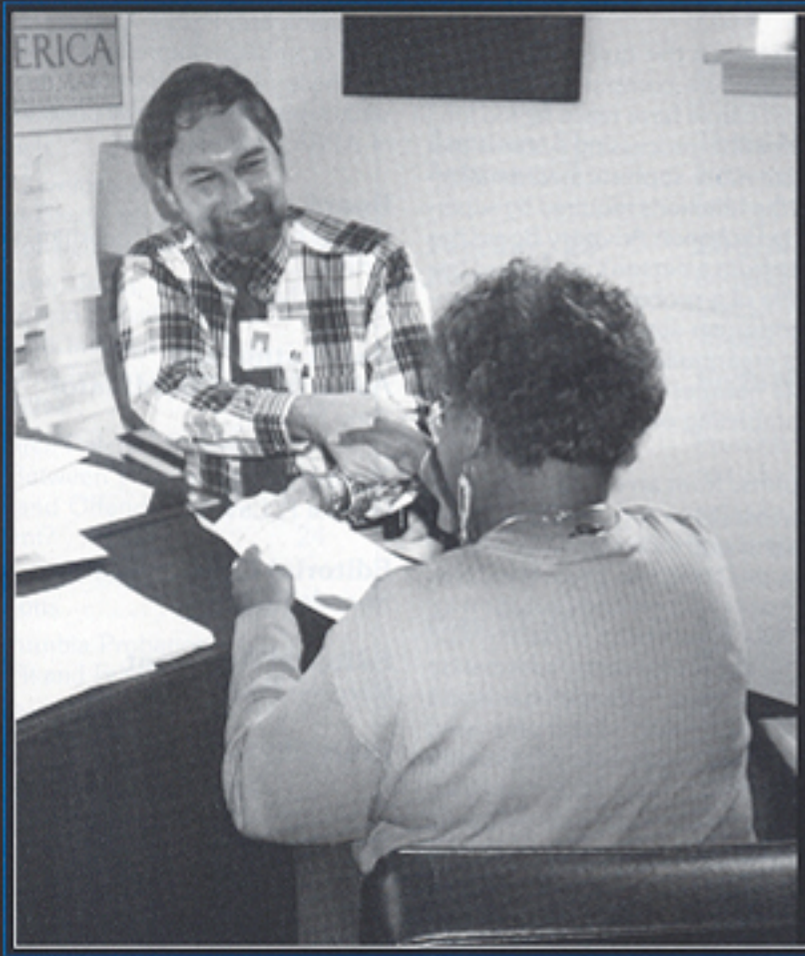
American Probation and Parole Association Winter 1993

PERSPECTIVES

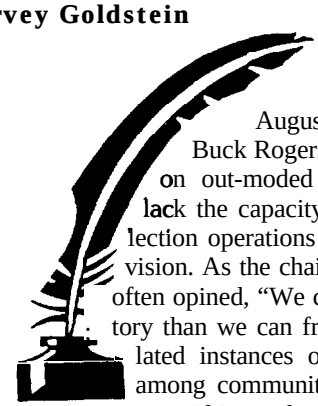


A Look at *Ethics and Values* in the Probation and Parole Profession

Plan to Attend APPA's Winter Training Institute
January 31-February 3, 1993 in Austin, Texas
Details Inside

Harvey Goldstein

PRESIDENT'S MESSAGE



It's time to replace the quill pen of John Augustus with the gigabyte computer systems of Buck Rogers. Probation and parole have relied far too long on out-moded manual information-processing systems that lack the capacity to interact with more sophisticated data collection operations and perform the functions required by supervision. As the chairman of a State Probation Advisory Board has often opined, "We can learn more from a person's credit card history than we can from the case file of a probationer." While isolated instances of advanced computer systems can be found among community corrections organizations, the lack of common systems within probation and parole hamper effective operations. Moreover, our ability to be effective in completing our mission - public protection — is compromised.

As cases are processed through the courts, from arrest through court intake, from bail hearings through diversion decisions and ultimately to disposition, a significant amount of demographic and individual case history data is accumulated. In all too many states, this collection process is duplicated, almost in its entirety, through presentence report and probation intake procedures. Parole similarly duplicates information collected and processed by others. Presentence and correctional processing information is rarely available in an automated fashion to be used by parole boards and aftercare agencies. Often the same information is collected and processed multiple times. These activities detract from field staff's ability to monitor and supervise offenders in the community. A recent study documented that juvenile probation officials (managers and line staff) each saved nearly ten hours a month by maintaining an interactive computer system with the Family Court. At the touch of a button, demographic, case history, and dispositional data appeared at the console of a probation officer. Further, all cases involving any family member of the juvenile - child support, domestic violence, adult criminal, sibling juvenile - were immediately available to the officer. The time saved can be better used by the officer supervising the probationers rather than collecting duplicate case data.

Beyond the information stage, automated systems can be used to enhance the performance of staff. The financial collection role of probation and parole personnel has been debated in the professional journals for some time now. The fact is that enforcing economic conditions of community corrections is here. and in all likelihood it is here to stay. A plethora of research studies have documented that automated collections systems are more effective in obtaining compliance than manual exhortations of staff. Indeed, interfaces with unemployment insurance, disability payments, employment records and motor vehicle systems can provide the enforcement and information tools that probation and parole staff need. Beyond that, payments such as state income tax refunds can be intercepted with-

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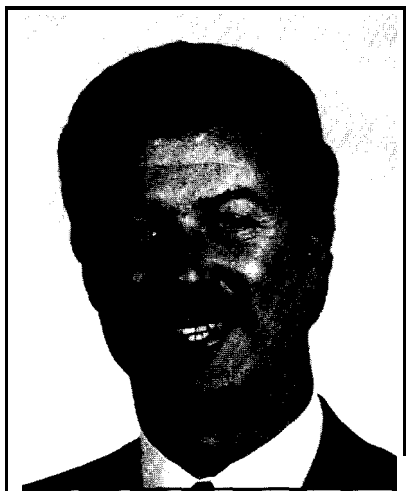

Robert E. DeComo

Arthur J. Lurigio

Dan Richard Beto

Letter from the Editors

by Robert E. DeComo, Ph.D., Chairman, Editorial Committee

Welcome to the Winter 1993 issue of Perspectives.

This issue represents a mini-theme issue on the subject of ethics and values in the probation and parole profession. During this election year we have heard much about these issues in regard to other public officials, so we thought it would be timely and interesting to present a discussion of ethics and values for our own field. To begin our coverage in this area we present an article by Richard Wehmhoefer, Executive Director and General Counsel of the Colorado Commission on Judicial Discipline. Mr. Wehmhoefer encourages those of us in the probation and parole profession to become proactive when dealing with the issues of ethics and values, and points out some of the important benefits to be gained by developing a Code of Conduct and in providing training for all employees in this area. The main body of this discussion follows and comes from two notable addresses that were made at recent APPA conferences.

First we present a speech by Don Evans, APPA's immediate past President, that he delivered at the closing session in Atlanta in 1991. In his address, Don reflects on the values in our profession that have been the driving forces in our past and present, and goes on to evaluate the values that are or should be affecting its future.

Our second address was delivered by Professor Todd Clear at the opening plenary session in St. Louis this year. Many of you that heard that address were so moved and inspired that we received numerous requests to reproduce it in Perspectives. We are pleased to include Todd's very personal speech in which he reflected on the values which shaped his father's life as a teacher and practitioner in our field.

Moving on to our other special feature, we present an article on the design and development of an information system for juvenile probation. Gerald Wilcenski and his staff recount their experiences with implementing the FACTS-Probation system which has integrated automation into the daily operation of 12 county juvenile probation departments in New Jersey. This article should be instructive to those who are designing or redesigning their own information systems, both in terms of specific features that have proved beneficial and the process used to successfully guide its development.

Our next special feature was contributed by Professors McGaha and Brown from the Southeast Missouri State University. The state of Missouri, like many states faced with overcrowding and litigation in their juvenile correctional systems sought solutions in expanding community programs. Our authors describe one of the model programs that emerged from this effort in Missouri. Operation Involvement is a unique Youth Services/University-based, intensive supervision program which involves one-on-one involvement between delinquents and college students who act as both positive role models and intensive case monitors. The paper presents the operational concepts of the program, several case studies, and some very encouraging evaluation data regarding its performance.

Our next special feature was contributed by Arthur Spica, Deputy Chief of the Cook County Probation Department. Mr. Spica discusses the increasingly important **role** that referrals for services must play in probation supervision in an era of diminishing resources. In his article, Mr. Spica presents some very practical strategies on making effective referrals that line staff and supervisors can follow in 1) deciding when to make a referral; 2) evaluating service providers; and 3) communicating with clients and providers.

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Letter from the Editors

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Our last special feature was contributed by S.D. Howell from the Province of British Columbia, which is celebrating the 50th anniversary of its probation service this year. This interesting piece recounts to us the forces that brought about the inception and evolution of the province's probation service and describes the dynamics that characterize its contemporary operations.

Finally, this issue also includes our regularly featured NIC Update and Legal Page. The NIC update focuses on that agency's efforts to generate information about female offenders in our correctional systems and to provide assistance to agencies interested in devoting attention to innovative programming for these special offenders. Specifically, the update includes the announcement and application information for NIC's expanded Intermediate Sanctions for Female Offenders project, which will provide funding and technical assistance to community corrections agencies in this area.

Our Legal Page on federal case law in sexual harassment has been contributed by Greg Markley from Austin. Texas. As we should all be aware from numerous news stories, this is an area of potential liability to employers and supervisors that has increased dramatically in just a short period. Mr. Markley's article is useful in helping probation and parole professionals correctly interpret the relevant case law in this area, and to understand what specific actions should be taken to control agency and individual vulnerability to successful legal challenges.

In closing, the Editorial Committee wishes to express its appreciation for the continued support of the Perspectives contributors and readership and encourages you to send your suggestions, comments and contributions to its members by writing to:

Robert E. DeComo, NCCD 685, Market St., Suite 620, San Francisco, CA 94105.

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President's Message

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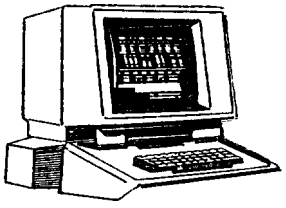
out lengthy battles with recalcitrant offenders. A computer-enhanced collection operation will result in greater restitution collections on behalf of victims and augmented funding for victim compensation programs, victim/witness assistance operations and anti-drug education and prevention efforts. Of even greater importance, more probation and parole staff time will be available to provide adequate supervision.

Finally, computer systems can provide automated word processing ability to staff, making clerical and professional personnel more effective in performing their functions. Further, automation can help develop paper-free files, augment team supervision, and facilitate research, offense trend identification, and drug usage patterns. These systems are not inexpensive to develop and maintain. But ask any administrator who has one whether s/he is willing to give it up. I doubt it. Let's learn from one another's systems and develop interstate information processing that will improve compact administration and ameliorate intrastate operations. Let's give John Augustus a *mighty quill.*



Information For *Perspectives* Contributors

The American Probation and Parole Association's Publication, Perspectives, disseminates information to the Association's members on relevant policy and program issues and provides updates on activities of the Association. The membership represents adult and juvenile probation, parole and community agencies throughout the United States and Canada. Articles submitted for publication are screened by a Board of Editors and, on occasion. selected reviewers, to determine acceptability based on relevance to the field of criminal justice, clarity of presentation, or research methodology. Perspectives does not reflect unsupported personal opinions. Submissions are encouraged following these procedures:

Articles should be submitted in triplicate to the Chair for the Board of Editors (refer to the "Letter from the Editors" for address) meeting the listed deadlines:

Spring 1993 Issue	**December 21, 1992**
Summer 1993 Issue	**March 26, 1993**
Fall 1993 Issue	**June 25, 1993**
Winter 1994 Issue	**September 24, 1993**

If possible, please submit articles in ASCII format on an IBM compatible computer disk along with three hard copies.

Unless previously discussed with the editors, submissions should not exceed ten typed pages which are numbered consecutively and double spaced. All charts, graphs, tables and photographs must be of reproduction quality. Optional titles may be submitted and selected after review with the editors.

All submissions should be in English. Footnotes should be used only for clarification or substantive comments and should appear at the end of the text.

References to source documents should appear in the body of the text with the author's surname and the year of publication in parenthesis, (e.g., Jackson, 1985). Multiple references to sources by the same author should be labeled alphabetically with each year. e.g., (Jackson, 1985a). If the same source is cited more than once, indicate the various pages of the source with each reference, e.g., (Jackson, 1985: 162-165). Alphabetize each reference at the end of the text using the following format:

Anderson, Paul J. "Salary Survey of Juvenile Probation Officers." Criminal Justice Center, University of Michigan (1982).

Jackson, D.J. "Electronic Monitoring Devices." Probation Quarterly (Spring, 1985): 86-101.

While the editors of Perspectives reserve the right to suggest modifications to any contribution. all authors will be responsible for and given credit for final versions of articles selected for publication. Submissions will not be returned to contributors. ❑

Ethics in the Probation and Parole Profession:

A Vision for the Future

by Richard A. Wehmhoefer, Ph.D., J.D., Attorney at Law and Executive Director and General Counsel, Colorado Commission on Judicial Discipline

Since the end of the decade of the 1980s there has been a growing demand from society for ethical and socially-responsible behavior on the part of individuals in government and business. Regardless of the profession one is examining today, it seems that there is a public outcry for professionals to "do something" to clean up unethical conduct in their respective profession, or the public will begin demanding that more oversight and regulatory bodies be created to do what professionals themselves might be unable or unwilling to do.

This demand has now reached into the arena of probation and parole officers. In effect, it has been recognized that many of the job-related decisions probation and parole officers make today are moral in nature. Tools must be provided to assist individuals in making such decisions. This has become particularly true in the probation and parole profession in an era of growing politicization of probation and parole, accompanied by severe budgetary and personnel cutbacks at both the line and managerial levels.

Arguments have been made that probation and parole decision making and ethics do not mix. In probation and parole, some have argued, the purpose of the probation and parole professional is to oversee the re-integration of individuals into the mainstream of society as productive and law-abiding citizens.

This re-integration process is accomplished through enforcing court orders, holding individuals assigned to be responsible and accountable, and working with the various constituent groups who interact with probation and parole professionals to accomplish mutually beneficial outcomes. Thus, because probation and parole officers have their own rules and objectives, ethical concepts, standards and judgments are inappropriate in the probation and parole context.

But, such a view has come to be disputed. The probation and parole professional works with clients in an economic environment and, like our economy as a whole, this environment has a moral foundation.

While it is true that the goal of probation and parole officers is to see that convicted criminal defendants are incorporated into society, this incorporation process is not a morally-neutral activity. Nor is the process for generating such things as pre-sentence investigation reports or other services such as drug testing, AIDS testing or home monitoring, morally neutral. Such a conclusion is evidenced not only by the thousands of laws and government regulations that govern both the internal conduct expected of probation and parole officers and also the external environment including legislative, media and public perceptions, in which probation and parole officers must operate on a daily basis.

In addition, many probation and parole departments and agencies have recognized that ethics is more than just adherence to the law. These departments and agencies have begun to develop codes of ethical conduct and to train employees at all levels of the organization in accepted standards of ethical conduct. In particular, the American Probation and Parole Association (APPA), in deciding to develop a Code of Ethics and to begin offering intensive sessions on ethics in the probation and parole profession at its annual conference in 1992, is on the leading edge of this phenomenon.

Even for a professional association like the APPA that already has a positive reputation for encouraging high standards of ethical conduct among its members, the need for the strategies it has decided to pursue will have long-term positive consequences. This is so because public distrust of government and, in particular, the role that probation and parole plays in the punishment and rehabilitation of convicted defendants in society, has increased in recent times.

Examples of why this distrust has increased include recurrent press reports of recidivism by convicted criminal defendants, heinous acts committed against otherwise law-abiding citizens by convicts on probation or parole, and reports on evaluations conducted by prestigious research think tanks showing that new programs undertaken by probation and parole officials (like intensive supervision programs) are simply ineffective and "don't work."

It seems that the public tends to "paint all probation and parole officers with the same brush." Thus, probation and parole agencies must continually guard against even the possibility that the public might accuse them of being ethically irresponsible.

In light of this growing negative public perceptions of probation and parole professionals, some within the profession itself have concluded that it faces a true crisis of legitimacy. So long as public trust and confidence in the job probation and parole officers are performing rank at a low level, proactive action must be taken now. In other words, in such a climate, an investigation of ethics and values, of the moral dimension of the probation and parole profession, and of the role that probation and parole officers play in society becomes necessary.

Therefore, it is incumbent on probation and parole officers and members of APPA to begin to define what ethics means in the profession, to examine the implications of the actions that various probation and parole agencies and

APPA have taken in the area of ethical conduct, to develop theoretical and applied concepts of ethics and social responsibility for the probation and parole professional, and to provide probation and parole professionals an understanding of how these concepts are applied in their profession as it interacts with other constituent groups in today's complex world.

The ultimate value of such an undertaking is to assist each probation and parole officer in gaining a better understanding of his or her own personal values and ethics, and integrating this understanding with the knowledge and training gained in each person's educational and professional career, as well as the expectations of the probation and parole profession for proper ethical conduct and behavior on the part of each of its professionals.

Specifically, at the conclusion of such a process, each probation and parole officer should be able to:

1. Demonstrate an understanding of the relationships between values, ethics, and socially responsible behavior in the probation and parole profession vis-a-vis public perceptions about the performance of the probation and parole profession, and various constituency expectations for the probation and parole profession to accomplish its purpose and goals;
2. Demonstrate competence in the conceptualization, analysis, presentation and discussion, pro and con, of current ethical and social responsibility issues, particularly those that are relevant to the probation and parole profession; and
3. Evidence an understanding of the values, attitudes, and behaviors concerning the responsibility of the probation and parole officer for ethical and socially-responsible behavior consistent with the continuing development of a public philosophy favorable to the probation and parole profession.

The public tends to "paint all probation and parole officers with the same brush."

In conclusion, the probation and parole profession must become proactive when dealing with ethics and social responsibility. It is only through such a process that the probation and parole professional can gain a better understanding of how proper ethical conduct will benefit all professionals, both in the near term and in the long run.

Past, Present and Future:

Probation, the Adaptable Agency

by Donald G. Evans, Assistant Deputy Minister, Policing Services Division, Ontario Ministry of the Solicitor General

In attempting to give the reader a sense of past, present, and maybe the future, it is useful to bear in mind that most prophetic messages are merely a reminder of where we are now and what they are related to in terms of our values and traditions from the past.

All ideas have consequences and will make a difference; therefore, it is important to understand how our values are related to the ideas expressed. Of primary importance is the need to understand that innovation has a timeline. That is why we cannot expect to put an idea into effect today and then tomorrow wonder why changes did not take place overnight. However, this is a particular problem in corrections and probation/parole. We have innovative ideas which are put in place, but we immediately want to evaluate them after a year and say, "that didn't work, we better quit that and try something else." In the world of innovation, it takes anywhere from five to seven years before the actual plan you are trying to put into effect takes root and begins to make a difference. Without this sense of reality, there will be challenges trying to shorten the timelines of innovation. I have studied organizational change at length and it is not uncommon to hear that something is not working, when it was only started nine months earlier. Innovation takes time; to reshape the organizational culture, it takes time to express values, and to educate people about new ways of working. We need to think about that when we have an idea that we want to turn into an innovation and we want to move forward.

We must also bear in mind that institutional response is caught in the institutional structure in which we are trying to work, and there will be a time lag in its response to the new ideas. We have to consistently remind ourselves that, while it takes time to learn something, once learned it is already obsolete. So there is a constant need to be pushing forward, thinking about new ways to do things, conducting research and study, and never giving up.

I want to draw the reader's attention to four books, all written by the same author. The first book is The *Adaptive* Organization. The author discusses the need for all organizations to learn to be adaptive to emerging realities. In the correctional area, probation and parole is the most adaptive organization in the business, and it is important to keep in mind the adaptiveness of this field and its capability to be flexible. The author, Alvin Toffler, excited all of us with his book, Future *Shock.* He explored the accelerating rate of change and probation/parole went along this route consistently. In fact, "shock," the last word of the title of Toffler's book, is useful to begin to think of in terms of the past.

Probation and parole has gone through what I describe as a shocking period. We were going along nicely; there was a lot of discussion about one modality of work. We were focused on a certain type of counseling - a kind of treatment orientation, if you prefer. Rehabilitation was still not a dirty word. I remember that the first time I went to visit a home, I was completely angered by what I saw in that home. I was angered to find the kind of housing the individuals lived in, and the circumstances under which the people were trying to adapt and respond. I went away feeling "no wonder they do what they do." I wondered how I could channel this anger so it would not make me bitter and resentful. Then I received a real shock. One day I was listening to a friend talking about an article he had read, entitled "The Tyranny of Treatment." That was the first time I began to understand and hear that there were some people who did not think the way I did about treatment. Indeed, that people were beginning to see that there were some abuses in rehabilitative treatment.

The reader will no doubt recall the circumstances surrounding Martinson's attack on treatment programs, but it took a long time for probation/parole to realize that he was only talking about research that was done just after World War II. It was not even reflective of where we were in the field at the time. We are all familiar with the rise of the justice model which came out of liberal roots, and how new ideas began to filter in which started us thinking about things in different way, We combined that with two other things that happened almost simultaneously.

First, there was a growing demand for more public accountability of people working in government. People wanted to obtain a better accounting of what we were doing with those entrusted to our custody and care. Second, we talked about issues of public safety. For example, people began to talk more about the need for safe streets. And then the recession came, the first one that this generation remembers. Issues of fiscal restraint began to be the change agent in the way we planned and operated. In fact, the decline of the rehabilitative ideal, the rise of the justice model, the emphasis on public accountability, and issues of public safety and fiscal restraint all became change agents. We had not thought about probation/parole in that way before, and there were ways in which we began to be adaptive and to respond to the changes.

Keep this "shock" element forefront, because these changes shocked the field. I remember going to conferences where the debate about whether or not we would do certain things would sometimes divide the Association. We have managed to adapt and work through

that. Even though we still have dissent, it is now more reasonable and informed.

This leads me into a review of the generational cycle of correctional reform. A problem emerges and people become unhappy. A reaction sets in and reform occurs. What happened in the seventies was a reaction to all the previous reforms that led to further reform - the reform that we are now working our way through. Underlining that becomes a reaction to the current reforms: ideas have consequences, innovation has a time lag, and the institutional response is caught in the time lag. You can see that in the cycle of reform. Probation/parole is facing a current reform agenda which is driven by the intermediate sanctions/punishments debate. Drugs and violence remain a big issue, but rather than becoming overly focused by that agenda, we should try to understand where most of the social harm is sometimes done.

In a recent discussion about property crimes and crimes of money (economic crime), it emerged that Western democracies make little distinction between these types of crime, but there is an interesting difference in the response to that crime in various countries. For example, banks lose more money from embezzlement and fraud by their own employees than they have ever lost through bank robberies. Hotels are forced to literally nail down just about everything as a deterrence to people who are able to pay between $60 and $200 a night for a room, but who still feel the need to take home TV sets, refrigerators, side tables, etc. This creates an interesting dilemma in determining what crimes we should or should not respond to.

I suggest that we should not get caught up in the school of thought about the legalization of drugs which argues that legalizing drugs would somehow make things more manageable. I suggest this because beneath all law lies only the state's power to use criminal sanctions to support the regulations, and there is no alternative to this. If drugs were legalized, an individual might not get charged with a crime, but would get charged because s/he violated a regulation. Therefore, the end result will be the same. It will still be a criminal sanction response. There are no other responses in terms of the dispersion of the state's penal power.

I want to explore the issue of demographics as a critical factor that will have a significant effect in probation/parole. Our aging population will definitely have to be taken into consideration in the way we plan for the future of this field. When we began working in this field, many of us believed research that suggested offenders "burned out" at 40. However, as the reader will know, the media inform us of 60 and 70 year old men assaulting their spouses and committing incredible acts of violence. What is the probation/parole response going to be to that? Already, in dealing with elderly offenders who commit violent crimes, the debate of whether or not this is a correctional/criminal justice response or a social service/health response is beginning to heat up. It will have an impact on this field, just as youth will have an impact.

An aging population theoretically means there are fewer youth in our society. But, even if there are fewer young people who commit crimes, those who do seem to be doing so at a higher level, and are committing more serious types of offense. These youth are going to be more difficult to deal with, not less.

Certainly, fiscal and economic realities and constraints will continue to be with us. Coupled with this will be enormous efforts of government and industry to restructure their organizations. As the nature of work changes, and as the kind of skills and education that are required to work in our society change in response to competition, we have to ask ourselves what this effect will be on certain groups of people within our society. What will the new correctional department look like in the future? Will it be an amalgam of education, social services and traditional criminal justice? Clearly, we do not have the luxury of staying in our little tight departments any longer.

Finally, the response to technology also adds to this current reality. At present, there is a tendency to regard technology as a way out. We look to technology as a way of sacrificing the human effort at times. I would suggest that we take a better look at technology response and ask ourselves the questions of whether we can, in fact, afford to merely use technology because it is available if it does not really accomplish what we want it to accomplish.

We must find a way to take criminal justice and put it in the envelope of social justice.

So much for the shock of the past. That takes us to the present and my reference to another Alvin Toffler book, *The Third Wave*. We are in this wave now. A wave is something that surges over you. You only have a couple of responses to a wave - to be engulfed by it and drowned, or to go with it. The wave that we are currently riding is the alternative debate. Probation/parole finally realized that all the community corrections and all the probation programs we were doing were not an alternative to any other sanction we have. Therefore, we have to rethink our positioning. That has led us to the discussion of intermediate sanctions, which some people refer to as a "continuum" of sanctions, or graduated tariffs. Something else has happened that will make it very difficult for us to work intermediate sanctions because, in the process of the shock that helped create this wave that we are riding, we squeezed discretion out of the system as much as we could. We are going to have to learn how to put discretion back into the system if intermediate sanctions are truly going to work. That will be one of our major challenges.

I like the emphasis that is beginning to occur in terms of understanding that the social problems that are facing us are not all occurring because people are necessarily bad (or mad), but that there are circumstances and situations that need to be looked at and dealt with. The majority of our caseloads are comprised of youth who have experi-

enced rotten outcomes in their lives. Many of them have been pushed out of educational facilities, and have high rates of illiteracy which makes them unemployable. When these factors are combined, some of the responses they have (such as drugs) almost make sense. These youths cannot see any alternate lifestyle, and that is what is so frightening. They cannot see hope, they have no ambition, and cannot fathom a way out. Therefore, I would like to suggest to you in riding this wave, that we must find a way to take criminal justice and put it in the envelope of social justice.

Social justice means reviving a sense of community and social solidarity. It means finding ways to keep from fragmenting our society, reducing the intergenerational and multi-cultural tensions that are beginning to arise, respecting human dignity and self-worth, and reducing unemployment and poverty. The real threat to our society is the development of a permanent underclass. As professionals, we ought to be concerned about the re-awakening of altruism and philanthropy, the realization that left-right ideologies are becoming more and more irrelevant, if not obsolete. We should not get caught up in those debates. We have made an adequate and an adaptive response to date, which has been done structurally and organizationally. More and more departments have taken their correctional units and tried to put them together. In Canada, there are no longer any directors of probation and parole. That has occurred in many American states. There is a greater flow-through in career lines between people working in community and probation and parole on the institutional corrections. In essence, there is a correctional response. Our old debates are becoming obsolete; we need to examine where we stand on that. We have had an adaptive response problematically. I cannot think of any organization anywhere in the world that has amassed the level of pragmatic innovation that probation and parole has.

As little as 20 years ago we did not have classification systems, various programs or surveillance technology. The programmatic adaptation in the field has been incredible. We have learned to adapt and have done an incredible job of educating and training our staff. One would begin to look at it and see that in some ways, compared to other organizations, probation and parole as a profession has cause to hold its head up high. Its training and development has been one of the things that has helped it to be adaptive. The result is that probation has become a pragmatic and adaptive service that will survive long into the next millennium.

But what about the future? Toffler's last book, Power Shift, addressed the future, the big question mark. Certainly, there is a shift occurring. It is an interesting shift that we are all participating in, but it is a shift that will demand we begin to ask certain value-based questions, because one of the big debates of the future is going to be: "Is probation and parole community-based?" I suggest that it is in danger of not being community-based.

One of the shifts in our business that is occurring is that probation and parole is becoming institutionally-based and community-placed. We are beginning to look like extensions of this institutional activity. By this, I am not referring to prisons. I am referring to an institutional mentality, a bureaucratic mentality, a structure that occurs within society that begins to operate on the assumption and the guise that it is a community response when, in fact, it is an institutional response. In theory, a jail or prison is community-based - the inmates all reside in a community. Consider probation and parole. In some jurisdictions such as Canada, it is harder to get into a probation office than it is in one of our correctional centers. Prisoners inside a correctional center are considered to be less of a threat than probationers on the street. This is institution-based. I suggest that a community-based, or even better, a community-run system would have its responses from the community. This is a radical difference that allows for a lot more regional differences, for much more participation of the community, for more mitigating and mediating structures between the government and the problem it is trying to respond to. It is important for us to think and reflect on this. Are we community-based, community-run, or are we indeed merely an institution that has been community-placed?

In conclusion, in regard to the wave that we are riding, a shift that may be occurring is the danger of being institution-based rather than community-run. We need to remember the values that drive and motivate us. These values should be useful to us in terms of reflective action. They can help us conduct research, and to develop and evaluate new policies and programs. We should value dissent in the search for excellence. A great program begins with an idea, and a great service with determination. We have good ideas, we have determination and we have the will.

Adapted from a speech delivered by Mr. Evans at the closing session of the APPA *Annual Institute,* July 10, 1991 in Atlanta, GA.

JOB ANNOUNCEMENT

The National Institute of Corrections (NIC) Information Center is seeking applications for a Corrections Specialist with a background in state and/or local community-based corrections. The Corrections Specialist will be an employee of LIS, Inc., which operates the NIC Information Center in Longmont, Colorado.

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For further information and application instructions, contact Ms. Paula Wenger, Mr. Rod Bottoms, or Ms. Eileen Conway at the NIC Information Center, (303) 682-0213. The position is open until ii is filled.

Values in Probation Work

by Todd R. Clear, Ph.D., Professor, Rutgers University

My father, Val Clear, died on August 21, 1992.

For the last eleven years of his life, he worked as a probation officer in Madison County, Indiana. As I sorted through the artifacts of his life, organizing Dad's effects, I became increasingly impressed with the way he was able to use probation work as a vehicle for expressing the most cherished values of his life. And so, I would like to honor him today by talking about the values that undergirded his work.

It is appropriate, even necessary, that we consider the importance of values in our work, because the pursuit of criminal justice without values is a hopeless mistake. Without attending to values, we find ourselves captives of the faddishness of science and politics - years ago, it was the intrusive paternalism of the medical model; these days, it is the mindless punitiveness of "getting tough on crime." In between, we have flitted from fad to fad in the pursuit of something remotely "effective."

But to search for scientifically-proven effective practices without a firm grasp of our values will certainly take us down dreary paths and lead to destinations we will regret. Two examples come to mind from different eras of our work: the Positivist excesses of the Indeterminate sentence, offered to us by scientists who said we could "cure" crime; and the overwhelming punitiveness of the contemporary War Against Drugs, presented to us by the economists of supply and demand. Values, in their proper role, can be a vaccination against the dual problem of faddish corrections and the inane search for "effectiveness."

My father knew that. His work was defined by three major values:

1. **To understand people, you have to walk in their shoes.** My father believed in the importance of understand*ing* the other person, and he knew that in order to do that, you have to put yourself in that person's shoes, and see how *that person* interprets life in its own terms.

2. People, even **those who are faced with dire circumstances, can turn their lives around.** All Dad's actions with offenders were based in a faith - people seek better lives for themselves, and there is always the opportunity for them to change. The worst choice possible is to act as though people are not capable of making a change in their lives, should they become motivated to do so.

3. The use of power, coercion and pain can be self-destructive. Dad knew that the decision to use raw power against others, to coerce them, to use pain as a tool of teaching, is made at our peril. For whenever we indulge in these methods, we create a world in which power, coercion and pain become more frequent as instruments of those in control.

This is not a Pollyanna set of values - certainly it was not so for my father. He was very concerned, for instance, about the problem of drunk drivers, and was willing to use necessary techniques, even those challenging these values, to help prevent the pain and suffering chronic drunk drivers can cause. Dad knew that such offenders can change; he endeavored to understand their lives, but he took these values as prudent ways *to view the world,* not blind prescriptions to be followed without self-reflection. These values describe the kind of world you wish to create with your actions, the moral home from which you act.

This is a profound view of the world. It is a recognition that when you try to do things to people in order to create a desired world, your actions become the world in which you live.

For example, we have, through the last 25 years of penal policy, tried to solve a crime problem. In the process, we have created this world: instead of 90 persons incarcerated per 100,000 citizens, as was the case in 1967, we now lock up about four times that amount. Continuing the trends of the last 25 years, it is estimated that soon, 1 percent of all citizens will be under correctional control.

This is the world we have made: imprisonment is, for many inner-city African Americans, a "normal" experience, something they have learned to expect. In 1992, one out of four of all black males between 18 and 30 is locked up; more African American males are in prison or jails than are in college. Our incarceration rate outstrips all other Western societies.

The interesting thing is that, looking back, almost no one would trade the crime and justice world of 1967 for that of 1992. Having quadrupled the size of the correctional apparatus, re-instituted the death penalty, established a drug war that has neither made drugs less common nor made the pains of drug use less difficult, we have succeeded primarily in creating a world most of us find, I think, less desirable.

We embarked on this unprecedented, 25-year experiment in punishment with the idea that science required it - if we could not rehabilitate criminals, we could at least lock them in boxes where they could commit crimes no more. We followed this road to an extreme, and passed new sentencing laws restricting the use of probation, eliminating parole, and extending lengthy and even lethal punishments to more and more offenses. We were encouraged to "get tough" by studies showing that so-called "career criminals" accounted for a disproportionate share of the crime problem. At one point, for example, the federal government distributed widely a remarkable report telling us that to build prisons is the *cheap* choice, because of all the crimes prevented through incapacitation.

If this is the case, why has a quadrupling of punishment had no noticeable effect on crime? And why does punishment remain the only growth function

in government services?

Emerging science may give us some reasons for the failure of our last 25 years of penology. For example, studies by Albert Reiss of Yale and others indicate that a large proportion of crime is committed by offenders operating in groups - this is referred to as "co-offending." Locking up one member of the group not only has no impact on crime, it may actually encourage the group to recruit replacement members for continued criminality. Similarly, a recent study by Andrew Golub of Carnegie-Mellon University suggests that, while offenders sit in prison, their criminal careers do not wane. In terms of ending criminal careers, the average time in prison - 18 to 23 months in most states - is wasted.

Studies suggest we should be viewing crime not as a technical problem to be resolved by appeal to the scientific economies of control, but a human concern that relates to the way people live.

These kinds of studies suggest we should be viewing crime not as a technical problem to be resolved by appeal to the scientific economics of control, but a human concern that relates to the way people live. We need to admit that, while we have been embarked on this 25-year experiment in punishment, our densely-packed inner cities have become something akin to crime-generating machines. The intertwined forces of entrenched poverty, drugs and despair could not be a better foundation for a machine of crime. To pretend that the problem can be solved merely by catching criminals and locking them up is to ignore the realities confronting us.

But this kind of thinking permeates contemporary policy. "Weed and seed" is a good example. None of us would think it wise to deal with weeds by using the lawnmower. Yet, as I understand it, the "weed and seed" idea has nothing to do with roots. It does, however, have to do with making us feel that we are "tough," whether it makes a difference or not.

If we are to re-examine our values about crime, we need to begin with the recognition that crime and anti-crime (a term recently suggested in a book by Leslie Wilkins) are fundamental parts of all societies. The image of a "crime-free society" is unhistorical and, frankly, ludicrous. Instead of asking ourselves, "How do we get rid of crime?" we should ask: "What kinds of crime and anti-crime responses best represent the kind of society we seek to be?" In other words, what are our values regarding the anti-crime functions of our nation?

When we ask the question that way, it changes the nature of the debate. Inspecting a society's anti-crime apparatus tells us a great deal that is fundamental about that society - what it cherishes, and what it must be like to live there.

For example, in some Bedouin societies today, a person who steals will have his hand cut off. In Germany today, despite the growing unrest of unification and steady increases in crime, the rate of imprisonment has been declining because the government policy is committed to reduce incarceration. In China, as best we can put the facts together, execution is a common penalty for those who profess undesirable political beliefs. These simple statements speak volumes about the cultures and their values.

In 1992, what does a description of anti-crime in the United States tell us about our values? We outstrip South Africa in anti-crime. We ask children to turn their parents in to the police. We make it more likely that an African American male will go to prison than to college, and we pay more to confine him there. The only government social program in New Jersey that has a growing budget is the prison system, and by law we define it as a "service" that should be paid for by the prisoner. Nationally, if we executed even one person a day, it would take us **ten years** to clear out the collective death row in the states if we added no new prisoners to the ledger.

If we can get a glimpse of Bedouin society by knowing they remove the hands of thieves, then surely we must admit that the simple facts I have just reported tell us a great deal about the America we have created in 1992. Would anyone embrace this picture with pleasure? We need to be defining the kind of anti-crime realities we are willing to live with and of which we can be proud. History will evaluate us on the results of the decisions we make.

Let me illustrate by talking specifically about offenders.

Sex offenders are high-rate offenders. The failure at high rates, and the damage they do to their victims is severe. Certainly, we cannot Pollyanna our way out of the problem of sex offenders.

On the other hand, sex offenders represent a paradox. For example, most sex offenders against children were themselves victims of abuse when they were children. When they were child victims, we loved them, cared about them and professed a desire to help them. When they grew up and lived out the distorted desires they learned as children, we hated them and sought to cast them out. They merely grew older.

Rapists are a different problem, for as Susan Brownmiller has so eloquently shown us, rape not only injures the specific victim, but its existence infringes upon the lives of all women. Sexual assault is the most serious type of assault a person can commit.

Let us also recognize, however, that studies of predatory male rapists confirm that they do not possess healthy personalities. The prototypical offender has experienced a history of abuse that explains the kind of rage necessary to produce a violent, sexual assault.

In the case of rape, we find ourselves confronted with a three-way obligation - to the victim, to potential future victims, and to the offender. Our obligation to the victim is to do those things necessary to aid her recovery. In today's world, what we mainly do is to enlist the victim's cooperation in obtaining a conviction, then support the victim's rage by pursuing as severe a punishment as the law and case facts allow.

Of course, the rage of the victim is understandable, and victims need to experience that rage. Part of recovery is turning the rage into a source of power. Assisting in the conviction and helping to shape the punishment is instrumental in regaining a sense of personal power.

But rage and powerlessness are only one step in the process of recovery. Victims need eventually to confront their loss. But what the victims of crime have lost scares the rest of us so much - especially in their rage - that we tend to turn away from them once we have helped them to feel angry. We say, "We are done with you now, thank you very much." The primary role we assign to victims is to aid in the prosecution and injury of their attackers. Recovery, it seems, is left to the victim. Is it any wonder that the victim feels used by such a system, and remains stuck in a rage that seems unceasing, betrayed by a false promise that once we have punished the criminal, the event will be closed?

We also have an obligation to future potential victims. That obligation is to manage the offender in such a way so as to reduce the probability of new criminal offenses. Typically, this begins with a term of imprisonment, if for no other reason than to make the undeniable case that the sexual assault was wrong. But the lesson of the incarceration soon wears off, and we must deal with the sex offender in the community.

I can think of no better example of a responsible approach to dealing with sex offenders in the community than Vermont's Relapse Prevention Program. It recognizes that offenders have to learn ways to control their deviant sexual impulses, and so it seeks to teach them to recognize the circumstances that might lead to relapse. Research by Paul Gendreau, Don Andrews, Bob Ross, Frank Porporino and others has demonstrated the effectiveness of these cognitive approaches in a variety of settings. Equally important, this strategy also meets the obligation we have to offenders, for it treats them with dignity, creating the kinds of circumstances that promote change and recovery for them, as well.

I have gone into detail about sex offenders because the crime is one that so graphically illustrates the problem of values. The offense is so severe, the harm it causes so lamentable, that surely we must take seriously our obligation to reduce the suffering resulting from it. Yet, if we allowed ourselves to fully vent our collective social rage about this crime, surely we would end up with a system of penal harshness that none of us would feel good about.

The same type of analysis applies equally well to other, less horrifying crimes. Drug offenders, for example, offer an excellent opportunity for us to confront the problem of crime, but also provide support that improves their life prospects. For angry young men, whose crimes are the consequence of a viewpoint about life, we can choose to deal with them in ways that allow them to change and grow more responsible. As we continue to study interventions with offenders, our knowledge of offender management options will grow.

But the final answer can never be a scientific one. Though science must surely inform our options, the ultimate choices we make must come from our values, for these are the moral home from which we act. I would offer as an example the idea of forgiveness - here I borrow from an excellent discussion by Jeffrey Murphy and Jeanne Hampton. We have all done something in our lives for which we would hope to be forgiven. Yet, if we wish to live in a world where forgiveness exists as a possibility, then are we not morally obligated to contribute to that world by ourselves engaging in forgiveness whenever we can?

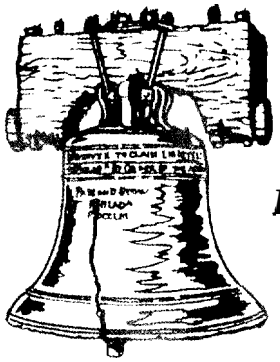
If we wish to live in a world in which values are important, then we must be certain our actions emanate from those very values.

This is what is really meant by the idea that our actions create the world in which we live. If we wish to live in a world in which values are important, then we must be certain our actions emanate from those very values.

Speaking about values in this way is a very sensitive matter, partly because of my own closeness to the topic, and also partly because everybody has a right to values - and we have had enough these days of people telling us the kind of values we ought to keep. To me, what was remarkable about my father's life was the way he portrayed his values. He seldom talked about them. He just **lived** them with a kind of quiet confidence which was made alive by his daily choices.

I would wish for our field the same quiet confidence in our values. Thank you.

Adapted from *a plenary address at the APPA 17th Annual* Training *Institute, St. Louis, Missouri, 1992.*



Just the Facts. . . Probation

by Gregory B. Wilcenski, Chief; Elizabeth D. Disney, Assistant Chief; Edward Miklosey, YSC Coordinator, and Michael H. Epstein, Sr., Research Associate (members of the Juvenile Probation Services Unit, Probation Division of the Administrative Office of the Courts, New Jersey)

Across the United States today, community corrections and judicial authorities have increased demands for credible data and rapid communications. The National Center for State Courts estimates that approximately 50 percent of the nation's juvenile courts have implemented, or are in the process of implementing some computer applications for the maintenance of court records.' A number of states have also initiated computerized applications for juvenile probation records.*

In New Jersey the Administrative Office of the Courts has developed a comprehensive Family Automated Case Tracking System (FACTS).[3] An integral part of the program is the ability to integrate probation department records with those of the Family Court through the FACTS-Probation system. The courts are committed to linking all 21 counties to this case-tracking system. To date, 12 counties are on-line. That system offers individual management of probation cases, aggregate management of overall workloads, and network communication with every other on-line user in the state. The basic intent is to integrate juvenile probation casework and technology.

Integration of Casework and Technology

The purpose of probation in New Jersey is stated as follows:

Probation's paramount responsibility, to provide effective supervision of adjudicated offenders in the community, is achieved through enforcing the orders of the Court, monitoring probationer behavior, and providing services and assistance in those cases where they are required. The supervision case management model includes four components: classification, case planning, management information system, and workload standards.[4]

Automation has been designed to complement and assist probation officers in the supervision of offenders. Management information is gleaned from the existing data base and imposes little additional time or work on the part of probation personnel.

The FACTS-Probation system has been designed to be an electronic family file with specific functions to support the core activities of probation officers in the supervision of offenders. The system elements include: case entry, needs assessment, classification, case planning, case book entry, caseload management reports, scheduling and noticing, Family Court record access, and statewide communication through Electronic Mail. All Family Court case types are included, e.g., juvenile delinquency, matrimonial, domestic violence, abuse and neglect, and family crisis. The system reduces the need for typing, printing forms, telephoning, mailing and recordkeeping. All information can be printed to a hard copy.

Computerization of juvenile probation cases in New Jersey began in 1986. Originally designed as a post-dispositional segment of the court's Family Automated Case Tracking System (FACTS), the probation component has evolved into an electronic file that eliminates most of the problems associated with manual recordkeeping. Speed, reliability and functionality characterize the existing features of FACTS-Probation.

FACTS-Probation tracks delinquency cases from their inception as family court complaints, through the adjudicatory and dispositional court processes, and into the post-dispositional phase. Juvenile probation case data are entered by a probation officer into FACTS-Probation. Information from Family Court and juvenile probation are brought together, creating a shared mainframe database containing every juvenile probation case in the automated network. A natural byproduct of this merger is the important relationship that develops between Family Court judges and juvenile probation staff, a key ingredient in the successful management of probation cases.

FACTS-Probation was first piloted in March 1989. After a year and a half of corrections to the program based on that first trial experience, the FACTS-Probation component was ready for full-scale installation statewide. Six county juvenile probation units were brought on-line in the next 16 months under the management of the Juvenile Probation Services Unit of the state's Administrative Off ice of the Courts. Previously, the Office's Information Services Division coordinated every aspect of the FACTS implementation. That the judicial professionals of the Juvenile Probation Services Unit with limited experience in computers were able to learn the intricacies of FACTS-Probation (from supervision of the hardware installation to development of system enhancements) and teach it, is indicative of a key feature of the program - the fact that it is user friendly.[5]

In 1991, formation of a Policy Committee and User Committee gave leadership to the project. The task of the Policy Committee is to decide substantive and technical issues within FACTS-Probation. More importantly, its existence signified that the project had a strong voice in related policy debates over such issues as resources. The User Committee includes first line supervisors and probation officers; they identify for the Administrative Office those improvements and problem areas that need attention. This committee serves a critical purpose in the development of FACTS-Probation by ensuring that the program is ever-improving. This group is crucial to the implementation of the project since endorsement by the people who are actually going to use this new way of managing cases and caseloads had to be acquired in order for it to be successful.

At the time of this writing, 12 counties are fully on-line in the FACTS-Probation automated network. Chief Probation Officers, Supervising and Senior Probation Officers, case-carrying

Probation Officers as well as clerical staff are currently entering and maintaining nearly 7,000 juvenile probation cases in this data base.

Benefits

Although it was anticipated that FACTS-Probation would produce certain benefits in terms of access and quick availability of case information, additional benefits have also accrued. From a state oversight perspective, uniformity and standardization of terminology, procedures, processing, case elements and management information were achieved. The system has also resulted in better organizing the work of probation officers at all levels, simplifying statistical procedures, building reliability, credibility and professionalism, minimizing duplication, and providing research potential for both offender profiles and outcome measurements.

Specific benefits reported by field staff are as follows:[6]

Chief Probation Officers

- Saves both professional and clerical time and provides ability to reallocate staff resources; and
- Allows for more efficient review of cases and more effective management of staff in branch offices.

Juvenile Probation Supervisors

- Saves significant time in obtaining Family Court and probation case information;
- Improves legibility and accuracy of records, provides timely reminders and management report information;
- Requires less time for organizing work schedules, accessing case files and records, and producing monthly statistical reports (an average of 11 hours per month are saved through automated access to Family Court and probation department records);
- Standardizes departmental procedures;
- Provides ability to measure the effectiveness of probation officers' performance; and
- Increases ability to re-allocate staff and distribute workloads evenly.

Juvenile Probation *Officers*

- Reduces duplication of efforts, expense and waste;
- Enhances ability to manage cases effectively;
- Improves and increase the use of case management;
- Strengthens relationship with local Family Court staff through better communication;
- Facilitates communication between juvenile probation units statewide; and
- Saves time in accessing case files and records (an average ten hours per month are saved through automated access to Family Court and probation department records).

In addition to the above benefits already realized from FACTS-Probation, significant anticipated advantages include:

- a savings of $800,000 annually in time and efficiencies;
- standardized practices, policies and procedures;
- increased support for the role of supervisors and continued empowerment through the management capabilities of FACTS-Probation; and
- valuable information on case outcomes and staff performance gleaned from a statewide shared database.

Summary

An important aspect of FACTS-Probation is that its content and features continue to be shaped around those responsibilities essential to effective juvenile probation. Still in development, FACTS- Probation is being designed by the actual users - line staff, supervisors and administrators - through the Policy Committee, User Committee and Subcommittees. Flexibility and adaptability will help create a juvenile probation system that will be standardized throughout the state.

Additional enhancements include a scheduling function that will allow probation offices to record events and mail notices to probationers, their families, and any other parties involved in a probation case. The field use of lap top computers will provide officers with direct access to all relevant caseload information, as well as permit immediate automated updating of case records. As an added benefit, a statewide data base will be available for the purposes of research. Reports, based on outcomes and activities, will be available to probation decision makers. The same data base will also provide detailed information with regard to staff performance. All of this information will be critical for improving the quality and effectiveness of juvenile probation in New Jersey.

In conclusion, the FACTS-Probation system has been successfully integrated into the daily operations of 12 county probation departments, representing over half of the statewide juvenile probation caseload. Staff and management have, for the most part, adapted well to automation. The implementation process has been a very rewarding experience providing the Courts, probation managers and staff with a wealth of readily available information. Expenditures of both time and money will continue to yield even greater benefits as this technology is implemented in each of the remaining counties and a statewide system is realized.

References

[1] Kevin Kilpatrick, "National Sampling of State Court Computer Use," *National Law* Journal (May 1990).

[2] See Arizona - Juvenile On-Line Tracking System (JOLTS); Utah - the PROFILE II System; South Carolina Juvenile Information System (JUVIS) ; Oklahoma and Hawaii have adopted versions of Arizona's JOLTS System; West Virginia and Michigan have developed their own data Processing software and are supporting it by supplying juvenile probation officers with computer terminals.

[3] James Rebo, "New Jersey Takes Courts, Computers Where None Have Gone." New Jersey Law Journal (June 13, 1992).

[4] Administrative Office of the Courts, "A Model for Enhancing Probation Supervision: Purpose, Priorities, Practices:' 1991, p. i.

[5] The Juvenile Services Unit created a comprehensive training manual to assist their teaching: Family Automated Case Tracking System: FACTS-Probation Training Manual, N.J. Administrative Office of the Courts (Trenton, NJ, 1992).

[6] Gregory B. Wilcenski, et.al., FACTS-Probation Automated Case Tracking System: *An* Initial Assessment of Savings, *Efficiencies* and *Effectiveness*, N.J. Administrative Office of the Courts (Trenton, NJ, July 20, 1992), Et seq.

Operation Involvement:

A University-Based Aftercare Program for Delinquent Youth

by Johnny E. McGaha, Associate Professor of Criminal Justice, Southeast Missouri State University and Michael F. Brown, Professor of Criminal Justice, Southeast Missouri State University

(Paper prepared *for presentation at the American Criminal Justice Society Meeting, Kansas City, Missouri, March 1993)*

Abstract

The Missouri Division of Youth Services, concerned about a 30 percent increase in commitments during fiscal year 1989, and in an effort to further improve the quality of its programs, enlisted the help of national juvenile justice consultants, The Division requested assistance in determining innovative methods to expand community programs and decrease reliance on large group care facilities. One of the model programs that subsequently developed was a unique Youth Service/University-based, intensive supervision program titled "Operation Involvement." The program relies on intensive, one-on-one involvement between delinquents and college students who act as both positive role models and intensive case monitors. In some cases, youth actually reside with a college student. Preliminary results indicate this to be a very promising and cost-effective partnership, benefitting both DYS clients and University students. This paper will present the operational concepts concerning this program and look at some preliminary results.

Introduction

Missouri was among several states including Utah and Massachusetts that led the nation in closing large, ineffective and centralized reform schools during the 1970s. In doing this, Missouri established a regional network of smaller residential-based facilities. Division of Youth Services (DYS) juvenile justice philosophy proposed that youth would be better served **closer** to family and community.

From 1984 to 1988, the Missouri Division of Youth Services continued to diversify its community programs establishing trained family specialist/therapists in each region and a limited foster care program. A system of regional aftercare workers was developed to assist youth upon re-entry to their community. Non-residential day treatment programs were in the process of being developed.

From 1984 to 1988, approximately 725-750 youth were committed to the Division of Youth Services annually. However, in fiscal year 1989, the commitments to DYS rose unexpectedly to 917 youth, an increase of 30 percent. For the most part, the Division handled this recent increase in commitments by opening up new residential programs, increasing the number of youth that existing residential programs served, placing more youth on primary care and, by necessity, creating a waiting list of committed youth who are held in local detention centers pending placement. The Division's management staff anticipated 900-950 commitments during calendar 1990-91. A **Blue** Ribbon Commission for Services to Youth had recommended that the state seek the help of national juvenile justice organizations and consultants. In the fall of 1989, DYS applied for and subsequently received a grant from the Edna McConnell Clark Foundation to evaluate the Division's capacity for expanding community services to accommodate the increasing numbers of youth. The Division of Youth Services contracted with two juvenile justice consultants who reviewed the existing DYS system and recommended expansion and diversification of non-residential programs.

The evaluation revealed that Missouri was doing many things right. Staff throughout the system were very child-centered and committed to providing quality services. DYS was found to have a solid track record of providing quality residential services in small treatment units usually no larger than 10-16 youths. The Division has an accountable, decentralized management structure that insures that decisions concerns individual youth take local issues into consideration. Local programs were found to operate in an economically efficient manner with a staff committed to critical self- examination.

On the other hand, DYS was found to **be** overly dependent on the residential, therapeutic group model and reluctant to impose length of stay guidelines on its residential programs. They were found to have a lack of program diversity relying too much on state-run residential care to handle its committed population. While other states who had de-institutionalized had developed a comprehensive continuum of services (including short and long-term residential and non-residential services often provided by private agencies through purchases of service contracts), Missouri had not. It was noted that in Utah **and** Massachusetts the case managers are able to respond to an individual youth's needs by selecting the appropriate service interventions from a varied service "menu" or range of services as the need requires.

The evaluation revealed in Missouri that property offenders outnumber youth committed for violent crime by more than 3 to 1. Many of the property

crimes were also found to be relatively minor. It was also found that in fiscal year 1989, 149 youth were committed for status offenses. Even though these status offenders and the minor property offenders obviously posed little risk to the community, they often were found to spend an extensive period of time (6-12 months) in residential care. Most of these offenders, while undoubtedly needing service, could safely be supervised in community residential and nonresidential programs. This would allow the division to reserve its institutions for more serious and violent offenders.

The program relies on intensive, one-on-one involvement between delinquents and college students who act as both positive role models and intensive case monitors.

It was recommended that DYS develop a continuum of community-based services to meet these needs of the less serious youth. Consultant Demuro warned, however, that it **was** not **just** a matter of creating more treatment options. He suggested rather that DYS should broaden the concept of treatment. He suggested that new community-based intervention programs should involve the healthy interaction of individual community people with the community youth. The youth should be exposed to concrete opportunities within their communities including job training, jobs, community role models, education, and leisure time activities.

Merely locating more small living units within or near the communities is no guarantee of a youth's real contact with his community. The most important test of interventions with these youth is not their behavior in the group residential programs, but rather it is their ability to function lawfully and independently within their own home communities. According to Demuro, the major part of the task should be "recommunalization" of the youth. "They will live and die, succeed or fail, remain crime-free or continue to commit crime within their own communities and, therefore, need to **be** exposed to concrete and legitimate opportunities in their own communities." A substantial increase was recommended in the diversity, quality and quantity of local neighborhood-community supports available to all DYS youth. With an expanded network of local services, most status offenders and less serious property offenders could be handled on primary care in or near their own homes. Services such as "tracking," alternative education, jobs and job training, specialized foster care and supervised independent living programs, etc. should be available in each region. Missouri wholly endorsed the increased development of a continuum of community services, but like other states, was faced with the dilemma of very limited financial resources.

Operation Involvement

In October 1989, DYS officials approached Southeast Missouri State University with the opportunity to contract for students to provide services to delinquent youth in the Southeast Missouri region. Specifically, the Division was interested in developing a pilot program to see if University resources could **be** successfully utilized to develop cost-effective options for youth. The Division was specifically interested in intensive case monitoring (tracking) and specialized foster (proctor) services. As a result of several meetings between University and DYS officials, the concept of a comprehensive and coordinated continuum of services that was labeled "Operation Involvement" was initiated. Operation Involvement is a combined effort between Southeast Missouri State University and the Division of Youth Services. The program is overseen by the director of the local DYS programs and project director at the University located in the Criminal Justice Department. This combination of resources allows the project to merge the structure of Youth Services with the energy and enthusiasm of college students. Operation Involvement not only benefits the troubled youth, but it also gives invaluable experience to the University students involved.

Program *Purpose* **and** *Description*

Operation Involvement is a joint ven**ture** of the State Division of Youth Services (DYS) and Southeast Missouri State University's Department of Criminal Justice. The purpose of the program is to provide a variety of innovative services as an alternative to institutionalization for delinquent youth who are in the custody of DYS. Southeast Missouri State's Criminal Justice Department recruits, screens, and assists in training and supervision of upper level, students, juniors and seniors, who participate in Operation Involvement.

To participate in the project, University students must be majoring in one of the human service fields. These fields include criminal justice, psychology and social work. After the students submit their applications, the University project director interviews the students. If the interview is successful, the Division of Youth Services then conducts a background of each applicant being considered. Once students have been accepted into the program, they must attend an eight hour training session that is held every semester. The training helps the students understand their role in working with youth, along with basic adolescent development and intervention skills. The student is then assigned a case by one of the Youth Services aftercare workers. During the time the students are involved with the program, they are required to attend biweekly coordinating meetings with the other students and staff from the Division of Youth Services. During these biweekly meetings, trackers discuss experiences and problems encountered. DYS staff propose strategies and treatment approaches for each client. Students selected as intensive case monitors and proctors receive compensation for their services through a contract to the University from the Division of Youth Services.

Programs

Intensive Case Monitoring - The intensive case monitoring program (tracker) is under the joint supervision

of the DYS Program Supervisor and the University Project Coordinators. Students accepted for this program provide intensive supervision to DYS youth. Students are to check on their charges several times per week at school, home or other places as necessary. "Trackers" work under the supervision of a DYS aftercare worker who is in charge of the case. Each tracker/DYS student relationship is unique, depending on the particular needs of the youth. In some cases, the trackers are strictly seen as monitors whose sole purpose is to ensure that the youth is abiding by the terms of his/her aftercare plan. In other cases, the student "trackers" develop big brother/sister relationships with the youth providing positive role models in addition to supervision.

Proctor Care - There is a limited number of students who are selected to provide actual "live in" residential services for selected DYS youth. These individuals provide positive role models for youth on a 24 hour live-in basis including food, shelter and other services similar to traditional foster care. The DYS youth's aftercare worker makes a home study on the student and helps negotiate a behavioral contract between the youth and college student. The college students in this program are compensated at a rate of $14 per day, or about $420 per month. Proctor care allows the youth to live with a college student who acts as a role model for the youth, who in many cases have come from dysfunctional or abusive home situations. While the kids are staying in proctor care they attend public school or other treatment services provided by the Division of Youth Services.

Case Examples

Case study: **Kim**

Age 14, alcoholic father, presenting problems: Chemical abuse, runaway, severe truancy, petty theft, fighting.

Kim was assigned a tracker after being discharged from a residential care facility. The DYS staff at the facility said that they discharged Kim early because of his lack of adjustment and emotional problems. Kim had previously been in an adolescent drug and alcohol program and had a 30 day evaluation completed at a private treatment facility. When assigned a tracker he was receiving medication to control his behavior. DYS staff were not very optimistic that much could be done with Kim in the community but, since most alternatives had already been tried, they decided to try him in his own home under the watchful eye of a University "tracker." The tracker, Kelly, a junior criminal justice major, received the case in April 1989. Kelly saw Kim several times per week in his home and at school. He became very well known to Kim's teachers and principal. When Kim's behavior became disruptive at school, Kelly obtained permission from the school to actually go into the classroom and sit with Kim and help him with his assignments. By doing this on a regular basis, Kim actually finished the school year. During the summer, Kim's behavior improved, although he had ongoing problems with his mother. Kelly continued to build a positive relationship by taking Kim on canoe trips and other types of outings. As the new school year approached, Kim's behavior became more problematic and the home situation also deteriorated. DYS decided that Kim needed to be placed outside the home environment if he was going to **succeed.** Additionally, it was felt that he would **be an** excellent candidate for the new day treatment program, particularly since it was obvious that his chances of making it for the next full school year was slim. Kelly applied for the proctor program and received permission for Kim to live with him. Kim moved in the first week of September and each had their share of adjustments to make. Kim learned to take regular baths and to clean house while Kelly learned to cook. A behavioral contract was negotiated and subsequently was modified several times as the need arose and the situation changed. Kim **was** properly diagnosed as learning disabled by the day treatment staff and was put in a proper remedial program. His grades went from all Fs and a D to four Cs and an A by the end of the first semester. Kim has continued to reside with Kelly for the past six months. Success with clients like Kim require patience and are measured in small increments. It has not all been rosy. He ran away a couple of times and was recently caught under the influence of some substance. But overall, considering his background and lack of success in any other program, Kim is "making it." He is now attending drug counseling on a weekly basis and continues to do well in the day treatment program. He recently has expressed an interest in going to college once he either graduates or receives his GED, and his behavior continues to improve.

Case study: *Alex*

When Eric first met Alex, Eric was dressed in his crisp R.O.T.C. uniform and had his usual close-cropped haircut. When not in uniform, Eric was usually seen in his designer jeans and polo shirt. Alex, a tall, slender 16 year old, was dressed in his usual torn jeans and heavy metal tee shirt. His long hair was in a pony tail. They looked at each other and shook hands. Alex was in the process of completing a four month DYS group home program where he was sent for theft and truancy. His home situation was not suitable for him to go back to. Eric had just been accepted into the new "proctor" program even though he lived in a University dorm with many other students. The University had given permission for Eric to share his room with a DYS youth. Both Eric and Alex had decided to give each other a try. The goal was to provide Alex with a positive male role model - something he had never had - and to help him get through the spring semester of school before returning home. It was not easy for either of them. Alex had to learn about dorm life and discipline, as Eric required him to adhere to a fairly strict schedule. There were 6 a.m. four-mile runs together, school suspensions and meetings with school officials, haircuts, runaway threats, sneaking in late at night, and restrictions. Alex learned that someone cared enough about him to sit and follow through

with limits consistently. Eric learned to be flexible and understanding when it was called for. They both made it through the semester. Alex is now 17 and living at home with his mother. Eric is now an Army officer.

Results

Measuring the effectiveness of service provision is difficult without a full program evaluation. Missouri has not formally evaluated the early shift from large training schools to community-based residential programs. Long-term follow-up data are not currently available. Missouri has, however, examined some data and begun to look at re-offense and recommitment data in the last several years. Records of 4,970 youths discharged from DYS programs from July 1, 1983 through June 30, 1989 were matched against records in adult corrections, adult probation and parole. Only 15 percent of youth records matched adult records. From this analysis, it would appear that 85 percent of youth served by DYS during 1983-1989 subsequently did not enter the adult system during this period. More recently, an analysis of the records of 917 youth committed to DYS in fiscal year 1991 was conducted. The results indicated that 92 percent were first-time commitments. The remaining 8 percent were recommitment. A preliminary examination of recommitment data indicates that youth are recommitted to DYS at a low rate, suggesting that interventions provide at least some deterrent to future criminal behavior (Center for Youth Policy, 1992).

On a regional basis, during FY 92 over 50 Southeast Missouri University students from five different academic disciplines have participated in "Operation Involvement." Thirty-four students provided a total of 2,855 hours of intensive case monitoring services to 45 DYS youth throughout the Southeast region during the year, and six students have provided a total of 584 proctor care days for 12 DYS youth. Since the program's inception, 12 youth have resided with college students in the Proctor care program. Many more students are helping out as volunteer tutors, etc. Only one of these youth has been revoked after release from their Proctor home. Four youth are currently residing with students.

A total of 112 DYS youth have been supervised in the "tracker" program since its inception. So far, only 20 have been revoked or considered a failure for some reason. The day treatment program has had 22 students the past year, and only five have been placed back into the system.

The students gain much more from the program than the money they receive for their time. They gain valuable experience that can be applied after graduation. Since all the University students are from the human service fields, this experience will directly link them to the work that they will be doing after they obtain their degrees.

Operation Involvement seems to be a workable alternative to residential placement or institutionalization for youth and has been a wonderful learning experience for the University students. The program stresses keeping the kids in society as much as possible without risking the community's well-being. By utilizing college students in the supervision of delinquent youth, the Division of Youth Service provides intensive monitoring in a very cost-effective manner. Although it is not possible to gauge real success at this point, the program seem to be very promising from the standpoint of both the DYS kids and the college students who are gaining as much or sometimes more than their clients. The students are enthusiastic and eager to learn and are, in most cases, closer to the youths' ages and better able to establish relationships than the "professionals." The Southeast Missouri State University and DYS partnership at this point seems to be a very liable and positive one. It is currently being replicated at least four other universities in the state of Missouri.

Fiscal Development and Cost Savings

The projected cost-effectiveness of broadening and diversifying community-based services in lieu of residential youth placement was estimated by DYS over a several year period. Costs were calculated based on agency historical data and fiscal year 1992 budget requests. Year one expenses, projected for residential services for 210 youth, based on an average length of stay of six months (105 beds), were $11.5 million. This figure included an $8.5 million expenditure for construction of new residential facilities. Expenses for the same number of youths in community-based programs for the same time period were estimated at $2.5 million. This amount included rental space funds and resulted in cost-savings of more than $9 million the first year. A second year comparison was calculated, considering rent instead of capital expenditures, for 210 youths in residential care. These costs were estimated at just under $4 million, while community-based services for the same number of youths were still estimated at $2.5 million. The second year cost-benefit was still significant: approximately 1.5 million less than a residential program (Center for Youth Policy, 1992).

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South Dakota, Texas, Virginia, and Wisconsin Selected as *Coordinated Interagency Drug Training and Technical Assistance* Training Sites

by Mickey M. Neel, Manager of Special Projects, American Probation and Parole Association

In 1989, the Bureau of Justice Assistance (BJA) provided funding to the American Probation and Parole Association (APPA) and the National Association of State Alcohol and Drug Abuse Directors (NASADAD) to assess field training needs, develop a training curriculum based on the identified needs, and field test the training curriculum after its development. Following completion of the initial phase of the project, BJA provided grant continuation funds to conduct the training at sites selected on a competitive basis from throughout the United States,

APPA/NASADAD staff and the Project Advisory Committee designed a Request for Proposals which was subsequently mailed to all agencies who had cooperated with the needs assessment survey and which was published in the Winter, 1992 issue of Perspectives. Despite the limited number of training seminars available due to reduced Phase II funding levels, the fields of probation/parole and treatment responded with a total of thirty proposals prior to the February 15, 1992 submission deadline. These states, listed in alphabetical order, included Arizona, Arkansas, Connecticut, Delaware, Georgia, Idaho, Iowa, Kentucky, Louisiana, Maryland, Missouri, Nebraska, New Hampshire (two proposals), New Jersey (two proposals), New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon (two proposals), South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. The three states submitting two proposals submitted both a state and jurisdictional proposal.

APPA/NASADAD staff involved in the selection process were: Vernon Bowen, NASADAD; Robert Anderson, NASADAD, and Mickey M. Neel, APPA.

Project Advisory Committee members consisted of the following individuals: Carol Schoenleber, Nebraska; Steve Bocian, Maryland; Geraldine Sylvester, New Hampshire, and Robert Aukerman, Colorado.

The Project Advisory Committee and APPA/NASADAD staff met in Washington, D.C. on March 16 and 17, 1992 to review proposal rating sheets and to select their recommendations for sites to receive the training seminars. The results were forwarded to BJA on March 27, 1992. As the selection process, to some degree, was defined by funding limits, the Project Advisory Committee and APPA/NASADAD staff felt compelled to inform BJA that the top sixteen proposals were exemplary in content and worthy of immediate funding. The committee and staff also advised BJA that of the fourteen remaining proposals, all but three were suitable for funding with some negotiation prior to delivery of the training product. The overall quality of the proposal submissions is a tribute to the fields of probation/parole and treatment. It is also an indication of the perceived need for training seminars such as those provided through this project. Selection of the funded sites proved to be a difficult task for the APPA/NASADAD staff, the Project Advisory Committee, and BJA officials.On May 27, 1992, BJA formally notified APPA/NASADAD that the states of South Dakota, Texas, Virginia, and Wisconsin were approved as sites for the Coordinated Interagency Drug Training and Technical Assistance training seminars.

Funding levels also impacted on APPA/NASADAD's ability to respond to the training requests from the selected sites. BJA determined that South Dakota and Wisconsin were to receive exactly what their respective proposals requested. Texas and Virginia were awarded only one of two training seminars requested in their proposals. Negotiations between APPA/NASADAD and BJA are currently underway to secure complete funding for the Texas and Virginia training requests. Agencies not selected as training sites were informed of and referred to an alternate governmental agency funding source, the Center for Substance Abuse Treatment (formerly the Office for Treatment Improvement).

The training seminars are scheduled to begin in Richmond, Virginia in October, 1992 to be followed by training seminars in Sioux Falls, South Dakota in November, 1992; Dallas, Texas in December, 1992; Milwaukee, Wisconsin in December, 1992; and Madison, Wisconsin in January, 1993.

Training recipients will participate in a four and one-half day seminar designed to address the following areas:

- common ground;
- clarifying systems and roles;
- communication;
- teamwork and conflict management;
- confidentiality;
- managing the drug-involved offender;
- internal implementation; and
- interagency partnerships.

Training staff will consist of consultants from the fields of treatment and probation/parole as well as APPA/NASADAD staff. Two significant products of the training seminar will be an agency plan to internally implement a coordinated, interrelated design for managing the drug-involved offender and an initial draft, or the framework for a draft, of an interagency agreement designed to result in more effective joint management and supervision of the drug-involved offender. These two products are viewed as the underpinnings of a longterm partnership between probation/parole and treatment.

APPA/NASADAD remains committed and eager to achieve the goals of the project. It is anticipated that the training seminars will result in coordinating and enhancing the parallel efforts of probation/parole officers and drug treatment practitioners through cross-training; developing expanded networks between probation/parole agencies and treatment providers; and improving community management of the drug-involved offender.

The Resource Referral Process:

What is Between Human Services and Offender Adjustment?

by Arthur R. Spica, Jr., Deputy Chief Probation Officer, Cook Co. Adult Probation Dept., Chicago, Illinois

If the probation supervisory process is the crucial link between the courts and the community, then the resource referral process is an additional, and no less crucial, link between human services and offender adjustment. Because of internal and external pressures to demonstrate positive and significant results with criminal offenders, probation is being forced to provide a growing range of specialized services to an ever-increasing population of clients, frequently without a corresponding increase in available monies or treatment alternatives. Overcrowded prisons and a broadening of options in community corrections have led to probation sentences for offenders previously slated for incarceration. This, in turn, has forced personnel to search for a wider range of treatment modalities for the purpose of achieving meaningful rehabilitation.

Offenders on probation generally present a multiplicity of problems. We, in the field, cannot deal with all of them effectively on a "one to one" basis because probation officer education does not adequately cover all the specialty services needed. Moreover, there is not enough time to deal properly and effectively with the full range of problems offenders present to caseload officers.

By utilizing "brokerage" as the model for accomplishing rehabilitation, officers identify "outside experts" who they hope will offer services to offenders in order to assist them in their attempts to adjust to societal norms. The primary avenue to achieve this end is the resource referral process. Some real thought must be given to this central function if we are to achieve any measure of success in helping offenders develop some insights concerning their present criminal behavior.

The resource referral process is grounded in the following assumptions:

(a) probationers have basic, unfulfilled needs, which can best be met by an adequate human service delivery system;

(b) because most probationers are not considered chronically mentally ill, to the point where they cannot function in society, these services can probably achieve a degree of successful behavior change;

(c) probation officers are well-trained in a number of professional skills relevant to working with offenders, but identifying outside human service specialists to deal with the specific problems of probationers can enhance the potential or capacity of officers to influence offender adjustment; and

(d) most specialized services needed for offender adjustment are not available directly in the criminal justice system, but rather in the community social service network; therefore, it is imperative that we utilize these outside service providers to insure the success of the resource brokerage model.

The above assumptions are predicated upon the proper implementation of the resource referral process. Officers must thoroughly understand the nature of this process before applying it to their assigned charges.

Probationers generally need the opportunity to learn new, workable strategies to handle their lives more effectively. Referrals to the proper service provider can afford the appropriate "opportunity" for offenders to change their life situation.' The probation officer assumes the advocacy and broker roles to negotiate these services through referrals to the proper community agencies.

The referral of a probationer to any outside service provider is, at best, a difficult task because of the many practical issues that arise in identifying offender problems and locating available and appropriate services to meet those problems.' Making the appropriate referral involves answering the questions of where to send the probationer for optimum results, whom to contact, and what relevant information must be shared, and completing the necessary paperwork to initiate the referral process. One must consider if:

(a) the probationer and referral agent are compatible;

(b) the location of the service, i.e. whether it is accessible to the probationer;

(c) the cost of the service, whether it is affordable or it can be covered by insurance or other benefits because most probationers are indigent; and

(d) the waiting time required before services can be implemented (e.g., drug treatment is imminent, lag time is critical).

Generally, probation officers should initiate a referral under any of the following circumstances:

(a) when the probation officer reviews the case and determines that there is insufficient time or expertise to provide in-house treatment;

(b) if there is a need for a professional "diagnostic" evaluation;

(c) when controllable influences are the primary cause of the probationer's problems, which can be addressed by the outside professionals;

(d) when the probationer specifically requests services; and

(e) when a probation officer, in his/her supervision practice, foresees the possibility of a critical or serious problem hampering that supervision process and causing additional problems.

Probationers' feelings concerning outside human services must also be taken

into consideration. These feelings may be varied and complicated and they ultimately determine the success of the referral. Probation officers must learn to recognize these feelings and encourage probationers to accept the referral as a positive helping experience. There is always the danger that referrals may become too routine and the probationer may not be considered a partner in the process. As the "one-to-one" relationship with the probationer is de-emphasized, there may be a tendency to mechanize the referral, which occurs when the officer "goes through the motions" of initiating a good referral without proper communication or the solicitation of meaningful feedback from the probationer. This could result in a failure to evaluate the needs of the probationer and the actual level and type of services offered by the referral agent.

The need to adequately communicate, listen, and process feedback is illustrated by the following incident:

CASE: The probation officer felt it necessary to refer probationer N.M. to a mental health professional and gave the probationer three names of counselors who lived in the area, believing that he understood the need to contact one of these counselors for an interview. The probationer thought that the officer would make the contact. Two weeks passed with no results. Meanwhile, the probationer was very upset at not receiving any directive from the probation officer and finally contacted the officer. The officer listened attentively and understood the frustration without laying any blame or making excuses. This officer immediately called one of the counselors, set an appointment and communicated it to the probationer. The referral was completed and the proper service identified.

To avoid any miscommunications, the officer should listen carefully and empathetically to the probationer's concerns and should ascertain the type of help really needed. Probationers' feelings must be fully addressed in order to help them identify and accept their problems. The probation officer must stress that an outside service provider can suggest ways of dealing with these problems but cannot solve their problems for them. Another effective strategy is to explain why the referral is being made and affirm the probationer's negative or resistant feelings about that referral. The officer should highlight the fact that others have expressed the same problems and have been referred with visible success. Also, he or she should make certain that the outside service agent can deal with the particular problem(s) before the probationer expends any unnecessary effort traveling to that provider and attending the session.

A complete and in-depth interview with the probationer will maximize the success of the referral. When talking to the probationer, an officer should always attempt to recognize what the probationer is not saying through body language, eye movements, the way facts are being expressed, and other non-verbal cues and indicators. He or she should be aware of the potential that the probationer may be directed in a course of action that will be difficult for that probationer to follow or that might be resisted, thus causing additional problems. It is also useful to talk about similar issues rather than the probationer's individual issue, and to avoid a judgmental attitude when reacting to presenting problems.

When evaluating a service provider, the following questions should be considered:

(a) How did the particular service provider work with similar problems in the past?

(b) What is the "success" rate of this service provider?

(c) What is the cost of this particular service to others?

(d) Does the service provider keep in contact with the referring probation officer?

(e) Does the service provider share pertinent information?

(f) What reasons were given to the service provider for the probationer not keeping appointments?

Probationers may need multiple referrals to various types of outside professionals to achieve acceptable results as illustrated in this next case.

CASE: Probationer AS. was sentenced to probation for a period of three years for aggravated battery. The probation officer identified three areas of need: probationer had poor self-esteem, was overweight, and had an alcoholic wife. The officer referred the probationer to a professional counselor for a psychological assessment and follow-up, to a dietitian for nutritional information, and to an Alcoholic Anonymous center for guidance on how to deal with persons with an alcohol problem.

Offenders on probation generally present a multiplicity of problems.

Another consideration to address, before identifying a particular service provider, is the preference of the probationer for an identified provider. Probationers have had previous contacts with community agencies and are familiar with particular staff at these agencies, and many times express a desire for an identified professional.

CASE: Probationer R.N. was convicted of indecent liberties with a child and sentenced to probation for two years with a condition to seek outside counseling. The probation officer suggested a therapist but the probationer opted for another counselor whom he had seen previously. The probation officer strongly disagreed and insisted that the probationer see the professional he had recommended. R.N. took offense to the insistence of the officer and was greatly distressed with the officer's evaluation concerning the former counselor's lack of success. Needless to say, the whole referral was a failure and it was questionable whether any meaningful rapport could ever be established between the two again.

The focus, thus far, has been on what the officer must do to achieve a successful referral. There are also several behaviors that must be avoided when making a referral,[3] such as:

(a) Never make a value judgment. Probationers need to hear both positives and negatives about a referral; avoid dwelling on the probationer's previous failures, experiences, and rea-

sons for unacceptable behavior.

(b) Avoid assumptions; the probationer may not automatically follow through with the referral or accept it with the same confidence or certainty as the probation officer. Probationers may be apprehensive about going out on a referral, and that trepidation might not be apparent to the probation officer.

(c) Do not build up false hopes to the probationer regarding the success of a particular referral. Although the probationer should feel confident about being sent out to a particular service site, the initial results might fall short of expectations, thus resulting in an unfavorable attitude toward the next referral.

(d) Do not overemphasize the service provider. Too many glowing recommendations about a particular service provider may not match the reality of their competence.

(e) Never ignore the probationer's perceptions about an outside service provider; they may be valid; investigate the probationer's claims with both the probationer and professional.

(f) Never accept a referral professional's rejection of the referral without a full explanation of "why." This seems so basic, but how many probation officers just make another referral without finding out the full circumstances of the previous one?

(g) Avoid dismissing the probationer's feelings, emotions, apprehension, and expectations. Each probationer has individual concerns and the officer should listen and react to them.

(h) Avoid the "I have all the answers" syndrome. If we had all the answers there would be no need for outside services. Explain to the probationer that the best solution to the problem might lie with the referral professional, but be truthful about the possible failure to alleviate the problem.

Reflecting on all these points and practicing these strategies will not guarantee a successful referral every time, but it will definitely minimize the number of poor referrals, which always yield unsuccessful results. There is a great potential and challenge in the referral process; it can only help us in our endeavors to fulfill our mission in the field of criminal justice.

Footnotes

[1] U.S. Department of Justice, *Improved Probation* Strategies, Washington, D.C., 1987.

[2] S. Cheston, *Making Effective* Referrals, Gardner Press, 1991.

[3] Op.cit., No. 2.

British Columbia Probation Service:

Fit and Feisty at Fifty

by Stephen Howell, Program Analyst, Corrections Headquarters, Ministry of Attorney General

It was a beginning that was almost mythically humble. An English style Borstal institution had been closed down because of low counts during the war, and instructor Ernie Stevens was out of a job. He was rescued from the unemployment line by an Order in Council signed by the provincial government on April 10, 1942, making him a "Follow-Up Officer" for released inmates. He was awarded the annual salary of $1,920. Mr. Stevens scrounged some furniture from the basement of the Vancouver Courthouse, set up an office in the Motor Vehicle Building, and unceremoniously founded the British Columbia Probation Service.

Four years later a Probation Act was formally passed by the British Columbia Legislative Assembly, and Mr. Stevens finally assumed the dignified title of Provincial Probation Officer.

Probation was not a new idea in Canada. The British and American experiences were well known in Canada when Parliament passed 'An Act to Permit the Conditional Release of First Offenders" in 1889, and the "Juvenile Delinquents Act" in 1908. In the early days, probationers were usually supervised by volunteers, until municipal and provincial probation departments were created. The city of Vancouver hired its first juvenile probation officer in 1910, while the Province of Ontario created a provincial probation service in 1920.

In British Columbia the new service grew slowly. There were just 25 probation officers in 1957, covering a province which is larger than every state except Alaska. New structures and responsibilities defined the organization as it developed. In 1951, Mr. Stevens was made Inspector of Goals, as well as Provincial Probation Officer, beginning a process which would lead to today's highly integrated Corrections Branch.

In 1963, probation officers were introduced into the matrimonial arena, with duties respecting child and spousal maintenance, and custody and access investigations. (Later, probation officers would adopt the "Family Court Counsellor" moniker when performing these tasks.) In 1974, the municipal probation departments were absorbed by the provincial service.

Today, the name on the office door is "Probation and Family Court Services, Corrections Branch, Ministry of Attorney General." The people who work inside are part of a community corrections enterprise of 500 professional and administrative staff, and the office is one of 78 throughout the province. Apart from six specialized offices, the same statutory services are delivered by all units: adult and youth diversion, presentence reports, bail, probation and parole supervision, Family Court mediation, and custody and access investigations.

Although the services are the same everywhere, the working environments and challenges are as diverse as the British Columbia landscape. In cosmopolitan Vancouver, specialized officers meet regularly with police to contain a growing Asian youth gang problem. In Terrace, in northern British Columbia, a lone probation officer loads her four wheel drive vehicle with survival gear, before embarking on a seven-day circuit to visit clients in isolated aboriginal communities, and mining and logging camps. From the Pacific Coast to the Continental Divide, some 19,000 offenders and 3,000 Family Court clients are served by probation officers.

Defining the mission and culture of probation seems to be a universal challenge, and British Columbia struggles with as much ambiguity and angst as her Canadian siblings and American cousins. British and American influences can be discerned in many features of the organization. Under the leadership of Selwyn "Rocky" Rocksborough Smith, the gentlemanly English-educated Director of Corrections from 1962 to 1973. a number of probation officers were recruited from Great Britain. They brought with them a strong social work tradition. In more recent years, expertise from Washington State has been enlisted to assist in training officers to assess and supervise sex offenders.

Diversion, community service programs, and electronic monitoring have all been borrowed from elsewhere, but their use has been pioneered in Canada by the British Columbia Corrections Branch. Nonetheless, there is something distinctly Canadian in the particular balance struck between compassion and confrontation in British Columbia's approach to clients. Although they are Peace Officers, British Columbia's probation officers are unarmed and almost never make an arrest, leaving the more athletic aspects of law enforcement to the Mounties or municipal police. On the other hand, they have earned a reputation for frank and feisty dealings with offenders, lawyers, supervisors and other government ministries.

The potent legacy of the province's early probation officers has no doubt guided the succeeding generation. Usually working alone, with little interference from Headquarters, and with few other social services to rely on, they created a corporate culture based on independence and resourcefulness. It is a tradition perpetuated in the recruitment and training of new officers today, even though it is not always appreciated by managers. Defying the trend throughout North America, British Columbia's officers have firmly resisted the introduction of a caseload classification sys-

tern, carefully protecting their exercise of discretion.

By most measures, the first 50 years of British Columbia's probation experience has been very successful. The count in the provincial prison system has remained virtually unchanged at 2,000 adults since 1962, even though the provincial population has nearly doubled to 3.2 million.' The explanation can easily be found in the expansion of alternative programs, and the steady growth in community caseloads.

The youth custody population surged dramatically after introduction of the *Young* Offenders *Act* in 1984, but has now leveled off at about 300.[2] British Columbia has the second lowest rate of youth incarceration in Canada. For every youth in custody, 16 are under supervision in the community.

Faithful to their Canadian character, British Columbia's probation officers tend not to trumpet these achievements. They are more likely pre-occupied with the problems which persist in spite of a record which compares favorably with other jurisdictions. Staffing levels have failed to keep pace with climbing caseloads, and the complexity of the workload has increased significantly. As in other jurisdictions, the de-institutionalization of the mentally ill, and the increase in sexual abuse reports, have had an alarming effect on the composition of caseloads. Changing attitudes to violence against women, the rights and needs of victims, and the accountability of government bodies have also contributed to a more demanding and sophisticated work place.

A 50 year anniversary may be cause for celebration, but in British Columbia the festivities have been brief and modest. The province's earnest probation officers are far too busy managing a lively present and developing strategies for a demanding future.

References

[1] "Corrections Branch Resource Information Book 1991/92," British Columbia Ministry of Attorney General, 1992.

[2] Doherty, Diana and Ekstedt, John W. "Conflict, Care and Control: The History of the Corrections Branch in British Columbia." Simon Fraser University Institute for Studies in Criminal Justice Policy 1991.

NIC Update

Historically, female offenders have received little attention and few resources primarily because of their comparatively fewer numbers in the criminal justice system, as well as the lesser status they have been accorded in our larger society. Data gathering efforts have generally been focused on women in prison, and there is little information about female offenders in the community on probation or parole.

The dramatic increases in the number of women being arrested and incarcerated across the nation, the increase in female drug offenses, and the growing impact of AIDS and other health issues on not only women but also their children, have stimulated a new interest in this population of offenders. There is much anecdotal information about the female offender under community supervision and her issues, but few jurisdictions have made an effort to find out who she really is, how she is being sanctioned, and what resources in the community are available to meet her needs.

In 1989, the Community Corrections Division held a Special Topic Seminar in Washington, DC. on "Women Offenders Under Community Supervision." Invitees included a cross-section of practitioners around the country who supervise programs/services for female offenders in the community. The discussions focused on the types of female offenders under community supervision, their unique needs, the problems they face as both women and offenders, and ways to better serve them. As the result of that meeting, in 1990, NIC's Community Corrections Division sponsored a document, prepared by the National Council on Crime and Delinquency, entitled "Female Offenders in the Community: An Analysis of Innovative Strategies and Programs." This report is ready for publication and it identifies emerging issues regarding female offenders in the community and provides a descriptive analysis of strategies and programs which appear to be effective.

In 1991, the Community Corrections Division also began to work closely with three community corrections agencies in Johnson County, Kansas; Dakota County, Minnesota; and Allen County, Indiana, to examine their current sentencing practices and options related to female offenders. Since women tend to commit less serious, non-violent and property offenses, and do not generally pose a serious danger to their communities, it is particularly appropriate to establish sanctions for this group which permit supervision in the community.

However, the lack of information about this population impedes our attempts to develop options, services and programs which could usefully respond to their criminal activity. Because of the lack of carefully designed and effective programs for female offenders in the community, NIC's primary goal with these jurisdictions is to encourage the development of a range or continuum of options. The focus of the project, called "Intermediate Sanctions for Adult Female Offenders," is on policy development which provides the foundation for the development of programs and services for offenders (the what and *why we* want something done).

Another major component of the work of these three jurisdictions involves the development of useful information with which to explore policy options. They have all started by developing a map of their criminal justice system which provides a way of looking at the decisions made about female offenders at each point in the system, from arrest to sentencing and post-sentencing decisions. Input from each member of their policy groups, including key players such as judges, county attorneys, community corrections managers, public defenders, jail personnel, county commissioners, human services planners and others, is critical to understanding how decisions are being made about women in the local system.

After the mapping is completed, numbers are inserted into the system decision points to determine how female offenders are "flowing" through the system.

Kansas, Indiana, and Minnesota are currently developing comprehensive profiles of the female offenders in their jurisdictions. Their objectives are to describe female offenders and the sanctions they receive in order to address issues related to desired changes in sentencing practices, the range of intermediate sanctions, and related criteria for eligibility for these sanctions.

These jurisdictions are also attending to the distinction between dysfunctional (criminogenic) behavior related to female offenders and their needs for services. Female offenders are often perceived, with good reason, as having more service needs than male offenders; for example, for education, vocational training, drug treatment, housing, and for help with parenting, problematic relationships with their partners and health care. They are also perceived by many to be especially responsive to interventions that can effectively address those needs. Thus, women tend to be *more* vulnerable than men to increased social control. That is, there is a danger that intermediate sanctions may be overloaded with service conditions in an effort to "fix" an array of personal and social conditions for their own good. For example, parenting classes may be ordered as a condition of probation when no inquiry has been made into the individual's level of parenting skills and where there is no relationship to their criminal behavior **or** offense.

An important goal of this project is to define sanctioning goals clearly to distinguish those which can properly

be imposed at sentencing from those needs better addressed through non-mandated, supportive services in the community. This concept does *not* mean that probation officers ought not to be concerned with the service needs of the women they supervise; rather, it is essential that they understand the many and complex issues which female offenders present and that they know about and refer their clients to community resources which can effectively address those needs. As the information about female offenders on probation and parole develops in each jurisdiction, the members of the policy group can use the data to make policy decisions about how to respond to female offenders' criminality and to design appropriate sanctioning options. NIC is documenting the process by which Indiana, Kansas, and Minnesota achieve their goals in the hope that this documentation will be useful for other jurisdictions who wish to explore sanctioning options for this population.

In 1993, the Intermediate Sanctions for Female Offenders project is expanding to include three other jurisdictions. NIC encourages applications from public community corrections agencies (probation or parole) in jurisdictions with populations over 200,000. The Community Corrections Division will provide funding and technical assistance to support critical aspects of the project. **The deadline for applications is January 15, 1993.** For more information, please see the NIC Annual Program Plan for fiscal year 1993 or contact Anne McDiarmid, Corrections Program Specialist, at 202-307-3995.

Call for Information on the Role of "Availability" of Drugs and Alcohol on "Demand"

The National Center for Juvenile Justice (NCJJ) is working with the U.S. Office of Technology Assessment (OTA) to conduct an assessment of "Technologies for Understanding the Root Causes of Substance Abuse and Addiction" for several committees of the U.S. Congress. To that end, NCJJ is conducting an analysis of the role that the availability and marketing of drugs and alcohol plays in the onset and maintenance of drug/alcohol abuse. Specifically, NCJJ has been asked to explore the relationship between availability of drugs and alcohol and demand for drugs and alcohol. In addition, we are addressing the following relevant questions:

- What role do risk and protective factors play in drug use and abuse?
- How can the availability of drugs and alcohol overwhelm protective factors?
- What is the role of pro-drug messages and pro-active drug marketeering in drug abuse?
- Why does drug use and abuse "suddenly" increase in some communities?
- What is the role played by drug gangs and other drug users/marketeers in increasing drug use and abuse?

To answer these questions, NCJJ project staff must: 1) identify communities that have experienced a sudden, observable increase (or decrease) in the abuse of alcohol and/or drugs in the past 12 months; 2) collect preliminary data about the events and circumstances leading to the observed increase or decrease in the availability of alcohol and/or drugs; and 3) collect any available documentation (i.e., data, reports, articles in the local media) of the changes observed. *We are* **particularly** *interested in the observed effects of changes in the* relative availability of controlled substances on *demand* **fur** *drugs and alcohol.*

Accordingly, *we* are *seeking reports* of *observed* changes *in the availability* of *drugs and/or* alcohol *in communities* around *the* U.S., reasons **(or** suspected reasons) *for those* changes, and *the* impact *that these changes have* had *on drug use within the* community. This project is an exploratory study of a phenomenon about which little is known; therefore, while documented accounts of fluctuations in availability are highly desirable, we are also very interested in personal accounts, vignettes, unofficial reports, and reports in the news media.

To contribute information, please call Douglas W. Thomas at (412) 227-6970 or send any information that you feel appropriate (with any available documentation) to:

National Center for Juvenile Justice
701 Forbes Avenue
Pittsburgh, PA 15219

LEGAL PAGE

Ignorance is Not Hiss:

A Brief History of Federal Law and Sexual Harassment

by Greg Markley, Director, Staff Development, Texas Department of Criminal Justice

News stories about sexual harassment are common, whether the stories involve the Navy, Supreme Court nominees, or persons in your organization. The case involving Anita Hill became a focal point for fear, anger and confusion about what does and does not constitute sexual harassment. The potential liability to employers and supervisors is now greater than ever before, yet many lack a real understanding of the relevant laws and how we got to where we are today. This article attempts to fill in some of the gaps by describing the history of federal case law in sexual harassment cases.

Title VII of the Civil Rights Act of 1964

Under Title VII of the Federal Civil Rights Act of 1964 it "shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, sex or nationality."[1] On June 19, 1986, 22 years after passage of the Civil Rights Act, in his opinion for the court in Meritor Savings *Bank v. Vinson,* Justice William Rehnquist stated: "Without question, when a supervisor sexually harasses a subordinate because of a subordinate's sex, that supervisor discriminates on the basis of sex."[2] Prior to this unanimous Supreme Court decision, legal support for sexual harassment as a cause of action lay with lower courts under tort laws.

Early Title VII Cases - Early court decisions *Barnes v.* Train,' Miller v. Bank of America,' and Tomkins v. *Public Service Electric &* Gas Co.3 viewed sexual harassment as isolated behavior between individuals rather than a pervasive and discriminatory pattern of behavior. In the first reported case, *Corne v. Bausch Lomb,*[3] the court held that the behavior was peculiar to the supervisor and that Title VII did not provide protection when the behavior had "no relationship to the nature of the employment."[4]

The first successful relief for discrimination as a result of sexual harassment under Title VII was in Williams v. Saxbe.[4] Where earlier courts had held that to be actionable under Title VII, a characteristic such as "sexual attractiveness" had to be peculiar to the protected class, the *Williams* court held that while "sexual attractiveness" was not peculiar to women, the fact that *only* women had been subjected to the conduct did provide a cause of action. Initial fears that this would grant women a higher standard of protection than men proved unfounded. Although relatively rare, subsequent successful cases have been brought by men alleging sexual harassment by female and homosexual male supervisors.

What is sexual harassment?

The Equal Employment Opportunity Commission (EEOC), which issues "guidelines for interpreting the law and to bring lawsuits against organizations that violate the law,"[5] defined sexual harassment in 1980 as violation of Section 703 of Title VII which consists of "unwelcome sexual advances, requests for sexual favors, and other verbal, visual and physical conduct of a sexual nature." Conduct is presumed to constitute sexual harassment if:

- Submission was an implicit or explicit condition of employment.
- Submission or rejection of the sexual invitation was made a basis for employment decisions.
- A sexual advance or request had the effect of unreasonably interfering with an individual's work performance, or constituted an "intimidating, hostile or offensive" working environment.

Under Title VII, plaintiffs allege one of two types of sexual harassment: quid *pro quo* or hostile *environment. Quid* pro *quo* involves claims that a supervisor demanded sexual favors in return for some job-related benefit which might include, for example, promises of future promotions, raises, or assurances of being retained in the position. Historically, the courts looked for a sexual proposition followed by a response from the victim, and a job-related consequence such as constructive discharge. Proof of the sexual advances as well as rejection of the advances in *quid pro* quo cases is often difficult, forcing courts to examine the credibility of the actors.

In determining exactly what kind of conduct constitutes *quid pro* quo, sexual harassment courts have been inconsistent, with the exception that single or *isolated incidents* do not generally meet the test. While normal behavior with sexual overtones such as flirting is not sufficient proof, requests to affairs have been held to constitute sexual harassment.[5] Generally, behavior that may constitute sexual harassment may be viewed as a continuum ranging from

"flirting, asking for dates and innuendoes," to the other end which may include "fondling, attempted rape, rape, and sexual assault. The lighter the gray the behavior, the more times it has to be repeated" to constitute sexual harassment[6]

Definition of *quid pro quo* sexual harassment was expanded in Bundy v. Jackson[6] where the court ruled that a job-related consequence such as termination of the victim was not necessary. Otherwise, the court reasoned, a person could be sexually harassed indefinitely as long as the harasser refrained from firing the victim. Consequently, Bundy v. Jackson opened the door to claims that the work environment could in itself constitute sexual harassment.

Sexual harassment which creates a hostile *work* environment, the second of the two primary Title VII claims, is characterized by unwelcome behavior that is *offensive* and inappropriate which interferes *with the* workplace and *work* performance. In the benchmark case, Meritor Savings Bank, F.S.B. vs. Vinson, the plaintiff submitted to repeated sexual advances by her supervisor over the course of several years which included public fondling in front of other employees, rape, and other forms of abuse out of fear for her job. Fear for her job also prevented her from reporting her supervisor's behavior to his superiors. At issue was whether she suffered any adverse economic consequences due to her supervisor's harassment which came to light after she left her job.'

The Supreme Court ruled in Meritor that it is not necessary to show that a plaintiff suffered economic damages to prove sexual harassment, merely that the work environment was offensive or hostile to one gender and not the other. Further, a plaintiff could seek legal remedy if harassment was unwelcome and "sufficiently severe or pervasive" so as to "create an abusive working environment."

Since the Supreme Court in Meritor did not provide any guidance, lower courts have been struggling with quantitative and qualitative standards which define abuse and hostile. Normally accepted behavior such as sending an employee a standard birthday card is not included under the concept of hostile work environment, To be actionable the behavior must be pervasive or severe. Isolated conduct is generally not actionable' unless the behavior was so severe as to prove the claim.'

What remedies are available?

Process

One cannot simply file a Title VII charge in court. Victims of sexual harassment may use company grievance processes, if any, or may file an administrative charge directly with the EEOC. In the latter case, if the state does not have an office which carries out EEOC function, the charge must be filed with 180 days of the harassing behavior. If the state does have such an agency, then the plaintiff has 300 days in which to file. The EEOC conducts an investigation and determines whether there was probable cause. Alternatively, at the charging party's request, the EEOC may also close the proceedings. If probable cause was established, the EEOC issues a right to sue letter. The person then has, with some exceptions, 90 days upon receipt of the letter in which to file a suit under Title VII.[10]

Damages

Until recently, victims of sexual harassment could only seek back pay, reinstatement to their job, attorney fees and injunctive relief, but not monetary damages. Title VII, historically, precluded damages for emotional harm. Many courts held that in instances where back pay is awarded after the "employee reigned following discrimination, assuming the resignation does not amount to a constructive discharge," limited the back pay to the time of discharge.[11] A more recent case held that back pay may extend beyond the time of a person's resignation where they were denied a promotion. Consequently, Title VII relief is often sought in addition to relief under state tort and contract laws or other federal laws. In one case, for example, "the plaintiff was awarded $3,000 in back wages for her Title VII claim, but a jury gave her $10 for common battery and $25,000 in compensatory damages for a state law claim for invasion of privacy."' Such limitations probably served as another barrier which further discouraged victims of sexual harassment from pursuing court action.

On November 21, 1991, the Civil Rights Act of 1991 was signed by President Bush. Now, Title VII plaintiffs can sue for both compensatory and punitive damages in addition to attorney fees previously authorized under Title VII claims. 'Compensatory damages may be awarded for future financial loss, and for non-financial losses such as emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life."[8] The bill also includes protection of previously excluded employees of Congress.' Maximum limits on combined damages depend on the size of the business: $50,000 for firms with 15-100 employees during 20 weeks out of the current or preceding year; $100,000 for firms with 100-200 employees; $200,000 for firms with 200-500 employees, and $300,000 for firms with 500 or more employees. Also, winning parties may now also recover fees for expert witnesses. Finally, the Civil Rights Act of 1991 also provides that both defendants and plaintiffs can demand a trial by jury.

Proof

According to one study, roughly 36 percent of the cases (22 out of 61) filed on the basis of hostile environment were won by the plaintiffs. While the potential window of liability for employers is large, such cases are difficult to prove. Elements of a primae facie case of sexual harassment must include a finding that:

- The employee is a member of a protected class.
- The employee was subject to unwelcome sexual harassment.
- The harassment was based on sex.
- The sexual harassment or the employee's response to it affected the conditions of employment.
- The employer was liable for the sexual harassment under respondent superior.

In the first instance, both men and women are considered to be members of a protected class, although the original intent of VII did not specify men unless they were members of a specific race, color or natural origin. Men as well as women are included as a protected class since Title VII prohibits discrimination based on sex regardless of the sex of the victim of the discrimination.[12]

To establish that the sexual harassment was based on sex, a plaintiff must show that if he or she had been a member of another sex, no harassment would have occurred.

A plaintiff must show that the behavior was both sexual and unwelcome. Generally, the courts consider the totality of the circumstances. In circumstances where the behavior was initially welcome, but later unwelcome, the victim should be able to show through consistent speech or behavior that the conduct was no longer welcome. Courts have held that a plaintiff who uses "foul language or sexual innuendo in consensual setting does not waive her legal protections against unwelcome harassment."[13] The plaintiff must, however, show that a change of attitude about such behavior was clearly communicated to the harasser. In cases where there was evidence of a prior mutually acceptable sexual relationship, the issue is whether at some later time there was a declaration that sexual advances were no longer welcome.

To establish that the sexual harassment was based on sex, a plaintiff must show that if he or she had been a member of another sex, no harassment would have occurred.[14]

Under Title VII claims it is the employer, not the employee, who is being sued (although in some instances the harasser may be sued as an individual as well). Once all other elements of prima facie proof are established, a plaintiff must still be able to show that the employer is responsible for the actions of the harasser. Employers are not protected simply because they have a policy prohibiting sexual harassment. Courts will ask whether the employer was aware of the harassment, either directly or through constructive knowledge. Constructive knowledge is inferred from conditions in the workplace which indicate that sexual harassment is so pervasive that a reasonable person should have known harassment was occurring even if they lacked direct knowledge. In quid pro quo cases, however, courts have held employers strict-/y liable for the actions of supervisors whether or not the employer has any knowledge of the harassment. With hostile environment cases, the courts have remained split. Some have held that strict liability is not applicable, while others have taken the opposite view.

Who else may be liable?

Most Title VII cases involve co-workers rather than supervisors and subordinates as in quid pro quo cases. The employer, using the reasonablr person test, will be held liable for co-worker harassment, unless it can be shown that they immediately took appropriate corrective action. Generally, the plaintiff must prove that the employer was made aware of the harassment." In Guess v. Bethlehem Steel Corporation, the court held that the standard is one of negligence of the supervisor where the employer knew or should have known, not respondent superior.[15] In Hirschfels v. New Mexico Corrections Department, the court found that co-workers can be harrassers under hostile environment claims.[16] Liability of non-employees, such as a customer or contractor, must meet the same levels of proof and liability as that of employees.

Reasonable from whose perspective?

Should sexual harassment be viewed from the perspective of a "reasonable person" or a specific victim? Until recently, courts have generally applied the reasonable person test to determine whether a work environment is hostile. For example, in Rabidue v. Osceola Refining Co., the court held that a reasonable person would not find vulgar language and nude pictures to be hostile or intimidating.[17] In a dissenting opinion, Judge Keith stated that the real test should be that of a reasonable woman because the standard for reasonable behavior with respect to sex is different for men and women. In Brooms v. Regal Tube Co., however, the court applied a dual standard of "reasonable person" and "specific plaintiff."[18]

In a recent, precedent-setting Ninth Circuit case, Ellison v. Brady, the court adopted Judge Keith's view when it rejected the reasonable person test because it "systematically ignored" the experiences of the women being harassed." The court held that the appropriate inquiry is the perspective of the victim, and that consequently the standard for reasonableness should be that of a reasonable woman.

Although the harassing behavior in the case which involved two IRS employees was not as serious as that found in many sexual harassment cases, the Ellison court held that the "pervasive and severe" test should be applied to the harassing behavior itself and not to whether the victim of the behavior suffered mental or emotional damage. Consequently, even less abusive forms of conduct may be actionable under Title VII if they are frequent and ongoing. Further, the court held that the reasonable person standard does not adequately protect the victim of such conduct because it might equate common conduct with reasonable conduct. The test of reasonableness should be from the perspective of the victim because men and women have a fundamentally different understanding of abusive acts such as rape. Using this test, the court ruled that even well-intentioned conduct may be actijonabld if "a reasonable person of the same sex as the plaintiff would consider the comments sufficiently severe or pervasive to alter a condition of employment and crease an abusive working environment."

The court also held that employers in hostile environment cases will have to make substantial remedies, which might include terminating the harasser to escape liability. [11] While the court found that the IRS had taken some actions to stop Gray's harassing conduct, such as verbal instructions to stop and the six-month transfer to another off ice, the IRS was liable because they failed to take any disciplinary action against Gray.

Future of sexual harassment under Title VII

With the retirement of Justices Thurgood Marshall and William Brennan, it is believed that the Supreme Court will render more conservative decisions. Some believe that state legislatures have begun to respond to the conservative make-up of the court. It is unclear, however, that a more conservative court will result in a retrenchment in sexual harassment cases. The court, however, looks to EEOC policies for guidance and the EEOC cites court decisions which are in support their policies. It seems more likely that the scars from Justice Thomas' confirmation hearings will, in fact. sensitize the court and the EEOC to future sexual harassment claims. For example, on February 26, 1992 the U.S. Supreme Court rendered a unanimous vote (the first sexual harassment case Justice Clarence Thomas ruled on since his confirmation) in *Franklin* v. *Gwinnett,* under Title IX of the 1972 law which bars sex discrimination in schools which receive federal funds. Christine Franklin sued Gwinnett County, Georgia[20] schools because of sexual harassment by her ninth grade teacher who forced her to have sex. The school initially failed to respond to Franklin's complaint, although their eventual investigation led to the resignation of the teacher." Under the ruling victims of sexual bias in schools can now sue for unlimited damages rather than simply obtain an injunction to prevent further harassment.

Women now comprise 50 percent of the workforce in many occupations, and are making inroads in top management positions. The social, economic and political reality of their presence is likely to strengthen the definition of what constitutes sexual harassment. The new damages provisions for Title VII cases makes it less likely that women will simply walk away from jobs where they've been harassed.

Class action suits for sexual harassment seem unlikely. Although a recent decision in Wisconsin would appear to open the door for class action suits, EEOC considers each case on an individual basis and is unlikely to change this view. Also, case law has shifted from the point of view of a reasonable person to that of a specific victim.

Litigation of Title VII claims will increase in the future. The provision for compensatory and punitive damages under the Civil Rights Act of 1991 removes some of the previous barriers which limited the number of Title VII claims. During 1989-1990, 84 sexual harassment suits were filed with the Texas Human Rights Commission (THRC). The THRC reported no correlation between the size of business and the probability of a sexual harassment complaint. Nationwide, the EEOC filed 523 suits in 1990, of which 353 were filed under Title VII. Total damages awarded amounted to $98,850,000. Filings do not give the whole picture, however. In 1990, 62,135 charges were filed with the EEOC, a 5 percent increase over the previous year. Successful claims as well as unsuccessful claims have an educational effect, which in turn will encourage more individuals to seek legal remedies rather than ignore the problem. Arbitration of sexual harassment claims will also increase. First - for the simple reason that it is now possible under recent changes. Second - employers will have an incentive to restrict their liability in the face of new damages under the Civil Rights Act of 1991.

What should employers do?

The EEOC holds an employer strictly liable for sexual harassment by a supervisor. Moreover, co-workers and other third parties can file a complaint if the offending behavior "unreasonably interferes with his or her work performance." Liability exists when "the employer or its agents or supervisory employees know or should have known of the conduct, unless the employer can show that the right action happened at the right time. Courts differ, however, about what kind of corrective action on the part of employers removes them from liability. In Guess v. *Bethlehem Steel Corp.,* the court found that prompt corrective action which could be reasonably likely to prevent a future occurrence was sufficient to remove an employer's liability." In Ellison v. Brady, the court held that the only acceptable corrective action is that which actually stops the behavior in the present and makes it unlikely in the future.[22]

Generally, there appears to be a consensus of opinion that, in order to limit liability, employers need to:

- Develop, publish and distribute a policy prohibiting sexual harassment;
- Provide training to all staff regarding the policies;
- Develop a clear grievance procedure that does not require an employee to initially file the grievance with the immediate supervisor;
- Investigate and document all complaints immediately; and
- When the investigation indicates that sexual harassment has occurred, discipline the harasser and put it in writing. In serious cases only, termination may suffice.

While such efforts will limit the more serious incidents of sexual harassment, as well as limiting employer liability, plaintiffs will continue to push the boundaries in defining what constitutes sexual harassment. Following Ellison more courts are likely to adopt the standard of a reasonable victim. This sets the stage for a whole new set of definitions as to what constitutes reasonable, including the limits of such a standard.

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[5] *Phillips v. Smalley Maint. Services, Inc., 711* F 2d 1524, 32 FEP 975 (11th Cir. 1983).

[6] *Bundy* v. Jackson, 641 F. 2d 934 24 FEP Cases 1093 (D.C. Cir. 1981).

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[19] *Ellison* v. Brady, 924 F.2d 872 (1991).

[20] Franklin *v. Gwinnett County School* District (No. 90-918), Argued Dec. 11, 1991.

[21] *Guess v. Bethlehem Steel Corp.,* 54 EPD ¶ 40,251 (7th Cir. 1900).

[22] *Ellison v. Brady,* 55 EPD ¶ 40, 520 (9th Cir. 1991).

Where Are You?

Parole and Probation is "on the move," but please keep us informed of your new address when it changes. In this issue you will find a postage-paid return postcard, which can be used to renew membership, become a member, or notify us of a new address.

If you don't know whether we have your latest address, just complete and return the card so APPA mailings will reach YOU, and not those who bought your house or the one who holds your old job! □

National Victims' Forum a Success!

by Tom Hudson. Public Information Officer, South Carolina Department of Probation, Parole and Pardon Services, Columbia, SC

The first national Victim Issues Public Hearing of the American Probation and Parole Association was held August 29, 1992 in conjunction with the APPA Annual Training Institute in St. Louis. Missouri.

AI *Smith* of Kansas City, Missouri, provided *testi*mony to the Victim Issues Committee as the *parent* of *a* murdered daughter whose assailant was found not *guilty* by reason **of** insanity.

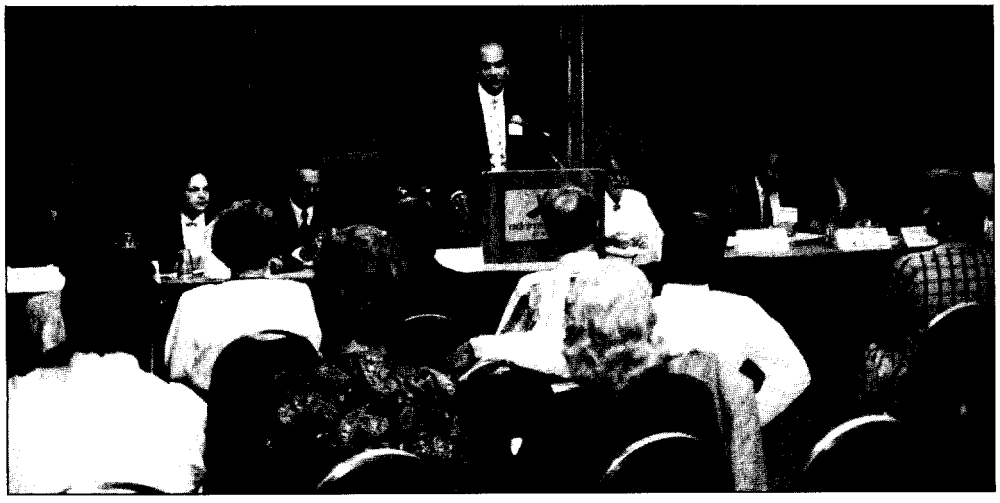
Over a dozen individuals representing victim advocacy groups, the court, law enforcement, and the probation and parole field offered opinions and ideas to the APPA Victim Issues Committee as part of the committee's effort to enhance services to victims of crime. Committee member Anne Seymour of the National Victim Center in Arlington, VA, did an excellent job moderating the hearing on behalf of the committee.

"This was a groundbreaking effort on the part of the Association," says Victim Issues Committee Chairman Michael J. Cavanaugh. "Through this hearing, we in the field of probation and parole can build upon the significant work that has already been done in providing stronger and more comprehensive services to victims."

Echoing Cavanaugh's view is Susan Laurence, Program Specialist with the Office for Victims of Crime within the U.S. Department of Justice. "There is a need for greater sensitivity from correctional professionals related to the area of victims' rights," notes Ms. Laurence. "We in the criminal justice field need to be attentive and responsive to the impact of crime on the individual." Ms. Laurence provided compelling testimony to the APPA Committee at the hearing and stressed the federal government's continued interest in this area. Cranston Mitchell, Chairman of the Missouri Board of Probation and Parole, testified to his state's effort to involve victims in the parole process.

Also among those testifying was Hyman Eisenberg of the St. Louis Chapter of Parents **of** Murdered Children. Eisenberg believes the Victim Issues Public Hearing is "a major step forward" in directly communicating the rights and needs of victims. "It was an opportunity for a number of victims to give personal insight on the impact of crime on their lives," says Eisenberg. "This hearing opened the door for them to provide their own thoughts on their own experiences." Another surviving family member of a homicide victim who provided testimony was Allen Smith of Kansas City, MO.

In addition to two committee members who addressed the panel, Honorable Ted Poe (Houston, TX) and John Gillis (Sacramento, CA), representatives from several victim advocacy organizations offered testimony to the committee: Ed Stout, Aid *for* Victims **of** Crime, St. Louis, MO; Linda Miller, Adult Offender Center, Memphis, TN; Margaret Phillips, American *Friends Service Committee,* St. Louis, MO; Nancy Hampe, Circuit Attorney's Office, St. Louis, MO; and Kathy Tofall, Victim *Service* Council, St. Louis, MO. Three additional committee members were prepared to provide testimony, but due to time constraints they were placed on the agenda for a future public hearing that will be held in 1993: Christine Heisel (O'Fallon, IL); Dr. Brian Ogawa (Honolulu, HI); and Linda F. Frank (Lexington, KY).



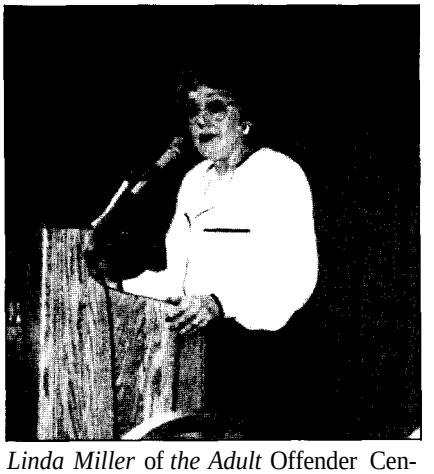
Chairman Mike Cavanaugh made opening remarks at *the* Victim Issues Public Hearing.

Also included in the record was written testimony received prior to the hearing from the following individuals: Janice Lord, *Mothers Against Drunk* Drivers, Irvin, TX; Senator Carol McBride Pirsch, Lincoln, NE; and LaJuan Woodland, Probation Officer, Washington, DC.

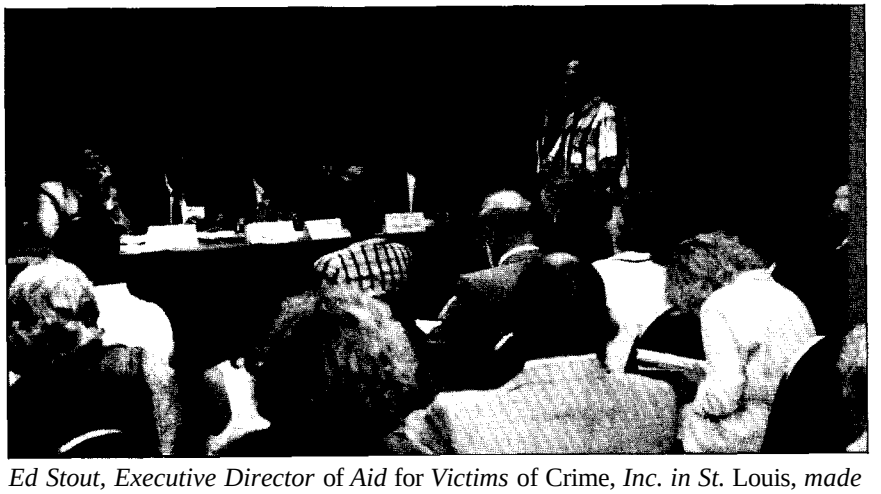
Linda F. Frank, the APPA Victim Services Specialist, was very pleased by the attendance and exchange of ideas between participants at this first public hearing. She established that given the success of the public hearing, an open forum will again be available for crime victims and their advocates to address the APPA Victim Issues Committee. The enthusiasm for reaching a common ground between corrections professionals and crime victims has prompted a second public hearing which will be held during the APPA Annual Institute in Philadelphia in September 1993. More information on this hearing will be released by the committee in a future issue of *Perspectives.*

Audio and videotapes of the public hearing in St. Louis are available through Brett M. Macgargle, Director of Victim Services, SC. Department of Probation, Parole and Pardon Services, (803) **734-9367.**

Kathy Tofall of *the Victim Services* Council *in St. Louis provided testimony to* the *committee.*



Linda Miller of *the Adult* Offender Center in Memphis *stressed the* importance of *providing* services to crime victims at the community corrections level.



Ed Stout, Executive Director of *Aid* for *Victims* of Crime, *Inc. in St.* Louis, *made suggestions* for *services to victims* on *the community corrections level.*

Achieving Public Safety through the Provision **of** *Intense Services:*

The Promise of a New ISP

by Betsy Fulton and Susan Stone, Research Associates, American Probation and Parole Association

Intensive Supervision is not a new concept. The Intensive Supervision Programs (ISPs) of today, however, would be unrecognizable to practitioners of the sixties and early seventies. They have changed dramatically from rehabilitation oriented programs in which a probation or parole officer's role was assistance and advocacy to control oriented programs in which the officer's role is primarily surveillance (O'Leary, 1987; Clear and Hardyman, 1990; Lawrence, 1991). ISPs have changed with the prevailing societal norms, rather than because of lessons learned through the systematic evaluation of practices. Accordingly, the ISPs of today are having no better impact on recidivism than earlier efforts.

Despite the disparaging results of recent ISP research suggesting that ISPs are not achieving their stated goals (Byrne and Kelly, 1989; Baird and Wagner, 1990; Petersilia and Turner, 1992; Turner and Petersilia, 1992), probation and parole practitioners firmly grasp on to what they believe to be a "new and improved" form of community supervision. Recognizing this commitment and the potential for ISPs, the Bureau of Justice Assistance awarded a grant to the American Probation and Parole Association to facilitate the search for ways to improve the effectiveness of ISPs. An examination of the available research, policy issues, and practitioner attitudes and perceptions has led to the following recommendations.

A Conceptual Framework for Effective ISPs

The following four recommendations provide a conceptual framework for ISPs that focuses on addressing the needs of the probation and parole population and promoting the long-term behavioral change that leads to a reduction in recidivism and enhanced public safety.

- ISPs should remain intact but change the way in which they are intensive by shifting the emphasis of ISPs from exclusive incapacitative and punitive measures to a more integrated approach of interventions and risk-control strategies.
- ISPs should be developed as probation and parole enhancement programs that meet the needs of the existing probation and parole populations. While prison diversion and intermediate sanction programs offer potential solutions to pressing problems, the theoretical foundation provided by enhancement ISPs supports probation and parole's mission; public safety and offender rehabilitation become a priority. Because other system improvements (including the alleviation of prison crowding) are dependent on the effective management of the probation and parole population, the entire criminal justice system will benefit from this shift in priority.
- The focus of ISP should be on the provision of intense services. Considering the research findings that suggest correlations between participation in rehabilitative programs and recidivism reduction (Byrne and Kelly, 1989; Gendreau and Andrews, 1990; Andrews et al., 1990; Petersilia and Turner, 1992; Jolin and Stipak, 1992), a more meaningful form of crime control seems to be the provision of assistance and services for offenders in the areas of employment, education and substance abuse (Lawrence, 1991).
- Surveillance needs to be redefined, so as not to negate the importance of control and monitoring, but to emphasize the need to conduct surveillance through constructive activities rather than mere supervision contacts.

Critical Elements for Effective ISPs

Further refinement of ISPs requires an examination of existing program elements and a conscious decision by agencies to invest their resources in those elements and strategies that cultivate effective intervention and long-term behavioral change. The following elements were identified as being essential for effective ISPs:

- **High risk/need target population:** Research has indicated that the prospect for positive change through the provision of intensive supervision is greater for a high risk/need population than it is for a low risk/need offender population (Gendreau and Ross, 1987; Andrews et al., 1990).
- **Reliable risk/need instrument:** Studies show that statistical predictions of recidivism are actually superior to clinical predictions (Glaser, 1987; Clear and O'Leary, 1983; Andrews et al., 1990).
- **Small caseloads:** To implement the type of program proposed, time becomes even more of an issue. It is recommended that ISP caseloads range from 20 to 30 offenders per officer depending on various jurisdictional factors.
- **Frequent substantive contact:** The findings from recent program evaluations suggest that increased contact alone is not sufficient. The focus should be on "substantive" contact aimed at assisting the offender, resolving problems and monitoring progress in rehabilitative programming.
- **Phase or level system:** Phases and levels serve as a means for ISP staff to evaluate the offender's progress and provide the offenders with concrete, attainable milestones to strive toward.

APPA - Your ISP Resource

Learn more about the future of Intensive Supervision Programs by taking advantage of the following information and training opportunities:

- An extensive report, "A New Direction for Intensive Supervision Programs in Probation and Parole," details the above recommendations and related issues, The report is available from the American Probation and Parole Association on a cost recovery basis (total cost: $18.00).
- Nationwide and state-specific results of a comprehensive survey of ISP administrators and ISP line officers will soon be available.
- Upcoming training will provide "how-to" information on incorporating the above recommendations into your ISP Specifically, training participants will learn:
  - the importance of recent ISP research results;
  - the necessity of an appropriate target population and methods for identifying that population;
  - the importance of objectives-based case management and procedures for its implementation;
  - effective supervision strategies focusing on offender rehabilitation and reintegration;
  - which elements are critical to ISP success;
  - how to identify and overcome resource and programmatic constraints; and
  - strategies for increasing community involvement.

Three national seminars, three to five days each, will be conducted between February and April of 1993 in Seattle, Denver and Charleston, SC. This training will also be conducted at APPA's Winter Training Institute in Austin, TX; January 31 - February 3, 1993.

For further information please call (606) 231-1954 or write to: Betsy Fulton, APPA; Iron Works Pike; P.O. Box 11910; Lexington, KY 40578-1910.

- **Systematic case review:** The offender's initial classification and assessment should not determine the course and content of treatment for the duration of the program (Palmer, 1984). Palmer (1984) suggests that case plans should be reviewed and updated approximately every six months and in the case of a crisis.
- **System of rewards:** The use of rewards supports the behavior modification theory that assumes that "rewarding a behavior positively, immediately, and systematically increases the occurrence of the behavior" (Bartollas, 1985).
- **System of sanctions:** Pearson and Harper (1990) note the importance of "providing visible progressive sanctions." Each violation should be followed by the swift imposition of an appropriate sanction to promote offender accountability. A progressive program gives the probation/parole officer the discretion and the authority to impose intermediate sanctions in response to violations without having to return to court or to the parole board.
- **An available range of correctional interventions:** Providing for treatment and reintegrative services that address substance abuse, sex offender issues, mental health problems, employment and education are essential to the effectiveness of the ISP (Byrne and Kelly, 1989; Gendreau and Andrews, 1990; Andrews et al., 1990; Petersilia and Turner, 1992; Lawrence, 1991).
- **Restitution to victims:** It is recommended that restitution be used, at face value, as a means to justly compensate victims rather than as a means to deter criminal behavior or reduce recidivism (Harland and Rosen, 1987). In the midst of the growing concern for victims' rights, restitution may be a means for ISPs to gain public support (Colson and Van Ness, 1989).
- **Community involvement:** ISPs must address the community context in which offenders reside. What is needed is a way of bringing ISPs, offenders, and communities together in a triad committed to rehabilitation and integration of the offender into the community.
- **ISP officers as facilitators and advocates:** In addition to performing surveillance-type duties, the role of an ISP officer is to see that offenders receive the services they need. The offender needs an advocate in the community as long as there are barriers to rehabilitation and reintegration.
- **Objectives-based management:** Objectives-Based Management (OBM) is a management system designed for human service agencies that focuses on the provision of services versus traditional productivity measures (Clear and O'Leary, 1983). OBM focuses every aspect of the agency on its intended purpose. It provides for continual organizational feedback, evaluation, and planning.
- **Sound means of program evaluation:** Program evaluation should occur on an annual basis to examine whether the ISP is meeting the established program goals; what elements appear to be effective; and what elements appear to be hindering progress. Program evaluation and modification demonstrates a commitment to achieving program goals.

Conclusion

Throughout this "get tough on crime" era, the pendulum has swung so far to the right that one of the original purposes of probation and parole has been forgotten: the rehabilitation of offenders so that they will no longer need or desire to become involved in criminal activity. This article is not suggesting that the pendulum swing to another extreme. It is suggesting that agencies recognize the importance of rehabilita-

tion to public safety. Agencies must build on the available knowledge base and incorporate principles of effective correctional interventions to keep ISP as a major component of the system. It is a critical time for ISPs. The response to this period of uncertainty will define probation and parole for the next decade.

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