit goals and appropriate direction. The author describes the characteristics of properly planned and unplanned change.

Alvin W. Cohn

[Over-representation of Minorities in the Juvenile Justice System: Three Counties in Rural Texas](#)

The authors examine juvenile defendants in three rural counties, seeking answers to the questions: 1) Are ethnic minorities over-represented in the juvenile justice systems there and 2) If so, at what phases of the juvenile justice system do the rates differ?

H. Elaine Rodney, H. Richard Tachia

[Media Portrayals of Prison Privatization: A Research Note](#)

One solution to the overcrowding of prisons of recent decades is the use of privately operated prisons. The author studies the language of print media portrayals of private prisons from 1986 to 2002 to detect trends in the presentation of this option to the public.

Curtis Blakely

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An Introduction to the Supervision of the Cybersex Offender

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ADVANCED TECHNOLOGIES are increasingly becoming a way of life for our society. Computers are found in every home, school, and business, with more and more individuals going "online" every day. Unfortunately, these advanced technologies (computers, scanners, digital cameras, the Internet, etc.) are becoming the tool of choice for the "cybersex offender." Probation and parole officers must become acquainted with how cybersex offenders utilize these new tools in order to manage the risks posed by this offender population.

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Who is the Cybersex Offender?

Cybersex offenders use computers to view, store, produce, send, receive and/or distribute child and other forms of pornography; to communicate, groom, and entice children and others for victimization; and to validate and communicate with other sex offenders. The U.S. Department of Justice 2000 guide, [1](#) "Use of Computers in the Sexual Exploitation of Children," identifies three general types of cybersex offenders. They are 1) the dabbler; 2) the preferential offender; and 3) the "miscellaneous" offender. Dabblers are described as curious adults with a newly found access to pornography or offenders who are profit-motivated to deal in child pornography. A dabbler could also be the typical adolescent searching for pornography who downloads child pornography. The next group is the preferential offender. This is the sexually indiscriminate individual with a wide variety of deviant sexual interests or a pedophile with a definite preference for children. The last group, the "miscellaneous" offenders, are pranksters or misguided individuals conducting private investigations or exposés who have been found in possession of child pornography.

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Advantages In Using Advanced Technologies

Cybersex offenders find the computer and/or Internet a compelling tool in their deviant behavior for four general reasons. First, Internet access provides the offender with a level of anonymity that is not present in the real world. The offender can communicate with whomever he or she wants with little fear of being readily discovered and/or identified. Offenders communicating online with juveniles can be anyone they want. They can become someone from the opposite sex, another child, more attractive, less overweight, etc. The possibilities are endless. The ability to be anyone they want to be online is a big asset for someone trying to entice a juvenile.

Second, sex offenders using computers can "groom" multiple victims, even simultaneously. Such activity would be much harder in the real world.

Third, the computer greatly enhances the storing, cataloging, and retrieval of offenders' pornography collections. Literally thousands of pornographic images can be stored and concealed on a computer. These images can easily be kept out of sight of family members and inquisitive probation/parole officers, but at the same time be readily available for the offender's viewing and other purposes. This makes the storage of material much easier than if the images were in hard copy form.

Finally, advanced technologies permit anyone to produce pornography. Innocent images can be created and converted to pornography through a process called "morphing." [2](#) Offenders can even put themselves into pornographic images with a computer. Offenders can also easily take digital pictures of their victims, without having to be concerned about getting the film developed.

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Effects of Cybersex Offenses on the Victim

The effect of cybersex offenses can often be more detrimental for the victim than effects of other offenses. Pornographic images electronically maintained do not deteriorate like hard-copy images. Additionally, they can be distributed easier and faster and have a wider distribution audience than hard-copy images. Once distributed on the Internet, they are harder to retrieve and control. These factors tend to transform electronic pornographic images into media with a longer duration of harm for the victims portrayed than traditional hard copy images.

The Internet also provides a method for the cybersex offender to affect the victim without any physical contact occurring. Consider for a moment incidents where juveniles are exposed to pornography that was forwarded to them by adults. Also, no physical contact occurs when cyber-offenders obtain innocent images of children via the Internet or other sources and then "morph" those images into pornography. Such images may not even be known to the child for some time, until they begin surfacing online.

The nature of the Internet is such that no one country or authority governs its content. Issues of child pornography and exploitation frequently transcend jurisdictional boundaries, causing not only legal problems but also difficulties for victims seeking redress or a remedy.

Additionally, electronic images, just like hard-copy images of child pornography, are used by sex offenders to encourage or entice children to engage in inappropriate sexual conduct. The sending of these electronic images, however, takes on increased importance when they can be so readily transmitted to "future" victims. Finally, the trading of electronic images of child porn between offenders provides a form of reinforcement to these offenders.

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Determining What You Have

Determining what type of cybersex offender you have involves examining the following general areas: 1) files found in the offender's possession; 2) the offender's equipment and Internet

Service Provider(s) (ISP); 3) the offender's online activities; and 4) other activities of the offender. Looking at these areas individually and in conjunction with one another helps assess the offender's commitment to deviance.

Files Found

Knowledge of the files found in the offender's possession is very important. Obviously, sheer quantity reflects the offender's commitment level. Other areas to be aware of are types of files found. Specifically, were they still images, such as those with a file extension of .jpg, .bmp; .gif, etc., or were they moving images, such as those with a file extension of .avi or .mpg? Having a collection of moving images reflects a different aspect of offender behavior than just having still images. Additionally, it takes longer to download moving images than it does to download still images. An individual with a large collection of moving images shows an advanced degree of commitment to getting them because of the time involved in amassing them over the Internet. Finally, moving images take more electronic space to store than still images.

What were file names of the images? Were the names descriptive? This is important because it can counter the cybersex offender's claim not to know that the images were of child porn. Were the pornographic files found in the temporary Internet folders or did the offender save them in specific folders of his choosing? Did the offender's pornography reflect a specific theme and how were the images organized? Was there a particular age group or possible sadistic or masochistic (S & M) images? These issues provide important information on the offender's areas of interest or deviancy. Organization of the images is also significant because it takes active offender participation. It obviously takes a certain level of commitment to organize and sort hundreds or thousands of images.

How many pornographic files were saved on the offender's computer? How many such files did the offender forward to others or did the offender receive from others? This information provides insight into the offender's involvement with the community of deviancy. Additionally, did the offender forward any child porn images to juveniles? Remember, this can be one of the initial online activities to entice children into sexual acts.

In all of the above incidences—i.e., possession, receipt, and distribution—what were the percentages of child porn to adult porn? Specifically, let's suppose an offender has 1,000 pornographic images on his or her computer. Of that 1,000, only 15 were of child porn. This offender shows a different level of commitment from the offender with 1,000 images, of which 900 were of child porn. Likewise, did the offender have a high percentage of violent pornography, such as rape and torture themes?

Finally, how were the images used by the offender? Did he masturbate to them? Did he use them to entice children? Does he claim he has them so that he won't abuse children? Are they used to enhance his "status" with other individuals who collect child porn, i.e., my collection is larger and better, etc.? Did he use them to barter for other forms of pornography (adult, incest, S & M, bestiality, etc.)? Was he involved in selling child pornography?

Equipment and ISP

Offenders' equipment also provides insight into how committed they are to deviancy. Top of the line computers, scanners, digital/ video cameras, etc., may reflect an interest in producing and/or viewing "quality" images. Also, the offender may want large hard drives to store more image files, as they take more space. Better equipment also can provide faster access to images for viewing. Additionally, better equipment can facilitate the production of media containing child pornography to distribute to others.

Beware of what type of ISP offenders have or had. Dial-up services (AOL, Compuserve, MSN, etc.) are slower for downloading image files. Cable and DSL connections provide faster Internet speeds and make it easier to download these files. Again, remember to look at all factors together. For instance, two offenders, both with the same number of moving image files, may

have different levels of commitment if one considers how they obtained the images. Specifically, one offender may have a dial-up service and the other may have obtained the images with a cable service. The first offender would have had to spend more time downloading the images than the second offender because of the slower speed of the dial-up Internet connection.

Online Activities

Information about offenders' online activities is equally important in identifying the type of offender. How many screen names do they have and are any of the names suggestive, implying some deviant interest? For instance, the screen name K9trainer123 may reflect that the offender has an interest in bestiality. Did an offender have a screen profile and what interests did the profile mention? Was the offender's photo on the profile? Was the profile accurate? For instance, did the profile reflect the offender's true age and gender or did it claim that the offender was a child or maybe a member of the opposite sex?

How long has the offender been accessing the Internet: one year, five years, or ten years? How much time did the offender spend online and was the offender frequently online when juveniles were present, such as after school or before 9:00 p.m.? How many people communicated with the offender? How many names were in the Buddy List (for chats) or email address book? Were these names of other adults or juveniles? Were the other adults possibly interested in child porn? How many messages, with and without attachments, did the offender send or receive? What were the favorite websites? Was the offender paying for access to porn sites? Did the offender use file-sharing programs such as Kazaa, Bearshare, Napster, etc., to obtain and trade porn?

In cases involving enticement over the Internet, what did the messages/chats reflect? What was the offender discussing? Were there references to S & M, incest, etc. themes? If possible, obtain copies of these messages to include in reports and for the supervision file. The text of such messages can be very useful during treatment when offenders attempt to minimize or rationalize their conduct. Equally important are the items the offender brought to any planned meeting with a juvenile or undercover officer posing as a juvenile. Possession of digital cameras, condoms, sex toys, handcuffs, whips, blindfolds, weapons, drugs (including sexual enhancement drugs), etc. sheds a spotlight on the offender's intentions during and after the encounter. One graphic example is an offender who was arrested in an undercover sting operation to which he brought a shovel, axe, gasoline, and garbage bags to meet someone he thought was a minor.

Other Activities

What were the offenders' real world activities? Have they been employed in jobs involving juveniles? Are they or were they involved in voluntary activities where juveniles are active (Boys Club, YMCA, coach, etc.)? Do they reside near places juveniles frequent or are there juveniles in the home? An offender's history of organizing life around juveniles is an indication that the offender may be strongly drawn to minors.

Does an offender have a history of extensive foreign travel (certain countries are lax in enforcing laws prohibiting sex acts with minors)? Does the prior record include sex offenses with or without computers? Past convictions for such conduct help assess possible future risks.

What kind of educational and work experience do sex offenders have? Are they skilled in computers and/or advanced technologies? Does the record show a prior period of supervision in which monitoring software/hardware was circumvented? This information is important in deciding how best to monitor or manage sex offenders once they are on supervision.

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Conditions to Recommend

Computers can dramatically increase the effects of criminal behavior, and their misuse therefore poses a unique risk to the community. Pedophiles, from the safety of their homes, can anonymously "groom" numerous children simultaneously by computer for later molestations.

Child pornographers can effectively distribute their "collections" to hundreds of other offenders, or even to other children, with the click of a mouse. But while a computer poses a risk, it can also be a legitimate tool for an offender trying to become a productive member of society. Offenders, like others in our community, can use computers to the benefit of all. A blanket prohibition against all access to a computer and/or the Internet during the period of supervision may not always be realistic nor consistent with current case law. The least restrictive yet effective conditions are the most desirable. Probation and parole officers should embrace both traditional and "high tech" tools to manage the risk posed by cybersex offenders, consistent with their agency's directives.

The decision to recommend discretionary computer conditions should be based upon the following criteria: probation/parole law in the particular jurisdiction; the offense of conviction; computer knowledge/skills of the offender; prior criminal conduct involving computers; necessity of the offender to have computer/Internet access; and the availability of a computer or the Internet to the offender. Based upon this evaluation, appropriate computer conditions can be recommended.

As previously indicated, officers should determine what type of cybersex offender they have. Obviously, more restrictive conditions should be considered for offenders who have personally victimized a minor or demonstrated a willingness to do so. For instance, a traveler (offender who travels across state lines to have sex with a minor) poses a different risk than an individual convicted of simple possession of child pornography.

Monitoring software/hardware, coupled with computer search/seizure, serves as the "least intrusive and restrictive" method for controlling the risk that may be posed by most cybersex offenders. Offenders are permitted to use a computer and access the Internet, with the clear understanding that their computer activities are being monitored. The use of high-tech monitoring techniques also allows offenders to remain in households where a computer exists for use by family members. ³ Monitoring limits the requirement to do in-depth computer searches, an endeavor that requires training, equipment, time, and money. Forensic computer searches can be saved for cases 1) in which a tamper to the monitoring operation has occurred; 2) in which the monitoring captures a violation of supervision; or 3) in which there is a new law violation, such as a download of child pornography. ⁴ Finally, monitoring software/hardware can overcome some of the problems associated with an offender using encryption and/or stenography. Specifically, monitoring can capture what is being hidden and how, as well as capturing passwords used by the offender in the process. To be effective, computer conditions must: 1) establish the offender's access to computers and the Internet; 2) provide a method for controlling or limiting access to what can be monitored; and 3) have a method for monitoring.

There are three general classes of computer conditions for cybersex offenders. All three provide for search and if necessary seizure of any computer found. The first is a total prohibition of access to a computer and the Internet. The second permits access to a computer but not the Internet. The third allows access to a computer and/or the Internet, but access is closely monitored through a combination of high tech and traditional supervision techniques.

With these three classes in mind, prohibitions against computer and/or Internet access should only be recommended for those cybersex offenders who have clearly demonstrated they are unwilling to comply with a less restrictive condition or for offenders who pose such a high risk to the community that no other condition can manage them. The following are the computer conditions used by Ohio Northern, U.S. Probation Office, in sex offender cases, from most restrictive to least restrictive:

Option A: Total Prohibition of Access to a Computer and Internet

1. "You are prohibited from access to any computer, Internet Service Provider, bulletin board system or any other public or private computer network or the service at any location (including employment or education) without prior written approval of the U.S. Probation Office or the Court. Any approval shall be subject to any conditions set by the U.S.

Probation Office or the Court with respect to that approval.

2. You shall submit your person, residence, place of business, computer, and/or vehicle, to a warrantless search conducted and controlled by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Any computer found is subject to seizure and/or search. Failure to submit to this condition may be grounds for revocation. You shall inform any other residents that the premises may be subject to a search pursuant to this condition."

Option B: Computer/Internet Restricted

1. "You are prohibited from access to any "on-line" computer service at any location (including employment or education) without prior written approval of the U.S. Probation Office or the Court. This includes any Internet Service Provider, bulletin board system or any other public or private computer network. Any approval shall be subject to conditions set by the U.S. Probation Office or the Court with respect to that approval.
2. "You shall consent to the U.S. Probation Office conducting periodic unannounced examinations of your computer system(s), which may include retrieval and copying of all memory from hardware/software and/or removal of such system(s) for the purpose of conducting a more thorough inspection and will consent to having installed on your computer(s), at your expense, any hardware/software to monitor your computer use or prevent access to particular materials. You hereby consent to periodic inspection of any such installed hardware/software to insure it is functioning properly.
3. "You shall provide the U.S. Probation Office with accurate information about your entire computer system (hardware/software); all passwords used by you; and your Internet Service Provider(s); and will abide by all rules of the Computer Restriction and Monitoring Program." [5](#)
4. "You shall submit your person, residence place of business, computer, and/or vehicle, to a warrantless search conducted and controlled by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. You shall inform any other residents that the premises and your computer may be subject to a search pursuant to this condition."

Option C: Computer/Internet Access Permitted

1. "You shall consent to the U.S. Probation Office conducting periodic unannounced examinations of your computer system(s), which may include retrieval and copying of all memory from hardware/software and/ or removal of such system(s) for the purpose of conducting a more thorough inspection and will consent to having installed on your computer(s), at your expense, any hardware/software to monitor your computer use or prevent access to particular materials. You hereby consent to periodic inspection of any such installed hardware/software to insure it is functioning properly.
2. "You shall provide the U.S. Probation Office with accurate information about your entire computer system (hardware/software); all passwords used by you; and your Internet Service Provider(s); and will abide by all rules of the Computer Restriction and Monitoring Program."
3. "You shall submit your person, residence, place of business, computer, and/or vehicle, to a warrantless search conducted and controlled by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. You shall inform any other residents that the

premises and your computer may be subject to a search pursuant to this condition."

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Computers and Employment/Education

Offenders will have access to computers at work, at school, and/or public institutions, such as the library. Most institutions have a vested interest in insuring that their systems are not misused and usually have some kind of internal monitoring in place. Traditional techniques of supervision, such as third-party contacts, can ascertain that such procedures are in place. However, an offender employed as a systems administrator or in a similar position creates a unique concern for monitoring. Offenders employed as systems administrators can circumvent all monitoring that may normally be present in the employment setting. In fact, they are frequently the ones in charge of the monitoring of the employer's computer system. Depending upon the circumstances and the risk posed by the cybersex offender, an employment prohibition may be warranted. The following additional condition is suggested in such cases:

"You cannot be employed directly or indirectly where you are systems administrator, computer installer, programmer, or "trouble shooter," for computer equipment or any similar position."

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Traditional Conditions

Traditional conditions for sex offenders should also be utilized. Examples of such conditions are limiting contact with minors, mental health and/or substance abuse treatment, and the use of polygraph testing. The use of polygraph testing is particularly important as an additional method to determine if the offender has, in some manner, overcome the monitoring process.

Limiting/Controlling Access

The first step in limiting or controlling offenders' access to computers and/or the Internet is to establish what access they currently have. In Ohio Northern and many other jurisdictions, this is done with the use of a questionnaire that all offenders with computer conditions are required to initially complete and periodically update. Falsification of these questionnaires can be grounds for not only a violation of supervision but also new criminal charges. Additionally, the veracity of these offender-provided documents is checked through home inspections and contacts with third parties.

Once an offender's computer/Internet access is established, it becomes necessary to decide what computer(s) he or she may continue to access. This process frequently requires not only thought but tact as well. If an offender has computer access at his employment, contact is made to establish what measures are in place to monitor employees' computer access and if necessary to obtain a waiver to install monitoring software on the offender's work computer. Uncooperative employers can create difficulties, which may necessitate directives (with appropriate supervisory authorization) for the offender to seek employment elsewhere. If an offender has several computers at home, it may be necessary to install monitoring software/hardware on all of them or direct the offender to only use certain computers.

Officers installing monitoring software/hardware should also be comfortable opening computer cases to insure that information provided by an offender is accurate. An offender could have two hard drives in a system and attempt to circumvent monitoring by only disclosing one. Visual inspection helps minimize this issue. Once it is decided to install monitoring software/hardware, tamper tape is used to seal the case and pertinent ports, to insure the offender does not later attempt to circumvent monitoring by replacing the hard drive with another one that doesn't have monitoring software installed.

All traditional techniques for supervising offenders remain of value with the cybersex offender. Contacts with third parties can be used to determine if an offender has overcome monitoring

software or used a computer in a manner inconsistent with his or her supervision. Home inspections can establish the existence of a computer system in the home. The examination of bank and credit card statements can be used to determine if online purchases have been made or if the offender has additional Internet access.

Additionally, offenders' initial responses to how frequently they access computers and the Internet can be compared to monitoring reports received to ascertain if there is some drop in usage, which may indicate that the offender is accessing a computer/Internet from somewhere other than the system being monitored.

Some may wonder what would prevent an offender from just going out and getting another computer or going to a friend's house or using some other unmonitored computer. The answer is nothing—just as there is nothing but fear of discovery to stop an offender from using drugs or obtaining a gun. However, once non-compliance is discovered, probation/parole officers have demonstrated an attempt to work with the offender while he has demonstrated a lack of willingness to comply. In such cases, more restrictive measures, including prison, may clearly be justified.

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Monitoring Methods

As we have noted, procedures to monitor an offender's computer use include traditional methods, such as home visits and third-party contacts, installation of monitoring software/hardware, and search/seizure.

Traditional methods are well established practices in most correctional agencies. Their usefulness is not diminished with the onslaught of technology. However, officers need to be aware of what to look for during home inspections and what to ask during third-party contacts. Offenders are frequently finding novel uses for new technology and officers must keep up. For instance, when the mini-USB storage devices initially appeared, it did not take long for cybersex offenders to start using them to store and trade child pornography. Therefore, officers must supplement their skills in traditional methods with a healthy dose of technical knowledge.

Software/Hardware

Currently, there is no monitoring software or hardware developed specifically for use by probation/parole officers. However, several vendors provide "off the shelf" products at a reasonable price that can be used by probation/parole officers to supervise the cyber-offender. Two different vendors provide products used by many correctional agencies. Both of these vendors have products that record a computer user's activity, i.e., applications running; screen shots; and key strokes. Both also provide for the periodic, remote forwarding of activity reports. Additionally, both vendors can forward "hot" reports, when key words are typed or detected on a web page. Both vendors have products that provide for some degree of concealment, which facilitates their use against knowledgeable offenders. Finally, both vendors have products that can be installed by officers without extensive computer expertise.

Another option being spearheaded by another company is a service providing realtime monitoring of an offender's computer for the cost of the installation software plus a monthly service fee. Software installed on the offender's computer directs all Internet activity to first go through this company, which records the activity and provides the supervising agency with access to those records. One additional benefit of this service is that officers can remotely limit access to certain sites and applications or prohibit all Internet access if the need arises.

Unfortunately, some operating systems preclude the use of monitoring software or the above service. In some cases hardware devices such as keystroke loggers can overcome this issue. Hardware devices can also be an additional tool, used in conjunction with monitoring software, for particularly "savvy" offenders who may be able to compromise or hack software. Such devices are self-contained and record all keystrokes typed, regardless of whether the system is

even on. These devices can contain up to a year's worth of keystrokes at a time. One has to download the data on site and review all keystrokes for problem areas, which can be a daunting task. Such devices, secured with tamper tape, do provide an additional hurdle for sophisticated offenders to overcome.

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Search/Seizures

Computer searches/seizures should only be conducted by trained personnel. Forensic methods ensure that evidence found can be used in violation proceedings as well as in additional new criminal charges. Initially, at the installation of monitoring software/hardware, it is appropriate to conduct a limited search to ascertain whether the system is "clean" or if any problem software is installed, such as anti-monitoring programs, file sharing programs, etc. Subsequent searches may require more intrusive methods, such as the recovery of deleted files, searching slack space and page and swap files, etc.

Unfortunately, probation/parole agencies are limited in their ability to secure funding for equipment and training. Additionally, probation/parole agencies may not always have the initial technical expertise to determine the appropriate equipment. Some vendors will attempt to provide software that is not forensic-based, noting that probation/parole officers need not worry about law enforcement standards. Often, these programs start up using the offender's own operating system. This should be avoided. Evidence found during a probation/parole search can lead to new criminal charges and shortcuts should not be taken because of the lesser standard of proof required in violation proceedings. Additionally, inappropriate handling of evidence by probation/parole officers may compromise the discovery of other individuals involved in the child sex offenses. For instance, a computer belonging to an offender may have information about people with whom the offender is trading child pornography.

The first step for probation/parole officers is to obtain basic computer forensic training to understand the proper methods for searching and seizing computers. Probation/parole agencies should also initially focus on software/hardware that allows their personnel to conduct on-site searches in a forensic environment, i.e., without changing the data on the offender's computer. Some software programs prevent any writes to an offender's computer systems. Additionally, hardware write blockers can be used to examine computers without making changes to the offender's system. Conducting initial searches in a forensic environment will allow probation/parole officers to "hand over" cases to law enforcement for a complete forensic search and possible new criminal charges.

If feasible, probation/parole agencies should obtain additional software/hardware and training that will allow an offender's computer to be completely processed in a forensic manner, from data acquisition through examination.

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Conclusion

Probation and parole agencies are seeing increases in the number of sex offenders on their caseloads. Many of these offenders are extremely high risk, and access to a computer and the Internet heightens that risk to the community. Like law enforcement, community corrections officers must learn to properly understand and investigate cybersex offenses. The use of monitoring software/hardware and the ability to conduct computer searches and seizures are skills that probation and parole officers must add to their correctional tool kits to supervise sex offenders and protect the community.

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Training Federal Probation Officers as Mental Health Specialists

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APPROXIMATELY FIVE PERCENT of the U.S. population has a serious mental illness, and those with mental illnesses are significantly more likely to come into contact with the criminal justice system (Council of State Governments et al., 2002). In fact, the President's New Freedom Commission on Mental Health (2003) estimated that the rate of serious mental illness for persons in jail in this country is three to four times more than that of the general, non-inmate population, and, according to a recent Human Rights Watch Report, jails and prisons in the U.S. hold three times more persons with mental illness than do psychiatric hospitals in America (Satel, 2003). Further, Ditton (1999) reported that 16 percent of jail and prison populations, as well as 16 percent of probationers in the U.S., have mental illnesses.

Consistent with the estimates above and with prevalence estimates by others (see Steadman et al., 1987; Teplin, 1990; Teplin et al., 1996; Pinta, 1999) of similar populations, in 2003, 18 percent (n=19,731) of those on federal parole, supervised release, conditional release, or probation had a special condition for mental health treatment (Slate, et al., 2003). With burgeoning caseloads filled by consumers of mental health services and a typical lack of reentry planning within the criminal justice system (see Osher, Steadman, and Barr, 2003), some state and local jurisdictions, as well as the federal government, have begun to develop specialized models of supervision for persons with mental illness.

Horn (2004) argues that offenders should not be released unprepared and unassisted at the culmination of their sentence. Even so, such abdications of responsibility have led to a settlement in which the New York City Departments of Corrections and Health have agreed, under pressure of a class action lawsuit, to provide discharge planning services to offenders with mental illness released from custody (see Barr, 2003; *Brad H. v. Giuliani*, 2003; Urban Justice, 2004). Other states have also become engaged in the reentry process from prison by, for example, ensuring that medical benefits are conferred upon individuals on the date of discharge into the community; some corrections departments provide assistance in filling out applications for re-instatement of benefits to those being released from prison (see Human Rights Watch, 2004).

Looking to the future, Horn (2004) maintains that public safety can be improved by equipping offenders with necessary elements to succeed and better ensuring responsible offenders upon release; there needs to be recognition of the magnitude of the problem of sobriety, and mastery of this problem is crucial to ensuring successful reentry into society. It has been estimated that 75 percent of the individuals with symptoms of serious mental illness present upon entering jails annually meet the requirements for a co-occurring disorder (a serious mental illness and co-occurring substance abuse disorder) (Teplin, Abram, and McClelland, 1996; Osher, Steadman, and Barr, 2003).

A myriad of explanations have been offered as to why the criminal justice system has become the de facto mental health system (see Slate, 2004). Yet, as reported by Lurigio and Swartz (2000), only 15 percent of probation agencies across the country indicated having a specialized program for probationers with mental illness, and fewer than 25 percent of parole administrators acknowledged having specialized programs for parolees with mental illness (Lurigio, 2001), with Camp and Camp (1997) finding no parole departments reporting the provision of any specialized mental health services for offenders in need of such services. Furthermore, probation agencies have been criticized for a disconnect from the community and for lack of systematic development of real interagency cooperation with the police, treatment and service providers and other community organizations (Reinventing Probation Council, 2000; Clear and Corbett, 1999).

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Looking to the Future—Probation Officers as Change Agents

In accordance with the principle of therapeutic jurisprudence, some criminal justice agencies have begun to explore development of trained specialists to assist the progress of offenders released on supervision in the community. The concept of therapeutic jurisprudence operates on the belief that the application of the law can have therapeutic and anti-therapeutic consequences, and, unlike the traditional criminal justice process, does not advocate solely looking back, finding fault, assessing blame, meting out punishment, and ignoring the consequences of the imposition of punishment (see Wexler and Winick, 1991; Finkleman and Grisso, 1994; Miller, 1997). Instead, the focus is to be on the future, with consideration of public safety and successful offender reintegration into society long after an individual's contact with the criminal justice system has ended (Slate, 2003).

As we have previously maintained, probation officers are logically positioned to operate as change agents in the spirit of therapeutic jurisprudence (see Slate, Roskes, Feldman, and Baerga, 2003). Probation officers have been identified in the research literature as resource brokers or boundary spanners based on their ability to be aware of available services and to properly match those released into the community to such services and/or benefits in such areas as mental health, housing, and vocational/employment opportunities (McCampbell, 2001; Steadman et al., 2001).

While, in general, most probation officers are inadequately prepared to handle persons with mental illness in the community (Veysey, 1994), some agencies have developed specialized programs to deal with this population. For example, specialized programs for probationers with mental illness can be found in Chicago (Lurigio and Swartz, 2000) and for parolees in California (Lurigio, 2001). Specialized mental health caseloads have been developed for those under federal supervision in the community in Baltimore (Lurigio, 2001; Roskes and Feldman, 1999, 2000),

the Northern District of Illinois, the Western District of Texas, the Eastern District of Tennessee, and New Jersey, as well as other districts. Probation officers have even become members of Assertive Community Treatment teams in Sacramento, California (Sheppard, Freitas, and Hurley, 2002). Such specialized programs are typically supported by an augmentation of resources and added training and can result in improved monitoring of special conditions of release such as mandates for mental health treatment (Lurigio and Swartz, 2000; Roskes and Feldman, 1999, 2000). Training programs that are in place are often aimed at identifying local resources and helping link persons with mental illness to the appropriate services, such as in Broward County, Florida (Slate et al., 2003).

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The New York State Example

Throughout New York State, where local services and resources vary greatly, the state has tried to introduce flexible, adaptable, and customizable training modules for probation officers supervising persons with serious mental illness and co-occurring substance abuse disorders; these training modules can be molded to fit the characteristics of a particular jurisdiction (Massaro, 2003). In accordance with the principles of therapeutic jurisprudence, the goals of the New York training program are to lessen recidivism, promote wellness and recovery, and improve public safety (Massaro, 2003). Components included in the training of New York state probation officers are as follows: understanding and responding to persons with serious mental illness and co-occurring substance abuse disorders, matching services to needs for this population, developing and improving partnerships between probation and other service providers—such as in the mental health arena—and identification of key issues pertaining to supervision of persons with serious mental illness and co-occurring substance abuse disorders (Massaro, 2003).

Depending on the degree of readiness and level of sophistication, in somewhat of a cafeteria style, individual supervisors can pick and choose the components and topics that make the most sense for their particular jurisdictions. Available topics include: persons with serious mental illness and co-occurring substance abuse disorders in the criminal justice system, challenges for probation officers, identifying persons with serious mental illness and co-occurring substance abuse disorders, red flags pertaining to safety issues, responding to persons with serious mental illness and co-occurring substance abuse disorders, recovery and wellness, best practices to meet needs and promote wellness, benefits and exploration of collaborative relationships, promising practices for enhancing service delivery, mental health and mental illnesses, signs and symptoms of mental illness, mental illness diagnosis, severe and persistent mental illness, and key issues in mental health (Massaro, 2003).

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Crisis Intervention Training

While there currently is no standardized/centralized training for federal probation officers who deal with persons with serious mental illness and co-occurring substance abuse disorders, there are probation officers designated as mental health specialists in judicial districts throughout the country. It is not uncommon for these officers serving as specialists to have an extensive mental health educational background; some are actually licensed counselors, clinical social workers, or psychologists (Slate, et al., 2003).

A logical place to look for relevant training has emerged from crisis intervention training curriculum protocols sometimes found in the law enforcement arena. For example, the Administrative Office of the U.S. Courts has served as a catalyst by opening doors for federal probation officers and pretrial services officers in the Washington, D.C. office and surrounding metropolitan area in Virginia and Maryland to attend crisis intervention training with the Montgomery County police in Maryland. Such law enforcement crisis intervention training typically includes components emphasizing: signs and symptoms of mental illness, psychotropic medications, co-occurring substance abuse disorders, suicide risk assessment and interventions,

de-escalation techniques for authorities when responding to a person with mental illness in crisis, police discretion and decision-making concerning civil commitment procedures and processing, awareness of the acute care system within a jurisdiction (which may include making site visits), familiarization with community resources, consideration of special populations (i.e., juveniles with mental illness, mental retardation, behavioral conditions that mimic mental illness, Alzheimer's, epilepsy, and homelessness), and perspectives of persons with mental illness and family members of persons with mental illness (Florida Mental Health Institute, 2003).

Many of the law enforcement crisis intervention training curriculums currently in place are modeled after the Memphis Police Department Model in Memphis, Tennessee (Reuland, 2004). Although there are other types of law enforcement interventions for dealing with persons with mental illness, such as trained social workers riding with police and mobile crisis units partnering with law enforcement (Steadman, et al., 2000), the Memphis Model of Crisis Intervention Team training has become very popular, and the Montgomery County, Maryland curriculum, which has been utilized to train federal probation officers, is based on the Memphis Model.

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Other Mental Health Specialist Training Initiatives for Federal Probation Officers

Again, while there currently is no standardized/centralized training for federal probation officers who specialize in supervising persons with serious mental illness and co-occurring substance abuse disorders, three separate two-hour training modules have been produced and broadcast live (also available on video) to interested parties around the country via the Federal Judicial Television Network. The modules that were broadcast (now available on video cassette from the Federal Judicial Center) present an overview of mental health disorders (psychotic disorders, mood disorders, anxiety disorders, personality disorders), means for identifying the signs and symptoms of mental illness, and the nuances of supervising persons with mental illness. Sources to rely upon for identification purposes include: the review of previous records and reports concerning the offender, the interview of the offender, behaviors observed in the offender, and information ascertained from collateral contacts (medical, familial, employment, financial, etc.). Factors and rationales for special conditions of release pertaining to mental health supervision are also explored in the training videos, as well as how to determine the need for special conditions and the wording of such conditions to maximize the potential of treatment strategies for persons with mental illness. Those strategies include the referral process, which deals with identifying treatment providers, designating prospective interview questions to be posed to treatment providers, identifying how to ask for services, determining how providers of services will be compensated, and teaching an offender with mental illness how to access and utilize services. Also, special supervision issues such as maintaining relationship boundaries, assessment of potential violence from clients, crisis intervention strategies, psychotic episodes, potential for suicide and homicide, and the requirements for documenting a crisis situation are covered by this training material.

It is our belief that there should be some uniformity in job performance and expectations for mental health specialists within the federal probation system, and this uniformity could be instilled via a centralized training process that could culminate with certifications qualifying officers as specialists. While traditionally probation officers may experience role conflict, being torn between law enforcement and social work responsibilities and expectations (see Slate, Johnson, and Wells, 2000), we believe that probation officers serve as brokers between those being supervised and those providing services to persons with mental illness under supervision.

The primary function of probation officers acting as mental health specialists is to ensure public safety; however, much of the day-to-day operation is not directly focused on protection but is oriented to ensuring that persons with mental illness are linked with appropriate resources. In so doing, probation officers, acting as navigators, move among various systems to provide persons with mental illness with meaningful and lasting outcomes that hopefully will continue and be maintained long after supervision is terminated.

Federal probation officers who are mental health specialists are expected to advocate within various systems for the client or for implementation of the Court's order for treatment or for restraining specific behaviors. The following entities are included among those systems within which mental health specialists must navigate and develop expertise.

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System I—Corrections

Bureau of Prisons

While all Federal Bureau of Prisons (BOP) facilities are capable of providing adequate health care for most offenders, there are currently seven inpatient Medical Referral Centers situated within the BOP (Bureau of Prisons, 2004). The Medical Center for Federal Prisoners (MCFP) is located within the North Central Region in Springfield, Missouri; also within this region is the Federal Medical Center (FMC) in Rochester, Minnesota. Other FMCs can be found in the Mid-Atlantic Region (Butner, North Carolina; Lexington, Kentucky), the Northeast Region (Devens, Massachusetts), and the South Central Region (Carswell, a facility for females in Fort Worth, Texas, and a center for males in Ft. Worth).

Many mental health cases arrive on probation officers' desks from the Bureau of Prisons (BOP). United States Probation Officers (USPOs) trained as mental health specialists should be aware of the mental health facilities in the BOP and should have a knowledge of treatment modalities within those facilities. USPOs should be engaged in the reentry process and have the capability to advocate for certain services, such as medication upon release from custody and the reinstatement of disability benefits or submission of applications for benefits. They should be aware of the similarity and divergence of the BOP's goals (maintenance and risk management) and the goals of USPOs (successful integration). USPOs trained as mental health specialists should be able to converse readily with caseworkers, psychiatrists, and psychologists and have a command of the treatment nomenclature and protocols. A complete understanding of civil commitment cases (18USC4246) and the requirements of supervision of conditional release cases should also be required.

Release to a Community Corrections Center (CCC), on prerelease status, is standard procedure for many offenders. Although this would seem especially important in the reentry process for mentally ill offenders, access to these centers is often difficult. A training curriculum might include strategies for assisting CCCs in developing community resources to maximize acceptance and continuum of care for mentally ill releasees. Last, specialists should be trained in methods to coordinate with local correctional facilities if an offender is in custody pending a Federal violation hearing.

The Courts

Mental health specialists must be able to articulate all the facets of a mental health case under supervision to the Court. This includes an understanding of a diagnosis, outpatient and inpatient treatment modalities, a current knowledge of medications and their side effects, strategies of placement and supervision, and an understanding of common behaviors of offenders with mental illness.

Mental health specialists should be aware of the appropriate Court strategies for revocation of a mental health case. In addition to knowing their own role and serving as consultants, mental health specialists should be familiar with the roles of defense counsel, prosecutor, judge, and mental health experts in the revocation process.

Specialists need to be able to prepare reports with practical recommendations to the Court that accomplish the goals of therapeutic jurisprudence. Yet, while trying to achieve such goals via recommendations, mental health specialists must be ever vigilant to deal with and attempt to comprehend issues of dangerousness and unpredictability when interacting with persons with

mental illness.

Probation

During training, areas of discussion may include traditionally sensitive areas of presentence and case assignment. Essential information pertaining to a person with mental illness to be entered into a presentence report should be included in any specialized training course.

If mental health specialists are consultants, they need to be taught how to best operate in that capacity. This should include how to develop cachet within our offices as experts. Furthermore, supervision of a specialized caseload by probation officers has been found to be a significant cause of workplace stress (see Slate, Johnson, and Wells 2000). Thus, inclusion of avenues to alleviate stress, including organizational means such as opening up avenues for line officers to participate in decisions that affect them in the workplace, should be considered in the training of mental health specialists.

Guidance on the logistical realities of how quickly various types of supervision strategies can be implemented should also be discussed. The supervision strategies of mental health specialists and how they differ from those of general officers should be addressed, including the maximum caseload of offenders with mental illness and specialized supervision needs that can be assigned to a specialist. Techniques for USPO safety and limiting risk should be instilled in officers. Instruction on suicidal signs and prevention should be given, as well as suggestions on what high-tech tools (phones, pagers, internet, personal digital assistants [pdas]) might be employed to effectively manage persons with mental illness under supervision.

Specific guidance on the mechanics of developing mental health contracts and connecting with local resources should be communicated to mental health specialists. Methods for ensuring accountability from treatment providers, such as through the development and use of memoranda of understanding (MOUs), need to be specified.

As mentioned previously, defendants supervised on Conditional Release require close coordination with the BOP and Courts. Matters of dangerousness, termination issues and knowledge of pertinent federal codes, as well as how to coordinate treatment with local resources, should be examined.

Law Enforcement

When mental health specialists are fortunate enough to be employed within a jurisdiction that has law enforcement personnel trained in CIT, then the police may prove to be valuable allies in the face of crises. Collaborative partnerships with CIT-trained police may also lead to meaningful training opportunities for mental health specialists, as seen in Montgomery County (Maryland), Memphis, and elsewhere.

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System II—The Community Mental Health System

Instruction on strategies for developing long-term relationships with the locals in the mental health community should be offered. Mental health specialists should be taught the mechanics of accessing the community mental health system and clinics, both public and private, and establishing successful collaborations therein. The availability of psychiatric housing programs (including independent, supportive, and supervised settings), day treatment, psychiatric rehabilitation programs, medication treatments, partial hospital and inpatient programs, dual diagnosis (mental health plus substance abuse) treatment, transportation, and the availability of local, state and federal funding for entitlements should also be addressed. The process of brokering by centralized parties within cities or states should be explored as well.

It is important for mental health specialists to develop an understanding of the community mental health system to explain to officers, managers, and the Court. Also, probation officers,

especially those who may also have degrees in a clinical area, should be versed in local laws and statutes relating to third-party risk and confidentiality of protected health information. Explaining how to define the criminal activities of offenders to community liaisons should also be considered. This may include the expansion of communication to daily or weekly contact to verify compliance or treatment planning of offenders.

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System III—The Offender/Patient

It is important for mental health specialists to understand the clinical aspects of an offender, including AXIS I (major mental illnesses), AXIS II (personality disorders) and AXIS III (medical problems) disorders, and how such disorders can have an impact on issues of compliance, criminal behavior, dangerousness and even time management. With the level of sophistication required, policy should be designed that defines which types of cases are suitable for staffing with non-specialists in the office. The proper philosophy and attitude to be exhibited by mental health specialists and strategies for developing rapport with persons with mental illness should be explored. Methods for establishing expertise with offenders while motivating them for change, stabilization, and compliance should be considered.

An offender's history in the community as well as relationships (including familial relationships) may positively or negatively affect supervision strategies. As such, consumers of mental health services and family members of persons with mental illness should be included as speakers and facilitators in the training process.

Applying Abraham Maslow's (1943) hierarchy of needs to persons under the supervision of mental health specialists, it is important to remember that individuals are at various stages of adaptation to their surrounding circumstances. For example, it doesn't make sense to begin working on self-esteem needs with a defendant/offender who is homeless and struggling to meet basic survival needs. Likewise, Massaro (2004) cautions that there are often gender differences in those being supervised, with women often primarily focused on parenting issues that must be met first, while men often strive for independence and self-sufficiency. These various levels of adaptation should be considered as supervision/treatment plans are developed.

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The Mission and Goals of Mental Health Specialists

The mission of USPOs as mental health specialists should be to identify, assess, and/or provide treatment for those with mental health and/or co-occurring disorders appearing before the court. The aim should be to foster intervention strategies to stabilize individuals, maximizing public safety and the potential for individuals to function and live law-abiding lives successfully within society. In accomplishing this mission, mental health specialists should serve as a resource for the court and within their district.

Mental health specialists should be equipped with the necessary skills to promote and realize their mission. Thus, the goal of developing a centralized mental health specialist training program should be to ensure that such specialists acquire the requisite knowledge, skills, and abilities to successfully supervise persons with mental health and/or co-occurring disorders within the community.

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Knowledge

Mental health specialists should have an extensive knowledge of specialized areas of mental health (including conditional releases, sex offenders, those with co-occurring disorders, and persons with severe, persistent mental illness) and substance abuse and their fit with correctional supervision. Federal probation and pretrial services mental health specialists should obtain a keen

knowledge of existing community resources relevant to these specialized areas. Mental health specialists should also have an extensive knowledge of mental illness, understanding signs and symptoms, diagnostic protocols, available treatments, and types of psychotropic medications. Familiarity with national, state, and local policies and regulations as well as educational materials pertaining to mental illness should be maintained.

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Abilities

Mental health specialists will need to communicate effectively orally and in writing both within the organization and with external agencies. Specialists will also be expected to assess statutory mandates and other requirements and should be consulted within their respective districts concerning the investigation, processing, and treatment of persons under their supervision. Specialists should be aware of and become engaged in the contractual process for procuring mental health treatment and be prepared to assist community providers in seeking, negotiating, obtaining, monitoring, and complying with such contracts. Specialists should also be capable of assisting with mental health policy making and the coordination of supportive services from organizations in the local community. A resource manual should be constructed to provide information on identifying persons with mental illness, referral procedures, local resources, current policies and potential penalties/alternatives for those who fail to comply with conditions.

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Caseloads and Supervision Requirements

We believe that a mental health specialist should have a total caseload of no more than 35 persons with severe, persistent mental health or co-occurring disorders. Furthermore, if the geographic location of these cases is widely dispersed, as in rural areas, we believe the number of such persons supervised should be even smaller. Likewise, those involved in obtaining and monitoring contractual services should have even further reduced caseloads.

Field supervision should be employed by mental health specialists, and it should be individualized and incorporate non-traditional means—including contacts with family members and service providers where warranted. Mental health specialists should not be burdened with duties outside of their area of expertise.

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Recommended Training Curriculum

We recommend that at least half to three-fourths of the annual required 40-hour training should focus on mental-health-related issues. Supplemental resources available for such training include familiarization with existing policies and procedures in Monographs 109 to 112 and the *Handbook on Working with the Mentally Disordered Defendant and Offender* (Federal Judicial Center publication); pertinent websites, such as that offered by the Office of Probation and Pretrial Services on Mental Health and Substance Abuse; the Federal Judicial Center's relevant videos on mental health and substance abuse concerns; The National GAINS Center for People with Co-Occurring Disorders in the Justice System (www.gainsctr.com); The Technical Assistance and Policy Analysis (TAPA) Center for Jail Diversion (www.tapacenter.org); the Criminal Justice/Mental Health Consensus Project (www.consensusproject.org); Center for Sex Offender Management (www.csom.org); Bazelon Center for Mental Health Law (www.bazelon.org); Dual Diagnosis Recovery Network (www.dualdiagnosis.org); National Mental Health Association (www.nmha.org); and the National Alliance for the Mentally Ill (www.nami.org).

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Essential Training Curriculum Components for Mental Health Specialists

While the specifics of training may vary from district to district, we believe that the following elements comprise the overall general components of training for mental health specialists and may serve as a template for further refinement within districts. We do not believe that all mental health specialists should possess the level of sophistication and expertise of clinicians such as psychiatrists and psychologists; however, they should possess the requisite knowledge to recognize when problems exist and the resourcefulness to link persons with mental illness under supervision to appropriate treatment and follow-up.

Components of the training should include a discussion of how in many respects the criminal justice system has become the de facto mental health system. The signs and symptoms of mental illness and co-occurring disorders should also be included in the training, as well as reasons individuals might not comply with treatment regimens, i.e. cognitive limitations, organizational problems, adverse side effects, lack of insight into one's illness (agnosia), lack of access to treatment/medications, and prohibitive insurance requirements. A segment on mental health medications and their effects on recipients should be included.

Training participants should be familiarized with de-escalation techniques for crisis situations, and links need to be established with specially trained law enforcement officers, where available, to assist with such crises. Site visits to area receiving facilities, clinics, crisis stabilization units, drop-in centers, and detoxification units for specialists undergoing training should be arranged. Specialists should understand the local civil commitment process related to mental health and substance abuse disorders in their district.

Contacts with any established alternatives to incarceration programs, specialty courts (drug or mental health), or community task forces aimed at diverting persons with mental illness or co-occurring disorders from confinement or assisting them with reentry into the community should be facilitated. Consumers of mental health/substance abuse services and family members of consumers should be brought in to discuss their unique perspectives with trainees. Information on other special populations, such as the homeless, persons with mental retardation, those at risk of suicide, those who are developmentally disabled, and those with disorders related to aging should also be provided.

A module on the mechanics of successfully writing and monitoring contracts and establishing solid memoranda of understanding between parties should be included. Detailed information on the services offered by each of the seven BOP Medical Referral Centers and contacts with each of the Centers to facilitate the flow of information and enhance supervision/treatment for mental health specialists should be provided.

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Conclusion

A significant barrier to care of offenders has been said to be the mutual distrust that exists between mental health providers and community corrections officials (Roskes and Feldman, 1999). Understanding each other's role and attitude in the delivery of services to an offender is certainly an important aspect of collaborative dynamics. Specifically, community mental health professionals are concerned that some probation/parole officers may monitor offenders with the primary goal of violating supervision or remanding them to confinement. Conversely, criminal justice officials tend to view mental health counselors as "soft" or non-cooperative in providing information that is required to enforce treatment conditions of community supervision.

Small, specialized caseloads offer community corrections officers greater opportunities to establish effective relationships with providers of mental health care (Council of State Governments et al., 2002). Some point out that a potential drawback of this method of supervision, however, may lie in what happens when more attention is focused on an offender. Problematic behavior is the more readily picked up and reported with negative consequences for a person under supervision (Solomon, Draine, and Marcus, 2002). We believe that with appropriate attention to the clinical needs of the offender (i.e., a "treatment-first" philosophy),

this risk can be minimized (Roskes et al., 1999).

Perhaps the simplest method of ensuring cohesion and collaboration between criminal justice and mental health systems is to establish a financial relationship from which the two can mutually benefit. An example of this is the federal legislation enacted in the Contract Services for Drug Dependent Offender Act of 1978, which authorized the Administrative Office of the U.S. Courts to contract for drug treatment services in 1978; it was later expanded to include mental health services (Henkel, 1997). This authority was eventually decentralized so that Federal District Courts, through their Chief Judges, could delegate contracting duties to their respective probation and pretrial offices. The purpose of this was to permit "more flexibility in managing substance abuse and mental health allocation" (Henkel, 1997:105). More uniquely, the major responsibility for initiating and monitoring contracts for mental health services to federal supervisees lies with the Mental Health Specialist, who also supervises mentally ill offenders (Freitas, 1997). In this manner, the momentum toward collaboration with a completely different system is encouraged through a natural self interest on the part of the payee and vendor.

Supervising a special caseload of mentally ill offenders offers many benefits. First, the practitioner quickly develops skills in "surfing" the two systems in which offenders must be involved. Many offenders with mental health problems have difficulty complying with conditions of supervision, including standard conditions. It follows, therefore, that a probation officer will need to be an expert in assisting the authority of jurisdiction in deciding how to best deal with corresponding legal sanctions and perhaps modulate them in accordance with the specific needs of the offender. Experience being the best teacher, having a specialized caseload provides a community corrections agent with many opportunities to learn the most efficient methods of doing this. Dealing with a variety of offenders with different diagnoses and in varied treatment settings or modalities also helps probation officers to become aware of community mental health resources and to develop an awareness of various providers' efficacy in treating forensic patients. Over time, mental health specialists should be able to assess the benefits available to offenders referred for treatment.

The optimum number of offenders efficiently supervised within a caseload is difficult to determine. It is said that the average number of probation cases should be no more than 50 persons, with a specialized caseload being half that. Without a time study it is hard to find data as to what a "good" number of offenders within a specialized caseload should be. It seems clear to practitioners, however, that probation officers need to devote a proper amount of time to crisis intervention, community field visitation, and follow-up with community resources and family members, in order to make a contribution to monitoring and developing stability for an offender. As anyone in the field of supervising this type of offender would agree, working with patient-offenders is both time consuming and time sensitive, requiring intensive involvement in problems while attending to them quickly.

The ability to collaborate with community resources is essential in referring offenders to treatment and in monitoring offenders' compliance with mandated treatment conditions of supervision. Since community mental health resources are usually the provider of treatment, their cooperation is essential. However, if memoranda of understanding (MOUs) are not prearranged, then it falls to the individual probation officer to establish informal professional relationships with care providers. The difficulties at this micro level are evident. First, there is often no requirement for clinics to accept court-mandated patients who they may view as dangerous, antisocial, or consistently noncompliant with the treatment regimen. Also, treatment staff may be concerned that their actions and communications with a patient will be under close scrutiny or that they will be subpoenaed to testify in Court. These and other concerns undercut the ability and motivation of treatment programs and their staff to participate in the synergy that develops in multiple systems attempting to effect positive change in offenders with mental illness.

Probation officers will often be able to minimize issues of professional opposition if they are actually a part of the mental health profession. It is easier to find an "open door" if the community corrections agent is a member of the "guild" as a social worker or licensed as a counselor in a related field. Training for federal probation officers resulting in certification of

officers as mental health specialists may serve to enhance credibility and foster rapport. This does present some interesting difficulties as well as potential for successful collaboration. However, a probation officer who is also a licensed professional human service worker must be careful to understand his/her role as an authority figure. This may be difficult when they are trained to determine the causal factors of mental health decompensation, while required to implement legal sanctions for the behaviors related to mental illness. The problem of dual agency is inherent in these roles, and community corrections agents must be aware of this dual agency and of their primary mission as agents of public safety and of the Court. Navigating through the various systems to strike the crucial balance between treatment and public safety may not be easy, but it is our hope that the recommendations contained here will lead to the development of a certified training model for mental health specialists within the federal probation system. Meanwhile, perhaps an assessment of the various approaches to training from district to district with input from those currently performing as mental health specialists would prove enlightening.

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PLANNED SYSTEMIC CHANGE in any organization can be difficult, if not nearly impossible. Correctional systems, often entrenched in ideology, established ways of doing things, and political agendas, are frequently regarded as among those organizations most impervious to substantial change.

Nested within an overall criminal justice response to crime, correctional policies have bent and shifted throughout the past century. Focus has one back and forth among competing purposes: public safety, punishment, deterrence, offender rehabilitation, responding to victim needs, and prevention (Coates, 1989). Large prisons were built, followed by cottage-based institutions and training schools. Group homes and other community-based components were added. Parole and probation were first beefed up to provide services and then stripped to provide surveillance. In some jurisdictions parole was abolished. Offenders were provided with religion, education, training, and treatment—sometimes mandatory, occasionally voluntary. Inmates remained institutionalized until someone determined that they were "fixed." Newer—possibly older—policies set a time to be served, fitting time to the crime.

For much of the past century the plight of victims was largely ignored by the justice system. Victims might have played an important role as witnesses, but beyond that they were often forgotten or thought of as in the way, bringing unwanted emotion to a deliberation of facts and the meting out of justice. Since the 1980s, however, the victim voice has been increasingly heard and states, counties and cities have responded in a variety of ways: victim compensation, victim impact statements, victim services, hotlines, and so on.

To a large extent the desire to involve the victim and to involve local citizens in an overall response to crime has brought about a change in the dialogue concerning the scope and purposes of corrections specifically and criminal justice generally. Part of that dialogue has centered on an evolving paradigm of justice called variously "restorative justice," "community justice," and

"balanced approach to justice" (Morris and Maxwell, 2001).

While many definitions of restorative justice are available, we rely here on one offered recently by Howard Zehr (2002): "Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible." This particular definition makes clear that restorative justice, although typically manifested in specific programs, is a process highlighting the importance of involving all stakeholders "to the extent possible." It similarly qualifies the notion of making things right with the modifier, "as possible."

Numerous programs across the United States and the world have been developed that adopt at least some restorative justice principles (Umbreit, Coates, Vos, 2002). A national survey by the Balanced and Restorative Justice project at Florida Atlantic University found that restorative justice policies and practices were developing in nearly all states. An even more recent survey by Lightfoot and Umbreit (2003) found that legislation in 19 states included reference to use of victim-offender mediation, the most widely used and empirically grounded expression of restorative justice. In the late 1990s there were more than 1,400 victim offender mediation programs in North America and Europe. (Umbreit & Greenwood, 1999).

Frequently, these programs provide significant additional resources for serving offenders and victims and for involving local community members in the justice process. Often, however, such "restorative" programs may be little more than showcase programs with minimal impact on a jurisdiction's total response to crime. Thus there is sharpening interest within the justice arena for documenting efforts of systems, of whatever size, to integrate restorative justice processes into the overall response of a correctional department—hence bringing about significant, planned systematic change.

In Minnesota, Washington County Court Services responsible for community corrections took steps to adapt restorative justice principles as the basis for shaping their responses to crime, involving offenders, victims, and communities. The Center for Restorative Justice and Peacemaking at the University of Minnesota was asked to document this ongoing process; to ferret out the key change elements and the barriers and resistance to change; to outline the immediate impact as perceived by staff, justice officials, and community members; and to address issues surrounding continuing progress toward integrating restorative justice policies and practices into the department's responses to crime.

Washington County stretches from the Minneapolis Saint Paul Metropolitan Area on the west to the Wisconsin border on its east. While bedroom communities are emerging from farmers' fields near the metro area, the county has several long-established communities and has a rural flavor. Although the county has experienced significant growth in recent years, planners suggest it is 10 or more years behind some nearby counties that are reeling under the influx of new populations and fledgling communities. With its older, established communities, Washington County has a relatively stable base from which to develop and experiment with community-based services. On a cusp of even more rapid growth, however, administrators are challenged to stay ahead of the inevitable pressure on resources as population and citizen needs increase.

Data for this study included existing records and extensive in-person interviews with key individuals. Record data including annual reports, program descriptions, and relevant memos were also reviewed. During the summer of 2001, sixteen individuals were interviewed: five community corrections staff/court services, five other justice system staff, and six community members. System players included a judge, the county attorney, the county administrator, a public defender, and the victim witness coordinator from the county attorney's office. Interview length ranged from half an hour to an hour and a half, with most interviews taking fortyfive minutes to an hour.

Although the reform effort in Washington County described here began in the mid-nineties, it has roots that can be traced back at least into the seventies. It should be clear, then, that this study will not be able to fully describe the rich dynamics of the change process. We interviewed

individuals about events that had transpired years earlier. Often individuals had forgotten important details and there was frequent disagreement between two or more persons about what was recalled. While much of the specific dynamics of the change process can no longer be captured, participants were able to identify those factors and elements that fostered or impeded restorative justice policies and practices, and to describe at least in broad strokes how the system attempted to move forward in the face of enthusiasm and resistance.

We expect that administrators and staff in other jurisdictions, private providers, and community interest groups contemplating this kind of planned systemic change will benefit from the Washington County's experience. The telling of that story here is divided into the following sections: precursors to change, constructing a restorative system, continuing issues, and conclusion.

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Precursors to Change

The movement toward adopting restorative justice policies and principles in Washington County Court Services evolved over time (Umbreit & Carey, 1995). Unlike many instances of system reform (Miller, Ohlin, and Coates, 1977), participants do not point to a crisis or set of crises that stimulated the reform effort. Rather they point to a shared history of progressive philosophies toward justice dating back to at least the mid-70s. Over the course of 14 years the director of Court Services provided strong leadership and support for these reform efforts. He was seen as one among many leaders within Court Services, the criminal justice system, and the broader community who helped shape and direct this movement toward restorative justice.

Partnership was the key catchword mentioned by almost all of the participants in this study. Partnership among community justice decision-makers, county administrators, and citizens/community groups was seen as necessary for such a change effort to succeed and also as an important byproduct of such change. This commitment to a broad-based partnership was a value and strategy nurtured by the director over many years. Some of the key precursors to restorative justice reform in Washington County included the following.

Longstanding Community Corrections Act County

Washington County chose to participate in the Minnesota Community Corrections Act in 1978. That choice reflected a corrections philosophy oriented toward providing services at the local level and in ways that were as community based as feasible.

In Washington County, the department charged with providing probation and parole services for adults and juveniles, as well as out of home placements, retained the name Court Services; it is also referred to in its own annual reports as the Community Corrections. Much of the department's effort over the years consisted of forging links with community groups and resources that could assist in early intervention efforts within local communities. Early on, the focus of such undertakings was the offender; later, that focus would broaden to include the victim, and even the community, not only as resource, but also as victim.

An immediate and enduring result of Washington County becoming a Community Corrections Act County was the establishment of a Community Corrections Advisory Board, which "actively participates in the formulation of the comprehensive plan for the development, implementation, and operation of the correctional programs and services as prescribed by statute." (Washington County Court Services, 1999.) The Board is currently composed of seven citizen members, seven judges, the County Attorney, the County Sheriff, and representatives from Probation, Community Services, Public Defenders, and Law Enforcement. Ex-officio members include a County Board Commissioner, the district supervisor from the Minnesota State Department of Corrections, and the Director of Washington County Court Services. It continues to provide a place for testing new ideas, assessing ongoing programs, and enlisting support for seeking funds. The Board became one of the natural forums for discussion of restorative justice ideas.

Established Community-based Service Providers and Interest Groups.

Washington County has a long tradition of local communities providing prevention and early intervention services to youth through Youth Service Bureaus. These organizations range in size and scope, but their existence meant not only that there was a core of service providers, but also that these providers tapped into their local communities for volunteers for their own boards, committees, tutors, mentors and so on. They would provide natural settings for dialogue about restorative justice and become potential partners for a broad range of programs.

Other private groups existed and more would emerge during the '90s focused on mental health, domestic abuse and crime victims. Washington County communities and community groups had considerable experience in dealing with justice issues before restorative justice became a popular rallying call for community participation.

Key Staff Interest in Community-based Corrections and System Change

Washington County administrators saw themselves as striving to be progressive in carrying out criminal justice responsibilities. The Director of Court Services had been in that position for fourteen years and with the department for nearly thirty years. He claimed that "the department had a strong social work emphasis, much into change, helping people change, so that foundation was there before I became director." In the '70s and '80s the department, enabled in part by outside grants, developed restitution programs. The department wrote a grant with the five Youth Service Bureaus to develop and strengthen restitution programs, community service, and victim-offender mediation. After the three-year federal grant ended in the early '90s, victim-offender mediation was the first program to be cut because of the small number of persons benefiting from this service. Four of the six key staff supported under that grant remained with the department and supported a change in departmental philosophy and direction; they would later embrace restorative justice principles and practices.

Key staff already had much experience working with community groups. Natural alliances had already emerged in the '70s and '80s and a degree of trust had been established. The new reform would offer additional opportunities for collaboration. Some strain would develop, however, as community providers also would have to reconsider how their service delivery fit restorative principles. And new community players would step forward offering more programmatic options while at times calling into question the system's commitment to restorative justice and community collaboration.

Thus Court Services in Washington County had a long tradition of desiring to do what was best to help offenders and thereby enhance community safety. It had a very long commitment to involving local community groups able to provide community-based service and support to offenders. And it had a long-standing interest in systemic change that evolved over time. With these interests, it seems quite reasonable that the department with its community partners would be more than willing to explore the implications of restorative justice principles.

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Constructing a Restorative System

At least for the purposes of this study, it was important to establish a time in the change process that participants could agree upon as the pivot point for adopting restorative justice policies and practices in a significant way. Without exception, participants saw the department's decision to hire a person to develop and coordinate a victim-offender mediation/conferencing program in 1994 as that turning point, because it was that program's training and outreach effort that became the primary vehicle for bringing additional community members into the operation of the agency.

The Director of Court Services clarified that the movement toward restorative justice in Washington County was not a process that he or his department controlled: "We do not claim ownership. We provide technical support and information without trying to control the outcome."

Such an effort at broad systemic change is necessarily fluid and interactive. Just as the department attempted to influence the direction of the reform, so did other players such as community groups, judges, county attorneys, public defenders, and other interested parties. Given the focus and scope of this study, we looked at the movement toward restorative justice primarily through the lens of the department: its role and how it attempted to marshal forces to facilitate adoption of restorative justice principles.

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Change Strategies

A variety of change strategies were adopted that were directed and involved members of three distinct groups: 1) department staff, 2) criminal justice system decision-makers, and 3) community members. Many strategies directed at and within these groups took place concurrently. Others fed upon each other.

1. Department staff. "One of the things we didn't do," said the director, "when we started going down this path was jump right back and change the mission statement. I just allowed things to more evolve and then let people become comfortable and begin to let the change process unfold. Then about three years ago (1998) I said, 'You know what, what we're doing doesn't fit with our mission statements. It's time to go back and look at revising it to match and guide what we're doing.'"

An overarching strategy for working with staff was that of maximizing the options and choices staff had for their own personal growth as well as for working with their clients. "We wanted these restorative changes to be as non-threatening to probation staff as possible," said the director. "We gave them opportunities to grow; we planted seeds." Staff were invited to educational and training seminars. They were asked how they might best incorporate victim sensitivity training into their daily routines. They were invited, along with community volunteers, to take part in victim-offender conferencing training so they would have a better understanding of this option for victims and offenders. They were asked how they would measure the department's effectiveness. Not all staff responded. But many did. And many of these individuals began to regard restorative justice as a framework that "helped make sense of what they were doing."

There was a strong belief among those interviewed that staff were engaged in probation work because they wanted to help offenders change their behaviors. If one can identify how working on victim needs and broader community issues helps the offender, then even those who initially believe that expanding their workload to include the victim and community is a drain on limited resources will likely be responsive to adopting restorative frameworks.

The department was committed to learning about restorative justice and sharing information with staff regarding victim sensitivity. The place of victims within the probation response had begun to emerge as a concern in the late '80s and became the focus of a number of training efforts from 1993 onward. Outside monies were also sought for starting up victim-oriented projects within the department and in the community.

By 1995, administrative staff were committed to working with departmental staff on developing ongoing and new interventions with best practice research in mind. Many administrative and line staff had been trained in an era of crime and delinquency when the "nothing works" slogan rang supreme. It guided policy and practice. By the mid-'90s, however, staff were influenced by Canadian research that suggested that some things actually do work in the short run and over time. This commitment to best practice resulted in staff staying abreast of the latest research, including that emerging on restorative justice practices, and in staff considering ways for evaluating their own work.

It was believed that a best practice orientation would not only lead to better services to clients, but also provide a sound basis for presenting results-based evidence for new directions to staff

and criminal justice decision-makers who remained skeptical about the shift toward restorative justice policies and practices.

Many participants in this study cited developing and maintaining quality relationships as being at the core of making or allowing restorative justice processes to work. That was seen as true not only for relationships with community members/groups and criminal justice decision-makers. It was seen as equally true for relationships among staff within the department. An administrator stated, "I used to laugh when I asked people why they chose to work here. Invariably the response was: 'I want to help people.'" There was a belief, if not an expectation, that the ways of dealing with individuals, even those who disagree, needed to be restorative—peaceful rather than heavy handed. As one staff person said, "Restorative practice begins with how we deal with one another."

Administrators placed a premium on hiring employees from outside the department's boundaries to diversify and strengthen the department's response to its clientele. This was not done to diminish long-term employees and what they brought to their clients, but was an acknowledgement that it would strengthen the department's ability to work with victims and victim-oriented groups to move beyond the normal ways of managing corrections.

2. Criminal Justice Decision-makers. While there was no "grand strategy" for getting all the criminal justice decision-makers "on board" before initiating restorative justice programs, there was a genuine desire to collaborate wherever and whenever possible. Individual judges and county attorneys became, over time, strong proponents of restorative justice practices because they felt such practices were handling unmet needs of persons coming through the system, particularly victims, and that these programs underscored offender accountability to the victim and to the community as a whole.

Each decision-maker had an understanding of his or her own legal or statutory responsibilities *vis-à-vis* an offender and a victim. Those understandings at times clashed, making collaboration shaky. Department staff were aware that they must be able to respond and interpret restorative justice practices in clear ways that would invite further questions and participation from their criminal justice partners. Staff were determined to listen to the personal and professional conflicts that ensued for other decision-makers because of changes within community corrections and where possible to find common ground. That is, they attempted to handle such inevitable professional conflicts restoratively.

Beyond the formal and informal avenues for communicating with criminal justice decision-makers about restorative justice principles and planning, the department saw itself as bearing some responsibility for offering training and educational seminars that included other decision-makers. Sometimes these training efforts were tailored to a specific group such as the judiciary. At other times, persons system-wide, including individuals from the community, were invited to attend.

3. Community Members/Groups. "I believe very much," stated the director, "that systemic change doesn't happen because the system looks up one day and decides it needs a change. It happens because of outside forces. In this case the outside forces are in the community. It's the community piece that has some in the system reacting to restorative justice with resistance."

The department's track record of working with private community-based providers established a set of pre-existing relationships upon which to foster support for restorative justice approaches. Many private providers were already doing some things that were restorative in nature. "We have to have an organization that leaves space for more input and ideas from the outside," offered a court services administrator. "It's important to acknowledge that we don't have all the answers."

Relationships with community members developed and deepened as local citizens were invited to participate on ad hoc committees. Again, a model for this kind of interaction was often traced back to the long-standing representation of local communities on the Corrections Advisory Board. Shared committee responsibilities ranged from focusing on how a specific program

approach such as victim-offender conferencing or peacemaking circles might play out in a particular locality to putting on restorative justice related conferences.

Communication, relationship building and trust were cited repeatedly by department staff and by community members as keys for creating the kinds of partnerships required to adapt a restorative justice philosophy and turn that philosophy into concrete ways of working with victims, offenders and communities. In addition to nurturing ongoing relationships with groups and citizens already known to the department, staff saw the offering of training and education to a broad range of the department's employees, criminal justice system decision-makers and the community at large as a means for advancing the notions of restorative justice: "for planting seeds that might lead to a new invested stakeholder."

Another staff member cited the importance of ongoing training: "You have to have a lot of training in how restorative processes play out. It is true as so many say, 'you have to trust the process,' but you have to know what the process is before you can trust it."

As specific restorative programs began to emerge, such as victim-offender conferencing and, later, community justice circles, there was a concerted effort to recruit volunteers from the community and from the department to do conferencing and/or participate in circles. Two examples are cited here to illustrate how the department reached out into the community not only to strengthen its commitment to restorative justice but to strengthen its capacity for linking with community groups and nurturing community volunteers. After the administration determined, in 1994, that it wanted to make a concerted effort to incorporate victim-offender mediation it hired an individual who had extensive experience working with victim-offender mediation at the community level with the Minnesota Citizens Council. Likewise, when a deputy director was hired, the person chosen had formerly been the state director of MADD, was well connected with victims groups, and also had a strong community focus, having worked previously with the United Way.

Inviting and welcoming outside participation in any organization is likely to bring not only fresh ideas and new resources, but at times tension around conflicting ideas or use of resources. In the Washington County experience, some community advocates for restorative justice thought the department was not moving fast enough. Others felt that staff were moving too fast or were directly or indirectly critical of what community-based providers had been doing for years. Some expected the department to smooth out any difficulties community groups have with other parts of the justice system, such as county attorneys or with judges. Departmental staff entered this process expecting such divergence of view and hoped to be able to handle the inevitable conflicts in respectful, restorative ways.

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Impact, Policies, and Programs

1. Department. The movement within the department toward restorative justice practices served to expand the range of options available to individual probation staff as they responded to offender needs. The emphasis upon the accountability of the offender to the victim led to efforts to explore the offender's empathy for the victim, to understand the impact of his/her actions on the victim and the larger community, and to make accountability a personal matter. This enlargement of the probation lens was resisted by some and embraced with passion by others. One participant noted that those who resist do so passively: "I'm so busy." "I'm just trying to get through the day." It was clear that there remained pockets of folks throughout the system who regarded restorative approaches as "not punitive enough."

Study participants pointed to four primary examples of how a restorative justice framework has increased options available to staff and the department. First, an old program, the Sentence to Service program, which focused on community service and restitution, was retooled. Rather than simply assigning an adult offender with a number of hours, more thought was given to the nature of service to be carried out and its appropriateness to the offender's crime. A key question

became how the service could be tied back in meaningfully as a way for the offender to pay back to the victim and community rather than simply having the offender work so many hours because the system ordered it! In 1998, 1,487 adult offenders participated in the Sentence to Service project.

The second example was victim-offender conferencing, a process which typically involves the victim and offender meeting face to face so the victim has an opportunity to ask questions about the crime, the offender can answer questions and talk about his or her experience, and both are afforded the possibility of working out arrangements for some kind of restoration plan. While these conferences are often small, including a volunteer or staff mediator, a victim, and an offender, they can involve additional family and support members. And, on occasion, depending upon the nature of the case, they can be huge, involving neighbors or other community members.

In Washington County, offender participants were fairly evenly split among juveniles and adults. Fifty-eight volunteers are currently involved in this program and many more have one through the victim-offender mediation training. In 1998, one hundred and ninety-six offenders completed Victim Offender Conferencing, resulting in \$16,218 of restitution and six hundred and twentyfive hours of community work.

Third, Community Justice Circles or Peacemaking Circles were highlighted as among the restorative options available to the department. Circles are the result of a distinctively community partnership or collaboration. Individual cases may be referred by probation officers or other criminal justice decision-makers to a community circle. The circle will hold an application circle to determine whether it will accept the case. If so, additional circles are held, usually but not always involving both victim and offender. These may include healing circles, support circles, and sentencing circles. Although the number of offenders referred by the system to community circles is very small, the typical case referred to a circle is an adult offender who has been repeatedly in trouble and expresses a genuine desire to change.

At least one community is becoming involved in using circles in domestic abuse situations. Some community groups are also looking at the possibility of providing support circles for helping reintegrate individuals returning from institutions.

The fourth example was an ongoing effort to frame the day to day casework of probation officers within a restorative justice philosophy. Study participants constantly pointed out that restorative justice is more than a program—it is a way of being, thinking, and doing. The director acknowledged that: "We have a long way to go to integrate restorative justice into our day to day work, but we're making progress." For example, some supervisors were requiring that case plans clearly identify, in addition to offender needs, how the offender described the harm done to the victim and or community and how he or she planned to repair the harm.

The revised mission statement for the department was visibly present in offices and appeared in the *Washington County Court Services 2000–2001 Comprehensive Plan*. This mission statement was derived late in the reform process by asking, "How is what we're doing reflected in our mission statement?" By the time of our study it provided a valuable restorative, community-oriented framework for inspiring and shaping new restorative processes and programs as well as forming a basis upon which to hold staff and others accountable for implementing restorative principles.

"I think the director very thoughtfully did planning, implementation and mission in that order so we wouldn't get hung up or bogged down on abstract arguments over mission," noted a department staff person. "Later, after staff had experience with trying to implement restorative justice principles and they had some understanding of his vision, he got the staff together and they hashed out a very thoughtful vision, mission and values statement." At the time our study, staff were engaged in (and had been for two years) the ongoing critical and painstaking task of reviewing policy and procedures with this restorative mission in mind.

In 1996, an ad hoc committee of the Community Advisory Board was gathered to identify

desired outcomes and measures. "We had citizen members of the board, plus victim representation from the community and staff. I don't think we realized that what we were doing was the beginning of working on measurements and outcomes that had a restorative focus," remembered a staff participant. "The director saw the first document and said, 'Wow, this is really good. It has all three components: victim, offender, and community. It has a real balanced approach to it.' So we were off and running."

A judge commented on the importance of having the assessment tools available in Washington County: "We now have assessment tools that improve our capacity for assessing people when they come into the system. Once we assess the risk of the individual, then we can apply the restorative justice principles and processes as to what that person needs specifically."

It should be noted that at times there was a perceived conflict between best practices language and that of restorative justice. First, best practices language was viewed as "very offender focused." "So we're telling probation officers that best practices is a new way of doing business with offenders," said a staff person, "and oh, by the way we're intending to place a greater value on the work you do with victims. A time crunch is often the result." Second, there was the question of how best to measure the impact of such programs as victim-offender conferencing and peacemaking circles. Is it victim/offender satisfaction? Is it recidivism? And some community participants were resistant to the notion of any effort to evaluate processes that from their perspective could not be adequately "measured" and were inherently positive anyway.

"If we're going to do restorative justice, then it needs to be a process that's restorative," according to the director. There is little doubt that the process of reform in Washington County not only sparked resonant chords with individuals within the department who were eager to try a different way of balancing needs of victims, offenders and communities; it also caused feelings of "being unappreciated," "unheard," and "misunderstood." Tensions arose among staff members as debate was carried out regarding next steps, accountability measures, and the role of the department *vis-à-vis* the community and other justice system components.

2. Criminal Justice Decision-makers. Collaborative efforts with other criminal justice decision-makers occurred both formally and informally. For instance, some of the initial system-wide discussions regarding victim-offender mediation in the early '90s took place within the context of the Community Advisory Board. As one department administrator pointed out, presenting program options at the Board "is one of the ways in which we try to generate support for new ideas. The Board had been active with restitution and supported it and supported the victim-offender mediation, in part, because it could help with restitution. I'm not sure everyone was really talking about systemic change at that point."

A county administrator saw the Board as a central place where the various players from across the system could come together to explore new directions as well as voice their concerns. "It is where I started hearing about restorative justice and the movement toward the increased concerns for the victims of crime and also of ways of offenders becoming reintegrated into the community in positive ways."

For example, at times ad hoc committees emerged within the judiciary and probation staff participation was invited. In another instance, the department was evaluating a possible modification in a risk assessment tool and invited judicial input or response from the County Attorney's Office. Such collaboration was ongoing and offered opportunities for establishing working relationships that could be drawn upon in times of philosophical or practical disagreement.

Judges tended to be supportive of restorative programs. "They all use victim-offender conferencing and they all use Sentence to Service across the board. Those two parts of restorative justice are most widely accepted and most widely used." While an individual judge or two were strong advocates for circle sentencing, "others," indicated a judge, "view circles as kind of unimportant, because we can do only eight to ten cases a year, maybe. So they see it as marginally of any value because of the numbers." Pre-sentence investigation was an area

identified for possible further development. This might involve explicitly incorporating restorative principles in the investigation report, such as potential impact on victim, offender, and community, or it might include some kind of victim-offender conferencing.

County attorneys were also reported as being favorably disposed toward victim-offender conferencing and Sentence to Service. One concern raised by a representative of this office was whether funding going into community justice circles was draining resources from victim-offender conferencing.

Referrals to victim-offender conferencing were slowed in 2000 as the system dealt with legal concerns raised by the Public Defender's Office. The issue was that victim-offender conferencing, which was supposedly a voluntary process for offenders, ought not to generate additional sanctions or consequences for the offender beyond what the court imposed. It was agreed the offender could write a letter of apology, but the conference could not result in increased restitution or community work hours. Any additional hours that the offender agreed to would be considered part of a "good faith" agreement that could not be enforced by the court.

3. Community Members/Groups. The department continued to work with community-based youth and family oriented agencies to develop services, to establish referral guidelines, and to assess to what extent services were restorative. Likewise, representatives of such groups were often included in ad hoc committees within the department that were raising similar issues and questions. Representatives of community groups reported they often looked to the department as a technical support resource.

An example of an ongoing partnership was the department's involvement with the community justice circles. The department had worked with representatives from three communities in Washington County—Cottage Grove, Stillwater, and Woodbury—to establish a Community Circles Council and find funding to support a full-time Coordinator. The Council consisted of representatives from the three communities and from other systems such as Court Services, the judiciary, law enforcement, and the Family Violence Network. The Coordinator was housed in the offices of Court Services, was accountable to the Council and was supervised by Court Services.

A community participant summed up the essence of restorative justice partnership in this way: "It takes time to establish an effective process. It takes a lot of time to establish relationships because the most effective restorative justice is a partnership and doesn't come from the top down. Nor does it come from the bottom up. It kind of grows together between community members and court services and everyone else."

Typically, community members were invited to ongoing conferences and training seminars sponsored by the department. Often community representatives helped to organize the training efforts and sometimes served as trainers. Most of the community members who participated in this study had one through the victim-offender conferencing training sponsored by the department. This training was highly regarded and trainees often recommend it to others. The exchange of information through educational conferences and training seminars was regarded by participants as an important way to form and nurture relationships across the various interest groups of community, department staff, and other criminal justice personnel.

The volunteer pool available to the department and community providers had been expanded. Finding, training and keeping volunteers was an unending challenge for any group or organization dependent upon volunteers. "We have a motto," said a community volunteer, "'that is, each one teach one.' It really is community involvement." Representatives of programs often went out along with department staff to local civic groups to talk about what they do, about restorative justice, and about opportunities for individuals to volunteer.

Wherever there is an attempt at building relationship, there will be points of tension and conflict. That remained the case in this effort to bring a restorative justice philosophy to Washington County. Repeatedly, participants in this study from every sector pointed out that maintaining

ongoing partnerships depended upon trust and relationship-building skills. Some community participants regarded themselves as restorative justice advocates. "It's very easy for system folks to talk the talk; we want to make sure they walk it," said a community volunteer.

There was also recognition on the part of at least some community members of just how much was being asked of system decision-makers to try some of the restorative justice measures. A community participant suggested, "It took a lot of time to do relationship building with system players and to justify referring a case to the circle. I'm impressed and grateful for the prosecutor being willing to take that risk."

One of the director's hopes early on was that restorative justice would be owned by the community and the system. It seemed clear that such hope had been realized to a significant extent. As one community commentator reflected, "A purpose of restorative justice is also community-based; this belongs to everybody."

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Continuing Issues

Developing and Maintaining a Continuum of Community-based Options

Remaining open to new ideas, to continuing to consider where restorative justice principles might lead in practice remained a challenge. Reform efforts of any kind can suffer from trying to institutionalize outcomes. A number of study participants worried that some individuals felt they had found the "one true model," be it circles or victim-offender conferencing or some other approach. "It's been rather discouraging, but I suppose part of the human condition," said a supervisor. "There is a continuum here which expands the resources we have to work with victims and offenders."

A youth service provider comments on the importance of "thinking outside the box:" "I think that people need to look at restorative justice as a philosophy and principles rather than starting out by looking at it as a packaged program. Because when we first heard about restorative justice we heard about victim-offender mediation and we would say, 'We can't do that.' Our agency is not equipped to be able to do that for three hundred kids a year! And so we set the idea aside, but once we started to think of restorative justice as a philosophy and how we can make that philosophy match and shape our programming, then it started to make a lot more sense."

And according to the director, "We will always need more seed planters. This is an evolving process. We cannot afford to get locked into one way of thinking or doing things."

Integration of Restorative Justice Principles Across the Department

Court Services administrators acknowledged that integration of restorative justice principles across the department's response to offenders and victims was an ongoing undertaking. The director pointed out that from the beginning he and his administrative staff wanted to be "non-threatening" and "invitational." He also indicated that some supervisors were making more progress than others. The work on policy and procedures had been onerous but helpful. A supervisor noted that handling a couple hundred cases through victim offender conferencing, while important, "doesn't mean that's it."

It is the pre-sentence investigation, casework and supervision that is the bulk of the probation effort and it is there where restorative principles must have a positive impact if restorative justice is to be more than "special programs." Progress was being made within some probation units as supervisors and staff sorted out how to build the three components of offender, victim, and community into case plans in explicit, concrete ways.

Others pointed out that integration of restorative justice principles has to be tied closely to performance measures and staff incentives, that is, to career advancement and salary increases.

Leadership Transition

As in any organization, individuals in Court Services will retire or move to other positions. The question of what is likely to happen when key leaders leave is a question we typically ask when studying organizational or system change. Initially, we did not realize that the director was planning to retire in the near future. His departure and his replacement will no doubt impact the network of relationships that shape restorative justice in Washington County. It should be clear that the same would be said if other key department staff were retiring or otherwise leaving, or if key judicial or county attorney supporters retired, or if key community members moved on to other locations. No single individual is indispensable in this reform effort, yet the departure of any key player will alter the dynamics of the undertaking.

The director remained confident that the support across the various restorative justice interest groups was significantly strong to absorb his retirement. "If you can't leave, then you're doing something wrong," he claimed. He believed that the years of community involvement and collaboration with others working in the system plus the continuous efforts at training would make the transition manageable.

Others worried a bit about leadership transition, but were confident that commitment to restorative justice principles would not flag. "I think restorative justice has worked its way into the consciousness in Washington County to a certain degree," said a community volunteer, "if the restorative focus gets neutralized someone will step up to the plate and sell it."

A staff person didn't doubt "that the department will do wonderful things in the future," but was also keenly aware of the political dynamics of reform. If an individual were to attempt to take the department in a nonrestorative direction, "there would be enough resistance in the department to be proactive to educate and help him or her come on board to be in tune with restorative justice. I think there are enough folks here, throughout the system, and in the community who have taken it and internalized it to make that happen." Another staff member pointed out that the restorative justice change effort was a "marathon, not a sprint" and believed that inevitable leadership transitions, at whatever level within the system, would involve "passing the baton to committed runners."

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Conclusion

Without a major precipitating crisis and without the classic charismatic leader, Washington County Court Services has demonstrated the ability to institute long-term, durable change. Building off a long-established commitment to community-based services and working closely with community groups as well as with decision-makers within criminal justice, community corrections administrators orchestrated a fairly elaborate systemic change effort aimed at adopting restorative justice policies and practices with a tripartite focus on needs of the offender, victim, and community.

By using strategies of "partnering" and collaboration; providing stake for community programs and volunteers; maximizing staff and other criminal justice personnel choices and options for working with offenders; maintaining a commitment to assessment and evaluation of services provided; and relying on restorative justice principles of respect, expanding the number of stakeholders, and using dialogue to work through inevitable conflict and resistance, the department played a pivotal role in bringing restorative justice practices to Washington County.

This organizational change effort did not begin with a lengthy review of the department's mission. Rather it began with focusing on what needed to be done and could be done to help meet the needs of offenders, victims and communities. After a time of experience with some restorative justice practices, a visionary mission statement was fleshed out by all staff who desired to participate over an 18-month period reflecting restorative justice philosophies and principles.

New programs have emerged. New partnerships have emerged with community groups and with other criminal justice professionals. Yet, those interviewed for this study acknowledged that the movement toward adopting restorative justice policies and practices is hardly finished. The change process was seen as ongoing and drew on support from within the department, the broader justice system, and the local communities. Depending upon the moment, support may appear to be strengthening in places and wavering in others. That is to be expected in any reform effort. The question remains whether coalitions supportive of restorative justice will be able to manage the cross-currents of limited resources, political tussles, leadership transitions, and competing interests of those within the coalitions.

We hold no crystal ball regarding this question. That Washington County has been able to maintain restorative justice reform efforts over a good number of years already suggests that the staying power of such coalitions is strong. We suspect that in the long run the "successful" implementation of restorative justice policies and practices rests as much upon how the change effort is managed and how inevitable conflicts are resolved as on a widely shared philosophy.

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Treatment Retention: A Theory of Post-Release Supervision for the Substance Abusing Offender*

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WITH DWINDLING STATE budgets, and a prison population that is almost four times what it was 30 years ago (Beck, 2000), offenders are being returned to communities. Most released offenders (84 percent) are still under some form of active supervision (Glaze, 2002). Accordingly, the United States parole population has grown to three-quarters of a million persons under parole supervision (Glaze, 2002). However, the success of offenders released from prison has typically been poor. Over 67 percent of prisoners released in 1994 were rearrested within a three-year period. Of those, 46.9 percent were convicted of a new crime (Langan and Levin, 2002).

The considerably larger parole population has a different make up than those of paroled offenders just several decades ago. When offense type is examined, it has been determined that the majority of offenders released are no longer violent offenders (Travis and Petersilia, 2001). Drug offenders now make up more than a third of prisoners released. In addition, driving under the influence/driving while intoxicated offenders make up the largest percentage of public order prisoners released (Langan and Levin, 2002). And, it is estimated that when alcohol is combined with drugs, 80 to 90 percent of offender populations have a problem with one or both of them (Champion, 2002; Abadinsky, 2003). Drug-involved offenders have presented unique challenges for probation and parole agencies, as they have found themselves dealing with an offender group that may not pose an injurious threat to communities, but is still at high risk to recidivate.

In light of most states' financial situation, their current prison populations (Beck, 2002), and the poor outcomes of released offenders (Langan and Levin, 2002), a renewed focus on "reentry" has come from practitioners and scholars alike (Austin, 2001; Travis and Petersilia, 2001). Through this focus, some research has emerged on what works in treating offenders (see Andrews, 1995; Cullen, 2002; Cullen and Gendreau, 2000; Cullen and Gendreau, 2001; Gendreau, 1996; Lipsey, 1999; Losel, 1995), as well as how best to supervise them (Clear and Corbet, 1999; Cullen, Eck and Lowenkamp, 2002; Karp and Clear, 2000; Reinventing Probation Council, 2000; Taxman and Byrne, 2001; Taxman, 2002).

However, the supervision research, largely adopted from policing literature, has fallen short in that it has proposed either agency-level recommendations or general approaches to be implemented for all offenders. Additionally, these theories have yet to be empirically tested, which is possibly a result of their design. While these theories have marked an advance from previous approaches, they have provided little guidance for the individual officer working with specific types of offenders in the community. Whereas theories of police officer approaches are probably best applied generally, because they will span across line level patrol officers whose departments rarely have any control over what call for service will be assigned to them, the same does not hold for probation/parole agencies and their line level officers. Indeed, an advantage that probation/parole agencies have is the relative ease with which they can specialize and match certain offender types (i.e., substance abusers, sex offenders) with officers trained to deal with specific offender types and their individualized risks, needs, and responsivity levels.

In this paper a theory is proposed for effectively supervising the post release substance-abusing offender. This theory contains specific components that, if applied in the field, could be subject to empirical evaluation. This is accomplished by focusing on two main areas; post release treatment and supervision. This research suggests that these two entities should not be divergent, but instead need to be unified if any success is to be seen in curbing recidivism and producing long-term change. As such, an argument for the "treatment retention" theory of supervision is made.

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Treatment

Farabee and his colleagues (1999) outlined six main barriers to implementing successful substance abuse programs for offenders: client identification and referrals, recruitment and training of treatment staff, redeployment of correctional staff, over-reliance on institutional versus therapeutic sanctions, aftercare, and coercion. Here, the focus is on the last three of these barriers. However, it is important to note that the likelihood of success for the treatment retention model will be reduced if the offender does not receive effective treatment while incarcerated.

In successfully handling substance abusing offenders, the evidence supports the use of therapeutic communities (TCs) that are long-term and intensive in their delivery (Butzin, Scarpitti, Nielson, Martin, and Inciardi, 1999; Butzin, Martin and Inciardi, 2002; Griffith, Hiller, Knight, and Simpson, 1999; Harrison, 2001; Hiller, Knight, and Simpson, 1999; Inciardi, Martin, and Butzin, 2004; Pearson and Lipton, 1999). Pearson and Lipton (1999) found an overall effect size of .16 for TCs relative to various control groups and other treatments in their meta-analysis of correctional-based treatments for drug abuse. Therapeutic communities that are most effective contain a cognitive treatment component and focus on individual offenders' risks, needs, and responsivity. The evidence in support of programs adhering to these principles is perhaps even more overwhelming (see Andrews et al., 1990; Andrews, 1995; Cullen, 2002; Cullen and Gendreau, 2000; Cullen and Gendreau, 2001; Dowden and Andrews, 1999; Gendreau, 1996; Griffith et al., 1999; Lipsey, 1999; Losel, 1995).

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Aftercare

An important component of TC programs is relapse prevention and aftercare. In this part of treatment the offender creates a plan to assist him or her in not returning to a drug-involved lifestyle after release. Here, the principles of risk, need, and responsivity are again important, as offenders usually return to the same area they resided in when they committed their offense. The initial assessment that addressed the offender's various risks, needs, and responsivity levels will help in drawing up the relapse prevention plan.

It is also important for the treatment staff and probation/parole officer to share the assessment of the offender's risk factors. In doing so, the two can work in unison to assist the offender in reducing his or her likelihood for relapse and re-offense. In addition, the assessment process

should be continuous throughout the treatment process, in order for the level of care and supervision to be modified accordingly.

Establishing a support system, whether family or peer based, is critical in this stage of treatment. Slaughter (1999) found family influences to be a dominant factor in whether a released offender returns to drug use or not. A clarification of family roles by the treatment provider or supervising officer, directed towards assisting the offender in maintaining sobriety, is an integral part of treatment (Slaughter, 1999). On the other hand, in some cases the family will merely be a "trigger" for use and cannot be a support.

One way of contending with the non-supportive family is by developing additional supports in the community. If the offender is involved in a therapeutic community treatment program, it will be largely peer-based and it may be important to carry this over into the community. However, the offender will likely be required to find new peer supports, as terms of supervision are not inclined to allow for continued association with fellow parolees. Weekly or more frequent 12-step participation has been found to be an effective tool in maintaining an offender's long-term abstinence from substance use (Read, 1995; Florentine, 1999). In addition, the use of transitional living arrangements such as Oxford House have been effective in keeping offenders away from family triggers at home (Read, 1995).

The evidence is rapidly mounting that in-prison TCs with follow-up aftercare treatment that is cognitive based are effective in reducing recidivism. This is especially true for those offenders who complete aftercare treatment (e.g., Hiller et al., 1999; Knight, Simpson, and Hiller, 1999; Larimer and Palmer, 1999; Martin et al., 1999; Chanhathasilpa, MacKenzie, and Hickman, 2000; Dowden, Antonowicz, and Andrews, 2003; Inciardi et al., 2004). Dowden and his colleagues' (2003) meta-analysis revealed an average reduction in recidivism of 15 percent for relapse prevention programs compared to other treatment programs and control groups. Additionally, they found programs that adhere to the principles of risk, need, and responsivity typically yielded the better outcomes (Dowden et al., 2003). Furthermore, Larimer and Palmer (1999) found cognitive-behavioral relapseprevention-based approaches effective for reducing the frequency of relapse episodes as well as the intensity of lapse and/or relapse episodes among offenders who resumed use after treatment.

Important to note is that a "relapse episode" does not only mean substance use, but also a return to an event which could trigger use. Recall that central to the relapse prevention model is the detailed classification of factors or situations that can precipitate relapse episodes (Larimer and Palmer, 1999). Larimer and Palmer's (1999) finding is important because it examined drug use, as opposed to solely focusing on recidivism. It suggests that relapse is a likely experience for an offender in recovery. How the relapse is handled is where the treatment retention model turns to the joint effort of treatment personnel working with the client and the probation/parole officer supervising the offender.

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Coercion

In the past, there has been much conflict between treatment personnel and correctional officials over the issue of voluntary or coerced treatment. Some of the driving forces for therapists include achieving sobriety, preventing relapse, and maintaining confidentiality about the aspects of a substance abuse disorder (Reddick, 2000). Lowering recidivism rates, on the other hand, typically drives probation departments. For the most part, drug and alcohol therapists tend to subscribe to the medical model of treatment. However, non-compliance is often the norm with offender populations. Consequently, it is unlikely the previous medical model of treatment alone will be effective in treating an offender who abuses substances. In view of this, the cognitive approach has emerged, the notion that an offender's pattern of thinking must be changed. The task of educating treatment providers about offender therapy often falls to probation and parole departments, as the treatment community is still theoretically grounded in the medical approach (Reddick, 2000).

Hiller et al. (1999) found the level of offender commitment to be a risk worth noting in the assessment of an offender's likelihood for success in treatment. However, strong motivation is not necessary to facilitate the treatment process. Sanctions or enticements, either in the personal life or the criminal justice system, can significantly increase treatment entry and retention rates, as well as the success of drug treatment interventions (Martin and Lurigio, 1994; Martin and Inciardi, 1997; Hanlon, Nurco, Bateman, and O'Grady, 1999; Peterson, 2003). In addition, Torres (1997) found that coerced treatment produced more long-term change when compared to voluntary treatment. Given this knowledge, effective supervision becomes important, as offenders often are unwilling participants in the treatment process.

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Supervision

In the past, frequent drug testing and intensive supervision was the response to substance abusing offenders. Traditionally, intensive supervision programs (ISP) have been characterized by close monitoring and surveillance as well as swift punishment-oriented responses to any violations (Cullen, Wright, and Applegate, 1996; Petersilia, 1998; Petersilia and Turner, 1992; Petersilia and Turner, 1993; Martin and Lurigio, 1994). However, intensive supervision programs have been found to have equal to or higher rates of recidivism than regular probation or prison sentences (Cullen et al., 1996; Gendreau et al., 2000; Petersilia, 1998; Petersilia and Turner, 1992; Petersilia and Turner, 1993; Martin and Lurigio, 1994). One reason for this is the high amount of technical violations associated with these programs (Fulton, Latessa, Stichman, and Travis, 1997; Martin and Lurigio, 1994; Petersilia, 1993; Petersilia, 1998). On the other hand, proponents of these practices argue that these offenders are then incapacitated, eliminating their ability to perpetrate further criminal acts. However, Petersilia and Turner (1992 and 1993) found technical violations to be a weak predictor of future criminality.

With respect to the substance abusing offender, Agopian (1990) found that new crimes committed by ISP drug involved offenders were extremely rare (under 20 percent), but that the clients did exhibit a high failure rate due to technical violations. Petersilia, Turner, and Deschenes (1992) found no significant differences in recidivism rates for drug offenders monitored intensively versus those who were supervised routinely. However, they did find that ISP clients had higher rates of technical violations. Ryan (1997) found new crimes to be the reason for nearly six percent of revocations in the Vermont ISP program. However, substance abuse accounted for the highest amount of technical infractions, 33.3 percent respectively. And, a history of drug and alcohol use was highly correlated with revocation. Accordingly, the practice of incapacitating revoked ISP offenders may not really be targeting those offenders recidivating by committing a new crime.

Despite the less than encouraging outcomes of intensive supervision programs, some positive findings have also emerged. Although it is a preliminary finding, much of the research shows some evidence to support intensive supervision and treatment (Bonta, Wallace-Capretta, and Rooney, 2000; Cullen et al., 1996; Gendreau, Goggin, Cullen, and Andrews, 2000; Fulton et al., 1997; Petersilia, 1998; Petersilia and Turner, 1992; Petersilia and Turner, 1993). Indeed, Petersilia and Turner (1993) found reductions in recidivism of 10-20 percent where treatment was combined with intensive supervision. Bonta and his colleagues (2000) found significantly lower recidivism rates for high-risk offenders who received treatment and intensive supervision compared to those who did not.

Hanlon, Nurco, Bateman, and O'Grady (1998) found employment and continued involvement in a social support style of treatment to be positively correlated with offender success on parole. Here, the intensive supervision program did not mandate immediate revocation for infractions, but instead allowed officers to use discretion and other sanctions if appropriate. It was also determined that those offenders who completed the social support treatment program were more likely to be successful in the long-term, despite early troubles after release (Hanlon et al., 1998). Similarly, Martin and Inciardi (1997) found that intensive aftercare in conjunction with case management produced better retention in treatment. They concluded that more long-term change

would be likely, despite the lack of success in the short-term, as it appeared offenders were gaining self-esteem and a desire to change (Martin and Inciardi, 1997). Accordingly, the evidence suggests intensive supervision, if applied correctly, may be effective for offenders in conjunction with effective treatment. In addition, retention of clients in treatment may be the gateway to long-term change and lower recidivism rates.

Despite the evidence that retention in treatment may be an effective way of producing change, probation authorities are still limited in their ability to compel offenders to remain in treatment. Revocation, which is still the norm, often leads to reincarceration, which would remove the offender from treatment. Yet, failure to sanction offenders for a violation of court conditions and treatment could lead to re-offense or full-blown relapse, the latter from which recovery is less likely. Consequently, it is important for departments to have a wide array of intermediate sanctions at their disposal to hold offenders accountable, while retaining them in treatment.

Sanctions

Petersilia (1998) illustrates that over the past decade much has been learned about the effectiveness of intermediate sanctions. She contends that intermediate sanctions have shifted from getting tougher to combining graduated sanctions and treatment. In addition, the use of community-based sanctions has become more prevalent and yielded some promising findings with respect to recidivism (Petersilia, 1998).

Torres (1998) contends that an effective supervision strategy for substance abusing offenders contains a wide array of sanctions to hold offenders accountable for violations. Examples of sanctions could be admonishments by the probation officer, the court, parole commission, or even community. In addition, the use of community service or inmate labor detail, increasing supervision length or frequency of interactions, upping the level of treatment, home confinement, discretionary jail time, or residential treatment are all sanctions that could be used in a graduated format to retain an offender in treatment as opposed to revocation and returning them to prison. However, to adhere to this graduated sanction approach, departments will typically have to alter the style in which their officers supervise substance-abusing offenders.

Supervision Style

Klockars (1972) revealed four basic roles or styles of probation officers: law enforcer or control-oriented, timeserver, therapeutic or social service, and the synthetic or combined approach. More recently, research on supervision style has dichotomized probation/ parole officers as either law enforcers or social service officers (Anderson and Spanier, 1980; Burton, Latessa, and Barker, 1992; Clear and Latessa, 1993; Ellsworth, 1990; Fulton et al., 1997; Glaser, 1969; Lawrence, 1984; McCleary, 1978; Purkiss, Kifer, and Hemmens, 2003; Seiter and West, 2003; Steiner, Purkiss, Roberts, Kifer, and Hemmens, 2004; Studt, 1978). However, Clear and Latessa (1993) did find that the two dominant roles, law enforcer and caseworker, are not incompatible. Sigler (1988) found similar results in his research, provided the department supported the two dichotomous styles. And, others have found that officers see themselves more as service brokers than law enforcers or social service officers when measuring supervision style outside the dichotomy (Sluder, Shearer, and Potts, 1991; Sluder and Reddington, 1993; Shearer, 2002). Consequently, it is possible that the synthetic officer described by Klockars (1972) can be achieved. This is the officer that can hold offenders accountable for their behavior, yet also work with the offender to solve problems and reduce their risk to re-offend.

On the other hand, it has been noted that often the law enforcer style of officer is selected to supervise intensive supervision caseloads (Petersilia et al., 1992; Ryan, 1997). Ryan (1997) discussed how this may be a flaw in the design of such programs, as the offenders selected for these programs are high-risk for violations. With this in mind, as well as the research supporting the effects of retaining offenders in treatment (Chanhatasilpa et al., 2000; Hanlon et al., 1998; Hiller et al., 1999; Inciardi et al., 2004; Knight et al., 1999; Martin et al., 1999; Martin and Inciardi, 1997), it is important for officers to alter their prior revocation oriented approach to supervision, what one senior Utah officer called "hook 'em and book 'em," to an alternative

model where the goal becomes treatment retention. Treatment retention is not a social service approach. Instead, it falls somewhere between the law enforcement and social service dichotomy, more in line with service brokerage. Accordingly, an important component of this model is the brokerage of sanctions designed to coerce the often resistant offender to remain in treatment.

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Conclusion: Supervising the Post-Release Substance Abuser

It has been determined that a large portion of the offenders returning to communities have problems with substance abuse (Harrison, 2001; Langan and Levin, 2002). These offenders present unique challenges to community corrections personnel. In this paper, the barriers to implementing successful substance abuse programs for offenders after release (Farabee et al., 1999) were addressed by synthesizing the research-based best practices for supervising reentry of the substance abuse offender. Accordingly, an empirically testable model for the individual officer supervising the substance abusing offender on parole entitled "treatment retention" was conceived (see [Table 1](#)).

In terms of treatment, the research seems to support the use of therapeutic communities that contain a cognitive component, within facilities coupled with aftercare treatment upon release (Chanhathasilpa et al., 2000; Hiller et al., 1999; Inciardi et al., 2004; Knight et al., 1999; Martin et al., 1999). With respect to the aftercare treatment, the relapse prevention model should guide the treatment personnel as they work with the offender to identify relapse-triggering situations and develop cognitive-based problem-solving strategies to work through them.

Probation/parole officers should begin by partnering with their treatment providers in an attempt to educate one another on what works best to reduce relapse and recidivism. In this model, the probation/parole officer and the treatment provider become a team with the common goal of treatment retention. As the focus is shifted to supervision, it is important to note that coerced treatment can yield as effective, if not more favorable results than voluntary treatment (Hanlon et al., 1999; Martin and Lurigio, 1994; Martin and Inciardi, 1997; Peterson, 2003; Torres, 1997). It has been discovered that the traditional intensive supervision approach was not effective in producing long-term change (Cullen et al., 1996; Gendreau et al., 2000; Martin and Lurigio, 1994; Petersilia, 1998; Petersilia and Turner, 1992; Petersilia and Turner, 1993). However, a more promising approach seems to be intensive supervision that employs a phase system that includes graduated sanctions designed to retain offenders in treatment while not compromising public safety (Torres, 1997).

As a component of supervision, Torres (1997) endorses reliable drug detection devices. This is important because early detection is critical in order for the supervising officer to respond swiftly before the offender retreats to full-blown relapse. Violations should be handled on an individual basis, but it is important to communicate with the offender up front that each violation will receive some form of sanction (Hanlon et al., 1999; Torres, 1997). Here, the psychological literature in support of immediate short-term punishments tailored to the offender's individual risks, needs, and responsivity level is relied upon (see Andrews et al., 1990; Andrews, 1995; Cullen and Gendreau, 2000; Dowden and Andrews, 1999; Gendreau, 1996). Torres (1997), as well as Hanlon et al. (1999), advocate for a continuum of sanctions that is graduated leading up to returning the offender to prison. However, prior to reincarceration, graduated sanctions can be an effective way of coercing an offender into compliance with treatment (Hanlon et al., 1998; Petersilia, 1998; Torres, 1997). And, retaining the offender in treatment until he or she completes aftercare has yielded promising results in achieving abstinence, the goal of treatment providers, and reductions in recidivism, the goal of probation and parole agencies (Chanhathasilpa et al., 2000; Hiller et al., 1999; Inciardi et al., 2004; Knight et al., 1999; Martin et al., 1999).

In addition to monitoring the offender's progress in treatment, the officer should be working with the offender to better other domains of his or her life. Part of the relapse prevention model is the focus on how treatment and sobriety relate to other areas of the offender's life. The old adage of "I just supervise the court order" (Klockars 1972:550) is not applicable if an officer wants to

effect any meaningful change and is serious about achieving long-term public safety. Taxman (2002) and Cullen et al. (2002) argue that a probation or parole officer should act as a problem solver. Klockars (1972) describes a synthetic officer that uses tools from the law enforcer style of supervision as well as the social service approach to achieve offender compliance. The problem solver theory of supervision appears to expand on this idea. In the treatment retention model, problem solving is tailored to the individual offender through the use of the relapse prevention plan to identify and prevent the individual offender's opportunities for relapse. This is achieved by working with the offender's family, the neighborhood the offender lives in, as well as through the use of service brokerage to assist the offender in obtaining employment and pro-social peers.

Probation departments that choose to have their officers implement this approach to supervision need to be careful about what their policies and procedures allow officers to do. Role conflict brought about by departmental bureaucracy or legislative mandate can lead to poor work performance (Clear and Latessa, 1993) and officer burnout (Whitehead and Lindquist, 1984). Probation agencies should create specialized, manageable caseloads to allow officers time to work with treatment providers and communities as well as utilize their discretion in handing out individualized sanctions for non-compliance. In addition, agencies should provide training on treatment and effective supervision if they expect their officers to adopt this philosophy. Training has been found to be an effective way of guiding officers' attitudes and clarifying roles (Fulton, Stichman, Latessa, and Travis, 1997). In addition, supervising officers should be cautious in their expectations, as offenders can often take long periods of time to accept treatment and begin to change. Often, there will be many bumps in the road (relapses). However, through the use of the promptly applied graduated sanctions and by exercising a problem-solving approach tailored to the individual offender's risks, needs, and responsivity level, officers should begin to see some success with this challenging population.

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**Table 1: Treatment Retention
Reducing Agency Goals to the Officer Level**

	Traditional ISP Model	Broken Windows Model	Treatment Retention Model
Goal	Surveillance and Control	Promote public safety	Retain Offender in Treatment
Offenders Targeted	All	All	Post release substance abusers
Post-Release Treatment	None/medical model	Research based	Cognitive behavioral aftercare/ relapse prevention model
Supervision Style	Law enforcer	Problem solver	Substance abuse specialist/service and sanction brokerage
Partnership Building	None	Law enforcement and crime prevention entities	Treatment providers, offender's individual support system
Response to Violation	Revocation	Swift and sure, graduated sanction	Graduated sanction tailored to individual treatment plan
Effect	Offender returned to prison	Unknown	Offender coerced into treatment

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Experiences and Attitudes of Registered Female Sex Offenders

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RECENTLY CHANGES and innovations in public policies and sentencing structures have extended criminal sanctions beyond the immediate needs of offenders, victims, and society in general. One clear example of reaching beyond immediate needs and extending the form, length and consequences of sentencing is the use of community notification and registration of sex offenders. The present research identifies how such practices have created unintended and potentially serious collateral consequences for convicted sex offenders, with a special focus on female sex offenders.

Research on sex offenders has historically focused, almost exclusively, on male offenders. Studies of female sex offenders are relatively rare, at least in part because most known sex offenders are male. Females comprise only 1.2 percent of arrests for rape and 8.0 percent of arrests for all other sex offenses (U.S. Department of Justice, 2002). Women who are sex offenders are most often convicted of offenses against children (Faller, 1987; Lewis and Stanley, 2000; Rosencrans, 1997; Vandiver and Walker, 2002) or low level felonies (other than rape); because of the latter, female sex offenders are often considered "less serious" sex offenders (Hetheron, 1999).

In the criminological literature, attention to female sex offenders is rare, with the first articles appearing in the 1980s. Although recognized, female sex offending is not only often considered less serious than that of males (Hetheron, 1999), but is also acknowledged as possibly less likely to be detected or reported (Berliner and Barbieri, 1984; Johnson and Shrier, 1987).

Recently, much attention has been focused on community notification and registration of (male and female) sex offenders. To date, there are few studies of sex offender registries. The existing assessments are of four varieties: overviews and "profiles" of the population of registered sex offenders, evaluations of recidivism rates for registered sex offenders, examinations of the accuracy of information in the registries, and assessments of the experience of registration from the point of view of offenders. However, only one study to date has focused on female registered sex offenders.

The Bureau of Justice Statistics (Adams, 2002) reports that a total of 386,000 convicted sex offenders were registered in 49 states [1](#) and the District of Columbia in 2001. The use of sex offender registries has grown rapidly; the 2001 total represents a 46.2 percent increase over the

registered offender population in 1998. However, statistics on the sex of registered sex offenders is not available. Individual studies have reported that females comprise 0.8 percent of registered sex offenders in Hawaii (Szymkowiak and Fraser, 2002), 3 percent of sex offenders in Iowa, 2.4 percent of registered sex offenders in Arkansas, and in the present research, 2.7 percent and 2 percent of registered sex offenders in Kentucky and Indiana respectively.

The most comprehensive assessment of registered sex offenders to date is the overview of 1,458 offenders on the Hawaii registry (Szymkowiak and Fraser, 2002). The demographic assessment shows that the "average" registered sex offender in Hawaii is between the ages of 40 and 49, lives in the greater Honolulu metropolitan area, has a criminal record of between one and five (typically non-violent) felonies (and a similar number of misdemeanor convictions), and has only one sex offense conviction. In Iowa, the "typical" registered sex offender was a white male with a median age of 31.1 at time of conviction; a majority (57.9 percent) have a previous criminal (but not necessarily sexual) conviction (Adkins, Huff, and Stageberg, 2000).

The only assessment to date of female registered sex offenders (Vandiver and Walker, 2002) focused on identifying a typology of offending patterns, including victim and offender characteristics. This review of official records revealed that these offenders were almost all white, with a mean age of 31 at the time of their first sex offense. Females comprised a slight majority (55 percent) of the victims of these female sex offenders. All had juvenile victims and less serious (if any) criminal records than their male counterparts. Vandiver and Walker (2002) were not able to gather complete data on how many of their sample of female sex offenders were related to their victims; from the data available, though, 94 percent of the victims were related to the offender.

The Iowa study also assessed recidivism of registered sex offenders over a 4.3 year period and showed "mixed effects on recidivism rates" when comparing sex offenders that were and were not (due to a different time period in question) required to register (Adkins, et al., 2000: 19). Registered sex offenders had a sex offense recidivism rate of 3.0 percent; the comparison group had a recidivism rate of 3.5 percent; total recidivism (for all offenses) was 24.5 percent for the registered offenders and 33.3 percent for the comparison group.

All of the examples of research focused on identifying the characteristics and recidivism of offenders listed on sex offender registries is superficial and macro in nature.

As a third focus, Tewksbury (2002) examined a sample of 537 sex offender listings on the Kentucky Sex Offender Registry in 2001, examining whether offenders' listed information was complete and accurate. Results showed that while most offenders' information was provided, the registry showed a significant degree of missing data. One in twelve (8.2 percent) registrants had "unknown" addresses listed. The problem of accuracy was most acute for sex offenders listed as residing in an urban county: 10.5 percent had "unknown" addresses, 10.5 percent listed addresses that turned out to be commercial locations and 5.4 percent had addresses that did not exist.

Finally, a fourth focus of research on sex offender registries has examined the experiences of registered sex offenders, examining the collateral consequences of registration. Focusing on registered sex offenders in Kentucky, Tewksbury (in press) found that serious social consequences were reported by more than one in four registrants. Specifically, at least one-quarter of registrants reported having received harassing/threatening mail and telephone calls, losing a job, being denied a promotion at work, losing (or being unable to obtain) a place to live, being treated rudely in public, being harassed/threatened in person, and losing at least one friend. These experiences were more common for registrants from non-metropolitan communities, and (surprisingly) less common for offenders with child victims. Tewksbury (in press) further suggested that child-victimizing sex offenders were able to more closely control information about their status as a sex offender, and consequently limit the collateral consequences experienced. One shortcoming of this research, however, is that females comprised only 7.5 percent of the sample, rendering an assessment of female registered sex offenders impossible.

This shortcoming provides the impetus for the current research. With an exclusive focus on female registered sex offenders, the present study examines if and to what degree female registered sex offenders perceive they are known in their community as sex offenders; what consequences are experienced as a result of being listed on the publicly accessible sex offender registry; and registrants' attitudes regarding the registration process.

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Method

Data for this study were collected through a mailed, anonymous questionnaire sent to all female offenders listed on the Kentucky Sex Offender Registry (<http://kspso.state.ky.us>) and Indiana Sex and Violent Offender Registry (<http://www.indianasheriffs.org/default.asp>). Once identified, sample members' addresses were recorded from their individual registry pages. All sample members were mailed a cover letter, informed consent explanation, survey, and postage-paid return envelope. The Human Studies Protection Program office at the author's university reviewed all materials. Data collection was conducted in May, 2004.

Sample

A review of all entries on the Indiana and Kentucky registries reveals a total of 227 females. The Kentucky registry had 97 females listed among the total of 3,586 individuals. Females accounted for 130 of 6,407 registrations on the Indiana registry. This means that 2.7 percent of the registrants in Kentucky and 2.0 percent in Indiana are female.

A total of 40 completed and usable surveys were obtained, ² for a response rate of 20.5 percent. While this is not a very high response rate, ³ this needs to be understood as a difficult to access population. Previous research looking at registrants has relied on small samples (2.4 percent, Vandiver and Walker, 2002; 14.3 percent, Tewksbury, in press) or has used only officially recorded data, avoiding collection of data directly from registrants (Adkins, et al., 2000; Szymkowiak and Fraser, 2002; Tewksbury, 2002). And, as Vandiver and Walker (2002:286) state, "the number of subjects in female sex offender research has consistently remained low,... The number of subjects in female sex offender literature has been as low as 2 (Peluso and Putnam, 1996) and as high as 93 (Rosencrans, 1997)." Additionally, studies of sex offenders in general have almost always collected data either from offenders who are incarcerated or in treatment, or researchers have collected data from professionals working with sex offenders (treatment providers, probation officers, etc.). Only two studies have gathered data directly from sex offenders in the community (Sack and Mason, 1980; Tewksbury, in press), and both have samples of 112.

[Table 1](#) presents the demographic and registration information for the respondents.

Instrument

The data collection instrument was designed specifically for this study. The instrument is a four-page questionnaire containing 35 closed-ended items. The items assess demographics, offenses characteristics, questions about whether, by whom, and how often the offender is recognized as a registered sex offender, and attitudes regarding registries in general and the registration experience specifically.

The dependent variables for this analysis are self-reports by registered sex offenders regarding ten different negative consequences they may have experienced (loss of a job, denial of promotion, loss/denial of a place to live, being treated "rudely" in a public place, being asked to leave a business, loss of a friend, harassment or assault and receipt of harassing/threatening telephone calls or mail). Also used as dependent variables are items assessing registrants' perceptions of shame, being unfairly punished by registration, understanding the purpose/goal for the registry and perceiving social stigmatization, all as a result of registration.

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Results

Analysis focused on identifying the distribution of negative consequences reported by registrants as arising from registration, as well as perceptions and attitudes of registrants toward registries and the activities of officials charged with maintaining the registries.

In order to understand the negative consequences that may come from a sex offender being placed on the registry, it is important to assess the degree to which others in a registrant's social milieu know of the registrant's status and offenses. When asked to indicate what portion of their "family, friends, coworkers, and other people you consider a part of your life know about your sexual offense conviction(s)," responses indicated that for almost all offenders, at least a sizable minority if not all or nearly all of these persons know of the offender's offenses. Only 5.0 percent of registrants report that fewer than 10 percent of others in their lives know about their offenses. However, fully 45.0 percent report that 90 percent or more of others know of their offenses, with 25.0 percent saying everyone they know has knowledge of their offenses. Whether this knowledge is attributable to the registration process and site is not known; however, the important point is that for most registered sex offenders, others know their status as sexual offenders.

Perceived Collateral Consequences of Registration

As shown in [Table 2](#), a number of negative experiences stemming from sex offender registration are commonly reported by registrants. More than 30 percent of registrants report having lost a job, losing or being denied a place to live, being treated rudely in public, losing friends, and being personally harassed as a result of public knowledge of one's offenses.

[Table 3](#) presents the distribution of negative experiences resulting from registration for registrants based on length of time on the sex offender registry. It is apparent that for all ten collateral consequences, a greater percentage of women who have been on the registry for longer than the sample median of 32 months report having had such a negative experience.

Attitudes Toward Registration

In addition, to assess registered female sex offenders' perceptions and reports of negative consequences arising from their listing on the registry, analysis also examined registrants' responses to five attitudinal items. Women were asked to report their level of agreement with each of 5 statements (1= strongly disagree, 10 = strongly agree), as shown in [Table 4](#). Registrants report a high level of shame about their registration and largely believe that registration is an unfair form of punishment; yet typically say they understand why society desires a sex offender registry.

There are no statistically significant mean differences in responses to the five attitudinal items across registered female sex offenders based on the length of time they have been on the sex offender registry.

All registrants were also asked whether they believed that "because my name and personal information is listed on the Sex Offender Registry I am less likely to commit another sexual offense in the future." The mean response to this item is 7.42. Nearly two-thirds (61.1 percent) of registrants report complete agreement with the statement, although the actual effect of registration on recidivism cannot be determined. No statistically significant differences are seen for registrants based on length of time on the registry.

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Discussion

As one of the more recent responses to sexual offending, the use of sex offender registries clearly has far-reaching implications for society as well as for individuals listed on registries.

However, little previous research has examined these implications. The present research is one of the first attempts to examine both the consequences of sex offender registration for offenders and one of the few assessments of female sex offenders outside of clinical settings.

The results of this research make clear that registered female sex offenders frequently experience collateral consequences that may have serious deleterious effects on their social, economic, and physical well-being. While the goal of shaming sex offenders seems to be achieved through registration, and registered female sex offenders report an understanding of why society would want to have such registries, there are also obvious indications of registration having lasting negative consequences for individual offenders. Approximately one in three (or more) registered female sex offenders report that as a result of their listing on a sex offender registry they have lost a job, lost or been denied a place to live, lost friends, and been personally harassed. Such experiences are directly contradictory with the goals and resources known to be critical to successful community reentry and the reduction of recidivism. And, as women remain on a sex offender registry for longer periods of time, these (and other) collateral consequences become more common.

In light of these findings, the importance of sex offender registration as a tool for promoting public safety needs to be questioned. While the present research does not definitively conclude that sex offender registration leads to recidivism or poor community adjustment following conviction, it does suggest that the very resources identified as centrally important for successful reentry are diminished and weakened by registration. As such, it is important to continue to assess the consequences of sex offender registration on recidivism, and on accompanying costs (both financial and social) experienced by offenders and communities. If registration cannot be shown to be associated with significantly lower rates of recidivism (see Adkins, et al., 2000), the costs may well outweigh the benefits of registration. And, if registration in fact is associated with lower rates of sexual offending recidivism, it may be useful to examine whether the current method for registering (and publicizing information about registrants) can be modified in a way that maintains the positive outcomes while reducing the costly collateral consequences.

The present study is a first step toward evaluating these costs and benefits. Future research needs to look more closely at the costs of sex offender registration and the benefits. At present it appears that registration of sex offenders—or at least the female sex offenders questioned in this study—may generate more societal costs and negative consequences for individuals than intended, necessary, and appropriate.

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Table 1: Description of Sample

Number of Offenders		40
Registration Period		
	10 Years	75.7%
	Lifetime	24.3%
Mean Length of time on registry		38.5
Mean Age		37.3
Race		
	White	92.3%
	Black	5.1%
	Other	2.6%
Victims*		
	Male	41.0%
	Female	43.6%
	Children	71.8%
	A Relative as Victim	15.4%

* Percentages total more than 100% due to multiple responses permitted.

Table 2: Negative Experiences Resulting From Registration

Experience	Percent
Loss of job	42.1
Denial of promotion at work	10.5
Loss/Denial of place to live	31.6
Treated rudely in a public place	31.6
Asked to leave a business	2.6
Lost a friend who found out about registration	39.5
Harassed in person	34.2
Assaulted	10.5
Received harassing/threatening telephone calls	10.5
Received harassing/threatening mail	15.8

Table 3: Negative Experiences Resulting From Registration, Above and Below Median Sample Time on Registry

Experience	32 Months or Less Time on Registry (Percent)	More than 32 Months on Registry (Percent)
Loss of job	38.9	45.0
Denial of promotion at work	--	20.0
Loss/Denial of place to live	27.8	35.0
Treated rudely in a public place	22.2	40.0
Asked to leave a business	--	5.0
Lost a friend who found out about registration	27.8	50.0
Harassed in person	22.2	45.0
Assaulted	5.6	15.0
Received harassing/threatening telephone calls	5.6	15.0
Received harassing/threatening mail	5.6	25.0

Table 4: Mean Responses to Attitudinal Items

Item	Total Sample	Shorter than Median Time	Longer than Median Time
“I feel ashamed that I am on the Kentucky Sex Offender Registry”	8.20	7.74	8.62
“I feel I am being unfairly punished by being on the Sex Offender Registry”	7.50	7.74	7.29
“I understand why people want there to be a Sex Offender Registry”	7.53	8.16	6.95
“People avoid being around or talking with me if they know I am on the Sex Offender Registry”	5.28	4.95	5.57
“I think that the Sex Offender Registry is a good thing”	6.45	6.21	6.67

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Assessing the Inter-rater Agreement of the Level of Service Inventory Revised

[References](#)

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Introduction

Risk assessment has a long history in corrections. In reviewing the types of assessment practices available, Bonta (1996) identifies three generations of risk assessments. Each of these assessment processes possesses advantages and disadvantages. For example, the first generation of risk assessments, also known as quasi-clinical or subjective assessments, allows for deviation from the assessment protocol when necessary, but has proven to be lacking in predictive accuracy (Bonta, Law, & Hanson, 1998; Hanson & Busiere, 1998; and Mossman, 1994). Second generation assessments are objective and empirically based, but often focus on criminal history and a host of atheoretical (and static) factors. While the second generation of risk assessments has been fairly accurate in regard to prediction and easy to score, very little can be garnered from this second generation that leads to the development of a meaningful intervention plan (Andrews & Bonta, 2003). The third generation of risk assessments is also objective and empirically based. What makes them more useful for developing case planning is their dynamic measurement of risk factors and the quality and breadth of information collected. But this advantage is also a disadvantage. Measuring dynamic risk factors and scoring a detailed and comprehensive risk assessment requires specialized knowledge of the assessment process and the items contained therein.

The advent of the third generation of risk assessments has provided much hope for correctional interventions. Such assessments can be used not only to identify high-risk offenders, but to determine what factors exist in an individual's life that cause him or her to be high risk (Lowenkamp & Latessa, 2002). Such a determination provides meaningful targets for interventions. If these targets are properly addressed, reduction in risk and subsequently the likelihood of recidivism follow. In the aggregate, these instruments can assist correctional agencies in increasing public safety. However, as noted earlier, completing these assessments requires training and considerably more care than completing other assessment methods. The LSI-R, the focus of the current research, requires knowledge of psychological testing in general and specialized knowledge of how to score the risk assessment itself (Andrews & Bonta, 2001). Included in the LSI-R are 10 criminogenic domains (criminal history, education/employment,

financial, family relationships, accommodations, leisure and recreation, companions, substance use, emotional health, and attitudes/orientations). Additional reviews of other risk assessments and staff ability to complete and integrate the information in daily decision-making activities also leads to the recommendation of staff training and development (Andrews & Bonta 2003).

One concern, among others, that makes training necessary is the reliability of the completed assessment (for a more complete description of potential threats to the utility of risk assessments, see Bonta, Bogue, Crowley and Motiuk, 2001). With any interview-based, dynamic offender assessment process, reliability in scoring is essential. Often the issue of individual subjectivity is raised due to the ways in which information is gathered, and the scoring criteria that accompany third generation risk/need assessment instruments. One of the major advantages of instruments such as the LSI-R is the potential for standardization in classification and assessment. In other words, when conducted properly, use of the LSI-R may help reduce bias in decision making, create a logical classification strategy, and offer information that can be used to create detailed, dynamic case planning. In light of the weight of the decisions that can be informed through using the LSI-R, inter-rater reliability becomes a critical issue.

To date, much of the research involving the LSI-R has focused on the predictive validity of the tool (Andrews, 1982; Andrews, and Robinson, 1984; Bonta and Andrews, 1993). The LSI-R, through the provision of a composite additive score, should offer a valid scale where high scores are associated with a high probability of recidivism. Conversely, low scores on the LSI-R should represent a low probability of recidivism. The validity of the LSI-R has been shown in a variety of correctional settings and with a variety of offender sub-groups (Lowenkamp and Latessa, 2002; Lowenkamp, Holsinger, and Latessa, 2001). More research is needed, however, regarding the reliability of the LSI-R scores across various raters.

Some studies have indirectly examined the inter-rater reliability of the LSI-R. One study utilized a Self Report Inventory that was derived from the LSI-R itself. The Self Report Inventory was designed to gather from offenders themselves measures similar to those on the LSI-R. The Self Report Inventory did demonstrate inter-rater reliability with the LSI-R, which would indicate congruence between the information gathered by correctional professionals and the information provided by offenders themselves (Motiuk, Motiuk and Bonta 1992). While these results are encouraging, they do not demonstrate reliability across the group of professionals conducting the LSI-R, but rather reliability between the offender being assessed and the professional conducting the assessment. In addition, other research has demonstrated the reliability of the LSI-R, compared to the reliability of other risk assessment tools such as the PCL-R (Gendreau, Goggin, and Smith 2002). While clearly this type of investigation is a necessary part of the correctional research landscape, the question regarding LSI-R scores across individual raters is left largely unanswered. In fact, much of the information about the reliability of the tool takes the form of measures of internal consistency (such as Chronbach's Alpha coefficient) for the 10 subscales present in the tool, as well as the tool as a whole (all 54 items together).

One way to increase inter-rater reliability within the LSI-R (as well as overall quality) may be through staff training (Flores, Lowenkamp, Holsinger, and Latessa 2004). The important effect of training has been demonstrated in other venues as well, involving offender assessments other than the LSI-R (Baird and Prestine, 1988). In order to further test the specific inter-rater reliability of the composite LSI-R score, research that uses a common example across a group of LSI-R raters is necessary. The current research utilizes a sample of correctional professionals, all of whom were formally trained in the use and implementation of the LSI-R. As part of the formal training, a common example was conveyed represented by a vignette containing current (dynamic) narrative information about a particular offender. After the training was complete, the participants were asked to utilize the common vignette to score the 54 items on the LSI-R. The ratings that resulted were used to test the inter-rater reliability of the LSI-R for a sample of trained correctional professionals. The results of the analyses are presented below.

There are several different methods for assessing an instrument's reliability. The focus in this research is inter-rater agreement or the extent to which independent raters converge in terms of their scoring of the same offender. To assess inter-rater reliability, 167 training participants

independently completed an assessment of an offender vignette at the conclusion of a three-day training on the principles of offender classification and the use of the LSI-R in particular.

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Methodology

Participants

The participants in this study are 167 correctional practitioners from a large Western state. While data on the individual participants was not collected, participants included males and females, individuals of various races, and those working with offenders in the community and in institutions.

Procedures

The participants in this training were part of a three-day training required of all correctional staff. The training covered the intent and scoring criterion for each of the 54 items on the LSI-R. At the end of the training, the participants were given an exam that included a vignette describing an offender. This vignette covered all areas represented on the LSI-R. Participants were instructed to complete the exam and score an LSI-R based on the vignette independently. A facilitator was present during the completion of the exam. The scores from the LSI-R scoring forms were entered into a database for analyses.

Analyses

Since there was only one assessment for each of the 167 raters, traditional tests of inter-rater reliability are not possible. However, investigating the percentage of agreement for each item, descriptives for the total score, and agreement for overall classification are possible. To assess the reliability of the LSIR, the percentage of raters that scored each LSI-R item was calculated. Marks for each item were coded as either indicating a risk factor, indicating that the item was not a risk factor, circled items, and items that were left blank. Average agreement percentages were calculated for each section and for the entire instrument. Descriptive statistics were calculated on the overall score and the final classification based on that score.

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Results

[Table 1](#) presents by-item results for the first four sections of the LSI-R (Criminal History, Education/Employment, Financial, and Family/Marital). The percentage of the respondents who scored each item in a particular way is presented. There were four possibilities for each item: 1) marking an item as a risk factor, 2) marking an item as a non-risk factor, 3) circling an item, indicating that not enough information was present to assess it either way, and 4) leaving the item blank. For the Criminal History section, the agreement was very high. For nine of the ten items, agreement ranged from 86 percent to 100 percent. The lowest agreement occurred for "ever punished for institutional misconduct," where 55 percent of the sample scored the item as a non-risk factor. All the items within the Education and Employment section had a percentage agreement ranging between 95 percent and 99 percent. The Financial section, with only two items, had fairly low agreement by comparison, with 66 percent and 57 percent of the sample in agreement. Three of the four items in the Family and Marital section had very high agreement, ranging between 94 percent and 100 percent. The last item in this section had an agreement rate of 51 percent.

[Table 2](#) presents by-item results for the remaining six sections of the LSI-R (Accommodation, Leisure/Recreation, Companions, Alcohol/Drug, Emotional/Personal, and Attitudes and Orientations). The three items in the Accommodations section had very high rates of agreement (96 to 99 percent).

Similarly, the Leisure and Recreation section also showed high rates of agreement for the two items in the section (90 and 98 percent). Likewise, the five items in the Companions section had high rates of agreement (89 to 100 percent). The first seven (of nine) items in the Alcohol and Drug section had very high rates of agreement amongst the raters (92 to 100 percent). However, the last two items had agreement rates of lesser magnitude (56 and 72 percent). Four of the five items in the Emotional and Personal section had high rates of agreement, ranging from 89 to 99 percent. One item had a moderate rate of agreement, at 65 percent. Finally, the Attitudes and Orientations section showed high rates of agreement as well, with the four items ranging in agreement from 82 to 98 percent. Overall, the agreement rate for the 54 items taken as a whole was very high for the sample.

[Table 3](#) presents the average agreement rates for each subsection. Nine of the 10 subsections had average agreement rates of 85 percent or above (the Accommodations section with three items had the highest average agreement rate at nearly 98 percent). The Financial section, however, had the lowest average agreement rate, at 61.5 percent.

[Table 4](#) presents the portions of the sample that placed the offender in each category of risk (using Multi-Health System's prescribed cut-off scores). A large majority of the subjects in the sample—86 percent—assessed the offender in the vignette as having a composite score that placed them into the Medium/High category of risk. These results are particularly important when considering the importance of classifying offenders objectively, and allowing agencies to incorporate the Risk principle of correctional classification and intervention. Regardless of slight differences that may have occurred across a handful of the items across raters, overall, the average rates of agreement were acceptable to very high for each subsection, and a very high proportion of the sample were assessing the offender as being at the same level of risk.

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Discussion

The goals of the current research were fairly modest. After being trained on the use of the LSI-R, practitioners were tested as to whether or not they agreed on the scoring of the 54 items present on the assessment. However modest these goals were, the process of determining whether or not practitioners can reliably score the LSI-R assessment is an important issue. The LSI-R and the information it gleans can be used to inform several decision points throughout the processing of offenders. In addition, both the Risk and Need principles can be met via the use of the LSI-R. In light of these aspects of offender assessment and classification, and the fact that the LSI-R is an example of a proprietary tool that requires agencies to commit resources, inter-rater reliability becomes even more important. Based on the results presented above, properly trained practitioners do exhibit high levels of agreement across virtually all the items in the 54-point scale. Even considering that a small number of items had moderate rates of agreement, the overall average agreement rates for all 10 subsections were acceptable to very high. In most cases, where agreement rates were lower, that should be interpreted in light of the fact that the subjects had only attempted to conduct the assessment two prior times. As such, with continued practice and quality assurance checks, rater agreement should only increase over time. This assumption is supported by Flores et al. (2004), who found that the amount of time an agency uses the instrument and the implementation of formalized training on its use produce significant increases in the predictive validity of the tool.

Some limitations were inherent in the current research. For example, the LSI-R process, when conducted in the field, requires practitioners to gather their own data via one-on-one interviews with offenders and the consideration of multiple sources of collateral information. The subjects in the current study were given a tailor-made vignette that represented the information that should have been gathered had they been involved in a real-life assessment process. A true test of inter-rater reliability using the LSI-R would require pairs (or more) of subjects to gather their own information independently from the same source, after which the assessment would be scored accordingly. Doing this would also allow for the calculation of inferential statistics designed to more explicitly test rater agreement. Nonetheless, the research presented above represents a

descriptive analysis that attempts to contribute to the knowledge base pertaining to inter-rater reliability with practitioners who have been trained in the use of the LSI-R.

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Table 1: Agreement Percentages for LSI-R Subsections Criminal History, Education/Employment, and Financial

Item	Percent Risk Factor	Percent Not a Risk Factor	Percent Circling Item	Percent Left Blank
Any Prior Adult Convictions	99	0	0	1
Two or more prior convictions	98	2	0	0
Three or more prior convictions	98	2	0	0
Three or more present offenses	3	95	1	2
Arrested under age 16	96	4	0	0
Ever incarcerated upon conviction	99	0	0	1
Escape history from a correctional facility	1	86	13	1
Ever punished for institutional misconduct	15	55	27	3
Charge laid or probation/parole suspended during prior community supervision	99	1	0	0
Official record assault or violence	0	100	0	0
Unemployed	97	2	0	0
Frequently unemployed	99	1	0	0
Never employed for a full year	95	5	0	0
Ever fired	99	1	0	0
Less than regular grade 10	1	99	0	0
Less than regular grade 12	1	99	0	0
Suspended or expelled at least once	2	98	0	0
Participation/performance	99	1	0	0
Peer interactions	95	4	2	0
Authority interactions	95	2	2	1
Financial problems	66	2	22	10
Reliance upon social assistance	7	23	57	13
Dissatisfaction with marital or equivalent situation	100	0	0	0
Nonrewarding, parental	96	4	0	0
Nonrewarding, other relatives	94	6	0	0
Criminal family/spouse	9	51	37	3

**Table 2: Agreement Percentages for LSI-R Subsections
Accommodations, Leisure/Recreation, Companions, Alcohol/Drug,
Emotional/Personal, and Attitudes/Orientations**

Item	Percent Risk Factor	Percent Not a Risk Factor	Percent Circling Item	Percent Left Blank
Unsatisfactory	99	0	0	1
Three or more address changes last year	96	4	0	0
High crime neighborhood	98	1	1	0
Absence of a recent participation in an organized activity	90	8	1	1
Could make better use of time	98	1	1	1
A social isolate	92	8	0	1
Some criminal acquaintances	99	1	0	0
Some criminal friends	100	0	0	0
Few anticriminal acquaintances	89	9	0	2
Few anticriminal friends	95	5	0	1
Alcohol problem, ever	99	1	0	0
Drug problem, ever	100	0	0	0
Alcohol problem, currently	96	4	0	1
Drug problem, currently	95	4	0	1
Law violations	99	1	0	0
Marital/family	99	3	1	1
School/work	95	5	2	1
Medical	13	56	29	2
Other indicators	72	15	6	7
Moderate interference	97	3	0	0
Severe interference	35	65	0	0
Mental health treatment, past	1	99	0	0
Mental health treatment, present	2	98	1	0
Psychological assessment indicated	89	10	1	1
Supportive of crime	17	82	1	0
Unfavorable toward convention	7	93	0	0
Poor toward sentence	2	98	0	1

Poor toward supervision	2	98	0	0
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Table 3: Average Percentage Agreement by LSI-R Subsection

Area	Average Agreement	Number of Items
Criminal History	92.50	10
Education/Employment	97.50	10
Financial	61.50	2
Family/Marital	85.25	4
Accommodations	97.66	3
Leisure/Recreation	94.00	2
Companions	95.00	5
Alcohol/Drug Problems	89.77	9
Emotional/Personal	89.60	5
Attitudes/Orientation	92.75	4

Table 4: Risk Level Classification

Classification Level	Percent	Number
Low/Moderate	1	2
Moderate	11	19
Medium/High	86	143
High	2	3

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OUR JUVENILE JUSTICE AGENCIES are in need of revitalization, but this cannot be accomplished by administrators alone. If a line staff person devotes himself or herself exclusively to managing a caseload and fails to interject into the organization's service delivery system, it is unlikely that the agency will change. Unfortunately, it is obvious that too many administrators are unwilling to listen to subordinates. The tragedy here is that revitalization will not be forthcoming, increasing the probability that the staff person will lose enthusiasm and take appropriate skills to another industry or to another career. The consequence, then, is a disconnect that not only perpetuates the *status quo*, it can lead to agency stagnation.

Our generation, similar to those in the past, recognizes that juvenile delinquency is not new, but it has reached significant proportions due to factors such as the increasing numbers of at-risk juveniles, the disparities of human existence, and the nexus of guns and drugs as they impact the adolescent population. The management of agencies as well as caseloads is fraught with difficulties and complexities unknown in generations past. As one thinks about the juvenile court and where it is headed, *it may be difficult to accept that all of the youths who will come before the juvenile court by the year 2020 have been born!*

Historically and in Western culture, juvenile offenders, regardless of age, were processed and punished in the same manner as adults. They were variously viewed in different eras as being possessed by demons, as having free will that led to seeking pleasure and the avoidance of pain, or as resulting from determinism—the pushes, tugs, and pulls of society. The English experiment in 1847 of holding separate hearings for juveniles and the creation of the juvenile court in the United States in Chicago in 1899, however, opened a new approach to the juvenile and to the problem of delinquency. Later, of course, the same juvenile court that dealt with the delinquent also began to deal with the dependent, the neglected, and the status offender.

This movement involved a change in emphasis from mere punishment to a new concern for the solicitous care of the adolescent offender. As the juvenile court evolved, including its modest beginnings, the juvenile was spared the formality and inflexibility of the adult criminal court. The "moral entrepreneurs" (Platt, 1969), as the founders of the juvenile court were called, subjected the offender to the jurisdiction of the judge, who was legally empowered to act as the "father" of the child, *in loco parentis* or *parens patriae*. Based on the "rehabilitative ideal" (Allen, 1964), which some later tried to discredit but which has experienced a rebirth, the juvenile court judge was authorized by law to make available the best treatment facilities and

resources to the juvenile in all matters coming before the court.

The judge, working collaboratively with the probation staff, relies heavily upon the social sciences for diagnosis and treatment, generally requiring a complete and thorough investigation into the juvenile's development and environmental relationships—an individualized social history (See Richmond, 1917). Thus, the judge and staff attempt to pass beyond a concept of social control through punishment in the desire to rehabilitate the youth at an age when he or she is believed to be most flexible and open to change (See, for e.g., Latessa, 2004 and Bank, et al., (2004).

With well over 100 years of implementation experience, the philosophy and practice of the juvenile court have been reviewed, criticized, and extolled. There have been many significant changes, most of them imposed upon the court by external agents; they include legislative changes to the juvenile code, appellate decisions concerning due process, and changes provoked by citizen-based groups. Questions pertaining to the rights of juveniles, the best methods for treatment of adolescents and youthful offenders, and the most effective methods of social control have gained prominence at one time or another.

But, to understand the dynamics of change associated with the court and its procedures, one must also address the context in which change has occurred both in earlier eras and today: heavy immigration, riots, excessive violence, and the development of settlement houses (Higham, 1963) at the turn of the century; the development of psychology and our understanding of behavior and maturation; and today, the continuing, gross inadequacies of modern urban education, changes in familial patterns and family roles and responsibilities; employment and unemployment coincident with economic conditions; the proliferation of guns and violence; and the use and abuse of illicit substances together with youths' eternal willingness to experiment even in the face of self-destruction.

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The Role of the Juvenile Court

As these and other issues mount amidst debate over how best to deal with them and what is the appropriate role of the juvenile court, some earnestly believe that delinquency can be controlled simply by increasing the penalties for offending behavior, transferring (waiving) juveniles to adult criminal courts, and/or reducing the confidentiality of court procedures and thereby making public the names of offending juveniles. With similar superficiality, some believe that such approaches only harden the juvenile's negative attitude and cause the child to commit other violations as he or she enjoys the publicity of having his or her name spread in the public media. Still others, rightly or wrongly, believe that the best a society can do is to reduce opportunities for penetration into the juvenile system and allow the child time to mature (See Schurl, 1968).

We are keenly aware that juvenile delinquency is actually a problem of multiple variables, that it follows no monolithic pattern, but ranges widely among all kinds of personal and property offenses. Although many citizens, legislators, and concerned groups criticize the increase in delinquency and attribute it to lax morals and the deterioration of families, they also insist that it is due to the court's permissive probation practices as well as the failure of institutional services and programs. They fail to recognize and accept that the release of juveniles under community-based supervision, and with appropriate treatment, has been far more effective than commonly assumed (Sherman, 1996).

Whatever form the argument takes, the two basic positions discussed above were postulated more than a century ago by Cesare Beccaria, who argued that crime must be punished in relationship to the degree of pleasure that the offense gives, and Cesare Lombroso, who maintained that the individual's problem and action must be evaluated carefully in order to effect a meaningful rehabilitation—controversial positions that continue to claim adherents (Schafer and Knudten, 1970, viii).

Planning

The role and value of planning in juvenile justice must be presented in an organizational context. Here, as Selznick (1957: 27) dictates, there has to be an understanding of the difference between *organizational achievements* and *institutional success*. Organizational achievements include many activities within an organization in which one may take pride, including training hours, caseload size, intake data, case closings, educational achievements of staff, and budgetary figures. These may be important, and they clearly indicate how busy the organization and its staff are, but neither one item alone nor all collectively address the issue of how well the organization has performed in meeting declared objectives during a specific period of time.

Institutional success, on the other hand, deals exclusively with goal attainment; that is, the degree to which the organization accomplishes what it sets out to do in a given period of time.

Institutional success indicates that the organization has clarity about what it wants to achieve and creates and deploys its resources toward that end. Additionally, it requires that staff at all levels be held accountable. It is an organization where top-level administrators participatively share responsibility for decision-making and goal achievement, and are held as accountable as staff for meeting explicit goals.

Planning for change, however, according to Katz (1977: 21 and Dror, 1968) "...is the process of preparing a set of decisions for action in the future, directed at achieving goals by optimum means." Note that being goal *directed* is identified as a critical issue in planning. That is, without explicit and understandable goals, it simply is not possible to engage in successful planning. It is also important to recognize the distinction between *planning as a task to be accomplished* versus *planning to obtain results*. Unfortunately, when there is planning in a juvenile justice agency, some may engage in planning activity merely as a means to seeking a grant or satisfying other personal or internal organizational goals. Far too many agencies engage in the reverse of the Midas touch: "anything that's gold, we touch!"

As Katz (1977: 21–22) states:

Planning has been identified by many different philosophies, methodologies, and descriptions of technical manipulation. It has been viewed as both a savior and a nemesis. It has been severely criticized and complimented, but the ultimate evaluation is going to have to lie in the answer to the question: "Does it work?" Caution must be exercised when planning (in the juvenile justice arena) since the goals that are being set have profound and lasting implications on the lives of many, many people. We are continually refining the criminal justice planning process to be more responsive to the *system's* problems, but in that process of refinement, there must be an improvement upon the social situations which make it worth the cost of producing those refinements; *i.e., the consideration of appropriate social policy* (emphasis added).

In recent decades, space age technology has significantly influenced our culture, and the use of computers has spawned a new generation of management specialists (See, e.g., Reddick, 2003). Whether one's orientation is classical, human relations, or functionalist, the impact of this new technology is inescapable. Since so many of our juvenile justice managers are "social engineers" or "new utopians," as Boguslaw (1965:1) labels them, one has to exercise caution not only in the design of a planning activity, but in what is to be done with the results. That is, the extent to which an agency is forced to change as a consequence of "successful" planning may be problematic both for the agency and for the staff, especially if the planning efforts appear to be unsuccessful.

The administration of juvenile justice is not immune from the demands and processes of these social engineers. In an age when bureaucracy recognizes the value of scarce resources and attempts to reallocate them more efficiently and effectively, the *systems analyst* should and does

play a large role. However, in attempting to produce meaningful results, the systems analyst needs 1) *explicit* goals and 2) actual systems defined, without which effective and meaningful planning simply cannot occur.

In juvenile justice, neither of these is always known. Further, the process for clarifying goals and systems is not always identified and pursued by practitioners including staff or by theoreticians in any consistent manner. The result is muddy water. Following the works of Freed (1969), Cohn (1974) has commented on the *nonsystem* aspects of both criminal and juvenile justice. While juvenile justice is somewhat contained and can be viewed more as a system than adult criminal justice services, both demonstrate fragmentation, splintering, and divisions (if not competing goals) among agencies where programmatic goals are not always clear or understandable.

In addition to identifying explicit goals as a foundation for any planning effort, equal attention must also be given to pursuing a systems approach. This means that a juvenile justice agency should never engage in a planning effort without a clear understanding of how the agency "fits" within the total system of juvenile justice. Boundary agencies and groups, such as legislators, elected officials, law enforcement, prosecution and defense, community-based treatment organizations, as well as other important stakeholders, all must be identified and their roles explicated if one wants to deal in a systems approach.

Cohn (1977: 8–9) elucidates as follows:

As we explore this total systems view, we can see in very sharp relief the many roles played by significant actors and the variety of functions served by their host agencies. Analyses also illuminate the serious conflicts experienced by those actors and agencies as they interact with one another.

Long ago, O'Leary and Duffee (1969: 2) commented on a situation that exists even today:

Rarely are conflicts openly explored; even more rarely are they handled successfully. The notion that criminal—and juvenile—justice are systems whose parts must effectively articulate is more often employed as a pious aspiration than as something to be applied seriously.

Conflict within the system as well as within an agency should be viewed as healthy and constructive, especially when attempting to bring about change. Conflict should be seen as necessary for growth and constructive transactions among people and organizations. This, however, presupposes that the development of a true system within juvenile justice, with all its myriad components, is a desirable goal. While the merits of such a position may be obvious, it is possible that achieving such a true system may itself be dysfunctional in our kind of government. Without checks and balances, without competing goals, in a system devoid of conflict, complacency may take hold and change denied. Yet, change in one agency undeniably produces a ripple effect; that is, there must always be concern for how any given change may impact other groups and organizations, as well as the agency itself.

As an example, the development of drug courts within the juvenile justice system impacts the treatment agencies in the community not only in terms of needed treatment modalities, but in demanding from them, through the process of reporting back to the court on client progress, a style different from that of past reporting. Intake for a drug court may be substantially different from routine probation intake. Changes in how much time the court gives for completing a social history will affect not only probation officers' time and style of completing reports, but also how critical information is obtained from external agencies familiar with the youth and his or her family.

Notwithstanding such issues, each agency and service within juvenile justice probably could benefit from better planning, more coordination, and additional consideration of the needs and problems of others, especially "customers," clients, and communities. Moreover, in order to deal effectively with various stakeholders, the involvement of other agencies and community groups

in policy-setting and implementation should be encouraged—a democratic state demands such involvement. Collectively and collaboratively, a mandate to do something about juvenile crime, as well as dependency and neglect, could be better enunciated and put into practice. Such a liaison undoubtedly has a better likelihood of bringing about meaningful reform.

An ideal planning process requires not only the explication of organizational (if not systemic) goals, but a set of goals that can be translated into an action strategy to be implemented by all those in the organization regardless of hierarchical rank. While there has been progress in this area of management activity, the state-of-the-art in juvenile justice management training may fairly be summarized as *deficient*; many simply do not know how to plan and find excuses and rationalizations for this failure. Too many managers learn how to run their organizations only through trial and error, through prolonged experience—sometimes too long!—and through the dictates and pressures of others, especially superordinates and other stakeholders.

Through a kind of naiveté, these managers often think that planning is merely a process for delineating what programs they would like to have, without first identifying organizational mission and goals, availability of resources, and without conducting a responsible needs assessment. Planning is not words, communications, or public relations. It is not merely the setting down on paper what is desirable. Instead, it should be treated as a vigorous process that demonstrates a responsiveness to needs, an awareness of resources, and an honest approach to matching needs with resources (available and to be developed) in a manner likely to produce significant results—results, which can and should be measured to determine the extent to which goals are explicit and are being attained.

Although writing for the corporate and business worlds, Ewing (1968: 17–18) expands upon our definition of planning—a definition that is as apt today as it was when he stated:

...(planning is) a method of guiding managers so that their decisions and actions affect the future of the organization in a consistent and rational manner, and in a way desired by top management.

He goes on to say (p. 19) that "desired by top management" is of great significance for it is a phrase which implies *goal setting*. "It implies a conscious management effort to look at itself and its environment and, on the basis of facts and aspirations, makes the best choice possible in the range of alternatives."

It was previously suggested that conflict can be viewed as healthy for an organization as it strives to harness the inevitability of change and to avoid its dysfunctional aspects. Mary Parker Follett, a keen observer of administrative practice, once said: "When we think we have *solved* a problem, well, by the very process of solving, new elements or forces come into the situation and you have a new problem on your hands to be solved" (1937: 166).

Moreover, as Blau and Scott noted some time ago:

New problems are internally generated in organizations in the process of solving old ones. However, the experience gained in solving earlier problems is not lost but contributes to the search for solutions to later problems. These facts suggest that the process of organizational development (*change*) is dialectical for problems appear, and while the process of solving them tends to give rise to new problems, learning has occurred which influences how the new challenges are met (1962: 250-251).

The administration of juvenile justice services in the United States currently is undergoing considerable change, as it has in the past. Today, however, there is change with a new self-conscious dimension, namely *direction*; and this is the nitty gritty of *development*. Goals, measures, tempos, and agencies have been added to the sense of change everywhere throughout juvenile as well as criminal justice systems. Thus, the winds of change are blowing in some well-sensed direction and, one hopes, practitioners (including managers as well as line staff) and

academicians are at least feeling the breeze.

Many people are questioning the direction of this wind and whether or not it is promising a brave or even a new world as the second century of juvenile court services begins. Some portend a "future shock." Others believe that the change process—even through appropriate planning—is much too slow and not in the best interests of all identified stakeholders (customers). Some demand radicalization. Still others believe that change is occurring, however slowly, but not necessarily in a positive direction. They ask for a slow-down and time for reflection; an opportunity to re-group. Thus, even those who are concerned with change are in conflict, not only in terms of substance, but with regard to the process itself.

The juvenile court has never been without critics and the likelihood of diminished criticism in the future is nil.

The great learning, moreover, may not lie in designing appropriate change mechanisms—the planning process. It may be, as a famous social psychologist, Kurt Lewin, once wrote, that a social organism becomes understandable only after one attempts to change it. It often happens, therefore, that management's awareness of a new organizational design emerges only *after* the start of an intensive change process. And even were it possible for a manager to be omniscient in developing a master blueprint before introducing any organizational change—through the planning process, it is doubtful that colleagues and/or staff will readily accept the new design or have the requisite skills for making it work. Furthermore, without input from colleagues and staff, it is doubtful that there will ever be a "buy-in." For these reasons, managers need to be as skillful in handling the question of *how* to introduce change as they are in diagnosing what needs to be changed.

While managers must perceive themselves as change agents and develop change strategies in goal-directed ways, it is critical that they also recognize the inherent relationship between change and social policy. Developing goals is insufficient. These goals and the processes needed to implement them must be placed in proper context. This context can appropriately be defined as a social policy that explains why a certain goal is appropriate for the organization at a given time and place and how it "fits" the organization's mission and stakeholder expectations. Social policy is needed to assist the manager in understanding the social environment in which the organization operates.

Thus, what values, what philosophies, what needs—and from what groups, are all aspects of social policy development. Therefore, ignorance of or insensitivity to external and internal environments perpetuates the isolation of juvenile justice agencies many observers have criticized for decades.

To involve the various communities is, of course, difficult, for in the short term it slows down movement and development. Yet, as many have noted, in the long term, greater coordination, improved communication, and consensus over direction and goals are quite likely to improve the state-of-the-art in juvenile justice administration, all of which must be taken into consideration when attempting to plan for change.

However, organizational change can be seen as an outcome jointly determined by motivation to change, opportunity to change, and capability to change. It is a risky process; therefore, an understanding of the literature on individual and organizational risk-taking is critical not only for effective planning but for enhancing organizational productivity. As Hambrick, et al. (1993) argue, too many executives tend to become committed to the organizational *status quo*, including existing strategies and policies, which compromises their ability to recognize the need for change; thus, no real planning, strategic or tactical, occurs.

Changing organizations requires leadership that may not always be available in juvenile justice. Yet, while management training is viewed as crucial, as well as in business and industry, and while the number of management training programs that is available is considerable and continues to grow at an increasing pace, the scarcity of sound research on training (i.e., its

effectiveness) has been among the most glaring shortcomings in the leadership area.

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The Identification of Juvenile Justice Problems and Issues

Juvenile justice and the court, as the second century of practice begins, are not in turmoil. While there is considerable debate over practices and direction, the system is not broken, though there are areas needing attention and repair. They include:

1. Excessive caseloads that preclude meaningful interventions by an assumed well-trained staff.
2. The failure to recognize that not the offender but the community is the real "customer" of services.
3. Little understanding of the relationship between planning, change, and social policy.
4. Political, hard-line rhetoric leading to inappropriate changes in the juvenile code, including automatic waivers to criminal courts.
5. The changing character of youthful offenders, especially in terms of substance abuse and the use of weapons when committing offenses.
6. Inadequate kinds and availability of treatment programs for detained youths and for probationers and those in after-care, and, for those that work, inadequate replication efforts.
7. A stubborn refusal by some significant actors to work collaboratively in defining and resolving problems of a mutual nature, such as diversion or graduated sanctions.
8. The failure of the "leadership" to deal head-on with inappropriate and "wrong" changes in juvenile codes, especially in terms of waivers.
9. The failure of judges to provide the leadership when it comes to advocacy.
10. The lack of meaningful diversion programs, including the need for more informal processes for non-violent offenders.
11. The lack of meaningful programs that involve the families (parents) of offenders.
12. The failure to engage in advocacy for needed programs in the community for youths and their families.
13. Too much complacency (status quo), which results in lack of appropriate planning.
14. The failure to involve critical stakeholders in the development of agency-based policies and procedures.
15. Inadequate involvement of subordinate staff in identifying and implementing agency mission and goals.
16. Inadequate staff development and training programs that are based on the identification of core competencies.
17. The failure to recognize the need for and value of wrap-around services and programs, resulting in poor case management by too many case managers in too many agencies in any given case situation; i.e., the failure to recognize that too few offenders and their

families receive disproportionately high levels of human services.

18. Inadequate development of ongoing and meaningful communication with superordinates and appropriate stakeholders, which results in too many being unaware of "what works."
19. The failure to design and implement a total, systems-based information technology program that enhances data sharing.
20. The ongoing failure to evaluate programs to determine worthwhileness that should lead to decisions about program continuation, expansion, or abandonment.
21. The failure to develop and implement program and operational standards.
22. The failure to think system.
23. *The problem of too much stupidity!*

*In the final analysis, these issues and concerns reflect the fact that these are not **problems** to be solved, but a **set of conditions** needing to be managed.*

The problems will not go away by themselves nor should they be solved piecemeal. Change is inevitable, but it takes a competent and skillful manager to provide clear and explicit goals and appropriate direction. It requires a collegial approach that includes colleagues, subordinate staff, and critical stakeholders. It requires skillful planning. It demands goal-directed efforts toward meaningful change. It requires that the manager continually incorporate a systems view and a responsible and responsive stewardship of his or her agency.

Although change may be inevitable, it should never be reckless. Instead, it must be planned and viewed as beneficial for the court, its staff, the community (the real customers) being served, as well as all its stakeholders.

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Over-representation of Minorities in the Juvenile Justice System: Three Counties in Rural Texas*

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IN 1998, CONGRESS amended the Juvenile Justice and Delinquency Prevention Act of 1974 by requiring that states receiving funding from Title II Part B Formula Grants program address the issue of disproportional minority confinement (DMC). Four years later, Congress further enhanced the DMC focus by elevating its status to that of a "core requirement." In effect, the mandate required states to assess the magnitude of DMC and formulate effective policies or risk losing as much as 25 percent of their State Formula Block funding.

As a result, research studies examining the over-representation of minorities in the juvenile justice system have increased during the past 20 years. Research findings, however, have been mixed, making the development of effective policies difficult (Lieber, 2002). A primary shortcoming of over-representation research has been the failure to include all relevant variables; researchers have designed juvenile research to mirror that on adult outcomes (Fader, Harris, Jones and Poulin, 2001). This approach neglects the central component of juvenile court decision-making.

In one of the most recent and comprehensive national studies of the problem of over-representation of ethnic minorities in the juvenile and criminal justice system, Jones (2000) found over-representation of youth of color at every point and the disadvantages worsened as they went through the system. Minority youth are more likely to be referred to juvenile court, be detained, face trials as adults, and go to jail than white youth who commit comparable crimes. (Shepard, 1995; Pope & Feyerherm, 1995; Wilson, Gillepsie, & Yearwood, 2001.) Racial disparities as well as selection and institutional bias in the process may contribute to minority over-representation in secure facilities and suggest that the perception of white police officers can contribute to minority over-representation. White police officers are more likely to arrest poor minorities because of the underlying belief that they are prone to participate in criminal activity. Additionally, seriousness of the current offense, prior offending, age as well as individual characteristics may affect referral decisions. Older minority males are more likely to be recommended for formal processing than are whites, younger adolescents and females (Bishop, Frazier, & Charles, 1996, Drakeford & Garfinkel, 2000).

Racial bias within the mental health system also plays a part. Black juveniles are more likely than their white counterparts to be incarcerated in correctional facilities rather than in a psychiatric facility, even after similar scores are reported on the child behavior checklist. According to Drakeford & Garfinkel (2000), mental health agencies fail to properly diagnose and assist African-American children who may have psychological disorders. This is supported by the National Coalition for the Mentally Ill, which reports that 60 percent of youths in the system have a mental health disorder and 20 percent a severe disorder. Because of the high rates of mental disorders among incarcerated youths in these facilities, Cellini (2001) sees the need for extensive evaluations. Bishop, Frazier and Charles, 1996, report lack of community support.

Racial bias has varying effects on whites and non-whites, with black youths more prone to formal processing because families may be unable to comply with agency policies for one or both parents to be present at adjudication hearings. Institutional bias regarding who will be referred to private treatment in lieu of formal processing also greatly disfavors minorities. Those from single parent homes and perceived as receiving insufficient parental supervision are more likely to be referred to court and placed under state control, according to Bishop, Frazier and Charles (1996) and Wilson, Gillespie and Yearwood (2001). Similarly, urbanization tends to increase imprisonment risks for blacks and other minorities, while it tends to decrease imprisonment for whites.

In the southwestern state where the study was conducted, the problem of minority over-representation was first investigated in 1990 in response to the federal government requirement that each state receiving funds from the Juvenile Justice and Delinquency Prevention Act determine the existence of this problem and propose ways of rectifying it. Charged with responding to the federal mandate was the Subcommittee on Minorities in the Juvenile Justice System, formed by the Office of the Governor's Criminal Justice Division. The findings of the Subcommittee (1992) were consistent with national studies. Although minority youth made up 49 percent of the state population aged 10-16, they constituted 66 percent of juveniles referred to court for delinquency offenses, and 73 percent of detained youth. An analysis by the state's corrections facilities found that 80 percent of youth committed to its care were minorities, with the commitment rate per population for black and Hispanic youth respectively eight and three times greater than that of white youth. The referral rate for black youths was three and a half times greater than for white youths. The referral rate for Hispanics was twice that of whites. Even after accounting for the higher referral rates for minorities, commitments for violent offending per felony referrals was 9.3 for blacks, 8.9 for Hispanics, and 4.8 for whites. For nonviolent youth offenders committed to the facility without the benefit of a prior residential placement, the rates were 61 percent for blacks, 55 percent for Hispanics, and 28 percent for whites. These disparities follow the youth to rehabilitative treatment in the facilities, where higher rates of whites received specialized treatment for various chronic offenses. To date, not many studies have been found that have focused attention on rural southwestern United States. Added to this is the fact that this study state is rapidly becoming a minority/majority state. Therefore, if the problem is not seriously addressed, the majority of the youth population will be in the juvenile justice system. Thus, the purpose of this research is to revisit the problem of minority over-representation in these three counties almost ten years after the initial studies and particularly since the ethnic composition of the state has changed and to examine the problem at each phase of the process, with particular attention on the youth's family, social background and prior involvement in delinquency.

The specific research questions include:

- a) Are ethnic minorities over represented in the juvenile justice systems in a rural southwestern state?
- b) If so, at what phases of the juvenile justice system do the rates differ?

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Method

Participants

Participants in this study consisted of 316 adolescents aged 10–17 years (69 percent males) who went through juvenile probation centers in three rural counties in a southwestern state between January 1999 and December 2000.

Instrument

The instrument for this study was originally developed to study minority over-representation in Fairfax Juvenile and Domestic Relations Court Services in Virginia. For suitability as a data collection tool in a southwestern state, the instrument has undergone substantial revision and adjustments. In its current form, it is an eleven-page questionnaire consisting of a) demographic data, b) current offense, c) background and social history, and d) repeat offending.

Demographics

Demographic information includes age at the time of intake, race, sex, and county and zip code of residence.

Current Offense

This subsection provides details of the current offense the juvenile is being charged with at the various phases: predisposition, adjudication, disposition, and a summary of the time spent in the system. Description of the current offense includes the total number of complaints and their codes, the progressive sanctions level of the most serious complaint, and the complainant, such as the police or parent.

Predisposition Phase

Information at this phase includes the number of days in detention (if detained), dates of detention hearing, and a determination of whether the complaint was drawn prior to court hearing.

Adjudication Phase

The instrument documents the number and dates of adjudication hearings, representation by an attorney (court-appointed or private), and the number of days between detention and adjudicatory or transfer hearing. For those not detained, additional data include determination of adjudicatory hearing within 15 days, finding at final adjudicated hearing, psychological evaluation, and the total number of continuances and reasons for them.

Disposition Phase

Dispositions include commitment or suspended commitment to a corrections facility, probation, detention center, and others. Other information includes holding of a separate dispositional hearing, the number of days between adjudicatory and dispositional hearings and whether the latter was held within 30 days of the former. Also captured at this phase are any special services recommended such as urine testing, treatment for mental or physical health, counseling, electronic monitoring, and others. The instrument also summarizes the involvement of the juvenile in the justice system for the current offense, such as the total number of detentions, detention alternative, days on probation and/or detention, residential placement, and the number of days from intake to close of case.

Procedure

The revised Court Processing Data Collection Instrument was sent to the Juvenile Probation Officers (JPOs) in the three study counties to solicit their review and input. The Principal Investigator held a series of meetings of persons working on the study to ensure everyone had a

thorough understanding of the purpose of the study and of the instrument being used for data collection. The JPOs, who were familiar with the juvenile offenders and their background, completed the instruments by copying information from their files and mailing it to the Principal Investigator.

The researchers and their assistants did not have access to the names or other identifying information of the juveniles. However, to ensure strict anonymity of the participants and confidentiality of the data, all of the persons working on the study signed a research confidentiality agreement with OJJDP. In compliance with the requirements, we filed a privacy certificate pledging to provide administrative and physical security of the data.

To facilitate analysis, the offenses and delinquency acts were grouped into six broad categories: school, theft/burglary, assault, police and law enforcement, drugs and alcohol, and other. School-related delinquency included truancy and failure to attend school. Theft/burglary included forgery, criminal mischief, vehicle or building burglary, and unauthorized use of motor vehicle. Offenses under assault included all types of assaults such as sexual offenses and terrorist threat. Police and law enforcement category consisted of offenses such as contempt/ disobedience of court, violation of juvenile court order, and resisting or avoiding arrest. Drugs and alcohol offenses comprised possession and use, driving under the influence, and failing drug test. The category "Other" included arson, organized crime activities, and any other offense not included in the five categories above.

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Results

Demographics

The sample size N=316 consists of 40.2 percent cases from county I, 34.1 percent from II, 18 percent from county III, and 7.7 percent from elsewhere. In county I, the racial composition was 51.2 percent black, 5.6 percent Hispanic, and 43.2 percent white. In county II, the ethnic distribution was 42.5 percent black, 20.8 percent Hispanic, and 36.8 percent white, and in county III, the distribution was 21.1 percent black, 15.8 percent Hispanic, and 63.2 percent white. Youth outside of these counties were predominantly white (75 percent). In the entire sample of N=316 cases, 40.2 percent were black with 27.3 percent males; 11.6 percent Hispanic, 7.2 percent males; and 46.2 percent white with 34.4 percent males. Summary figures have been calculated for family and social background.

While 76 percent of Hispanic youth have married biological parents, only 20 percent of black children and 40 percent of whites have married biological parents. Sixty percent of black children live with their mother only, compared to 36 percent for Hispanics and 37 percent for whites. Among black children in the study, only 17 percent live with both parents, which contrasts with 48 percent and 34 percent for Hispanics and whites respectively. Among all participants combined, 28 percent live with both parents, 47 percent with their mother only, and 7 percent with their father only. Across the races, more than half of all participants did not know if their mother or primary mother figure was employed. In the case of the father or father figure, over 71 percent of black children did not know his employment status, compared with 47 percent for Hispanics, and 60 percent for white children.

Less than 33 percent of black juveniles have married parents (including stepparents), and about 50 percent have parents that never married. On the other hand, 76.4 percent of Hispanic youth said their parents were married, and only 11.8 percent said their parents never married. For whites, nearly 41 percent said their parents were married, 28 percent said their parents had never been married, and 27.3 percent of the parents were separated, divorced, or widowed.

About 60 percent of the black juveniles lived with their mothers only and about 17 percent lived with both parents. Among Hispanics, 48 percent lived with both parents and 36 percent with the mother only; for whites, 71 percent lived with the mother or both parents. Fifty percent of the

juveniles did not know whether or not their mothers were employed.

Initial entry into the system

Police arrests were the primary reasons most youth of all races entered the system. While police accounted for the entry of three of four African American youth, the figures were even higher for Hispanics (92.1 percent) and White (79 percent). Besides police arrests, parents were responsible for 5.3 percent and 2.9 percent of black and white youths respectively. No Hispanic parents accounted for their children's entry into the system. The race distribution at this initial phase was 39.9 percent black, 47.6 percent white, and 12.5 percent Hispanic.

To determine the existence of minority over-representation at this phase, a comparison was made between the proportions of youth aged 10–17 years old and those in the general population in the three counties according to the 2000 Census. Census figures show that African Americans comprised 17.4 percent of the youth population, Hispanics were 12.5 percent, and Whites 61.7 percent. The difference between the population and sample figures was statistically significant ($\chi^2(2) = 37.75, p < .001$). Specifically, at intake, the data showed that there was a significantly higher proportion of African American youth in the system than would be expected from their numbers in the general population.

Offenses and Delinquency

The youth's offenses and delinquent acts were grouped into six broad categories. The distribution of these categories were: school, 7.5 percent; theft/burglary, 38.8 percent; assault, 23.1 percent; police and law enforcement, 6.9 percent; drugs and alcohol, 11.3 percent; and other, 12.5 percent. The category "other" included arson, organized crime activities, and any other offense not included in the five categories. For blacks, there was a 6.3 percent chance of being involved in a school-related offense or delinquency, 42.2 percent of theft or burglary, 21.9 percent of assault, 4.7 percent of breaching law enforcement court orders, 6.3 percent of drug or alcohol involvement, and an 18.8 percent chance of being involved in some "other" undesirable act. Among whites, there was a 10.1 percent chance of being involved in a school-related offense or delinquency, 39.2 percent of theft or burglary, 22.8 percent of assault, 8.9 percent of breaching law enforcement court orders, 12.7 percent of drug or alcohol involvement, and a 6.3 percent chance of being involved in some "other" undesirable act. Within the Hispanic group, there was no record of a school-related offense or delinquency. However, there was 23.5 percent chance of theft or burglary, 29.4 percent of assault, 5.9 percent of breaching law enforcement court orders, 23.5 percent of drug or alcohol involvement, and a 17.6 percent chance of being involved in some "other" undesirable act. In the sample, these distributions did not show any significant relationship between the offenses and ethnicity, ($\chi^2(10) = 11.22, p > .05$).

The most severe of the six offense categories (theft/burglary 41 percent and assault 22.2 percent) accounted for 63.2 percent of all offenses committed. Blacks and whites accounted respectively for 47.5 percent and 52.5 percent of arrests for theft/burglary; and 43.8 percent and 56.3 percent for physical/ sexual assaults.

Pre-Adjudication Phase

Of the N=232 youth who went through preadjudication, 52 were detained. Approximately 40.4 percent of the detentions were African American, 48.1 percent were white, and 11.5 percent were Hispanic. These figures are nearly identical to the distribution at intake. Hence, in comparison to the numbers at intake, these detention numbers would be consistent with our expectations, ($\chi^2(2) = 0.22, p = .90$), and one may conclude there is no ethnic overrepresentation at intake. However, when compared to the general population, we once again see that African Americans are over-represented among those detained prior to adjudication, ($\chi^2(2) = 21.67, p < .05$). Perhaps a more accurate view of ethnic bias in detention may be viewed by examining the relationship between detention and race for comparable offenses.

Because of the relatively small number (six) of Hispanics at this stage, they were excluded from

further analysis, and thus reducing the data to a 2 _ 2 contingency table. For each offense category, Fisher's Exact Test statistic was used to examine the relationship between detention (detained or not detained and race (African American or White). None of the offense categories revealed a significant relationship between detention and race: for school offenses, $p = 0.67 >.05$; theft/burglary, $p = 0.62 >.05$; assault, $p = 0.12 >.05$, police and law enforcement, $p = 0.41 >.05$; drugs and alcohol, $p = 0.59 >.05$; and other, $p = 0.69 >.05$.

Adjudication Phase

The number of youth arraigned for adjudicatory hearing totaled 93, with 39.78 percent black, 51.61 percent white, and 8.60 percent Hispanic. At this phase, as in the previous others, there is a proportionately higher representation of blacks in the sample than whites or Hispanics, ($\chi^2 (2) = 38.20, p <.05$). A court-appointed attorney represented a large majority of juveniles (80.9 percent), 12.8 percent had no attorney, and 6.4 retained a private attorney. There did not appear to be any racial differences in the availability of attorney representation during adjudication. All African American youth had a court-appointed or private attorney, compared to 75 percent of Hispanics and about 90 percent of whites.

Disposition Phase

The disposition phase involved 185 cases with 41.8 percent black, 45.6 percent white, and 12.6 percent Hispanic. Once again, in comparison to population figures, there is evidence of black over-representation at the disposition phase ($\chi^2 (2) = 46.82, p <.05$). Disposition decisions included probation, detention, commitment to a corrections facility, community service, restitution, dismissal, and driver license suspension.

The disposition resulted in more than half (54.2 percent) of the youth receiving probation, 14.0 percent being placed on community service, 5.2 percent paying restitution, 3.3 percent detained, and 2.6 percent dismissed. Similar disposition figures were revealed within each ethnic group.

Relating Disposition to Offending and Delinquency

Because of the small number of Hispanic youth at the disposition phase, they were excluded from this analysis. In the theft/burglary category, 41.2 percent of the black juveniles were placed on probation compared to 33.3 percent whites; 11.8 percent and 6.7 percent respectively of blacks and whites were detained; 17.6 percent of blacks and 26.7 percent of whites did community service; and 23.5 percent of blacks and 6.7 percent of whites received some other type of disposition. For physical and sexual assault offenses, 44.4 percent of blacks and 14.3 percent of whites were required to perform community service.

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Discussion

The primary purpose of this study was to examine the over-representation of ethnic minority youth in three rural counties in a southwestern state, and to identify the phases of the juvenile justice system where this problem occurred. Several national studies have shown there is a significantly higher number of African Americans in the system than would be expected from their population figures. While the 2000 national census reported that African Americans comprised 17.4 percent of the youth aged 10-17 years in the three counties in the study, they constituted 40.2 percent of the sample, more than twice what would be expected. These disproportionate figures were consistent at the stages of arrest, pre-adjudication, adjudication and disposition.

Some researchers and members of law enforcement have attributed the disproportionality of youths at intake to their greater involvement in delinquency and criminal activity. In this study, 72 percent of the black juveniles who were detained came from a family structure where the mother had sole custody of the children. Thus, coming from a home where the mother has to play the role of both parents may have an impact on the juveniles' behavior, as well as on the

decision to detain.

In this study there was no association between school offenses and detention. Theft and burglary represented the highest rates of all offenses committed, with minorities accounting for approximately 54 percent and whites 46 percent. Blacks were more likely to be detained for problems related to police and the law than their white counterparts, supporting research conducted by Pogue (1998) and Conley (1994). They found that disparity exists at the level of police contact contributing to higher arrest rates for blacks. No one is condoning criminal or juvenile misbehaving for which punishment must be given. However, in order to address the severity of minority over-representation at the disposition phase, a number of factors must be considered (Shepard, 1995).

State laws should incorporate standard guidelines for the processing of youth offenders. Juvenile justice agencies, law enforcement officials and social service agencies should work cooperatively to ensure that the needs, including rehabilitation, of all youths are addressed. For example, they should ensure that all offenders have access to treatment services, deterrence and educational programs (Shepard, 1995). Cultural and sensitivity training for police officers, judges and other officials of the juvenile justice system is necessary in order to promote the understanding of cultural, racial and ethnic differences.

A common factor that has been shown to have a relationship with delinquency is single parenting. Researchers have pointed out that because of the instability of these settings and because the homes may have fewer resources to provide needed support, youths who were adjudicated needed to be confined to a secure facility rather than be sent back to their surroundings (Leiber & Stairs, 1999; Anderson, 1992). Many understand that minority parents have a limited understanding of the system, they experience barriers with respect to parental advocacy. Therefore, the juvenile justice system, in the absence of parental advocates, needs to ensure the proper legal representation of these juveniles. Socioeconomic and educational opportunities, such as higher likelihood of low incomes, few job opportunities, and urban density among minority youths, are also linked with disproportionate minority confinement. This points to the need for local communities to become involved in mustering the resources needed for intervention. Community leaders and schools can institute career development programs and vocational training for high-risk minorities, as well as conflict resolution and anger management. Churches, youth groups, and service organizations can also develop programs specifically geared to minorities to help with a sense of empowerment and social responsibility. By actively engaging them in activities in the real world, the youths can develop a sense of belonging and commitment.

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Media Portrayals of Prison Privatization—A Research Note

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MOST PENOLOGISTS are aware of the debilitating effects of prison crowding. Creative solutions to ease crowding dominate contemporary correctional debate. One solution that has gained considerable attention is the use of privately operated prisons. These prisons are often used to supplement existing government units. The private sector's promise to provide rapidly built and efficiently operated facilities is appealing to many jurisdictions. Despite their popularity, oftentimes the only information that the average citizen gets about these facilities is through local media coverage. To date, no previous study has considered media portrayals of this phenomena. Such a consideration provides added insight into media presentations as well as the manner by which citizens come to support or oppose such initiatives.

This research project was designed to be undertaken in two distinct stages. The first stage considers portrayals of prison privatization by the print media. The second, yet to be completed, considers similar portrayals by the broadcast media. To complete the first stage, it was necessary to locate appropriate newspaper articles. ProQuest, a computerized information retrieval service used by academic and research institutions worldwide, was employed. A search revealed that 2,654 articles about prison privatization were published between January 1, 1986 and April 18, 2002. From this pool, 151 articles were randomly selected for analysis, of which 129 proved suitable. Newspaper articles from nearly half the states as well as the District of Columbia and the United Kingdom are represented. A consideration of the language appearing in both the title and body of each article was undertaken. Titles and article content were determined to be either favorable, neutral, or unfavorable. A favorable presentation denoted language or imagery that was complimentary to privatization. Favorable presentations often included words such as "effective, cost efficient, or safe." A neutral presentation denoted language or imagery that was neither favorable or unfavorable but was generally balanced in presentation. An unfavorable presentation denoted language or imagery that featured a negative aspect of privatization or that presented privatization as a negative phenomenon. Unfavorable depictions often included words such as "unsafe, corrupt, or violent."

A pattern emerged with regard to the overall nature of article titles. During the 1980s, titles were unfavorable in a third of the articles, neutral in half, and favorable in approximately seventeen percent. During the 1990s, about a third of the titles were unfavorable, with 64 percent being neutral and the remainder favorable. During the early 2000s, a third of the titles were unfavorable, while 62 percent were neutral and the remainder favorable (see [Table 1](#)). Thus, titles have become less favorable and more neutral since 1986, with the percentage of unfavorable titles remaining relatively unchanged. Overall, unfavorable titles used language that portrayed privatization as an unregulated practice that jeopardizes the rights and safety of inmate populations. Favorable titles tended to focus upon the financial benefits of privatization.

When considering article content a similar pattern emerged. During the 1980s, a quarter of it was unfavorable to privatization, with 58 percent being neutral and the remainder favorable. During the 1990s, approximately a third was unfavorable, 56 percent neutral and the remainder favorable. During the early 2000s, 46 percent of the content was unfavorable, 46 percent neutral and approximately 8 percent favorable. Thus, article content has become more unfavorable with corresponding decreases in the neutral and favorable categories (see [Table 1](#)). A majority of the unfavorable content referenced staff misconduct and even inmate abuse. Much of the favorable content focused upon the benefits of privatization upon local economies as well as its ability to help alleviate crowding.

Furthermore, in about a third of the articles, comparisons were made between the private and public sectors. A quarter of these comparisons pertained to financial matters, where it was suggested that the private sector could operate more efficiently than the public sector. Another frequent area of comparison included institutional violence, where depictions tended to portray private prisons as less safe than their public counterparts. Overall, newspaper depictions do reveal a good deal about how privatization is portrayed to the public. A greater understanding of these portrayals is beneficial since it is the media that creates, perpetuates, and presents this topic to a majority of the citizenry. While the initial stage of this study is enlightening, the second phase will make it possible to answer questions relating to the media in general. For example, by collectively considering findings derived from both stages of this project, a better understanding of how the media presents privatization will result.

By identifying trends related to the levels of support given privatization by the media, it becomes possible to better predict the role that privatization may play in future correctional processes.

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Table 1 Article Titles & Content: January 1, 1986-April 18, 2002

Percent and number of articles by category				
Decade		Unfavorable	Neutral	Favorable
1980's				
	Title	33.3 (4)	50 (6)	16.7 (2)
	Content	25 (3)	58.3 (7)	16.7 (2)
1990's				
	Title	30.8 (28)	63.7 (58)	5.5 (5)
	Content	37.4 (34)	56 (51)	6.6 (6)
2000's				
	Title	34.6 (9)	61.6 (16)	3.8 (1)
	Content	46.2 (12)	46.2 (12)	7.7 (2)

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LOOKING AT THE LAW

[Endnotes](#)

BY DAVID N. ADAIR, JR.

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The Incredible Shrinking Probation Officer

Scott Carey did not notice it right away. He thought that it was something the dry cleaners had done that made his clothes too large, but eventually he could not escape the realization that he was shrinking. In the classic 1950s science fiction movie, *The Incredible Shrinking Man*, [\[1\]](#) medical science could do nothing for Scott and eventually he became too small even to be detected by other humans. He still existed as part of the universe, but he was no longer significant in the world as he had known it.

Over the course of the last 20 years much has been said about the way in which the sentencing guidelines have transformed the role of judges and probation officers. Judges have lost discretion to sentence defendants in ways they believe are fair and just. Probation officers have been required to spend more attention on technical application of the sentencing guidelines and less on an assessment of individual defendants and the kind of sentence they need for rehabilitation and protection of the public. But while our backs were turned, while we were thinking and talking about the effect of guidelines on fair sentencing, something has been happening to probation officers' role in supervision. It's been happening on a smaller scale and it has not completely changed the way officers supervise offenders. But, if the trend continues, it could shrink the supervision role of officers and the ability of officers to effectively work towards the rehabilitation of offenders and the protection of the public.

I am referring to the trend of the courts of appeals to limit what decisions probation officers can make in supervising offenders. They are doing this by reserving more and more decisions to the court and prohibiting judges from allowing probation officers to make decisions of importance in the supervision of offenders. I characterize this process as the formalization of supervision because, like the sentencing guideline process, it sacrifices the decision-making of those in the best position to exercise it, and substitutes decision-making that cannot be as familiar with the needs of the individual offender. This results in formalization because the decision-maker must rely on a more formal, less individualized process to determine specific conditions of supervision for the offender. Most supervision officers are familiar with the individual cases discussed below. But I believe that officers must be aware of the trend these cases are a part of so that they can recommend and administer conditions in ways that reduce the chances that the courts of appeals will further limit officers' ability to effectively supervise offenders.

The earliest and best-known example of this trend has been the prohibition on sentencing courts allowing probation officers to set payment schedules. In the last 10 years, a series of court of appeals decisions has made the collection of fines and restitution more difficult and time consuming by requiring that judges set precise schedules for the payment of financial penalties at the time of sentencing. This case law is so well established that it is difficult to conceive of a

way district courts can avoid the results on collection efforts. I discuss it in some depth here only because it demonstrates so well the lack of serious consideration I believe courts of appeals give to the lawful and proper role of probation officers in the federal criminal justice system.

Of course, it is nearly impossible to establish, at the time of sentence, a realistic, effective schedule for defendants who will serve periods of incarceration. A defendant's earning ability is uncertain at the time of sentencing and highly volatile thereafter. Until the last several years, most courts simply set the total financial penalty and ordered that it be paid as determined by the probation officer. This simple and practical expedient was flexible and efficient. The officer could assess the offender's earning ability on an ongoing basis and make upward or downward adjustments to the payment requirements as warranted by the offender's economic circumstances. We know that officers weren't always entirely effective in this task, but they were certainly better placed to do it than the court at sentencing.

But 11 circuits have now determined that the "delegation" of the function of setting restitution or fine payment schedules to the probation officer is unauthorized. ² Most of these decisions have been based upon language in the Mandatory Victim Restitution Act (MVRA). ³ The MVRA, at section 3664(f)(2), requires the court, pursuant to section 3572, to specify "the manner in which, and the schedule according to which, the restitution is to be paid. . . ." Section 3664(f)(3)(A) provides that the court may direct the defendant to make a single lump sum payment, partial payments pursuant to a schedule, or a combination of partial and in-kind payments. If the defendant is unable to make payments that are reasonably calculated to result in the payment of the entire amount of restitution ordered, section 3664(f)(3)(B) permits the court to order nominal payments. Pursuant to section 3664(k), the court may adjust a payment schedule because of a change in the defendant's financial circumstances. The courts have relied upon these provisions to hold that the statute explicitly imposes a nondelegable duty upon judges to determine the manner of payment of restitution.

But some courts of appeals have relied upon the much more general language of the Victim and Witness Protection Act of 1982 (VWPA) ⁴ to reach this result. The VWPA simply permits the court to require that restitution be paid within a specified period or in specified installments. 18 U.S.C. § 3663(f)(1). And the principle has been applied to the payment of fines, based upon 18 U.S.C. § 3572(d), which provides that the defendant shall pay a fine immediately, but that the court may, in the interests of justice, provide for payment on a date certain or in installments. ⁵ The non-delegation rationale has even been applied to efforts to allow the Bureau of Prisons to begin to collect restitution during incarceration. ⁶

The courts that base these results on the payment language of the MVRA have a credible argument that some fairly specific statutory language imposes a duty upon the court to set payment schedules. But district courts should be able to delegate that responsibility unless the statute expresses a clear congressional intent that the responsibility not be delegated, or unless the function of setting a payment schedule is a core judicial function that constitutionally may not be delegated. Two circuits, in fact, have even suggested precisely that. In *United States v. Johnson*, the Fourth Circuit, observing that 18 U.S.C. §§ 3663 and 3664 impose on the court the duty to fix the terms of restitution, found the delegation of this duty to the probation officer was limited by Article III.

While the statute [18 U.S.C. § 3603] does authorize the district court to order the probation officer to perform such duties as the court directs, the type of duty that the court may so delegate is limited by Art. III. Cases or controversies committed to Art. III courts cannot be delegated to nonjudicial officers for resolution. That general principle does not, however, prohibit courts from using nonjudicial officers to support judicial functions, as long as a judicial officer retains and exercises ultimate responsibility.... [I]n every delegation, the court must retain the right to review findings and to exercise ultimate authority for resolving the case or controversy. ⁷

Why is setting a payment schedule a core judicial function? These courts suggest that it is part

of the sentence. But the penalty itself is the sentence. The timing of its collection is a mere matter of execution. Why doesn't the collection of a penalty, the amount of which has been set by the court, constitute the "support of a judicial function" over which the court has ultimate authority? The offender can always disagree with the officer's determination of a schedule and raise the issue with the court. [§](#)

This Article III rationale, furthermore, is very difficult to reconcile with accepted practices regarding the execution of sentences of incarceration. The Bureau of Prisons has always administered sentences of imprisonment imposed by the court. [§](#) Is it really an unconstitutional delegation of judicial authority to allow the court's probation officer to determine if a monthly payment towards a judicially-imposed restitution sentence is \$20 more or less each month, when it is perfectly constitutional to allow the Bureau of Prisons to determine if the judicially imposed sentence of imprisonment should be served at the maximum security facilities at FCI Florence or the camp at FPC Allenwood? This question has not even been asked in the cursory treatment of these important issues.

Of course, district courts and probation officers did not simply abandon efforts to effectively execute sentences of financial penalties in the face of these earlier decisions. When it became clear that courts of appeals would not permit sentencing courts to leave to probation officers the responsibility of establishing payment schedules, it was suggested that, as an alternative, the court simply order the immediate payment of the entire amount of restitution. The intent of such an order would not be to require immediate payment of the entire amount. The amount would simply be "due" and require the offender to make payments to the best of his or her ability. The Seventh Circuit in *United States v. Ahmad, supra*, proposed this policy as a means of avoiding the implications of its decision that a court could not allow a probation officer to set payments. But a reading of how the court proposed that this system would work reveals a lack of real distinction between the recommended procedure and the prohibited one.

A judgment in civil litigation specifies the amount due without elaboration. If immediate payment proves impossible, accommodation will occur in the course of collection. A judgment creditor will garnish the judgment debtor's wages and collect incrementally, even though the court has not said a word about installments. Just so with criminal restitution. If the sentence specifies the amount of restitution, without elaboration, and makes the payment a condition of probation or supervised release, the probation officer will assess the defendant's progress toward satisfaction of his debt, and if the defendant is not paying what he can the probation officer will ask the judge to revoke or alter the terms of release. Then the judgment may make the order more specific, or, if the defendant has not paid what he could in good faith, may send him back to prison. Everything works nicely without any effort to establish installments on the date of sentencing and without delegating a judicial function to the probation officer.

2 F.3d at 249. This approach, despite concerns about its apparent artificiality, was recommended in *Criminal Monetary Penalties: A Guide to the Probation Officer's Role* (Monograph 114), Ch. V, as a means to deal with the practical limitations imposed by the courts of appeals. The monograph was approved for distribution by the Judicial Conference, and was also incorporated into the Conference-approved September 2000 version of the Judgment in a Criminal Case (AO 245B), Sheet 5. JCUS-SEP 00, p. 49.

The revised judgment as well as draft Monograph 114 were reviewed by officials at the Executive Office for United States Attorneys. That office apparently adopted this approach specifically and has since issued guidance to United States attorneys offices suggesting that this is the preferred method. In its *Prosecutor's Guide to Criminal Monetary Penalties* (May 2003), citing *Ahmad*, the publication recommends that, except in circuits that explicitly require the setting of a payment schedule and in cases in which the defendant can pay the entire penalty at the time of sentencing, the government should support a "general imposition" of the payment obligation pursuant to which payment would begin immediately.

But now this practical solution has also been foreclosed as more and more courts have determined that it runs afoul of their reading of the MVRA's requirements. These decisions, in even more stunning exercises in literalism than their precedents, reason that immediate payment of the amount of the penalty may not be ordered unless the defendant has the actual ability to pay the entire amount on the spot. [10](#)

The crabbed interpretations of the payment provisions of sections 3664 and 3572 have made it extremely difficult for probation officers, the courts, and the Bureau of Prisons to maximize the collection of money towards the criminal financial obligations of defendants. The requirement that a payment schedule be set at sentencing, perhaps years before the defendant is free to become employed and begin to make significant contributions towards his restitution sentence, makes such a schedule extremely imprecise. The requirement that the court, upon a recommendation of the probation officer, and perhaps after a hearing, adjust the payment schedule to account for a change in the defendant's financial circumstances is extremely inefficient, particularly since defendants' occupational situation is typically unstable. For those defendants that have assets, the situation is a boon as they are able to manipulate these inefficiencies to delay or avoid the maximum payments of which they may be capable.

These problems are particularly troublesome in the context of restitution since collections are for the benefit of victims of the defendants' offenses. Although there is little legislative history regarding the MVRA, it is safe to assume that part of Congress' intent was to provide as much restitution as possible to victims. Yet the language of the statute has been interpreted in a way that limits maximum collection efforts. That most courts of appeals have not even considered these issues is disturbing and shows that a similar kind of formulaic, formalistic approach that has been taken to sentencing since the Sentencing Reform Act may be applied to supervision.

The case law has so restricted the courts' and officers' ability to effectively collect criminal monetary penalties that there doesn't appear to be any solution short of legislation that will resolve the matter. Accordingly, the Judicial Conference of the United States at its March 2004 meeting agreed to support legislation that would allow the collection of such penalties as civil debts by the Department of Justice:

In order to achieve greater flexibility in the establishment and adjustment of criminal fine and restitution payment schedules, the Committee [on Criminal Law] recommended that the Judicial conference seek legislation that would provide that all criminal monetary penalties be payable immediately and collected as non-dischargeable civil debts. This would essentially decriminalize debt collection and apply well-established and efficient civil debt collection techniques to the collection of criminal debts. [11](#)

Legislation to achieve this result has not yet been offered and, once offered, may take time to enact. In the meantime, courts and officers will have to muddle through, setting initial schedules at sentencing that will have to be reviewed by the court at the commencement of supervision and thereafter in many cases. As noted above, however, the collection of monetary penalties is not the only area in which courts of appeals have limited the ability of the courts to rely upon officers to execute their sentences. The case law in these areas is not so well established. Officers in circuits that have not established firm rules in these areas need not necessarily be bound by holdings in other circuits. More importantly, officers' practices in recommending and administering conditions of release could still make differences in the developing case law in some of these areas.

Some courts of appeals have determined that the district court may not delegate to the probation officer the decision regarding an offender's drug or mental health treatment. In *United States v. Kent*, [12](#) for example, the offender had been convicted of mail fraud. There was information that the defendant presented some risk of physical abuse against his wife. In light of this information, the court imposed two special conditions: that the defendant have no contact with the wife absent the probation officer's approval, and that the defendant "participate in an appropriate psychological/psychiatric counseling program as directed by his probation officer." At the

sentencing, the court stated that the latter condition was not intended to require *any* counseling unless the probation officer determined that it was necessary. When asked if the defendant could move for a reconsideration of any order by the officer regarding counseling, the court replied that he would not be "riding herd" on the officer's decision, but that he would hear such a motion if necessary. The court of appeals vacated the imposition of the condition because it reasoned that the probation officer, rather than the court, retained ultimate responsibility over the defendant's counseling.

Kent was distinguished by the First Circuit in *United States v. Allen*, [13](#) where the district court had imposed a condition requiring the defendant to "participate in a program of mental health treatment as directed by the probation officer." After examining the record of the case, the court of appeals held that this condition required the defendant to participate in mental health treatment. It authorized the probation officer only to determine the details of that treatment. Accordingly the condition was upheld. A number of other courts of appeals have adopted the rationale of *Kent* to foreclose courts from leaving to probation officers the responsibility of prescribing treatment. [14](#) While required drug, alcohol, mental health, or sex offender treatment can have a serious impact on the freedom of an offender, probation officers may be in the best position to determine if such treatment is necessary. The court likely has some evidence at sentencing that the offender needs treatment, but there may be insufficient information to make an informed decision. Furthermore, after sentencing and during supervision, an offender's situation may suddenly change in a way that makes the immediate commencement of treatment critical to the success of the treatment and the protection of the public. A requirement that, before any treatment takes place, the officer must petition the court and a hearing must be held under the provisions of F.R.Crim. P. 32.1 delays treatment to the detriment of the offender and perhaps the public. And it squanders the professional training and judgment of probation officers. In the face of *Kent* and similar cases, the district court might simply impose treatment whenever there is evidence that treatment could be useful. But this is not only unfair to the offender who might not need treatment, but is wasteful of limited treatment resources.

The district court might attempt to construct a condition that structured the probation officer's discretion to require an offender to seek treatment. Such a condition would retain ultimate control in the court by limiting the circumstances in which a probation officer could order treatment. However, courts of appeals have not been receptive to this kind of condition. In *United States v. Melendez-Santana*, [15](#) the district court had imposed a condition stipulating that if the defendant tested positive, he would be required to participate in drug treatment as determined by the probation officer. The First Circuit held that even this condition delegated too much authority to the probation officer.

The Seventh Circuit has determined that district courts must actually determine the number of drug tests to which defendants must submit pursuant to the mandatory testing provisions of 18 U.S.C. § 3583(d). In response to that case, *United States v. Bonanno*, [16](#) the Office of Probation and Pretrial Services was forced to suggest that probation officers in the Seventh Circuit recommend that the court not rely on the mandatory drug testing condition to deal with defendants whose history suggests a need for drug treatment. Instead officers should recommend in those cases a special treatment condition. Arguably, there was an advantage to this process; officers and courts were required to focus courts on the actual testing and treatment needs of offenders instead of relying on the statutorily mandated testing condition, but it created unnecessary inefficiencies.

The minutiae of decision-making that these cases are imposing on district courts are unjustified and counter-productive. The probation officer, who is in a much better position to observe the offender's needs, is permitted only to determine the precise number within that range and the timing of the tests. [17](#) It is hard to ignore the irony that courts are offering probation officers wider latitude in conducting full-blown searches of offenders and their homes [18](#) at the same time that they are restricting their authority to determine the details of much less intrusive drug testing.

These cases in the First, Second, Seventh, Eighth, and Tenth Circuits create another unnecessary

formalism in the supervision process and could delay the commencement of necessary treatment, but they are not otherwise difficult to deal with. The probation office must simply make a determination to recommend treatment at the time of sentencing or, if that has not been done, at such time during supervision as it becomes apparent that treatment is necessary. Unfortunately, given the potential difficulties in changing conditions of supervision, the officer may wish to consider erring on the side of an order of treatment. There should be good grounds for the recommendation, but if there is any doubt, perhaps that doubt should be resolved in favor of a treatment condition. The recommended condition should be clear that the probation officer's function is to determine the manner and type of treatment. With respect to the number of tests to fulfill the mandatory testing requirement under 18 U.S.C. §§ 3563(a)(5) and 3583(d), I believe the minimum should be ordered, and for offenders who need it, an additional, special condition that permits ongoing testing. If the court wishes to set a number of tests greater than the minimum under those sections, a range would be safe in circuits other than the Seventh.

In other circuits, I suggest that officers consider continuing to recommend conditions that allow officers to determine treatment. Such recommendations should be made only in those cases in which there is some evidence that treatment might be justified. Districts should have policies and procedures in place that assist officers in making the treatment decision. The existence of such policies could blunt arguments that officers might act arbitrarily. Depending on the potential length and intensity of treatment, and the cooperation of the offender, officers may also wish to consider approaching the court for a modification of conditions to require treatment. This could be done after the reference to treatment, so as to avoid any delay in commencement of treatment.

It may be that some of the restrictions on the district courts' authority to permit the probation officer to make supervision decisions could have been avoided by a more prudent and more thoroughly supported recommendation. For example, some sex offender specialists believe that these offenders should be barred from viewing any sexually stimulating material. This includes not only legal pornography, but suggestive pictures that are available in mainstream media. The idea is that these depictions objectify women and support the sex offenders' view of the world. Accordingly, a frequently recommended condition of release has been one that simply prohibits pornography, to be defined in more detail by the probation officer or treatment provider. To many people, and to most courts of appeals, however, this restriction seems heavy-handed. Apparently, because it has not been cited in opinions, the rationale for the condition has not been articulated on the record. Or, if articulated, it was not accepted.

First, in *United States v. Loy*, [19](#) the offender was convicted of receiving child pornography. The district court imposed a condition of supervised release that prohibited him from possessing "all forms of pornography including legal adult pornography." The Third Circuit determined that this condition was simply too vague. It permitted the probation officer too much discretion to identify what was pornography. Likewise, in *United States v. Guagliardo*, [20](#) the Ninth Circuit relied upon *Loy* to invalidate a similar condition as violating the offender's due process right to know what behavior will result in a violation of supervision. As in *Loy*, the Ninth Circuit did not accept the argument that the probation officer could assist the defendant in defining what was prohibited by the condition. The term "pornography" was simply too subjective and would allow too much discretion and personal judgment to be exercised by the probation officer.

Recent cases in the Fifth and Eighth Circuits have resisted this trend, [21](#) and these cases offer an opportunity to limit its damage. Officers considering these kinds of conditions need to be able to clearly articulate how the condition is necessary for the rehabilitation of the particular offender and how the condition will protect the public from that offender. Officers may want to try to provide more explicit definitions of the kind of pornography to be prohibited even if these may not be as comprehensive as they believe is ideal. Scientific support for the thesis that pornography enables these kinds of offenders should be available to the court and noted in the recommendation. The courts of appeals may still not be impressed with probation officers' ability to make the decisions regarding sex offenders' access to pornography, but so long as there is a chance that this area of probation officer discretion will survive, it is worth the effort to preserve it.

Another example of the trend of formalism is one that has not been specifically characterized as an improper delegation, but like the pornography condition, involves the exercise of a probation officer's discretion. This is the problem of barring offenders from using the Internet. A number of courts of appeals have refused to allow district courts to impose conditions barring offenders from having access to the Internet even if some of those offenders had histories of using the Internet for activities that are illegal. ²² This development is particularly damaging to officers' ability to protect the public in appropriate cases. The Internet ban is clean, efficient, and effective. It does not require the probation officer to search an offender's computer. It is more effective than the threat of a search, which, if successful, will likely result in revocation. It is more protective of the public and more geared to rehabilitation than incarceration.

Fortunately, this is also an area in which there is not yet unanimity. In *United States v. Crandon*, ²² for example, the court imposed a condition that provided that the offender not "possess, procure, purchase, or otherwise obtain access to any form of computer network, bulletin board, Internet, or exchange format involving computers" without prior approval of the probation officer. The offender challenged the condition, but the court of appeals found the condition was reasonably related to the goal of deterring defendants from engaging in further criminal conduct and in protecting the public. This was particularly important here, where the defendant had used the Internet to lure a minor to his home, where he molested her.

In *United States v. Walser*, ²⁴ the court permitted a condition that prohibited access to the Internet. The defendant had been convicted of possession of child pornography. The pornography had been discovered on the defendant's computer in a drug investigation. The court distinguished other decisions because the defendant was not completely banned. In this case the condition actually said that he was prohibited use or access to the Internet without the permission of the probation officer. Here is the rare case of a court of appeals upholding a condition because of the professional ability of the probation officer to make appropriate decisions. Other cases recently have taken similarly favorable positions. ²⁵

This is another area in which careful presentence work could limit the trend. Officers should limit recommending Internet bans to situations in which the potential for harm caused by the misuse of the Internet is demonstrable. It will also be helpful to use the "safety valve" relied upon in *Walser*, that allows the probation officer to permit use of the Internet in appropriate circumstances.

Not all attempts to cabin probation officers' discretion have been welcomed by the courts of appeals. Some years ago, there was an effort by defense counsel to limit probation officers' ability to commence revocation of supervision. Fortunately, no court of appeals accepted this challenge to the authority of the probation officer to file the Form 12C with the court to seek the court's approval of the initiation of a proceeding. ²⁶ Indeed, these cases are filled with citations to long-standing authority endorsing the role of the probation officer to function as an arm of the court. But this kind of good judgment is not necessarily a harbinger of future treatment of these issues. The Second Circuit has held that the probation officer is not authorized to make a decision to give a third-party risk warning if the warning could result in a loss of the offender's employment. ²⁷ This unfortunate and potentially dangerous decision was based upon the provision of the third-party risk guidelines ²⁸ that indicates that if the offender strongly objects to a warning, the officer should approach the court for an order or a special condition authorizing the warning, and on the sentencing guideline provision that requires the court, before imposing a condition restricting an offender from engaging in a specific occupation, to make certain findings regarding the necessity for such a condition. ²⁹ The Office of General Counsel originally advised officers in all districts to follow the holding in this case, but recently, because the case has been followed in no other circuit, it is clear that officers in circuits other than the Second should not be bound by the holding.

But, in addition to the suggestions above, efforts to increase the formalization of supervision might also be contested by a greater understanding of basic principles regarding the purpose of supervision and probation officers' role in supervision. Officers can assist United States Attorneys offices in defending cases in which conditions are challenged by reminding them of

these principles.

It seems clear that most of the appellate decision-making here has not been adequately sensitive to these principles. It is well accepted that the purpose of probation and supervised release is twofold: rehabilitation and protection of the community. Courts impose conditions to prevent future criminal activity, otherwise protect the public and to provide the offender with the services necessary to assist him to become a law-abiding citizen. ³⁰ Part of the process of becoming a law-abiding citizen is to fulfill the obligations imposed by the court. The probation officer, who in the federal system is appointed and directed by the court that imposes those conditions, is responsible for the supervision of the offenders. He is specifically charged with the responsibility of monitoring the offender's compliance with the conditions and "using all suitable methods, not inconsistent with the conditions specified by the court, to aid a probationer or a person on supervised release who is under his supervision, and to bring about improvement in his conduct and condition." ³¹

While probation officers are considered law enforcement officers for some purposes, their sole function is not to solve crimes and see to it that perpetrators are imprisoned. They have, in my view, a much more difficult job. It is their responsibility to try to effect change in offenders' lives. The effective performance of this responsibility requires the flexibility to exercise their judgment. Indeed, it has been argued that officers need a degree of discretion in offenders' incentives to comply with the conditions of release. It is important that offenders perceive that there are sure and rapid consequences to breaking the rules and rewards for following the rules. Officer flexibility promotes this perception. ³²

The performance of these functions should be enhanced by the location of United States probation officers in the judicial branch, not the executive, prosecutorial branch of government. The "United States Probation Office is established pursuant to the direction of Congress as an arm of the United States District Court." Therefore, "it is reasonable to view the United States Probation Office itself as a legally constituted arm of the judicial branch." ³³ The restrictions placed upon officers' assistance to the district courts, in my view, misperceive the function and placement of probation officers within the judicial branch. There is some reason to hope that this misperception can be corrected. The First Circuit, not a circuit that has been overly sensitive to the important roles probation officers play in supervision, recently recognized their probation officers' place in the judicial branch:

Delegation to probation officers may be less likely to be problematic than those involving other officials because probation officers, while not judicial officers, are statutorily bound to "serve within the jurisdiction and under the discretion" of the appointing court. 18 U.S.C. § 3602(a). They function as an arm of the court, and the Sentencing Guidelines themselves entrust many correctional decisions to their discretion, *see, e.g.*, U.S.S.G. § 5D1.3(d)(7) (recommending that sex offenders participate in a treatment program "approved by the United States Probation Office"). As a practical matter, moreover, many district courts must rely on probation services to ensure the efficient administration of justice in criminal cases. For this reason, at least one court of appeals has suggested that delegations like the one in this case [polygraph testing, the frequency and timing to be determined by the probation office] are permissible in part because of the unique relationship between probation officers and district courts. [citing the Eleventh Circuit cases, *United States v. Taylor* and *United States v. Zinn*. See Note 25] [other citations omitted] ³⁴

Although this language was located in a footnote, it is a hopeful sign that courts of appeals may be rethinking the decisions that treat the probation officer as an adversary of the defendant and a mere functionary in the criminal justice system. As discussed above, officers can help in stemming the erosion of the probation officer's discretion by recommending well-supported conditions. A few recent cases suggest that this may be a very good time to step up these efforts and support the possible second thoughts of the courts of appeals. So, unlike Scott Carey in *The Incredible Shrinking Man*, probation officers are not consigned to shrink into oblivion. There is

yet a role in supervision and quality work by officers can help to preserve that role.

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REVIEWS OF PROFESSIONAL PERIODICALS

The Prison Journal

REVIEWED BY SAM TORRES

"Supermax Prisons: Their Rise, Current Practices, and Effects on Inmates," by Jesenia Pizarro, and M.K. Vanja Stenius (June, 2003, Vol. 84, no. 2, pp. 248–264)

Since the late 1970s, a number of conservative crime control strategies like determinate sentencing, capital punishment, mandatory minimums, and elimination of parole, all seeking to meet the goals of deterrence, retribution, and incapacitation, have gained supremacy within the criminal justice system. One particularly harsh strategy, the supermax prison, is the focus of this article. Pizarro and Stenius examine the roots of supermax prisons, how they operate, and the effects on the inmates of these modern-day dungeons. These inmates are often referred to by prison administrators as "the worst of the worst," who need to be removed from the general population because they pose a danger to other inmates and staff and/or are so disruptive that they must be isolated.

The article opens with a few statistics to demonstrate the growth of the prison population in the U.S. since 1973. Between 1973 and the early 1990s, the number of prisoners grew by 332 percent, while the rate of incarceration increased over 200 percent. As the number of inmates grew rapidly, the characteristics of inmates began to change due to an influx of younger and more violent offenders. As prisons became more and more violent during this period, correctional administrators examined various strategies to manage this increasingly "worst of the worst" inmate population. Thus emerged the supermax prison, based on the Federal Bureau of Prisons (BOP) model developed in 1983 at the U.S. Penitentiary at Marion, Illinois. Some believe that the U.S. Penitentiary at Alcatraz provided the foundation for the modern-day supermax facility. Alcatraz, the infamous federal prison located in San Francisco Bay, overlooking Fisherman's Wharf, housed the most notorious and disruptive inmates of the early and mid-1900s. The BOP closed Alcatraz in 1963 and opened the U.S. Penitentiary at Marion in 1969. Between 1969 and 1983 Marion was a level 5, maximum security prison, housing some of the most dangerous inmates in the federal system. In 1972, the BOP built H unit at Marion, which was designed to house the most disruptive inmates. Escalating violence continued at Marion through the mid-70s, and as a result, a new administrative maximum-level unit was built. This in essence became a higher security level 6 within a level 5 (maximum) security facility. The mission of this administrative unit was to provide long-term segregation for inmates who threatened or injured other inmates or staff members.

Violence at Marion continued to escalate during the early 80s, culminating in the killing of two correctional officers on the same day in the fall of 1983. As a result, Marion was placed on a complete lockdown and remained in lockdown, thus becoming the first supermax institution in the country that confined all of its inmates in their cells 23 hours per day. The warden and correctional officers at Marion claimed that this strategy reduced assaults and made the prison

environment safer. As a result, other states began to emulate the Marion model. As of 1997, approximately 34 states operated one or more supermax facilities, with 55 supermax prisons or units in operation nationwide.

Like almost all correctional strategies, the use of supermax facilities has not been without controversy, and in some quarters there has been intense opposition. Opponents to this form of extreme incarceration argue that it violates prisoners' rights, contributes to a deterioration in the physical and mental condition of inmates, results in increased suicides, and is extremely expensive. Those who support supermax incarceration argue that these facilities are needed to enhance the security of other inmates and staff, and to decrease the tremendous influence and disruption of prison gangs. Above all else, order must be maintained and some inmates simply cannot be kept in the general population. Thus, supporters of supermax prisons argue that a special high-security facility is needed for the most dangerous and disruptive of inmates.

The authors indicate that while the empirical research on supermax prisons is somewhat limited, what little has been done on the topic seems to suggest that this form of incarceration has the potential to damage the mental health of inmates while failing to meet the purported goals of deterring inmates from violent and disruptive behavior. That these prisons seem not to meet their goals, according to the article, results in added problems and increased cost to public budgets. So, early on in this article, it becomes quite clear that the authors have concluded that supermax prisons are destructive and expensive.

In supermax prisons inmates are kept in their cells between 22½ to 23 hours per day, coming out only to exercise for approximately one hour per day. Because these inmates are deemed to be the most dangerous, they take part in virtually no educational, religious, or other programs. The unambiguous purpose of this form of incarceration is total control, and with this stated objective, there is little room or flexibility for any therapeutic intervention. Although the operation of supermax facilities varies from jurisdiction to jurisdiction, all facilities possess common features, which include confinement in their cells 22 to 23 hours per day, limited human contact, and restraint—usually of both hands and feet—for any movement outside the cell. Criteria for placement in a supermax facility for most jurisdictions are based on the inmate's behavior in prison and not the conviction offense or prior record. Supermax confinement is generally reserved for those inmates that are deemed to threaten the safety, security, or orderly operation of the facility where they have been serving their sentence.

Pizarro and Stenius report that only 23 jurisdictions have written criteria outlining how an inmate can earn a transfer back into the general population. The amount of time that inmates serve in supermax custody also varies across jurisdictions. Most inmates are serving indeterminate placement in these facilities and the amount of time that they remain in total isolation is generally determined by the perceived risk of the inmate. Thus, an inmate may either be returned to general population or released to the community when his or her sentence is completed.

Needless to say, this type of incarceration is more expensive than maximum, medium, and minimum security prisons. The average daily cost for inmates at the supermax facility in Colorado in 1999 was \$88.72, compared to the daily cost of \$50.82 for a maximum security prison. Annually, the cost per year in a supermax prison was \$32,383 compared to \$18,549 for a maximum security prison. The form of incarceration raises legal and ethical issues as well; however, the overall constitutionality of supermax prisons remains unclear. Many scholars and practitioners argue that the living conditions and treatment provided to inmates in these facilities do not meet the standards of the 8th Amendment, while some federal court judges have repeatedly ruled that prolonged confinement in supermax conditions is cruel and unusual punishment only for the mentally ill.

That the pains of imprisonment in a supermax facility are more severe than those of a maximum security prison are acknowledged by proponents and opponents. Opponents of supermax prisons argue that a major concern is the potential effect on inmates' mental health because of the total isolation and lack of activity. The Pennsylvania Prison System model of the 1800s was abandoned largely because of the physical and mental deterioration of inmates, the increased rate

of suicide, and the high cost of this type of imprisonment. Thus, the reinvention of supermax facilities in 1983 is simply a recycling of the Pennsylvania System that long ago was found to be too harmful to the mental and physical well being of inmates as well as being too costly. Although no research to date has directly examined the effects of supermax confinement, isolation research supports the notion that greater levels of deprivation contribute to more psychological and emotional problems. The authors cite research demonstrating that as inmates face greater restrictions and social deprivations, their levels of social withdrawal increase. Other studies have found that segregation tends to result in such forms of psychological distress as depression, hostility, severe anger, sleep disturbance, physical symptoms, and anxiety. Thus, although no research has directly examined the effects of supermax confinement, the general consensus is that increasing the level of restrictions increases the risk for psychological and emotional problems. The authors cite numerous studies which have found that prolonged isolation results in a multiplicity of serious psychiatric conditions, up to and including losing touch with reality (psychosis).

Although the weight of the research supports the destructive impact of isolation, a few studies have found that such confinement can result in desirable behavior modification. A 1975 study found that short-term segregation can be an effective tool for dealing with disruptive inmates, while a 1982 study concluded that there is no support for the claim that solitary confinement is adverse, stressful, or damaging. Although most of these studies possess some methodological problems, taken together, they do suggest that isolation negatively influences inmates' psychological and emotional well-being. While it is acknowledged that many inmates come to prison with pre-existing psychological problems, supermax incarceration is likely to exacerbate their problems.

In addressing the deterrent effect of supermax confinement, the authors suggest, consistent with Classical Theory, that the punishment must be administered with certainty, severity, and celerity (promptness). The article concludes that it is unlikely that supermax facilities serve as a deterrent on the basis of certainty since placement in these facilities is relatively rare and often based on administrative decisions using risk factors over which the inmates have little control. The perceived certainty of placement, according to the authors, is likely to be low and inmates observe that disruptive or violent behavior does not generally result in a transfer to a supermax facility. Principles of deterrence theory argue that severity is less important than the certainty of punishment. The authors cite existing empirical literature that suggests that placement of problematic inmates in supermax prisons does not decrease prison violence. Furthermore, research in the area of deterrence indicates that in most cases, deterrence as a correctional policy does not work.

In conclusion, the authors in reviewing the literature on supermax incarceration and deterrence/isolation studies find what early correctional administrators/practitioners discovered almost 200 years ago under the Pennsylvania System, that this type of incarceration is not only very expensive but leads to mental/physical deterioration and increased suicides. Ironically, in adopting the supermax prisons, the correctional system seems to have suffered from a deficiency common to many of our offenders: a failure to learn from experience. In agreement with most correctional progressives, these authors also conclude that inmates who have been abused, treated violently, and confined in dehumanizing conditions that threaten their mental health may well leave prison angry, dangerous, and far less capable of leading law-abiding lives than when they entered prison. Angry, violent, and dangerous people may be released back into the community more angry, more violent, and more dangerous than when they entered our "correctional" institutions, *and* the public will pay over \$30,000 per inmate annually to make them more likely to re-offend and victimize us.

This article clearly and (I believe) accurately outlines the damaging effects of supermax confinement. Correctional administrators had good reason to abandon this mode of incarceration almost 200 years ago. However, as a career correctional practitioner, I have observed first-hand the increasingly dangerous and violent offenders entering the system. While it is easy to identify current correctional strategies that are counterproductive, it is more difficult to know how to protect correctional officers, and for that matter, thousands of inmates serving time in maximum

custody institutions. Correctional officers expect to return home at the end of their shift and inmates should expect that they will survive to complete their sentences without getting a shank in their back, having their throat slit, or being passed around as a sexual possession being repeatedly sodomized by sexual predators. While it is acknowledged that supermax facilities are probably over-utilized, and that many inmates serving time in these facilities could safely be released back into the general population, we are still left with the problem of what to do with the small percentage of sexual predators, violent psychopaths, prison gang members, or inmates that have little to lose by assaulting a prisoner or staff member. What are we to do with the inmate serving a life sentence without parole who kills an inmate or staff member with little remorse or fear of consequences? Should that inmate remain in general population?

The point here is that while it is easy for us academicians and researchers to highlight poor correctional practices, it is much harder to identify alternative constructive strategies to deal with the "worst of the worst." My own opinion is that there are way too many inmates serving sentences in a supermax facility; a significant percentage could be reintegrated back into the general population. A formal mechanism must be developed to determine if "disruptive" inmates may be suffering from mental or emotional problems, thus needing psychiatric care rather than total isolation. All jurisdictions must establish criteria outlining how long an inmate will remain in isolation and how inmates can work their way back to the general population. For those inmates that must be kept physically separate from other inmates and staff, the condition of their isolation should be mitigated by more time out of their cells and with the opportunity to participate, if only to a limited extent, in some type of programs. While it may be argued that many of these supermax inmates already have a diminished sense of humanity, in a civilized society it is incumbent upon us to encourage the maintenance of whatever humanity remains.

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JUVENILE FOCUS

BY ALVIN W. COHN, D.CRIM.

President, National Juvenile Court Services Association

OJJDP Wins Award

OJJDP is one of five recipients of the prestigious *Innovations in American Government Award* from the Ash Institute for Democratic Governance and Innovation at Harvard University and the Council for Excellence in Government. OJJDP received the award in recognition of its Performance-Based Standards for Youth Correction and Detention Facilities project. Developed by the Council of Juvenile Correctional Administrators, the project collects information from juvenile facilities and tracks injuries, assaults, suicidal behaviors, time in isolation, and academic performance to make needed improvements. Barbara Allen-Hagen serves as the OJJDP Program Manager. For additional information: <http://www.excelgov.org/displayContent.asp?keyword=aiHomePage>.

OJJDP News @ a Glance

The July/August 2004 issue is now available and contains news about OJJDP activities, publications, funding opportunities, and events. The current issue's lead article presents an overview of training and technical assistance opportunities. The free bimonthly publication will be available online only with the close of the current year. It can be found at: <http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11793>.

Assessment Instrument

Assessing the Mental Health Status of Youth in Juvenile Justice Settings (NCJ 202713) reports the results of a study of the Voice DISC-IV, a self-administered version of the Diagnostic Interview Schedule for Children (DISC). See: <http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11718>.

Publications Available

- *Project Childsafe* reports on a nationwide program that distributes free gun locks and teaches firearm owners how to handle and safely store their firearms. <http://www.ncjrs.org/html/bja/204959/>
- *Sourcebook of Criminal Justice Statistics, 2002* is the 30th edition. It provides data from over 100 sources and has over 600 tables. The CD-ROM includes the 1994–2002 editions. Ordering information is available at <http://www.ojp.usdoj.gov/bjs/cd.htm#Sourcebook>.
- *Detection and Prevalence of Substance Abuse Among Juvenile Detainees* presents study findings that indicate high rates of drug use among high-risk juvenile detainees. The authors conclude that self-reporting and urinalysis are the best approaches to detection.

<http://ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11680>.

- *Prostitution of Juveniles: Patterns from NIBRS* draws on data from the FBI's National Incident-Based Reporting System to examine this underreported problem. The authors provide a profile of juvenile prostitution, noting how it differs from its adult counterpart. <http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11663>.
- *Evaluating G.R.E.A.T.: A School-Based Gang Prevention Project*. The Gang Resistance Education and Training program is a nine-hour gang prevention program administered by uniformed law enforcement officers to middle-school-aged youths; this is a summary of a five-year study. <http://www.ncjrs.org/pdffiles1/nij/198604.pdf>.
- *Weed and Seed Best Practices: Evaluation-Based Series, Vol. 2* shares programs and practices that have been successful in reducing crime, violence, and juvenile delinquency and increasing neighborhood vitality and economic strength. <http://www.ojp.usdoj.gov/ccdo/pdfxt/1769-02WeedSeed.pdf>
- *Access to Counsel* examines access to legal counsel in the juvenile justice system. It describes problems affecting access at each stage of the juvenile justice process, discusses factors that hinder access to and the quality of counsel, and identifies elements of effective counsel. It also identifies five approaches to improving access, including program initiatives, legislation, administrative reforms, research, and litigation. <http://ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11679>.
- *America's Children in Brief: Key National Indicators of Well-Being 2004* is a compilation of statistics about children's economic security, health, behavior, social environment, and education. OJJDP is one of 20 federal agencies collaborating to produce this report, which presents the most recent available data. <http://ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11716>.

Sexual Misconduct in Schools

More than 4.5 million students endure sexual misconduct by employees at their schools, from inappropriate jokes to forced sex, a report to Congress by Hofstra University states. The best estimate available shows nearly one in 10 students faces misbehavior ranging from unprofessional to criminal some time between kindergarten and 12th grade. The report was required by the No Child Left Behind law and is the first to analyze research about sexual misconduct at schools.

Federal Justice Statistics

BJS sponsors the *Federal Justice Statistics Resource Center*, which provides easy, online access to comprehensive case processing information describing persons:

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- Released or held before court disposition
- Prosecuted and sentenced in the federal courts
- Appealing conviction or sentence
- Under federal correctional supervision

See: <http://fjsrc.urban.org>

School Violence

The number of teens skipping school for fear of getting hurt climbed over the past decade, even though violence in the schools actually declined, reports the Centers for Disease Control and Prevention. The CDCP attributes the increase in part to a rise in schoolyard threats and lingering

fear from the Columbine High School massacre in 1999 and other school shootings in the 1990s. More than one out of every 20 high school students—5.4 percent —skipped at least one day of school because of safety concerns in 2003, which is up from 4.4 percent in 1993. But the percentage of students who said they had been in a fight declined from 42.5 percent in 1991 to 33 percent in 2003.

Emphasis on New Math

Federal statistics show that the percentage of 13-year-olds taking algebra or pre-algebra has risen sharply from 35 percent in 1986 to 56 percent in 1999. The percentage of high school graduates who have taken algebra II also has risen, from 35.6 percent in 1982 to 64.3 percent in 2000. In many districts, it tops 90 percent. A popular algebra textbook from 1970, it is reported, had 460 pages. The 2004 edition has nearly 800 pages. The percentage of high school graduates earning minimum credits in general math has fallen since the 1980s as the percentage earning credits in algebra, geometry, and calculus has increased. In 1982, 4.7 percent of students took calculus; in 2000, the percentage rose to 11.6. With regard to geometry, in 1982, 45.8 percent of students took geometry; in 2000, the percentage increased to 78.3.

Hispanics and College

Young Hispanic high school graduates are as likely as their white counterparts to enter college, yet half as likely to finish with a bachelor's degree, reports the Pew Hispanic Center. The lower college completion rate isn't necessarily a sign that Hispanic students are less prepared for college, though inadequate preparation in elementary and high schools remains a barrier, the study finds.

Even well-prepared Latino undergraduates disproportionately enroll in less selective colleges, which typically have lower bachelor's degree completion rates than more selective schools. And even when they enroll on the same campuses, white and Latino undergraduates have different experiences. Among the findings based on recent U.S. Department of Education data:

- Of the best-prepared students, nearly 60 percent of Latinos attend non-selective colleges and universities, compared with 52 percent of white students.
- Among students who are less prepared, nearly 66 percent of Latinos initially enroll in "open door" institutions such as public two-year colleges and vocational- technical institutes, while less than 45 percent of similarly prepared white students start college at such institutions. Among two-year college entrants who are "minimally qualified" for college, 16 percent of whites finished a bachelor's degree vs. seven percent of Hispanics.
- A "notable exception" occurs among the nation's most selective colleges and universities, where Latinos enroll at the same rate as their white peers. Latinos are also more likely to complete their bachelor's degree at such institutions than they are at less selective schools, though at lower rates than white students (83 percent vs. 90 percent). Still, the report stresses that the top schools represent "a very limited universe" of "highly qualified" students.

Back to School Advice

Advice and questions about sending youngsters back to school can be found online at life.usatoday.com or via email at betterlife@usatoday.com. Issues covered include:

- What can working parents do to be involved in school?
- How can parents help their kids adjust to having multiple teachers in middle school?
- How hard should a parent push a high school student to take the most challenging college prep courses?

Home Schooling

Almost 1.1 million students were homeschooled last year, up 29 percent from 1999, the last time the Education Department's National Center for Education Statistics gathered data. In surveys,

parents offered two main reasons for choosing home schooling: 31 percent cited concerns about the environment of regular schools and 30 percent wanted the flexibility to teach religious or moral lessons. Third, at 16 percent, was dissatisfaction with academic instruction at other schools. Still, the number of home-schooled students accounts for a small part—just 2.2 percent—of the school-age population in the U.S., ages five through 17. The National Center for Home Education, which promotes home-schooling and tracks laws that govern it, says the new figures accurately reflect the interest in home-schooling, but underestimate the number of children involved. It puts the number at two million.

Closed Autos and Children

A growing number of children are dying or being injured after being left alone in a hot car, and children's advocates say not enough is being done to prevent such deaths, which the government does not even track. A recent report indicates 214 cases of heat-related deaths from 1998 through July 31 of children who were left in cars. Last year, there were 42 cases, up from 25 in 1999. Most of the children were ages two months to five years old. The National Highway Traffic Safety Administration in a recent report identified 116 deaths and 39 injuries in children nine and younger from 1998-2002.

Correctional Population

The Bureau of Justice Statistics (BJS) reports that the nation's combined federal, state, and local adult correctional population reached a new record of almost 6.9 million men and women in 2003, an increase of 130,700 people since December 31, 2002. Details can be found at <http://www.ojp.usdoj.gov/bjs/abstract/ppus03.htm>.

Profile of Jail Inmates, 2002, including offenses, conviction status, criminal histories, sentences, time served, drug and alcohol abuse and treatment, and family background can be found at: <http://www.ojp.usdoj.gov/bjs/abstract/pji02.htm>.

BJS Statistics

The BJS Publications Collection as of December 31, 2003 (NCJ 205170) can be found on a CD-ROM, which contains all of the BJS publications that are available electronically. Documents are presented in Portable Document Format (PDF) and/or ASCII text. See: <http://www.ojp.usdoj.gov/bjs/cd.htm#publications>.

Educational Attainments

More people are finishing high school and obtaining advanced degrees (percent of the population 25 and older):

	2000	2003
High school grad or GED	29.6	29.8
Some college, no degree	20.5	20.3
Associate degree	6.5	7.0
Bachelor's degree	16.0	16.9
Graduate or professional degree	9.0	9.7
High school graduate or higher	81.6	83.6
Bachelor's degree or higher	25.0	26.5

Youth and Mental Health Problems

There is a growing sense of crisis surrounding youth involved in the juvenile justice system who

are experiencing mental health problems, many of whom have co-occurring substance abuse disorders. To respond to these needs, Policy Research Associates has established the National Center for Mental Health and Juvenile Justice with major support from the John D. and Catherine T. MacArthur Foundation and OJJDP. The Center has four key objectives:

1. Create a national focus on youth with mental health and co-occurring substance abuse disorders in contact with the juvenile justice system.
2. Serve as a national resource for the collection and dissemination of evidence-based and best practice information to improve services for these youths.
3. Conduct new research and evaluation to fill gaps in the existing knowledge base.
4. Foster systems and policy changes at the national, state, and local levels to improve services for these youths.

A key part of the Center's mission is to provide practical assistance to all persons interested in mental health and juvenile justice issues. Available resources include:

- A comprehensive database of the best available research and information.
- A compendium of effective and innovative programs and policies.
- A list of experts and technical assistance resources.
- Publications that synthesize existing knowledge.
- For further information, phone 1-866-9NCMHJJ or Email: ncmhjj@prainc.com

Girls and Juvenile Justice

Over the past decade there has been a marked increase in the number of girls arrested in the U.S. Between 1989 and 1999, the number of adolescent girls arrested increased by 45 percent to an estimated 670,800. By contrast, between 1989 and 1999, the number of male juveniles arrested decreased by almost 10 percent.

In 1999, the number of arrests for girls under the age of 18 accounted for 27 percent of all juvenile arrests. In 1997, most girls who were adjudicated delinquent were placed on probation (60 percent) or in a residential setting (22 percent). Between 1988 and 1997, the number of cases resulting in probation or residential placement increased by over 100 percent, and the number of female cases that involved detention increased by 75 percent, surpassing the increase in detention rates for males. A recent study also indicates that 74 percent of the girls compared to 66 percent of the boys meet the criteria for a current mental disorder. Affective disorders were especially prevalent among females, with more than 25 percent meeting criteria for a major depressive episode. Almost half of all female offenders were found to have a substance abuse disorder and more than 40 percent met criteria for disruptive behaviors. For a list of references regarding female offenders, see www.ncmhjj.com/publications/

Victims of Violent Juvenile Crime

OJJDP has recently published *Victims of Violent Juvenile Crime*, an eight-page Bulletin written by Carl McCurley and Howard N. Snyder. It analyzes the extent and nature of nonfatal violent victimizations committed by juvenile offenders based on 1997–1998 data from the FBI's National Incident-Based Reporting System. Incidents analyzed include aggravated and simple assault, sexual assault, and robbery. The Bulletin examines characteristics of victims and offenders (age, gender, and relationship), types of offenses, use of guns, and injuries. The authors note that juvenile offenders are involved in approximately one-fifth of nonfatal violent victimizations.

Most victims of juvenile violence are themselves juveniles and nearly all victims knew the offender. See <http://www.ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11718>.

Justice Expenditure and Employment Data

In 2001, the U.S. spent a record \$167 billion for police protection, corrections, and judicial and legal activities. The nation's expenditure for operations and outlays for the justice system increased 366 percent from almost \$36 billion in 1982 (a 165 percent increase in constant

dollars). Local governments funded nearly half of all direct justice system expenditures. Another 35 percent came from the states. Criminal and civil justice expenditures comprised approximately seven percent of all state and local public expenditures in 2001. Compared to justice expenditures, state and local governments in the U.S. spent almost four times as much on education, almost twice as much on public welfare, and a roughly equal amount on hospitals and health care.

In March of 2001, the U.S. justice system employed nearly 2.3 million persons, with a total March payroll of \$8.1 billion. More than half of all justice system employees worked at the local level (63 percent of these worked in police protection). A third were state employees (64 percent in corrections). The remaining nine percent were federal employees, of whom more than half worked in police protection. Since 1982, total justice expenditures more than quadrupled from nearly \$36 billion to over \$167 billion. The average annual increase for all levels of government between 1982 and 2001 was eight percent. Between 1982 and 2001, per capita expenditures for all levels of government and across all justice functions increased from \$158 to \$585, with corrections having the largest increase: from \$39 to \$200 (over 400 percent). Throughout the justice system, approximately 59 percent of all expenditures were for payrolls.

Per capita justice employment of all state and local governments was about 70 per 10,000 resident population in 2001. Per capita employment was lowest in West Virginia, with 42 full-time equivalent justice employees per 10,000 residents, and highest in the District of Columbia, with nearly 119 employees per 10,000 residents. Vermont had the fewest state and local sworn police per capita, with approximately 15 per 10,000 residents. The District of Columbia also had the highest per capita rate of employment of corrections employees (35), followed by Texas and New York (nearly 33 state and local officers per 10,000 residents). Maine had the fewest state and local employees in judicial and legal services (seven), while New Jersey had the most (25 per 10,000 residents). Full data can be found at: <http://www.ojp.usdoj.gov/bjs>.

Health Insurance Coverage

The U.S. Census Bureau reports that 45 million lacked health insurance last year, which was 15.6 percent of the population, the highest since the share hit a peak of 16.3 percent in 1998. The ranks grew by 1.4 million over 2002. The proportion of children without health insurance did not change, remaining at 11.4 percent.

The percentages of uninsured children by age are:

Under 3 years	10.5 percent
3 to 5 years	10.1 percent
6 to 11 years	11.0 percent
12 to 17 years	12.7 percent

The percentages of uninsured by race are:

White	14.7 percent
White not Hispanic	11.1 percent
Black	19.4 percent
Asian	18.6 percent
Hispanic of any race	32.7 percent

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A Civic Engagement Model of Reentry: Involving Community Through Service and Restorative Justice

¹ The guide is free and can be ordered from the U.S. Department of Justice, Office of Justice Programs, using the NCJ 170021 identification number.

² Morphing is basically the process of combining one image with that of another image to make a new image. For instance, taking a child's head and imposing it on a nude body of an adult. This defers from the Ashcroft decision which found unconstitutional the prohibition against pornographic images that are completely fabricated (See *Ashcroft v. Free Speech Coalition* (00-795) 198 F. 3d 1083, affirmed).

³ The use of a simple banner program and hard copy notices ensures that all parties with use of a monitored computer have no "expectation of privacy."

⁴ Obviously, monitoring software/hardware is only one trigger to instances when a search is required. Others include surprise home visits, law enforcement contacts, third-party contacts, discovery of unmonitored computer, etc.

⁵ The Computer Restriction Monitoring Program is a list of eleven specific restrictions that the offender must comply with. Most are computer-related, such as only accessing or obtaining software/ hardware approved by the U.S. Probation Office. Additionally, the offender is prohibited from attempting to circumvent any monitoring of their computer activities.

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Experiences and Attitudes of Registered Female Sex Offenders

¹ Massachusetts data was not included due to a court injunction prohibiting registration without first providing a hearing to the offender.

² Twenty-three (23) surveys were returned as undeliverable, invalid or non-existent addresses. Nineteen (19) (14.6 percent) of the 130 female registrants in Indiana had mail returned as an incorrect address or undeliverable and 4 (4.1 percent) of those in Kentucky were returned. The final sample of contacted female registered sex offenders, therefore, is 204.

³ It should be noted that response rates for mailed surveys with no sponsorship or follow-ups may run as low as 20 percent (Monette, Sullivan and DeJong, 2005; Hagan, 2003; Miller, 1991).

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Looking at the Law

¹ Universal Studios 1957. Directed by Jack Arnold.

² *United States v. Merric*, 166 F.3d 406, 408-09 (1st Cir. 1999); *United States v. Porter*, 41 F.3d 68, 71 (2d Cir. 1994); *United States v. Coates*, 178 F.3d 681, 683-84 (3rd Cir. 1999); *United States v. Johnson*, 48 F.3d 806, 808-09 (4th Cir. 1995); *United States v. Albro*, 32 F.3d 173, (5th Cir. 1994); *United States v. Davis*, 306 F.3d 398, 424-26 (6th Cir. 2002); *United States v. Ahmad*, 2 F.3d 245, 248-49 (7th Cir. 1993); *United States v. McGlothlin*, 249 F.3d 783 (8th Cir. 2001); *United States v. Gunning*, 339 F.3d 948 (9th Cir. 2003); *United States v. Overholt*, 307 F.3d 1231, 1254-56 (10th Cir. 2002); *United States v. Prouty*, 303 F.3d 1249, 1253-55 (11th Cir. 2002). See also *United States v. Braxtonbrown-Smith*, 278 F.3d 1348, 1356 (D.C. Cir. 2002).

³ Title II, subtitle A of the Antiterrorism and Effective Death Penalty Act of 1996 Pub. L. No. 104-132, 110 Stat. 1214, 1227 (April 24, 1996).

⁴ Pub. Law No. 97-291, 96 Stat. 1248 (Oct. 12, 1982).

⁵ *United States v. Merric*, *supra.*; *United States v. Workman*, 110 F.3d 915, 918-19 (2nd Cir. 1997); *United States v. Miller*, *supra.*; *United States v. Yahne*, 64 F.3d 1091 (7th Cir. 1995).

⁶ *United States v. Mortimer*, 94 F.3d 89, 91 (2nd Cir. 1996); *United States v. Miller*, 77 F.2d 71, 77 (4th Cir. 1996); *United States v. Pandiello*, 184 F.3d 682, 688 (7th Cir. 1999).

⁷ 48 F.3d at 808-09. See also *United States v. Kent*, 209 F.3d 1073 (8th Cir. 2000), which relied upon the *Johnson* analysis.

⁸ See Judge Cohn's concurring opinion in *Weinberger v. United States*, 268 F.3d 346, 362-64 (6th Cir. 2001).

⁹ See 18 U.S.C. §3621. See, e.g., *Bell v. Wolfish*, 441 U.S. 520 (1979).

¹⁰ See, e.g. *United States v. Overholt*, *supra.*; *United States v. Prouty*, *supra.*; *United States v. McGlothlin*, *supra.*; *United States v. Myers*, 198 F.3d 160 (5th Cir. 1999); *United States v. Coates*, *supra.*; *United States v. Mortimer*, 52 F.3d 429 (2nd Cir. 1995). But see *United States v. Dawkins*, 202 F.3d 711, 716 (4th Cir. 2000).

¹¹ JCUS-MAR 04, P. 12.

¹² 209 F.3d 1073 (8th Cir. 2000).

¹³ 312 F.3d 512, 515 (1st Cir. 2002).

¹⁴ *United States v. Peterson*, 248 F.3d 79 (2nd Cir. 2001) (sex offender treatment); *United States v. White*, 244 F.3d 1199 (10th Cir. 2001) (same).

¹⁵ 353 F.3d 93, 100 (1st Cir. 2004).

¹⁶ 146 F.3d 502, 511 (7th Cir. 1998).

¹⁷ *United States v. Melendez-Santana*, 353 F.3d at 103. See also *United States v. Tulloch*, 380 F.3d 8 (1st Cir. 2004).

¹⁸ See, e.g., *United States v. Knights*, 534 U.S. 112, 122 S.Ct. 587 (2002); *Griffin v. Wisconsin*,

483 U.S. 868 (1987); *United States v. Reyes*, 283 F.3d 446 (2nd Cir. 2002).

[19](#) 237 F.3d 251 (3rd Cir. 2001).

[20](#) 278 F.3d 868 (9th Cir. 2002).

[21](#) *United States v. Phipps*, 319 F.3d 177 (5th Cir. 2003); *United States v. Ristine*, 335 F.3d 692, 694-95 (8th Cir. 2003).

[22](#) *United States v. Sofsky*, 287 F.3d 122 (2nd Cir. 2002); *United States v. Scott*, 270 F.3d 6322, 635 (8th Cir. 2001); *United States v. Peterson*, 248 F.3d 79 (2nd Cir. 2001); *United States v. White*, 244 F.3d 1199 (10th Cir. 2001).

[23](#) 173 F.3d 122 (3rd Cir. 1999).

[24](#) 275 F.3d 981 (10th Cir. 2001). See also *United States v. Paul*, 274 F.3d 155 (5th Cir. 2001).

[25](#) *United States v. Taylor*, 338 F.3d 1280, 1284-85 (11th Cir. 2003); *United States v. Ristine*, 335 F.3d at 695-96; *United States v. Zinn*, 321 F.3d 1084 (11th Cir. 2003); *United States v. Deaton*, 205 F.Supp2d 1181 (E.D.Ark. 2002).

[26](#) See *U.S. v. Amatel* 346 F.3d 278 (2nd Cir. 2003); *United States v. Cofield*, 233 F.3d 405, 409 (6th Cir.2000), cert. denied, 532 U.S. 952 (2001); *United States v. Bermudez-Plaza*, 221 F.3d 231, 234- 35 (1st Cir.2000); *United States v. Mejia-Sanchez*, 172 F.3d 1172, 1174-76 (9th Cir.), cert. denied, 528 U.S. 982 (1999); *United States v. Davis*, 151 F.3d 1304, 1306- 08 (10th Cir. 1998).

[27](#) *United States v. Doe*, 79 F.3d 1309 (2d Cir. 1996).

[28](#) *Guide to Judiciary Policies and Procedures*, Vol. X (Probation Manual), Chapt. IV, Part D(3).

[29](#) U.S.S.G. § 5F1.5(a).

[30](#) 18 U.S.C. §§ 3553(a)(1), 3553(a)(2), 3563(b), and 3583(d).

[31](#) 18 U.S.C. § 3603(2), (3), and (4).

[32](#) Mark A. R. Kleinman, *Community Corrections as the Front Line in Crime Control*, 46 U.C.L.A. L. Rev. 1909 (August 1999).

[33](#) *United States v. Inserra*, 34 F.3d 83, 88 (2nd Cir. 1994). See also *United States v. Reyes*, 283 F.3d 446, 555-56 (2nd Cir. 2002).

[34](#) *United States v. York*, 357 F.3d 14, 22 n. 6 (1st Cir. 2004).

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The articles and reviews that appear in *Federal Probation* express the points of view of the persons who wrote them and not necessarily the points of view of the agencies and organizations with which these persons are affiliated. Moreover, *Federal Probation's* publication of the articles and review is not to be taken as an endorsement of the material by the editors, the Administrative Office of the U.S. Courts, or the Federal Probation and Pretrial Services System.

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