

# Federal Probation

<b>Matching Drug-Involved Probationers to Appropriate Drug Interventions</b> .....	<i>Gregory P. Falkin Shiela Strauss Timothy Bohen</i>
<b>A Comprehensive Approach to Supervision in the Southern District of West Virginia</b> .....	<i>Dave Hanson</i>
<b>Perspectives on Parole: The Board Members' Viewpoint</b> .....	<i>Ronald Burns Patrick Kinkade Matthew C. Leone Scott Phillips</i>
<b>Can Probation Be Revoked When Probationers Do Not Willfully Violate the Terms or Conditions of Probation?</b> .....	<i>Dane C. Miller Richard D. Sluder J. Dennis Laster</i>
<b>Screening and Assessing Substance-Abusing Offenders: Quantity and Quality</b> .....	<i>Robert A. Shearer Chris R. Carter</i>
<b>Early Termination: Outdated Concept in an Era of Punitiveness</b> .....	<i>Sam Torres</i>
<b>Communication Between Probation Officers and Judges: An Innovative Model</b> .....	<i>S. Scott MacDonald Cynthia Baroody-Hart</i>
<b>The Strengths Perspective: A Paradigm for Correctional Counseling</b> .....	<i>Katherine van Wormer</i>
<b>Student Interns: Are They Worth the Bother?</b> .....	<i>Eric T. Assur M. Celia Goldberg Lucinda Ross</i>
<b>American Criminal Justice Philosophy: What's Old—What's New?</b> .....	<i>Curtis R. Blakely Vic W. Bumphus</i>
<b>"Up to Speed"—The Nexus Between Drugs and Crime: Theory, Research, and Practice</b> .....	<i>Arthur J. Lurigio James A. Swartz</i>
<b>"Looking at the Law"—The Privilege Against Self-Incrimination and Supervision</b> .....	<i>David N. Adair, Jr.</i>

# Federal Probation

A JOURNAL OF  
CORRECTIONAL  
PHILOSOPHY  
AND PRACTICE

*Published by*

THE ADMINISTRATIVE  
OFFICE OF THE  
UNITED STATES COURTS

**Leonidas Ralph Mecham,**  
*Director*

**Eunice R. Holt Jones, Chief**  
Federal Corrections and  
Supervision Division

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

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

Subscriptions to *Federal Probation* are available from the Superintendent of Documents at an annual rate of \$6.50 (\$8.15 foreign). Please see the subscription order form on the back inside cover of this issue for more information.

## ADVISORY COMMITTEE

### ***Special Advisers:***

**Richard A. Chappell**  
**Merrill A. Smith**

### ***Members:***

**Dan Richard Beto**  
Correctional Management  
Institute of Texas  
Huntsville, Texas

**Honorable James G. Carr**  
United States District Court  
Toledo, Ohio

**Alvin W. Cohn**  
Administration of Justice  
Services, Inc.  
Rockville, Maryland

**Ronald P. Corbett, Jr.**  
Office of the Commissioner  
of Probation  
Boston, Massachusetts

**Michael Goldsmith**  
Brigham Young University  
Law School  
Provo, Utah

**M. Kay Harris**  
Temple University  
Philadelphia, Pennsylvania

**John M. Hughes**  
Administrative Office of the  
U.S. Courts  
Washington, DC

**Russ Immarigeon**  
Hillsdale, New York

**Magdalene Jensen**  
United States Probation Office  
Tucson, Arizona

**Jolanta Juszkiewicz**  
Pretrial Services Resource  
Center  
Washington, DC

**Honorable David D. Noe**  
United States District Court  
St. Louis, Missouri

**Joan Petersilia**  
University of California, Irvine  
Irvine, California

**Martin Rudenko**  
Bournemouth Probation Office  
Dorset, England

**Toby D. Slawsky**  
United States Third Circuit  
Philadelphia, Pennsylvania

**Richard D. Sluder**  
Central Missouri State  
University  
Warrensburg, Missouri

## EDITORIAL STAFF

**Karen S. Henkel**  
*Editor*

**Janice G. Barbour**  
*Editorial Secretary*

***Federal Probation***  
Administrative Office of the  
U.S. Courts  
Washington, DC 20544

**Telephone:** (202) 502-1600  
**Fax:** (202) 502-1677

### **Postmaster:**

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

# Federal Probation

VOLUME LXIII

JUNE 1999

NUMBER 1

## This Issue in Brief

**Matching Drug-Involved Probationers to Appropriate Drug Interventions.**—Some probation departments have established specialized drug supervision units; others use community-based drug treatment programs. Which is the best for managing high-risk probationers with serious drug problems? Authors Gregory P. Falkin, Shiela Strauss, and Timothy Bohen address the importance of matching offenders with the right type of treatment and present findings from an evaluation of the New York City Department of Probation's drug treatment initiative.

**A Comprehensive Approach to Supervision in the Southern District of West Virginia.**—Author Dave Hanson tells how the probation staff in the Southern District of West Virginia developed a comprehensive approach to supervising offenders. The approach focused on five goals: reducing the percentage of unemployed offenders, reducing the percentage of offenders receiving public assistance benefits, reducing violations filed with the court, increasing the collection percentage of court-ordered financial obligations, and increasing the percentage of offenders with at least a GED diploma. How the staff designed a method to measure progress in each area is explained.

**Perspectives on Parole: The Board Members' Viewpoint.**—In deciding whether offenders are ready to return to society, parole board members play a crucial role in the criminal justice process. Authors Ronald Burns, Patrick Kinkade, Matthew C. Leone, and Scott Phillips describe research designed to help detail how and why parole is granted in individual parole cases across the United States. They report the results of a survey designed to determine parole board members' points of view on the purpose of corrections, the problems facing parole boards, changes that might improve the parole board process, rationales to justify parole as an early release mechanism, and more.

**Can Probation Be Revoked When Probationers Do Not Willfully Violate the Terms or Conditions of Probation?**—The foundations of American criminal law suggest that, with rare exception, for an individual to be held liable for a criminal act, there must be some form of culpability on the part of the individual. Yet, in the context of probation revocation, it is less clear as to whether probation can be revoked in instances in which the probationer has not willfully violated the terms or conditions of probation. Authors Dane C. Miller, Richard D. Sluder, and J. Dennis

### CONTENTS

Matching Drug-Involved Probationers to Appropriate Drug Interventions . . . . .	Gregory P. Falkin Shiela Strauss Timothy Bohen	3
A Comprehensive Approach to Supervision in the Southern District of West Virginia . . . . .	Dave Hanson	9
Perspectives on Parole: The Board Members' Viewpoint . . . . .	Ronald Burns Patrick Kinkade Matthew C. Leone Scott Phillips	16
Can Probation Be Revoked When Probationers Do Not Willfully Violate the Terms or Conditions of Probation? . . . . .	Dane C. Miller Richard D. Sluder J. Dennis Laster	23
Screening and Assessing Substance-Abusing Offenders: Quantity and Quality . . . . .	Robert A. Shearer Chris R. Carter	30
Early Termination: Outdated Concept in an Era of Punitiveness . . . . .	Sam Torres	35
Communication Between Probation Officers and Judges: An Innovative Model . . . . .	S. Scott MacDonald Cynthia Baroody-Hart	42
The Strengths Perspective: A Paradigm for Correctional Counseling . . . . .	Katherine van Wormer	51
Student Interns: Are They Worth the Bother? . . . . .	Eric T. Assur M. Celia Goldberg Lucinda Ross	59
American Criminal Justice Philosophy: What's Old—What's New? . . . . .	Curtis R. Blakely Vic W. Bumphus	62
Departments		
Up to Speed . . . . .		67
Looking at the Law . . . . .		73
Juvenile Focus . . . . .		79
Reviews of Professional Periodicals . . . . .		82
Your Bookshelf on Review . . . . .		85
It Has Come to Our Attention . . . . .		88

Laster review recent cases in which courts have both permitted and denied revocation in instances in which offenders did not willfully violate probation.

**Screening and Assessing Substance-Abusing Offenders: Quantity and Quality.**—The sheer number of offenders with substance abuse problems continues to be a major concern for the criminal justice system. Screening and assessment is the beginning of the substance abuse treatment process. Authors Robert A. Shearer and Chris R. Carter discuss the importance of proper screening and assessment in creating effective treatment plans and in using scarce treatment resources wisely. They address such issues as using interviews versus self-reports, screening instrument accuracy, screening offenders for psychopathy, and readiness screening.

**Early Termination: Outdated Concept in an Era of Punitiveness.**—Is the concept of terminating an offender's supervision early incompatible with the punitive philosophy of sentencing that is prevalent today? Author Sam Torres addresses probation officers' use of early termination as an incentive to encourage offenders to do well on supervision. The article discusses ways in which officers can offer incentives—for instance, in selecting the level of drug testing required or by reducing the supervision level—and addresses the appropriateness of raising the issue of early termination at the initial interview. Statutory authority for early termination, supervision policy, and actual early termination practice in four districts also are presented.

**Communication Between Probation Officers and Judges: An Innovative Model.**—Judges traditionally have relied on information from probation officers in making sentencing decisions. In recent years, however, the dramatic increase in workload has made officer communication with the court increasingly difficult. Authors S. Scott MacDonald and Cynthia Baroody-Hart look at the bureaucratization of probation with regard to the court services probation pro-

vides and report on a study of communication between judges and probation officers in Santa Cruz County in California.

**The Strengths Perspective: A Paradigm for Correctional Counseling.**—At the heart of the strengths perspective is a belief in the basic goodness of humankind, a faith that individuals, however unfortunate their plight, can discover strengths in themselves that they never knew existed. Author Katherine van Wormer introduces a strengths framework as both a systematic model of behavioral/attitudinal change and an integrated method of offender treatment. She offers a literature review, discusses the basic tenets of the strengths approach, describes the relevance of this approach to the corrections field, and highlights implications for professionals.

**Student Interns: Are They Worth the Bother?**—Student interns can be a valuable resource for criminal justice agencies—they also can be a big bother. Authors Eric T. Assur, M. Celia Goldberg, and Lucinda Ross tell how—if recruited, managed, and supervised properly—student interns can make significant contributions to the agencies they serve. They tell how internships work, what you can expect of interns, what the professional's role is in guiding the intern, and the ways in which interns can be an asset not only to agencies but to the clients they serve.

**American Criminal Justice Philosophy: What's Old-What's New?**—The American criminal justice system was established to meet a wide range of social service needs, including crime control and rehabilitative interests. Authors Curtis R. Blakely and Vic. W. Bumphus discuss current proactive movements in criminal justice in light of the historical record, and review the proactive-reactive posturing of the American criminal justice system. The authors examine how the criminal justice system has in recent years approximated its traditional mandate, attempting to juggle complex political, social, legal, economic, and ethical concerns.

# Matching Drug-Involved Probationers to Appropriate Drug Interventions: A Strategy for Reducing Recidivism

BY GREGORY P. FALKIN, SHIELA STRAUSS, AND TIMOTHY BOHEN

**F**OR CLOSE to two decades, probation and parole agencies have been struggling with large caseloads of drug-involved offenders. This is especially true in areas such as New York City, where drug-related arrests have risen sharply and community corrections has had to expand in order to alleviate overcrowding in jails and prisons. Probation and parole departments have emphasized two main approaches to manage high-risk clients with serious drug problems and criminal records. Many of these agencies have established intensive or specialized drug supervision units that monitor clients' drug use with urine testing and refer those who test positive to drug treatment programs. In the last several years, a number of agencies also have begun contracting with community-based drug treatment programs as a means of having greater access to treatment resources (outpatient slots and residential beds) and more control over clients. How well suited are these approaches for managing drug-involved offenders?

Unfortunately, the answer is not as simple as one would like to provide to policymakers and probation and parole officials. In brief, evaluation studies of intensive or specialized supervision programs have produced, at best, mixed results. Probationers under intensive as well as regular supervision recidivate at high rates, and many of them are subsequently incarcerated. Langan and Cunniff (1992), for example, report that about half of the felony probationers in a national sample sentenced in 1986 had been incarcerated or had absconded within 3 years of sentencing. The vast majority of these cases were drug-involved. Evaluation studies of over a dozen intensive supervision programs have found that many of them are not effective in reducing recidivism (Petersilia & Turner, 1993). As Petersilia and Turner (1990) note, this may be because these programs do not place a great enough emphasis on drug treatment.

Evaluation studies have shown that clients who participate in drug treatment programs, including methadone maintenance, residential, and outpatient programs, have significantly lower rates of recidivism and drug relapse than

do control groups (Anglin & Hser, 1990). Clients who stay in treatment longer are significantly less likely to relapse and recidivate than those who drop out earlier. Indeed, for clients in outpatient drug treatment programs, rates of rearrest and relapse are significantly lower if they stay in treatment for more than 3 months than if they drop out earlier (Hubbard, Rachael, Craddock, & Cavanaugh, 1984). It must be noted that most clients leave treatment before this time. While research generally finds that drug treatment is effective in reducing recidivism among clients mandated to treatment, it has not specifically addressed whether contracting with programs improves outcomes for criminal justice clients.

The main thrust of evaluation studies of intensive (or specialized) supervision and drug treatment programs that serve offenders has been on assessing their effectiveness. Unfortunately, the one consistent finding of all this research is that many offenders relapse and recidivate. Even when programs are effective, even when recidivism rates are significantly lower—as they often are—among drug treatment clients than among control cases, a sizable number of clients drop out and many of them are rearrested, usually within about a year. Since neither of these strategies—intensive supervision or outpatient drug treatment—appears to be successful with many offenders, then continuing to ask whether particular programs are effective may be asking the wrong question. A better question to ask is “For which kinds of offenders are these approaches appropriate?”

This article is intended to provide policymakers and community corrections administrators with insight into why it is important to match clients to appropriate forms of treatment and how this might be done. The basic point is that when appropriate interventions (e.g., residential drug treatment, outpatient treatment, urine monitoring) are used with drug-involved clients, scarce treatment resources are utilized more effectively in reducing recidivism and relapse. Just as community corrections has long given priority to classifying probationers and parolees to appropriate levels of supervision, these agencies can develop guidelines for referring clients to appropriate treatment modalities. We demonstrate the value of matching clients to appropriate treatment interventions by presenting findings from an evaluation study of the New York City Department of Probation's drug treatment initiative. The main findings follow a brief description of the city's drug treatment initiative as it existed in the early 1990s.

\*The research reported here was supported by the National Institutes on Justice (93-IJ-CX-0056). Opinions expressed in this article do not represent the opinions of the U.S. government, the New York City Department of Probation, or National Development and Research Institutes, Inc. The authors wish to acknowledge Andrew Sutton, Douglas Young, Laura Winterfield, Mangai Natarajan, Akiva Lieberman, and Josephine Hawke for their help in the research.

**New York City's Anti-Drug Initiative**

The New York City Department of Probation's strategy for managing drug-involved probationers involved a combination of specialized supervision caseloads and contracts with outpatient drug treatment programs. In 1989, the probation department established SAVE (Substance Abuse Verification and Enforcement) Units. These specialized units were created to provide closer supervision of high-risk, cocaine-abusing probationers by having lower caseloads than regular units and by developing stronger linkages with community-based drug treatment programs. In practice, SAVE caseloads were comprised of probationers at various risk levels (though mainly the two highest of four levels), with cocaine use representing only about half the cases. The average caseload for SAVE units was about 65 probationers per officer, whereas the caseload for regular probation officers was between 150 and 175.

In 1991, the department created a Central Placement Unit (CPU), which contracted with nine outpatient drug-free treatment programs for 965 treatment slots intended primarily for cocaine-abusing probationers.<sup>1</sup> Probationers who were identified as users of drugs other than cocaine also could be referred to treatment through the CPU. Referrals were made through the CPU, which operated like an 800-number reservation service that probation officers could call to place clients in contracting treatment programs. Twelve months was the recommended course of outpatient treatment. The average cost per slot (person-year of treatment) was about \$4,000. The contracts paid programs for providing the department with intake, treatment services, and information about clients. The treatment programs were to notify probation officers (within 24 hours) whether the probationers showed up for intake and provide the CPU with a four-page intake report, monthly progress reports, timely communication if the probationer failed to appear for treatment and was at risk of being discharged from the program, and a termination form.

Department policy required that all high-risk (levels 1 and 2) probationers receive mandatory urinalysis within the first 2 weeks of entering supervision, regardless of whether they were known to have a history of drug use. Probationers who initially tested negative then received a second urinalysis within another 2 weeks. Probationers who tested positive on either of these tests were supposed to be referred to drug abuse treatment as were clients who had a court-ordered drug condition. Though the CPU was intended to serve primarily SAVE cases, probation officers managing clients on regular supervision also could access treatment resources through the CPU. Both SAVE and regular probation officers continued to refer clients directly to non-contracting treatment programs. The contracting drug treatment programs were required to conduct regular urinalysis and report the results to the CPU. The probation department, however, could not require non-contracting treatment programs to test clients regularly or to report the test results to probation officers (though some programs did this voluntarily).

**Evaluation Research Findings**

We found, overall, that New York City's drug treatment initiative was effective. Outpatient drug treatment was related to significant reductions in recidivism among clients referred through the CPU, with the greatest reduction in recidivism among those CPU clients who were appropriately matched to outpatient drug treatment on the basis of the severity of their drug use. The following paragraphs summarize the main findings of the process and outcome evaluation (for a more detailed explanation of the statistical methods and findings, see Falkin, Strauss, Bohen, Young, & Winterfield, 1997).

*The CPU was an innovative strategy for meeting the considerable need for drug treatment among probationers.* The CPU was an important innovation, improving on the past practice which required that probation officers individually identify non-contracting programs that would admit each of their clients who needed treatment. The CPU represented a systematic approach, enabling probation officers to refer clients to a variety of contracting outpatient drug treatment programs with guaranteed slots. The CPU was a significant effort in that the probation department contracted for enough slots to make nearly 2,000 referrals for probationers who needed drug treatment.

Even though the CPU contracts served many drug-involved probationers, slots were available for only a portion of the clients who needed drug treatment. About three-quarters of the probationers in New York City used drugs before being arrested (National Institute of Justice, 1995), and about two-thirds of intensive supervision cases were using drugs, mainly cocaine, while on probation (Wish, Brady, Cuadrado, & Martorano, 1986). Conservatively, we estimate that at least one-quarter of the roughly 20,000 new probationers who entered the system in the year the CPU was established were in need of drug treatment (Falkin et al., 1994). Less than one-tenth ( $N=1,860$ ) of the individuals sentenced to probation during the first year of the CPU's operation (September 1991 to September 1992) were referred to contracting outpatient drug treatment programs one or more times as of December 31, 1993. It is not known how many probationers were referred to non-contracting (residential, drug-free outpatient, or methadone) treatment programs.<sup>2</sup>

*The implementation of the CPU was a success in the final analysis, though it appears that many of the cases referred to treatment may not have been high-risk, cocaine-dependent probationers, as originally intended.* Although the CPU was intended to serve cocaine-dependent probationers, primarily those on SAVE supervision units, this did not actually happen. Only about 20 percent of the cases referred through the CPU were SAVE cases. The 362 SAVE cases referred through the CPU represent about 30 percent of all SAVE cases ( $N=1,243$ ). While the CPU also was intended to serve high-risk probationers, about one-third of the CPU referrals were classified as relatively low risk (levels 3 and 4). It is not possible to know exactly what information about their clients' cocaine use (i.e., presen-

tence investigation reports or drug testing results) was available to probation officers at the time they referred cases through the CPU. (We estimate that approximately half of the CPU cases were not known to be cocaine users at the time of referral.) Although the CPU was intended primarily for high risk, cocaine-dependent probationers, the fact that the CPU actually served many probationers with less serious problems should not be viewed as problematic. As we show below, referring more cocaine abusers to outpatient treatment may not have been appropriate and would have reduced the effectiveness of the effort.

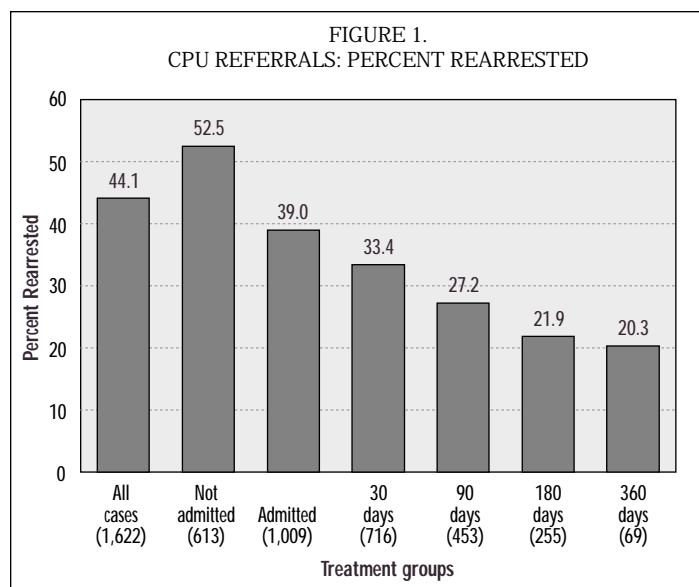
*Most cases referred to treatment through the CPU did not get much treatment—either they were not admitted or they dropped out within a few months.* Over one-third of the cases referred through the CPU failed to appear at treatment intake or were not admitted. Among those who were admitted, the length of time that clients stayed in treatment varied considerably, with retention rates being fairly low overall. Retention in treatment ranged from 1 day to about 2 years, with only 5 percent of probationers remaining for the recommended 1 year of drug treatment. About one-fifth of the probationers dropped out of treatment in less than 2 weeks and slightly more than half dropped out within 3 months. The mean retention rate (which was a little over 3 months) is comparable with retention rates for other outpatient samples serving mandated clients (Hubbard et al., 1984).

*Client participation in outpatient drug treatment was low. On average, clients attended only about half (about 1.5 hours per week) of their scheduled treatment sessions.* Although the length of time clients stay in treatment provides one indication of the amount of treatment that clients receive, actual attendance at treatment sessions can vary considerably among outpatient clients. Client participation in treatment, as measured in terms of the number of hours of treatment and the number of sessions that clients attended, also was very low (Hawke & Falkin, 1995). Probationers participated in only about half of their scheduled treatment activities. On average, all the clients were scheduled for an equivalent of about 10 hours of treatment per month, but they attended an average of only about 5 hours per month. Clients who stayed in treatment longer also were more actively involved in the treatment process in that they attended more hours/sessions weekly than those who dropped out earlier. Though clients who stayed in treatment longer (e.g., over 3 months) actually received substantially larger “doses” of treatment than dropouts, the “dosages” were still fairly low.

*Contracting with outpatient drug treatment programs was an effective strategy for reducing recidivism.* Three-quarters of the probationers admitted to contracting programs had fewer arrests during the year following discharge from treatment than during the year before they were sentenced to probation. Furthermore, as figure 1 shows, clients who were admitted to treatment had significantly lower rearrest rates than those who were referred but not admitted. Although 44 percent of all the CPU cases referred to treatment between September 1991 and December 1993

were rearrested by December 31, 1994, 53 percent of those who were not admitted to treatment were rearrested. In contrast, only 39 percent of those who were admitted to treatment were rearrested. (These percentages include all rearrests from the time of sentencing until the cutoff period for the recidivism data.)

*Clients who stayed in outpatient drug treatment longer than 90 days were significantly less likely to recidivate than those who dropped out earlier.* Figure 1 also shows that the percent of probationers who were rearrested declined as the length of stay in treatment increased. Clients who stayed in treatment longer were significantly less like-



ly to recidivate than those who dropped out earlier. Among those who were admitted to treatment, about half of the probationers who stayed in treatment less than 3 months were rearrested, while only about one-quarter of those who stayed longer were rearrested.

Because the time period for measuring rearrest varied among the cases, we standardized rearrest as an annual rearrest rate. We were not able to control for time at risk because we did not have data to determine when probationers were in jail. Figure 2 shows the annual rearrest rate for all crimes in relation to the number of days of treatment. (The rearrest rate for clients not admitted to treatment is measured from the date of sentence to probation; the rearrest rate for the other group is measured from the date of admission to drug treatment.) The pattern for the rearrest rate is similar to the one for the percent of clients rearrested. The annual rearrest rate for the group not admitted to treatment is .385, which is significantly higher than the .311 rearrest rate for the group admitted to treatment.

The rearrest rate declines significantly as the length of time clients stay in treatment increases. The clients who stayed in treatment for more than 90 days had a significantly lower rearrest rate (mean = .198) than those who were either not admitted or dropped out earlier. Among those

who were arrested, the group that stayed in treatment longer also was significantly less likely to be incarcerated, and the length of time until rearrest was significantly longer. Multiple regression analyses also showed that clients who stayed in drug treatment for more than 90 days had significantly fewer rearrests for drug offenses and violent crimes.

Other factors also were examined for their possible influence on rearrest rates. The number of prior arrests was the strongest predictor of rearrest. Younger probationers and men were found to have higher rearrest rates than older probationers and women. The age at first arrest was positively related to rearrest. Controlling for these variables, time in treatment was still a significant predictor of rearrest. Clients who stayed in treatment 90 days or more had significantly lower rearrest rates than others, including probationers who were referred but not admitted and those who dropped out within 90 days after being admitted to treatment. The addition of other client variables (e.g., severity of drug use, types of drugs used, drug use among family members, employment, marital status, race/ethnicity, risk level, and other measures of prior criminal record) did not significantly explain any more of the variance in rearrest rates than did the preceding variables.

*Specialized SAVE supervision was no more effective in curbing recidivism than regular supervision.* We also compared SAVE supervision with regular supervision by entering the type of supervision as an independent variable in each of the multiple regression models. In all these analyses, recidivism rates were never lower for probationers in SAVE units.

*Outpatient drug treatment was not appropriate for about one-quarter of the probationers referred through the CPU because the severity of their drug use indicated a need for residential treatment.* Using the Offender Profile Index (OPI), a clinical assessment instrument designed for matching criminal justice clients to various drug interventions (Inciardi, McBride, & Weinman, 1993), we separated the CPU clients into three groups according to their probable need for differ-

ent interventions: residential drug treatment, outpatient drug treatment, or urine monitoring only. The OPI assigns clients to these various interventions on the basis of the severity of their drug use and a number of aspects of their "stakes in conformity" (which includes criminal involvement, drug treatment histories, job situation, education, and housing).

Data from the presentence investigation drug assessment were mapped retrospectively onto the OPI drug use severity index in order to determine the severity of each probationer's drug use and to provide an appropriate treatment recommendation. About one-quarter of the CPU cases had severe drug problems (i.e., injecting drugs or using cocaine, crack, or amphetamines once a week or more). According to the OPI criteria, these cases required long-term or short-term residential treatment.

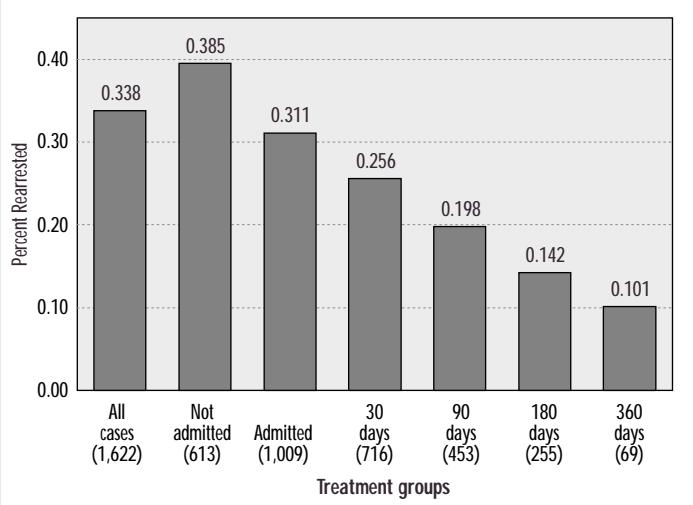
Two-thirds of the sample only needed urine monitoring on the basis of their OPI assessment of drug use and social conformity. This group was comprised of individuals who either only used alcohol or marijuana or used PCP or barbiturates on a very limited basis (less than once a week). (If PCP or barbiturates are used more frequently, urine monitoring also is indicated, provided that there is an acceptable degree of social conformity.) Thus, on the basis of information available in the presentence investigation report, the majority of the sample were not hard-core drug users. Having been referred to outpatient treatment through the CPU, these cases were matched to a more intensive intervention than they may have needed, as indicated by their OPI assessment.

Only about 7 percent of the sample would have been recommended for outpatient drug treatment on the basis of their OPI drug use severity index. Daily users of alcohol or marijuana, and individuals who use PCP or barbiturates once a week or more, are recommended for outpatient treatment (consisting of a minimum of one counseling session per week lasting at least 1 hour). Probationers who used PCP and barbiturates once a week or more, and those who used cocaine, crack, or amphetamines less than once a week, are recommended for intensive outpatient treatment (in the OPI scheme this consists of at least three 1-hour sessions per week).

Although the OPI categorizes the sample in accordance with the severity of drug use and assigns clients to various treatments depending upon their drug severity, it should be noted that all CPU clients were referred to outpatient treatment. Outpatient drug treatment was adequate (or more than adequate) for about three-quarters of the probationers (this includes the cases for which urine monitoring would have been appropriate).

*Outpatient drug treatment was most effective for those clients who were appropriately matched to this treatment modality on the basis of the severity of their drug use.* Given that many CPU cases had serious criminal records as well as severe drug problems, is it plausible that outpatient drug treatment, usually in modest doses, would reduce recidivism? In order to address this question, separate multiple regression analyses were conducted for the three

FIGURE 2.  
CPU REFERRALS: ANNUAL REARREST RATES



groups of clients having different treatment needs. At issue was whether outpatient treatment influences rearrest rates after taking into account the client's age, gender, age at first arrest, and number of prior arrests. In each of the three multiple regression analyses conducted for the three OPI groups, the four client characteristics were entered first and then treatment duration was entered. The analyses focused on determining whether the addition of the treatment variable significantly increased the amount of variance explained in rearrest rates above and beyond that of the other salient client characteristics.

In the model for the group needing residential treatment, most of the variance was explained by the client's age, gender, age at first arrest, and number of prior arrests. The addition of the treatment variable did not significantly increase the amount of variance explained. In other words, outpatient drug treatment did not lower rearrest rates among probationers whose drug use indicated a need for more structured and intensive treatment. Among those who needed urine monitoring only, the client's age, gender, age at first arrest, and number of prior arrests explained about the same amount of variance in rearrest as it did for the group needing residential treatment; however, the addition of the treatment variable increased the overall significance of the model, accounting for about an additional quarter of the total variance explained.

This suggests that outpatient treatment was effective in reducing rearrest among probationers who only needed urine monitoring according to the OPI criteria. The model for the group needing outpatient treatment had the greatest predictive power, with the treatment variable adding significantly to the explanatory power of the other predictor variables (client's age, gender, age at first arrest, and number of prior arrests). In short, this model suggests that outpatient treatment was most effective with clients who were appropriately matched to the modality on the basis of the severity of their drug use.

In conclusion, we did not find a significant reduction in rearrest rates among clients whose drug use was serious enough to warrant residential drug treatment. The most significant reductions in recidivism were found among those clients who appear to have needed outpatient drug treatment and actually received these services.

### ***Limitations***

The reader needs to be aware that the outcomes described above should be evaluated with some caution. Concerns emanate primarily from the fact that the evaluation involved a retrospective analysis of administrative data. The strength of the findings are limited because: 1) it was not possible to compare the treatment group to a no-treatment control group; 2) there were a lot of missing data on some client characteristics (e.g., employment status); and 3) self-selection may have biased the results (i.e., it is not possible to know whether clients who stayed in drug treatment longer were more motivated to succeed on probation than

those who never entered treatment or those who dropped out earlier).

There are, however, reasons for believing that the evaluation's key findings are valid. In particular, since there were relatively few significant differences between the background characteristics of the admitted and not admitted clients, but the treatment outcomes were significantly better for the group admitted to treatment than the group not admitted, one reasonably may infer that the positive outcomes are influenced by the treatment. Furthermore, since research consistently documents the fact that drug treatment does not reduce rearrest for many probationers, the finding that clients have significantly lower rearrest rates if they are appropriately referred to outpatient treatment is especially noteworthy.

### ***Policy Implications and Recommendations***

The results from this evaluation study demonstrate that if recidivism rates are to be reduced among substance-abusing probationers, these probationers need to be referred to appropriate drug treatment modalities. This finding is supported by the fact that significant reductions in rearrest rates were associated with increases in the length of outpatient drug treatment, after controlling for other variables that influence recidivism. Outpatient drug treatment clearly was not effective for the group with the most severe drug use. The findings have a number of important implications for probation policy. In general, they suggest that probation departments should refer clients to outpatient drug treatment programs, provided outpatient treatment is an appropriate modality for them:

- Contracting with outpatient drug treatment programs is a sound strategy for probationers whose use of drugs is not too severe.
- Since matching clients to appropriate forms of treatment is a key to success, it is necessary to have a variety of drug interventions. These include random urine testing and contracts or agreements with residential as well as outpatient drug treatment programs.
- Probation departments should refer clients to various treatment modalities after assessing clients' needs by utilizing instruments that measure the severity of drug use.
- Since drug treatment only can be effective if clients are actually admitted, probation officers need to ensure that clients appear for their intake appointments—making referrals is not sufficient.
- Because clients do best if they remain in treatment longer, probation departments should find ways to encourage clients to stay in treatment. Various strategies (e.g., providing positive reinforcement and supportive services) should be used to prevent clients from dropping out, especially during the critical, early stage of treatment.
- For clients in outpatient programs, it is essential to monitor attendance and progress in treatment and to take

appropriate action to ensure that they attend sessions regularly.

#### REFERENCES

- Anglin, M.D., & Hser, Y. (1990). Treatment of drug abuse. In M. Tonry & J. Wilson (Eds.), *Drugs and Crime* (Vol. 13) (pp. 393-460). Chicago, IL: University of Chicago Press.
- Falkin, G.P., Prendergast, M., & Anglin, M.D. (1994). Drug treatment in the criminal justice system. *Federal Probation*, 58(3): 31-36.
- Falkin, G.P., Strauss, S.M., Bohen, T., Young, D., & Winterfield, L. (1997). *Reducing recidivism among New York City's drug-involved probationers: A client-treatment matching approach*. A Final Report to the National Institute of Justice. New York: National Development and Research Institutes, Inc.
- Hawke, J.M., & Falkin, G.P. (1995). *Measuring client participation in outpatient drug treatment: The case of probationers mandated to treatment in New York City*. New York: National Development and Research Institutes, Inc.
- Hubbard, R., Rachael, J., Craddock, S., & Cavanaugh, E. (1984). Treatment outcome prospective study (TOPS): Client characteristics and behaviors before, during, and after treatment [DHHS Publication No. (ADM) 84-1349]. In F. Tims & J. Ludford (Eds.), *Drug abuse treatment evaluation: Strategies, progress and prospects* (NIDA Monograph No. 51) (pp. 29-41). Rockville, MD: National Institute on Drug Abuse.
- Hubbard, R.L., Craddock, G.S., Flynn, P.M., Anderson, J., & Etheridge, R. (1997). Overview of 1-year follow-up outcomes in the *Drug abuse treatment outcome study* (DATOS). *Psychology of Addictive Behaviors*, 11(4): 261-278.
- Inciardi, J.A., McBride, D.C., & Weinman, B.A. (1993). The assessment and referral of criminal justice clients: Examining the Focused Offender Disposition program. In J.A. Inciardi (Ed.) (1993). *Drug treatment and criminal justice*. Newbury Park, CA: Sage Publications.
- Langan, P.A., & Cunniff, M.A. (1992). *Recidivism of felons on probation, 1986-1989*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- National Institute of Justice. (1995). *Drug use forecasting, 1994*. Washington, DC: Author.
- Petersilia, J., & Turner, S. (1990). Comparing intensive and regular supervision for high-risk probationers: Early results from an experiment in California. *Crime and Delinquency*, 36(1): 87-111.
- Petersilia, J., & Turner, S. (1993). Evaluating intensive supervision probation/parole: Results of a nationwide experiment. In *Research in Brief*. Washington, DC: National Institute of Justice.
- Wish, E.D., Brady, E., Cuadrado, M., & Martorana, J. (1986). Estimates of drug use in intensive supervision probationers: Results of a pilot study. *Federal Probation*, 50(4): 4-16.

#### NOTES

<sup>1</sup>The contracts are funded by the New York State Office of Alcohol and Substance Abuse Services (75 percent) and the City of New York (25 percent).

<sup>2</sup>We attempted to determine the percent of cases referred to non-contracting outpatient programs and the percent not referred to treatment (in an effort to develop comparison groups); however, serious data limitations preclude our presenting reliable estimates of these percentages.

# A Comprehensive Approach to Supervision in the Southern District of West Virginia

BY DAVE HANSON

*Supervising United States Probation Officer, Southern District of West Virginia*

**R**ECIDIVISM RESEARCH over the past several years has focused substantially on personal factors in offender's lives that tend to reduce recidivism. Research from academic and private foundations and federal agencies, such as the Department of Justice (including the Bureau of Prisons), consistently indicates correlations between recidivism and attributes such as unemployment and poor educational achievement. While the concept of recidivism seems simple and straightforward, it is often difficult to construct a working definition when designing intervention strategies. Developing evaluative tools for measuring an intervention's impact on recidivism also is cumbersome. Regardless of how recidivism is defined or measured, both the perception and the reality is that a large percentage of crime is attributable to repeat offenders.

Law enforcement officials find it difficult to have an impact on recidivism due to operational philosophies and the mandates placed on police departments. The mission of most police agencies can be characterized as crime prevention through detection and apprehension. In practice, law enforcement primarily responds to crime rather than deterring it. Prosecutors and courts attempt to affect crime, especially recidivism, through tougher and certain prosecution, sentencing through recidivist or habitual offender statutes, and enhanced guidelines. Courts have an impact on recidivism more directly than police through specific deterrence.

The role of corrections (including community-based corrections) in responding to crime involves even more direct intervention with offenders. As offenders progress through each phase of the justice system, the opportunity to affect their lives becomes more apparent. Consequently, the opportunity to affect recidivism also is enhanced. Probation occupies a truly unique position within that continuum of offender contact.

Although probation departments are operated within court units, probation officers are required to enforce rules and conditions as well as laws, play the roles of prosecutor and advocate, and serve as agents of change and service brokers. To be effective in this unique role requires a solid understanding of various correctional styles, a blending of those styles, and a good dose of common sense.

In 1996, the probation staff in the Southern District of West Virginia began looking at personal attributes and circumstances of offenders that affect success or failure during supervision. Officers considered current and historical

research as well as their personal experiences with offenders. In May of that year, the supervision unit in Charleston began conducting monthly meetings focusing on supervision priorities and strategies. The staff engaged in discussions and exercises designed to promote proactive thinking about: 1) personal orientations toward correctional styles; 2) the enhanced quality of decision-making by consensus; 3) personal orientations toward group situations and interactions; 4) accomplishing work through groups and how that translates to teamwork; 5) directive counseling with offenders; 6) prioritizing and managing workloads; 7) creativity in accomplishing work; 8) managing change; 9) communication models; 10) professional maturity; and 11) competency and influence as a process.

During these meetings, officers identified five specific supervision issues that they believed either affect an offender's success during supervision or are expectations of the court in providing supervision. The unit adopted these expectations as goals and set about developing a comprehensive approach to supervision, including methods to define and measure success. The goals identified by staff were:

- Reducing caseload unemployment percentages.
- Reducing the percentage of caseloads receiving public assistance benefits.
- Increasing the collection of court-ordered financial obligations.
- Increasing the percentage of offenders having at least a General Equivalency Diploma (GED) education.
- Reducing violations filed with the court through intervention.

All of those goals are meaningful and measurable. The staff also assumed that two factors could affect progress toward these goals: 1) being aware of what those percentages were for each officer's caseload and 2) treating those issues as supervision priorities on which intervention specifically should focus. After defining the goals, the staff designed a method to assess current standing and measure progress in each area. The tools developed for measuring and reporting information about caseloads provide officers an excellent means for focusing supervision activities and managing workloads. The practices and reporting procedures developed from this approach were subsequently

adopted throughout the district, and this discussion focuses on outcomes district-wide.

### ***Reducing Unemployment***

In assessing caseload employment percentages, "employed" is defined as

- Anyone working the equivalent of 40 hours per week.
- Full-time college, vocational, or technical training students (the equivalent of 12 credits or semester hours).
- Any combination of work and approved study or training equaling at least 12 credit hours or 40 hours of employment (i.e., six credit hours and 20 hours of employment).
- Any combination of approved community service work, schooling, and employment totaling at least 40 hours per week.
- Retirees.
- Anyone with a certified social security or workers compensation disability.
- Full-time homemakers (i.e., individuals whose primary source of income is from a working spouse and the majority of their time is devoted to child care, housekeeping, or related activities).

Since the goal is to bring the offender to a level of full employment, specifically excluded from this definition is anyone receiving any form of government-funded public assistance or unemployment compensation. Certain entitlement programs, such as social security and workers compensation, are not considered public assistance, but documentation of awards and disabilities are required for the offenders' files and verified by the supervisor during case reviews.

In some instances, the officer and supervisor must exercise discretion in determining the employment status of self-employed offenders. For example, a self-employed offender who misses several days of work during the month due to weather or other uncontrollable factors likely will be counted as employed after considering work history, earnings, and any other relevant circumstances. On the other hand, working offenders receiving partial benefits due to underemployment are not counted as employed because one of the goals is to reduce the percentage of offenders receiving these payments. Instead, officers continue working with individuals to achieve full employment, striving to eradicate the need for any type of public assistance. Eradicating the need for public assistance may seem a lofty expectation; however, from an intervention standpoint, we have to begin at the individual's current level and raise the expectation. Furthermore, for purposes of gathering and reporting statistics, not counting recipients of partial benefits as employed provides officers a workable definition for assessing employment percentages. Using these definitions, every offender on our caseload can be categorized as either employed or unemployed.

In spite of officers' familiarity with their caseloads, their first attempt to compile these statistics took a significant amount of time. Initially, most officers spent approximately 4 hours during the course of a week verifying offenders' employment status, financial payments, and educational status. Currently, officers verify the same information in 2 hours or less. All employment statistics for any given month must be submitted to the supervisor by the fifth day of the following month. After collecting these data, each supervisor forwards it to the person designated to prepare the district's monthly report, which is broken down by office.

Given the conscientious nature of the officers, we believe that a quantitative analysis of their caseloads motivates them to improve their caseload profiles by focusing efforts on offenders having the greatest need for intervention. Officers do exactly that by consistently and conscientiously applying techniques that always have been available to the probation staff. For example, unemployed offenders are required to find work within 15 days of becoming unemployed by registering with local job service and temporary placement agencies and by submitting employment applications to a minimum number of employers. Officers require verification of these contacts and follow-up on the offender's efforts. If offenders are unable to find work on their own, officers become more involved by contacting employers with whom they have previously placed offenders; however, it is always emphasized that responsibility for finding employment rests with the offender.

Officers also make use of "work opportunity" and "welfare-to-work" tax credits available to employers who hire felons, vocational rehabilitation referrals, residents of "empowerment zones," and welfare and Supplemental Security Income (SSI) recipients. The record keeping for these programs is minimal for both employer and probation, making these incentives attractive for all parties. In some instances, officers also utilize a federal bonding program for felons to alleviate the concerns of employers. Employment coordinators from each office work with offenders referred from other officers by teaching them basic employment skills, such as completing job applications, interviewing, personal appearance, and good work habits. Officers have found themselves having to make few referrals to the coordinators due to their diligent efforts and motivation.

Occasionally, voluntary community service is used as an alternative for offenders who cannot find work for extended periods of time. If there are no physical or psychological barriers preventing an unemployed offender from working, the offender is given the opportunity to voluntarily participate in community service by executing a Waiver of Hearing for Modification of Conditions, which is then given to the court for review and approval. In cases where the offender simply refuses to work, the officers submit to the court a summary of interventions with the offender, along with a request for the offender's placement in a local community treatment/work release center where even more intensive efforts can be focused on employment. Table 1 depicts how the district's employment data are reported each month.

TABLE 1.  
EMPLOYMENT/UNEMPLOYMENT DATA

(AUGUST 1998)—(ACTIVE PROBATION, SUPERVISED RELEASE, AND PAROLE CASELOAD)

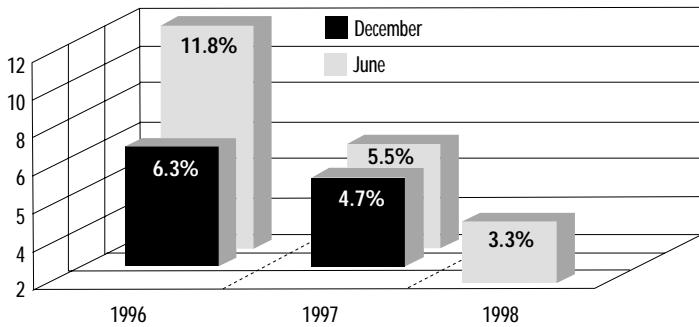
Office	Employed	Unemployed	Caseload Unemployment Percentage
Beckley/Bluefield	130	8	5.8%
Huntington	113	2	1.7%
Charleston/Parkersburg	184	3	1.6%
District Totals	427	13	3.0%

Note: The state unemployment percentage for August 1998 was 6.4 percent and the national percentage was 4.5 percent.

Supervisors in each branch office use the same format in tabulating data from individual officers. The district's unemployment percentages are compared with monthly state and national percentages provided by the West Virginia Bureau of Employment Programs. The goal is to maintain the district's caseload unemployment percentage at a level less than or equal to the state's percentage. Figure 1 depicts a 2-year trend for the district's unemployment percentage at 6-month intervals, beginning in June 1996.

FIGURE 1. SOUTHERN DISTRICT OF WEST VIRGINIA CASELOAD UNEMPLOYMENT PERCENTAGES (2-YEAR TREND)  
(PROBATION, SUPERVISED RELEASE, AND PAROLE)

6-Month Periods Ending:  
June 1996 December 1996 June 1997 December 1997 June 1998



As you can see, unemployment consistently decreased from 11.8 percent in June 1996 to 3.3 percent in June 1998. The unemployment percentage since has decreased to 2.1 percent in September 1998. Although these percentages fluctuate for each office and for the district from month to month, the district's unemployment averaged 4.4 percent for the 12-month period of September 1997 through August 1998. After having collected these statistics for about 3 months, officers found that the figures became more accurate due to clarified definitions, streamlined procedures, and close review by supervisors.

#### ***Reducing Receipt of Public Assistance***

An inverse relationship should exist between a higher percentage of employed offenders and the percentage of

offenders receiving public assistance. The staff defined public assistance as any form of government-funded assistance or subsidy where income is the primary determinant for eligibility, such as Aid to Families With Dependent Children or Department of Housing and Urban Development (HUD) subsidies. Entitlement programs such as SSI or workers compensation are not considered in this definition as long as the offender can provide certification of award or disability. Government-administered incentive programs such as Veterans Administration or HUD mortgages are not considered public assistance since individuals taking advantage of these programs must be employed and meet qualifying ratios. Just as the working offender receiving benefits due to under-employment is considered unemployed, so too is the offender receiving housing subsidies while participating in vocational training or other schooling. Government-funded student loans are not considered public assistance since students have signed agreements for repayment of the loan and must maintain full-time registration status.

When we began tracking this data district-wide in June 1996, 5.9 percent of our caseload was receiving some form of government-funded public benefits. By July 1998, that percentage was down to 4.0 percent. Table 2 depicts the format used for reporting this information.

TABLE 2.  
PUBLIC ASSISTANCE

(JULY 1998)

Office	Total Caseload	Number Receiving Public Assistance	Percentage
Beckley/Bluefield	132	12	9%
Huntington	119	5	4%
Charleston/Parkersburg	185	0	0%
District Totals	436	17	4%

#### ***Increasing the Collection of Financial Obligations***

As officers of the court, probation officers' responsibilities include promoting confidence in the court among the general public and the offenders that officers supervise. As officers, our professional reputations are directly affected in part by how the public perceives the operation of the court system and, more importantly, how the judiciary we serve perceives our interventions. The staff in our district believes that probation's role goes beyond simply monitoring payment of court-ordered obligations to the clerk of the court, U.S. attorney's office, or victims. It also includes assisting with the collection of those obligations through any legitimate means available, consistent with law, court policy, and probation office policy. As officers of the very courts empowered to levy financial sanctions, we would be remiss if we did not do everything within our authority to collect those obligations.

There are millions of dollars in delinquent and outstanding obligations nationwide. Ineffectiveness in tracking and collecting these debts has contributed to criticism and disillusionment with the justice system in general, but, specifi-

cally, with courts' abilities to enforce their own orders. Appellate court decisions in most circuits have made collecting these obligations somewhat cumbersome and inefficient in that specific payment schedules must be established at sentencing or approved by the courts for modification.

The obvious importance of collecting restitution is making the victim whole, and Congress recognizes this by statutorily giving the payment of restitution priority over fines [18 U.S.C. § 3612(c)], with the exception of community restitution based on public harm [18 U.S.C. § 3663(c)(5)]. Aside from generating revenue, fine collection also is important because it is an integral component of an offender's sanction. Whether we advocate the justice model in which we simply aim to impose upon offenders what they deserve, no more or no less, or the rehabilitation model in which we want to provide treatment, payment of fines satisfies both objectives. When the court assesses a fine, it is in effect making an assessment against defendants' time and labors through their earnings. By requiring payment of these obligations, the court is providing treatment by re-enforcing consistent, responsible behaviors, something many offenders have never had to acquire.

For all of the reasons just outlined, increasing the collection percentages of court-ordered obligations also was identified as a supervision priority, for the following reasons:

- to enforce the court's orders;
- to assist in making victims whole;
- to promote the integrity of and respect for the court;
- to ensure just punishment for offenders; and
- to provide treatment for offenders.

Just as we had to develop parameters and a format for collecting and reporting employment and public assistance data, we had to do the same for financial obligations. Here, again, we believed that simply devising a format for officers to use in assessing collections would enhance these percentages. The format developed for reporting these collections is depicted in table 3.

As you can see, restitution and fines are calculated and reported separately. The amounts in the "Due" column are taken directly from the Judgment and Commitment (J & C) Orders and totaled for each division's caseload. In cases where the J & C requires an amount due within a specified

period of time, the amount is prorated over that period to obtain the monthly amount due.

In rare instances where the court imposes a fine or restitution amount without designating an installment schedule, we consider the plain language of 18 U.S.C. 3572(d):

[A]n individual sentenced to pay a fine or restitution shall make such payment immediately, unless, in the interest of justice, the Court provides for payment on a date certain in installments. If the Court provides for payments in installments, the installments shall be in equal monthly payments over the period provided by the Court, unless the Court establishes another schedule.

In other words, absent a specific payment schedule where just an amount has been imposed, probation staff will consider the obligation due immediately. Courts always have had the option of specifically ordering payment in full immediately based on the offender's ability to pay immediately. However, as the result of appellate court decisions in most circuits, district courts presumably may order payment in full immediately in cases in which:

- the offender does not have the means with which to pay the obligation immediately and the court believes the offender's financial circumstances may change over time, or;
- the court does not have adequate information at sentencing to impose a specific installment schedule.

By requiring the obligation due in full immediately for offenders in these two categories, the court retains ultimate authority without delegating its constitutionally mandated judicial function to a non-judicial entity (probation or Bureau of Prisons). If the offender does not have the ability to pay the obligation in full immediately, the court has the discretion not to proceed adversely against the offender. In these cases, probation staff members develop an installment schedule, subject to judicial approval, based upon the offender's current or changing financial circumstances.

The totals of all installment amounts from the J & C's, as well as amounts calculated by officers, are tabulated independently for each caseload, then added together by the supervisor to get the total amount due for each office. Each officer also determines the amount collected from his or her caseload each month. The total amounts due, collected, and collection percentages then are calculated and reported for each office and the district. This gives us an excellent benchmark from which to survey our progress in achieving our goal from month to month.

TABLE 3. COURT-ORDERED FINANCIAL OBLIGATIONS

Restitution				Fines		
Office	Due	Collected	% Collected	Due	Collected	% Collected
Beckley/Bluefield	\$ 4,778	\$ 4,658	97%	\$ 1,377	\$ 1,157	84%
Huntington	\$ 1,608	\$ 2,310	144%	\$ 888	\$ 824	93%
Charleston/Parkersburg	\$ 4,007	\$ 5,539	138%	\$11,148	\$11,023	99%
District Totals	\$10,393	\$12,507	120%	\$13,413	\$13,004	97%

Note: The amounts *due* are the *monthly* payments due for active supervision cases pursuant to the Judgment and Commitment Orders.

Beginning in June 1996, the percentage of fines and restitution collected in Charleston was tracked for a year before implementing this procedure throughout the district in May 1997. A trend similar to that associated with the increased awareness of employment percentages developed with financial collections. Emphasis on collecting these obligations as opposed to simply monitoring payments, along with making officers aware of individual caseload collection percentages, resulted in a dramatic increase in the percentage of fines and restitution collected. Of course, quarterly reporting these figures in a standard format to the judicial staff also provides some incentive for officers to focus efforts on this important aspect of an offender's sanction. Although Table 3 indicates that 97 percent of the monthly fine payments due for June 1998 were received, the district's collection averages for restitution and fines from May 1997 through August 1998 were 123 percent and 120 percent respectively. Collecting a higher percentage than is actually due results when some offenders make higher payments than originally ordered or calculated due to changes in financial circumstances. When this occurs consistently in individual cases, the payment schedule is reviewed as part of the case review process and adjusted if appropriate. This alleviates the appearance of high collection percentages resulting from installments that are set too low. We believe that our proactive measures in dealing with caseload unemployment also have enhanced the collection of these obligations.

### **Caseload Educational Profiles**

Proactive intervention to maintain our caseload's high school education equivalency percentage at a level equal to or higher than the average rate for the state also became a supervision priority. Fortunately, the Bureau of Prisons places heavy emphasis on the acquisition of a GED while offenders are incarcerated. We believed that only modest improvements could be expected from this initiative due to the demographics of our caseloads, specifically, the age of offenders who have not already earned a GED while incarcerated, and transportation concerns in rural areas. However, shared values regarding the roles of education, from enhancing employment opportunities to reducing crime, led the staff to consider this a worthwhile attempt. Increasing offender educational levels has many potential benefits for the state and nation, including reduced reliance on public assistance programs. Statistics derived from a U.S. Department of Education study indicate that in 1996, 25- to 34-year-olds who had not completed high school were about three times as likely as high school graduates to receive income from Aid to Families with Dependent Children.<sup>1</sup> Not surprisingly, the same Department of Education study determined that, on average, the level of education has a direct impact on earnings, benefits, and more satisfying work and that an important determinant of these outcomes is *steady work*. Steady work generally brings valuable job experience, skills, and, ultimately, more rewarding work.<sup>2</sup> A personal growth cycle is then set in

motion because satisfying and steady work is affected by educational level, and as an individual's work situation improves, so too does the desire and need for continued educational development.

In operationalizing this component of our supervision initiative, officers were asked to consider three things in their approach to referring offenders for GED programs:

- *Motivation*, which is psychological in nature. Motivation stems either from self or from influence that others have. It is important that officers realize that offenders are motivated to act either in their own self-interest or due to the influence of significant others, including the probation officer.
- *Incentives*, which pertain to something probation staff legitimately can offer to get others to act. Concerning incentives, officers never consider actions such as recommendations for termination or reduction of supervision terms in return for participation in a GED program. In fact, the focus is on communicating to offenders the incentives for voluntary participation in an educational program, i.e., enhanced employability, self-esteem, and the esteem of significant others. Occasionally, and where appropriate, legitimate incentives such as reclassification of supervision levels or reporting schedules are considered.
- *Leverage*, which is the power or authority to act effectively. Officers have leverage through the conditions of release. When an offender is unemployed or incurs a relatively minor violation, a measured amount of leverage, commensurate with the situation, can be exerted to get offenders to act. Although the court is notified of any violations, minor ones can be used as leverage in getting offenders enrolled in GED study.

Since commencing this effort in October 1997, the number of offenders participating in a GED program in August 1998 rose from 4 to 10, and the number participating in a vocational or technical training program increased from 2 to 15. Our district's caseload percentage of offenders without at least a GED went from 23 percent to 17 percent during that same time. The format developed for reporting the educational profile of our caseload is depicted in table 4.

### **Reducing Violations Through Intervention**

In assessing the impact of interventions on violation reports and revocations over the past 2 years, we looked at revocation data entered into PACTS (Probation Automated Case Tracking System) dating back to 1995 (the year our district began utilizing PACTS to record this information) and compared that to data collected through May 1998. Overall, a very small percentage of the district's caseload was being revoked monthly even before 1996, when we began tracking caseload characteristics and goal-related data. Revocations were averaging 3.5 percent of the total caseload per month for the year preceding these supervision initiatives. Since that time, the district has maintained revocation percentages

TABLE 4.  
EDUCATIONAL PROFILES

(AUGUST 1998)—(ACTIVE PROBATION, SUPERVISED RELEASE, AND PAROLE CASES)

Office	Total Caseload	Number Without GED or High School Diploma	Percentage Without GED or High School Diploma	Number Currently Enrolled in GED Program	Number Completed GED Program this Quarter/Year July-Sept. 1998	Number Currently Enrolled in Other Vocational or Technical Training
Beckley/Bluefield	138	32	23%	4	0/1	4
Huntington	115	29	25%	3	0/0	8
Charleston/ Parkersburg	187	14	7%	3	1/2	3
District Totals	440	75	17%	10	1/3	15

ranging from 3.0 percent to 1.8 percent (more recently) per month. This does not seem to reflect much difference; however, considering that revocation percentages were low to begin with, three or four fewer revocations per month or even per quarter may be significant. These data were not subjected to statistical significance testing; we simply were seeking outcomes. Noncompliance reports (technical violations not meriting formal action) to the courts did increase during this time, and that is attributed primarily to two factors. First, the largest office in the district elected to specialize in supervision and pre-sentence functions just before operationalizing this comprehensive plan. Specialization already had occurred in branch offices where fewer officers were located. This allowed all officers in the district who had any supervision functions to deal more effectively with supervision issues. Second, the district's supervision caseload has consistently decreased over the past 4 years, also allowing officers to focus time and attention on caseloads. Violation petitions, however, did decrease approximately 13 percent from 291 in calendar year 1996 to 254 in 1997. A further decrease of 4 percent occurred in calendar year 1998.

I cannot say whether our interventions with offenders or our way of handling violations have reduced revocation percentages. Since our focus was both outcome and action oriented, a scientific methodology to control for assessing officer attitudes versus interventions was not designed; however, I would like to think a little of both apply. For instance, with the exception of drug use, the district's revocation petitions over the last 18 months contain fewer technical or status violations, and of the petitions that are filed, the courts seem more apt to revoke rather than modify or continue supervision. Although I would never be so presumptuous as to speak for any member of the judiciary, I also would like to think that the court understands that our focus is on promoting offender success with supervision, and, once the decision to file a revocation petition has been made, every appropriate incremental sanction and treatment option has been exercised. Again, it should be stressed that the emphasis is on reducing violations through interventions, not by ignoring violation behavior.

#### ***Substance Abuse Education and Treatment***

Noticeably absent from this discussion has been the district's approach to substance abuse treatment. We have not ignored this element; in fact, our caseload, like that of most districts, is heavily comprised of drug offenders. The primary approach to treatment is similar to that of other districts nationwide. Heavy reliance is placed on vendor contracts providing outpatient and inpatient services. The staff also developed an in-house substance abuse education component consisting of six 1-hour modules, which officers take turns conducting for groups of up to 10 offenders. This serves as follow-up for offenders who have completed a contract program, but it also is utilized for offenders recently released from custody, where high risk factors for abuse may be present but not yet manifested.

#### ***Conclusion***

Rather than recite a philosophical position regarding the many roles of probation, we all can agree that outcomes pertaining to these initiatives are the basics of supervision and are what we believe the courts expect us to address. As previously described, these initiatives were not simply thrown upon officers. Staff members were initially prepared during unit discussions and exercises designed to explore what our basic collective roles are and why. Even though individual officers may have different orientations toward correctional styles (i.e., enforcement, surveillance, and order maintenance versus treatment or reintegration), our role is unique in the criminal justice system in that it requires a blending of styles. Over-reliance on any one style renders us ineffective.

After initiating these strategies and seeing results, officers commented that their caseloads basically take care of themselves once they achieve a high percentage of caseload employment. Early obstacles consisted mainly of staff apprehensiveness about engaging in activities in which quantifiable results could be directly reflected from their efforts. Some staff members asked, "Why are we doing this?" This is why it is important to prepare officers in advance by discussing exactly what their roles are and what the courts and public expect of them. As officers talked with members of the original staff involved and the reports summarizing caseload characteristics were circulated among

the branch offices and to the court, results began to spread through the district. Although never intended as a motivating factor, friendly competition among supervision officers throughout the district, fostered by personal pride in their work product, contributed to the success of this effort. It is important to emphasize, however, that collaboration rather than competition produces results in a collective effort such as this. Officers quickly came to realize that there was not a great deal of extra work involved in the collection of these data and that knowing where to focus attention actually may reduce unnecessary work with caseloads each month. At this point, staff members have embraced these common practices and have adopted the elements of employment, education, and data collection and reporting as district goals. Each month, officers prepare this information and submit it on time as part of their regular duties.

The staff's professionalism and openness to new methods have been integral in making this comprehensive supervision effort a success. I should emphasize that the main

ingredient in operationalizing this comprehensive supervision approach has been the encouragement and support of management, especially the chief and deputy chief probation officers. We now have the benefit of seeing over 2 years of results with these initiatives, and we believe they have proven effective in assisting offenders and in managing our workloads and resources. All of these initiatives and outcomes have been implemented and achieved without any increase in costs. In fact, we believe they have saved money by prioritizing our work and allocating resources more effectively and efficiently. We also would like to believe that another benefit of these initiatives has been enhanced credibility with the court we serve.

#### NOTES

<sup>1</sup>U.S. Department of Education, National Center for Education Statistics, Common Core of Data Surveys, September 1996.

<sup>2</sup>Ibid.

# Perspectives on Parole: The Board Members' Viewpoint

BY RONALD BURNS, PATRICK KINKADE, MATTHEW C. LEONE, AND SCOTT PHILLIPS\*

**T**HE ORIGINS of parole date back to the 19th century, when the practice of "giving mark" was established by English and Irish prison reformers (Clear & Cole, 1990). Under these early systems, prisoners were granted a release from incarceration if they accumulated a designated number of "marks" by following institutional rules and working toward self-improvement. The extension of parole as a correctional practice into the United States was linked to the adoption of the indeterminate sentencing models of the early 20th century. Under these models, the correctional system's primary function was to reform the prisoner. Once this reformation was completed, it made sense to release inmates back into society since the correctional system had diverted them from their criminal tendencies. It was the parole board that exercised this discretion in terms of these releases, deciding whether the incarcerated had, indeed, been reformed.

Over the last 20 years, however, the nature of parole has changed. The political constituencies of many jurisdictions began to view indeterminate sentencing as too lenient and opted to shift to determinate sentencing. Using this form of sentencing, the courts prescribe an upper limit of years that the offender must serve with a set rate of "good time credit" the offender may earn for following institutional rules and for meeting personal treatment goals. The discretion for release, then, was removed from the parole board and retained by the judiciary through the process of charging the offenders for their crimes. The parole board, however, maintained the responsibility for parole revocation hearings, deciding if the offender should be reinstitutionalized for violating court-prescribed conditions for release.

Currently, the increasing number of offenders under correctional supervision has affected all members of the criminal justice system, including parole boards. Jackson, Rhine, and Smith (1989) report that between 1970 and 1988 the number of inmates in United States prisons roughly tripled. These figures are corroborated by Joo, Ekland-Olson, and Kelly (1995), who note that incarceration rates have nearly tripled since 1980. At the end of calendar year 1996, the total number of adults under correctional supervision—incarcerated or in the community—reached a new high of 5.5 million (Brown & Beck, 1997). The criminal justice system has responded in traditional fashion by increasing parole (Joo et al., 1995) and changing the methods by which parole is granted. For instance, California parole is considered auto-

matic, and the parole board serves only to deny, rather than grant, release. Many states have even utilized Emergency Powers Acts, which increase parole eligibility in order to meet court-mandated prison population limits (Jackson et al., 1989). The resulting increase in the parole population has been staggering as the number of parolees has swelled from 220,000 in 1980 to 457,000 in 1989 (Joo et al., 1995).

More recently, in 1996, there was a 3.7 percent increase in the overall parole population, with eight states reporting increases of at least 10 percent in their parole populations. New Hampshire (up 35.8 percent) and Alaska (up 20.5 percent) experienced the greatest increases (Brown & Beck, 1997). Similarly, between 1985 and 1996, there was a 134.7 percent increase in the number of persons released on parole (Brown & Beck, 1997). Currently, about 12.4 percent of individuals under correctional supervision are on parole (U.S. Department of Justice, 1996). The problems associated with such rapid parole population growth include overwhelmed community support services such as substance abuse counseling and halfway houses, increased caseloads for parole board members and a concomitant decrease in the quality of community supervision, and an inability to revoke parole caused by crowded county jails and overburdened state prisons (Jackson et al., 1989).

In the United States, then, there are primarily two forms of parole currently in use: discretionary parole, by which the parole board grants release, and mandatory parole, by which the judiciary defines release as a function of sentencing. Until recently, discretionary parole was most commonly used, although in 1996 mandatory parole was used slightly more often (48 percent compared to 46 percent respectively) than discretionary parole (U.S. Department of Justice, 1996). However, use of the parole board as a release mechanism is likely to increase in coming years. Indeed, despite the general public's distaste for parole and parole's perceived leniency, conditions in prisons are forcing correctional officials to use early release mechanisms to keep their institutions within the constitutional standards defining "cruel and unusual punishment" (Jackson et al., 1989).

Given parole's common use, and the likelihood that such use will expand in the coming years, the nature of the parole decision-making process should come under academic scrutiny. Standards for release are, at best, ill defined and irregularly applied. In one of the best studies on this topic, Talarico (1975) suggests that parole board release is not based on "a detailed clinical assessment of treatment effects that parole theory and model are based on" (p. 136). Instead, the decision is an interplay between a variety of external factors about which parolees and the public are misinformed. The net result is a public that is frightened

\*Mr. Burns is assistant professor at Texas Christian University. Mr. Kinkade is Director of Criminal Justice and Associate Professor at Texas Christian University. Mr. Leone is Associate Professor at the University of Nevada. Mr. Phillips is a doctoral student at Louisiana State University.

about a perceived threat from the paroled offender and an incarcerated population frustrated about the perceived caprice within the parole process.

### **Goals and Objectives**

Despite both the pivotal role and dynamic nature of parole in the criminal justice system, few research efforts have been directed at understanding parole board decision-making processes. The goal of this research was to collate a data set that will begin to detail how and why parole is granted in individual parole cases across the United States, as well as provide greater insight into the primary actors in the parole process. Prior work on this topic is sparse and has become dated. This study specifically will add to the literature on parole board decision-making processes by determining: 1) parole board members' perceptions of the most important purpose of corrections; 2) parole board members' perceptions of the most serious problem facing parole boards; 3) parole board members' perceptions of the most important areas of change that might improve the parole board process; 4) parole board members' primary rationales used to justify parole as an early release mechanism; 5) the importance of various rationales parole board members use as justification for the continuance of parole; and 6) the importance of various release criteria as justification for parole board members to grant parole.

### **Methodology**

This study employed a survey methodology. Parole board members were selected as the appropriate respondent group on these issues because of their familiarity with the parole decision-making process. Researchers who have used this approach to analyze similar criminal justice issues have argued that administrators are the most appropriate unit of analysis when one seeks to determine how policies are actually formulated, initiated, and carried out by those with the power to do so. As Baker, Blotky, Clemens, and Dillard argue:

It is on the basis of information seen from the administrator's perspective that decisions are made, determining correctional policy which affects not only the lives of employees and inmates within the system, but also the manner in which the correctional system functions within society. (1973, p. 459)

To maximize response rates, Dillman's (1978) "total design method" (TDM) was used for the data collection. Dillman's method is based on social exchange theory and requires three things to increase survey response: 1) minimized cost for responding, 2) maximized reward for doing so, and 3) established trust that those rewards will be delivered. These three criteria are achieved by keeping the survey short, offering information on the results and policy implications of the study to the respondents, and obtaining an endorsement from a pertinent sponsoring agency for the survey's administration. The National Judicial College and

the leadership in the National Parole Board Association were contacted for letters of support.

Fifty studies based on the TDM have been reviewed by Dillman (1978). The response rates for these efforts range from a low of 53 percent to a high of 96 percent. Here are just a few examples: Appellate Judges, 956, or 69 percent; State Supreme Court Justices, 350, or 94 percent; Prison Administrators, 1,200, or 81 percent.

Personal experience with the technique has yielded similarly impressive results. Of the seven survey processes the current researchers have completed (on both state and national levels), each has had a completion rate of over 70 percent.

The TDM requires multiple mailings to achieve its high response rates. Although the results of individual surveys were kept confidential in this study, each survey was numbered so that the instrument's return could be tracked. The survey was initiated by mailing a cover letter, an endorsement letter, and a survey instrument to each respondent. At the end of 1 week, a reminder postcard was sent to all respondents. This served as both a thank you for those who returned the survey and a reminder for those who did not. At the end of 3 weeks, the first follow-up letter and a replacement questionnaire was sent to non-respondents. The letter reminded individuals that their questionnaires had not been received and appealed for their return. At the end of 6 weeks, a second follow-up letter and survey was sent to all non-respondents. This letter was tracked and, thereby, allowed the targeted individual anonymity. The sensitive nature of the topic may have adversely affected completion rates, and using this strategy relieved some respondent apprehensions and increased overall response rates. The surveys were administered in early 1996, and the final return rate was approximately 59 percent.

#### *The Population*

The sample frame has been compiled as The 1995 Directory of Juvenile and Adult Correctional Departments, Institutions, Agencies and Paroling Authorities. This volume provides a current list of the names, addresses, and phone numbers of all parole board members in the United States. The final respondent group of 351 was drawn from this list. In that there are relatively few parole board members in the United States, the population as a whole can be surveyed, eliminating both sampling error and bias.

#### *Respondent Demographics*

The median age for the respondent group was 52 with a range of 35 to 78. Approximately 70 percent of the respondents were male and 30 percent were female. Approximately 80 percent of the respondents were Caucasian. Twelve percent had no more than a high school diploma, 35 percent had a bachelor's degree, and 53 percent had an advanced degree. Approximately 65 percent identified themselves as politically conservative and 35 percent identified themselves as politically liberal. The median number of years of experience in the criminal justice system was 19 and the median number of years in parole was 7.

### *The Instrument*

The majority of the survey questions dealt with the standards used to apply and revoke parole. The questions were fill-in, yes/no, or typical five-point Likert construction. Using a Likert format, respondents identified their relative agreement/disagreement to declarative statements. Demographic information also was collected.

### **Results**

The first question in the survey asked the parole board members what they thought was "the most important purpose of corrections." Five options were provided: 1) rehabilitation (training offenders to lead non-criminal lives); 2) deterrence (preventing crime by showing potential offenders the serious consequences of committing a criminal offense); 3) incapacitation (protecting the public by removing offenders from the community, where they might commit additional crimes); 4) retribution (simply making offenders pay for the crime they have committed: "an eye for an eye"); and 5) restitution (creating a situation whereby inmates work to restore those damaged by their act). Of the five options, incapacitation was most often ranked as the first or second most important purpose (71.8 percent). In order of perceived importance, the other options were rehabilitation (63.4 percent), deterrence (47.7 percent), and restitution (22.7 percent). Retribution was ranked a distant fifth, with only 12.4 percent noting it as their first or second most important purpose. Table 1 provides the results.

TABLE 1.  
PERCENTAGE OF RESPONSES TO THE  
QUESTION: "WHAT DO YOU THINK IS THE MOST  
IMPORTANT PURPOSE OF CORRECTIONS?" ("1" IS THE  
MOST IMPORTANT, "5" IS THE LEAST IMPORTANT)

<b>Purpose</b>	<b>Importance</b>				
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Rehabilitation	42.5	20.9	21.6	11.2	3.7
Deterrence	12.9	34.8	31.8	11.4	9.1
Incapacitation	50.4	21.4	14.5	13.0	0.8
Retribution	3.1	9.3	18.6	17.1	51.9
Restitution	4.7	18.0	18.0	35.2	24.2

The second question asked the respondent to rank by seriousness the problems currently facing parole boards. Seven options were given: 1) lack of commitment by parole board members; 2) burnout among parole board members; 3) lack of support for the parole process by government officials; 4) lack of support for the parole process by the public; 5) media coverage of parole board activities; 6) excessive caseload demands; and 7) lack of support for the parole board by other correctional officials. Interestingly, the percentage of respondents who noted lack of public support (69.9 percent) and lack of government support (51.9 percent) as the first or second most important problem in parole far surpassed the percentage who noted that excessive caseload demands (37.1 percent) were most important. Table 2 displays the results.

TABLE 2.  
PERCENTAGE OF RESPONSES TO THE QUESTION:  
"WHAT IS THE MOST SERIOUS PROBLEM FACING PAROLE BOARDS?"  
("1" IS THE MOST IMPORTANT, "7" IS THE LEAST IMPORTANT)

<b>Problem</b>	<b>Importance</b>						
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
Lack of commitment by parole board members	0.8	3.0	6.1	4.5	6.1	18.9	60.6
Burnout among parole board members	0.0	3.8	5.3	6.0	21.8	46.6	16.5
Lack of support for the parole process by government officials	26.3	25.6	15.8	14.3	15.0	0.8	2.3
Lack of support for the parole process by the public	35.3	34.6	17.3	9.0	1.5	1.5	0.8
Media coverage of parole board activities	12.1	19.7	18.2	22.7	14.4	6.1	6.8
Excessive caseload demands	26.7	10.4	15.6	17.0	20.7	4.4	5.2
Lack of support for the parole board by other correctional officials	5.3	7.5	21.8	22.6	21.8	12.8	8.3

The third question asked the subjects what they considered the most important area of change that could improve the parole board process. The options included were: 1) better systems of inmate classification; 2) more treatment-based programs within the prison; 3) more programming options available outside the prison; 4) better trained parole board members; 5) better developed guidelines for paroling decisions; and 6) better public understanding of the parole process. In general, the need for better public understanding of the parole process and more treatment-based programs within prison (both at 56.6 percent) were most commonly cited as the first or second most important problem in the parole process while the need for more programming options available outside the prisons (48.2 percent) appeared to be of high importance as well. Table 3 displays these data.

TABLE 3.  
PERCENTAGE OF RESPONSES TO THE QUESTION:  
"WHAT IS THE MOST IMPORTANT AREA OF CHANGE THAT  
MIGHT IMPROVE THE PAROLE BOARD PROCESS?"  
("1" IS THE MOST IMPORTANT, "6" IS THE LEAST IMPORTANT)

<b>Problem</b>	<b>Importance</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
Better systems of inmate classification	4.4	10.3	16.2	22.8	19.9	26.5
More treatment-based programs within the prison	35.3	21.3	23.5	9.6	8.1	2.2
More programming options available outside the prison	16.1	32.1	24.8	17.5	6.6	2.9
Better trained parole officers	6.7	7.4	10.4	16.3	31.1	28.1
Better developed guidelines for paroling decisions	11.0	13.2	11.8	14.0	22.1	27.9
Better public understanding of the parole process	41.2	15.4	14.0	14.0	7.4	8.1

The fourth question asked the respondents about the primary rationale they used to justify parole as an early release mechanism. The six options were: 1) reintegration (It creates circumstances whereby offenders are aided in their transition from institutional life back into society.); 2) incentive (It helps to maintain order within the institution by giving the correctional official a reward to offer for "good behavior."); 3) prison overcrowding (It helps to maintain court-mandated prison population caps by lowering the number of incarcerateds.); 4) rehabilitation (It allows prisoners who have demonstrated change in their tendencies to begin restructuring their lives in society at large.); 5) sentencing disparities (It allows for the criminal justice system to reconcile arbitrary differentials in punishment levied against offenders who have committed the same crime.); and 6) punishment (It allows the criminal justice system to continue to impose a sanction against offenders who might otherwise simply be released.). The two options that were perceived as being of greatest importance (either first or second option) were rehabilitation (74.7 percent) and reintegration (59.9 percent). Table 4 displays these data.

TABLE 4.  
PERCENTAGE OF RESPONSES TO THE QUESTION:  
"WHAT IS YOUR PRIMARY RATIONALE USED TO JUSTIFY  
PAROLE AS AN EARLY RELEASE MECHANISM?" ("1" IS THE  
MOST IMPORTANT, "6" IS THE LEAST IMPORTANT)

<b>Rationale</b>	<b>Importance</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
Reintegration	26.3	33.6	18.2	14.6	6.6	.7
Incentive	11.0	13.2	37.5	19.1	16.9	2.2
Prison Overcrowding	5.1	3.7	3.7	12.5	28.7	46.3
Rehabilitation	43.5	31.2	13.0	8.0	2.9	1.4
Sentencing Disparities	8.1	11.0	15.4	28.7	22.1	14.7
Punishment	13.1	11.7	10.2	16.1	18.2	30.7

The fifth question addressed the respondents' perceived importance of several rationales according to their appropriateness as justifications for the continuance of parole. The rationales included: 1) "helps reintegration to society"; 2) "works as incentive for good behavior in prison"; 3) "helps relieve prison overcrowding"; 4) "works toward the end of rehabilitation"; 5) "helps to remove sentencing disparities between prisoners"; and 6) "extends the length of punishment possible." Based on the responses, it appears that parole board members use parole because they believe that it helps reintegration to society (95.4 percent rate it as very, or somewhat, important), that it works toward the end of rehabilitation (89.9 percent), and because it works as an

incentive for good behavior in prison (86.9%). Table 5 presents these data.

*Note:* For Tables 5 and 6, the following response category abbreviations are used: "VI" is very important; "SI" is somewhat important; "N" is neutral; "SU" is somewhat unimportant; and "VU" is very unimportant.

TABLE 5.  
PERCENTAGE OF RESPONSES REGARDING RATIONALES  
AS JUSTIFICATION FOR THE CONTINUANCE OF PAROLE

<b>Rationale</b>	<b>Importance</b>				
	<b>VI</b>	<b>SI</b>	<b>N</b>	<b>SU</b>	<b>VU</b>
Helps reintegration to society	75.2	20.4	2.9	1.5	0
Works as incentive for good behavior in prisons	35.5	51.4	8.0	5.1	0
Helps relieve prison overcrowding	6.5	21.7	25.4	23.2	23.2
Works toward the end of rehabilitation	58.7	31.2	8.0	2.2	0
Helps to remove sentencing disparities between prisoners	10.1	37.0	27.5	31.7	3.6
Extends the length of punishment possible	13.0	25.4	28.3	15.9	17.4

The sixth question asked the respondents to rate the importance of each of the following release criteria in their decision to grant parole: the nature and circumstances of the inmate's offense; the inmate's prior criminal record; the inmate's attitude toward family responsibilities; the inmate's attitude toward authority; the inmate's attitude toward the victim; the inmate's institutional adjustment; the inmate's community support; the inmate's financial resources; the inmate's physical health; the inmate's psychological health; the inmate's insight into the cause of his or her past criminal conduct; the adequacy of the inmate's parole plan; the attitude of the offender's victims about the offender's release; prison conditions; public sentiment about the offender or the offense type; public notoriety of the case; and the inmate's age.

In general, it appears that parole board members feel that the nature of the inmate's offense, as well as the inmate's prior criminal record, attitude toward the victim, institutional adjustment (as measured by the inmate's participation in prison programs), and insight into the causes of past criminal conduct are the most important factors in the decision to grant parole. In contrast, the board members appear to feel as though the inmate's physical health and age, prison conditions, and the public notoriety of the case are of lesser importance in the decision to grant parole. Table 6 presents the results.

TABLE 6.  
PERCENTAGE OF RESPONSES REGARDING THE  
IMPORTANCE OF RELEASE CRITERIA AS JUSTIFICATION  
FOR THE DECISION TO GRANT PAROLE

<b>Rationale</b>	<b>Importance</b>				
	<b>VI</b>	<b>SI</b>	<b>N</b>	<b>SU</b>	<b>VU</b>
The nature and circumstances of the inmate's offense	90.6	6.5	2.2	0.7	0.7
The inmate's prior criminal record	79.9	19.6	0.7	0.0	0.0
The inmate's attitude toward family responsibilities	20.3	58.7	13.8	6.5	0.7
The inmate's attitude toward authority	38.4	50.7	10.1	0.7	0.7
The inmate's attitude toward the victim	60.9	34.8	3.6	0.7	0.7
The inmate's institutional adjustment	55.1	41.3	3.6	0.7	0.0
The inmate's community support	29.0	60.1	9.4	1.4	0.0
The inmate's financial resources	14.5	52.9	26.8	5.1	0.7
The inmate's physical health	2.9	29.0	51.4	13.0	3.6
The inmate's psychological health	49.3	40.6	8.7	0.7	0.7
The inmate's insight into the causes of his or her past criminal conduct	53.6	40.6	5.1	0.7	0.0
The adequacy of the inmate's parole plan	47.1	44.9	5.1	2.9	0.0
The attitude of the offender's victim(s) about his or her release	37.7	42.0	17.4	1.4	1.4
Prison conditions (overcrowding)	1.4	15.9	30.4	21.7	30.4
Public sentiment about the offender or the offense type	13.0	50.0	26.8	7.2	2.9
Public notoriety of the case	14.5	40.6	34.1	5.8	5.1
The inmate's age	11.6	44.2	31.2	5.8	7.2

### **Discussion**

Each of the survey questions raises several significant areas of discussion based on the responses of the parole authorities. Thus, the following discussion addresses several of the issues within the context of each question.

The first question asked the respondents what they thought was the most important purpose of corrections. It appears that the parole board members included in the present study believe that correctional practices should be designed to protect society and rehabilitate offenders, as opposed to punishing offenders. Such a finding could be explained through the nature of parole decision-making. For example, because they may bear the brunt of the responsibility for releasing an offender on parole who subsequently commits a serious crime, these board members may be more concerned about the well-being of the individual offender and society than about inflicting punishment upon the offender. It could be argued that releasing an offender who has been punished, yet not "corrected," is of little interest to parole board members.

Based upon the responses to the second question, which

asked the subjects what they thought was the most serious problem facing parole boards, it appears that parole board members perceive a lack of support from both the public and government. Because one of the limitations of survey research is the inability to further "pry" into subject responses, future research should be directed toward a better understanding of why, and to what extent, parole board members perceive a lack of support from both groups, as well as how the situation can be improved. Nevertheless, the present research findings suggest that, given the significance of their decision-making roles, parole board members do not feel as though they should be solely responsible for the entire parole process. In other words, similar to the recent movement in law enforcement toward greater involvement of the community in addressing crime, parole board members recognize the need for, and encourage help from, those typically outside of the parole process.

Similarly, based on the finding that a lack of government support was noted as the second most important problem facing parole boards, it is not surprising that excessive caseloads was noted as the third most important problem facing parole boards. Such findings lead to speculation that parole board members believe that their workload could be reduced through a greater concern for the roles they play in the correctional process. Yet, despite the perceived lack of support these officials receive and their excessive workload, the subjects appear to believe that parole board members are quite committed to their job and that burnout is not a problem. In other words, the problems facing parole boards have little to do with parole board personnel, but with other factors instead.

In general, the responses to the third question were consistent with the responses to the first and second questions. For example, respondents frequently noted that the most important area of change that might improve the parole board process involved both the need for more treatment-based programs within prison and a better public understanding of the parole process (the percentages of respondents who cited these responses as the first or second most important area of change were exactly the same). The high number of responses suggesting the need for more treatment-based programs within prisons is consistent with responses to previous questions, which found that parole board members are concerned about the well-being of the offenders and society, and the answers to the fourth question, which suggests that 74.7 percent of the parole board members felt that rehabilitation was a highly important rationale to justify parole as an early release mechanism. The results also resemble responses to previous questions in that board members noted that they were not necessarily concerned about the punishment of the offender and that they perceived a lack of government support. Accordingly, the need for more programming options available outside of prisons was selected as the third most important area of change. Because the respondents rated the need for better treatment programs and programming options as more important than the needs for better developed guidelines

and a better classification system (ranked fourth and fifth in importance, respectively), we can begin to see where the need for government support would be required. Nevertheless, additional research obviously is necessary.

The finding that parole board members believe that one of the most important areas of change to improve the parole process requires the public to better understand the parole process also is consistent with the finding in the second question, which suggested that parole board members would like greater public support. Finally, it does not appear that parole board members perceive the problems of the parole board process to involve parole board members, as the response suggesting the need for better parole board members was least often cited by the subjects.

The fourth question of the survey concerned the respondents' primary rationale used to justify parole as an early release mechanism. In accordance with the responses to several of the previous questions, parole board members suggested that the well-being of the offender and the safety of society were of utmost importance. By most often noting rehabilitation and integration as the most important factors in their primary rationales used to justify parole, respondents demonstrated consistency in their concerns about the parole process. Interestingly, punishment, which previously was ranked low in importance by the parole board members, was noted by the respondents as the third most important rationale used to justify parole as an early release mechanism. Although the percentage of respondents who supported punishment as an important rationale to justify parole was significantly lower than those who felt reintegration and rehabilitation were most important (a difference of roughly 35 and 50 percent, respectively) and nearly half (48.9 percent) of the respondents ranked it last or second to last in importance, punishment was selected as more important than incentive, sentencing disparities, and prison overcrowding, the latter being the least often used rationale to justify parole as an early release mechanism. These findings appear to be in contrast to previous research which suggests that parole has been employed pragmatically to promote prison discipline (i.e., incentive) and reduce prison overcrowding (e.g., Abadinsky, 1978).

The fifth question addressed the parole board members' perceptions of various rationales for the continuance of parole. Once again, many of the results are in accordance with the responses to the previous questions in the present research. For example, once again parole board members appear to be concerned about the reintegration and rehabilitation of the parolees (which were most often noted as "very" or "somewhat" important) while the continuance of parole as a justification for helping to relieve prison overcrowding and as an extension of the length of punishment were most often noted as somewhat, or very unimportant. Interestingly, in contrast to previously noted results which suggested that parole board members generally do not support parole as an incentive for good behavior in prison, 86.9 percent of the responses to this question noted that respondents felt that the continuance of parole was either very, or

somewhat important as an incentive for good behavior in prisons. Thus, it appears that as a rationale to justify parole, parole board members are slightly more supportive of the rationale of punishment than that of incentive for good behavior. Yet, with regard to the rationale for the continuance of parole, the opposite is true. Further research in this area could shed greater insight into why such is the case.

A great deal of research has focused upon the issue addressed in the sixth and final question of the present research, which concerned the subjects' perceived importance of various criteria in the decision to grant parole. In general, with regard to the issue being addressed/measured in the present question, many of the findings in the present research have been suggested by previous research in the area. For example, the criteria that were most often (at least 90 percent) cited as very, or somewhat important were as follows (in order of noted importance): 1) the inmate's prior record; 2) the nature and circumstances of the inmate's offense; 3) the inmate's institutional adjustment; 4) the inmate's attitude toward the victim; 5) the inmate's insight into the causes of his or her past criminal conduct; 6) the adequacy of the inmate's parole; and 7) the inmate's psychological health. Other release criteria noted in the present research and consistent with previous research that were found to be somewhat, or very important, although not to the extent as the previously noted criteria (at least 80 percent but less than 90 percent), were the inmate's support in the community and the inmate's attitude toward authority, which were noted as being of equal importance.

The factors that appeared to be of least importance to parole board members in their decision to grant or deny parole also were consistent with the previous literature and, in part, with the above-noted research findings in the present study. For example, prison condition was the release criterion that was generally noted as least important in parole decision-making. This finding is consistent with the findings of the present research and, by its absence in the previous literature concerning the factors related to parole decision-making, is consistent with prior research. An inmate's health and public notoriety of the case also appear to be of little consideration in the parole decision-making process, and they, too, are absent in the previous research. Finally, based on the present results, an inmate's age does not appear to be an overly important release criteria although Heinz et al. (1976) noted that the relationship between age and parole is curvilinear with the youngest and oldest having the greatest chance of parole.

### **Conclusion**

As noted above, many of the results regarding the factors used in the parole decision-making process are consistent with previous research on the topic (c.f., Thomas, 1963; Gottfredson, Wilkins, Hoffman, & Singer, 1973; Heinz, et al., 1976; Stanley, 1976; Carroll, 1978; Schmidt, 1979; Carroll, Weiner, Coates, Galegher, & Alibrio, 1982; Carroll & Burke, 1990; Turpin-Petrosino, 1993). Also, a general analysis of the

results of the present study provides the reader with several recurring "themes." First, it appears that parole board members feel that they should not be the only ones involved in the parole process. They appear to request the support of the general public and government officials to make the parole process more effective and more efficient and to provide efficacious post-release support. To what extent, and in what manner, this support need be supplied requires further research. Accordingly, parole board members do not appear to perceive the problems currently facing parole boards as internal ones. In other words, they do not perceive the need to increase the standards for, or professionalism of, parole board members.

Second, it appears that parole board members have a concern for the well-being of both individual offenders and the general public. In a period when punishment and punitiveness are becoming more the norm than the exception in the criminal justice system, some may find comfort in the finding that parole board members would rather "correct" than punish offenders. As we gravitate toward punishment as our correctional philosophy, it will be interesting to see what impact, if any, this concern has on policy or decision-making in the parole process.

Finally, it appears that parole board members do not perceive their role in the criminal justice system as one that is, or should be, affected by prison overcrowding. Contrary to conventional wisdom, parole board members do not perceive the parole process as one that is, or should be, dictated by the increasing prison population. Whether the perceptions of the parole board members directly reflect "reality" requires further research in this particular area. Historically, the parole process has been affected by the prison population (e.g., Jackson et al., 1989; Abadinsky, 1978), yet the respondents in the current study do not seem to believe that that is the situation.

Through obtaining a better understanding of parole decision-makers, we hope that we can obtain a better grasp of the current state of parole and of how parole board members wield their discretion. Although we would like to think of such personnel as automatons who consistently make unbiased, accurate, and consistent decisions each time they are presented with a case, such a case is highly unlikely. As Gottfredson and Ballard (1966, p. 112) ask, "Are differences in parole decisions associated not only with the characteristics of the offenders themselves (or their crime) but also with the persons responsible for the decisions?"

It is quite likely that despite our attempts to limit parole board member discretion—for example through parole guidelines—the answer to Gottfredson and Ballard's question is "Yes, the characteristics of parole board members do play a role in the parole process." As such, the present research has attempted to obtain a better grasp of the beliefs, perceptions, and values of those largely involved in the decision-making process, with the ultimate goal of furthering our understanding of the parole process.

Working in a branch of corrections, parole board members often face the difficult task of deciding if an offender is ready to return to society. They must determine if the person is "corrected." The innumerable variables in predicting human behavior can quite easily lead to an incorrect decision. When that incorrect decision results in physical harm, or even loss of life, it becomes easy to point fingers at the persons responsible, whether directly or indirectly, for this harm. Yet, such is the role parole board members play daily. With such decision-making powers and the amount of discretion inherent in the position, the need for understanding what "makes these people tick" becomes vital. We hope that we have added to this understanding.

#### REFERENCES

- Abadinsky, H. (1978). Parole history: An economic perspective. *Offender Rehabilitation*, 2(3): 275-278.
- Baker, D.P., Blotky, R., Clemens, K., & Dillard, M. (1973). Judicial intervention in corrections: The California experience—An empirical study. *UCLA Law Review*, 20: 452-462.
- Brown, J.M., & Beck, A.J. (1997). *Nation's probation and parole population reached almost 3.9 million last year*. Washington, DC: Bureau of Justice Statistics.
- Carroll, J. (1978). Casual attributions to expert parole decisions. *Journal of Personality and Social Psychology*, 36: 1501-1511.
- Carroll, J.S., & Burke, P.A. (1990). Evaluation and prediction in expert parole decisions. *Criminal Justice and Behavior*, 17: 315-332.
- Carroll, J.S., Wiener, R.L., Coates, D., Galegher, J., & Alibrio, J.J. (1982). Evaluation, diagnosis, and prediction in parole decision making. *Law & Society Review*, 17(1): 199-228.
- Clear, T.R., & Cole, G.F. (1990). *American corrections* (2nd. Ed.). Pacific Grove, CA: Brooks/Cole.
- Dillman, D. (1978). *Mail and telephone surveys: The Total Design Method*. New York: Wiley.
- Gottfredson, D.M., & Ballard, K.B. (1966). Differences in parole decisions associated with decision-makers. *Journal of Research in Crime and Delinquency*, 3: 112-119.
- Gottfredson, D.M., Wilkins, L.T., Hoffman, P.B., & Singer, S.M. (1973). *The utilization of experience in parole decision-making: A progress report*. Davis, CA: National Council on Crime and Delinquency Research Center.
- Heinz, A., Heinz, J., Senderowitz, S., Vance, M. (1976). Sentencing by parole board: an evaluation. *Journal of Criminal Law and Criminology*, 67: pp. 1-31.
- Jackson, R.W., Rhine, E., & Smith, W. (1989). Prison crowding: A policy challenge for parole. *Corrections Today*, 51: 118-123.
- Joo, H.J., Ekland-Olson, S., & Kelly, W. (1995). Recidivism among paroled property offenders released during a period of prison reform. *Criminology*, 33: 389-410.
- Schmidt, J. (1979). The creation of parole guidelines: From rehabilitation to retribution. *Comparative Crises*, 3: 419-439.
- Stanley, D.T. (1976). Prisoners among us: The problem of parole. Washington, DC: Brookings Institute.
- Talarico, S.M. (1975). *Patterns of decision-making in the judicial process: The special case of probation and parole*. Ph.D. dissertation, University of Connecticut.
- Thomas, P.A. (1963). An analysis of parole selection. *Crime and Delinquency*, 9: 173-179.
- Turpin-Petrosino, C. (1993). *Exploring the effects of plea bargaining on parole decision-making in the state of New Jersey*. Ph.D. dissertation, Rutgers State University.
- U.S. Department of Justice, Bureau of Justice Statistics. (1996). *Sourcebook of criminal justice statistics*. Washington, DC: Government Printing Office.

# Can Probation Be Revoked When Probationers Do Not Willfully Violate the Terms or Conditions of Probation?

BY DANE C. MILLER, J.D., RICHARD D. SLUDER, PH.D., AND J. DENNIS LASTER, PH.D., J.D.\*

## ***Introduction***

IT IS well settled in American criminal jurisprudence that, with rare exception, for an individual to be held liable for a criminal act, there must be some form of culpability on the part of the individual. The concept of a blameworthy state of mind as being essential to liability for a criminal act has existed for centuries. A perusal of virtually any text on substantive criminal law will lead one to the phrase *actus non facit reum, nisi sit rea*, an act does not make the actor guilty in the eyes of criminal law unless there was a guilty mind (Black, 1968).

The concepts of *actus reus* and *mens rea* were so critical under English common law that William Blackstone noted, “[T]o make a complete crime, cognizable by human laws, there must be both a will and an act” (Blackstone, 1983, p. 21). More than a century later, Oliver Wendell Holmes, Jr., was willing to identify “actual personal culpability” as the very ground spring of our entire system of legal liability (Holmes, 1982, p. 4).

Notwithstanding the growth in strict liability offenses (see, e.g., Perkins, 1983), the *Model Penal Code* continues to express a clear juridical preference that blameworthiness for a criminal act find its source in the actor’s state of mind. Section 2.02 of that work, for instance, provides that “a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently” (American Law Institute, 1985).

In the context of probation revocation, the issue is less clear as to whether probation can be revoked in instances where the offender has not willfully violated the terms or conditions of his or her sentence. This article identifies and reviews recent cases on the issue. We begin by assessing the Supreme Court’s holding in *Bearden v. Georgia* (1983), the case often used as a guidepost by lower courts in determining whether probation may be revoked when an offender, ostensibly through no fault of his or her own, is unable to comply with the terms or conditions of the probationary sentence imposed. This article also surveys and analyzes those cases where courts have permitted revocation even though the offenders did not willfully violate probation. Cases where courts held that probation could not be

revoked because of the absence of willfulness on the part of the offender also are discussed. The article concludes by assessing the implications of cases decided thus far in this largely unexamined area of law.

## ***The Touchstone Case on Willfulness Relating to Financial Conditions: Bearden v. Georgia***

*Bearden v. Georgia* (1983) is the touchstone case often referenced by lower courts in making determinations whether probation can be revoked in instances where the probationer has not willfully violated the conditions of probation. In *Bearden*, the defendant had been placed on probation following a conviction for burglary and theft by receiving stolen property. Thus, the trial court had determined that probation was the suitable disposition for the matter. As a condition of probation, the trial court ordered the defendant to pay a \$500 fine and \$200 in restitution. With minimal education and few job skills, Bearden apparently was unable to find work and thus could pay neither the fine nor restitution imposed by the court. Because the defendant failed to meet these financial requirements, the defendant’s probation was revoked and he was sentenced to serve the remaining portion of the probationary period in prison.

On appeal, the Georgia Court of Appeals rejected Bearden’s claim that the Equal Protection Clause of the 14th Amendment was violated because he was imprisoned for an inability to pay the fine levied as a part of probation. The U.S. Supreme Court granted *certiorari*.

On review, with Justice O’Connor writing for the majority, the U. S. Supreme Court ordered the revocation vacated and the matter remanded. In reaching its decision, the Court found *Williams v. Illinois* (1970) and *Tate v. Short* (1971) instructive. In both *Williams* and *Tate*, the Court had struck down state practices that allowed the jailing of indigent defendants based on their inability to satisfy the financial requirements of their sentences.

Likewise, in *Bearden*, the Court determined that the revocation order was improper, holding that a state may not automatically convert a non-prison sentence to a term of incarceration solely because the defendant is indigent and cannot meet the financial obligations of his sentence. Rather, something more was required. The Court summarized the “something more” as follows:

\*The authors all are with the Criminal Justice Department at Central Missouri State University. Dr. Miller is a professor. Dr. Sluder and Dr. Laster are associate professors.

We hold, therefore, that in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. If the probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may revoke probation and sentence the defendant to imprisonment within the authorized range of its sentencing authority. If the probationer could not pay despite bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment. (pp. 672-673)

In essence, the Court imposed a two-step revocation process in such cases. First, there must be an assessment of the probationer's efforts to comply with the financial conditions imposed. If those efforts are found to be bona fide, there must be an assessment of whether alternative modes of punishment will meet the state's penological interests. "Only if alternative measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay" (*Bearden v. Georgia*, 1983, p. 672).

Importantly, the Court went on to point out in a footnote, "We do not suggest that, in other contexts, the probationer's lack of fault in violating a term of probation would necessarily prevent a court from revoking probation" (*Bearden v. Georgia*, 1983, p. 668). Citing a hypothetical of an offender being placed on probation for driving under the influence, it may be reckless for a court to permit the person to remain on probation once it becomes evident that efforts to control his chronic drunken driving had failed. "In contrast to a condition like chronic drunken driving, however, the condition at issue [in *Bearden*]—indigency—is itself no threat to the safety or welfare of society" (*Bearden v. Georgia*, 1983, p. 668).

While the Court thus suggests that its holding did not extend to situations where the probationer presents some kind of danger, serious questions are presented. For example, is a finding of willfulness unnecessary in "all" cases that do not involve financial obligations? Or is the Court suggesting that a finding of willfulness is not necessary in that very limited class of cases where the offender's continued supervision on probation would pose a risk to the community? Additionally, the Court left unanswered the crucial question of whether probation revocation can accomplish what is constitutionally prohibited in an outright criminal prosecution; namely, the punishment of an individual for a condition that is beyond his or her control. In *Robinson v. California* (1962), for example, the Court held that imposing criminal sanctions based solely on a defendant's status of being addicted to drugs violates due process. And, in *Powell v. Texas* (1968), the Court suggested that imposition of criminal liability on a diagnosed alcoholic solely for being drunk might violate due process. These cases provide at least some indication that probation revocations based on a violation that could not have been avoided by the probationer could raise serious due process concerns.

The possible due process concerns notwithstanding, several courts have rejected the notion that there must be a finding of culpability on the part of the probationer to support an order revoking probation. In the next section, we identify and discuss recent cases where courts found that probation may be revoked even though the probationer did not willfully violate the terms and conditions of the probationary sentence.

### **Cases Supporting Revocation Absent Findings of a Willful Violation by the Probationer**

The decision in *State ex rel. Nixon v. Campbell* (1995) illustrates the rationale applied by many courts when revoking the probation of an offender who has not willfully violated probation conditions. In *Nixon*, the defendant was convicted for rape and abuse of his 14-year-old daughter. He was sentenced to concurrent sentences of 4 and 7 years. Execution of the sentence was suspended and the defendant was placed on probation for 5 years, with a special condition that he complete a 2-year inpatient sex offender program at a state hospital.

Less than 3 months after the defendant entered the inpatient treatment program, the program was discontinued by the state. The prosecuting attorney sought revocation of the defendant's probation based on the alleged violation of the conditions imposed. At the revocation hearing, the administrator of the discontinued program testified the defendant had made minimal progress in the program, that she believed he would revert to pedophilia without further treatment, and that the only remaining inpatient sex offender program was operated within the prison system by the state's department of corrections.

After offering the defendant the opportunity to withdraw his guilty plea, the trial court revoked probation and ordered the suspended sentence executed. The defendant's writ of habeas corpus was granted by the circuit court after concluding that there was no basis in the record to support a finding that the defendant violated the conditions of his probation. On appeal, the Missouri Supreme Court reinstated the defendant's sentence mandating his incarceration in the department of corrections.

The Missouri Supreme Court reached its decision after the consideration of several factors. First, the court acknowledged that the defendant, through no fault of his own, failed to comply with the conditions of probation since he was unable to complete the inpatient treatment program as ordered. Citing *Bearden v. Georgia* (1982), the court indicated that the probationer's lack of fault in violating a condition of probation would not necessarily prevent a revocation of probation. The original sentence in *Nixon* was founded not only on the defendant's "hopes of rehabilitation but also the need of society for protection from [the defendant]" (*State ex rel. Nixon v. Campbell*, 1995, p. 372). The court noted that there was further evidence that without additional inpatient treatment the defendant would revert to pedophilia. Since there was no alternate inpatient treatment

program outside of the prison, and because of the need to protect society, the court could not conclude that the order of revocation was improper.

The court noted that the present case was further complicated because the defendant's probation was part of a plea bargain. This problem was overcome, however, when the trial court offered the defendant the option of withdrawing his guilty plea and beginning the plea negotiation process anew.

The facts in *State v. Kochvi* (1996) are similar to those in the above case. In *Kochvi*, a defendant pleaded guilty to two counts of felonious sexual assault and three misdemeanor sexual assault charges. He was sentenced to a 1-year term in prison on the misdemeanor charges and 3 to 10 years on the felony charges. The sentence on the felony charges was deferred for 18 months following the defendant's release from custody on the misdemeanor sentence. The defendant was placed on probation for 5 years, with a special condition that he participate meaningfully and complete a treatment program as prescribed by corrections officials and treatment providers.

The defendant was evaluated by a psychiatrist, who concluded that it would not be appropriate to place him in an outpatient treatment program. The psychiatrist questioned the defendant's honesty and lack of impulse control, suggesting that without continued incarceration, he would be at risk of repeating his offense.

Upon release from the incarceration portion of his sentence, the defendant was referred by his probation officer to a generic treatment program. Staff at this program indicated that they would not accept the defendant into their sex offender treatment program. Because of this refusal and the information provided in the initial psychiatric assessment, a violation report was filed alleging that the defendant had violated a special condition of his probation requiring him to enter a treatment program. The trial court found that the defendant had violated a condition of probation, and the previous suspended sentence was ordered executed.

On appeal, the New Hampshire Supreme Court affirmed the order for revocation. The court concluded that a defendant's probation may be revoked even if the alleged violation was caused by factors beyond the defendant's control. The court was not convinced that because the defendant's inability to secure treatment was not his fault, the defendant's probation could not be revoked. Citing the *Nixon* case discussed above, the court held that revocation is permitted when a defendant fails to complete a sex offender treatment program for reasons beyond his control. Although in most cases a defendant's fault is of great importance in determining whether the conditions of probation have been violated, circumstances beyond the defendant's control may provide an adequate basis for revocation where such circumstances frustrate the very purposes of probation. In this case the defendant's lack of impulse control, coupled with his inability to secure treatment, frustrated the dual functions of probation: rehabilitation of the defendant and protection of society (*State v. Kochvi*, 1996).

A similar decision on probation revocation was reached in *People v. Colabello* (1997). In *Colabello*, the defendant was placed on probation for sexual assault on a child. A condition of probation was that the defendant successfully complete a treatment program identified by his therapist and probation officer. An assessment by a psychologist concluded that the defendant was a fixated pedophile, suffering from a psychosis that severely distorted his judgment and functioning. Because of these factors, the defendant was not judged to be an appropriate candidate for outpatient treatment because of the very high risk of recidivism.

The defendant was subsequently admitted to a long-term secure inpatient program for sex offenders for a 2-week trial period to evaluate whether he would be able to work and complete the program. The defendant was discharged from the program approximately 6 weeks later with a "poor prognosis." The discharge report noted that the defendant did little or nothing while in the program and that his lack of progress resulted more from a lack of commitment than ability. The defendant's probation was revoked after the trial court concluded that the defendant's failure to complete the program was a violation of the conditions of his probation. The defendant was subsequently sentenced to a term of 8 years in the department of corrections.

On appeal, the Colorado Court of Appeals held that probation could be properly revoked based on the defendant's failure to complete the program in question. The court disagreed that the trial court had to make a finding that the defendant "willfully or unreasonably" failed to complete the treatment program. Because of the defendant's high risk of recidivism, his failure to complete the prescribed treatment program presented a potential threat to the community. A careful consideration of the treatment options available led the trial court to properly conclude that there were no viable alternatives to incarceration (*People v. Colabello*, 1997).

*Kupec v. State* (1992) involved a case where a defendant pleaded guilty to delivery of a controlled substance. The defendant was placed on probation with the first year to be spent in the Surveillance and Treatment of Offender Program. One of the conditions of probation was that the defendant refrain from the consumption of alcohol or use of illegal drugs.

After a urine test revealed the presence of cocaine metabolites, the prosecutor moved for revocation of probation. Another allegation subsequently was added, indicating that the defendant had been arrested and had a blood alcohol content of .151 percent. At the hearing, the defendant was found to have violated probation by using alcohol and cocaine, and her probation was revoked.

On appeal to the Wyoming Supreme Court, the defendant raised several issues, including an argument that it was an error for the revocation court to rely solely on a breathalyzer test result without finding that the defendant had willfully and intentionally consumed alcohol. The defendant claimed that she had unknowingly consumed a 16-ounce glass of possibly spiked lemonade. The appellate court affirmed the revocation, citing several considerations. First, the court noted that Wyoming's statutes and rules do not

specify whether a probationer must willfully violate probation conditions before a court may revoke probation. Secondly, the court noted that while the revocation of a term of probation where the violations were not willful may not always be fair, a court cannot be prevented from revoking probation in situations where the probationer's conduct is beyond his or her control and such conduct presents a threat to society. Finally, the court was not convinced that the defendant's consumption of alcohol was not willful. There was sufficient evidence in testimony to find that it was improbable that the defendant had not consumed the alcohol willfully (*Kupec v. State*, 1992).

In addition to the cases cited above, other courts have ruled that it is not necessary to find that a probationer acted willfully or intentionally to revoke probation. In *People v. Neckopulos* (1996), the defendant was ordered to attend drug treatment as a condition of probation. After attending several treatment sessions, the defendant stopped attending treatment without permission or direction from treatment officials. The defendant's probation subsequently was revoked by the sentencing court. On appeal, the defendant claimed that the revocation was improper because there was no proof presented that she willfully conducted herself in violation of the conditions of probation.

The Illinois Court of Appeals found the defendant's argument in this regard wholly without supporting authority and an inaccurate statement of Illinois law. The court noted that under Illinois law, probation is a privilege to be employed when the defendant would present no threat to society and when the defendant's rehabilitation would be enhanced. In this case, the defendant's failure to attend treatment frustrated the purpose of her probation regardless of whether such failure was willful. Because the prosecution was not required to prove that the defendant's failure to comply with drug treatment was willful, any evidence of the defendant's incapacity for willful activity did not render the trial court's revocation of her probation improper. The court went on to suggest, however, that the defendant's lack of progress in her court-ordered treatment was not caused by the unavailability of the treatment, but rather by her own failure to take advantage of the opportunities presented to her (*People v. Neckopulos*, 1996). Thus, although the court held that a willful violation is not required, it nonetheless found the defendant's lack of effort to be a significant factor.

The final case reviewed in this section reflects a decision by an appellate court in the state of Washington. In *State v. Gropper* (1995), an offender violated conditions of his sentence by not fulfilling financial obligations and by failing to notify the department of corrections of a change in address. The sentencing court revoked the defendant's community release status and imposed a term of incarceration. On appeal, the defendant alleged that the sentencing court did not establish that his failure to satisfy community release conditions constituted a willful violation.

The appellate court rejected the defendant's argument on several grounds. First, the court noted that state statutory provisions do not require a court to consider willfulness

before ordering incarceration for a violation of a condition that does not have a financial component. Thus, the state was not required to establish that the defendant's failure to report and notify the department of corrections of his change of address was willful. Secondly, insofar as the financial conditions were concerned, the same statute requires the state to show noncompliance with a probation condition by a preponderance of the evidence. In this case, the defendant stipulated to the violation of his financial obligations. Once the state met its initial burden of showing noncompliance with a financial condition, the offender then had the burden of showing that the violation was not willful. This burden was not met by a mere claim of indigency. Instead, the offender had to show that he had made a real effort to fulfill the financial obligations, but was unable to do so. Because the offender failed to meet his burden of establishing that his failure to satisfy the financial obligations was non-willful, the sentencing court's order revoking probation was affirmed (*State v. Gropper*, 1995).

#### ***Cases Concluding that Willfulness is Required In Probation Revocation Decisions***

The decision in *Bennett v. State* (1996) shows the complexities surrounding any requirement of a finding of willfulness in the context of a probation revocation proceeding. In this case, the defendant was charged with one count of handling and fondling a child under the age of 16 and one count of battery. He entered a negotiated plea of guilty to two counts of battery and was placed on 2 years probation. A condition of probation required the defendant to enter into and successfully complete an outpatient sex offender treatment program.

After entering therapy, the defendant refused to admit that he had committed the deviant sexual conduct charged in one count of the information. As a result of his refusal to admit the sexual conduct, the defendant was terminated from the sex offender treatment program. The defendant's probation subsequently was revoked based on his failure to complete the treatment program.

On appeal, the defendant asserted that the evidence presented at the probation revocation hearing did not prove that he willfully and substantially violated the probation condition requiring him to complete the sex offender treatment program. The Florida District Court of Appeals agreed, relying on case law in that state that requires a violation triggering the revocation to be willful and substantial. The appellate court noted that the defendant was never advised before entering his plea that he would be required to admit the sexual acts underlying the primary charge of handling and fondling a child. The court also considered it important that no condition of probation was imposed that required the defendant to admit to a counselor the sexual acts charged. Under these circumstances, the defendant's refusal to admit to the sexual conduct did not constitute a willful and substantial violation of the terms of his probation. Because the defendant had otherwise complied with the

conditions of probation, the appellate court reversed the revocation and ordered that his probation be reinstated (*Bennett v. State*, 1996).

In *Gibbs v. State* (1992), the defendant was placed on probation following a conviction for possession of cocaine. A condition of probation required the defendant to enroll and participate in a substance abuse treatment program. After attending several treatment sessions, the defendant was removed from the program because his behavior was deemed disruptive. Probation was revoked on the basis of the defendant's failure to complete substance abuse treatment.

On appeal, the defendant requested reinstatement of probation on the grounds that his violation of the treatment condition was not willful. The appellate court found that there was sufficient evidence in the record to establish that the defendant did not willfully violate the probation condition requiring completion of drug treatment. At the revocation hearing, the treatment therapist had testified that the defendant actively participated in his own therapy. The defendant's probation officer noted at hearing that although the defendant had trouble adjusting to the program, the defendant had made several verbal commitments to continue the treatment.

The appellate court acknowledged the need to preserve order in a therapeutic setting like that at the program attended by the defendant. The court concluded, however, that the defendant's disruptive behavior at some of the treatment sessions was a manifestation of antisocial traits associated with his drug abuse problem. The defendant's inability to control the antisocial behavior for which he needed treatment did not constitute a willful and substantial refusal to participate in the program. The appellate court noted that the treatment therapist testified at the revocation hearing that the defendant was in need of treatment and that he was treatable, but that treatment might best be accomplished in some other setting. The court reasoned that if the treatment program in question was not a suitable setting for the defendant, his inability to comply with program requirements could not be considered as a willful refusal to participate (*Gibbs v. State*, 1992).

The decision in *State v. Austin* (1996) also involved the issue of whether a probationer's failure to participate in treatment to the satisfaction of corrections officials constituted grounds for revocation of probation. In this case, the defendant was placed on probation for a charge of sexual assault. Conditions of probation required the defendant to remain in the State of Vermont unless granted permission to leave by his probation officer, to submit to urinalysis testing at the request of his probation officer, and to attend and successfully complete substance abuse and sexual aggressiveness therapy. The defendant served 9 days in custody for violating probation by failing to meet with his counselors and admitting he used marijuana. Later, he served 16 days for missing meetings with his counselor and for refusing to submit to a urinalysis test. Thereafter, the defendant was charged twice with violating the drug use condition after urinalysis testing revealed the presence of cannabinoids.

Ultimately, the defendant was charged with violating the conditions of probation by leaving the state without permission of his probation officer. He also was charged with violating probation by failing to participate in sex offender therapy to the satisfaction of his probation officer and by failing to put into practice what he had learned in therapy.

At the revocation hearing, the defendant claimed that he had actively participated in the sexual aggression program and that he had a 4-year history free from sexually violent behavior. The defendant's probation officer and his therapist testified that the defendant could identify his "risk factors" but suggested that he had not used this knowledge to change his lifestyle. The sentencing court found that the defendant had not integrated what he had learned in therapy into his life, concluding that he was in violation of probation in this regard.

On appeal, the Vermont Supreme Court considered, among other issues, whether the offender had violated the condition of probation requiring him to complete the sex offender therapy program to the satisfaction of his probation officer. The court noted that while a refusal to cooperate with therapy constitutes a failure to complete therapy, there was no evidence in this case that the defendant had failed to cooperate with the therapist. Importantly, the defendant's therapist expressed satisfaction with the defendant's attendance, participation, and level of intellectual understanding in his treatment. Because the defendant had not ceased his therapy, the trial court's conclusion was supportable only if it determined that continued therapy served no useful purpose. Because this view was contradicted by the defendant's therapist, this alleged violation could not form the basis for revocation of the defendant's probation (*State v. Austin*, 1996).

In *Davis v. Florida* (1998), the court considered whether a probationer had willfully violated the conditions of his probation. In *Davis*, the defendant was placed on probation for burglary of a dwelling and petty theft. While on probation, the defendant was found guilty of the sale of "imitation" cocaine and sentenced to 6 months in jail to be followed by 18 months of community control. Later, the state filed an affidavit for revocation of probation alleging that the defendant had violated conditions of his sentence by failing to remain confined at his approved residence when he was not authorized to be anywhere else and that he had failed to reimburse the county for the costs of his prosecution.

At the revocation hearing, defense counsel sought a continuance to allow the defendant to be evaluated by a mental health expert in support of the theory that the defendant suffered from drug and alcohol addiction and was therefore mentally incompetent to appreciate and comply with the conditions of community control. The motion for continuance was denied and the defendant's community control was revoked. The defendant subsequently sought review by the appellate court, contending that the trial court acted vindictively and erred by finding willful and substantial violations of community control.

The Florida Court of Appeals considered whether the defendant's probation was properly revoked following a finding by the sentencing court that he willfully violated the condition requiring him to remain at his residence. During the revocation hearing the defendant admitted that he had not remained at his residence on several occasions and that he had not obtained permission from his probation officer to leave his residence. As such, there was ample support in the record to find that the defendant willfully and substantially violated this condition of his probation. Thus, there was evidence that the defendant was not amenable to supervision outside the prison system. Based on this and other information in the record, the appellate court found no support for the defendant's claim that the sentencing court acted vindictively by revoking probation (*Davis v. Florida*, 1998).

### ***Discussion and Conclusion***

Outside of revocation of probation for failure to comply with financial conditions, the issue is less than firmly settled whether probation can be revoked when a probationer does not willfully or intentionally violate the terms or conditions of probation. Despite conflicting rulings by the various appellate courts, a review of recent cases on the issue provides indications of the factors likely to be considered in such matters.

Matters involving willfulness and compliance with the financial conditions of probation continue to be guided by the Supreme Court's decision in *Bearden v. Georgia* (1983). In *Bearden*, the Court noted that if a probationer made bona fide efforts to satisfy the financial conditions of probation, but was unable to do so, probation may not be revoked unless alternate measures are inadequate to meet the state's interests in punishment and deterrence. Hence, nonwillful probation violations that are the product of the probationer's indigency are likely to provide an insufficient basis for the revocation of probation. Yet, a probationer's mere claim that he or she is indigent does not satisfactorily establish an inability to satisfy the financial conditions of probation. In one of the cases discussed above (*State v. Gropper*, 1995), the court held that once the state met its initial burden of showing noncompliance with a financial condition, the offender then had the burden of showing the violation was not willful. In *Gropper*, the court held that the defendant had to show that he had made a real effort to fulfill the financial obligations, but was unable to do so.

When courts have held that there need not be a willful violation to support revocation, the foremost consideration in the cases reviewed centers on the issue of public safety. Three of the cases discussed above (*State v. ex rel. Nixon v. Campbell*, 1995; *State v. Kochvi*, 1996; *People v. Colabello*, 1997) involved defendants charged with sex offenses. In each of the cases, the offenders involved, through no fault of their own, were unable to complete sex offender treatment programs. Importantly, the court in each case noted that without treatment, the offenders would present public safety risks because of their likelihood of re-offending. Because

of the public safety risk and the lack of alternate treatment programs, each court was able to support the revocation after finding there were no viable alternatives to incarceration. Thus, there are clear indications that willfulness is not required when revoking the probation of a potentially predatory sex offender who is unable to find, or remain in, an approved treatment program.

Another court used the same rationale in supporting the revocation of a probationer whose substance abuse patterns presented a threat to society (*Kupec v. State*, 1992). Here, the court found that there was no requirement to show that a defendant willfully consumed alcohol in violation of a condition of probation. Instead, the appellate court noted that a sentencing court cannot be prevented from revoking probation in situations where the probationer's conduct is beyond his or her control and therefore presents a threat to society.

In some states, either statutory provisions or case law mandate that the revocation of probation be founded on a violation that is willful and substantial. In *Bennett v. State* (1996), for instance, the court found that a defendant's refusal to admit in counseling to deviate sexual conduct that precipitated the original charges was neither willful nor substantial. Here, the appellate court pointed out that the defendant was never advised before entering a plea that he would be required to admit to sexual acts involving the handling and fondling of a child. Likewise, no condition of probation stated that the defendant would be required to admit to such acts. Because the defendant was otherwise in compliance with the conditions of probation—and presumably because his continued presence on probation did not present a threat to community safety—the appellate court ordered the reinstatement of probation.

Other cases suggest that mere "difficult" or repugnant conduct on the part of the probationer while attending mandatory treatment may be an insufficient basis for the revocation of probation. In *Gibbs v. State* (1992), the appellate court ruled that the defendant's disruptive conduct while in treatment sessions was a manifestation of antisocial traits for which he was receiving counseling. Since the defendant was in compliance with the conditions of probation, and his counselor admitted that the offender was participating in therapy, there was no willful violation as required by case law in that state. The court furthermore concluded that if the program in question was inappropriate for the client, his inability to comply with program requirements could not provide the foundation as a willful refusal to participate in treatment.

In a similar vein, vague or imprecise charges that an offender had failed to "put into practice" what he had learned in therapy also have been interpreted as an insufficient basis for the revocation of probation (*State v. Austin*, 1996). In this case, the defendant had participated in therapy and abstained from sexually violent behavior for 4 years. In addition, there was no evidence the defendant had failed to cooperate with his therapist.

Probation can be revoked if an offender fails to attend prescribed treatment, downright refuses to participate in

the therapy process, or engages in conduct that destroys order in a therapeutic setting. Conversely, an allegation that an offender is simply difficult in the therapy setting is unlikely to provide the basis for revocation of probation. Similarly, nonspecific, unsupported contentions that an offender has failed to capitalize or put into practice what has been taught in therapy are also unlikely to support a revocation of probation.

Several things become clear from an examination of the above cases. First, a close reading of *Bearden* makes it obvious that a two-step inquiry is required where a defendant is charged with a violation of a financial condition. There first must be a finding on the issue of willfulness. If the defendant's violation was not willful, there must then be an examination of alternative penal measures. It also is clear that most courts are willing to follow the suggestion in *Bearden* that a finding of wilfulness need not be made when the continued supervision of the offender presents a danger or risk of danger to the public. Even here, however, the courts have been careful to delineate findings regarding the lack of alternatives and the specific risks posed by the defendant.

What remains to be seen is whether courts will be willing to extend the concept of "nonwillful" revocations to violations of conditions where the offender poses no such danger. For example, if a high school dropout is convicted of theft and placed on probation with a condition that he complete his GED, may the court revoke probation without a specific finding regarding the defendant's willfulness? Given *Bearden's* specific reference to public safety, it is anticipated that the concept of nonwillful violations will be confined

to only those circumstances where the defendant's continued supervision will pose a risk to the public. In all other situations, it seems most likely that the two-step process outlined in *Bearden* will be required.

#### REFERENCES

- American Law Institute. (1985). *Model Penal Code*. Washington, DC: American Law Institute.  
 Black, H.C. (1968). *Black's law dictionary* (4th ed, rev.). St. Paul, MN: West Publishing Company.  
 Blackstone, W. (1983). *Commentaries on the laws of England* (Vol IV). Birmingham, AL: The Legal Classics Library.  
 Holmes Jr., O.W. (1982). *The common law and other writings*. Birmingham, AL: The Legal Classics Library.  
 Perkins, R.M. (1983). Criminal liability without fault: A disquieting trend. *Iowa Law Review*, 68: 1067-1081.

#### Cases Cited

- Bearden v. Georgia*, 461 U.S. 660 (1983).  
*Bennett v. State*, 684 So.2d 242 (Fla.Dist.App. 1996).  
*Davis v. Florida*, 704 So.2d 681 (Fla.App. 1 Dist. 1997).  
*Gibbs v. State*, 609 So.2d 76 (Fla.Dist.App. 1992).  
*Kupec v. State*, 835 P.2d 359 (Wyo.Sup. 1992).  
*People v. Colabella*, 948 P.2d 77 (Colo.App. 1997).  
*People v. Neckopulos*, 672 N.E.2d 757 (1996).  
*Powell v. Texas*, 392 U.S. 514.  
*Robinson v. California*, 370 U.S. 660 (1962).  
*State ex rel. Nixon v. Campbell*, 906 S.W. 2d 369 (Mo.banc 1995).  
*State v. Austin*, 685 A.2d 1076 (Vt.Sup. 1996).  
*State v. Gropper*, 888 P.2d 12211 (Wash.App. 1995).  
*State v. Kochvi*, 671 A.2d 115 (N.H. Sup. 1996).  
*Tate v. Short*, 401 U.S. 395 (1971).  
*Williams v. Illinois*, 399 U.S. 235 (1970).

# Screening and Assessing Substance-Abusing Offenders: Quantity and Quality

BY ROBERT A. SHEARER, PH.D., AND CHRIS R. CARTER\*

THE CRIMINAL justice system continues to be overwhelmed by the number of offenders with substance abuse problems. The impact of the large number of substance-abusing offenders now is achieving attention in and out of the system. For example, a recent Bureau of Justice Statistics publication estimated that 36 percent of convicted offenders, under the jurisdiction of corrections agencies, were consuming alcohol at the time of the offense (Greenfeld, 1998). When the numbers for drugs are combined with the numbers for alcohol, the estimates appear to reach 80 percent to 90 percent of offenders who have serious substance abuse problems (Lipton, 1998).

In some correctional agencies, this large number of offenders is their single greatest challenge. For example, in some state correction systems, it is not unusual for the agency to be in-processing 3,000 to 4,000 offenders a month. Included in the offenders' general processing is usually a determination of the offender's involvement with alcohol and other drugs (AOD) or substance use disorders (SUDs). Some of the problems created by unprecedented numbers of offenders being processed through the system were foreseen. Lipton (1998) identifies "inadequate selection/diagnostic process to ensure that offenders selected for these programs are the ones likely to benefit from them" as being a critical problem amplified by the sheer number of offenders to be screened and assessed for substance abuse as they enter correctional facilities. (p. 23)

Clinical screening and assessment have been identified as two of the basic tasks and responsibilities (also known as core functions) of an addiction counselor (Curr. Review Committee, CSAT, 1995). In addition, the Center for Substance Abuse Treatment has provided for addiction counselors extensive technical publications with guidelines for screening and assessing substance-abusing offenders (Crowe & Reeves, 1994; Inciardi, 1994). Drawing on these valuable resources, some of the unique issues and challenges created by the large number of offenders needing screening and assessment will be identified in the discussion that follows. Understanding these issues and challenges clearly is important for correctional managers and program supervisors because a lack of screening and assessment procedures was one of the key factors where there have been problems with implementing substance abuse programs. (Austin, 1998).

## ***Screening***

A clinical screening is an initial gathering and compiling of information to determine if an offender has a problem with AOD abuse and, if so, whether a comprehensive clinical assessment is warranted. Screening can be accomplished through a structured interview or instruments that are designed to get offenders to self-report information about their substance abuse. As Inciardi (1994) has stated, "Screening also filters out individuals who have medical, legal, or psychological problems that must be addressed before they can participate fully in treatment." In addition, screening may identify those offenders who would not profit from or be ready for treatment. The screening process is particularly critical because of the limited funds for subsequent assessment, which tends to be more expensive and time consuming than screening.

## ***Interview vs. Self-Report***

As the number of offenders entering criminal justice-based drug treatment programs increases, the ongoing debate about using interviews versus self-report measures has intensified. The first type of screening and assessment is referred to as a "structured counselor-client interview" and the second as a "self-administered assessment." The first type, with the benefit of providing an opportunity for the counselor to build rapport with the client, is clinically preferred. If a clinical interview is not possible, then a self-administered instrument, which requires less of the counselor's time, may be more appropriate. In addition, program administrators can get a better statistical profile of the population of offenders being screened with self-administered instruments. The question with self-report measures is whether they can be trusted to deliver as quality information as interviews do. As Broome, Knight, Joe, and Simpson (1996) report, "The few investigators who have compared interview-administered assessment and self-administered assessment with the same measure have found generally consistent agreement between the two assessment types."

Another major issue concerns the cost of screening. The per-unit cost of screening offenders is always an important budgetary concern, but when the cost reaches \$3000 to \$4000 a month, it becomes critical. Even a per-unit cost for instruments like the *Substance Abuse Subtle Screening Inventory* (SASSI), which costs about \$1.50 an inmate, can be very expensive. Because of budgetary concerns, it becomes increasingly more important for substance abuse

\*Dr. Shearer is a professor of criminal justice at Sam Houston State University. Mr. Carter is administrative coordinator for program analysis in the Texas Department of Criminal Justice Executive Administration.

programs to secure screening instruments that lie within the public domain with very low per-unit costs.

One such instrument currently in use is the *Texas Christian University Drug Dependence Screen* (TCUDDS). This instrument is consistent with the DSM-IV classifications for substance abuse and dependency. Since it falls within the public domain, it has a low per-unit cost. In addition, the TCUDDS is relatively brief and can be automated for ease of scoring. With the increasing number of offenders, the use of lengthy screening interviews becomes impractical, and an instrument of this type shows considerable promise for screening. Conversely, the high volume of offenders to be screened makes automated scanners and scoring programs very cost effective.

#### *Accuracy*

Most substance abuse programs obviously would prefer a screening instrument that only identified offenders who had serious substance abuse problems. Unfortunately, most instruments have psychometric properties that produce either over- or under-identification of substance abuse problems. When an instrument over-identifies substance abuse, it is termed a *false positive*. This means the screening instrument has indicated that the offender has a problem when, in reality, the offender does not. When an instrument under-identifies substance abuse, it is termed a *false negative*. This means the screening instrument has indicated that the offender does not have a problem when the offender actually does.

For typical substance abuse programs, the preferred outcome is to err on the side of false positive and reduce false negatives because it is important that individuals with substance abuse problems not be missed in the screening process (Nathan, 1996). Offenders who are over-identified can be eliminated from the program by the subsequent assessment process using more detailed diagnostic instruments.

The issue for agencies screening large numbers of offenders is one of consciously or unconsciously moving in the direction of false negative. Because of strained assessment and treatment resources, there is a greater advantage in screening instruments with *false negative* psychometric tendencies. In other words, it might be better to initially under-identify substance-abusing offenders and later conduct a document or criminal records check to see if a decision is warranted to override the initial screen. On the other hand, missing offenders with serious substance abuse problems would seem to be counter to the mission of the treatment programs and concerns for public safety. The challenge is to achieve a high level of screening accuracy.

#### *Psychopathy*

Recent research by Rice (1997) has emphasized the importance of screening offenders for psychopathy who may be potential candidates for placement in substance abuse therapeutic communities. Her research suggests that certain treatments, such as therapeutic communities, may actually increase the psychopath's future violence. It would

follow that screening psychopathic tendencies is critical for successful placement in treatment programs.

Without getting into a detailed discussion of the theory and research on psychopathy, it is sufficient to say that it is a characteristic that is most difficult to screen in offender populations. At present, the most valid method of measuring psychopathy is the *Psychopathy Checklist-Revised* (PCL-R) (Hare, 1991). This 20-item checklist, designed for use in prison settings, provides a score that reflects the probability that an individual is a psychopath. Alterman, Cacciola, and Rutherford (1993) report that the PCL-R has high reliability and good validity in prisoner populations. In addition, most of the published work on the PCL-R has been on offender populations, but there is little evidence that this instrument is being used for screening large offender populations.

Another promising measure of psychopathy is the *Psychopathic Personality Inventory* (PPI) developed by Lilienfeld and Andrews (1996). The PPI is a 56-item, self-report inventory that provides a total score on psychopathy and factor scores on eight dimensions of psychopathy: Machiavellian egocentricity, social potency, cold-heartedness, carefree nonplanfulness, fearlessness, blame externalization, impulsive nonconformity, and stress immunity.

The strength of the PPI is that it is based more on psychopathic behavior than psychopathic personality, which is more consistent with DSM-IV diagnosis of antisocial personality disorder. The DSM-IV diagnosis emphasizes a history of criminal behaviors, so the PPI is more likely to identify the offender that substance abuse programs are concerned about.

The disadvantage of the PPI is that it was constructed for use with subjects in non-prison settings, having been developed on college student samples. This raises a critical question of generalizability: Can the psychopathic traits of college students be generalized to incarcerated samples? Until this concern is resolved, the PPI would seem to have limited value for screening psychopathy in substance-abusing offenders.

#### *Assessment*

Assessment involves a standardized set of procedures designed to:

- Establish baseline information on AOD dependence.
- Assess client readiness for counseling.
- Serve as treatment planning tools for counseling by identifying:
  - 1) the client's high-risk situations for AOD use and
  - 2) the client's coping strengths and weaknesses (Annis, Herie, & Watkin-Merek, 1996).

The assessment process is designed to gather detailed data in the social, behavioral, psychological, and physical areas of the offenders' functioning. In recent years, many assessment instruments have been developed to gather data on AOD abuse or SUDs in order to make decisions for placement or treatment planning. Reviews of instruments by Evans (1998), Murphy and Impara (1996), and Inciardi (1994) can be very

helpful in selecting the most appropriate instrument(s) for a particular program because each instrument tends to have specific psychometric strengths and weaknesses.

Currently, the most widely used assessment instrument is the *Addiction Severity Index* (ASI), but many other instruments are available (see Inciardi, TIP #7). The ASI is a structured interview that takes about an hour to complete by a counselor specifically trained in administering the instrument. In large offender populations, the ASI presents some critical issues as an assessment instrument. Software programs are available to enhance this process. First, the ASI is a lengthy interview that becomes too cumbersome for assessing 3,000 to 4,000 offenders a month. Inciardi (1994) indicates that a typical assessment "is conducted in a 2-3 hour procedure, although this can vary" (p. 15). The challenge for counselors conducting assessments in large populations, when we consider these guidelines, becomes mathematically apparent. A 2-hour assessment easily translates to over 2,000 hours a month in the assessment process if one-third of the original 3,000 are screened into the assessment process. One approach is to assess offenders after program placement when it also must be done for treatment planning. Offenders inappropriately screened into the program can be identified at this time.

Second, the staffing of specifically trained professionals is a major challenge for substance abuse assessment. To assess and diagnose substance abuse in offenders, the counselor must have not only general counseling skills, but also sufficient specialized professional training and clinical experience relative to this population (Inciardi, 1994; Evans, 1998). The individual conducting the assessment also must be able to communicate, particularly in writing, the assessment results and conclusions to the individual formulating a treatment plan. The retention of trained assessment personnel in substance abuse treatment programs becomes a challenge for program directors because these skilled personnel become highly desirable recruits for private health care organizations, which usually can pay higher salaries. With many assessments to conduct, as is the case in the large programs, the loss of assessment personnel becomes critical because of the number of offenders who are to be assessed each month.

### ***Readiness Screening***

Finally, several intriguing screening instruments are being tested in substance abuse programs to determine the offender's readiness, suitability, and amenability for treatment. Some of these are:

**URICA.** An offender is ready for treatment when the offender perceives and accepts that he or she is the problem and "owns" the problem. In coerced treatment settings, readiness traditionally has been a challenge for assessment personnel. According to Inciardi,

Among clients mandated to treatment from the criminal justice system, it is unusual for a client to be genuinely enthusiastic about entering treatment. Most clients are not ready, do not want to be in treatment, and do not like it. (1994, p. 18)

Assessing readiness for treatment has been conceptualized as following several distinct stages of change that offenders may move through as they experience ambivalence about changing their addictive lifestyle. The issue of valuable treatment resources makes the assessment of readiness a primary focus of a comprehensive assessment process.

In order to measure treatment readiness, the *University of Rhode Island Change Assessment* scale (URICA) (Prochaska, Di Clemente, & Norcross, 1992), has been experimentally tested with offender populations. This is a self-report, paper-and-pencil questionnaire that classifies an offender on one of the five sequential stages of change: pre-contemplation, contemplation, preparation, action, and maintenance. Annis, Schober, and Kelly state that "[a]n important implication of the model, with its discrimination of different stages of change, is that a counselor should engage in a different set of counseling procedures depending on the readiness for change of the client" (1996, p. 153). The URICA shows promise in assessing offenders in their motivation for change so that those in the precontemplative stage, at least, can be matched to a different program for treatment, such as AOD education programs. Serin and Kennedy (1997) found that the URICA was not as useful with offender populations as with other clinical populations, but the sample in their study was quite small and limited to sex offenders. Other studies are underway with the URICA with much larger samples of substance abusing offenders.

**CTRS.** Traditionally, offenders have reported low readiness for treatment. This result has been attributed to minimization, denial, and resistance. In the latter case, offenders who are resistant to treatment, who are identified as such, may well require pre-treatment intervention in order for the overall treatment program to be comprehensive and effective. We are not sure why offenders are resistant to treatment, but the question is certainly an important one.

An experimental attempt to identify offender's resistance to treatment, and answer why they are resistant, is represented by the *Correctional Treatment Resistance Scale* (CTRS) (Shearer, 1998). The CTRS measures an offender's response to seven factors: isolation, counselor distrust, compliance, low self-disclosure, cynicism, denial, and cultural issues. These factors are based on the theoretical work of Romig and Gruenke (1991) and Cullari (1996), who point out that overcoming resistance is critical if mental health services are to be effective in corrections. Data from the CTRS and research on the psychometric properties of the instrument currently are being established on offender populations in substance abuse treatment programs. This information can be valuable in addressing specific issues in pre-treatment consciousness raising and education programs.

Several instruments currently are being developed and evaluated that assess several important components of offender attitudinal factors. Research (e.g., Gendreau, Little, & Goggin, 1996) shows that these factors are important predictors of offender recidivism; however, there has been a lack of suitable assessment tools measuring these factors

such that treatment personnel have been reluctant to integrate these factors into treatment planning.

*Criminal Sentiments Scale-Modified (CSS-M) and Pride in Delinquency Scale (PID).* The CSS-M and PID are two measures of criminal attitudes in which the CSS-M examines offender attitudes toward offending behavior and the PID examines the criminal subculture component of criminal attitudes. Both scales have respectable reliability and validity (Simourd, 1997a). Also, they are relatively simple to administer, score, and interpret and can be used in assessment and program evaluation contexts. The *Criminal Expectancy Questionnaire* (CEQ; Simourd, 1996a) and *Offense Attitude Questionnaire* (OAQ; Simourd, 1996b) are also criminal attitude measures that assess more specific components of criminal cognitions. The CEQ is designed to measure the expectations offenders have about criminal behavior, whereas the OAQ examines the social psychological phenomenon consistent with the theory of reasoned action (Ajzen & Fishbein, 1980) within a criminal behavior context.

The *Self-Improvement Orientation Scheme* (SOS; Simourd, 1997b) is an interview-based instrument that assesses treatment amenability. The SOS is based on the clinical, behavioral, and attitudinal factors related to motivation for personal growth. The importance of their development is emphasized because of the rise in the number of offenders to be screened into treatment programs. It is important to identify those people who are not suitable for therapeutic intervention but, instead, need to be matched to a more appropriate intervention. Treatment matching seems to be the future of screening and assessment, and the development of these types of instruments is vital to accomplish this goal.

### Conclusions

Screening and assessment is the beginning of the substance abuse treatment process. According to Chamberlain and Jew,

Improper assessment and faulty diagnosis can lead counselors to create ineffective treatment plans, have inappropriate expectations for therapy, and instill the overall sense of frustration in the client and the therapist. One cannot treat what one does not recognize or understand. (1998, p. 97)

The large number of offenders entering the system, maintaining adequately trained substance abuse treatment personnel, and the cost and accuracy of screening have become major challenges. In addition, recent research has indicated the need for screening for psychopathy, criminal attitudes, and value systems. Several intriguing assessments, such as change readiness and treatment resistance, are currently being tested in substance abuse programs.

By identifying these issues and challenges, the critical elements of treatment can move forward so that: 1) appropriate offender-treatment matching is possible and; 2) scarce treatment resources can be used wisely by conducting careful assessments before designing and implementing treatment plans. With the large number of offenders entering the system, accurate screening and assessment increase cost effectiveness. In addition, offenders need an accurate

picture of their substance use or abuse and how the behaviors relate to offense patterns. Specifically, the feedback of screening and assessment information can give the offender a more realistic estimation of the challenge and effort required to overcome addictions.

Finally, screening and assessing someone as drug or alcohol dependent can bring about serious consequences for that individual. When the screening and assessment is based on instruments that are self-report or brief interviews, the consequences can be devastating. As a result of this rather inexact science, substance abuse counselors ethically are obligated to exercise caution and be professionally certain about the critical issues in screening and assessment when using instruments that are designed to distinguish between those people whose use of substances raises the probability of criminal behavior and those whose substance use does not.

### REFERENCES

- Ajzen, I., & Fishbein, M. (1980). *Understanding attitude and predicting social behavior*. Englewood Cliffs, NJ: Prentice-Hall.
- Alterman, A.I., Lacciola, J.S., & Rutherford, M.J. (1993). Reliability of the revised psychopathy checklist in substance abuse patients, *Psychological Assessment*, 5(4): 442-448.
- Annis, H.M., Herie, M., & Watkin-Merek, L. (1996). *Structured relapse prevention*. Toronto: Addiction Research Foundation.
- Annis, H.M., Schober, R., & Kelly, E. Matching addiction outpatient counseling to client readiness to change: The role of structured relapse prevention counseling, in *Structured Relapse Prevention*.
- Annis, H.M., Herie, M.A., & Watkin-Merek, L. Addiction Research Foundation, Toronto, Ontario 153.
- Austin, J. (1998). The limits of prison drug treatment. *Corrections Management Quarterly*, 2(4): 66-74.
- Broome, K.M., Knight, K., Joe, G.W., & Simpson, D.D. (1996). Evaluating the drug-abusing probationer: Clinical interview versus self-administered assessment. *Criminal Justice and Behavior*, 23(4): 593-606.
- Chamberlain, L.L., & Jew, C.L. (1998). Assessment and diagnosis. In *Substance Abuse Counseling*. Stevens-Smith, P., & Smith, R.L. Merrill, Upper Saddle River, N.J.
- Crowe, A. H., & Reeves, R. (1994). *Treatment for alcohol and other drug abuse* (TAP #11). Rockville, MD: Center for Substance Abuse Treatment.
- Cullari, S. (1996). *Treatment resistance: A guide for practitioners*. Boston: Allyn and Bacon.
- Curriculum Review Committee. (1995). *Addiction counselor competencies*. Rockville, MD: Addiction Training Center Program, Rockville, MD: Center for Substance Abuse Treatment.
- Evans, W. (1998). Assessment and diagnosis of substance use disorders (SUDs). *Journal of Counseling and Development*, 76: 325-333.
- Gendreau, P., Little, T., & Goggins, C.E. (1996). A meta-analysis of the predictors of adult offender recidivism: What works! *Criminology*, 34: 401-433.
- Greenfeld, L.A. (1998). *Alcohol and crime: An analysis of national data on the prevalence of alcohol involvement in crime*. Washington, DC: U. S. Department of Justice, Bureau of Justice Statistics.
- Hare, R.D. (1991). *The Hare Psychopathy Checklist-revised*. Toronto: Multi-Health Systems.
- Inciardi, J.A. (1994). *Screening and assessment for alcohol and other drug abuse among adults in the criminal justice system* (TIP #7). Rockville, MD: Center for Substance Abuse Treatment.
- Lilienfeld, S.O., & Andrews, B.P. (1996). Development and preliminary validation of a self-report measure of psychopathic personality traits in noncriminal populations. *Journal of Personality Assessment*, 66: 488-524.

- Lipton, D.S. (1998). Treatment for drug abusing offenders during correctional supervision: A nationwide overview. *Journal of Offender Rehabilitation*, 26: 1-45.
- Murphy, L.L., & Impara, J.C. (1996) Editors. *Assessment of substance abuse*. University of Nebraska Press, Lincoln, Nebraska.
- Nathan, P.E. (1996). Assessing substance abusers. In L.L. Murphy & J.C. Impara (Eds.), *Assessment of substance abuse*, Lincoln, NE: Burros Institute of Mental Measurements.
- Prochaska, J.O., Di Clemente, C.C., & Norcross, O.C. (1992). In search of how people change: Applications to addictive behaviors. *American Psychologist*, 47: 1102-1114.
- Rice, M.E. (1997). Violent offender research and implications for the criminal justice system. *American Psychologist*, 414-423.
- Romig, C.A., & Gruenke, C. (1991). The use of metaphor to overcome resistance to mental health counseling. *Journal of Counseling and Development*, 69: 414-418.
- Serin, R., & Kennedy, S. (1997). *Treatment readiness and responsibility*. Correctional Service of Canada. Research Branch, Ottawa, Ontario.
- Shearer, R.A. (1998). *Correctional treatment resistance scale*. Huntsville, TX: College of Criminal Justice, Sam Houston State University.
- Simourd, D.J. (1996a). *Criminal Expectancy Questionnaire* (Unpublished manual). Kingston, Ontario: Collins Bay Institution.
- Simourd, D.J. (1996b). *Offense Attitude Questionnaire* (Unpublished manual). Kingston, Ontario: Collins Bay Institution.
- Simourd, D.J. (1997a). The Criminal Sentiments Scale-Modified and Pride in Delinquency Scale. *Criminal Justice and Behavior*, 24: 52-70.
- Simourd, D.J. (1997b). *Self-Improvement Orientation Scheme (SOS)* (Unpublished manual). Kingston, Ontario: Collins Bay Institution.

# Early Termination: Outdated Concept in an Era of Punitiveness

BY SAM TORRES, PH.D.

*Associate Professor, Department of Criminal Justice, California State University, Long Beach,  
and Senior United States Probation Officer (Retired), Central District of California*

**I**N A RECENT article describing the initial interview with substance-abusing offenders, I noted that "in the criminal justice system, coercion and threats of incarceration are appropriate means of inducing offenders with substance problems to enter a therapeutic community or other treatment program" (Torres, 1997b).

However, while coercion and threats of incarceration are powerful and necessary tools in the probation officer's arsenal of techniques and strategies, officers should not neglect to reward cooperative behavior and compliance. Too often, probation and parole officers find it easy to rely almost exclusively on threats and coercion to induce offenders to comply with the conditions of supervision. While these may be effective in the short run, many offenders revert to negative behavior patterns once structure and supervision are removed. Therefore, it is incumbent upon officers to use all means at their disposal to encourage, assist, reward, coerce, and threaten offenders into prosocial behavior and compliance with supervision conditions.

## ***Officer Controlled Incentives***

Although probation officers do not have some of the more powerful incentives that are available to institutional staff such as good time, preferred housing, lower security level, and programs, they do, nonetheless, have some persuasive ways to encourage and reward favorable behavior. For substance abusers, perhaps one of the more tangible rewards is the level of testing that is required. In U.S. probation offices, testing normally progresses at specific intervals. Depending on the offender's background, the offender may progress through the program at 4- or 6-month stages. Needless to say, the officer's decision to select 4- or 6-month phase intervals has significant impact on the offender. Four-month intervals represent a suspension from structured drug testing 6 months sooner than if the offender was on a 6-month cycle. Officers should inform offenders at the initial interview that the length of time on structured testing depends on the offenders' ability to report consistently for testing, provide acceptable urine samples (no diluted tests), and remain drug free. When I was a probation officer, I generally informed new cases that the testing would proceed at 6-month intervals, but that they could accelerate their progress through the cycles by exemplary participation.

## ***Paperwork, Paperwork, Paperwork***

Probation officers should be generous with *praise* when offenders respond favorably to supervision. Many of the offenders they supervise have come from highly dysfunctional families and have had minimal success and achievement in their lives. Many officers become so overburdened with paperwork and other requirements of the job that they fall into a cycle of seeing offenders as contacts, monthly supervision reports, or mere statistics to be met. Some officers have developed what is sometimes referred to as a "cattle call" method of supervision. Probation officers who use this method of supervision require all of their cases to report during the first 2 to 3 days of the month or during the first week so that the "contact" and monthly supervision report can be completed.

Although this "quickie" or "eyeball" contact type of case management style may prevent officers from identifying problems with offenders who appear to be doing well, it is a survival technique many, if not most officers use to stay on top of the increasing paperwork. We can all cite instances where dedicated and hardworking officers who have devoted a great deal of time to cases have received negative evaluations because they neglected to complete their paperwork. I recall one officer who had only the most superficial contact with his cases but paid meticulous attention to collecting monthly supervision reports, always met his monthly contact requirements, and stayed up to date on case summary reports. This officer was consistently the top officer in the percentage of monthly reports collected. I occasionally overheard him tell an offender that the chief had called him, inquiring as to why the particular offender had failed to get his report in on time. This efficient "paper pusher" received excellent evaluation reports while the devoted "caseworker" who neglected the paperwork received substandard evaluations.

Most officers realize that in any particular month, if they must prioritize between casework or processing required written reports, they must delegate the casework to the "back burner" until they have completed the *essential* paperwork. A tremendous amount of paperwork is simply the harsh reality of working in a government bureaucracy that demands increasing accountability. It is the paperwork that facilitates personnel evaluations because these tangible products, like presentence investigations, are easier to measure. It is easy to measure the number of monthly reports that have

been submitted on time, the number of monthly contacts, the number of delinquent financial payments, and case summaries completed on time. However, it is much more difficult to measure the quality of a contact or the quality of services provided. Supervisors know that it is virtually impossible to evaluate whether the hour-long contact is effective casework or merely the inefficient use of an officer's time.

The dramatic increase in paperwork has resulted in many capable officers leaving to pursue other professions. While an offender's progress and adjustment does require adequate documentation, most officers find the documentation excessive and extremely tedious. A study of the time allocations of a sample of Missouri probation officers in 1980 showed that paperwork responsibilities and travel constituted over 50 percent of an officer's monthly work activities (Hartke, 1984, pp.66-68). Since 1980, the amount of paperwork required of officers in the federal system has increased dramatically. Clear and Cole observe that:

One reason for the small amount of time spent in contact with parolees is that officers have organizational responsibilities to fulfill. Some part of the day may be spent in the field helping clients to deal with other service agencies medical, employment, educational but a great portion is spent in the office meeting bureaucratic paperwork and administrative requirements. Paperwork and other duties are such that parole officers spend as much as 80 percent of their time at nonsupervisory work (1997, p.455).

### ***Reclassification and Reduction of Supervision Level***

A built-in mechanism for rewarding a favorable adjustment is to reclassify offenders and reduce their supervision level. This, of course, is similar to the structured drug testing requirement where special drug aftercare offenders have their testing reduced based on a positive response to the testing program. My own preference was to set the framework for the supervision process at the time of the initial interview. After carefully reviewing the general and specific conditions of supervision, which basically consisted of instructing offenders as to what they could and could not do while on supervision, I always preferred to end the initial interview on a somewhat positive note. The discretion to reduce the offender's level of testing and supervision allowed me to introduce a cheerful element into an otherwise negative process. I would say something to the effect that "all this basically means is that we want you to stay clean, work, and stay out of trouble. If you can do well for a few months I'll reduce your testing and you'll only have to report four to six times instead of six to eight times."

I believe that it is desirable to allow the offender to see some "light at the end of the tunnel" and in the process introduce some hope and optimism. Although officers' roles are defined largely by their power and authority over their charges, officers can and should treat offenders with respect and dignity. If there is something positive that officers can introduce at the initial interview as an incentive for cooperation and compliance with the conditions of supervision, I believe that they should employ it without hesitation. The opposite view is held by the officer who responded, "I

tell them at the initial interview that they don't have anything coming."

### ***Statutory Authority for Early Termination***

In the federal system, authority to terminate supervision early is outlined in 18 U.S.C. 3564(c), which states:

The court, after considering the factors set forth in section 3553(a) to the extent that they are applicable, may, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, terminate a term of probation previously ordered and discharge the defendant at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice. (Federal Criminal Code and Rules, 1994, p.829)

In the case of supervised release, the authority for the court to terminate supervision early is found in 18 U.S.C. 3583(e)(1):

The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6), terminate a term of supervised release and discharge the person released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the person released and the interest of justice. (Federal Criminal Code and Rules, 1994, p.835)

Section 3553 makes clear that the court *may* terminate supervision at any time in the case of misdemeanors and any time after 1 year in the case of felonies if "it is satisfied that such action is warranted by the conduct of the person released and the interest of justice." In considering early termination, the statute refers the court to the specific factors that must be considered prior to granting early termination. These are defined in section 3553(a), which states, in part, that the court, in determining the particular sentence to be imposed, shall consider the nature and circumstances of the offense and the history and characteristics of the defendant. It *shall* also consider the need for the sentence imposed in order to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense. Section 3553(a) also requires judges to consider deterrence, public safety, and consideration for the offender's need for educational, vocational, medical, or correctional services. Subsection requires the court to consider *the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct* (Federal Criminal Code and Rules, 1994:822).

Although there are few "old law" parole cases, early termination with those cases under the jurisdiction of the U.S. Parole Commission are governed by the requirements set forth in 18 U.S.C. 4211. The statute governing parolee eligibility for early termination is notable for its degree of specificity, which states, in part, that the Parole Commission may, upon its own motion or upon request of the parolee, terminate supervision. The Commission is also required to review annually the need for continued supervision. Five years

after each parolee's release on parole, the Commission is required to terminate supervision over a parolee unless it is determined, after a hearing, that there is a likelihood the parolee will engage in criminal conduct (Federal Criminal Code and Rules, 1994, pp. 903–904).

A close reading of the above sections makes clear that Congress intended that the courts have the discretion to reward an offender by granting early terminations "if such conduct is warranted by the *conduct of the defendant* and the interests of justice." It may be that Congress also intended that government services and resources not be expended on those who do not appear to need further supervision. These sections, which address probationers, supervised releasees, and parolees, appear unambiguous in the need to consider the "conduct" of the offender and the "need for continued supervision."

Most state penal codes also allow for early termination, as California Penal Code Section 1203.3(a), which states, in part:

The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence. It may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held. (California Penal Code, 1990:510)

#### **Publication 109 and Administrative Caseloads**

Although each of the 94 federal judicial districts and each judge possess considerable authority and discretion over early termination procedures, the Administrative Office of the U.S. Courts, in Publication 109, has developed guidelines to consider:

Early termination from supervision is *recognition that the offender has achieved the objectives of supervision*. Generally, an offender should have been assigned to the administrative caseload before being considered for early termination. The criteria for early termination include:

- law-abiding behavior;
- full compliance with the conditions of supervision, and
- a responsible, productive lifestyle.

Unless otherwise directed by the court or U.S. Parole Commission, the officer should not request early termination unless the offender has met all the criteria for placement on the administrative caseload. (Publication 109, 1993, p.37)

An administrative caseload as defined by Publication 109 is one that provides little or no direct supervision activity. This type of caseload permits officers to focus on offenders who require greater supervision in order to enforce conditions, control risk, and provide treatment. According to the guidelines established by Publication 109, the criteria for an administrative caseload include no history of violence, drug distribution, or an otherwise notorious conviction offense. Furthermore, there should be no pending cases and no criminal convictions in the past 12 months, excluding minor traffic matters. Officers should verify that the offenders have a stable residence and marriage for at least 6

months.

Designation to an administrative caseload also requires a documented history of compliance with the conditions of supervision, including submitting monthly supervision reports on time, adhering strictly to fine/restitution payment schedules and community service work schedules, and completing all special conditions for treatment (i.e., drug, alcohol, or mental health treatment). In addition, no alcohol or drug abuse in the past 12 months, no current psychiatric problems, and no third-party risk issues should be evident in the case.

While the guidelines for early termination set forth in Publication 109 are very precise, it is necessary to examine the guidelines for placement in an administrative caseload to determine the criteria for early termination since the Administrative Office of the U.S. Courts maintains that an officer should not request early termination unless the offender has met all the criteria for placement on the administrative caseload.

In one Western judicial district, an assistant U.S. attorney informed the probation office that assistant U.S. attorneys were receiving an increasing number of requests *by defense lawyers* to terminate probation or supervised release early. The assistant U.S. attorney acknowledged that a recommendation for early termination was generally a discretionary call by the probation officer and the assistant U.S. attorney. Interestingly, the assistant U.S. attorney concluded that *absent extraordinary circumstances, the full term of supervision should be served*.

While there is, in fact, considerable discretion in the submission of early termination recommendations, a close reading of the statutes governing early termination does not seem to support the assistant U.S. attorney's position requiring *extraordinary circumstances*. Furthermore, the guidelines outlined in Publication 109 appear inconsistent with this interpretation. The relevant case cited to support the "absent extraordinary circumstances" position is *U.S. vs. Perelmuter* (SDNY, 1989), which requires that the circumstances that were present at the time the offense occurred not be present at the time of a motion for early termination. In *Perelmuter*, Judge Sweet held that:

*The factors which resulted in the May 8, 1987, sentence remain unchanged, including recognition of the shifting sands of statutory interpretation, a previously unblemished record of the defendant, and the use of her profession in a fashion to benefit clients who had engaged in crime, according to the government. (U.S. vs. Perelmuter, SDNY)*

The court concluded that since the probationer's circumstances had not changed, no basis existed to grant the motion for early termination. In *U.S. vs. Martin*, 1992 WL 178585 (SDNY), an offender argued that he would not be eligible for admission to the New York State Bar until the termination of his probation. However, the fact that he had led an exemplary personal and professional life before his involvement in the offenses was taken into account in the original sentencing. Therefore, his 18 U.S.C. 3564 motion for early termination was denied.

In reviewing the relevant case statutes and case law pre-

sented by the assistant U.S. attorney, there does not appear to be merit to the position that *extraordinary circumstances* need to be present, that is, unless extraordinary circumstances are interpreted as referring to a positive change in conduct by the offender over that which was demonstrated at the time the offense occurred. It would appear that Publication 109 and the varying district policy statements adequately assess this positive change in conduct in their criteria for early termination without the need to introduce an "extraordinary circumstances" requirement.

### ***Setting Clear Expectations for Early Termination***

In a study examining what offenders say about supervision, Leibrich (1994, p.41) reports that probation officers feel that the nature of the relationship between the officer and the offender is the essential factor in influencing offending behavior. This study group involved a random sample of 48 offenders drawn from the 312 who were sentenced to supervision in New Zealand in 1987.

Leibrich's study found that about 50 percent of the sample felt they had gotten something out of their probationary sentence. Approximately one-third of this number said that probation had contributed to their going straight. Of significance is the finding that getting something out of probation was clearly related to feeling positive about their probation officer. Approximately 66 percent made positive comments about their officer because the officer treated them like individuals and displayed genuine consideration for them. What seemed important for offenders was that they were treated as a "person" and a "human being" rather than as a thing, a number, a product (p.45).

Offenders had the most positive comments about their probation officers if they were:

- Someone they could get on with and respect who
- Treated them as an individual
- Was genuinely caring
- *Was clear about what was required of them*
- Trusted them when the occasion called for it (p.45)

Offenders tended to have negative feelings about their probation officer if the offenders felt as though they were being merely "processed," if the officers were consistently late for scheduled appointments, or had given the impression that they were more curious than genuinely concerned (p.45).

For the purpose of this discussion on early termination, I believe it is critical to recognize that offenders tend to feel that their officers are fair when they are clear on *what is required of offenders*. As a drug specialist, I was considered by offenders as a "tough officer" and had acquired the moniker "Send 'Em Back Sam." My reputation developed, I believe, less from the number of violations that resulted in custody than from my willingness to set firm limits *and* to stick by them when violations of the special drug aftercare condition occurred. My first action of choice was seldom a recommendation for a return to custody but, instead, placement in a therapeutic community. At the initial interview, I

was always clear that drug use would likely result in placement in a therapeutic community. Many of my cases would holler, scream, curse, and use every manipulation imaginable when they had to decide whether they would enter a program or opt to have a violation hearing. Despite my reputation and the fact that many substance abusers would avoid me like the plague, my reputation also was one of being fair, "straight," and "he'll tell you how it is." Even now, in my work with offenders at a federal halfway house, residents occasionally will tell me, "I heard you were tough; but they say you were fair." In my view, fair is being direct with the offenders as to what I expect of them. Part of being clear about what is required is telling the offender at the initial interview the expectations for an early termination recommendation.

### ***Early Termination Policies in 4 Districts***

My examination of early termination began when I discovered substantial disparity on this issue from district to district, unit to unit, and within the same unit, and even from officer to officer. The information contained in the following section was obtained in interviews with U.S. probation officers, supervising probation officers, and deputy chief probation officers in four districts in the western United States.

**District #1:** According to District #1's supervision manual, certain types of offenses are not appropriate for early termination, including sophisticated white-collar crimes, organized crime, and sales of illicit drugs. Furthermore, early termination requests are not submitted for corporations (Supervision Manual, 1998, pp.400-498).

In the District #1, *mere compliance with conditions of supervision is insufficient reason to initiate a request for early termination*. To consider a case for early termination, the offender must demonstrate a willingness to *exceed the basic requirements* of supervision and show a pattern of consistent positive adjustment. The probation officer is required to document any discussion with the offender about early termination. Criteria for early termination consideration are arranged into *essential* and *pertinent criteria* (Supervision Manual, pp. 498-499).

Essential criteria must be met before the case is submitted for early termination and include a thorough record check to verify that there are no pending charges, arrests, or convictions; complete compliance with general and specific conditions of supervision; at least 50 percent of the supervision period completed, and evaluation of the codefendant's status.

Pertinent criteria include: demonstrated employment and residential stability; type and circumstances of original offense behavior; impact on community; offender attitude, and overall supervision adjustment (pp. 498-499).

The guidelines for early termination consideration introduce an additional element that mandates that the offender must perform "above and beyond" as "mere compliance with the conditions of supervision is insufficient reason to initiate a request for early termination." However, neither the essential nor pertinent criteria delineate what is meant by "willingness to exceed basic requirements."

One senior probation officer remarked that he tends to consider offenders for early termination at two-thirds or three-fifths time. That is, after they have completed 2 of 3 years on a 3-year supervision grant or 3 of 5 years on a 5-year grant. He felt that the "above and beyond" requirement for early termination can be unreasonable. For example, some officers have cases that are remaining drug-free, maintaining stable employment, where "mere compliance" would represent meritorious conduct worthy of early termination consideration. This officer feels that dangling the early termination carrot at the initial interview may provide an incentive for the offender to stay clean and comply with the conditions of supervision. He acknowledged that there is substantial disparity on how early terminations are processed by units and also between officers within the same units.

Another senior probation officer forcefully described her opposition to any discussion of early termination at the initial interview. Any talk of early termination at the initial contact, she stated, is premature. The issue can be broached at a later time after the offender has demonstrated a favorable adjustment to supervision. This officer also referred to the district's supervision policy manual, stating that the offender must show more than just "mere compliance" with the standard and special conditions of supervision.

A supervising probation officer also referred to this district's "above and beyond" requirement for early termination, adding that the term is "relative" and subject to interpretation. In his view, the issue of early termination must necessarily consider legal issues or what is contained in the statutes, the district handbook policy, and reality. Philosophically, the policy manual holds that if offenders receive 5 years supervision, they do 5 years supervision. The reality, however, is that supervisors tend to interpret the district policy according to their own philosophy. This supervisor was of the opinion that consideration for early termination at two-thirds for a 3-years grant and three-fifths for a 5-years grant was a reasonable guide. The supervisor added, "I think early termination is a good tool to use as an incentive." However, he also supported Publication 109 and the district's policy that certain offenses, such as crimes of violence, and chronic offenders should not be considered for early termination.

The supervising probation officer also advised that he must be alert to the practice of using early termination as a tool to manage caseloads. That is, some probation officers tend to use early termination as a tool to keep their caseload down to a manageable level. In reviewing a case for early termination, this supervisor examines the case for a history of violence, length of prior record, and a history of mental instability. This officer also conceded that there are times when officers need to "dangle a carrot."

A supervising probation officer in another branch office reported that during "orientation" (group meeting with new cases), he reads the early termination policy right out of the district's supervision handbook. He tells new cases that they "are not going to be rewarded for doing the minimum." During the orientation, the supervisor states, "don't bug my

officers [for early termination]. We view early termination as something special." This officer acknowledges that actual practice contradicts the "above and beyond" policy. In reality, many offenders are being terminated early for having met the basic requirements.

**District #2:** District #2 has developed a novel approach toward early termination of supervision. The deputy chief probation officer said that the shift to sentencing guidelines represents a greater emphasis on punitiveness of sanctions, and early termination of supervision would appear to conflict with this goal. In 1992, District #2 took a position that supervision was a punitive sentence and attempted to develop an early termination policy consistent with this goal.

In considering supervision as a punitive sentence the district has developed a policy of "supervision waived." It was emphasized that "supervision waived" was not in lieu of supervision but rather an option to early termination. It was not seen as replacing early termination because the court continues to grant some early termination requests. However, granting early termination now appears to be the exception.

"Supervision waived" gives more freedom to the offender while still requiring a degree of accountability. That is, there is no active supervision but the offender remains under the jurisdiction of the court. If no flash notices are received indicating a new arrest or conviction, the case is allowed to expire. The deputy chief probation officer notes that the district has established specific criteria for both early termination and supervision waived, but the district clearly emphasizes the latter.

**District #3:** District 3 has developed a well-defined early termination policy. In order to be considered for early termination from supervision, the offender must be in compliance with all of the conditions of supervision and there should be no new convictions for serious violations. All drug aftercare cases must spend one year on a general caseload following completion of the testing program. Offenders who have a history of violence or take leadership roles in large scale criminal activity are not eligible. Furthermore, only first-time offenders should be considered; however, some exceptions are permitted. Offenders with four years of supervision or more are required to do at least one-half before become eligible for early termination. Those with two or three years of supervision must complete at least two-thirds of their supervision. Those with one year of supervision generally must complete the entire year.

District 3 requires that if there are codefendants under supervision, *the probation officer should determine that all are being treated equally in terms of consideration for early termination.* This policy is intended to provide guidance for early termination and not to foreclose the possibility of termination in cases that do not meet all of the stated criteria (District Policy Manual, 1998:13-14).

The deputy chief probation officer in District #3 noted that his district has a well-articulated policy regarding early termination that allows for discretion in exceptional cases. As others who were interviewed for this article noted, the deputy chief notes that disparity between the policy manual

and reality often arises. He is keenly aware that early termination policies are influenced by workload and budget factors. A further problem, according to the deputy chief, is the need to ensure that cases appropriate for early termination are, in fact, being considered and not overlooked or neglected. It is not unusual for supervision officers to keep "cream puff" cases to inflate the caseload. That is, a particular caseload may not be as demanding as the numbers would seem to reflect because it may be inflated with low activity cases that could appropriately be terminated early.

**District #4:** According to a supervising probation officer, District #4 has no written early termination policy at this time and relies on Publication 109 for guidance. The district takes the position that if the court orders a specific period of supervision, then "that is what they should do." However, the officer noted that a variance exists among units, and some officers and supervisors will consider an early termination of 1 year if the offender has done well. Special circumstances such as employment or medical considerations may warrant an early termination recommendation.

Although it appears that some officers and some supervisors consider early termination for exceptional cases, generally, this district does not terminate offenders early unless the individual probationer/supervised releasee petitions the court for such consideration. In such cases, the court usually asks the probation officer for their input. The district usually does not take a proactive stance for the offender unless the offender becomes "aggressive," perhaps by retaining counsel for the purpose of filing an early termination motion.

### ***Conclusions***

This article has examined the early termination practices of four districts in the western region of the United States. Sections 18 U.S.C. 3564(c), 3583(e)(1), and 4211, which address early termination of probation, supervised release, and parole, were examined.

The largest of the four districts considered in this paper was District 1. This district articulated an early termination policy, which states that mere compliance with conditions of supervision is insufficient reason to initiate a request for early termination. District 2 has implemented an early termination policy of "supervision waived." While the district's policy continues to allow for early termination, early termination is clearly the exception.

District three has a well-defined early supervision policy that clearly describes the type of cases that are appropriate for early termination and the specific amount of time offenders must complete before they are eligible. District four has no formal policy addressing early termination. Instead, the office relies on the guidance set forth in Publication 109. The unwritten policy is simply that if the court grants a certain period of supervision, then the offender should serve the entire term.

The use of discretion is a fundamental and inherent principle in the field of corrections. It cannot and should not ever

be completely eliminated. However, in recent years there has been a clear shift toward more conservative crime control policies that seek to reduce the disparities that result from too much discretion. Passage of sentencing guidelines in the federal system sought to reduce judicial discretion in an attempt to ensure that defendants with like crimes generally received like sentences. That sentencing disparity has been a major concern of Congress as reflected in 18 U.S.C. 3553(a)(6), which requires that one of the factors to be considered in imposing a sentence is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

It would seem reasonable to infer from these statutes that the court, and the probation officer as an arm of the court, seeks to reduce disparity by granting early termination. This very brief examination of early termination in four districts suggests that significant disparity exists between districts, between units in the same district, and between officers in the same unit.

A policy that allows for few early terminations in favor of a "supervision waived" option would also appear to be contrary to the intent of the statute. It is noted that three of the four districts clearly lean toward a policy of recommending early termination in exceptional circumstances or if the offender has exceeded the basic requirements of supervision. There are two views on whether to raise the subject of early termination at the initial interview. One view holds that it is premature to discuss the issue at the initial interview, however, it may be raised at a later time if the offender's adjustment has been favorable. The other view, and the one which I support, is that the offender should have all pertinent information presented at the time of the initial interview. After reviewing all the general and special conditions, I liked ending the interview on a positive note. I feel that "dangling" the early termination carrot might, indeed, contribute to compliance and cooperation. As a U.S. probation officer for 22 years, I found that, generally, offenders appreciate and respect an officer who is "up front" with them and I firmly believe that credibility is enhanced when the officer is clear about expectations, including what he or she looks for in considering an offender for early termination. This position seems to be supported by Leibrich's study which found that offenders tend to do better with officers that are clear about what is required of them.

The officer that is opposed to raising early termination at the initial interview might instead tell the offender that early termination may be an option, however, the PO would like to evaluate their progress on supervision before the issue is considered. I believe that offenders have the right to raise any legitimate question that impacts them and officers have an obligation and duty to provide the information as accurately as possible. For example, I would inform offenders that if they made an exemplary adjustment they could be *considered* for early termination. My general rule was two-thirds of a three year grant and three-fifths of a five year grant. This meant if they wanted to be considered they needed to stay clean, stay out of trouble, work, submit their monthly reports on time,

and comply with all the standard and special conditions.

Officers that choose not to raise the early termination issue at the initial interview are, I believe, missing an opportunity to introduce a positive element into the development of the offender-officer relationship and are not taking advantage of a constructive tool available for creating an incentive to do well on supervision.

It appears that the most problematic issue with respect to early termination is the perpetual discretion/disparity concern. Irrespective of the particular policy of the district, U.S. probation officers, supervising probation officers, deputy chiefs all seem to agree that policy does not translate into practice. There appears to be considerable disparity by districts, units, and officers.

Early termination is also commonly utilized as a case management tool by officers, either as a method to keep the caseload manageable by processing cases that no longer need supervision or by keeping the "cream puffs" to inflate the size of the caseload. One deputy chief probation officer acknowledged that supervisors must be sensitive to the latter situation so that there are not cases appropriate for early termination that are being neglected or overlooked.

In conclusion, I believe that early termination is yet another tool available to the PO that can be used to encourage offenders toward compliance and cooperation. The district policy and officer's expectation regarding early termina-

nation should be clearly presented at the initial interview. While disparity can never be entirely removed from the supervision process, nor should it, there is a clear need to reduce the disparity that exists on this issue. Early termination should be associated with specific guidelines and definable offender behavior as outlined in the statutes presented above. A recommendation for early termination should not rely so heavily on where the offender lives and which officer he happens to have the good fortune or misfortune of drawing.

#### REFERENCES

- Administrative Office of the United States Courts. (1993). *Supervision of federal offenders (Monograph 109)*. Washington, DC: Author.
- Clear, T.R., & Cole, G.F. (1997). American corrections. Belmont, CA: Wadsworth Publishing.
- California Penal Code. (1990). St. Paul, MN: West Publishing Co.
- Federal Criminal Code and Rules. (1994). St. Paul, MN: West Publishing Co.
- Hartke, K.L. (1984). What works in theory and practice. *Corrections Today*, 46: 233-246.
- Leibrich, J. (1994). What do offenders say about supervision and going straight? *Federal Probation*, 58(2): 41-46.
- Torres, S. (1997b). The substance-abusing offender and the initial interview. *Federal Probation*, 61(4): 11-17.
- United States v. Perelmutter*, 1989 WL 97829 (S.D.N.Y).
- U.S. Probation Office, Central District of California. (1998). *Supervision handbook*. Los Angeles, CA. 400-98.
- U.S. Probation Office, Western District of Washington. (1998). *Office Manual*. Seattle, Washington, 13-14.

# Communication Between Probation Officers and Judges: An Innovative Model

BY S. SCOTT MACDONALD AND CYNTHIA BAROODY-HART\*

PROBATION, LIKE other areas of criminal justice, has undergone tremendous growth in recent years. The response to growth, in itself, has created problems. One area that has been affected but that has received little attention in the literature is the relationship between probation officers and judges. Taking a systems perspective, this article looks at the bureaucratization of probation with regard to the court service probation provides and reports on a study of communication between judges and probation officers in Santa Cruz County California.

Like judges, probation officers are charged with weighing the benefits and the risks of any court action affecting the probationer. Judges traditionally have depended on probation officers' balanced judgments, provided in the form of recommendations, to assist them in determining sentences. Communication takes place formally, usually in written reports to the court, with recommendations for the treatment of offenders. Another less formal but more direct means of information exchange, only hinted at in the literature, is presenting information orally in the courtroom. Given the significance of the relationship between probation officers and judges, effective communication is essential if probation is to remain viable.

## ***Factors Influencing Communication***

While a variety of factors such as plea-bargaining and determinant sentencing law may have contributed to a decrease in probation officer influence in sentencing, other environmental factors such as workload also have had an effect. An ever-increasing workload appears to have bureaucratized procedures, decreased communication between probation officers and judges, and impeded the expeditious and individualized handling of cases.

The dramatic increase in workload in recent years has made officer communication with the court increasingly difficult (Ellsworth, 1990; Hill, 1994; Mills, 1990). Since the 1980s, the number of individuals on probation has steadily increased. From 1983 to 1992, there was in California a 24 percent statewide increase in probation officers while case-loads grew by 73 percent (Hill, 1994). Large workloads and scarce resources have had impact on the courts. Court workload has increased despite the fact that cases are dispatched more rapidly than in previous years (Champion,

1987). Judges are often faced with the decision to handle matters before them expeditiously or to delay a matter to another court date for more detailed information from a probation officer in the form of a written report.

## *Roles of the Probation Officer*

In addition to being a sentencing advisor to the court, the probation officer is counselor, director to resources, and authority figure to monitor probation compliance and community safety. The probation officer prepares various types of reports for the judge. Presentence reports are prepared in all felony cases unless attorneys and the judge waive them. The presentence report traditionally has been an important source of information that may not have been obtained in the process of determining guilt. It includes information on the defendant, victims, and the offense and concludes with a recommended sentence.

Many probation departments separate pre- and post-sentence functions into two job categories of probation officers. Whereas the presentence investigator's duty is to prepare the presentence report, the supervision officer's duty is to ensure that the probationer complies with the orders of the court as set out in the probation terms and conditions. The presentence investigation officer's encounter with an individual typically consists of one extensive meeting before sentencing while the supervision officer maintains an ongoing relationship until the probationary period is completed.

Supervision officers ideally spend their time directing probationers toward rehabilitation but, in reality, spend a great deal of time reporting violators to the court (Koehler & Lindner, 1992). According to a State of California Legislative Analyst report on the state's probation system, seven out of every ten felons under jurisdiction of the courts are on probation (Hill, 1994). The rise in felons on probation has contributed to a preoccupation with the enforcement role of the probation officer in the literature and innovations in the field in recent years (Harris, 1987; Lawrence, 1990). Rehabilitative efforts and service to the courts have been strained by the increase in workload generated by the increasing numbers of felons on probation (Ellsworth, 1988; Lawrence, 1990; Lindner, 1991).

## *Probation and Court Proceedings*

In spite of the pressure of workload demands to move a case efficiently through the court process, amazingly little research has been conducted on the effectiveness of a pro-

\*Mr. MacDonald is Assistant Division Manager in The Santa Cruz Probation Department. Dr. Baroody-Hart is an Associate Professor at San Jose State University.

bation officer in the courtroom. Eisenstein and Jacobs' (1991) pioneering work on the courtroom workgroup gave no recognition to the role of the probation officer in the courtroom. The only relevant work found in the authors' review of the literature which addressed a probation officer's oral contribution in court proceedings was an analysis of British courts (Carlen, 1979). It gave considerable recognition to the probation officer's influence in court proceedings.

The area most studied in the relationship between judges and probation officers is the presentence report (Carter, 1966; Carter & Wilkins, 1967; Campbell, McCoy & Osigweh, 1990; Gibson, 1973; Trever, 1978). These studies primarily support the importance of presentence reports in sentences received, particularly when probation is recommended (Lohman, Wahl, & Carter, 1966; Carter, 1969; Campbell, McCoy, & Osigweh, 1990).

Hagan, Hewitt, and Alwin (1979) present a different perspective regarding the probation officer's influence in the sentencing process. They note that the influence of the presentence investigation report previously had been studied in samples where presentence reports were requested and argue that a good assessment requires a broader view. This broader perspective offered by Hagan, et al. (1979) looks at the roles of the prosecutor, the judge, and probation officer. In their analysis of 504 randomly sampled court cases, they contend that the presentence report was largely "ceremonial, preserving the myth of individualization in the court process." They assert that criminal courts have responded to the "potential disjunction between individualization and efficiency by expanding the decision-making network."

Sentencing recommendations not only are presented to the court by the probation officer, but by the prosecutor. Over 90 percent of all criminal convictions in the state and federal courts are obtained through plea bargaining (Champion, 1987; Langbein, 1979). The opportunity for the prosecutor to effectively circumvent the probation officer's report is great, given that pleas and sentences are often arranged before a presentence report referral:

The prosecutor's recommendation for sentence is presented orally in court, while the probation officer's recommendation is submitted in writing as part of the presentence report undisclosed to the offender or to members of the public [until after sentencing for a limited period of time]. The failure to disclose the probation officer's recommendation can conceal the fact that an elaborate presentencing process aimed at individualization has effectively been ignored. (Hagan et al., 1979, 510)

Hagan et al.'s (1979) work recognizes that the need for efficiency has resulted in the expansion of the district attorney's role in the decision-making process. They add that the larger role of the district attorney in this process appears to be inversely related to the probation officer's direct influence in court decisions. They suggest that a tighter coupling between the judge and the district attorney may result in less individualized justice because social history information does not get presented to the court for consideration at sentencing.

Determinate sentencing law, therefore, is not the only explanation for a loss in individualized justice, nor has it

effectively removed the need to consider the individual since most felons are granted probation, not sent to prison with determinate sentences.

#### *The Loosely Coupled Justice System and Bureaucratization*

Early systems theory viewed the organization as an organic whole. Today's systems theory has taken a more complex view:

In contrast to the prevailing image that elements in organizations are coupled through dense, tight linkages, it is proposed that elements are often tied together frequently and loosely. (Weick, 1976, p.1)

Loose coupling refers to the independence retained among sub-systems that are otherwise responsive to one another. Tight coupling is indicated by a high level of coordination while loose coupling is indicated by a high level of autonomy among subsystems. Depending upon the task or particular goal at hand, sub-elements or agencies may be loosely or tightly coupled. Coupling is a fluid and changing phenomenon that may vary greatly and may change with time.

Various researchers have explained the criminal justice system as a loosely coupled system (Cuvelier & Jones, 1992; Hagan 1989; Welsh & Pontell, 1991). The justice system is composed of a variety of agencies—police, judges, district attorneys, probation officers, or public defenders—all working under the principle of doing justice. Additionally, these agencies have independent sub-goals, some of which are a point of conflict between them. Conflict is a built-in feature of the adversarial justice system, but conflict may exist for other reasons as well. For example, two agencies of the justice system that typically work toward similar goals may find themselves competing for the same funds and resources. Change in one element of a loosely coupled system may have a ripple effect on other elements. A shifting of resources, changing needs, and changes in political environments may act as catalysts to tighten (Welsh & Pontell, 1991) or loosen coupling (Hagan, 1989, pp.124–125).

The research by Hagan et al. (1979) showed that the tighter coupling between the judge and the district attorney loosened the coupling between the probation officer and the judge to such a degree that researchers referred to the presentence investigation report as "decoupled" and taking on a "ceremonial" role rather than being crucial or essential in the presentencing process. The term "decoupled" meant that the sub-elements operate independently and are unresponsive to each other.

In the research by Hagan et al. (1979), the demands for efficiency due to workload caused a shift in coupling while Welsh and Pontell (1991) found an eventual tightening of elements throughout the system after court intervention over jail overcrowding. These studies indicate that workload, in addition to changes in the political environment, may be a variable influencing the coupling and potential decoupling of elements in a system.

While Max Weber introduced a benign bureaucracy in the 1800's aimed at increasing efficiency and productivity,

bureaucracies today are associated with lack of initiative, inflexibility, indifference to human needs, and "red-tape." Probation work today has been characterized as a bureaucratization of procedures. Face-to-face contacts in the field and in the office have been endangered by large caseloads and the associated paperwork probation officers have come to rely on as a method of conducting supervision (Lawrence, 1984; Mills, 1990). Keeping up with complicated sentencing law (Holt, 1995) has resulted in further bureaucratization of probation work in many jurisdictions. It has induced specialization between presentence investigation and supervision roles and a "production line" approach to job tasks.

Tepperman (1973) studied the effects of court size on bureaucratization. He found that: 1) a greater degree of case standardization occurred in the larger courts; 2) less individualization took place as the court size increased; 3) smaller courts were able to reach dispositions faster than medium and larger courts; and 4) it took less time to find services for offenders in the smaller courts. Tepperman speculated that this was due to the informal nature and greater intensity of communication among the court officials, probation officers, and service providers.

The criminal justice system has been labeled a non-system by various researchers. It may be more appropriate to view a lack of observed coordination between criminal justice agencies as loose coupling. This language gives way to a perspective that is not static and acknowledges the flexi-

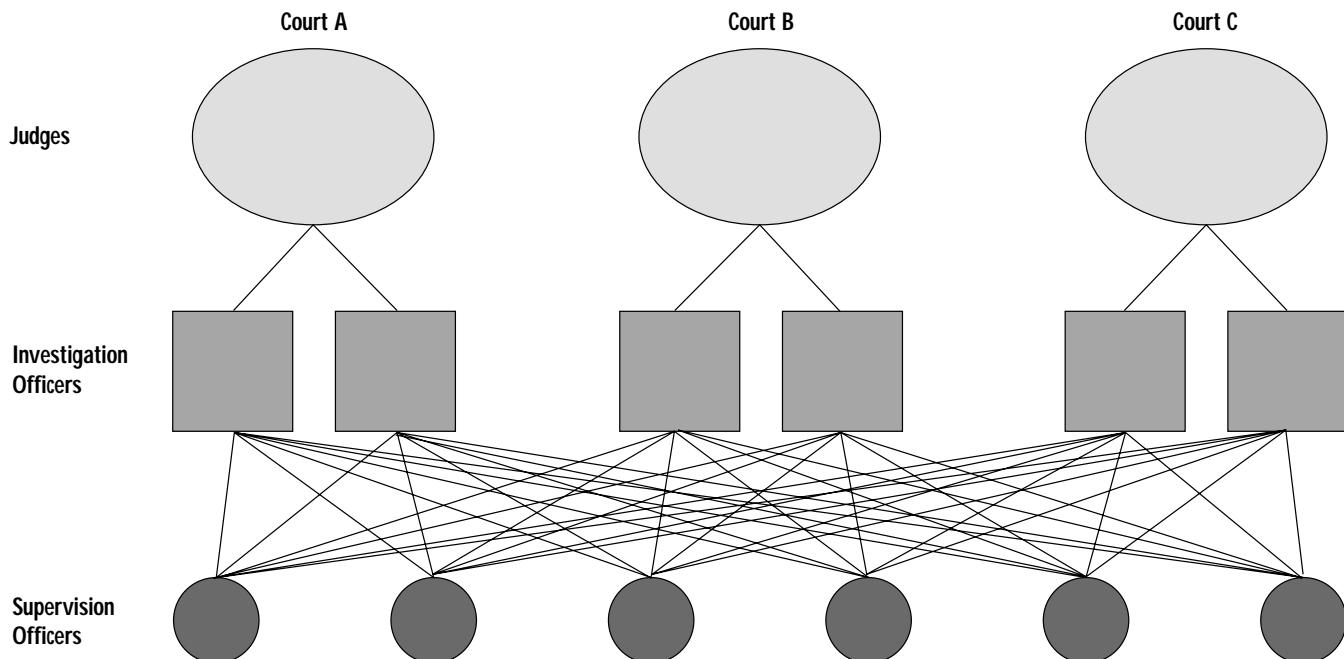
bility of a changing system that is responsive, both proactively and reactively, to the environment.

### ***The Santa Cruz County Court at time of Study: Judges and Probation Officers***

The study was conducted in the justice system of Santa Cruz County, California. The felony courts in Santa Cruz County adopted a system referred to as "felony teams" or "vertical prosecution" in an attempt to cut bureaucracy and streamline court processes. The felony team approach maintains continuity of professionals assigned to a defendant's criminal cases. The same judge and prosecutor handle a defendant's criminal case and subsequent cases through the entire court process. Although this has been an improvement, Tepperman's example of bureaucratization still can be seen in the communication network that exists between probation officers and judges in these courts.

There are presently three felony criminal courts. Each court has a morning criminal calendar, which contains arraignments, sentencings, motions, modifications, and probation violations. Investigation probation officers provide courtroom coverage, not because the court work is more pertinent to their work, but because the thought was that they could more easily handle the extra job responsibility. Supervision officers' caseloads were approximately 200 probationers each while referrals for presentence reports had dropped. According to a division director for the probation

FIGURE 1.  
THE SYSTEM OF INFORMATION PATHWAYS BETWEEN JUDGES, INVESTIGATION OFFICERS,  
AND SUPERVISION OFFICERS IN THREE FELONY COURTS.



department, the referrals began to drop in the late 1980's (over a decade after determinate sentencing law went into effect in California). This occurred after the probation department administrative staff told the courts that the department was inundated with referrals for presentence reports.

Figure 1 is a schematic representation of the exchange of information under the "existing system" at the time of this study. The investigation probation officers go to court to represent the cases belonging to the supervision probation officers. The supervision officers therefore must provide information to the investigation officers so that they may adequately cover the case in court. A concern is that this represents a red-tape bureaucratization lacking a sense of "ownership" among employees and direct communication among justice professionals.

With an ongoing demand for efficiency in court proceedings, an increase in discretionary power of the district attorney, and bureaucratization of probation in the face of workload demands, exploration into the usefulness and potential efficiency of probation service to judges is imperative if probation is to provide viable service to judges. This study attempts to determine the value of the probation officers' recommendations and explores the communication between probation officers and judges in felony courts, primarily from the perspectives of judges. Based on this research, the authors proposed a model that subsequently was implemented in Santa Cruz County.

### **Methodology**

The researchers suspected that bureaucratization and workload had induced loose coupling. Pinpointing causation, however, is not the intention here; it is instead to explore, through relevant data, the communication between judges and probation officers and to determine the need for improvement. Since probation officers work by mandate for the court, emphasis is placed on judges' perceptions. The following broad research questions dictated the data sources in this study:

- 1) How do felony court judges perceive the quality and efficacy of probation service?
- 2) How do probation officers perceive probation service in the courtroom?
- 3) Does the activity in the courtroom corroborate the perceptions of judges and probation officers?
- 4) Does this point to a need for improvement of courtroom service?

The data sought to answer the research questions came from three primary sources: 1) the Santa Cruz County felony judges; 2) the Santa Cruz County probation officers with caseloads of adult offenders; and 3) documents of court outcomes pertaining to probation. The three data sources and methods are summarized below.

### *Judges Interviews*

Interviews with judges were chosen as the most direct method of obtaining judicial perceptions of courtroom service. Five judges were interviewed during late 1994 and early 1995. Their time serving as judges ranged from 3 months to 17 years. This constituted the entire population of felony judges: three judges who presided over the three felony courts and two who were soon to be transferred to felony courts. One of the judges had no prior experience on the criminal bench and participated minimally for that reason.

Interview questions were formulated to determine whether the felony court judges: 1) would like active participation from probation officers during court proceedings; 2) would like improvement in the service probation officers provide them in the courtroom; and 3) would prefer to have the officers in court who supervise the probationers they sentence (i.e., more direct communication).

Two interviews were used. The first interview included unstructured general questions to allow the judges to express their own definitions of any problems existing between the courts and probation and to avoid acceptance of the researcher's definition of the situation. This is in keeping with the "elite interview" technique developed by Dexter (1970), which promotes the use of the professional expert interviewee in defining problems to the interviewer and an interviewer who has a working knowledge of the subject. A second interview focused specifically on the judges' perceptions of probation service in the courtroom.

### *Probation Officer Survey*

Surveys were constructed to assess the perceptions of all the investigation probation officers and all the general supervision probation officers regarding courtroom service (four investigation officers and six supervision officers). Investigation and supervision officers with caseloads of adult offenders were given surveys in early 1995 that contained questions to assess the level of satisfaction with the existing system of courtroom service. The instruments contained questions to determine whether they wanted improvement and more direct communication between judges and probation officers. Surveys included ranked responses to questions as in a Likert scale, a list of statements to be ranked in order of applicability, and a sentence completion regarding how officers felt the system could be improved.

### *Court Data and Client Contact*

Daily court calendars noting all court action pertaining to probation matters in the three felony courts from April through June 1994 were analyzed to determine whether survey findings are supported by events in the courtroom. Additionally, the number of formal probation grants ordered with and without presentence investigation reports from January through May 1995 were obtained to determine indicators of loose coupling between probation officers and judges.

The sample sizes of judges and probation officers are small in this study, but they do represent all the Santa Cruz County court workers involved in the study area. Another limiting factor is that the researcher works as a probation officer in Santa Cruz County. This may have influenced the findings, particularly those obtained from probation. Direct interviews with probation officers were avoided and anonymous surveys were given for this reason. Emphasis is focused on the judges. It should be noted that the elite interview technique calls for an interviewer informed in the research area.

### ***Findings***

The following section presents the findings from the three data sources. The elite interviews with judges are presented independently. For the sake of brevity, only the key issues that surfaced in structured interviews with judges and in the surveys of probation officers and judges are presented. This section concludes with a presentation of archival data collected from the courts and probation records.

#### ***Interviews of Judges***

Judges recognized the difficulty in achieving the goal of probation, particularly with the voluminous workload. They emphasized the importance of the probation officer's independent judgment expressed in the form of recommendations for court action. They expressed frustration with the information they receive from probation in that it is not direct and immediate. They noted a tendency to treat dissimilar cases similarly. While they understood this response to workload, they want better and more immediate information. The following is a summary of the common points judges made.

***Workload and Probation Officer Roles.*** Three out of the four judges mentioned the increasing workload demand as one of the more notable changes affecting the relationship between judges and probation officers. Cutbacks in probation services and the diminished quality of supervision of felony probationers due to the large caseloads were mentioned:

Ideally, probation officers would have caseloads of thirty of the hardcore offenders. Assuming the ideal caseload is not going to be achieved, I would at least like to see supervision caseloads [as opposed to other areas in probation] not get the short end of the stick. It seems that a response to cutbacks is to increase the supervision caseload. I think overall, probation does the best it can considering the conditions. Probation has been treated like the stepchild of the system. We spend too much money at the "backdoor" instead of the "front door."

Most of the judges brought up the need for the probation officer to combine a rehabilitation role with an enforcement role. As one judge explained, "Probationers should be made accountable to society. Concomitantly, they should be given direction and encouragement not to recidivate." Enforcement of the court's directives is important to the judges; however, they ideally like to see probation officers help probationers get the resources and direction they need to keep from reoffending. Two of the judges stressed that the primary goal is to assist defendants toward rehabilita-

tion. One of the areas that pleased judges most was seeing probation officers make successful interventions through a coordination of resources. As one judge stated:

I think primarily it [the role of the probation officer] should be assisting probationers in rehabilitation—helping them get themselves on their feet in the community so that they can function without being institutionalized—without being dependent on anyone. Obviously, with some individuals, they have to act like policemen. They need to isolate those who are receptive to probation services from those who are not, and who, left to their own devices, get arrested again....I am particularly pleased when something constructive is done by getting people together to deal effectively with a particular or unusual problem—a coordination of resources.

***Independent Judgment and Recommendations.*** Another area each of the judges touched upon was the value of probation officers' recommendations presented in the form of written and oral reports to the court. One judge stated that he trusts an active and contributing probation officer to provide him the best information. He explained that this is because the probation officer's recommendations can come from a position of neutrality, unlike those of the district attorney and defense counsel. Said another judge:

What I value most is when a probation officer speaks his/her mind. In my opinion, the probation officer should be independent of the judge, the prosecutor, and the defense. He or she should not be influenced by the plea and should take an independent viewing of the case and recommend accordingly. The probation officer may disagree with the plea based on factors the judge has not had the opportunity to consider. It may very well be that, after consideration of these factors, the judge will agree completely with the assessment the probation officer has made. Recommendations should be independent, objective, honest, and should be made on a case by case basis. Probation officers should not become hardened by the routine. They should avoid thinking of recommendations in terms of the *average* or *typical* case.

This judge felt that probation officers frequently treat cases similarly and offer "typical" recommendations. He cautioned against doing this and elaborated on the importance of independent viewing on a "case-by-case" basis. Another judge said that his relationship with probation has improved considerably over the years; however, the tendency to lump cases together is something that has frustrated him. He said, "In my opinion, there has been an apparent lack of recognition between the difference of somebody who is on probation for possession of cocaine and somebody who is on for armed robbery."

***Direct Communication.*** All the judges indicated that direct and informed communication in the courtroom was important to them. Having probation officers in court who can speak clearly and articulate their position was what one judge said he would like most. Another judge stated:

I am pleased most when I have a human being expressing an opinion in my courtroom and it's an honest one.... I value a free-flow of ideas and discussion, as I feel that the outcome will be better. I actually feel more comfortable with disagreement because I know that I can trust that it is honest and not meant merely to please the court.

All of the judges mentioned good communication from the probation officer as being very important to them. One judge said, "Paperwork is nice, but direct communication

can cut through the bureaucracy. That way, things don't have to be calendared and people don't have to be rounded up." He went on to say that communication could improve by:

...having a knowledgeable probation officer in court to cut through the crap and be able to make some decisions in court without having to serially continue probation matters in order to get more information from the probation officer. ... It may be a case of someone who got sloppy with reporting to his probation officer that we could take care of on the spot. The court [probation] officer would much rather the defendant stay in custody another two weeks and be interviewed by their regular probation officer for a report, when it is my feeling that I could get the information in two minutes. The DA is supposed to run a *rap* [criminal record] on the individual before they come into court. If there are no other warrants and it is a simple matter, why keep an individual in custody another ten days and have the guy lose his job and make matters worse. Sure, some people have no reliable explanation and get what they deserve, but there is a need for more aggressive decision-making in court.

Another judge said:

It is also pleasant, every once in awhile, when after the defense attorney, the district attorney and I have put together some disposition—if for no other reason, to expedite matters on somebody well known to the probation department—and the probation officer says, "Wait! Halt! We can't do this again. We all know this is not going to work."

**Courtroom Coverage and Preparation.** Judges noted frustration with the courtroom coverage arrangement in which court probation officers were not active in court and did not seem to be prepared or know the cases that came to court. One judge said it was important, "to know the file and to know the probationer." Another judge commented:

I am frustrated with the lack of familiarity with files. We get a probation officer that is a mouthpiece on another officer's case more often than not. ... In court, the officer is often not familiar with the file and cannot answer the questions I have.

All the judges commented on the value of competent service in the courtroom and said that improvement was needed. One judge specifically suggested that supervision officers be assigned probationers by court, in line with the vertical prosecution system, as he felt it would present probation the opportunity for more direct involvement in court cases. Another judge elaborated:

I would like probation officers to have the ability to be active in the court process and to be able to make a recommendation in each case. The potentially most effective tool in the justice system is probation. It is unfortunate, but probation has become a bad word. It is seen as ineffective and that has to do with the tremendous workload. There is a need for real casework.

#### *Judge and Probation Officer Surveys*

Judges receive information in court from the investigation officers, who receive information from the supervision officers. Separate questionnaires were designed and administered to judges, supervision officers, and investigation/court probation officers; many similar areas were covered in the surveys. The findings of the supervision officer and investigation officer are presented together as there was general consensus in the data.

As was the case in the unstructured interview, judges

showed agreement in their responses to the structured questions. While judges generally want a direct system of communication where probation officers can be present on their own cases, they felt that the officers who were not directly involved in the cases tended to be unprepared and ill informed.

When information they request in court is not available, judges said that they: 1) "frequently" keep an individual in custody longer; 2) continue or delay a case until they can get the information they desire; 3) request either a supplemental report or the court presence of the probation officer assigned to the case; and 4) "sometimes" release an individual prematurely from jail.

Probation officers also felt that a direct system of communication between the judge and the probation officer handling a case would be an improvement, would increase the chances of matters being handled in court, and would cause fewer delays. Even when new information came out in the court process, probation officers did not feel comfortable changing the recommendation on a case assigned to another officer. They also did not feel comfortable conducting a short interview with a probationer in the courtroom and offering the judge a recommendation on a case assigned to another probation officer. Probation officers felt that court delays would be fewer if officers were present in court on their own cases.

The perception that delays would be fewer, information would improve, and communication would be freer if probation officers directly represented their own cases was the common and recurrent point that emerged from the judge and probation officer surveys. This was particularly apparent in written responses about how courtroom service could improve. As one probation officer stated in the survey, court coverage would best improve if there were "more direct communication [and] probation officers could go to court with their own probationers. I would like more communication, input and information with the DA and the Public Defender." Another probation officer said that the court officer position would best improve "by having probation officers represent their own cases in court. [One judge] does that and seems to go with probation's recommendation 90 percent of the time."

#### *Court Data*

Individuals placed on felony probation with and without a presentence report were tracked from January through May 1995. Of the 639 individuals placed on probation, 377 or 59 percent were sentenced without a presentence report. These data indicate change according to probation staff who said that formal felony probation grants without presentence investigation reports were rare 5 years before this study.

All cases in court pertaining to probation during the months of April, May, and June 1994 were tracked. Nearly two-thirds of the cases (342 out of 574) involved people already on formal probation. These data would appear to corroborate the statements by judges and probation officers that supervision officers need to be in court.

The court data indicated that, while judges have dramatically decreased soliciting probation officers in their decision making about granting probation or alternate recommendations, probation appears to remain the popular sentencing choice.

### *Summary of Findings*

While the judges in Santa Cruz County felony courts understand the workload demands of probation officers, they are not satisfied with probation's courtroom service arrangement. This primarily is due to what judges perceive to be a lack of preparation and a lack of direct involvement with cases in the courtroom. Probation officers also would like to see the court officer more directly involved with cases. The court data support the judges' and probation officers' views as the data reveals that the service provided in the courtroom is not direct. The rate of referrals for presentence investigations indicates a lack of input on felons' sentences in more than half the cases.

### ***Discussion***

The data presented here indicate that factors other than determinate sentencing law and a law-and-order environment must be considered to explain the standardization of criminal sentences. The drop in presentence investigation referrals began over a decade after determinate sentencing law went into effect. Increased workloads have added to the problem.

Two of Tepperman's (1973) key findings on court bureaucratization were observed in this study: the standardized treatment of cases (as noted by judges who cautioned against the tendency to treat cases routinely by making a "typical" recommendation) and a decrease in the quality of interaction as the communication network among professionals increases. The court data, as well as the perceptions of judges and probation officers, indicate that the service to the courts suffers from an indirect and complicated network of communication. The number of formal probation grants without a presentence investigation report indicates a decrease in communication between judges and probation officers. According to Hagan et al. (1979):

...reliance on the professional judgments of probation officers is a workable solution to the disposition dilemmas of individualized justice only insofar as these recommendations do not seriously impede the efficiency needs of the court organization. It is only under these conditions that the organization can function as a tightly coupled system. Alternately, a problem arises when efficiency needs require outcomes different from those recommended by probation officers. It is under these circumstances that decoupling becomes a means of ceremonially preserving the myth of individualization. (p. 510)

A loose coupling, if not "decoupling," has taken place between judges and probation officers in Santa Cruz County. Decisions directly affecting probation are being made regularly in the courtroom without the input of the probation officer involved. The alarming aspect of this trend is that the balanced, nonpartisan view of the probation officer, which can bring forth an independent source of infor-

mation relevant to justice, may be lost. Findings suggest that decoupling is not due to a lack of appreciation of the potential for probation to be a valuable asset to judges. Rather, it has to do with the incompatibility of organizational function with current court structures. The decoupling does not appear to be a result of conflict. It appears to be a consequence of bureaucratization in times of a growing workload.

Judges desire and value information from the probation officer. Given that a felon is far more likely to be placed on probation than in prison, taking the *individual* into account is essential if the most appropriate probation terms are to be selected. These findings support the need for a systems perspective combined with ongoing analysis of field data. A tighter coupling between probation officers and judges would promote individualized justice. This tighter coupling will not occur unless efficient strategies are in place.

### ***The Proposed Model***

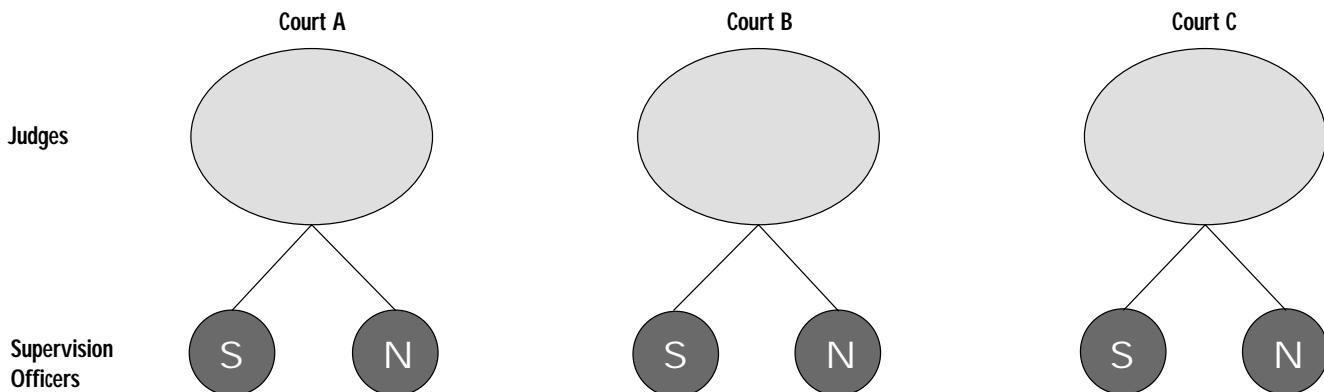
Based on the research, the authors proposed the following model, which was subsequently implemented in Santa Cruz County. If one were to draw a schematic representation of bureaucracy, one might come up with something similar to figure 1. By revisiting this figure, we can see the conditions under which problems thrive. With two potential court officers covering one of three courts in order to receive and give information to a judge and to any one of six supervision officers, the dissatisfaction among professionals working under this system is easy to understand. Supervision officers are reviewing cases and giving notes to investigation officers, who also are reviewing the same cases. The structure, with regard to the flow of information, is hierarchical and reflects the bureaucratization of courtroom service.

Private industry in recent years has recognized problems associated with hierarchical structures (Graham, 1994). Teamwork has been used innovatively to combat these problems and has been widely recognized as successful. Small teams are more effective than individuals or larger groups (Katzenbach, 1993).

Santa Cruz County's system of vertical prosecution fits with the proposed model for Santa Cruz County courtroom service shown in figure 2. Unlike a hierarchical model, the structure is relatively flat. Unlike what happens in a red-tape bureaucracy, the flow of work is simplified through a more direct approach created by teams. Cases are assigned to one court (or judge) rather than dispersed among three courts. This structure should produce the benefits associated with teamwork and create tighter coupling between judges and probation officers.

Motivation to be well informed and to avoid standardized treatment of dissimilar cases is likely to be enhanced by the "ownership" of direct service. This proposed model of direct service empowers the probation officer to: 1) expedite the court process; 2) decrease the need for continuances for interviews and supplemental reports, which can reduce jail time; 3) increase contacts with probationers and individuals

FIGURE 2.  
THE FLOW OF COMMUNICATION BETWEEN SUPERVISION OFFICERS AND JUDGES UNDER THE PROPOSED MODEL.



NOTE: One probation officer from the south county (S) office and one probation officer from the north county (N) office are assigned to each court team.

significant to probation cases; 4) make referrals for probationers to services from court; 5) gather information relevant to the supervision of offenders; and, 6) become involved in the negotiation of a case predispositionally.

The proposed model (referred to as "court teams") was implemented as a direct result of this study. The team concept was extended to the three investigation officers who were each assigned to a court as a team as a supervisor and investigator. Since implementation, judges have noted that the new system is an improvement. One judge commented that the probation officers now have impetus to handle matters in court whereas they did not under the previous system. A public defender noted to one of the authors that probation officers are giving out cards and phone numbers directly after sentencing and that this did not occur previously. A bailiff from one of the courts commented that the new system has reduced jail overcrowding in that more matters are handled in court rather than referred back to the probation department for a supplemental report. Anecdotal evidence from judges, probation officers, and public defenders has indicated that the system has greatly reduced continuances and excessive jail time previously used to obtain information through written reports. Judges and probation officers have commented on a more expeditious and individualized handling of cases. Probation officers have expressed increased job satisfaction now that they have more influence in the courtroom.

Tight coupling could produce a loss of conflict that should take place in an adversarial process. Furthermore, a tightly coupled court team could become decoupled from the other courts. Ongoing evaluation should be conducted to maximize benefits and reduce negative consequences.

### ***Implications for the Future***

The findings of this study lend support to the theory that bureaucratization and loose coupling have occurred in the

court service probation provides to judges. Changes in response to the growing workload demands have negatively affected communication between judges and probation officers. One negative consequence of loose coupling or decoupling is observed in this and other research (Hagan et al., 1979): the independent voice probation officers can provide to judges is in jeopardy. This may be a significant impediment to justice in that the non-adversarial voice of the probation officer, unbound by a predetermined position, has become increasingly removed from court proceedings.

We need to consider further the value of the probation officer in the courtroom as a means to bring this voice back into the court process. The Santa Cruz County Felony Courts' adoption of vertical prosecution has presented an opportunity to improve the communication between probation officer and judge. While probation departments vary in size and structure, the literature reviewed suggests that the findings in this study may be relevant to other jurisdictions; large caseloads and bureaucratization are universally recognized problems in today's criminal justice system.

The model proposed will not solve all of the problems facing probation. The need for more staff to create smaller caseloads is ongoing. This continues to be one of the biggest obstacles to providing high quality service. This should not, however, preclude using innovative developments to tackle some of these problems. By viewing probation as a sub-system of the larger justice system and by recognizing that changes in one sub-system not only affect the other but also can be used as an opportunity for change, we can begin to find innovative solutions.

Anecdotal data indicate that the proposed model has been effective in Santa Cruz County. We recommend research to determine how and to what extent the relationship between probation officers and judges has improved since implementation of the proposed model. Efficiency improvements and the increase in individualized handling of probation cases should be evaluated. Improvements, such

as a reduction in the jail time that is used only to obtain information, should be studied as well. Other jurisdictions may relate to the problems studied in Santa Cruz County and also may find strategies similar to the proposed model to be effective.

## REFERENCES

- Campbell, C., McCoy, C., & Osigweh, C. (1990). The influence of probation recommendations on sentencing decisions and their predictive accuracy. *Federal Probation*, 54(4): 13-21.
- Carlen, P. (1975). Magistrates' courts: A game theoretic analysis. *Sociological Review*, 23(2): 347-379.
- Carter, R.M. (1966). It is respectfully recommended. *Federal Probation*, 30(2): 38-42.
- Carter, R.M. (1969). Variations in presentence report recommendations and court dispositions. *Research Report*, 2(5): 27.
- Carter, R.M., & Wilkins, L. (1967). Some factors in sentencing policy. *Journal of Criminology and Political Science*, 38(4): 253-273.
- Champion, D.J. (1987). District attorneys and plea-bargaining: An analysis of the prosecutorial priorities influencing negotiated pleas. *The Prosecutor*, 20: 25-32.
- Cuvelier, S., & Jones, M. (1992). Local programs and state dollars: Performance reward funding and intergovernmental relations in Texas criminal justice. *Journal of Contemporary Criminal Justice*, 8(3): 299-316.
- Dexter, L.A. (1970). *Elite and specialized interviewing*. Evanston, IL: Northwestern University Press.
- Eisenstein, J., & Jacobs, H. (1991). *Felony justice*. New York: University Press of America.
- Ellsworth, T. (1990). Identifying the actual and preferred goals of probation. *Federal Probation*, 54(10): 10-15.
- Ellsworth, T. (1988). Case supervision planning: The forgotten component of intensive supervision. *Federal Probation*, 52(4): 28-33.
- Gibson, R.E. (1973). *Recommending sentence: New Zealand probation officers' presentence reports*. Victoria, New Zealand: Australian and New Zealand Society of Criminology.
- Graham, Morris A. (1994). *The horizontal revolution: Reorganizing your organization through teams*. San Francisco: Jossey-Bass.
- Hagan, J. (1989). Why is there so little criminal justice theory? Neglected macro- and micro-level links between organization and power. *Journal of Research in Crime and Delinquency*, 26(2): 116-135.
- Hagan, J., Hewitt, J., & Alwin, D. (1979). Ceremonial justice: Crime and punishment in a loosely coupled system. *Social Forces* 58(2): 506-527.
- Harris, M.K. (1987). Observations of a "friend of the court" on the future of probation and parole. *Federal Probation*, 51(4): 12-21.
- Hill, E. (1994). *State of California probation system*. (Legislative Analyst Report.) Sacramento, CA: State of California.
- Holt, N. (1995, August). California's determinate sentencing: What went wrong? *American Probation and Parole Association*, 19-22.
- Katzenbach, J.R. (1993). *The wisdom of teams: Creating the high performance organization*. Boston: Harvard Business School Press.
- Koehler, J., & Linder, C. (1992). Alternative incarceration: An inevitable response to institutional overcrowding. *Federal Probation*, 56(3): 12-18.
- Langbein, J.H. (1979). Understanding the short history of plea bargaining. *Law and Society Review*, 13: 261-272.
- Lawrence, R. (1984). *Probation officer's role perceptions*. Paper presented at the 1984 annual meeting of the Academy of Criminal Justice Sciences, Chicago, IL.
- Lawrence, R. (1990). Reexamining community corrections models. *Crime and Delinquency*, 37(4): 449-464.
- Lindner, C. (1991). The refocused probation home visit: A subtle but revolutionary change. *Journal of Contemporary Criminal Justice* 7(2): 115-127.
- Lohman, J., Wahl, A., & Carter, R. (1966). *The San Francisco Project*. Berkeley, CA: University of California Press.
- Mills, D.K. (1990). Career issues for probation officers. *Federal Probation*, 54(3): 3-7.
- Sieh, E.W. (1993). From Augustus to the progressives: A study of probation's formative years. *Federal Probation*, 57(3): 67-72.
- Tepperman, L. (1973). The effect of court size on organization and procedure. *Review of Canadian Sociology and Anthropology*, 10(4): 346-365.
- Trever, H. (1978). Offender reaction, professional opinion and sentencing. *Criminology*, 16(3): 403-419.
- Weick, K. (1976). Educational organizations as loosely coupled systems. *Administrative Science Quarterly*, 21: 1-17.
- Welsh, W., & Pontell, H. (1991). Counties in court: Interorganizational adaptations to jail litigation in California. *Law and Society Review*, 25(1): 73-101.
- Whitehead, J.T. (1989). *Burnout in probation and corrections*. New York: Praeger.

# The Strengths Perspective: A Paradigm for Correctional Counseling

BY KATHERINE VAN WORMER, PH.D.

*Professor, Department of Social Work, University of Northern Iowa*

"In every child who is born, under no matter what circumstances, and of no matter what parents, the potentiality of the human race is born again."

—James Agee

**A**T THE heart of the strengths perspective is a belief in the basic goodness of humankind, a faith that individuals, however unfortunate their plight, can discover strengths in themselves that they never knew existed. No matter how little or how much may be expressed at one time, as Weick, Rapp, Sullivan, and Kisthardt (1989) explain, people often have a potential that is not commonly realized. The Biblical injunction from *Matthew* 7:7 sums it up in a nutshell: "Seek and ye shall find." This cardinal principle is implied in the opening statement of the social work Code of Ethics: "Social workers' primary responsibility is to promote the well-being of clients" (National Association of Social Workers, 1996, p. 1.01). The first step in promoting the client's well-being is through assessing the client's strengths. A belief in human potential is tied to the notion that people have untapped resources—physically, emotionally, socially, and spiritually—that they can mobilize in times of need. This is where professional helping comes into play—in tapping into the possibilities, into what *can be*, not what *is*.

The view of humanity underlying the strengths approach is that humans are unique and multifaceted beings (Kelley, 1996). In clinical settings, however, simple labels based on pathology, often highly pejorative in connotation, tend to take on a life of their own. Clients come to be seen as unidimensional, their very being tailor-made to the therapist's special needs. Years ago, Dennis Wrong (1976, p. 112) chided social scientists for this very flaw: "We must do better," he wrote, "if we really wish to win credit outside our ranks for special understanding of man, that plausible creature whose wagging tongue so often hides the despair and darkness in his heart." His words are especially relevant to the treatment process, a process where the search for root causes of problems often blinds us to underlying strengths.

Deficit, disease, and dysfunction metaphors permeate treatment at every stage of the process, from intake to termination (Cowger, 1994). In the criminal justice system, clients often find their very selfhood defined by their crimes. For such persons, whose views of therapy and of all authority figures are apt to be decidedly negative, a positive approach is essential to establish the one crucial ingredient of effective treatment—trust. Sometimes one encounter or one supportive relationship—whether with a teacher, social worker, or priest—can offer a turning point in a life of crime.

Who can forget the thief Jean Valjean's about-face in Victor Hugo's *Les Misérables*, when the kind priest, the victim, tells

the police that the stolen candelabras were not stolen but a gift from himself? Or even the cold-blooded killer in the film *Dead Man Walking*, who grows personally and, to some extent, spiritually through his relationship with a caring nun. These two examples—one fictional, one based on fact—illuminate a theme of personal empowerment. One of the major tasks of the professional helper is to facilitate such change. Within the justice context, the challenge consists of promoting personal power in people whose lives have become circumscribed to varying degrees and whose very existence has been devalued and even criminalized.

A second major challenge to correctional social work is the challenge of viewing causality reciprocally. With criminal behavior, the locus of the problem is not the individual alone but the individual and society in interaction. To study the person-in-the-environment is not enough; one also needs to study the environment-in-the-person. If we conceive of the environment as the prison, we can view the new recruits as bringing into this milieu all of what Irwin (1980) calls the "cultural baggage" from their social background. And then we can view aspects of prison life—the social control, the convict norms—as internalized within the prison inmate. Both the person and the environment can be seen to be in continuous and dynamic interaction in this way. If we come to frame the inmates' confinement in a political sense, then we have moved toward a linking of the personal and political levels of existence (Lee, 1994).

More than any other population, correctional clients are the failures of the failures. Not only have they publicly been labeled through some kind of court action, but their encounter with professional counselors usually relates to some kind of punishment. Work in the correctional realm, then, with all the negatives stacked against it, is an excellent testing ground for a framework of strengths. In contrast to a diagnostic, pathology-based therapy, direct practice from this multidimensional framework looks beyond a client's diagnosis or offense—for example, borderline personality or drug possession—to positive attributes that can serve as an important resource even in the most desperate of circumstances. The challenge of the present article is to discover to what extent an approach that is geared toward individual resourcefulness and health is relevant for those who have been identified by society as criminal. To put this more graphically, the challenge is to discover if an approach, a model, that is successful in helping battered women suffering from low self-esteem also would be effec-

tive in work with their batterers or if a framework effective in therapy in cases of rape trauma also could be of any use to the rapist.

As this article will make clear, the answer is a qualified yes. A treatment approach that works for the victim also can help foster desirable change in the victimizer, at least in some persons who have abused or even murdered others.

Of special relevance to criminal behavior, and without which change is unlikely, is the taking of personal responsibility for one's actions and for one's life. The treatment relationship can serve as a powerful tool for helping the client change cognitive misconceptions that result in self-destructive thoughts and behavior. Even in a life most crushed by circumstances of time and place, there nevertheless exists the potentiality for actions other than those characteristically taken. This belief is at the core of the therapeutic relationship.

Given the motivation to change, a necessary ingredient is the development of personal resources. A sense of control over one's life and relationships is crucial. McWhirter (1991, p. 224) captures the essence of empowerment in her inclusive definition:

Empowerment is the process by which people, organizations, or groups who are powerless (a) become aware of the power dynamics at work in their life context, (b) develop the skills and capacity for gaining some reasonable control over their lives, (c) exercise this control without infringing upon rights of others, and (d) support the empowerment of others in their community.

The purpose of this article is to introduce a strengths framework as both a systematic model of behavioral/attitudinal change and an integrated method of offender treatment. Two professional literatures will be surveyed—first, correctional literature with a focus on the offender as a redeemable, reputable being and, secondly, clinical literature utilizing a strengths approach for work with offenders. As will be apparent shortly, however, it is as rare for contemporary correctional literature to focus on strengths of criminal offenders as it is for the strengths literature to direct attention to the criminal justice field.

Following this brief literature review, we will move on to a detailed discussion of the basic tenets of the strengths approach, currently in the process of evolution. The specific relevance of this framework to the field we euphemistically call corrections is described. Particular attention is given to the paradox of employing a positive, client-centered orientation within a system characterized by coercion and despair and for clients who are often less than amenable to treatment goals. Finally, a discussion of professional implications concludes this article.

### **Literature Review**

We are dealing here with the literatures of two separate enterprises—criminal justice and mental health counseling. The orientation of both is respectively different. Whereas the criminal justice emphasis is largely on the state enterprise and legal prerogatives, social work has as its first focal

point the individual within the system. Yet, the two literatures share a commonality; both reflect the social and political movements of the day. Prison reform, innovative rehabilitation programs, and generous social services tend to go together. Preparation for war, mandatory sentencing laws, and welfare cutbacks tend to go together also. The way criminals are regarded in a society, in short, reflects the ethos of the culture.

Rarely is the strengths or empowerment perspective articulated as such in the criminal justice literature. A computer search of the criminal justice abstracts index (as of February 1999) reveals no listing for articles under the heading strengths approach or strengths perspective. The empowerment concept, however, does appear to be widely used as a descriptive term for progressive work with juveniles, female victims, and occasionally female offenders, according to the computer index. The gender difference in the use of an empowerment approach is striking. For example, Harmsworth (1991, p. 135) offers the following description of a criminal justice program in Victoria, Australia:

The components of this approach include unit management in correctional facilities, high-security units, treatment models for violent men (including individual therapy, anger management programs, group programs, and sex offender treatment). The Victorian Office of Corrections is also establishing a range of strategies to provide support and empowerment to women offenders.

Despite the absence of a comprehensive strengths formulation for treating adult male offenders, Michael Clark, a senior juvenile court officer in Ingham County, Michigan, offers a sophisticated formulation of strength-based practice for work with youth (Clark, 1998). In contrast to a problem-solving approach, the strengths, solution-based paradigm is emerging and gaining ground in juvenile justice, according to Clark. Instead of a focus on owning up to the guilt of transgressions, argues Clark, the focus under this newer model is on dynamic behavior change. Interviewing questions center on the progress clients have made since their encounter with the authorities. Youths in trouble with the law are viewed not as delinquent but as healthy, capable, and able. Clark's innovative writings in such mainstream criminal justice journals as *Federal Probation* and *Corrections Today* (Clark, 1997) are a promising development in a field noted more for punitiveness than empowerment. Several earlier works on correctional counseling, nevertheless, did infuse principles of a positive, client-oriented treatment philosophy throughout the chapters. Noteworthy among them are *Correctional Treatment: Theory and Practice* by Bartollas (1985), which discusses numerous model programs offering meaningful experiences for offenders—the instillation of hope is seen as a key ingredient in such programs—and *Correctional Counseling and Treatment* edited by Kratcoski (1994), which offers "practical" readings on basic therapy techniques to help the correctional client become a functioning member of society.

A surprising find in the literature search is a book written by former probation officer and criminal justice professor Paul Haun (1998), *Emerging Criminal Justice: Three*

**Pillars for a Proactive Justice System.** Calling for reinforced community corrections and punishments for crimes that allow for nonrestrictive environments, Haun proposes a restorative approach to criminal justice. This approach is built on the concepts of community healing, social support, and innovative community-based programming. Implicit in Haun's conceptualization of restorative justice is the notion of the virtues of kindness, mercy blended with justice, and forgiveness. The aim of restorative justice is to restore the torn fabric of community and of wholeness to all those affected by crime—victims and criminals both. The key role of religion is recognized in helping offenders develop and maintain internal controls and resolving feelings of guilt.

Writing on probation and parole in a criminal justice textbook, Joseph Rogers (1992) utilizes a client empowerment model for female offenders. According to Rogers' empowerment model, women are helped to be more assertive and to achieve their potential through casework, group treatment, family therapy, and community involvement. Significantly, however, the majority of references for this article are taken from social work literature.

#### *Literature from the Helping Professions*

In the tradition of Carl Rogers, counseling psychology promotes the professional skills of empathic listening, genuineness, and nonpossessive warmth, skills which are compatible with the strengths paradigm. Yet as Riordan and Martin (1993) acknowledge, little exists in the counseling literature about the treatment of court-ordered clients.

Within the social work practice literature, a focus on client strengths has received increasing attention in recent years. Unlike related fields, moreover, social work has come to use the term, "the strengths perspective" or "the strengths approach" as standard rhetorical practice. The strengths perspective, as Kirst-Ashman and Hull (1997) note, assumes that power resides in people and that social workers should do their best to promote power by refusing to label clients, avoiding paternalistic treatment, and trusting clients to make appropriate decisions. Two popular textbooks, for example, *Generalist Social Work Practice: An Empowering Approach* (Miley, O'Melia, & Dubois, 1998) and *The Empowerment Approach to Social Work Practice* (Lee, 1994) incorporate the principle of strengths into every phase of the helping process. Although the literature consistently articulates the importance of a stress on clients' strengths and competencies, social workers must be cognizant of the reality of standard clinical practice built on a treatment problem/deficit orientation, a reality shaped by agency accountability and the dictates of managed care. Third-party payment schemes mandate a diagnosis based on relatively serious disturbances in a person's functioning (e.g., organic depression or suicide attempts) and short-term therapy to correct the presenting problem. Furthermore, the legal and political mandates of many agencies, the elements of social control embodied in both the institution and ethos of the agency, may strike a further blow to the possibility of partnership and collaboration between client and helper (Saleebey, 1997).

What you have in social work, in short, are two contradictory elements. On the one hand is the thrust to help people and, to paraphrase William Faulkner (1950), to help them not merely to endure but to prevail. "It is writer's privilege," declared Faulkner, "to help man endure by lifting his heart." We could consider this the social worker's privilege also. Social workers are members of a profession that aspires to help people become more loving and less embittered, more trusting and less competitive, more responsible and less irrational.

Countering the idealistic element in social work is the on-the-job, gut-level reality—the resistant clients, cynical workers, and tediousness of problem-based case management. (The British counterpart of care management is much more positive.) Thus, as novice social workers and students become socialized into professional norms, they often are inclined to try to separate theory from practice, all too willingly moving from what they perceive as the academic ideal to the bureaucratic imperative. Invariably, however, years later, they will attend a workshop oriented around some aspect of client centeredness only to momentarily rediscover their and social work's roots. And, once again, they will echo the truism enunciated by Kurt Lewin that "there's nothing so practical as good theory" (cited by Polansky, 1986). An essential premise of this article and one that, as Turner (1996) suggests, is a major tenet of the profession is that theory and practice are inextricably linked.

The strengths perspective has been applied to a wide variety of client situations: work with the mentally ill, child welfare clients, homeless women in emergency rooms, the elderly, and African American families. The concept of strength is also part and parcel of the growing literature on empowerment, feminist therapy, narrative therapy, client/person centered approach, and the ethnic-sensitive model. In his comprehensive overview of social work theory, Francis Turner (1996) perceives two common threads unifying contemporary theory. These are the person-in-the-situation conceptualization and a holistic understanding of clients in terms of their strengths and available resources.

*Correctional Case Management* (Enos & Southern, 1996) is a textbook written for students in criminal justice and co-authored by clinically trained writers. Although the book is organized around a behavioral-cognitive approach to the problem-solving process, the basic skills of social work consistent with Rogers' acceptance of the person as a person are described in depth. The authors even define acceptance in terms of what the Quakers refer to as "that of God in every person." There is no attention to strengths-oriented therapy, however, and the terminology is largely centered around problem solving and behavioral classification schemes, the standard negative fare in their field.

In their article "Empowering Female Offenders: Removing Barriers to Community Based Practice," Wilson and Anderson (1997) provide a prime illustration of a strengths-based approach to correctional treatment. A key component of their practice model is the placement of competence and coping within a sociopolitical context.

Empowerment practice with female inmates entails intervention directed at the economic, educational, social, and political structures of society in addition to strengths-focused individual and group therapy with the women.

Berger and Andrews (1995) describe an empowerment group that they, as two college professors, conducted at the women's prison in Minnesota. A short-term discussion group format was adopted to help raise the consciousness of a small group of women inmates. Videos concerning women's roles in society were used to stimulate discussion. Abandoning the role of expert, the facilitators engaged in co-learning with group members. After a slow start in early sessions, several group members actively and eagerly participated. The feminist perspective provided by the group leaders was not well received by a couple of the participants. Nevertheless, progress was made toward reduction of self-blame as a group consciousness developed.

We are talking here of literature from the strengths perspective in the writings of North Americans. European studies, although they use a different phraseology, are distinctly more humanistic in every regard than their American counterparts. Parker (1997), for example, marvels at the optimism of the Danish probation officer corps, who consistently express confidence in their ability to help their supervisees get on the right path. Similarly, Singer (1991), applauds the "non-punitive paradigm" of British probation practice, which is currently under threat, however, by new government initiatives.

### ***From Strengths Approach to Strengths Theory***

Much of casework failure, as Bricker-Jenkins (1997) reminds us, results not from poor practice but from poor theory. To exclude certain characteristics from practice theory, for example, strengths and environmental assets, as Bricker-Jenkins further suggests, may be the critical factor in casework failure. From the perspective of the client, being able to grasp one's potential contributes to helping not only in the immediate situation but in offsetting future difficulties as well. From the point of view of the worker, tapping into the client's strengths and support systems helps build rapport and even appreciation in contrast to a more traditional, problem-centered approach that may tend to provoke resistance.

In his essay on the aspects of theory, Polansky (1986) describes theory as a kind of mental map, as the thought that guides action. Theory affects one's perception and directs the worker to attend selectively to certain phenomena that otherwise might be overlooked. Without firm grounding in theory, notes Polansky, caseworkers are at the mercy of their gullibility and uncertain of direction.

For all the vast literature focused on strengths, no fully integrated theory has yet emerged to shape practice. The majority of the conceptual writing on this subject has come from the university, not from practitioners in the field. Moreover, students schooled in a strengths orientation, in fact, often are retrained by agencies to use assessment

schemes based on the documentation of individual inadequacies (Cowger, 1994). The rift between philosophy on the one hand and agency/management models on the other leads to inconsistency between the ideal and the real and abandonment of some very powerful techniques.

Built on a solid knowledge base, theory provides a viable explanation for why people behave as they do. Theory is validated in terms of predictions that can be made concerning human behavior under certain circumstances. In connection with social work, one can predict what the likely result of a certain intervention is to be. A good theory, notes Polansky, lets one go beyond known facts. Good theory generates new ideas, which, in turn, generates more theory.

Viewed as theory, the strengths approach has the power to explain both why people perform at an optimal level and why they do not. While some individuals thrive when faced with obstacles, drawing on both inner and outer resources, others face life with a kind of fatalism. Their survival skills are diminished accordingly. There is nothing very new about this theory certainly; the parallels with the self-fulfilling concept and "the-power-of-positive-thinking" dogma are obvious. Yet, as a framework for treatment intervention, the strengths approach can offer a mental map, as Polansky suggested, to operate as a reminder when we as therapists get off course. In corrections, for example, viewing clients solely through the lens of the crimes they have committed can obscure our vision and impede treatment progress. Interestingly, Bricker-Jenkins (1992, p.137) draws on the literature of Norman Polansky to illustrate how negativism can color social work research. In his classic studies on child neglect, Polansky viewed the neglectful mothers through a "convex pathological lens." If we are to develop theory for competent and sensitive practice, concludes Bricker-Jenkins, then we must replace our pathological lens with a "concave, health-oriented lens."

Shaped by a framework of empowerment, conversely, the therapy process is informed by an assessment of assets and resources. This kind of assessment operationalizes the strengths concepts and directs practice. The strengths approach, then, is not only a model but a method as well. Listening is the method—listening to the client's story, not passively, uncreatively, but with full attention to the rhythms and patterns—and then, when the time is right, observing, sharing, until through a mutual discovery, events can be seen in terms of some kind of whole. The challenge is to find themes of hope and courage and in so naming to reinforce them. Thus, one can discover qualities of goodness in a life otherwise defined by crime. This is how strengths theory gets played out in practice.

The strengths perspective, of course, is not intended to apply solely to individual strengths. Consistent with the person-in-the-environment and empowerment-in-the-person conceptualization of social work, the focus is on multifaceted intervention. The general expectation is that social workers should be able to intervene at any point—individual, family, neighborhood, or within society (Butler, 1996). Social workers, moreover, see themselves as ethically

required to work to change social policy affecting themselves and their clients; this is one of the major precepts of the National Association of Social Workers (NASW) Code of Ethics (NASW, 1997). A call has gone out for NASW to acknowledge each practice setting, including all aspects of the justice system (Lynch & Mitchell, 1995).

A presumption of health over pathology, a focus on self-actualization and personal growth, and a recognition that the personal is political and the political, personal: these are among the key tenets of the strengths approach. Pertaining to groups and communities as well as individuals, the strengths perspective can help reveal the light in the darkness and provide hope in the most dismal of circumstances. As informed by strengths theory, the therapeutic goal is to help people discover their areas of strength so that they can build on them in an ever-spiraling movement toward health and control. More specific therapeutic goals geared toward work with offenders relates to the discovery and reinforcement of areas of moral strength and the finding of alternative ways of coping with stress other than through violence or drug use or other illegal activities. Despite the constraints of the criminal justice system and the daily humiliations engendered in the system, correctional clients still can be helped to find an inner pride in themselves and their accomplishments. Within the constraints of the coercive bureaucracy, a little goes a long way, and minor accomplishments can become major triumphs. It is all a question of context.

### ***Correctional Practice***

Filtering out the major themes from the strengths perspective relevant to correctional practice, the following guidelines emerge:

*Seek the positive in terms of people's coping skills*, and you will find it. Look beyond presenting symptoms and setbacks and encourage clients to identify their talents, dreams, insights, and fortitude.

Can a psychological diagnosis be approached positively? A refutation of pathology need not preclude an affirmative use of diagnosis. The secret is in how the diagnosis is used. As the traditional saying goes, knowledge is power. Knowledge of one's medical condition, if accurate and meaningful, can bring tremendous relief. A leading psychiatrist, John Ratey (1997, p. 76), for example, describes what an eye-opener it was for him to understand why he is as he is:

A diagnosis by itself can change a life. My own father suffered from manic-depression and I used to wonder if I had inherited the same disorder. When I learned I had ADD (attention deficit disorder), that fact alone made a huge difference to my life. Instead of thinking of myself as having a character flaw, a family legacy, or some potentially ominous "difference" between me and other people, I could see myself in terms of having a unique brain biology. This understanding freed me emotionally. In fact, I would much rather have ADD than not have it, since I love the positive qualities that go along with it—creativity, energy, and unpredictability.

Since many offenders share the ADD diagnosis, this example is highly relevant to correctional work. The bulk of strengths literature, in the tradition of client-centered thera-

py, it should be pointed out, is highly critical of the use of diagnoses and other labels for reasons that are understandable. Cowger (1994, p. 267), for example, states that diagnosis is incongruent with a strengths perspective. "Diagnosis," he suggests, "is understood in the context of pathology, deviance, and deficits" and furthermore "is associated with a medical model of labeling." In response, I will make the case that the naming of symptoms often alleviates blaming. As we learn more and more about how brain chemistry affects our moods, cravings, and other behavior, such knowledge, far from being destructive, can be liberating to the individual. The process of assessment, however, should be a collaborative, explorative process; it is not imposed from above. With offenders, the use of negative, catch-all labels such as antisocial, borderline personality, and histrionic should be avoided. Addictions treatment centers apply the word codependent with a wild abandon (see van Wormer, 1995).

*Listen to the personal narrative.* Hearing the client's story, the client's personal and family history, is an excellent source of data for discovery of latent strengths. Through entering the world of the storyteller, the practitioner comes to grasp the client's reality, at the same time attending to signs of initiative, hope, and frustration with past counterproductive behavior that can help lead the client into a healthier outlook on life. The strengths therapist, by means of continual reinforcement of positives, seeks to help the client move away from what van den Bergh (1995, p. xix) calls "paralyzing narratives." Patricia Kelley (1996) discusses how narrative therapy can help clients reauthor their lives. Through careful questioning, the therapist introduces alternative ways of viewing reality and thereby of providing hope.

The concept of *suspension of disbelief*, borrowed from studies of ancient Greek literature and adapted by Saleebey (1997) as one of the key concepts of the strengths perspective, has special relevance for work with offenders. In contradistinction to the usual practice in interviewing known liars, con-artists, and thieves, which is to protect yourself from being used or manipulated, this approach would have the practitioner temporarily suspend skepticism or disbelief and enter the client's world as the client presents it. To the extent that involuntary clients may "have us on," as Saleebey acknowledges, this should be regarded as a reaction to their loss of freedom, a form of resistance that may be abandoned once trust is developed. A willingness to listen to the client's own explanations and perceptions ultimately encourages the emergence of the client's truth.

*Validate the pain* where pain exists. Reinforce persistent efforts to alleviate the pain and help people recover from the specific injuries of oppression, neglect, and domination.

Loss and pain and, in all probability, anger, are staples of the offender experience. Typical losses include loss of freedom of varying degrees, court sanctions, relationship adjustments, and forced abstinence from use of alcohol and other drugs. Strengths-oriented treatment helps clients to grieve their losses and to achieve some degree of acceptance of

things they cannot change. The therapy process engages the client and helps the client find ways of coping that are alternatives to chemical use or destructive behaviors. The focus is on enhancing the client's sense of control and ability to make decisions in a situation of legal constraints and entanglements. "To heal our wounds," as bell hooks (1993, p. 39) tells us, "we must be able to critically examine our behavior and change." As clients begin to take responsibility for their lives, the healing process can begin. Generally, this involves recognizing how past events influence present feelings, thoughts, and behavior. Women's and men's healing may involve a journey to childhood or early adulthood where traumas occurred. Healing may require a working through of guilt feelings whether they are justified or not. Inner change often comes through identifying irrational thoughts and concomitant feelings and reframing unhealthy assumptions and beliefs.

David Goodson (1998), youth shelter worker and himself an ex-convict, says it best:

I deal with a lot of cultural pain. The same issues come up again and again, and the issue of race always comes up, the issue of Who I am. Who am I as a black man? In a lecture I heard recently, the speaker said the only thing that keeps people clean is the fear of dying of an overdose. But in my work we have to go beyond that and acquire a love for life, a love for yourself, a love for your family, and so on. Sometimes we preach a message of running from rather than a message of salvation. My point is we have to go beyond fear to the positives. As black men we have to view this (drug use) as self-destructive behavior due to cultural self hatred.

Similarly, in her book on black women and self-recovery, bell hooks (1993) connects the struggle of people to "recover" from suffering and woundedness caused by political oppression/exploitation with the effort to break with addictive behavior. "Collectively, black women will lead more life-affirming lives," she writes (p. 111), "as we break through denial, acknowledge our pain, express our grief, and let the mourning teach us how to rejoice and begin life anew."

*Don't dictate: collaborate* through an agreed upon, mutual discovery of solutions among helpers, families, and support networks. Validation and collaboration are integral steps in a consciousness-raising process that can lead to healing and empowerment (Bricker-Jenkins, 1991).

Correctional counselors, such as probation officers, for example, find themselves in a position of extreme power imbalance that, if handled incorrectly, can be the death knell of a therapeutic treatment relationship. Workers can minimize this imbalance by stressing the importance of the client's perceptions and meanings. The fundamental social work value of self-determination is reified as practitioners entrust clients with rights and responsibilities to make decisions in each phase of the treatment process. To be effective, the process must redefine traditional roles, insofar as is possible, to reflect the status of clients as active partners (Miley et al., 1998). The long-standing social work principle "begin where the client is" has profound implications for the path that individual therapy will take. In partnership, workers and client map out an area of where to go (the goals), how rough a road to travel (issues to address), and the means of getting there (intervention and exercises). Instead

of a philosophy of the treatment guide as the expert and teacher, the notion of this type of journey is simply that two heads are better than one to figure things out.

Related to the concept of collaboration is the notion of *interactionism*. Interactional relationships are reciprocal exchanges in which the teacher is the learner and the learner the teacher. The opposite of interactionism is the model of cause and effect, a linear concept in which an action at point A causes a reaction at point B. The added dimension here is that A affects B and B affects A simultaneously. The effect is not merely additive but synergistic, for when phenomena including people are brought into interrelationships, they create new and often unexpected patterns and resources that typically exceed the complexity of their individual components (Saleebey, 1992). The whole is more than the sum of its parts, in other words.

In a relationship, because of the synergy involved, moods are transmitted, often unintentionally. The effect is as much on the therapist as it is on the client. Thus, the depression of one becomes the depression of both and likewise with joy. We learn from Zeldin (1994, p. 185) of a positive meeting of the minds between a criminal justice volunteer and her work at a French home for prostitutes:

"I knew nothing about them, paying no more attention to them than stray dogs in the street, but when I discovered this home by chance, I became very interested by how one becomes a prostitute, a double person. I look after two of them, and learned how parents kick their children out when there are too many mouths to feed, knowing they will end up in brothels. I treat these prostitutes as people, I do not judge them. One of them said to me, 'You have laughing eyes, and that does me good.' That is because I am conscious of being happy. Many people have reason to be happy, but do not know it." The voluntary work, says Mauricette, has transformed her appearance. "I have an austere face, but now I smile in the street."

To help people be more than what their criminal records would have us believe they can be is the goal. We know that some offenders emerge from their experiences with the criminal justice system redeemed and full of love for humanity while others are embittered and full of hate. People throughout the world were moved by the transformation of 35-year-old Karla Faye Tucker from brutal axe-murderer to repentant, hymn-singing Christian whose courage and deep religious faith she carried to her appointment with death by the State of Texas (see *The Economist*, 1998). Tucker not only was able to forgive her tormenters, those Texans cheering on her execution, but, more strikingly, she was able to forgive herself. Tucker's heroic strength presumably came from solitude, Bible reading, and a close relationship with a prison chaplain who guided her on her journey. It would have been difficult for this convict to achieve any level of reconciliation without help or inspiration from outside herself. Turning to religion besides gave her a sense of connectedness, both with humanity and with a power higher than herself. Above all, it provided her with what Zeldin (1994, p. 142) terms "spiritual dignity." The pains of imprisonment, the humiliations of death row inflicted upon those whose every private act is under surveillance, the insults of the mass media, all would have seemed less intolerable when a person found an inner conviction or peace.

*Draw on every ounce of your social work imagination* to reach people who at first may seem unreachable and who, for the most part, have been "written off" by authorities for their bad behavior and attitude. The process of uncovering strengths for persons "in disgrace with fortune and men's eyes" is fraught with difficulty. Additionally, there is the paradox of using a positive, client-centered orientation within a system that is highly punitive and the paradox of using creative and imaginative techniques in a setting bound by legislative rules and mandates and apt to be dominated at all levels by persons whose abilities at critical thinking sometimes appear to be lacking. This is where the challenge comes in, to somehow find a way to help people who do not want to be helped in a system not noted for compassion much less treatment innovation. Clearly, adding more darkness to the darkness will not further the cause of social justice.

Elsewhere, the *social work imagination*, a term comparable to C. Wright Mills' concept of the sociological imagination, is used to refer to that combination of empathy, suspension of disbelief, insight, and resourcefulness that makes for exceptional social work practice (van Wormer, 1997). Social workers need to be intermediaries, to open up the world to another, even as they gain a new or altered perspective from the same source. The energy of mutual discovery feeds on itself, recharges itself. Social work imagination makes it possible "to perceive the congruities in the incongruities, to discern the false dualism between the private and the public, to experience the beauty of social work against the bureaucratic assaults, and to see the past in the present" (van Wormer, 1997, p. 205). To have a new vision of the future, so important in work with court-ordered clients and other offenders, it is helpful if not absolutely necessary to have a new vision of the past. The mind is a refuge of ideas and images, many of them unhealthy, some distorted.

In counseling female offenders, the worker can begin by entering the world of these women, hearing the pain, anguish, and confusion and drawing on the women's own language and concepts to become the dominant mode of expression. An understanding of how sexism, racism, and class oppression affect this highly stigmatized group of women is essential to effective work with them. A history of victimization in abusive relationships, addiction, inadequate support systems, and severe economic problems alternates against glimpses of inner resourcefulness, daily survival skills, concern for children, and family loyalty. Through reflective listening and reinforcing revelations of strength, social workers can establish pathways to possibility when even the most convoluted life stories are offered. The feminist/strengths approach is especially effective in helping people reclaim a degree of personal power in their lives if, indeed, they ever had any, and in helping them gain a sense of it if they did not.

### **Conclusion**

A clear understatement is to say that the empowering and rehabilitative goals discussed in this article are not the goals of most correctional systems or penal institutions in which social workers are employed. With job possibilities in the correctional field growing at an unprecedented rate, social workers can do one of three things: uphold social work values of self-determination by refusing to work in an authoritarian, politically driven system (see O'Hare, 1996); knuckle under to the demands of the system and come to adopt a distrustful, pathology-based approach to the criminal population; or work within the system to change the system, advocate on behalf of clients, and help offenders get in touch with their own inner resources, however limited these may seem at the time. The social worker choosing this field of work will be confronted with the difficulty of needing to adapt social work skills and values to the correctional milieu (Severson, 1994). Yet, as Johnson (1995) urges, social workers should not relinquish their role here. To relinquish their role would be to cave in to more punitive forces and to deny inmates and other offenders the mental health counseling and support they desperately need. Professionals who, like me, harbor strong moral objections to the incarceration mania that is gripping this country can resolve like Quakers to "be in the world without being totally of the world." Idealistic workers can work to change the system when the time is right and meanwhile help a few individuals along the way.

The sudden recognition of the substance abuse/crime link (80 percent of prisoners have been found to have gotten into trouble because of alcohol or other drug involvement) and of the role of substance abuse in the high reoffending rates has been headlined in the media (Fields, 1998). Meanwhile, President Clinton's call for drastically extended drug testing and treatment for inmates and parolees has been well received (Associated Press, 1998). Under the circumstances, social workers can request to continue to be called on to provide clinical services to this population. However, at present only 10 percent of accredited social work programs even offer an elective course in correctional or justice social work much less a full concentration in offender rehabilitation (McNeece & Roberts, 1997). This is sad. One should never underestimate the power of an approach based on strengths and on possibility rather than probability. It may not do much to change people. But, in the final analysis, it is the only thing that will.

In any case, whether they choose to work within the justice system or on the outside, members of the social work profession inevitably will be working with persons who have violated the law. If contemporary trends continue, social workers will be called upon to provide substance abuse intervention, AIDS counseling, sexual offender treatment, anger management work with batterers, and juvenile offender counseling. For this kind of work, a strengths orientation will stand in good stead.

## REFERENCES

- Agree, J. (1939). *Let us now praise famous men*. New York: Ballantine.
- Associated Press. (1998, February 15). Clinton drug policy draws jeers from Gingrich. *The Des Moines Register*, p. 3A.
- Bartollas, C. (1985). *Correctional treatment: Theory and practice*. Englewood Cliffs, NJ: Prentice-Hall.
- Berger, B., & Andrews, J. (1995, October). *Developing a short-term empowerment group for female offenders*. Paper given at the annual meeting of the Association for the Advancement of Social Work with Groups, San Diego, CA.
- Bricker-Jenkins, M. (1991). The propositions and assumptions of feminist social work practice. In M. Bricker-Jenkins, N.R. Hooyman, and N. Gottlieb, *Feminist social work practice in clinical settings*. (pp. 271–303). Newbury Park, CA: Sage.
- Bricker-Jenkins, M. (1997). Hidden treasures: Unlocking strengths in the public social services. In D. Saleeby, *The strengths perspective in social work practice*, (pp. 122–135) 2nd edition. (pp. 133–150). New York, NY: Longman.
- Butler, S. (1996). Substance misuse and the social work ethos. *Journal of Substance Misuse* 1, 62(2): 46–53.
- Clark, M. (1998). Strength-based practice: The ABC's of working with adolescents who don't want to work with you. *Federal Probation*, 62(2): 46–53.
- Clark, M. (1997). Strength-based practice: A new paradigm. *Corrections Today* 59(2): 201–202.
- Cowger, C.D. (1994). Assessing client strengths: Clinical assessment for client empowerment. *Social Work* 39(3): 262–268.
- Enos, R., & Southern, S. (1996). *Correctional case management*. Cincinnati, OH: Anderson Publishing Company.
- Faulkner, W. (1950, December 10). Speech upon receiving the Nobel Prize, Oslo, Norway.
- Fields, G. (1998, January 9). Study links drugs to 80 percent of incarcerations. *USA Today*, p. 2A.
- Goodson, D. (1998, February 10). *Working with young offenders*. Presentation at University of Northern Iowa, Social Work Department.
- Harmsworth, P. (1993). Managing violent offenders in the correctional setting: A coordinated approach. In S.A. Gerull & W. Lucas (Eds.), *Serious violent offenders: Sentencing, psychiatry, and law reform*. Canberra, Australia: Australian Institute of Criminology.
- Haun, P. (1998). *Emerging criminal justice: Three pillars for a proactive justice system*. Thousand Oaks, CA: Sage.
- hooks, b. (1993). *Sisters of the yam: Black women and self-recovery*. Boston: South End Press.
- Hugo, V. (1931). *Les misérables*. New York: The Modern Library.
- Irwin, J. (1980). *Prisons in turmoil*. Boston: Little Brown and Company.
- Johnson, H.W. (1995). Criminal and juvenile justice. In H.W. Johnson (Ed.), *The social services: An introduction*. (pp. 199–222) Itasca, IL: Peacock.
- Kelley, P. (1996). Narrative theory and social work treatment. *Social work treatment: Interlocking theoretical approaches*. (pp. 461–479) New York: The Free Press.
- Kirst-Ashman K., & Hull, G. (1997). *Generalist practice with organizations and communities*. Chicago: Nelson-Hall.
- Kratcoski, P. (1994). The scope and purpose of correctional treatment. In P. Kratcoski (ed.), *Correctional counseling and treatment*, (3rd Ed.) pp. 9–14. Prospect Heights, IL: Waveland.
- Lee, J. (1994). *The empowerment approach to social work practice*. New York: Columbia University Press.
- Lynch, R.S., & Mitchell, J. (1995). Justice system: A must for NASW and the social work community. *Social Work* 40(1): 9–12.
- Man, woman, death and God. (1988, February 7). *The Economist*, 28–29.
- McNeece, C.A., & Roberts, A. (1997). Preface. In C.A. McNeece & A. Roberts, *Policy and practice in the justice system*. (pp. xi–xiii). Chicago: Nelson-Hall.
- McWhirter, E.H. (1991). Empowerment in counseling. *Journal of Counseling and Development* 69(3): 222–227.
- Miley, K.K., O'Melia, M., & DuBois, B. (1998). *Generalist social work practice: An empowering approach*. Needham Heights, MA: Allyn & Baern.
- National Association of Social Workers (1996). *Code of ethics*. Washington DC: Author.
- O'Hare, T. (1996). Court-ordered versus voluntary clients: Problem differences and readiness for change. *Social Work* 41(4): 417–422.
- Parker, L.C. (1997). A contemporary view of alternatives to incarceration in Denmark. *Federal Probation*, 61(2): 69–73.
- Polansky, N. (1986). There is nothing so practical as a good theory. *Child Welfare* 65(1): 3–15.
- Ratey, J. (1997, May/June). Out of the shadows. *Psychology Today*, 46–80.
- Riordan, B., & Martin, M. (1993). Mental health counseling and the mandated client. *Journal of Mental Health Counseling* 15(4): 373–383.
- Rogers, J. (1992). Probation, parole, power, and women offenders: From patriarchal parameters to participatory empowerment. In I. Moyer, *The changing roles of women in the criminal justice system*, (2nd Ed.). Prospect Heights, IL: Waveland Press.
- Saleeby, D. (1992). Introduction: Power in the people. In D. Saleeby (Ed.), *The strengths perspective in social work practice*. New York: Longman Press, (pp. 3–17).
- Severson, M.M. (1994). Adapting social work values to the corrections environment. *Social Work* 39(4): 451–456.
- Singer, L.R. (1991). A non-punitive paradigm of probation practice: Some sobering thoughts. *British Journal of Social Work*, 21: 611–626.
- Turner, F. (1996). An interlocking perspective for treatment. In F. Turner (Ed.), *Social work treatment: Interlocking theoretical approaches*. (pp. 699–706). New York: The Free Press.
- van den Bergh, N. (Ed.). (1995). Introduction. *Feminist practice in the 21st century* (p. xix). Washington DC: NASW Press.
- van Wormer, K. (1995). *Alcoholism treatment: A social work perspective*. Chicago: Nelson-Hall.
- van Wormer, K. (1997). *Social welfare: A world view*. Chicago: Nelson-Hall.
- Weick, A., Rapp, C., Sullivan, W.P., & Kisthardt, W. (1989, July). A strengths perspective for social work practice. *Social Work*, 350–389.
- Wilson, M., & Anderson, C. (1997). Empowering female offenders: Removing barriers to community-based practice. *Affilia*, 12(3): 342–358.
- Wrong, D. (1976). The oversocialized conception of man in modern sociology. In L. Coser, & B. Rosenberg (Eds.), *Sociological theory: A book of readings* (pp. 104–113). New York: Macmillan.
- Zeldin, T. (1994). *An intimate history of humanity*. New York: Harper Collins.

# Student Interns: Are They Worth the Bother?

BY ERIC T. ASSUR, M. CELIA GOLDBERG, AND LUCINDA ROSS\*

**S**TUDENT INTERNSHIPS can provide valuable resources to criminal justice agencies. These internships, in which students work part-time for college credit, can be a "win-win" proposition for the students, who gain work experience; for the criminal justice professionals, who get help with many of their day-to-day duties; and to the clients, who benefit from the extra attention students can provide. If they are recruited, managed, and supervised properly, undergraduate and graduate student interns can make significant contributions to the agencies they serve. This article is based primarily on our experience with undergraduate interns in a juvenile justice setting.

Persons who oppose using student interns in probation, parole, or institutional settings make a good point. Students can be a bother. They come in as blank slates and need considerable time, attention, guidance, and encouragement. In the first few weeks, student interns are not much help to the overburdened probation officers or staff members to whom they are assigned. And when they finally are given some responsibilities, they ask numerous questions and even may make a few mistakes. But student interns can be highly productive. They can help accomplish important tasks and contribute skills useful to the agency.

Internships usually work this way: The criminal justice agency or institution essentially forms a contractual relationship with the local community college, four-year university, or graduate school. The agency agrees to provide students an opportunity to learn about the field. Students generally are matched with career professionals to learn what they do and to assist them. If they are successful, students leave after a semester or an academic year with a thorough understanding of the particular justice system field and an ability to perform the functions performed by their mentors.

The student should not be expected to be an expert, but should be comfortable in assisting with the day-to-day tasks performed by the probation or parole officer or the staff member in the residential setting. These tasks might include diagnostic interviews, report writing, presentence planning and assessment, or implementing case plans and goals developed with the client. Other activities might include surveillance and supervision functions, group treatment programs, and even court appearances. The graduate student might even help with staff development or training, agency needs assessment work, and programs and services analysis.

As with professionals hired, interns selected sometimes bring special skills and talents to the court or correctional

setting. Not all interns are young and inexperienced. The intern who has already completed a career as a military officer or the intern who knows two or three languages can be a real asset and can offer specialized services.

No matter how talented or experienced, the intern still is somewhat of a drain on the professional during the first few weeks or months. The cost in the beginning or passive stage is real and often discourages professionals from wanting an intern. Some professionals simply do not see themselves in the teaching role. Others value their freedom and independence. Having an intern requires the professional to plan for two. It also requires that the professional be followed around, questioned, and occasionally even challenged. Some career probation officers or residential counselors do not relish anyone wanting to know why they do what they do or say what they say. The student intern's sponsor has to be open-minded and willing to teach good scheduling, case planning, service delivery, and job understanding. Not all professionals seek to share what they do in such an open and didactic fashion.

While some professionals may resent the young and inexperienced intern who brings in new thoughts, practices, and theories, other intern sponsors thrive on the energy and enthusiasm of students and welcome the opportunity to learn from them. The professional teaches the intern and the intern reciprocates by sharing what he or she is learning in school and other intern settings. Such benefits, however, usually are not realized until later in the internship. The cost accrues while the professional is helping the intern build a foundation to understand the agency, its mission, and the clients the agency serves. After this initial phase, the intern is given more independence and a hands-on role. When the intern can work independently, the true benefits are realized. Then the cost diminishes when compared to the benefit.

Only after a significant period spent building a foundation for the intern, answering a multitude of questions, and submitting to the logistical problems of being followed around from day to day does the professional begin to reap the rewards. Just as clear writing leads to clear thinking for the professional, having to explain clearly what he or she is doing often results in better thinking and planning. The simple fact that an intern is looking over the employee's shoulder may lead the employee to better practice and performance. Sharing goals and methods to reach them helps clarify them for the employee and inevitably produces a better employee.

When the intern becomes *active* and able to assist is when the agency, the employee, and the client most benefit. For instance, the probation officer can attend court hearings while the intern sees clients in a detention center. The

\*The authors work in Fairfax County, Virginia Probations. Mr. Assur is Director of Center County Probations in Fairfax, Ms. Goldberg is a probation officer, and Ms. Ross a secretary.

residential staff members can tend to other duties while interns assist in running sports or recreational activities. Interns occasionally can attend court hearings while the probation officer is on vacation or away from the office. Interns can assist by taking residential or group home clients to medical and dental appointments and thus allow the probation officer or residential staff members to work with the larger group. Probation officers, therefore, save time and have the support of an unpaid assistant. Such time-saving need not be equated with a decrease in the quality of service. It is important to realize that probation, parole, or other justice system interns are working for recognition, encouragement, a future job, a positive job reference, and a good school grade. These are very strong motivators.

Frequently, student interns outperform career professionals. Interns are often willing to go the extra mile because they only have a very small group of clients to work with. The intern works only several days a week and is not overwhelmed with a high caseload. It is not uncommon to hear clients express appreciation for being able to spend several months working with an intern. Interns may give the impression of having more concern for the client and more time to spend with the client. Clients benefit from such attention.

Interns raised in another culture or in a family where English is not the first language can serve as an outstanding bridge between the agency and the cross-cultural client. The Spanish-speaking and Spanish-heritage intern can do a great deal to develop a working relationship with the Hispanic client who may find the non-Hispanic probation or parole officer threatening or difficult to trust.

Interns also have been known to bring technological expertise to an agency. The intern who walks in with a laptop during the first few days of an internship may have many talents that could benefit staff throughout the agency. Perhaps this intern can help redesign outdated forms and streamline paperwork. Or, perhaps, with the right computer software, this intern can convert the presentence report from English to Spanish in a matter of seconds.

Better service to clients and the court are not the only benefits. Some benefits are intrinsic, including the probation officer's ability to teach others his or her profession and to learn from the experience. Another intrinsic benefit is the senior status, generally uncompensated, that is afforded to the field training officer who is asked to and specifically recognized as an intern sponsor.

Less tangible benefits occur in the areas of goodwill and future networking. Not every intern who comes to a criminal justice agency will want to stay in that agency's line of work. In fact, colleges and universities wisely seek to place student interns in a variety of settings. A well-trained student should know something about law enforcement agencies, hospital social work, geriatrics, alternative education, and a variety of other human service fields. After a semester or two in a justice system placement, the student may seek employment in a totally different field. But, if the internship was successful, the student has both a clear understanding and an appreciation of the work done in probation and justice settings.

It is quite useful—and satisfying—to be able to contact intern alumni for casework assistance. For instance, the local alcohol and drug counselor, deputy sheriff, Immigration and Naturalization Service or Drug Enforcement Agency agent, school social worker, or even judge *could* have served as your intern. The agency can only benefit from a reputation for reaching out and being available to teach and assist persons from other disciplines. Cross-agency training and the development of interagency programs and projects are another possible benefit of supporting internships.

An intern-friendly atmosphere does not come by chance. Agencies can learn to develop intern programs from professional or full-time volunteer program coordinators. Recruiting and managing interns is not an exact science. But you can take some steps to ensure a ready supply of interns and a good working relationship with local colleges and universities.

Having one designated contact person for the agency is a good idea. This provides a focal point for screening interns and referring them to professionals from various segments of a large criminal justice agency. The intern coordinator also ensures that a prior criminal record check is completed and the intern is afforded liability insurance, an identification card, and maybe even a parking space.

Having an employee or even the intern coordinator serve as an advisory board member for internship programs at the local university has advantages. Such an agency-college relationship opens the door to requesting interns with special skills and abilities. It is not unreasonable to request students who have mastered foreign languages or have grown up in other cultures. It also is not unreasonable to request students who have specific skills and abilities. It might be unreasonable to make such requests if a strong working relationship with the educational institution does not already exist. Agency staff sometimes are allowed to participate in free university training programs. The two programs, the agency and the university or school, develop a mutually beneficial relationship just like the professional and the individual intern.

The agency representative need not have a great deal of experience in internships. The department representative at the school is already an expert in working with a wide variety of agencies and has experience in matching students with programs. At a large university, a working relationship with more than one department may be necessary. Some schools offer student interns in criminal justice, sociology, psychology, education, and conflict resolution. Administrators should not rule out using law students. The first- or second-year law student could easily learn about the justice system by teaching street law, helping in domestic violence programs, or even serving in a clerkship for intake staff or judges.

Occasionally, special education student interns can be recruited to work in alternative schools or special high school programs operated within the justice system. Perhaps student teachers with special emphasis in physical education can be used to work with residents in correctional settings. The boundaries of the program are limited only

by the vision and creativity of agency professionals and academic advisors or professors associated with the internship programs.

Perhaps the most obvious benefit to the agency is in the area of recruiting and hiring the best possible employees. Student interns already have been closely scrutinized by the agency. They have been trained and presumably are almost ready to work. The intern who does a good job while placed with the agency has an obvious advantage when it comes to the competitive interview and hiring process. On the other hand, the agency can identify mediocre interns and avoid hiring them.

In planning intern programs, administrators generally can rely on the local college or university to provide expertise. A literature search on the World Wide Web will reveal journal articles found in social work and criminal justice publications. Even more exciting is the recent growth in web sites being created by students and educational institutions seeking appropriate placements. Good sites to visit include:

[www.corrections.com](http://www.corrections.com),  
[www.rsinternships.com/students/ crimjus.htm](http://www.rsinternships.com/students/crimjus.htm), and  
[www.sso.org/ncja/internsh.htm](http://www.sso.org/ncja/internsh.htm).

Some jurisdictions and large agencies now recruit interns through web sites.

There are a number of helpful books on the use of interns and internship programs. A well-regarded handbook is the Dorothy E. Peters contribution of 1979, *Staff and Student Supervision*. The most recent and relevant may be Dorothy L. Taylor's *Jumpstarting Your Career: An Internship Guide for Criminal Justice*, published in 1999 by Prentice Hall.

Internships in a criminal justice agency help students determine whether they are in the proper career field. The importance of this cannot be overestimated. Internship programs might prevent employees from deciding they made a terrible career choice and are miserable in their "chosen field." We often forget that there is a tremendous amount of emotional burden that goes with the work we do. We sometimes ask ourselves how those who do child protective work can deal with the sad and traumatic child abuse they respond to on a daily basis. When we ask this question, we

too easily forget that our own jobs make many uncomfortable. We have daily encounters with the discord, dysfunction, and distress that would shock and overwhelm those in other professions. The intern experience may show students that they lack the heart or the stomach for our work. Perhaps human services work is not meant to be their calling or career. This realization is best made before one spends a few years pursuing a career. Not all individuals can adjust to visiting with incarcerated youths or dealing with drug-addicted or HIV-infected patients, clients, or probationers. The life stories of our clients should overwhelm or at least sadden us all. Fortunately, career professionals learn to deal with the stress and emotional trauma with a sense of detachment. There is also more than the emotional part of the job. Some interns find that they simply do not like the paperwork, stresses associated with going to court, or the highly flexible schedules that are found in institutional settings that require evening and weekend work. It's easy to see that another benefit of an internship is to appropriately weed out those who could best pursue another career.

In one respect, it is only natural to find interns in criminal justice. John Augustus, considered the founder of probation services, took an individual into his workplace to give him a second chance, to provide instruction, to offer training in social skills, and to better equip him for future employment and living. The goals of an internship—to teach, guide, and encourage—are very similar.

#### REFERENCES

- Brown, P.W. (1987). Probation officer burnout. *Federal Probation*, 51(3): 7-21.
- Cohn, Y. (1980). Toward job related inservice training in corrections. *Federal Probation*, 44(2): 48-57.
- Greenberg, N. (1988). The Discovery Program: A way to use volunteers in the treatment process. *Federal Probation*, 52(4): 39-45.
- Peters, D.E. (1979). *Staff and Student Supervision*. London: George Allen & Unwin.
- Scheier, I. (1970). The professional and volunteer in probation: An emerging relationship. *Federal Probation*, 34(2): 12-18.
- Schrink, J.L. (1972). Structuring a student correctional research program. *Federal Probation*, 36(4): 42-47.
- Taylor, D.L. (1999). *Jumpstarting your career: An internship guide for criminal justice*. Englewood Cliffs, NJ: Prentice-Hall.

# American Criminal Justice Philosophy: What's Old–What's New?

BY CURTIS R. BLAKELY AND VIC W. BUMPHUS\*

## ***Introduction***

**C**ontemporary movements in criminal justice, such as community-oriented policing and certain community corrections strategies, have been portrayed as new innovations, having little historical precedent. While specific programs are genuinely original, criminologists have advocated the importance of proactive and preventive programming for decades. Toward that end, the criminal justice system is currently integrating its adversarial approach to the identification, apprehension, and correction of offenders with an increased service orientation by emphasizing community involvement. As such, criminal justice scholars and activists are encouraging officials to cultivate community partnerships to solicit citizen input.

The following review of literature explores the idea that the underlying objectives of the early American criminal justice system remain largely unaltered. What has changed is public attitudes about crime, police organization, police and public perceptions about each other, and the complex relationship between politics and justice initiatives. Community policing and restorative justice paradigms are briefly discussed. The specifics are less important than the guiding philosophy behind their growing popularity. While the political rhetoric surrounding these "new" programs envisions them as novel approaches, a review of the extant literature suggests that they are nothing more than modern adaptations to earlier innovations. The authors do not intend an exhaustive historical account of either policing or corrections. Instead, they hope to provoke more comprehensive thought by briefly examining criminal justice change from a socio-historical perspective.

## ***Police: A historical review***

The impact of European ideals upon early American policing is evident (Uchida, 1993; Walker, 1980; Carter & Radelet, 1999); however, unlike English protocol, original attempts at policing within America were characterized by direct citizen participation. This may be due to philosophical beliefs regarding governmental intervention and the slow, often hesitant, establishment of colonial law enforcement agencies. Colonists were attempting to escape a strong, often tyrannical government; therefore, they natu-

rally valued individual freedom, discretion, and participation. Due to this vacuum in official authority, individuals participated directly in criminal justice activities (Walker, 1980). Uchida (1993: 20) notes that an organized police force was viewed with suspicion due to its potential for "despotic control over citizens and subjects." However, as the colonies became more permanent and socially complex, the need for a more organized style of policing developed.

An early forerunner of contemporary policing was the night watch system, and as the name suggests, it was nothing more than night-time patrol. New York began experimenting with a night watch as early as 1684 (Walker, 1980; Uchida, 1993; Carter & Radelet, 1999; Lyman, 1999). These sentry men were primarily charged with patrolling the city for fires, suspicious individuals, riots, or other incidents requiring immediate intervention. This system was eventually modified to include a day watch component. Thus, the first forerunner of the modern police force emerged. Walker (1980:59) credits these early attempts with engaging in "preventive patrol,"—arguably, the first attempt at proactive policing within America. Another example of early policing can be found in the use of "frank pledges" which compelled all males twelve years of age and older to serve in a quasi-police role. These were small groups of citizens that vowed to deliver to court any group member committing an unlawful act. According to Uchida (1993: 17), this style of community policing became increasingly popular in England after 1066.

While these two approaches were primarily designed to prevent and control crime, they also served to reinforce the value of community involvement in law enforcement activities. Likewise, when reviewing the early epoch of American policing, it can be seen that police were involved in a wide variety of social service tasks including providing food to the hungry and shelter to the homeless (Uchida, 1993: 22; Kelling & Moore, 1995: 7).

It was during the reform era (beginning in the 1930s), under the direct tutelage of the Federal Bureau of Investigation, that professionalism and technology began to become paramount. The Wickersham Commission, under President Hoover, also advocated changes in policing envisioned as efforts to professionalize law enforcement (Carter & Radelet, 1999; Lyman, 1999). Departments nationwide followed suit and began to adopt a "professional" style of policing. This movement was characterized by a reduction of the social service role and an official emphasis upon crime control and offender apprehension. Therefore, police began to rely upon arrests and percentages of crimes

\*Both authors are members of the Department of Police Studies at Eastern Kentucky University. Mr. Blakely is a Training Specialist and Adjunct Professor, and Mr. Bumphus is an Assistant Professor.

cleared to measure effectiveness (Walker, 1980: 191; Kelling & Moore, 1995: 14). This shifted the human approach to a much lesser profile in formalized policing (Kelling & Moore, 1995:12). Walker (1980:135) states that this model remained dominant and unchallenged until the 1970s. However, he has also noted (1980:189), that "while the police role was redefined toward crime fighting, day to day police work increasingly involved miscellaneous services to the public." Reiss (1971) and Walker (1980) both conclude that during the 1960s, as much as 80 percent of police work was consumed by noncriminal matters. This suggests that even during an era characterized by growing police professionalism and isolation, delivery of informal policing tasks remained the norm.

### ***Contemporary policing issues***

Those familiar with the history of American policing are aware of the many challenges inhibiting the effective application of law enforcement. These include organizational (fiscal restraints, staffing problems, and large patrol districts), ethical, and socio-legal problems. Increasingly, police have been placed under closer scrutiny due to high-profile incidents such as the Rodney King beating, the Los Angeles riots, and more recently the flurry of misconduct complaints landing on the New York City Police Department. Substantial criticism has involved the treatment of the young, poor, and those of minority status. These various problems have subjected nearly all police agencies to critical examination in areas of public relations and citizen contact. Likewise, police administrators across America are currently concerned with managing public relations, often accompanied by some degree of community-oriented policing.

The 1970s marked a time in which the public, somewhat dissatisfied with police services, increasingly demanded that the police take a proactive and personal approach toward community issues. This desire is summarized by Meese (1993), who proposes that the police should be more than merely reactive, responding to crimes already committed. It is important that law enforcement develop a proactive posture toward community disorder, social problems, and quality of life issues.

In response, police establishments began to abandon a strict "law enforcement" approach, replacing it with a greater "peace and service" orientation. The latter, of course, embraces a more social service and holistic approach to policing. This shift away from a strict crime control approach to one that encourages citizen involvement in police operations, and police involvement in community activities, has been referred to as strategic, problem solving, and neighborhood oriented policing (Meese, 1993). Kelling and Moore (1995) have noted that this movement signifies a new era, distinguishable from the political and reform eras.

Central to community policing is a belief that the police can more effectively achieve their basic goals of crime prevention and control through the assistance and support of

the community (Meese, 1993). By establishing partnerships with other institutions like families, schools, churches, and neighborhood associations, police potentially widen their ability to identify and solve community problems. This approach envisions the importance of peace-keeping and social service tasks as equal to enforcement activities.

### ***Corrections: A historical review***

Many of the major shifts in correctional ideology parallel changes in approaches to law enforcement. Beginning in the 16th century, "workhouses, or houses of correction," spread widely over northwestern Europe (Shichor, 1995: 23). While little is known about these early institutions and their practices, anecdotal accounts present them as an attempt systematically to address and rectify increasing crime and disorder problems. Walker (1980: 16) adds that these institutions resembled modern prisons in their attempts to rehabilitate the offender and make him or her a productive member of society. Then in 1576, the English Parliament passed an act providing for the establishment of the "bride well" (Shichor, 1995). These institutions were places where vagrants, prostitutes, and offenders were instilled with rehabilitative rationale and provided rudimentary skills training (Welch, 1996: 44). Shichor (1995: 24) identifies these institutions as early forerunners to reformatories and prisons. Likewise, Welch (1996: 44) recounts that these institutions formed the basis for rehabilitative rationale and the work ethic. Philosophical statements like, "It is of little advantage to restrain the bad by punishment, unless you render them good by discipline," reverberated this sentiment (Walker, 1980: 42). According to Walker (1980: 66), incarceration was meant to rehabilitate the offender through "creating a better environment, separating the individual from harmful influences and subjecting him to a corrective prison discipline of solitude, hard work, and religious study." Morris (1998: 32) concludes that the penitentiary was intended to reform criminals by "isolating them from each other and other infectious diseases." Thomas (1987: 60) states that this rehabilitative ideal began to take root in Europe long before the 17th century and the colonization of America. Likewise, he states that an "argument can be made that enthusiasm for rehabilitation as a major objective of penal sanctions dates back to the time of Plato or before" (Thomas, 1987: 91).

Colonial America adopted many of the same European philosophies and practices. However, Walker (1980:12) notes that colonial criminal codes were often more lenient in their punishments than were their English counterparts. This comparative leniency may indicate an early philosophical difference existing between the colonists and England: a perception that English sanctions were more punitive than corrective. Thomas (1987: 66) recognizes this and states that well before the Civil War, sanctions were being applied within America's prisons with the conviction that they could serve the goal of crime prevention. Toward the end of the 18th century, the penitentiary arose (Shichor, 1995: 26). As the name implies, the penitentiary had as its main objectives

repentance, penitence, and rehabilitation (Shichor, 1995: 26; Walker, 1980: 65).

Much like the blind men of Hindustan who gave despairingly divergent descriptions of an elephant, penologists also maintain individualistic ideals regarding correctional objectives. Most researchers, however, have consistently identified four goals. For example, Barak (1998: 75) lists these goals as revenge, retribution, deterrence, incapacitation, and rehabilitation. Shichor (1995: 65) identifies these same four goals but substitutes retribution for revenge. Wilkinson (1997) identifies the same four, but substitutes vengeance for retribution. Thomas (1987: 51) reduces the number of correctional goals to three, including retribution, crime prevention, and rehabilitation. The designation of correctional objectives suggests only a slight difference in semantics, not in overall philosophy. Morris (1998) notes that whether prisons are considered tools of retribution or rehabilitation, most people believe that they fail to achieve either goal. He states:

Instead, the institution has unintentionally spawned a subculture that is antithetical to both goals—and it has become clear that the beliefs and behavior of inmates are far more likely to be shaped by this subculture than by prison and its programs (Morris, 1998: 8).

Thomas (1987: 85) notes that the life and death struggle of rehabilitative efforts may be the single most pervasive issue that has occurred in corrections over the past decade.

As already observed, one objective of the American correctional system has traditionally been rehabilitation. Historically, a belief in the innate goodness of humanity and one's ability to change have been valued in American correctional policies. This can be seen in the implementation of indeterminate sentencing, probation, and parole (Thomas, 1987: 93). Rehabilitation was strongly emphasized until the early 1970s when the United States began to experience unparalleled increases in crime rates and prison commitments (Shichor, 1995: 9; Blakely, 1997). Morris (1998: 8) observes that, due to overcrowding, correctional facilities are increasingly de-emphasizing their original mandate of offender rehabilitation, focusing instead on maintaining facility control. To manage the ever-increasing inmate population, rehabilitative efforts—which provide ample opportunity for inmate conflict, divert fiscal and personnel resources, and are labor intensive—increasingly become secondary to the orderly operation of the facility (Cullen, Latessa, Burton, & Lombardo, 1993; Thomas, 1995). Conditions associated with overcrowding and the violence that it spawns (Montgomery & Crews, 1998), are increasingly convincing prison officials that a strict model of incapacitation might be necessary. Contemporary correctional efforts appear less concerned with initiating inmate change and more interested in maintaining facility control by limiting opportunities for inmate misconduct. However, amidst the emergence of punitive, crime-control ideology, inmate enhancement and life skills programming remain central to correctional practices.

In the recent past, it appears that, much like the police, corrections has been guided by a strict crime control man-

date. This is reflected in that large segment of society that values incarceration of offenders over the remaining three goals (Blakely, 1997; Briscoe, 1997; Wittenberg, 1997). The current "get tough" response to crime is resulting in a growing reliance upon confinement strictly as a punitive measure (Cullen, Latessa, Burton, & Lombardo, 1993; Blakely, 1997; Briscoe, 1997; Wittenberg, 1997; Montgomery & Crews, 1998). The Congress' "Safe Streets" and "3-Strikes You're Out" bills as well as the President's "War on Crime" and "Get Tough" campaigns clearly indicate a more punitive ideology (Blakely, 1998; Montgomery & Crews, 1998). Additionally, the popularity of "Truth in Sentencing" laws requires offenders to serve increasingly longer terms of confinement (Cowley, 1998; Montgomery & Crews, 1998). In a recent study conducted by Cullen, Latessa, Burton, and Lombardo (1993), rehabilitation was ranked as a secondary goal by a large percentage of prison administrators. Wittenberg (1996: 46) reports that a substantial number of Americans currently prefer punishment to rehabilitation. Thomas (1987: 99) notes that this "get tough" response is culminating in an organized "anti-rehabilitation" trend, emphasizing the protection of society through incapacitation (Shichor, 1995: 10; Montgomery & Crews, 1998).

This apparent shift in goals has prompted Albanese (1996: 558) to state, "We just can't seem to punish enough." Wilkinson (1997: 100) observes that this approach has often been at the expense of both the offender and community. Shichor (1995: 10) states that this movement has culminated in an organized "anti-rehabilitation" trend emphasizing the protection of society through incapacitation. These scholars concur that the current punitive approach within corrections lacks any identifiable objective, other than punishment itself.

### ***Contemporary correctional issues***

A new paradigm in criminal justice has recently emerged. The restorative justice paradigm envisions a more proactive criminal justice system emphasizing preventing crime in the early stages, protecting society, and relying on incarceration as a last resort (Hahn, 1998; Bazemore & Umbreit, 1997). This philosophy advocates a more integrated approach to justice, encouraging community, victim, and offender participation. Restorative justice involves long-term commitment to systemic changes (Umbreit, 1995) and builds on existing programs like victim-offender mediation, restitution, community service, and police-community partnerships (Bazemore & Umbreit, 1997; Hahn, 1998).

To pursue rehabilitation again, corrections is currently experimenting with a number of restorative justice programs. At the nucleus of this movement is a belief in an offender's ability to change, and an expectation that offenders will accept responsibility for their actions. In a recent study conducted in Vermont, Gorczyk and Perry (1997: 79) report that 93 percent of that state's population wanted violent offenders to serve their entire sentences with no opportunity for early release. But these same researchers also

found that Vermonters expect the system to operate with specific concern for future behavior. While these findings cannot be generalized nationwide, they may indicate a desire by many for proactive and rehabilitative measures. Maryland, too, has implemented a restorative justice approach to its juvenile justice system. This program has the expressed objectives of increasing "public safety," and offender "accountability," while initiating "rehabilitative" measures (Simms, 1997).

### ***A comparison of proactive policing and proactive corrections***

After reviewing the historical objectives of policing and corrections, and current attempts to implement community policing and restorative justice programs, the question persists whether these philosophical approaches are new, or an attempt to return to earlier criminal justice pursuits. While it may initially appear unnecessary to make this determination, there are two compelling reasons to do so. First, a strong grounding in historical precedent is essential for the application of criminal justice and permits contemporary practitioners to make intelligent and informed decisions about crime control strategies and tactics. Secondly, this determination permits contemporary practitioners to further refine their approach to the ever-changing nature of criminal justice. This, in turn, allows for a more informed perspective on the evolution of correctional ideologies.

It appears that the early criminal justice system was originally more forward-looking than its contemporary counterpart. This is evidenced in the early establishment of peacekeeping and rehabilitative goals. While we are less interested in the methods of early justice than in the philosophical basis for their implementation, evidence indicates that early practitioners wished to cultivate a strong interpersonal relationship with society.

Likewise, with the advent of community policing, it appears that American policing is attempting to return to its original functions of public service and crime control. Faced with increasing crime rates during the reform era, police were largely unprepared to address social problems effectively. Therefore, police agencies adopted a defensive position of quick response times and the ready application of force. Rising crime rates also began to drive a wedge between the police and community. Increasingly, the police were being relegated to responding to incidents rather than intervening proactively. This encouraged society to view police efforts as unproductive and uncaring, and police to view communities as uncaring and nonsupportive.

Increasing crime rates and a defensive orientation readily lent itself to an adoption of military-style structuring. As can be expected, this further weakened the peacekeeping mandate of police agencies. Meese (1993) and Walker (1980) have noted the general negative impact of the military structure upon police agencies. Further, the inherent nature of military structuring stifled individual discretion and creative problem-solving techniques. Police departments began to

departmentalize, and internalize operations. Society also began to view government apprehensively. With growing discontent with government and police services, anti-government public sentiment emerged. This was compounded by the unpopularity of the Vietnam war and skyrocketing claims of police brutality.

The increased reliance by police agencies on the automobile also took its toll. Walker (1980) credits the introduction of the automobile with isolating the police officer from the community and ultimately increasing the officer's adversarial relationship with new segments of society. While the car allowed a rapid response to calls for service, it ultimately removed officers from the neighborhood, relegating them to the confines of the cruiser. Motorized patrol demanded that an officer be reactive rather than proactive. Along with the automobile came new forms of communication, which inhibited personalized contact with the public, and instead, encouraged a reliance on other police personnel such as the dispatcher. The dispatcher became the source of information for police personnel and effectively replaced face to face contact with citizenry.

Likewise, corrections, which was largely a victim in this crime control approach, increasingly emphasized incapacitation. With increases in arrests, convictions, and imprisonments, they too were unprepared to continue emphasizing service through treatment programs. Morris (1998: 8) observes, "Instead of concerning themselves with the original purpose of the institution, prison officials are forced to focus almost exclusively on simply keeping control over their wards." Between 1970 and 1995, the number of inmates being housed in state and federal prison more than quintupled (Morris, 1998: 7). This "explosion" led Morris to state: "America's prison populations have been growing at such a rate that prison authorities may soon be forced to post 'no vacancy' signs outside their gates." In an attempt to "tread water," efforts to impart skills and increase education became secondary to the safe management of large inmate populations (Morris, 1998: 8). Because of overcrowding and increases in prison violence, correctional officials increasingly limited or eliminated activities not seen as absolutely necessary. The 1970s and early 1980s became known for prison riots like those that ravaged Attica and the Penitentiary of New Mexico. These and similar events convinced prison officials that a strict model of incapacitation might best suit criminal justice policy. And yet, through all these changes, America's penal system did not totally abandon its original intent, and increasingly began to use terms like "correctional officer," "correctional center," and "departments of corrections." While many argue, like Thomas (1987: 96) that a change in terminology does not necessarily imply a change in practice, this change may indicate an attempt to identify with an overall objective.

### ***Conclusion***

The historical record does not support community policing and restorative justice as contemporary innovations, but

as attempts to return to an earlier model of justice emphasizing people, discretion, and a belief in the inherent goodness of humanity. Though criminal justice perspectives have gained and lost momentum due to social change, the symbiotic relationship between the various objectives ensures a criminal justice system that places emphasis on both reactive and proactive strategies. Therefore, contemporary proactive justice is part and parcel of the larger philosophical basis of the modern criminal justice system. In sum, it is the various interpretations of historical events in criminal justice that suggests that what is *old* (proactive or reactive) will eventually become *new*, again and again.

## REFERENCES

- Albanese, J. (1996). Five fundamental mistakes of criminal justice. *Justice Quarterly*, 13(4): 551-565.
- Barak, G. (1998). *Integrating criminologies*. Boston, MA: Allyn and Bacon.
- Bazemore, G. & Umbreit, M. (1997). *Balanced and restorative justice for juveniles: a framework for juvenile justice in the 21st century*. Washington DC: Office of Juvenile Justice and Delinquency Prevention.
- Blakely, C. (1998). The rehabilitative benefits of education. *The (British) Prison Service Journal* (120): 29.
- Blakely, C. (1997). Offender rehabilitation: A worthy goal. *Corrections Compendium*, 22(5): 1-2.
- Carter, D., & Radelet, L. (1999). *The police and the community* (6th edition). Upper Saddle River, NJ: Prentice Hall.
- Bloomer, K. (1997) America's newest growth industry. In *These Times* (March).
- Briscoe, J. (1997). Breaking the cycle of violence: A rational approach to at-risk youth. *Federal Probation*, 51(3): 3.
- Cowley, J. (1998). Changing public opinion. *Corrections Today* (February).
- Cullen, F., Latessa, E., Burton, V., & Lombardo, L. (1993). Prison wardens: Is the rehabilitative ideal supported. *Criminology*, 31(1): 69-87.
- Gorczyk, J., & Perry, J. (1997). What the public wants. *Corrections Today* (December).
- Hahn, P. (1998). *Emerging criminal justice: three pillars for proactive justice system*. Thousand Oaks, CA: Sage Publications.
- Johnson, B.R., & Ross, P.P. (1990). The privatization of correctional management: A review. *Journal of Criminal Justice*, 18: 351-355.
- Kelling, G. and Moore, M. (1995). The evolving strategy of policing. In Kappeler's *The police and society: Touchstone Readings*. Prospect Heights, IL: Waveland Press, Inc.
- Lyman, M. (1999). *The police: an introduction*. Upper Saddle River, NJ: Prentice Hall.
- Meese III, E. (1993). *Community policing and the police officer*. Washington DC: U.S. Dept. of Justice.
- Montgomery, Jr., Reid, & Crews, G. (1998). *A history of correctional violence: An examination of reported causes of riots and disturbance*. Lanham, MD: American Correctional Association.
- Morris, J. (1998). *Jailhouse Journalism: The Fourth Estate Behind Bars*. Jefferson, NC: McFarland and Company, Inc.
- Reiss, A. (1971). *The police and the public*. New Haven: Yale University Press.
- Rothman, D. (1971). *The discovery of the asylum*. Boston: Little, Brown.
- Shichor, D. (1995). *Punishment for profit*. Thousand Oaks, CA: Sage Publications.
- Simms, S. (1997). Restorative juvenile justice. *Corrections Today* (December).
- Thomas, J. (1995). The ironies of prison education. In Davidson's *Schooling in a Total Institution*. Westport, CT: Bergin and Garvey.
- Thomas, C. (1987). *Corrections in America—Problems of the past and the present*. Thousand Oaks, CA: Sage Publications.
- Uchida, C. (1993). The development of two American police: An historical overview. In Dunham and Alpert's *Critical issues in policing*. Prospect Heights, IL: Waveland Press, Inc.
- UC Research (1993/94). *Punishment vs. rehabilitation*. Cincinnati: University of Cincinnati.
- Umbreit, M. (1995). Holding juvenile offenders accountable: a restorative justice perspective. *Juvenile and Family Court Journal*, 42(2):31-42.
- Walker, S. (1980). *Popular justice: A history of American criminal justice*. New York: Oxford University Press.
- Welch, M. (1996). *Corrections a critical approach*. New York: McGraw-Hill.
- Wilkinson, R. (1997). Community justice in Ohio. *Corrections Today* (December).
- Wittenberg, P. (1997). Leadership and the management of agency image. *Federal Probation*, 61(3): 46.
- Wittenberg, P. (1996). Power, influence and the development of correctional policy. *Federal Probation*, 60(2): 43.

# Up to Speed

A Review of Research for Practitioners

EDITED BY RONALD P. CORBETT, JR.

*Deputy Commissioner, Massachusetts Probation Department  
Immediate Past President, National Association of Probation Executives*

AND

M. KAY HARRIS

*Associate Professor, Department of Criminal Justice, Temple University*

## The Nexus Between Drugs and Crime: Theory, Research, and Practice

BY ARTHUR J. LURIGIO AND JAMES A. SWARTZ\*

CRIME AND illicit drug use, especially the use of narcotics ( opiates, opiate derivatives, and cocaine), have been closely linked since the passage in 1914 of the Harrison Act, making the distribution of narcotics a federal felony offense. Before that, narcotics were the basic ingredients in numerous nonprescription or patent "medicines" that claimed to cure a variety of symptoms and illnesses. The typical narcotics user then was a white, middle-aged woman (Musto, 1987).

The Harrison Act profoundly influenced public perceptions about illicit drug use. Mostly because of the political climates surrounding this and other antidrug legislation, illicit drug use in the United States is viewed predominantly as a criminal justice instead of a public health problem (Massing, 1998). And since the outset of drug law enforcement, policing activities have focused primarily on young male narcotics users from minority groups (Musto, 1987).

The population of chronic illicit drug users consists largely of poor, undereducated, unemployed, and uninsured persons. Illicit drug users disproportionately commit crimes and are at high risk for becoming involved in the criminal justice system (Woodward et al., 1997). Much of the harm and costs associated with illicit drug use, such as crime, lost work productivity, medical problems, and the spread of HIV, can be attributed to chronic, high-intensity users (i.e., those who use illicit drugs on a daily basis or multiple times per week during periods of active use).

In this review, the authors summarize research on the relationship between illegal drug use and crime. First we present prevalence estimates of illicit drug use among criminal justice populations. Then we describe various theories about the relationship between drugs and crime. Finally we discuss the effectiveness of drug treatment compared with other strategies for reducing illicit drug use.

## ***Prevalence of Illicit Drug Use***

Drug use rates among offenders across the entire criminal justice continuum are significantly higher than those found in the general population. Illicit drug users not only report more criminal activities than nonusers but are also more likely to have official criminal records (Chaiken & Chaiken, 1990). Between 1980 and 1994, the number of state and local arrests for drug offenses rose from 581,000 to 1,350,000. During this time period, the composition of arrests shifted from mostly marijuana to mostly cocaine and heroin, and arrests for drug distribution accounted for a greater share of total drug arrests (from 18 percent to 27 percent of the total) (MacCoun & Reuter, 1998).

Beginning in 1987 the Drug Use Forecasting (DUF) program of the National Institute of Justice, which monitored the drug use of arrestees in 24 American cities, consistently showed that large proportions of arrestees—as many as 90 percent at some times, in some places—tested positive for at least one illicit substance (Wish & Gropper, 1990). At all 24 DUF sites, cocaine, marijuana, and opiate use have been quite prevalent, particularly among arrestees charged with drug sales or possession, burglary, theft, and possession of stolen property (see, e.g., National Institute of Justice, 1993).

In 1997 DUF, now known as the Arrestee Drug Abuse Monitoring Program (ADAM), tested more than 27,000 adult arrestees in 21 cities for drug use. At all ADAM sites, the majority of adult male arrestees tested positive for one or more illicit drugs. "The same [was] true for adult female arrestees in 19 out of 21 sites where [ADAM] data were collected" (National Institute of Justice, 1998 p. 4).

As might be expected, large percentages of jail inmates are drug users as well. McBride and Inciardi (1990) reported that more than 80 percent of a sample of street injection-drug users in Miami had been in jail in the past five years, and almost half had been incarcerated in the past six months. In a related study of more than 25,000 street injection-drug users in 63 cities, Inciardi, McBride, Platt, and Baxter (1993) found that approximately two-thirds had been in jail during the previous five years; more than one-third were currently awaiting trial or were on probation or parole supervision.

Drug use among jail inmates has risen substantially in recent years and is nearly twice as prevalent as drug use in

\*Dr. Lurigio and Dr. Swartz are professors in the Department of Criminal Justice, Loyola University, and Dr. Lurigio is also chair of the Department. Dr. Swartz is Director of Research and Information Services, Illinois Treatment Alternatives for Safe Communities.

the general population (Bureau of Justice Statistics, 1991). A Bureau of Justice Statistics (BJS) survey (1989) found that three out of four jail inmates admitted having used drugs at some time. Among inmates sentenced for property crimes, nearly one-third reported that they were under the influence of drugs when they committed their conviction offenses; nearly one-fourth reported that a drug habit motivated them to commit their conviction offenses; and 16 percent of the men and 33 percent of the women reported that they had used major drugs (heroin, crack, cocaine, PCP, methadone) daily in the month preceding their most recent arrests.

High rates of illicit drug use are also found among prison inmates (Harlow, 1991). A BJS profile of the nation's prison inmates demonstrated that nearly three-fourths had used drugs. One-third of the inmates reported that they regularly had used heroin, cocaine, or other major drugs. More than one-half reported that they had used drugs in the month before committing their conviction offenses and that they were under the influence of drugs or alcohol when they committed their conviction offenses (Innes, 1988).

According to more recent BJS (1997b; 1999) studies of prison inmates, 62 percent of the state prisoners and 42 percent of the federal prisoners had polysubstance abuse problems before their incarcerations. The link between drug use and criminality is supported by the finding that 70 percent of state prison inmates and 57 percent of federal prison inmates reported "regular" use (i.e., used the drug at least once a week for at least a month) of drugs at some point in their lives (Bureau of Justice Statistics, 1999). The proportion of state inmates reporting lifetime regular use of cocaine/crack and of heroin was 34 percent for each.

In 1992 more than one-third of the felons convicted of drug possession and nearly one-fourth of those convicted of drug trafficking were sentenced to probation (Langan & Perkins, 1994). In a 1995 census of probation caseloads conducted by BJS, 70 percent of the probationers reported that they had used illicit drugs at some time, one-third stated that they had used drugs in the month preceding their arrests, and 14 percent were on drugs when they committed their instant offenses (Mumola, 1998).

As the preceding studies clearly demonstrate, rates of illicit drug use, especially heroin and cocaine, are quite high among criminal justice populations. Moreover, although illicit drug use has declined or held steady in the general population during the past few years—with slight increases in marijuana use in the early 1990s—it has increased among various criminal populations over the same time period (e.g., Harrison & Gfroerer, 1992).

The trend of rising drug use among offenders might be due to an actual increase in drug use or to a selection bias: Crime-prone persons who use illicit drugs might simply be more likely to get arrested and incarcerated because they are more inept at committing crimes or because their offending patterns are less calculated and more opportunistic than nondrug-using offenders who avoid arrests (Chaiken and Chaiken, 1990). Regardless of the explanation

for the increase, the problem of illegal drug use among offenders is substantial. The fact that many persons in the criminal justice system use illegal drugs has fostered the conventional wisdom that "drug use causes crime."

### ***Nexus Between Drugs and Crime***

Many studies have confirmed that drug use and crime are correlated (e.g., Chaiken, 1986; Speckart & Anglin, 1986b). The longitudinal National Youth Survey, for example, found that youths who commit delinquency index crimes are significantly more likely to use cocaine than are minor delinquents or nondelinquents (Johnson, Wish, Schmeidler, & Huizinga, 1993). Other longitudinal studies of adolescents also have found that more serious delinquents are heavier drug users (e.g., Elliott, Huizinga, & Ageton, 1985). In agreement with the research on drugs and crime among youths, a survey of 700 adult cocaine users found that users had engaged in "an amazing amount of criminal activity (excluding drug law violations)" in the 90 days before they were interviewed for the study (Inciardi, McBride, McCoy, & Chitwood, 1995, p. 126).

One of the best-supported correlational findings in the literature on illicit drug use and crime is that serious drug use intensifies and perpetuates pre-existing criminal activity. Specifically, the need for money to purchase drugs is a motivating factor for criminally-active drug users (e.g., Ball, Rosen, Flueck, & Nurco, 1981).

Support for an income-generating explanation of the drugs-crime nexus comes from two types of studies: studies of the relationship between illegal income and drug purchases and studies of the relationship between drug use intensity and criminal activity. McGlothlin (1978), for example, found that offenders' incomes from property crimes increased proportionately with their drug use. In a 1989 jail survey, nearly 40 percent of the inmates who used cocaine reported that they had committed their instant offenses for money to buy drugs (Bureau of Justice Statistics, 1991). In another study, heroin users were found to spend 90 cents of every illegal dollar earned on drugs (Goldman, 1981). A direct relationship between illegal income and drug spending was also found among cocaine users (Collins, Hubbard, & Rachal, 1985).

Anglin and Speckart (1988) reported that narcotics addicts increased their criminal activities dramatically during periods of accelerated drug use and that the onset of their addictions coincided with a sharp rise in criminal activities (also see De Fleur, Ball, & Snarr, 1969). Similarly, a study of Baltimore addicts found that addicts' criminal activities decreased by 84 percent during the months and years in which they refrained from using heroin or other opiates (Ball, Rosen, Flueck, & Nurco, 1981).

Other research has shown that criminal activity is substantially greater among frequent drug and polydrug users than among sporadic drug users or nonusers of drugs (e.g., Bureau of Justice Statistics [BJS], 1992; Wexler, Lipton, & Johnson, 1988). Thus drug-using offenders, especially those with serious drug abuse and dependence problems, commit

a greater variety of income-generating crimes and commit crimes at higher rates than offenders without drug problems (e.g., Dembo, Williams, & Schmeidler, 1993).

Some drug users participate in producing, distributing, and selling illicit drugs in order to earn money for drugs (Goldstein & Duchaine, 1980). In a study of drug sellers in Washington, D.C., Reuter, MacCoun, and Murphy (1990) estimated that street drug sales generated approximately \$350 million in 1988, more than twice the estimated earnings from robbery and property crimes such as burglary and shoplifting.

Heavy drug users commit more income-generating property crimes than violent offenses, including violent predatory crimes (e.g., Ball, Shaffer, & Nurco, 1983). Studies suggest, however, that increases in cocaine use are associated with significant increases in violent crimes for both men and women offenders (e.g., Spunt, Goldstein, Bellucci, & Miller, 1990). The violent crime that cocaine users often commit is robbery, a high-risk offense that they commonly view as an expedient means of obtaining income as other sources of money become unavailable (Wright & Decker, 1997).

The violence associated with illicit drug use, especially in graphic media reports of gang wars, is closely related to the drug trade and occurs because of conflicts stemming from the importation, distribution, and sale of cocaine and other illicit substances (Goldstein, 1985). The systemic violence of the drug trade was first recognized as a serious problem in 1985 when crack cocaine became widespread in major metropolitan areas. Well-armed and violent drug dealers led the struggle to protect or gain control over initially unstable, highly lucrative drug markets (e.g., McBride & Swartz, 1990).

Some researchers have suggested that criminal involvement causes drug use by providing "the context, the reference group, and definitions of the situation that are conducive to subsequent involvement with drugs" (White 1990, p. 223; also see Collins, Hubbard, & Rachal, 1985). In this model, criminals use drugs before committing offenses "to bolster courage or afterward to celebrate success" (Hamid, 1998, p. 132).

In a correlational study, Johnson, O'Malley, and Eveland (1978) found that delinquency and criminal behaviors predate drug use in juvenile populations. Similar findings are reported in the National Youth Survey (Huizinga, Menard, & Elliott, 1989), which showed a general progression of activities: minor delinquency, alcohol consumption, index offenses, marijuana use, and polydrug use, in that order. Huizinga et al. (1989) reported that minor delinquency preceded drug use in nearly all of the cases studied. Overall, explanations that "crime precedes drug use involve the arguments that drug use is simply another form of deviant behavior and that involvement with delinquency/criminality provides resources and contacts necessary for entering into drug use" (Lab, 1992, p. 167).

Still others have suggested that the relationship between drug use and crime is reciprocal and mutually reinforcing: As persons commit more income-generating crimes, they find it easier to buy drugs. And as they use drugs more frequently, they are compelled to commit more crimes to support their intensifying addictions. In this explanation, "drug

use and offending are interrelated lifestyles and the relationship between drugs and crime lies in the overlap between the two lifestyles" (Hamid, 1998, p. 133).

For most youths, drug use and delinquency are not causally related in either direction, but contemporaneous behaviors stemming from common causes such as social disaffection, poor relationships with parents, school failure, and deviant peers (e.g., Hamid, 1998; Inciardi, Horowitz, & Pottieger, 1993).

Among adult offenders, the connection between drug use and crime can be explained by criminal subculture theory (e.g., Fagan, Weis, & Cheng, 1990; McLellan, Luborsky, Woody, O'Brien, & Kron, 1981). Within this framework, members of criminal subcultures are described as self-indulgent, hedonistic, materialistic, indifferent to risk, and committed to living the "fast life." For these individuals, drug use and crime operate along parallel lines; they are components of a larger complex of destructive behaviors, which also includes high-risk sex (McBride & McCoy, 1993).

In summary, the precise relationship between drug use and crime is complex, and little support can be found for a single, specific, and direct causal connection. At the most intense levels of drug use, however, there is considerable evidence of a powerful and direct correlation (e.g., McBride & McCoy, 1982, 1993; Speckart & Anglin, 1986a).

The literature generally suggests that criminal activity is neither an inevitable consequence of illicit drug use (apart from the illegal nature of drug use itself) nor a necessary or sufficient condition for criminal behavior (Chaiken & Chaiken, 1990). Many illegal drug users commit no other kinds of crimes, and many persons who commit crimes never use illegal drugs. Furthermore, even when people commit crimes while using illegal drugs, there may not be a causal connection between the two. As stated in an ONDCP (1997) report, "most crimes result from a variety of factors (personal, situational, cultural, economic), so even when drugs are a cause, they are more likely to be only one factor among many" (p. 3). Thus the evidence that drug use alone inexorably leads to criminal activity is weak.

Evidence does, however, support the notion that illegal drug use intensifies criminal activity among drug-prone individuals. As illegal drug use increases in frequency and amount, so does criminal behavior. Persons who are criminally-inclined tend to commit more crimes and more serious crimes after they become dependent on drugs. Conversely, as their drug use decreases so do the number of crimes they commit (Anglin & Speckhart, 1988). In addition, research suggests that illicit drug use and criminal activity often occur together as part of a deviant lifestyle (Wright & Decker, 1997).

The propensity for crime-prone, drug-using persons to commit property or violent crimes might increase after they cross the threshold of abuse or dependence. And an unknown number of illegal drug users, perhaps even dependent users, are able to maintain steady employment and never commit crimes, other than the crime of illicit drug use (Waldorf, Reinerman, & Murphy, 1993).

**Criminal Justice Response to Illicit Drug Use**

Stepped-up drug enforcement has been a centerpiece of the country's drug policy for the past 25 years (Anderson, 1998; Massing, 1998). Since the mid-1980s, unprecedented surges in arrests, prosecutions, and harsher sentences for drug offenders have caused monumental management and operational problems for criminal justice agencies (Belenko, 1990). The criminal justice system's response to the drug problem in turn has led to severe logjams in the courts, prison and jail overcrowding, soaring costs for constructing new prisons and jails, and early release from prison for violent felons (Peters, 1993).

During the 1980s and 1990s, many states also significantly increased penalties for drug offenses, resulting in prison sentences for almost two-thirds of convicted drug traffickers (Bureau of Justice Statistics, 1992). In 1994, for example, drug offenders accounted for nearly one-third of the 872,200 felony convictions in state courts (Bureau of Justice Statistics, 1997a). And from 1986 to 1992, the percentage of convictions in state courts for felony drug trafficking more than doubled: from 40,000 to 86,000 (MacCoun & Reuter, 1998).

A serious consequence of the most recent war on drugs is that many of the nation's most chronic addicts are now under the control of the criminal justice system. An Institute of Medicine (1990) report, for example, stated that one-fifth of the country's population in need of drug treatment is on probation or parole supervision.

Since the Bush Administration's creation of the Office of National Drug Control Policy in 1988, approximately 70 percent of all federal antidrug money has been spent on supply reduction strategies such as interdiction, source-country control, and street-level enforcement; only 30 percent has been spent on prevention and treatment efforts (Heaps & Swartz, 1995). Most states have been spending the largest proportion of their drug budgets on enforcement and interdiction and relatively little on treatment and prevention. Therefore the disproportion in spending is even larger than the federal figures alone would suggest (Heaps & Swartz, 1995).

Notwithstanding our emphasis on supply reduction strategies, an impressive body of evidence shows that drug treatment is a potent strategy for controlling illegal drug use and crime and is more cost-effective than law enforcement and interdiction efforts.

Three large-scale national studies of drug treatment have been conducted since the late 1970s: The Drug Abuse Reporting Program (DARP), the Treatment Outcomes Prospective Study (TOPS), and the Drug Abuse Treatment Outcomes Study (DATOS) (see Fletcher, Tims, & Brown, 1998). These studies have included tens of thousands of participants in hundreds of drug treatment programs and have involved years of careful follow-up research using longitudinal designs. All the studies have shown that participation in drug treatment for at least 3 months substantially reduces both drug use and crime, even among those who fail to complete treatment (General Accounting Office [GAO], March 27, 1998). Moreover, the studies demonstrated that treated

drug users maintain lower rates of drug use and crime long past the end of treatment (Fletcher et al., 1998).

RAND Corporation researchers compared the relative effectiveness of drug treatment with interdiction efforts and the incarceration of drug offenders (Rydell & Everingham, 1994; see also Rasmussen & Benson, 1999). Using national data sources, the investigators developed a mathematical model to predict how much money would have to be spent on each type of intervention (interdiction, incarceration, and treatment) to achieve a 1 percent reduction in the yearly national consumption of cocaine.

The RAND study's results were striking. For every dollar spent on drug treatment, seven dollars would have to be spent on imprisonment and twenty-five dollars on interdiction in order to achieve the same degree of reduction in cocaine use. The implications of RAND's findings are that this country's drug policies would be substantially more effective if even a small portion of the resources now devoted to enforcement and interdiction were shifted to drug treatment programs.

Other studies have shown that treatment for drug-abusing offenders reduces drug use and criminal activity (e.g., Anglin & Hser, 1990; Office of Technology Assessment, 1990). A recent study of persons who had undergone drug treatment found an overall 33 percent reduction in post-treatment criminal behavior five years after discharge from treatment (Substance Abuse Letter, 1998). Findings from large national surveys have yielded similar results. The National Treatment Improvement Evaluation Study, for example, found that 48 percent of treatment participants reported arrests in the year preceding treatment, but only 17 percent were arrested in the year following treatment (GAO Report, 1998). Hence "treating the substance abuse problems of offenders is an important element in any overall strategy to reduce drug use and recidivism among the offender population" (Anglin, Longshore, Turner, McBride, Inciardi, & Prendergast, 1996, p. 2).

Research suggests that offenders who are coerced into drug treatment by legal mandates are just as successful in recovery as those who enter treatment programs voluntarily. And legally coerced participants often remain longer in drug treatment programs (Anglin, Brecht, and Maddahian [1990]; Farabee, Prendergast, & Anglin, 1998).

Drug addicts who are processed through the criminal justice system typically have multiple deficits and problems. Many addicted criminal offenders are undereducated, suffer from psychological and medical disorders, and lack the social skills and training necessary for gainful employment. Many also have histories of family difficulties and of physical and emotional abuse (McLellan, Luborsky, Woody, O'Brien, & Druley, 1983). Furthermore, drug addicts are more likely than their nondrug-using counterparts to suffer from various physical diseases such as AIDS, hepatitis B, endocarditis, and pneumonia, and to die prematurely (Johnson, Williams, Dei, & Sanabria, 1990).

Therefore, in order to be successful, criminal justice drug treatment programs should consist of a wide range of services including detoxification, educational and vocational

training, urine testing, counseling, HIV education and prevention, training in life and interpersonal skills, psychiatric care, pharmacotherapy, psychotherapy, relapse prevention training, and self-help groups (Peters, 1993).

Despite the apparent benefits of drug treatment for offenders, the proportions of inmates in treatment in state and federal prisons declined significantly from 1991 to 1997. Among state prisoners, the percentage of inmates on drug treatment fell from 24 to 10 percent, and among federal prisoners, it fell from 16 to 9 percent (Bureau of Justice Statistics, 1999).

The case for drug treatment, however, must not be overstated; it is not a panacea. Too many individuals continue to drop out of drug treatment after only a short period of time, and relapse rates are high. In addition, the benefits of treatment might have been exaggerated because treatment evaluation studies have relied heavily on self-reports to measure drug use (General Accounting Office, 1998).

### **Conclusions**

Offenders with drug problems are a diverse group, and the relationship between drugs and crime is complicated. Offenders become involved with drugs and criminal activities by different pathways that can be divergent, parallel, or overlapping. Whatever the road to addiction and criminality, crime control policies must begin to fully recognize what research has consistently demonstrated: Drug addiction is a chronic relapsing disorder with biological, psychological, social, and behavioral concomitants. By the same token, programs for drug offenders must be comprehensive and should include treatment and adjunctive social services.

The lengthy debate about the best means to reduce illegal drug use in this country continues to be fueled by ideological fervor instead of sound research (MacCoun & Reuter, 1998). But there is no debate over the fact that illegal drug use is a significant and complex social problem that will continue to challenge policy-makers and criminal justice and treatment practitioners.

### **REFERENCES**

- Anderson, D.C. (1998). *Sensible justice: Alternatives to prison*. New York: New York Press.
- Anglin, M.D., Brecht, M.L., & Maddahian, E. (1990). Pretreatment characteristics and treatment performance of legally coerced versus voluntary methadone maintenance admissions. *Criminology*, 27: 537-557.
- Anglin, M.D., & Hser, Y. (1990). Treatment of drug abuse. In M. Tonry & J.Q. Wilson (Eds.), *Drugs and Crime* (pp. 393-460). Chicago: University of Chicago Press.
- Anglin, M.D., Longshore, D., Turner, S., McBride, D., Inciardi, J.A., & Prendergast, M.L. (1996). *Studies of the functioning and effectiveness of Treatment Alternatives to Street Crime (TASC) programs*. Los Angeles: UCLA Drug Abuse Research Center.
- Anglin, M.D., & Speckart, G. (1988). Narcotics use and crime: A multisample, multiperiod analysis. *Criminology*, 26: 197-233.
- Ball, J.C., Rosen, L., Flueck, J.A., & Nurco, D.N. (1981). The criminality of heroin addicts: When addicted and when off opiates. In J.A. Inciardi (Ed.), *The drugs-crime connection* (pp. 39-65). Beverly Hills, CA: Sage.
- Ball, J.C., Shaffer, J.W., & Nurco, D.N. (1983). The day-to-day criminality of heroin addicts in Baltimore: A study in the continuity of offense rates. *Drug and Alcohol Dependence*, 12: 119-142.
- Belenko, S. (1990). The impact of drug offenders on the criminal justice system. In R. A. Weisheit (Ed.), *Drugs, crime, and the criminal justice system* (pp. 27-28). Cincinnati: Anderson.
- Bureau of Justice Statistics. (1989). *Prisoners in 1987. BJS Bulletin*. Washington, DC: Author.
- Bureau of Justice Statistics. (1999). *Prisoners in 1997. BJS Bulletin*. Washington, DC: Author.
- Bureau of Justice Statistics. (1991). Drugs and crime data. Fact sheet: *Drug data summary*. Washington, DC: Author.
- Bureau of Justice Statistics. (1992). *Drugs, crime and the justice system*. Washington, DC: Author.
- Bureau of Justice Statistics. (1997a). *Felony convictions*. Washington, DC: Author.
- Bureau of Justice Statistics. (1997b). *Prisoners in 1996*. Washington, DC: Author.
- Bureau of Justice Statistics. (1997c). *Characteristics of adults on probation, 1995*. Washington, DC: Author.
- Chaiken, J.M., & Chaiken, M.R. (1990). Drugs and predatory crime. In M. Tonry & J.Q. Wilson (Eds.), *Drugs and crime* (pp. 203-240). Chicago: University of Chicago Press.
- Chaiken, M.R. (1986). Crime rates and substance abuse among types of offenders. In B.D. Johnson & E. Wish (Eds.), *Crime rates among drug-abusing offenders* (pp. 17-36). New York: Narcotics and Drug Research.
- Collins, J.J., Hubbard, R.L., & Rachel, J.V. (1985). Expensive drug use and illegal income: A test of explanatory hypotheses. *Criminology*, 23: 743-764.
- DeFleur, L.B., Ball, J.C., & Snarr, R.W. (1969). The long-term correlates of opiate addiction. *Social Problems*, 17: 225-234.
- Dembo, R., Williams, L., & Schmeidler, J. (1993). Addressing the problems of substance abuse in juvenile corrections. In J.A. Inciardi (Ed.), *Drug treatment and criminal justice* (pp. 97-126). Newbury Park, CA: Sage.
- Elliott, D.S., Huizinga, D., & Ageton, S.S. (1985). *Explaining drug use and delinquency*. Beverly Hills, CA: Sage.
- Fagan, J., Weis, J.G., & Cheng, Y.T. (1990). Delinquency and substance abuse among inner city students. *Journal of Drug Issues*, 20: 351-402.
- Farabee, D., Prendergast, M., & Anglin, M.D. (1998). The effectiveness of coerced treatment for drug-abusing offenders. *Federal Probation*, 62: 3-10.
- Fletcher, B.W., Tims, F.M., & Brown, B.S. (1998). Drug Abuse Treatment Outcome Study (DATOS): Treatment evaluation research in the United States. *Psychology of Addictive Behaviors*, 11: 216-229.
- General Accounting Office [GAO]. (March 27, 1998). *Drug abuse studies show treatment is effective but benefits may be overstated* (GAO/HEHS-98-72).
- Goldman, F. (1981). Drug abuse, crime, and economics: The dismal limits of social choices. In J.A. Inciardi (Ed.), *The drugs-crime connection* (pp. 155-182). Beverly Hills, CA: Sage.
- Goldstein, P.J. (1985). The drugs/violence nexus. *Journal of Drug Issues*, 15: 493-506.
- Goldstein, P.J., & Duchaine, N. (1980). *Daily criminal activities of street drug users*. Paper presented at the annual meeting of the American Society of Criminology.
- Hamid, A. (1998). *Drugs in America*. Gaithersburg, MD: Aspen Publishers.
- Harlow, C.W. (1991). *Drugs and jail inmates, 1989*. Washington, DC: Bureau of Justice Statistics.
- Harrison, L., & Gfroerer, J. (1992). The intersection of drug use and criminal behavior: Results from the National Household Survey on Drug Abuse. *Crime and Delinquency*, 38: 422-443.
- Heaps, M.M., & Swartz, J.A. (1995). Toward a rational drug policy. In *Proceedings of the University of Chicago Legal Forum on Drugs and Crime* (pp. 175-205). Chicago: University of Chicago Press.
- Huizinga, D.H., Menard, S., & Elliott, D.S. (1989). Delinquency and drug use: Temporal and developmental patterns. *Justice Quarterly*, 6: 419-456.

- Inciardi, J.A., Horowitz, R., & Pottieger, A.E. (1993). *Street kids, street drugs, street crime: An examination of drug use and serious delinquency in Miami*. Belmont, CA: Wadsworth.
- Inciardi, J.A., McBride, D.C., McCoy, H.V., & Chitwood, D.D. (1995). Recent research on the crack-cocaine/crime connection. *Studies on Crime and Crime Prevention*, 6: 118-137.
- Inciardi, J.A., McBride, D.C., Platt, J.J., & Baxter, S. (1993). Injecting drug users, incarceration, and HIV: Some legal and social service delivery issues. In *The national AIDS demonstration research program* (pp. 187-210). Westport, CT: Greenwood.
- Innes, C.A. (1988). *State prison inmate survey, 1986: Drug use and crime*. Washington, DC: Bureau of Justice Statistics.
- Institute of Medicine, Committee for the Substance Abuse Coverage Study. (1990). A study of the evolution, effectiveness, and financing of public and private drug treatment systems. In D. R. Gerstein & H. J. Harwood (Eds.), *Treating drug problems* (pp. 45-67). Washington, DC: National Academy Press.
- Johnston, L.D., O'Malley, P., & Eveland, L. (1978). Drugs and delinquency: A search for causal connections. In D. B. Kandel (Ed.), *Longitudinal research on drug use* (pp. 47-63). Washington, DC: Hemisphere.
- Johnson, B.C., Williams, T., Dei, K.A., & Sanabria, H. (1990). Drug abuse in the inner city: Impact on hard-drug users and the community. In M. Tonry & J.Q. Wilson (Eds.), *Drugs and crime* (pp. 9-68). Chicago: University of Chicago.
- Johnson, B.D., Wish, E.D., Schmeidler, J., & Huizinga, D. (1993). Concentration of delinquent offending: Serious drug involvement and high delinquency rates. In R. Dembo (Ed.), *Drugs and crime* (pp. 1-25). Lanham, MD: University Press of America.
- Lab, J.P. (1992). *Crime prevention: Approaches, practices, and evaluations*. Cincinnati, OH: Anderson.
- Langan, P.A., & Perkins, C.A. (1994). *Felony sentences in the United States, 1990*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
- MacCoun, R.J., & Reuter, P. (1998). Drug control. In M. Tonry (Ed.), *The handbook of crime and punishment* (pp. 207-240). New York: Oxford University Press.
- Massing, M. (1998). *The Fix*. New York: Simon and Schuster.
- McBride, D.C., & Inciardi, J.A. (1990). AIDS and the IV drug user in the criminal justice system. *Journal of Drug Issues*, 20: 267-280.
- McBride, D.C., & McCoy, C.B. (1982). Crime and drugs: The issues and literature. *Journal of Drug Issues*, 12: 137-151.
- McBride, D.C., & McCoy, C.B. (1993). The drugs-crime relationship: An analytical framework. *The Prison Journal*, 73: 257-278.
- McBride, D.C., & Swartz, J.A. (1990). Drugs and violence in the age of crack cocaine. In R. Weisheit (Ed.), *Drugs, crime and the criminal justice system* (pp. 141-170). Cincinnati: Anderson Publishing.
- McGlothlin, W.M. (1978). The etiologic relationship between drug use and criminality. In Y. Israel, F. Glaser, H. Kalant, R. Popham, W. Schmit, & R. Smart (Eds.), *Research advances in alcohol and drug problems* (pp. 201-226). New York: Plenum Press.
- McLellan, A.T., Luborsky, L., Woody, G. E., O'Brien, C. P., & Kron, R. (1981). Are the "addiction-related" problems of substance abusers really related? *The Journal of Nervous and Mental Disease*, 173: 94-102.
- Mumola, C.J. (1998, March). *Substance abuse and treatment of adults on probation, 1995*. Washington, DC: Bureau of Justice Statistics.
- Musto, D. (1987). *The American disease: Origins of narcotics control*. New York: Oxford University Press.
- National Institute of Justice. (1993). *Drug use forecasting—1992 annual report: Drugs and crime in America's cities*. Washington, D.C.: U.S. Department of Justice.
- National Institute of Justice. (1998). *Arrestee Drug Abuse Monitoring Program: 1997 annual report on adult and juvenile arrestees*. Washington, DC: National Institute of Justice.
- Office of National Drug Control Policy. (1997). *Fact sheet: Drug-related crime*. Washington, DC Author.
- Office of Technology Assessment. (1990). *The effectiveness of drug abuse treatment: Implications for controlling AIDS/HIV infection*. Washington, DC: U.S. Government Printing Office.
- Peters, R.H. (1993). Drug treatment in jails and detention settings. In J.A. Inciardi (Ed.), *Drug treatment and criminal justice* (pp. 44-80). Newbury Park, CA: Sage.
- Rasmussen, D.W., & Benson, B.L. (1999). Reducing the harms of drug policy. *Journal of Substance Use and Misuse*, 34: 49-67.
- Reuter, P., MacCoun, R.J., & Murphy, P. (1990). *Money from crime: A study of the economics of drug dealing in Washington, D. C.* Santa Monica, CA: Rand Corporation.
- Rydell, C.P., & Everingham, S.S. (1994). *Modeling the demand for cocaine*. Santa Monica: RAND.
- Spekart, G.R., & Anglin, D.M. (1986a). Narcotics and crime: A causal modeling approach. *Journal of Quantitative Criminology*, 2: 3-28.
- Spekart, G.R., & Anglin, M.D. (1986b). Narcotics use and crime: An overview of recent research advances. *Contemporary Drug Problems*, 13: 741-769.
- Spunt, B.J., Goldstein, P.J., Bellucci, P.A., & Miller, T. (1990). Race/ethnic and gender differences in the drugs-violence relationship. *Journal of Psychoactive Drugs*, 22: 293-303.
- Substance Abuse Letter. (1998, September 17). *Drop seen in drug abuse five years after treatment*. Washington, DC: Pace Publications.
- Waldorf, D., Reinerman, C., & Murphy, S. (1993). *Cocaine changes: The experience of using and quitting*. Philadelphia: Temple University Press.
- Wexler, H.K., Lipton, D.S., & Johnson, B.D. (1988). *A criminal justice system strategy for treating cocaine-heroine abusing offenders in custody*. Washington, DC: U.S. Department of Justice, National Institute of Justice.
- White, H.R. (1990). The drug use-delinquency connection in adolescence. In R. Weisheit (Ed.), *Drugs, crime, and the criminal justice system* (pp. 215-256). Cincinnati, OH: Anderson.
- Wish, E.D., & Gropper, B.A. (1990). Drug testing by the criminal justice system: Methods, research, and applications. In M. Tonry & J.Q. Wilson (Eds.), *Drugs and crime* (pp. 321-392). Chicago: University of Chicago Press.
- Wright, R.T., & Decker, S.H. (1997). *Armed robbers in action*. Boston: Northeastern University Press.

# Looking at the Law

BY DAVID N. ADAIR, JR.  
*Assistant General Counsel, Administrative Office of the United States Courts*

## The Privilege Against Self-Incrimination and Supervision

**I**N *MINNESOTA v. Murphy*, 465 U.S. 420 (1984), the Supreme Court held that while a defendant does not lose his or her right against self-incrimination after being convicted of a crime, requiring a probationer to respond to questions that are relevant to his or her probationary status does not violate the Fifth Amendment. If a probationer has a privilege against self-incrimination with respect to certain information, the probationer must assert the privilege; furthermore, no "Miranda" warnings are required when a probation officer asks questions. This case was reported in this column in Kahn, "Looking at the Law," 48 *Federal Probation* 78 (Sept. 1984). But, of course, *Murphy* did not answer all of the Fifth Amendment questions that arise in the context of supervision, and officers are finding that offenders are asserting the privilege in challenging various aspects of supervision. The most recent challenges have come in connection with sex offender treatment in which offenders are expected to admit certain behavior.

In fact, officers may have little direct control over these situations. When offenders refuse to answer questions based on their claim that the refusal is protected by the Fifth Amendment, officers are generally advised to respect the claim of privilege. On the other hand, some refusals to respond to questions constitute possible violations of the conditions of release and officers must determine if, when, and how to present these violations to the court. The intent of this article is to provide officers with background on this issue to assist them in making these determinations.

### ***Minnesota v. Murphy***

Before examining the specific ways in which the privilege applies in supervision, a detailed description of *Murphy* is necessary, since that case remains the starting point for any discussion of the Fifth Amendment privilege in the context of supervision. Murphy had been placed on probation for a sex-related crime. Among the conditions of his probation were that he participate in a sex offender treatment program and that he be truthful with his probation officer in all matters. During Murphy's probation, a counselor from his treatment program informed Murphy's probation officer that Murphy had admitted to a rape and murder committed seven years earlier. Immediately thereafter, the probation officer asked Murphy to meet with her to discuss treatment, and at that meeting, the officer specifically asked about the rape and murder. Murphy initially reacted with anger and

stated that he "felt like calling a lawyer," but after the officer stated that her concern was the relationship between the newly admitted offenses and the need for further treatment, Murphy admitted the crimes. The officer then provided that information to law enforcement and as a result, Murphy was convicted of murder. He challenged his conviction on the grounds that he was forced to make the admission in violation of his right against self-incrimination.

As noted above, the Court held that a probationer does not lose his Fifth Amendment privilege simply because he has been convicted of an offense and is in prison or under some form of supervision for that offense. And the privilege is available not only to an individual facing a criminal trial, but also in "any other proceeding, civil or criminal, formal or informal, where answers might incriminate him in future *criminal* proceedings." 465 U.S. at 426 (emphasis added). Nonetheless, the Constitution does not generally forbid the state to *ask* incriminating questions. If the offender answers these questions, his answers may be considered voluntary unless it can be shown that they were compelled within the meaning of the Fifth Amendment. If the offender chooses to assert the privilege, however, he may not be required to answer if there is a rational basis for believing that it might incriminate him.

There are exceptions to these rules. The most important is that established by *Miranda v. Arizona*, 384 U.S. 436 (1966), with regard to questioning that takes place in police custody. In this situation, the privilege is self-executing, which means that the person in custody must be given advice about the privilege. But in *Murphy* the Court held that a probation interview is not equivalent to police custody, since there is no arrest, the probationer is under no physical compulsion to remain in the interview, and the probationer is normally familiar with the interview process and therefore less likely to be intimidated than an arrestee in police custody.

The other exception discussed by the Court is presented in situations in which the state threatens the imposition of a substantial penalty for refusal to answer an incriminating question. For example, an offender may validly be required to answer questions relevant to the conditions of supervision. The fact that those answers may lead to a revocation proceeding does not trigger the protection of the Fifth Amendment because that protection only applies to criminal proceedings and revocation proceedings do not constitute criminal proceedings; they are more in the nature of administrative proceedings. But, the Court cautioned:

the result may be different if the questions put to the probationer, however relevant to his probationary status, call for answers that would incriminate him in a pending or later criminal prosecution. ...[I]f the

State, either expressly or by implication, asserts that invocation of the privilege would lead to revocation of probation, it would have created the classic penalty situation, the failure to assert the privilege would be excused. And the probationer's answers would be deemed compelled and inadmissible in a criminal prosecution. 465 U.S. at 435 n.7.

Under the circumstances presented in *Murphy*, the Court held, the offender was not threatened with a penalty for assertion of the privilege. He was aware that he was required to answer questions and that he might have his probation revoked for not answering those questions truthfully, but that did not constitute a penalty for asserting the privilege.

If *Murphy* resolved the question regarding the necessity of Miranda warnings in the context of supervision, it left a number of issues unresolved. Some of these involve the question of what kind of incrimination, that is, what form of criminal liability, is protected by the Fifth Amendment protection, but the most difficult issues involve the scope of the prohibition on the state's imposition of a penalty for an offender's failure to respond to questions put to him during supervision.

### **Nature of Incrimination**

The Fifth Amendment privilege applies only to questions that might incriminate for a criminal offense. It does not apply when there is no realistic possibility of prosecution. Accordingly, the Court in *Murphy* noted that "there can be no valid claim of the privilege on the ground that the information sought can be used in revocation proceedings." 465 U.S. at 435 n. 7. As noted above, a revocation proceeding is not technically a criminal proceeding.

Therefore, if non-compliance might result in revocation but not a criminal proceeding, there is no potential of incrimination and thus no Fifth Amendment privilege. For example, a supervised releasee may be prohibited from traveling outside the judicial district without the permission of the probation officer. Traveling without permission might result in the revocation of supervised release and the imposition of a term of imprisonment, but it is not a crime and will not result in criminal prosecution. The offender may, therefore, be required to truthfully answer a question regarding his travel on pain of revocation.

Because of the double jeopardy clause of the Fifth Amendment, a person may not be convicted twice for the same offense. Thus, questions about an offense for which an individual has already been convicted are generally not incriminating.

However, the timing of the questioning about an offense for which an offender has been convicted could become an issue. The Supreme Court has recently determined that a defendant does not waive the privilege against self-incrimination by pleading guilty and that a sentencing court may not draw adverse inferences from a defendant's silence. *Mitchell v. United States*, \_U.S.\_, 119 S. Ct. 1307 (1999). Accordingly, a defendant may properly decline to answer questions regarding the offense pending sentencing.

Even after sentencing, although this has not been firmly established, it appears that the better rule is that the Fifth

Amendment privilege "continues until the time for appeal has expired or until the conviction has been affirmed on appeal." *United States v. Duchi*, 944 F. 2d 391, 394 (8th Cir. 1991). See also *Taylor v. Liefort*, 568 N.W. 2d 456 (Minn. App. 1997). Accordingly, an offender might validly assert the privilege while his conviction or sentence is on appeal. This could be a problem for probation cases or short sentences of incarceration, but will not be of concern in the case of supervised release supervision after a lengthy period of incarceration.

Some offenders have argued that even though they have already been convicted of the offense that is the subject of questions during supervision, answers to such questions might subject an individual to a separate prosecution for false statements or, in appropriate circumstances, perjury. In *State v. Imlay*, 813 P.2d 979 (Mont. 1991), cert. granted, 503 U.S. 905 (1992), cert. dismissed, 506 U.S. 5 (1992), Imlay was convicted of a sex offense though he testified and asserted his innocence. When asked to admit his offense during therapy, he asserted his privilege against self-incrimination. Imlay's refusal to answer resulted in his being dismissed from therapy, a violation of his probation. Admitting the offense, he claimed, would, among other things, subject him to the risk of a separate prosecution for perjury since he had denied the offense at trial. The Montana Supreme Court held that this forced choice between imprisonment for failure to complete therapy and new prosecution for perjury violated the Fifth Amendment. The Supreme Court initially granted certiorari, but later dismissed it as improvidently granted. Accordingly, this issue is not yet settled.

### **Nature of Penalty for Refusal to Answer**

As noted above, the opinion in *Murphy* made reference to cases that have held that a state may not impose a penalty for the exercise of the Fifth Amendment privilege, but the Court was not entirely clear as to how that principle applied to revocation of supervision. *Murphy* cites a number of earlier cases, commonly referred to as the "penalty cases," that hold that "a State may not impose substantial penalties because a witness elects to exercise his Fifth Amendment right not to give incriminating testimony against himself." 465 U.S. at 434, quoting with approval *Lefkowitz v. Cunningham*, 431 U.S. 801, 806 (1977). These cases recognize that the mischief the Amendment is designed to prevent may be accomplished as easily by imposing a penalty upon the exercise of the privilege against self-incrimination as by directly forcing the person to testify against himself.

The Court specifically indicated that if the state threatened revocation for asserting the privilege it would have created a penalty situation in violation of the Fifth Amendment. But then the Court added a proviso to its caution in a footnote:

[A] state may validly insist on answers to even incriminating questions and hence sensibly administer its probation system, as long as it recognizes that the required answers may not be used in a criminal proceeding and thus eliminates the threat of incrimination. Under such circum-

stances, a probationer's right to immunity as a result of his compelled testimony would not be at stake . . . and nothing in the Federal Constitution would prevent a State from revoking probation for a refusal to answer that violated an express condition of probation or from using the probationer's silence as one of a number of factors to be considered by a finder of fact in determining whether other conditions of probation have been violated.

465 U.S. at 435 n. 7.<sup>1</sup> The decisions in two United States Courts of Appeals have relied on this language in holding that the failure of a probationer to truthfully respond to questions might subject him to sanctions without violating the Fifth Amendment. In *Asherman v. Meachum*, 957 F.2d 978 (2d Cir. 1992), a state prisoner had been placed in a home release program. While on release, the prisoner was ordered to report for a psychiatric evaluation. The prisoner reported but, on instructions from his attorney, declined to answer questions about the crime for which he was charged; a petition for habeas corpus regarding the prisoner's conviction was pending. As a consequence, upon reporting, he was taken into custody and his home release revoked for his refusal to cooperate.

While the court acknowledged that a state may not impose a penalty on an individual for invoking the privilege against self-incrimination, it held that when the state's inquiry is "reasonably related to the valid exercise of state authority," the state may take appropriate action without violating the Fifth Amendment. A governmental entity may not ask incriminating questions under a threat of using the answers in future criminal proceedings nor require a waiver of the protections of the Fifth Amendment. But the state may ask questions that are relevant to their legitimate public function and may penalize a refusal to answer.

Here, the court held, the questioning was a legitimate exercise of the state's responsibility to protect the public by attempting to understand the prisoner's mental state. The prisoner's release was revoked not because of the assertion of the privilege, but because the refusal to cooperate interfered with that responsibility. This seems a subtle distinction at best and the court specifically declined to address the question of whether answers to the state's incriminating questions could actually be used in a subsequent criminal proceeding.

While *Asherman* involved an offense for which the offender had already been convicted, the opinion clearly suggests that a state might in certain circumstances revoke probation in spite of the fact that compliance with the condition might result in the disclosure of information that could incriminate the offender.<sup>2</sup> The Seventh Circuit relied on *Asherman* in *United States v. Ross*, 9 F.3d 1182 (7th Cir. 1993), *judgment vacated on other grounds*, 511 U.S. 1124 (1994), a case that involved potential prosecution for new offenses. In that case, the offender was on supervised release for a firearms offense with a special condition that he not have contact with any firearms. After the probation officer reported a number of violations to the court, a revocation hearing was held. During the course of the hearing, the judge asked the offender what he had done with the sizable collection of guns the offender had possessed at the

time of his conviction. The offender replied that he had disposed of the collection but refused to disclose how he had done so, asserting that the refusal was based on the Fifth Amendment. The court revoked supervised release based on that refusal.

The court determined that the district judge had made the inquiries regarding the gun collection solely to insure that the conditions of supervised release were being met. It was not interested in "ferreting out incriminating admissions to facilitate the further prosecution of the defendant." 9 F.3d at 1190. The district court was simply trying to insure compliance with the conditions of supervised release. Although the offender had the right to assert the protections of the Fifth Amendment at the supervised release hearing based on the fear that answers to the court's questions could lead to a new criminal prosecution, the court held that the offender did not have the "additional right to avoid the express conditions upon which he was granted . . . supervised release. He must make a choice. If he is to enjoy the advantages of supervised release, he must comply with the lawfully imposed conditions." 9 F.3d at 1191. *See also Idaho v. Crowe*, 952 P.2d 1245 (Idaho 1998).

There were strong dissents in both *Asherman* and *Ross*. Both urged that a person should not be forced to choose between answering questions that could incriminate the person or having release revoked for asserting the privilege against self-incrimination.

[T]here can be no principled distinction between invocation of the fifth amendment and the failure to respond to a relevant inquiry. The two are inextricably intertwined. [The] failure to answer a relevant inquiry was solely and directly the result of [the] invocation of the right to remain silent.

9 F.3d at 1197. The dissents argue that an offender should not be required to answer incriminating questions until he is granted immunity from the answers being used in a new criminal prosecution. One United States district court has reached the same conclusion as the dissenters. In *Mace v. Amestoy*, 765 F.Supp. 847 (D.Vt. 1991), the state supreme court had determined that an offender's probation could be revoked because he refused to answer questions regarding illegal sexual behavior, since prosecution for those offenses was unlikely.<sup>3</sup> The district court granted the offender's petition for writ of habeas corpus because, the court found, the state's insistence on an answer to incriminating questions on pain of revocation place the offender in the classic penalty situation, which is prohibited by the Fifth Amendment. The court relied upon the language from footnote 7 in *Minnesota v. Murphy*, cited above, to reach the conclusion that the state should have granted immunity before insisting on the answers to the questions.

The recent Supreme Court decision in *Mitchell v. United States* does not, in my view, strengthen the arguments of the dissenters. The Court affirmed the continued vitality of the penalty cases in holding that a sentencing court may not draw an adverse inference from a defendant's silence regarding drug amounts even if the defendant has pleaded guilty to a drug offense. But the Court analogized the situa-

tion with the prohibition on drawing an adverse inference from the defendant's silence at trial, which is clearly prohibited by the Fifth Amendment. It specifically distinguished *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998), in which it had held that an adverse influence is permissible from silence in a clemency proceeding, because that is a non-judicial process that is not part of the criminal case. Probation and supervised release revocation proceedings are conducted by judges, but as discussed above, they are in the nature of administrative proceedings and are not part of the original criminal case.

Clearly this is an issue that awaits further resolution. And, even if *Asherman* and *Ross* are to be followed, as a practical matter, the probation officer is not in a position to challenge an assertion of the privilege by an offender. As the Court noted in *Murphy*, once an individual asserts the Fifth Amendment privilege, "he may not be required to answer a question if there is some rational basis for believing that it will incriminate him, at least without at that time being assured that neither it nor its fruits may be used against him in a subsequent criminal proceeding." 465 U.S. at 429.<sup>4</sup> It is not up to the officer to determine whether there is a rational basis for the assertion of the privilege.

Despite these concerns, an assertion of the privilege in response to a request for information that is relevant to the offender's compliance with the conditions of release should not automatically halt an officer's attempts to secure compliance. Officers are clearly entitled to seek information relevant to offenders' compliance. Officers may and, when the requested information is sufficiently important, should report the refusal to comply with the officer's request to the court. It will then be up to the parties to make the relevant legal arguments and the court to determine whether the refusal may result in appropriate sanctions.

### **Sex Offender Therapy and the Assertion of Privilege**

Offenders' assertion of the Fifth Amendment privilege has been frequent in sex offender therapy. Offenders with sex offense backgrounds are often ordered as a special condition of release to participate in a program of rehabilitative therapy. A common feature of such therapy is the requirement that the offender admit that he has a problem: that he has engaged in inappropriate sexual behavior. Such cooperation is considered so crucial to successful treatment that counselors will often not continue a therapeutic program without such an admission. Yet offenders are sometimes reluctant to make such admissions because the inappropriate behavior is criminal behavior and they fear that an admission could result in a new prosecution. When the offender refuses to answer questions about such behavior and is thereby dismissed from the program, he is in violation of the special condition. Under these circumstances, may the offender's supervision be revoked?

Probably the first questions an offender will be required to answer in a therapeutic sex offender program will be about the offense for which he was convicted. As noted

above, however, the privilege is not generally applicable to questions about an offense for which the offender has been convicted. If the offender enters the program pending an appeal, however, he may be able to legitimately assert the privilege until the appeal is resolved—unless, of course, the court determines, as in *Asherman* and *Ross*, discussed above, that answers to such questions may be demanded as part of the offender's rehabilitative program.

When a therapeutic program is ongoing, an offender may be asked to discuss behavior that does not constitute the offense of conviction. Questions may be asked about behavior that was the subject of counts that were dropped as part of a plea bargain. The offender may be asked about the origins of his current difficulties, which might include behavior that has not, but could, be charged as a criminal offense. The offender will most likely be asked to admit to any current inappropriate sexual behavior. It is possible that such behavior could be a criminal offense. In these situations, the requirements of an offender's therapy, and, accordingly, his compliance with the therapy condition of release, may be directly in conflict with any assertion of the privilege against self-incrimination.

There are a number of issues presented by this situation and not all are clearly resolved at this time. It is reasonably well established, however, that the imposition of such a treatment condition is not unconstitutional. The majority of courts that have examined this issue have determined that the imposition of these conditions is not, in and of itself, a violation of the Fifth Amendment. A number of state courts have relied upon *Minnesota v. Murphy* to uphold probation and parole conditions that require the offender to participate in treatment. These cases also affirm that an offender does not have a privilege with respect to the offense for which he or she was convicted and sentenced. *Gyles v. State*, 901 P. 2d 1143 (Alaska Ct. App. 1995); *State v. Carrizales* 528 N.W. 2d 29 (Wis. Ct. App. 1995); *State v. Gleason*, 576 A. 2d 1246 (Vt. 1990).

With respect to questions that may lead to incriminating statements regarding offenses for which the offender has not been convicted, it seems clear that such questions may be asked without a prior warning regarding the use of answers in subsequent criminal proceedings. As discussed above, the Supreme Court held in *Minnesota v. Murphy* that Miranda warnings are not required before incriminating questions are asked in the context of an interview with a supervising probation officer. The reasoning of the holding would also apply to an interview with a counselor treating an offender whose conditions of release require such treatment. Should the offender decide to respond to the questions, the answers may be used not only for revocation purposes but might also be used in a subsequent criminal proceeding. The offender retains the right to refuse to answer those questions that could incriminate him. *State v. Tenbusch*, 886 P. 2d 1077 (Ore. Ct. App. 1994); *State v. Gleason*, 576 A. 2d at 1251. If the offender provides incriminating answers, however, those answers may be used against the offender in a criminal proceeding. The holding in

*Minnesota v. Murphy* clearly indicates that the privilege against self-incrimination is not self-executing, and in the context of an interview with a probation officer no "Miranda" warnings are necessary.

Without a grant of immunity, however, the required admission of criminal conduct other than the explicit conduct for which the offender was convicted poses problems. As indicated above, an offender retains a right against self-incrimination with respect to information that might result in criminal prosecution. If the invocation of the privilege is legitimate, the government may not penalize the offender by revocation for that exercise of his or her Fifth Amendment right. As the Supreme Court indicated, "a state may validly insist on answers even to incriminating questions and hence sensibly administer its probation system, as long as it recognized that the required answers may not be used in a criminal proceeding, and thus eliminate the threat of incrimination." 465 U.S. at 435-36 n. 7.

### **Polygraph Examinations**

For the purpose of Fifth Amendment analysis, the issue of polygraph testing in supervision is nearly identical to the issue of requiring responses regarding criminal conduct. The polygraph is simply a device that purportedly assesses the truth of responses. But the frequency with which polygraphy is used in sex offender therapy and the controversy regarding its use in court make a separate discussion useful. There is virtually no federal case law on the use of polygraph tests in the context of supervision. The one case in which the issue was discussed indicates that polygraph results should not be used for revocation purposes, but the court held that its use in supervision was not violative of an offender's Fifth Amendment privilege against self-incrimination. The court held that the condition requiring him to submit to the polygraph test was reasonably related to his probation in that the possibility of detection deterred him from violating the conditions of his probation. *Owens v. Kelly*, 681 F.2d 1362 (11th Cir. 1982).<sup>5</sup> This holding is consistent with many state court decisions that hold that a condition requiring submission to polygraph testing is valid for supervision purposes.

But state case law is inconsistent regarding the use of polygraph results for revocation. Compare *Hart v. State*, 633 So.2d 1189 (Fla. 5th Dist.Ct.App. 1994) (polygraph not admissible for revocation purposes) with *State v. Travis*, 867 P.2d 234 (Idaho 1994). But the majority of state courts seem to permit conditions of probation that require submission to a polygraph test for the purpose of supervision or treatment. These courts reason, like the Eleventh Circuit, that the polygraph test may act as a deterrent even if it is not admissible in revocation proceedings. *Mann v. State*, 269 S.E. 2d 863, 866 (Ga.App. 1980). The test may also assist the probation officer in working with the offender to prevent violations before they occur. *People v. Miller*, 256 Cal.Rptr. 587 (Cal.App. 1989).

Most of the state cases on the subject appear to be sex offender cases. These cases stress the value of the polygraph

in treatment because of the inherent secrecy of sex offenses and the common tendency of sex offenders to deny their sexual proclivities. Dealing with denial is essential in treatment and accordingly the polygraph provides invaluable assistance in such treatment. *Cassamassima v. State*, 657 So.2d 906 (Fla. 5th Dist.Ct.App. 1995).

In *Cassamassima*, the court considered the issues of the use of polygraph results in revocation proceedings as well as use in supervision and treatment. Constrained by a panel decision in *Hart v. State, supra*, which held that polygraph results could not be used in revocation, the court carefully considered the issue of use in supervision and treatment. As noted above, the court found that polygraph testing was clearly useful in supervision and particularly in the treatment of sex offenders. Accordingly, the testing was reasonably related to the rehabilitation of the offender as well as the protection of the public. And relying on *Minnesota v. Murphy*, the court determined that such a condition of probation did not violate the offender's Fifth Amendment privilege against self-incrimination.

While the court in *Cassamassima* did not permit polygraph evidence in a revocation proceeding to prove a false response, it stated that the test results could be used by the probation officer to enhance supervision, to more carefully scrutinize the offender's activities, or to commence an investigation of the offender. Certainly the Florida court's analysis is correct that the results of the polygraph may be useful in supervision and treatment. Any criminal activity that is identified or suggested by the polygraph testing can be further investigated by the probation officer or, particularly in the case of serious offenses, can be referred to the appropriate law enforcement agency. The fact that the results of the polygraph are not admissible in evidence does not mean that they can't be used to commence or aid an investigation. And, as discussed above, the test can be used by counselors treating the offender to deal with the offender's denial and for other treatment purposes.

### ***Self-Incrimination and the Timing of the Revocation Proceeding***

A final issue in which the Fifth Amendment privilege may be implicated in connection with revocation is procedural. The privilege against self-incrimination could become an issue when an offender commits a new offense during supervision and the court determines to proceed with the revocation hearing without waiting for the completion of new criminal proceedings based on the same conduct. In this situation, the offender may be presented with the choice of defending the revocation, in which case statements made in the course of the hearing could be used against the offender in the subsequent criminal trial, or standing silent and accepting revocation.

The right to speak in one's own defense is a fundamental aspect of due process and one which has been held to apply in a probation revocation proceeding. *Morrisey v. Brewer*, 408 U.S. 471 (1972). On the other hand, an offender does not

have a Fifth Amendment privilege against testifying about matters that may only result in the revocation of probation, because the privilege only applies when the information places one in jeopardy of a new criminal conviction. *See, e.g., United States v. Nieblas*, 115 F.3d 703 (9th Cir. 1997).

When the alleged violation also constitutes a criminal offense, however, the offender does have a right to decline to testify to matters that may result in a criminal prosecution. Whether or not the analysis above regarding revocation for failure to provide information relevant to monitoring compliance with conditions of release is accepted, probation may certainly be revoked if the violation of probation is proved pursuant to the presentation of evidence that is unanswered by the offender in the exercise of the privilege. The fact that a person is required to make a difficult strategic choice between the exercise of the privilege and the use of whatever testimony might be given does not mean that the individual is unconstitutionally penalized for the exercise of the privilege.

In *McGautha v. California*, 402 U.S. 183 (1971), vacated on other grounds, 408 U.S. 941 (1972), the Supreme Court held that a defendant could not demand a bifurcated criminal trial so that he might remain silent at the guilt phase and testify in the sentencing phase. Accordingly, an offender may be required to choose between avoiding revocation by testifying in a revocation proceeding and avoiding conviction in a new criminal proceeding by exercising the privilege against self-incrimination. *United States v. Ross, supra*.

The dilemma presented by this choice, however, has led one court, in a case involving parole revocation, to hold that an individual must be given immunity against any use of the individual's testimony in any subsequent criminal prosecution. *Melson v. Sard*, 402 F.2d 653 (D.C. Cir. 1968). Other courts have determined that no right to such immunity exists and that the offender must simply make the choice between revocation and prosecution. *Lynott v. Story*, 929 F.2d 228 (6th Cir. 1991); *Ryan v. Montana*, 580 F.2d 988 (9th Cir. 1978), cert. denied, 440 U.S. 977 (1979); *Flint v. Mullen*, 499 F.2d 100 (1st Cir.) (per curiam), cert. denied, 419 U.S. 1026 (1974).<sup>6</sup>

### **Conclusion**

As stated above, there is little the probation officer can do to force an offender to answer questions in the course of supervision if the offender asserts a Fifth Amendment privilege. If the questions involve the offense of conviction, any other offense of which the offender has been convicted and sentenced, or violations of the conditions of supervision that do not constitute new criminal offenses, the officer

should consider reporting the apparent violation to the court. If the refusals are questions that might elicit information about new offenses, the assertion of the right may possibly be legitimate. The officer should nonetheless consider referring the matter to the court for resolution, particularly if there is any doubt about the supervisee's assertion that the question calls for incriminating information. While it is possible in this situation that the assertion of the right will be upheld, the issue should be determined by the court after argument by counsel, not determined by the officer.

### NOTES

<sup>1</sup>Any reliance by the probation officer that a grant of immunity may be secured in the context of a revocation of probation or supervised release would be misplaced. The authority for grants of immunity lies in 18 U.S.C. § 6003, which provides that the United States Attorney's office will initiate any grant of immunity for the use of testimony in a criminal proceeding. The court has no independent authority to grant immunity without a request by the government. *See United States v. Angiulo*, 897 F.2d 1169, 1191 (1st Cir.), cert. denied, 498 U.S. 845 (1990), and cases cited therein. The United States Attorney's office is not likely to be interested in initiating immunity in revocation cases on any regular basis.

<sup>2</sup>See also *Johnson v. Baker*, 108 F.3d 10 (2d Cir. 1997), in which an inmate unsuccessfully claimed that exclusion from a prison program based on his refusal to answer questions about the offense for which he was convicted was violative of his Fifth Amendment privilege.

<sup>3</sup>*State v. Mace*, 578 A.2d 104 (Vt. 1990). Other state courts have held that the Fifth Amendment is not violated by revocation of probation or parole based on refusal to answer questions regarding illegal sexual activity. *See, e.g., Gyles v. State*, 901 P.2d 1143 (Alaska 1995); *Gillfillen v. State*, 582 N.E.2d 821 (Ind. 1991).

<sup>4</sup>A waiver of the Fifth Amendment privilege is not a solution to these difficulties. A waiver of the privilege may not be required since such a requirement would be clear violation of the prohibition on the imposition of a penalty for the exercise of the privilege. Likewise, it may not be deemed voluntary if the alternative is the refusal to grant release. *State v. Eccles*, 877 P.2d 799 (Ariz. 1994).

<sup>5</sup>The state of the law regarding the admissibility of scientific evidence has changed since *Owens v. Kelly* with the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and the Eleventh Circuit pursuant to that decision has held that polygraph evidence is no longer per se inadmissible in that circuit. *See, e.g., United States v. Gilliard*, 133 F.3d 809 (11th Cir. 1998). There is still insufficient scientific support for the procedure to recommend its attempted use in revocation proceedings.

<sup>6</sup>Commentators have suggested that revocation proceedings should be delayed until the criminal charges are disposed of to avoid placing the offender in an untenable position. "Note, The Due Process Need for Postponement or Use Immunity in Probation Revocation Hearings Based on Criminal Charges," 68 Minn. L. Rev. 1077 (1984). However, most decisions in federal court have determined that there is no constitutional right to such a delay.

## Juvenile Focus\*

By ALVIN W. COHN, D. CRIM.  
*President, Administration of Justice Services, Inc., Rockville, Maryland*

**Abused and Neglected Children:** The number of abused or neglected children more than doubled from 1986 to 1998, from 1.4 million to more than 3 million. According to the Center on Addiction and Substance Abuse at Columbia University, the increase is due in part to substance abusing parents. The study also found that children of substance abusers are three times more likely to be abused and that substance abuse causes or worsens seven out of 10 cases of child abuse or neglect. It is estimated that substance abuse among parents costs the nation \$20 billion annually.

**Prisoners:** Prisoners are spending more time behind bars as states enact laws to narrow the gap between sentences handed down and time actually served, as reported by the Justice Department. Violent offenders released in 1997 spent an average of 49 months in prison, up from 43 months in 1993. On average, those freed in 1997 had served 54 percent of their sentences, while in 1993, they had served an average of 47 percent.

**Youthful Offenders:** In 1996, youth under age 15 were involved in 32 percent of all juvenile arrests and 9 percent of juvenile arrests involved youth under age 13, according to The Office of Juvenile Justice and Delinquency Prevention (OJJDP). Of all the arrests of youths under age 15, 30 percent were for larceny-theft or vandalism; 13 percent were for assaultive behaviors; 9 percent were for running away; 6 percent were for drug- or alcohol-related offenses; and 6 percent were for curfew violations.

Since peaking in 1994, the violent crime arrest rate for youth under 15 has declined, while the violent crime arrest rate for youth over age 15 remained relatively stable from 1983 through 1987 and increased sharply between 1988 and 1994. For both groups, the violent arrest crime rate declined between 1994 and 1996.

According to the FBI, the number of arrests for youth 12 and younger, in 1996, was 250,000. For youth age 13 and 14, the number was 671,900; and youth age 15 and older accounted for 1,929,800 arrests. Between 1986 and 1995, the number of cases referred to juvenile court increased 57 percent for youth under age 15 and 39 percent for youth age 15 and older.

Moreover, in this same period person offense cases handled by juvenile courts increased 129 percent for youth under age 15 and 81 percent for youth 15 and older. During the same period, drug offense cases processed increased 136 percent for youth under 15 and 117 percent for youth over age 15.

**Guns and Children:** Forty-three percent of American households with children have guns, according to a survey

released recently by the Center to Prevent Handgun Violence. Among the gun owners, 28 percent said they keep the guns hidden. Twenty-three percent said that at least one of the guns in the home is loaded at all times.

**Guns and Teen Homicides:** Although homicide rates generally have fallen, recent studies reveal that the increase in homicides by juveniles in the late 1980s was attributed to crimes committed with handguns, not to change in the nature of youth. While the rate of killings by juveniles tripled from 1986 to 1993 and has fallen since, the rate of homicides by juveniles with other weapons has not changed.

The new research on juvenile violence also suggests that much of the increase in arrests of juveniles in aggravated assaults in the late 1980s was not because teen-agers were more violent, but because of increased police activity, as officers arrested young people in altercations that would have been ignored earlier.

**Teen Birth Rates:** Teen birth rates, which have fallen steadily for six years, are falling most sharply among teens who already have at least one child, reports the National Center for Health Statistics. Second births among girls ages 15 to 19 dropped 21 percent and first births dropped six percent between 1991 and 1997. It is speculated that the substantial drop in second-time teen births reflects better contraceptive use, according to the researchers.

**School Violence:** During 1996-1997, 10 percent of public schools reported at least one serious violent crime to the police, and 47 percent reported a less serious, violent or non-violent crime, according to a survey conducted by the National Center for Education Statistics. High schools reported one serious violent crime per 1,000 students and 17 less serious violent or nonviolent crimes per 1,000 students in 1996-1997.

Between 1992 and 1994, 76 students were murdered or committed suicide *at school*, while 7,357 school-aged children were murdered and 4,366 committed suicide *away from school*.

During 1993-1994, 12 percent of elementary and secondary school teachers were threatened with injury by a student and four percent were physically attacked. For the period from 1992 to 1996, the rate of crime victimization was 32 incidents per 1,000 teachers at the high school level and 59 incidents per 1,000 teachers at the middle school level.

**College Smoking:** Smoking rose by 28 percent on college campuses between 1993 and 1997, according to a study published in the *Journal of the American Medical Association* by the Harvard School of Public Health. Smoking increased at 99 of 116 colleges surveyed. The study is based on responses from 14,521 college students surveyed in 1997 and 15,103 in 1993.

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

The survey indicates that whites smoked more than blacks and Asians; college seniors smoked more than underclassmen; but students at more competitive schools smoked less than students at less competitive schools. Students in the West had the lowest rates of smoking.

**Combating Youth Gangs:** Three new studies supported by OJJDP dispel some commonly held myths about young people and gangs. The studies reveal that young people can resist peer pressure to join gangs, that young people who join gangs seeking safety are often in far greater danger for doing so, and that many gang members would be willing to stop selling drugs if they could find steady work.

*Comparing the Criminal Behavior of Youth Gangs and At-Risk Youth* examines criminal behavior of gangs and other at-risk youth in four urban and suburban communities. In *Gang Membership, Delinquent Peers and Delinquent Behavior* and *Gang Members on the Move*, studies report that gang members were significantly more likely to engage in criminal behavior than youth who were not in gangs, but associated with delinquent youth, but that the level of such activity decreased once the youth left the gang.

The report also examines the increasing spread of youth gangs and their migration and expansion patterns, but this had a minimal effect on increasing the number of gangs. Researchers concluded that the expansion of gangs comes more from the proliferation by local gangs than by outsiders moving into communities.

**Teenager Employment:** A national panel of experts issued a warning recently about the hazards of teenage employment, saying that young people who work more than 20 hours a week, regardless of economic background, are less likely to finish high school and more likely to use drugs, and run into trouble with the police.

According to the National Research Council and the Institute of Medicine, the research indicates that young people are injured at work at twice the rate of adults, and 100,000 show up in hospital emergency rooms each year with job-related injuries.

It is estimated that eight of every 10 American teenagers holds a job sometime during their school years, especially in minimum wage jobs. Among high school seniors, it is estimated that 50 percent have jobs.

**College Freshmen Survey:** Contemporary college freshmen are significantly less interested in talking about politics and in keeping up with political issues than freshmen in the 1960s and 1970s, according to an annual survey conducted by UCLA. New freshmen are almost two times more likely to identify being "well off financially" as a very important objective than developing a "philosophy of life"—a reversal from findings obtained three years ago.

As far as casual sex is concerned, the freshman approval rate hovered between 45 and 50 percent between 1974 to 1986, then began to drop to 39.6 percent this year as AIDS emerged as a new threat. Today's freshmen recognize the academic and personal benefits of volunteering, which suggests they are trying to help their own communities, even if they are turned off by national politics.

Among entering freshmen last year, the survey reports, Catholic schools have the highest percentage (57.6 percent) of students who say they drank beer in the past year. Also, no more than 20 percent of the students checked a book out of the library last year. Those attending black institutions were most likely to have both attended a religious service and been late to class last year.

**State of Family Health:** In a survey of nearly 45,000 families by the Urban Institute, researchers point out that how Americans live depends on where they live. Also, most American families have supportive home environments, but too many children are poor and too many adults lack health insurance. However, the survey also reveals that the number of Americans without health insurance is about 12 percent smaller than current government estimates. The survey shows about 36 million nonelderly Americans were uninsured in 1997, not 41 million as previously reported.

The researchers also note that poverty affects children more than adults, for 20 percent of children are below the poverty line (\$16,400 for a family of four) compared with 12 percent of adults. Further, one-third of American children live in families that have trouble affording food, and one-sixth of parents have trouble paying for housing.

**Juvenile Vandalism:** In 1996, according to the FBI's Uniform Crime Reporting (UCR), law enforcement agencies made an estimated 141,600 arrests of persons under age 18 for vandalism. These juvenile arrests represented 44 percent of all arrests for vandalism. Males (89 percent) and youth younger than 16 (63 percent) accounted for the majority of arrests. The juvenile vandalism arrest rate (per 100,000 persons ages 10 through 17) remained virtually level between 1980 and 1988 (398 and 391 respectively) and increased to a high of 497 in 1994. By 1996, the juvenile vandalism arrest rate had declined to 455.

**Young Females and Crime:** According to the FBI, the number of under-18 females arrested rose 59.8 percent from 1988 to 1997, while the number of boys rose 27.9 percent. Girls are also using drugs earlier and more often. The percentage of 10- to 14-year-old girls who have tried alcohol and marijuana is increasing faster than the rate for boys, reports Drug Strategies. While girls are narrowing the gap on arrests, boys are still far ahead: 1.27 million to 455,000 in 1997. Among 28 juvenile crime categories tabulated by the FBI for 1997, boys led in all but two categories: prostitution and runaways.

**Teenager Deaths:** Of the 37,000 (out of 34 million at-risk) youths who die each year, 30 percent are killed in car crashes, almost half of them linked to alcohol. Roughly 10,000 are murdered, commit suicide, or die of complications of AIDS, reports the Centers for Disease Control and Prevention (CDC). Half of the 40,000 new HIV infections that occur each year involve people younger than 25, states the CDC.

The most recent CDC Youth Risk Behavior Surveillance Survey found that boys were more likely than girls to acknowledge that they have never worn a seat belt; fight, carry weapons, and use illicit drugs or smokeless tobacco; drink in binges; and have sex with four or more partners. Girls are more likely to flirt with suicide; suffer from distortions of body

image; and experiment with weight loss programs. Together, teens account for more than 1 million unintended pregnancies and 3 million cases of sexually transmitted diseases each year.

**Reading Scores:** The nation's fourth, eighth, and 12th graders showed improvement in their reading skills since 1994, reported the U.S. Department of Education. The National Assessment of Educational Progress (NAEP) is a set of Congressionally mandated tests that measure per-

formance in reading, math, science, and art and reflect a sample of 31,000 public and private school students.

The average reading score for fourth-graders increased from 214 in 1994 to 217; scores for eighth-graders rose four points to 264; and 12th-graders' scores rose four points to 291. NAEP scales range from zero to 500. Twelfth-graders also increased their scores at the basic, proficient, and advanced levels.

# Reviews of Professional Periodicals

## CRIME AND DELINQUENCY

*Reviewed by* Christine J. Sutton

**"Trends In Juvenile Detention" by Madeline Wordes & Sharon M. Jones (October 1998).** The United States is at a crossroads in determining what to do about juvenile crime. By using the data collected on juvenile offenders for the decade of 1985 through 1995, the authors first highlight the multi-dimensional problems of the juvenile detention system and then suggest strategies to reduce inappropriate detention of incarcerated youth.

The statistics are alarming. In 1995, the average number of juveniles detained in 503 public facilities on a daily basis was 23,000. An additional 7,900 were also held in jails on any given day. Since 1985, this marked a 68 percent increase in the daily detention rate. Furthermore, between 1985 through 1995, the number of juveniles arrested has increased 23 percent. Juvenile drug arrests have increased 78 percent and violent crime rates increased by 53 percent. National arrests for female juveniles has increased 41 percent, whereas the increase for male juveniles was 18 percent. More startling is the fact that there was an 111 percent increase in the violent offenses committed by female juveniles. However, the national detention rate increases did not parallel with the arrest rates. In 1995, male juveniles were detained at a rate six times higher than the females.

The authors' data analysis also reveals the significant difference between African-Americans and white youth national arrest rates for violent and drug offenses. There was a 69 percent growth rate in violent crimes for white juveniles, compared to 39 percent for African-American juveniles. As to drug arrests, in 1995 there was a 166 percent increase for African American juveniles, compared to a 54 percent increase for white juveniles. In 1995, African-American juvenile offenders were detained eight times the rate of white juvenile offenders.

The national trends in juvenile detention map a dreary picture for detained juveniles.

Despite the "get tough" public and political environment, to implement juvenile detention reform, the authors emphasize, will be a complicated series of small tugs. The two possible areas of suggested reform are the admissions process and the length of stay in a detention facility. The first could be addressed through implementing objective admissions criteria and risk assessment that identify juvenile offenders who are appropriate for detention. Use of alternative programs, as opposed to detention, is another possibility. The development and use of a detention staff as a "detention expediter," who review the detained juvenile population for possible release to home or to alternative detention, is another possibility.

In conclusion, the authors concur with the recommendations of the National Juvenile Detention Associations to develop and implement a new definition of "juvenile detention" that is limited by neither place nor process. The definition should also allow for varying types of facilities and programs that allow for detention of juveniles pending placement that addresses public safety issues, uses least restrictive environments, yet does not increase the failure-to-appear rates. The authors urge juvenile justice practitioners to pay more attention to the central role of juvenile detention and to accountability for resources—an age-old problem.

## CANADIAN JOURNAL OF CRIMINOLOGY

*Reviewed by* Robert A. Taylor, Sr.

**"What's Intermediate About 'Intermediate' Sanctions?: The Case of Young Offender Dispositions in Canada," by Voula Marinos (October 1998).** As is the case in the United States, Canadian use of "intermediate" sanctions is on the rise, and intermediacy in punishment has become a key penal strategy. Recently, Canadian lawmakers have passed legislation which not only encourages judges to employ intermediate sanctions for young offenders whenever appropriate, but requires that judges impose imprisonment only when necessary, for both adults and juveniles.

The author of this article conducted an analysis of Youth Court dispositions throughout Canada, focusing on the combinations of punishments imposed—particularly, the extent to which intermediate sanctions were employed as dispositions. The focus of this author's analysis was to understand the use of intermediate sanctions for young offenders in Canada. Using statistics compiled by the Canadian Center for Justice Statistics, the author researched the "most significant dispositions" handed down for each case disposed of in Youth Courts. Each case was associated with a single disposition ordered from the most to the least serious disposition, starting with custody, probation, fine, compensation, paid purchaser, compensation in kind, community service order, and absolute discharge.

The study defines intermediate sanctions as "a range of punishments between the two extreme poles of probation and imprisonment." Like their southern colleagues, Canadian judges routinely impose probation or prison sentences as their primary response to crime, despite the availability of a number of appropriate intermediate sanctions. Consequently, probation caseloads are unmanageable, and prison and jail overcrowding represents a significant problem.

In his analysis, the author explores the nature of imprisonment as a punishment, and to what extent intermediate sanctions offer a viable response to crime. The study further

reveals that probation is the most frequently imposed sanction in all of the cases studied, 65.4 percent, while custody is imposed in 34.1 percent of all cases studied. Intermediate sanctions were imposed in 42.9 percent of all cases studied.

When intermediate sanctions were imposed, community service was clearly the most popular sanction; it was imposed in two-thirds of the cases in which at least one intermediate sanction was used (67.23 percent). Surprisingly, fines were imposed in only 19 percent of all cases.

The author provides his justification for the greater use of intermediate sanctions, while also acknowledging circumstances where an intermediate sanction might not be appropriate. The author concedes that with certain types of crimes (i.e., violent, sexual, or serious property crimes), incarceration may represent the most appropriate response.

In conclusion, the author contends that incarceration should only be employed where an intermediate sanction would not serve the needs and concerns of the community. The author submits that although a significant number of short-term periods of incarceration were imposed in 1994-1995, the use of intermediate sanctions could have clearly resulted in more positive results than incarceration.

**"The Dangerous Offender Provisions: Are They Targeting the Right Offenders?," by James Bonta, Ivan Zinger, Andrew Harris, and Debbie Carriere (October 1998).** In response to an increase in violent crimes perpetrated by young offenders, Canadian criminal justice officials have lobbied for, and in 1977, passed legislation designed to target and punish young and very violent offenders. Because of the significant threat that some young people pose, Canadian legislators have passed laws intended to incapacitate violent offenders who represent the most significant threat to society.

In this article, the authors question the effectiveness of the Dangerous Offender Provisions of the Canadian Criminal Code, and examine to what extent these provisions target the right offenders. Although these statutes were designed to identify and incapacitate those young offenders whose dangerousness justifies severe sanctions, the study asserts that nonviolent offenders are being caught in an ever-widening criminal justice net. According to the authors, prior legislative attempts (Habitual Offender Statutes) to identify and punish violent offenders were less than successful. Specifically, a judicial review of 87 habitual offenders found 73 not to be dangerous according to the 1977 dangerous offender criteria.

According to the authors, in order to be designated by the court as a "dangerous offender," the offender must have committed a "serious personal injury offense." In addition to committing one of the above offenses, at least one of four criteria must be satisfied. (1) The act must have been of such a brutal nature that it compels the conclusion that the behavior is unlikely to be inhibited in the future; (2) There is a pattern of repetitive behavior that suggests a likelihood of causing future harm; (3) There is a pattern of aggressive behavior showing indifference to the consequence of the violence to other persons; and (4) There is a likelihood of

causing injury through a failure to control sexual impulses.

The authors reviewed the files of 64 dangerous offenders from two provinces, representing 43 percent of all dangerous offenders in Canada. The study concentrated on those offenders who were designated between 1979 and 1995. The study revealed that most of the dangerous offenders had extensive criminal histories starting from an early age, and that 40 percent to 45 percent had histories of sexual violence. In addition, the offense that led to the dangerous offender designation and their criminal histories suggested a "profile of highly violent men for whom incapacitation appeared to be the only viable option." The study also found that approximately 95.2 percent of dangerous offenders were Caucasian.

### BRITISH JOURNAL OF CRIMINOLOGY

*Reviewed by James Schloetter*

**"Assault in Prison, The Victim's Contribution" by Kimmett Edgar and Ian O'Donnell (Autumn 1998).** The authors embarked on a study to determine why assaults occur in a prison setting. An understanding of the role of the victim can help explain why an assault happened. The authors examined 96 prison assaults which revealed that activities which are often considered routine can actually increase the risk for assault. The authors showed that victims of assaults sometimes contributed to their own victimization through acts of facilitation, by gaining a reputation for vulnerability, and by increasing the perpetrator's sense of impunity. Somewhat surprisingly, various interpretations of events showed that there may be good reasons for an inmate putting himself at risk of being attacked.

The article looked at episodes of assaults in prison from the victim's viewpoint and was careful not to blame the victim for being a victim. Instead the authors attempted to elicit knowledge of each role played in an assault, from both the aggressor and victim.

Assaults in custody are quite frequent. They are based on status, a prior dispute, verbal abuse, lack of respect, drug dealing, debt arguments, retaliation, and robberies. Since resisting an inmate's demand might be seen as defending one's rights, such actions undoubtedly increase the chance of being assaulted. Verbal abuse is a great catalyst for assault, since the competition is not for goods or resources, but instead is for status. The authors showed that in roughly three quarters of the assaults they studied, the victims did something to directly bring the assault upon themselves.

Despite a high incidence of assault in prison, many inmates did not engage in exploitative behaviors. They stayed clear of drugs, they sought solutions to conflicts which were not based on force, they tended to ignore verbal abuse directed at them, and they avoided the reputation of being isolated or vulnerable. Those inmates that use

assaultive behaviors in prison only increase their own chances of being assaulted. It is ironic that inmates' faith in force is misplaced. But it is doubly ironic that with a value system which promotes force as a means of resolving problems, the decision not to use force, if interpreted as weakness, might be no more effective as a strategy of self-protection from assault.

**"Histories and Crime and Modernity," *British Journal of Criminology* (Volume 39, No.1, Special Issue 1999).** Over the years, many researchers in the criminal justice system have attempted comparative studies of crime across different spectrums, including time periods. The special issue of the *British Journal of Criminology* is an anthology of such comparative studies, looking at crime issues in the 19th and early 20th centuries.

Articles look at such diverse topics as poaching gangs and violence; the juvenile underworld in the early 19th century; migration and social change; female gangs and violence in the late Victorian era; and the urban-rural competition. Each article provides an historical overview of the issue at hand and attempts to re-examine the topic with late 20th century knowledge and understandings. The issue is particularly interesting for those who appreciate history, and believe that we can learn from our predecessors.

## THE PRETRIAL REPORTER

*Reviewed by George F. Moriarty, Jr.*

The February/March 1999 issue of *The Pretrial Reporter* devoted substantial space to the continuing problem of dealing with the mentally ill defendant. The problem is widespread and the closings of psychiatric hospitals nationwide exacerbate the situation.

- In Pasco County, Florida neither the jail nor the local short-term mental health agency is equipped to handle the chronic, deep-seated psychological problems of the severely mentally ill who become involved in the criminal justice system. While their offenses are often minor, their behavior can be extreme, leading the Sheriff's office to complain about behavior management problems, as well as the logistical problems of transporting and housing both those who need medication and those who refuse medication and must be isolated for safety reasons.
- The Skagit County, Washington jail has had to double up

"regular" inmates to accommodate the special supervision needs of the mentally ill ones, who often require checks every 15 minutes. The jail has become the holding site for the mentally ill because troubled people in need of emergency intervention can be held for only 72 hours in a psychiatric facility, and then only if a judge orders it.

- A newspaper editorial in DeSoto County, Mississippi detailed the plight of three mentally ill patients who were being held at the local jail until a bed became available at the state hospital. (A bill that would have allowed the county to house the mentally ill in private hospitals instead of jail to await transfer to the state hospital died in the legislature for the ninth year in a row.)
- In San Bernardino County, California, fully 20 percent of the 3,300 inmates in its largest jail receive mental health treatment, and the Sheriff's budget must absorb the costs. Drugs alone cost over \$400,000 last year. The jail has recently expanded its 20-year relationship with the Department of Behavioral Health to include assessments within 24 hours of new detainees identified by nurses as having mental health problems.

Several jurisdictions have developed innovative, enhanced programs to deal with the mental health issues of defendants entering their criminal justice systems.

- Cook County, Illinois has created a mental health court. Rather than jailing mentally ill and/or substance abusing defendants pretrial, their release on bond is conditional on their getting an assessment (to which every individual in the State of Illinois is entitled) for mental illness and substance abuse and following the assessors' recommendations for treatment. Both the assessment and the subsequent treatment are available at the court-based center. Defendants who are in treatment in a local mental health center have a court available to them at the center for their hearings. Mediators trained in substance abuse and co-occurring mental health disorders are also available.
- The Bernalillo County, New Mexico pretrial services program has three of its employees serving on a team with law enforcement and mental health professionals as part of an effort to keep the mentally ill out of jail and in treatment. The New Mexico Department of Health has funded a diversion program for mentally ill misdemeanants. While some participants are never formally charged and are transported to local mental health centers, others participate in the program after being screened by pretrial

### Women Doing Time

*"In the Mix": Struggle and Survival in a Women's Prison.* By Barbara Owen. Albany, New York: State University of New York Press, 1998. 219 pp. \$19.95.

One of the most neglected topics in criminology today is the experiences of women in correctional facilities. While many authors have addressed male prison life, little is known about the world of the female inmate. Barbara Owen provides dearly needed insight with her ethnographic study of inmates housed at Central California Women's Facility.

Chapter 1 introduces relevant issues regarding prison culture and defines the parameters of prior research on the subject. There have been limited numbers of studies regarding the experiences of women in prison. Issues regarding the nature of female offending (essentially what offenses women are sentenced for) and underlying status issues are addressed.

Chapter 2 provides a discussion of data collection including ethnographic, feminist, and survey methodologies. This section describes the development of inmate relationships supplemented by field notes and taped interviews or conversations. The use of feminist methodology provides a unique approach, because it assumes members of a disadvantaged class (in this case the female inmate) have a unique perspective of social reality not understood by the rest of society.

Chapter 3 addresses the lives of female inmates prior to incarceration. Many of the women included in this study had histories of physical and sexual abuse or problems with drugs and alcohol. While only a small proportion of the women studied were involved in juvenile crime or gang activity, those who were provide graphic descriptions of life on the streets. Data gathered provide clear indications that female inmates are primarily from the margins of society whose crimes are motivated by economic, psychological, and emotional factors.

Chapter 4 addresses how female inmates serve their time. Owen provides a logical, well-ordered analysis of this topic. Initially, she discusses environmental realities of women's prisons, such as crowding, physical layout of the facility, and social organization, followed by a review of the process of entering the prison world. Differences in the experiences of male and female inmates, and first timers versus repeat offenders, are addressed. The type and length of sentence being served also affects the prison experience.

Any newly arriving inmate is faced with learning the ropes of a prison facility. This reality is no different for women; however, the obstacles faced are clearly different from those faced by men. Owen walks the reader through the process of institutionalization, as inmates begin "Making a New Home." The daily lives of the women in prison are shaped by their environment and the schedule imposed by the facility. Much of the time spent in prison is public time;

little privacy is available. Issues such as conflicts, treatment programs, social relationships, and the trade in personal property are punctuated with the personal perspectives of inmates themselves. An extremely interesting perspective on the female inmate culture is provided by a discussion of what is considered "deviant" behavior. While informants or sex offenders are considered repugnant, they are not in the same perpetual danger as male prisoners convicted of such offenses are.

Chapter 5 focuses on relationships which female inmates maintain both inside and outside of prison. Three categories of relationships (family, other prisoners, and staff) are foundational to understanding gender differences in serving time.

Agreeing with prior research, this study found that existing relationships with children and family outside the prison and emerging relationships with other women, often through parallel emotional connections are the two cornerstones of prison life among women... Relationships with staff, however, appear to assume secondary importance for most of the women interviewed.

The reader comes away with a clear picture of the nature of social interactions occurring within the prison setting.

The final chapter describes the culture of a women's prison. The critical areas of prison culture revolve around negotiating the prison world, commitment to the prison code, and involvement in rule-violating behaviors, known as "the mix." The author walks the reader through these critical areas to convey an understanding of how an inmate begins to comprehend and survive the prison culture. The female inmate must achieve "prison smarts" and "juice" (or respect); frequently this knowledge is gained from experienced prisoners who mentor new inmates.

Barbara Owen provides a well-written, timely, and much needed study on the social and cultural experiences of female inmates. The vast majority of prior research on the issue of the prison experience has been based on the male experience. This book is a "must" for anyone considering research on women's prisons. I highly recommend it as a resource for seminar classes focusing on prisons or prison life. Study on this issue should not neglect the experiences of incarcerated women who represent a growing proportion of our prison population.

Huntsville, Texas

DALE G. COLLEDGE

### America's Failed War on Drugs

*The New War on Drugs: Symbolic Politics and Criminal Justice Policy.* Edited by Eric L. Jensen and Jurg Gerber. Cincinnati, OH: Anderson Publishing Co., 1998. 256 pp. (paper), \$24.95.

Eric Jensen, a professor at the University of Idaho, and Jurg Gerber, a professor at Sam Houston State University in

Huntsville, Texas, have edited a provocative if less than convincing book explaining the formulation of the United States' drug policy during the twentieth century. This book also examines the implications of our current approach to dealing with the trafficking and use of illegal substances. Finally, it offers a different alternative to the one presently employed in our country for dealing with substance abuse—one that treats drug use as a medical problem as opposed to a criminal matter.

This book consists of twelve chapters, ten of which examine specific issues arising from the policy adopted by the United States for combatting drugs. The first chapter is written by the editors, and provides an overview of the general thesis that forms the basis of the various monographs that follow. The closing chapter, also written by the editors, summarizes the prevailing sentiments of the other authors regarding the proper public response to drug abuse in this country. Each chapter is written by one or more college academics and each is written from a single perspective—that of a social constructionist.

Social construction is a theory developed by a group of sociologists to explain how policymakers identify certain issues of public concern and why one particular policy is adopted for addressing the "public problem" as opposed to another. The social construction theory asserts that the formulation of public policy has its origins in bureaucrats wishing to create a societal problem so that they can expand their power; politicians desiring a popular campaign issue that will secure the re-election of incumbent officeholders; and a dollar-driven media that seeks to create hysteria in the public in order to increase revenues. As the preface to this book concisely states, "constructionists believe that a combination of political opportunism, media profit maximization, and a desire among criminal justice professionals to increase their spheres of influence has led to many misguided drug policies."

The social constructionists distinguish their theory from that of objectivists, who define "a social problem as a societal condition that causes harm to individuals or to society as a whole." Whereas objectivists believe that societal problems are rationally identified and that the public has a legitimate expectation that public institutions should address these identified problems, social constructionists believe that "a social condition becomes a social problem only when groups or collectivities bring attention to it and influence people to think of it as problematic." Moreover social constructionists assert that these groups or collectivities have a vested interest in identifying a matter as a societal problem and in addressing that problem in a particular manner.

This book notes the historical coincidence that particular drugs associated with certain immigrant populations and ethnic groups were first identified as harmful and proscribed during periods of tension and strife between that immigrant or ethnic group and the majority group. For example, opium was outlawed during a period in American history when there was tremendous conflict between Caucasians living in the Pacific Coast region and immigrant

Chinese; marijuana first became a national concern in the 1930's when Mexican immigrants began to compete seriously with the native labor force in the Southwest; and "crack" cocaine, which is strongly associated with the urban black population, was considered in the 1980s as the leading cause of crime in America. Moreover, the authors in this book also observe that traditionally minority populations have been arrested and incarcerated in much greater numbers for drug crimes than their Anglo counterparts. Finally, this book shows that Congress has established much stiffer penalties for certain drugs associated with minority groups, e. g., crack cocaine, than for similar substances associated with the Anglo population, e. g., powder cocaine.

In addition, the authors in this book discuss the consequences, both intended and unintended, of the current drug policy in this country. They examine the monetary costs of the current war on drugs. They note the large sums expended to hire additional law enforcement agents, monies spent to augment the criminal courts needed to handle the increased dockets, and most significantly, funds appropriated for huge prison expansions. Several authors further discuss the social costs of the war on drugs, especially in minority communities where large groups of youthful males have either been incarcerated or placed under some form of supervision. Moreover, they argue that the current drug policy in this country has caused an erosion in our civil liberties. Finally, certain authors explain the effect that America's drug policy has had in the international arena: to wit, how the United States has attempted to control the foreign policy of other nations regarding drug interdiction and how the United States has attempted to determine the internal policies of other nations regarding substance abuse in their own societies.

This book advocates a change in the United States' drug policy. Instead of attempting to eliminate drugs from our society, the authors of this book argue for the adoption of a harm-reduction policy for dealing with substance abuse in this nation. The aim of such a policy is to treat substance abuse as a health problem and not criminalize drug use. Thus, "the overarching goal of harm reduction is to decrease adverse consequences of drug use without requiring decreased drug use."

While this book raises many important concerns regarding the war on drugs and exposes many inadequacies in the current policy towards drugs in this country, its thesis is not wholly convincing. First, the contributors to this book fail to credibly demonstrate the validity of the social construction theory for explaining the formation of the drug policy in the United States. Instead, this theory distracts from the more "grounded" points of this book and actually undermines the argument for a change in drug policy. Second, it is doubtful that the drug policy advocated here could garner widespread public support, and it is not even certain that this change in direction would effectively reduce the ills that drugs cause to our society. Although serious people of different philosophical and political persuasions have questioned the wisdom of our current drug policy, few if any

have been able to propose an alternative policy that is more constructive than the one we currently have. Even though the authors of this book have contributed to the awareness of a need for change, it remains for others to develop a new

policy for dealing effectively with the scourge of drugs in our society.

*Lampasas, Texas*

TODD JERMSTAD

## —It Has Come to Our Attention—

According to a **Bureau of Justice Statistics** (BJS) report "American Indians and Crime" (February 1999), American Indians are the victims of violent crimes at more than twice the rate of all United States residents. In the U.S. Department of Justice's first comprehensive analysis of Indians and crime, BJS reported that for 1992 through 1996 the average annual rate of violent victimizations among Indians (including Alaska Natives and Aleuts) was 124 per 1,000 residents 12 years old and older, compared to 61 violent victimizations per 1,000 blacks, 49 per 1,000 whites, and 29 per 1,000 Asians. BJS Director Jan Chaiken said, "The findings reveal a disturbing picture of American Indian involvement in crimes as victims and offenders. Both male and female American Indians experience violent crime at higher rates than people of other races and are more likely to experience interracial violence." There are about 2.3 million American Indian residents of the United States, representing just under 1 percent of the total population.

In a recent report, University of California at Berkeley Law Professor **Franklin Zimring** says that serious misreading of youth violence statistics has been driving a nationwide trend toward much harsher approaches to juvenile justice than are necessary. According to Zimring, whose research was funded by the MacArthur Foundation and published by Oxford University Press, unwarranted fear has led to a proposed national policy that is preoccupied with crime control

concerns about children who are currently under 5 years old. Zimring describes it as policy based on fear rather than fact. His analysis of juvenile crime statistics for the period 1980-96, and reinforced by FBI data, shows that juvenile crime has been on the decline for the past 4 years. But more important, says Zimring, is the fact that over the past 20 years, there has been no sustained trend of either increases or decreases in juvenile crime to support the nationwide toughening of laws affecting adolescents in trouble with the law. For more information, contact the MacArthur Foundation at Suite 1100, 140 South Dearborn Street, Chicago, IL 60603-5285, or call Joe Sutherland at 301-652-1558.

**The Office of National Drug Control Policy's Drug Policy Information Clearinghouse** offers a fact sheet on Gamma Hydroxybutyrate (GHB), a powerful and rapidly acting central nervous system depressant. Once sold in health food stores as a performance-enhancing additive in bodybuilding formulas, GHB is being used illicitly with alcohol by young adults and teens at night clubs and parties as a pleasure enhancer. The drug is being created in clandestine laboratories with no guarantee of quality or purity. GHB, usually taken orally as a powder dissolved in liquid or as a liquid sold in vials, can cause such side effects as hallucinations, seizures, respiratory distress, and coma. For more information about GHB or other drug policy issues, call the Drug Policy Information Clearinghouse at 1-800-666-3332 or visit the web site at <http://www.whitehousedrugpolicy.gov>.

# Contributors to this Issue

GREGORY P. FALKIN: Principal Research Investigator, National Development and Research Institutes, Inc., New York, New York. Ph.D., Cornell University. Author of "Drug Treatment: The Criminal Justification," *Federal Probation* (1994).

SHIELA M. STRAUSS: Co-Investigator, National Development and Research Institutes, Inc., New York, New York. Previously, teacher of mathematics, Hunter College High School, New York.

TIMOTHY BOHEN: Drug Services Coordinator, New York City Department of Probation. B.A., St. Bonaventure University.

DAVE HANSON: Supervising United States Probation Officer, U.S. District Court, Charleston, West Virginia. Previously, Superintendent, Anthony Correctional Center, West Virginia Department of Corrections.

RONALD G. BURNS: Assistant Professor, Department of Sociology and Criminal Justice, Texas Christian University. Previously, Research Assistant, Florida Alcohol and Drug Abuse Association. Ph.D., Florida State University. Author of "Realities of Automobile Safety," *Transportation Quarterly* (1999).

PATRICK KINKADE: Director of Criminal Justice and Associate Professor, Department of Sociology and Criminal Justice, Texas Christian University. Ph.D., University of California, Irvine. Author of *Public Support for the Death Penalty: Beyond Gallop* (1998).

MATTHEW C. LEONE: Associate Professor, Department of Criminal Justice, University of Nevada. Ph.D., University of California, Irvine. Author of *Filling the Gap: Essential Readings in Criminal Justice* (1998).

SCOTT PHILLIPS: Doctoral student, University of Georgia. M.A., Louisiana State University.

DANE C. MILLER: Professor, Criminal Justice Department, Central Missouri State University. J.D., St. Louis University School of Law. M.S., Central Missouri State University. Editor, *Probation and Parole Law Reports* (monthly).

RICHARD D. SLUDER: Associate Professor, Criminal Justice Department, Central Missouri State University. Ph.D., Sam Houston State University. Author, "Victimization and Youthful Prison Inmates," *The Prison Journal* (1998).

J. DENNIS LASTER: Associate Professor, Criminal Justice Department, Central Missouri State University. Ph.D., University of Southern Mississippi. J.D., University of Missouri. Author of "The Impact of HIV/AIDS in Prisons" in *The Dilemmas of Corrections* (1999).

ROBERT A. SHEARER: Professor, College of Criminal Justice, Sam Houston State University. Ph.D., Texas A & M. Author, *Interviewing in Criminal Justice* (1996).

CHRIS R. CARTER: Coordinator for Program Analysis, College of Criminal Justice, Sam Houston State University. M.A., Sam Houston State University. Author of "Prevalence of DSM-IV Substance Abuse and Dependence Disorders Among Prison Inmates" (1998).

SAM TORRES: Associate Professor, Department of Criminal Justice, California State University, Long Beach. Previously, Senior U.S. Probation Officer, Central District of California. Ph.D., Claremont Graduate School. Author of "Monitoring Prescription Medication Use Among Substance Abusing Offenders," *Federal Probation* (June 1998).

S. SCOTT MACDONALD: Assistant Division Director, Santa Cruz Probation Department. M.S., San Jose State University.

CYNTHIA BAROODY-HART: Associate Professor, San Jose State University. Ph.D., State University of New York at Buffalo. Author of "The Social Readjustment Scale Adapted for an Incarcerated Population," *Journal of Offender Rehabilitation* (1997).

KATHERINE VAN WORMER: Professor, Social Work Department, University of Northern Iowa. Previously Professor, Criminal Justice Department, Kent State University. Ph.D., University of Georgia. Author of *Social Welfare: A World-View* (1997).

ERIC T. ASSUR: Director, Center County Probation, Fairfax County Juvenile Court. M.A., American University. Author of *Adult Children of Alcoholics* (1987).

M. CELIA GOLDBERG: Probation Officer, Fairfax County Juvenile Court. M.A., Marymount University.

LUCINDA ROSS: Secretary, Fairfax County Juvenile Court. B.A., Shippensburg State College.

CURTIS R. BLAKELY: Training Specialist and Adjunct Professor, Department of Police Studies, Eastern Kentucky University. Author of "The Rehabilitative Benefits of Education: American Penal Educators Speak Out," *Prison Service Journal* (1998).

VIC W. BUMPHUS: Assistant Professor, Department of Police Studies, Eastern Kentucky University. Author of "Arming the Campus Cops: A Descriptive and Multi-Variate Assessment of Support," *Policing: An International Journal of Police Strategies and Management* (1998).

ARTHUR J. LURIGIO: Professor and Chairperson, Department of Criminal Justice, Loyola University, Chicago. Previously, Assistant Professor, Department of Psychology, Northwestern University. Ph.D., Loyola University, Chicago. Co-author of *The Prevention of Crime: Social and Situational Strategies* (1998).

JAMES A. SWARTZ: Director of Research and Information Services, Treatment Alternatives for Safe Communities (TASC). Previously, Computer Programmer/Analyst, Northwestern University. Ph.D., Northwestern University. Author of "Final Thoughts on IMPACT: A federally funded, jail-based, drug treatment program," *Substance Use and Misuse* (1999).

## PERIODICAL REVIEWERS

GEORGE F. MORIARTY, JR., is Chief U.S. Pretrial Services Officer, District of Massachusetts, Boston.

JAMES M. SCHLOETTER is Supervising U.S. Probation Officer, Northern District of California, Oakland.

CHRISTINE J. SUTTON is Supervising U.S. Probation Officer, Central District of California, Los Angeles.

ROBERT A. TAYLOR, SR., is Senior U.S. Probation Officer, Southern District of Ohio, Columbus, and Adjunct Instructor, Ohio State University and Otterbein College.

## BOOK REVIEWERS

DALE COLLEDGE is completing his doctorate in criminal justice at Sam Houston State University.

TODD JERMSTAD is Legal Counsel, Bell County Community Supervision and Corrections Department, Belton, Texas.

# **United States Government INFORMATION**

## Order Processing Code:

\*5876

*Credit card orders are welcome!*

**Fax your orders (202) 512-2250  
Phone your orders (202) 512-1800**

**YES**, please send me \_\_\_\_\_ subscription(s) to

**Federal Probation** (FPO) at \$6.50 each (\$8.15 foreign) per year

The total cost of my order is \$ \_\_\_\_\_ .  
Price includes regular shipping & handling and is subject to change.

Name or title	(Please type or print)		
Company name	Room, floor, suite		
Street address	/	/	
City	State	Zip code+4	
Daytime phone including area code			
Purchase order number (optional)			

### **Check method of payment:**

Check payable to: Superintendent of Documents

GPO Deposit Account

VISA       MasterCard       Discover

(expiration date)

NAME \_\_\_\_\_

---

**Authorizing signature**

9 / 99

**Mail To:** Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954

**Important: Please include this completed order form with your remittance.**

Thank you for your order!

**FEDERAL PROBATION**

Administrative Office of  
the United States Courts  
Washington, DC 20544