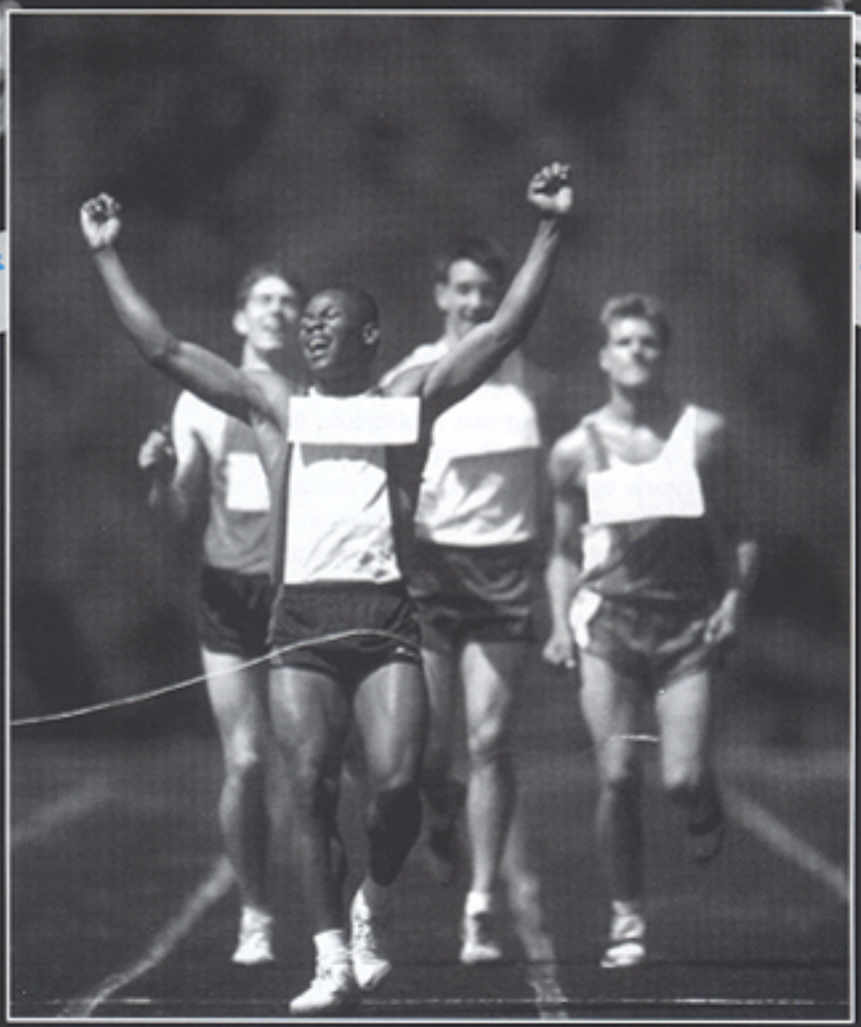
American Probation and Parole Association Summer 1994

PERSPECTIVES

WAKE UP Probation & Parole!

Is your agency. . .

. . . asleep at the wheel?



. . . preparing to take off?

. . . leading the pack?

19th Annual Institute Info Inside

Alan M. Schuman

PRESIDENT'S MESSAGE

I am happy to report that we are on track with the visionary process of involving APPA membership and other community corrections colleagues in determining the direction and goals of our association. At the Annual Institute this September in Phoenix, Arizona, we will be adding the finishing touches to the information we have collected and analyzed. I want to thank you for participating in this monumental task I also want to thank all of the members who were trained, and who facilitated this visionary process in various regions, states and at local agencies across the county. However, when I consider the Community Justice Leadership Project, I feel compelled to relate it to the issue of ***membership in APPA.***

Everyone agrees that increased membership in APPA is one of the organization's top priorities. Everyone agrees that the association has increased its national reputation through the acquisition of service-oriented grants, through research, through publication of documents addressing the major issues confronting our profession, and through the provision of quality training and technical assistance in every region of the nation. Everyone agrees that increased association membership enhances the influence the association has on local, state and federal policies. Everyone also agrees the association needs to become more creative in building our membership.

The promise I made to involve everyone in all aspects of APPA applies equally to membership issues. Historically, APPA has appointed a membership committee and expected those committee members to address the issues of increasing association membership. The association has unrealistically expected that these few hard working colleagues would dramatically increase the association membership. In assisting the membership committee, we have conducted the general membership meetings on Sunday evening just before the opening session of the Winter and Annual Institutes. The dedicated few then wonder why the attendance is so poor. In the spirit of being inclusionary and accessing the creativity of the entire APPA membership, a different approach is being proposed. The assistance of all APPA members is needed for it to be successful.

The membership committee, under the leadership of Mickey Neel, has developed a list of strategies and approaches that need to be implemented by the ***entire APPA membership.*** Some of these

continued on page 3

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strategies include:

- prioritizing the general membership meeting and scheduling it during a ***prime*** Institute time slot;
- awarding door prizes to members who attend the general membership meeting;
- establishing a ***President's Recruitment Award for*** the APPA member who recruits a certain number of new members;
- paid registration to the Winter or Annual Institute for APPA members who recruit a certain number of new members;
- longevity lapel pins for APPA members when they reach certain anniversary dates (i.e., new member, five years, 10 years, 20 years); and
- arranging for first-time members to purchase a multiple-year membership at a reduced rate.

The strategies described are just a sampling of the ideas that will be shared at the general membership meeting during the Annual Institute in Phoenix and through the APPA Board of Directors regional representatives. We have scheduled the general membership meeting just before the closing session of the Annual Institute to enhance attendance at the meeting. We plan to share ideas about the state of our association and incorporate those ideas into the future plans for the association.

APPA now offers four separate types of membership. Besides the ***in***dividual and ***affiliate*** memberships, we have created corporate and ***agency*** membership categories. The corporate membership is directly related to the association's commitment to be more inclusionary. One of the greatest untapped resources for probation and parole is the private sector. Partnerships with public sector disciplines are becoming commonplace, and forging such partnerships is one of the association's highest priorities. We are now accessing the considerable high technology, management and linkage skills of the private corporate world. Our early experiences with the association's new corporate members have surpassed our original expectations. The possibilities for more effectively providing quality services to the people we supervise are greatly enhanced by this partnership.

Another exciting category of involvement in APPA is through ***agency membership.*** This type of membership provides many more of our colleagues with the opportunity to participate in APPA activities. This type of membership represents a great cost savings and allows APPA to disseminate to a wider audience information relevant to their work. Our goal is to ***have every state probation and parole agency in the nation join as an agency member.***

APPA's greatest strength, however, continues to be individual membership. I am now asking each and every member of APPA to become actively involved in increasing our membership. I am asking each member to recruit at least ***one new member this year.*** I am asking you to submit to APPA your suggestions for creative ways of increasing membership in all four ***categories--individuaI, affiliate, corporate and agency. I*** am also asking you to attend the general membership meeting to share your ideas about the needs of our profession; I am asking that you also share the elements of membership that are most attractive to you with your colleagues. Every increase in association membership gives you a stronger voice at all levels of government.

There are 4.2 million people on some type of juvenile and adult probation or parole supervision. A strong, unified and visionary approach that expresses our common mission and goals is no longer a luxury but a ***necessity.*** The stronger the voice, the better the chances that our national leaders will put forward a balanced approach to corrections that will recognize the critical nature of our profession. Remember, every new member recruited makes a tremendous difference in the association's influence on policymakers.

Notice

On July 1, 1994, a new telephone system will be installed at the Council of State Governments and telephone numbers for all staff of the American Probation and Parole Association (APPA) will change. Old telephone numbers will be disconnected on July 1. Please revise your records to reflect the following new telephone numbers.

APPA Staff Directory

(effective 7-l-94)

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Stuban, Mistene	**606-244-8211**
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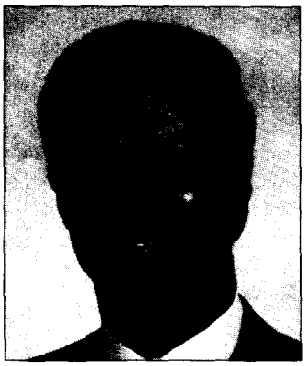
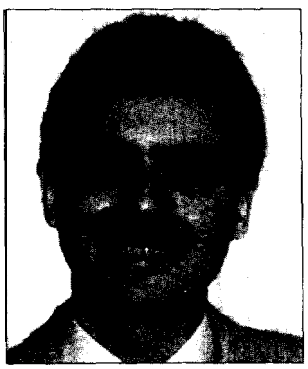
Where to Call at APPA

- **APPA Membership/ Institute Registration 606-244-8207**
- **F&ear&Information Clearinghouse 606-244-8193**
- General Inquiries *606-244-8203*



Robert E. DeComo

Dan Richard Beto



Arthur J. Lurigio

Faye S. Taxman

Letter from the Editors

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

Welcome to the Summer issue of ***Perspectives***. This is the issue each year in which we include a detailed description of APPA's plans for the Annual Institute as well as the registration materials you will need to arrange your participation. Please share these materials with your colleagues. Let's make this year's Institute an attendance record setter. See you in Phoenix!

In reviewing the content of this issue, I would like to draw your attention to an important and timely position paper developed by an APPA affiliate, the International Association of Residential and Community Alternatives. The IARCA position paper outlines that organization's "Call for a Comprehensive National Policy on Crime in America." This paper was developed in an effort to influence the final version of the Crime Control and Law Enforcement Act (H.R. 3355, the so-called Federal Crime Bill) currently being debated in Congress and all across the nation. I believe it is an important responsibility of individuals and organizations in our field to help fashion national policy on crime and justice. I believe ***Perspectives*** is an appropriate vehicle for helping disseminate the views of our membership and affiliates.

Note the addition of our new "FORUM" feature in this issue. It is designed to provide our constituency with an opportunity to speak their minds in a more in-depth format than that offered by a "Letters to the Editor" section (which also welcomes submissions).

Turning to our regular features, our Guest Editorial for this issue was contributed by James E. Fitzsimons, Senior United States Probation Officer from the Northern District of California. In his view, probation is in a regrettable state of merely "coping" with current issues and environments rather than shaping its future. To support his view, Mr. Fitzsimons identifies some of the dominant trends in the last three decades that has brought the field to this "near terminal" condition. He concludes his editorial by offering a prescription of leadership, discipline, publicity and research to restore confidence, security and stature to the field in the years ahead.

Our Legal Page has been contributed by Professor Rolando del Carmen and James Alan Pilant from the Criminal Justice Center at Sam Houston State University. The authors provide a detailed analysis of the case law governing how and when immunity from liability is extended or withheld from probation and parole officers. Since the issue of liability is becoming an increasing concern with the hardening of community corrections caseloads, this article is especially timely and instructive by offering guidance in this complex and inconsistent area of law.

The NIC column completes our regular features for this issue. While NIC is best known in our field for its technical assistance and training activities, NIC has also provided significant support for "networking in community corrections." Rick Faulkner, NIC Correctional Program Specialist, describes the agency's growing efforts to bring professionals together to foster an exchange of ideas and information.

Turning to our special features, our first has been contributed by Peggy Burke from the Center for Effective Public Policy and describes the NIC national technical assistance projects aimed at improving policies for the handling of probation and parole violations. This project is highly significant since it attempts to address one of the most critical problems in corrections today - the growing number of offenders incarcerated for supervision violations. In fact, in some

continued on page 6

Letter from the Editors

from page 4

states violators represent the majority of prison admissions. This article describes efforts in four jurisdictions to structure violation decision making, discusses the benefits to be derived by crafting policy-driven responses to violations and identifies resources available to agencies interested in working in this area.

Our second special feature has been contributed by Marty Ramsay, who is the state coordinator for the Alabama Court Referral Program. The state judiciary developed this multi-faceted program in an effort to develop a more comprehensive and effective approach to dealing with alcohol and drug addicted offenders. The article describes the various components of the program and reports encouraging evaluation results.

Our third special feature has been contributed by Ray Ferns, Director of Community Corrections in the Hood River area of Oregon. While many of us are aware of treatment programs using cognitive restructuring approaches, I believe the theoretical and philosophical bases for these interventions are not well understood. Mr. Ferns discusses the underlying principles of restorative justice and describes how it has been operationalized as a correctional case management approach. Moreover, he suggests that embracing the principles of restorative justice may represent the next step in the evolution of correctional purposes and practices.

Our final special feature for this issue has been contributed by Professors Wesley Johnson and Mark Jones. The authors document the hardening of probation and parole caseloads in three Texas counties and describe the impact "felonization" has had on agency policies and practices. While the trend to hardened caseloads has been widely observed, this article is significant in that it quantifies this trend and details its impact.

In closing, the members of the Editorial Committee invite your contributions, comments and suggestions by calling or writing to:

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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 an editorial committee 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 ASCII format on an IBM-compatible computer disk, along with five hard copies, to the chairman of the editorial committee (refer to the "Letter from the Editors" for address) in accordance with the following deadlines:

Fall 1994 Issue	**June 21, 1994**
Winter 1995 Issue	**September 21, 1994**
Spring 1995 Issue	**December 12, 1994**
Summer 1995 Issue	**March 21, 1995**

Unless previously discussed with the editors, submissions should not exceed 10 typed pages, 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 must 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 parentheses, 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.

FORUM

Introducing A *New Perspectives* Feature

Beyond "Letters to the Editor" (which are always welcome in Perspectives), ***APPA would like to provide a forum for community corrections professionals to talk about what's on their mind in a substantive format. To that end, this issue offers the first installment of our new FORUM feature. APPA welcomes your submissions and hopes you will use this opportunity to 'speak out!" (Mail features to APPA*** Perspectives/Attn. ***FORUM, Jo The Councilof State Governments, PO, Box 11910, Lexington, KY 40578-1910. They will be forwarded to the Editorial Committee.)***

Management vs. Leadership: A New Direction

"You manage things.. .You ***lead*** people." A good friend and correctional colleague, Lee Blenkush, used to say that to me on a regular basis. This simple phrase and its operative words are worthy of further consideration. When I checked the synonyms on my computer for "manage" I found words and phrases like: "fend, get along, get by, muddle through, and stagger on." When I checked for "lead" I found words like: "shepherd, escort, steer, introduce, convert, persuade, stretch, mentor, guidance and protagonist." We have become inundated in corrections both within the private and public sector with the word management - inmate management, offender management, the correctional manager - the list goes on. What a different meaning those phrases take on when the word leadership replaces management. Perhaps another way of looking at the differences between these roles is that managers are concerned with detail and leaders are concerned with goals. In this context, there is a place for management skills in us all. However, it occurs to me that as correctional professionals we have allowed ourselves to be lulled and "mandated" into believing that the best and only thing we can do is manage. I sincerely doubt that many of us got into this field to simply manage a caseload, but rather to introduce positive change in the people with which we work.

Furthermore, I suspect that the public doesn't have much appreciation for the task we face - that they only hear of our mistakes and, quite possibly, might not care to understand what our jobs entail. It is certainly clear that most lawmakers don't fully understand the complexities and corresponding challenges of our correctional system. They continue to demand more for less from community corrections. They often ignore sound practice and fiscal accountability, choosing instead knee-jerk responses to our country's crime problems. Headlines, not research; individual tragedies, not usual outcomes; and failures, not successes drive our policies and public opinions.

Likewise, what we as corrections professionals, read, hear and see from the media has a debilitating effect on our attitudes toward the people with which we work and the practices to which we profess. We must educate ourselves beyond headlines and sound bites. Much of what we do, much of what we are mandated to do, is based on prevailing opinions - prevailing opinions which are not formed from empirical data, effective practice or proactive ideals. Often, prevailing opinions are created by a single set of circumstances or sensational journalism. I believe that it is our responsibility as corrections professionals to not only prevent ourselves from being mesmerized by prevailing opinions, but to take a leadership role in courageously and loudly speaking out against them. Martin Luther King, Jr. said:

> "Many people fear nothing more terribly than to take a position which stands out sharply and clearly from the prevailing opinion. The tendency of most is to adopt a view that is so ambiguous that it will include everything and so popular that it will include everybody. Not a few men who cherish lofty and noble ideals hide them under a bushel for fear of being called different."

Corrections in this country will be only as viable, fair-minded, creative and effective as we (the people who perform the work) allow it to be through our commitment to taking a leadership role in educating ourselves, lawmakers and the public about sound and efficacious correctional practices.

Carl Wicklund, Court Services Director; Dodge, Fillmore and Olmsted Counties; Rochester; Minnesota.

GUEST EDITORIAL:

Good Morning, This is Your Wake-Up Call

by James E. Fitzsimons, Senior United States Probation Officer, California

Certainly they meant well, those probation officer types, though I never really understood what it was, exactly, that they did. I knew one once, seemed like a respectable sort, he ultimately found a decent job, however.

Probation Under Fiscal Constraints a 1989 National Institute of Justice publication, describes a myriad of "coping strategies" utilized by various probation agencies in order to adapt to diminishing resources. It is a sad, justly deserved state. Here we are treading water, at a time when we should be confident and secure.

Probation is the dominant criminal justice sanction in America. Preliminary Bureau of Justice statistics reflect that in 1992 there were 2,824,000 persons were under court-ordered probation. This compares with 627,000 persons on parole and 883,593 persons in prison. That's 3.5 million adults living among us in our communities under the jurisdiction of the criminal justice system. If, according to the Criminal Justice Institute, the minimum annual cost of keep ing a person on probation is $850, and parole $1055 and then you add the prison population at $20,803 per person, the cost incurred by the public is in the neighborhood of $21.5 billion per year. Now why would the public have the nerve to demand results? And I wonder if they know this doesn't include prison construction costs or any of probation and parole's many add-on features.

The thesis of this paper is that the state of corrections seems near terminal for a number of clear reasons, at least in retrospect:

- We have never had any true leadership;
- We have never had clear goals;
- We have never had a specific discipline;
- We have always been an enigma to the public; and
- We have done little to curry interest from researchers.

While realizing this is neither profound nor provocative, a review of the literature for the past 30 years discloses these recurrent themes.

The Sixties: No Direction

At the beginning of this decade we discussed the difference between changing and controlling behavior, but conspicuously absent was the matter of how this was to be accomplished. Descriptions of supervision such as "The use of a professional methodology which has been synthesized from the findings of the behavioral sciences" Evans, (1961) are not particularly illuminating. Much was made of the importance of the relationship between the probation officer and their client and the assumption that this somehow galvanized the offender's desire to change.

Rehabilitation was the operative word of the '60s, but it was a concept without any factual basis or theory. Shireman expressed this as ". . .our increasing awareness of the current incoherent state of knowledge and theory as to know precisely what rehabilitation implies and how it is to be accomplished," and "...much of our work rests upon no organized treatment theory at all, or upon the assumptions still only partially tested, or, sometimes, upon little more than pious hope." He stressed that we must build ". ..a systematic body of knowledge which can be tested, built upon, added to, and taught" (Shireman, 1963).

In 1965, Newman stated that the public had a right to know what it is we do, but warned, "Before we can ever hope to convince the public as to our claim of special knowledge and skills in the correctional field, we are going to have to agree on a philosophy of corrections" (Newman, 1965). So there it is, by the mid-sixties it is all laid out for us: the task is to agree upon a discipline and enlist public support. A veritable blueprint for action. Surely we'll grab the ball and run with it.

During 1968, with the war upon us, steeped in social unrest, the proliferation of illicit drug usage and the public feeling "bitter, alarmed, and fighting mad" (Harris, 1968) about corrections, we were feeling particularly alienated. Young reports, "The correctional worker must speak out, loudly, clearly, and constantly, if the changes necessary to make our correctional system work are ever to come about." In reemphasizing that which we had yet to learn, "The ultimate source of power in the field of corrections is the public" (Young, 1967).

The same year, in response to a survey about the key desires of correctional administrators, what was clearly the number-one desire of 1,870 persons queried? Better pay? Improved working conditions? No, it was "community acceptance" (Harris, 1968). There was a strong plea for leadership, but, really, isn't it somewhat of a dichotomy for a low profile profession to seek strong leadership?

At the end of the decade, still seeking assimilation into the community,

the "broker-of-services" label appears and the President's Crime Commission reports that we now have "...wider functions than are usually emphasized with their casework and guidance orientation." Here is significant change in our job description, and we didn't even get to vote on it. I knew we should have organized, but now at least we may be able to pass the buck. The community would now be responsible for providing the resources we were to broker. Harris aids us in externalizing the problem and solution; "The roots of crime lie in the community. Only the community, in the end, can really solve the crisis" (Harris, 1968). See, folks, it's really not our fault; these are, after all, societal problems.

The Seventies: Introspection

To commence the '70s crime is described as a national disgrace and we are presented with the report of the Joint Commission on Correctional Manpower and Training that states:

> Corrections today is characterized by an overlapping of jurisdictions, a diversity of philosophies, and a hodgepodge of organizational structures which have little contact with one another. It has grown piecemeal - sometimes out of expedience, sometimes of necessity. Seldom has growth been based on systematic planning. Lacking consistent guidelines and the means to test program effectiveness, legislators continue to pass laws, executives mandate policies, and both cause large sums of money to be spent on ineffective corrective methods (Wallach & Sanfilippo, 1970).

Alvin Cohn indicates, "Despite our best efforts and intentions, we continue to be unsuccessful in the development of a scientifically valid correctional process." And, "If we were successful, we would know what we were doing, why, and how best to achieve it on a replicated basis throughout the system" (Cohn, 1970). And Glazer states that we must learn, "What works best for what subjects or materials under what circumstances?" (Glaser, 1975).

This was indeed a decade for introspection and redefinition of our roles. The General Accounting Office described probation as a "system in crisis" due to its "...aimlessness of purpose" (Fogel, 1977). Mangrum attributes our failure to the fact that much of our effort is focused on changing defective personalities instead of on behavior, "...after all it is behavior - overt action - that is illegal, not an attitude or a condition or a characteristic or a personality trait" (Mangrum, 1976).

This, then, provides the backdrop for the introduction of risk prediction instruments which will enable us to measure and engage those whose behavior poses the greatest risk to the public. Additionally, they replace intuition with a process that has an empirical basis.

And speaking of the public, they're still scratching their heads. Dulaney, reporting on the Joint Commission on Correctional Manpower, offers, "Public attitudes toward corrections are being formed within a factual vacuum" (Dulaney, 1970).

MacPherson reports, "The most important activity in which a probation agency can be engaged is to provide leadership in the direction of vital social change" (1971). Now wait a minute, we're not doing such a good job of leading ourselves, ***please*** don't hand us another torch."

During 1979, Cohn, in describing "progress" in corrections during the decade, reports that there was none. Rather, he stated there had been "recognition by many that corrections has failed: failed to correct clients, failed to protect society, failed in general effectiveness, and failed at being efficient in its operations. There is still no distinct body of knowledge..." He reports that "... Treatment, however noble its intent, no longer suffices as the ideal strategy" (1979).

The Eighties: Redirection/ Instrumentation/ Contradiction

So do we start the '80s any differently than the Sixties? Mangrum reports that corrections continues to be characterized "...by a deafening silence" (1981). Cohn adds, "Corrections has hidden behind the walls of the prison and the file cabinets of agencies for so long that few in the community really understand what the agencies are supposed to do" (1982).

In terms of just what we purport to achieve, Mangrum states that our ". . .Broad, generalized claims for corrections are not substantiated in fact and may even be impossible to substantiate" (1981). Cohn endeavors to provide guidance: "It is axiomatic that a formal organization needs not only a mission, but a set of explicit goals and objectives to provide direction." Further, "...These goals and objectives cannot be mere slogans, such as 'rehabilitation of clients,' 'protection of society,' or 'reduction in recidivism.'" He adds that goals must be explicit, attainable and able to be measured (1982).

Regarding a discipline, Cohn offers that from time immemorial probation officers have tried to be all things to all people and have tried to effect change through clinically oriented processes. He states that we must narrow our focus and discard all strategies (those we select) that are not specifically aimed at criminogenic factors (1982).

As the orientation of society be-

comes decidedly focused on "law and order", the issue of "changing" versus "controlling" behavior resurfaces. With the in-vogue risk assessment tools comes specialization or different types of supervision. Specialization yields some immediate dividends. According to Marshall and Vito, 'The establishment of a clearly defined method of supervision has long been neglected and, as a result, decisions of this sort have been left to some arbitrary, subjective (and often unconscious) non-system of the individual officers" (1982). Now law enforcement minded probation officers can surveil, treatment oriented officers can treat, and we can "bank" those that need neither. In so doing, we seem to have downplayed the "broker" role (since there is a paucity of resources anyway) and reassumed a primary responsibility role.

The prison population doubles during the 1980s and society is beginning to realize that it cannot build its way out of the crime problem. Intermediate sanctions are all the rage as they help to offset the mollycoddling image of regular probation. They provide a mid-range, less repressive option. These "add-ons" (e.g., electronic monitoring) are aimed solely at additional control of the offender and at projecting a more punitive perception to the public.

In 1989, Harris, et. al., reported that community supervision officers, who previously had supported reintegration and rehabilitation as the goal of community corrections, had shifted their attitudes in the direction of enforcement and protection (1989).

The Nineties: Reflection Classification/Adaptation

Will the pendulum swing away from what Benekos characterizes as the "popular propensity for punishment?" (1990). Ellsworth indicates:

> While enforcement may someday overtake rehabilitation and emerge as the primary goal of probation, the change is not likely to occur in the near future. The history of probation has a foundation which is firmly embedded in a tradition of helping the offender, a tradition which is not likely to be easily replaced (1990).

This is the decade when the crisis in which we find ourselves suddenly becomes newsworthy. Article after article depicts this sorry state of affairs, and many as if it is of recent origin. All levels of corrections are calling for clear vision statements, a plan for which to achieve them and the leadership to steer the course. We have finally realized that, as the old saying goes, "if you don't know where you are going, any road will get you there." Additionally, the process of introspection has forced us, once and for all, to either demonstrate empirically that we can "help the offender" or admit failure and settle for attempting to control their behavior.

The Future: Get the Horse Going

Leadership. Cohn, *I* believe, would prioritize this as our primary concern:

> The question is whether an executive chooses to be reactive or proactive; whether he or she will simply ride the currents of change and hope for the best, or whether he or she will deliberately attempt to harness and control change. The former is a crisis or dilemma manager; the latter is the kind of manager we should be training to assume mantles of leadership. This is the kind of manager who has a sense of mission as well as vision - the manager who will ensure that the correctional organization thrives rather than merely survives.

Cohn stresses that the longer we go without strong leadership, the more irreversible the problem becomes (1991).

For the position of "leader," we have not exactly been inundated with applications. We must, however, at the very least, open a dialogue on what person, persons, organization, association or agency should take the helm. A cross-disciplinary team, including the research community, academics and progressive probation administrators might be considered.

Discipline. Can we ever agree on a discipline that will fit both hats? These hats have been variously called:

cop vs. social worker
surveillance vs. rehabilitation
controlling vs. changing
to offenders vs. for offenders

The current description is risk management versusneeds management. Basically, they are all the same. The "cop" side of the equation has always been relatively easy to explain. The "treatment" side has not. We've gone from being the process (treater) to being part of the process (broker). We have never, however, been close to agreeing upon the "right" discipline. In working toward this goal let us first, once and for all, call off the panacea watch. It hasn't come yet, and it is not on the horizon. Let us also agree to the following:

- We are not now, nor have we ever been, therapists. While there are certainly therapeutic aspects to what many of us do, the difference between seeing a person as an offender and as a patient are, of necessity, markedly different.
- We are not generic, and cannot be all things to all people. Whatever the number of offenders assigned to us, let's select and agree upon the number with whom we can deal effectively and to which we will be held accountable, and bank the rest. It is

better to deal effectively with some than to deal ineffectively with more. A smaller bite may prevent choking.

- Let's not be cajoled into working primarily with the most difficult, least tractable offenders. At all times, let us try to maximize the number of persons upon whom we can have a salutary effect.
- We will always be receptive to and embrace new strategies and protocols that may bear fruit. This quest will always be a part of our process.
- Let's return to viewing ourselves as a helping profession. The tail-em, nail-em and jail-em role just isn't what Father Augustus had in mind. Clearly, our mission is also to protect the public. How this is achieved depends on whose opinion is being solicited, and ranges from confinement to a myriad of non-confinement alternatives. We need all be in agreement, however, that society is best protected, in the long run, by rehabilitating offenders.

Publicity. We can certainly attest to the disadvantages of being an enigma; when nobody knows, nobody cares. With strong leadership, we will become confident to stand up and be counted. The number of probation and parole officers has increased from 16,877 in 1967, to 35,072 in 1976, to 53,848 in 1992. That's a lot of people standing united who are engaged in an exceptionally noble endeavor. But does society know, do they like what they do know, and are they interested?

The top two concerns of the American public are crime and the economy. A conservative estimate is that we are expending 21.5 billion dollar; per year supervising probationers and parolees and incarcerating offenders. In our district over the past seven years, 90 percent of our charges have successfully completed supervision. We have compiled statistics to show that the taxpayers benefit by $30,695 for each offender that remains in the community in lieu of incarceration (and that includes contracted substance abuse treatment). With 1,800 parsons under supervision, the cumulative annual savings by having them under community supervision instead of incarcerated, therefore, is $49,725,900. Bear in mind that we are only one of 94 federal districts, which collectively supervise two percent of probationers and parolees in this country. This impacts both of the public's two main concerns, and it seems newsworthy, doesn't it?

So, what else can we do besides taking a reporter to lunch? Once the public knows about us, there will, undoubtedly, be a proliferation of new TV series (and just possibly where we are not portrayed as rude, rotund and the last bastion for polyester clothing). In the interim, we must all assume a public relations component to our duties. If we truly believe in what we do, then we must do our best to project a positive image. It is likely that we will engender the support of the public when they become familiar with the many avenues we utilize to aid an offender in becoming a productive citizen. The public's expectations will inevitably become more realistic in terms of what we can and what we cannot accomplish, and that only in collaboration with other social institutions, the private sector and the public in general, is a significant impact possible. We are all stakeholders in society, we are all responsible for its problems and solutions. We must jointly find non-criminal options for those desirous of a different path.

Additionally, it appears unlikely that there will be any significant increase in the number of probation officers nationally. It is, therefore, incumbent upon us to maximize our effectiveness by utilizing the maximum number of persons possible working with offenders. There are two areas we might look to for some relief:

1. ***De-emphasis of the presentence investigation.*** With the improvement of risk assessment measurements, better rap sheets, etc., we might consider streamlining our reports and re-prioritizing the person power expended.
2. ***Administration.*** In the federal system we have one supervisor for every six officers, which is in stark contrast to the private sector which varies between one to 12 and one to 42. It seems that we are top-heavy in this regard and too much effort is expended in the overseeing of professionals.

Research. We need to absolutely insist that there be a research component to all we do. Joan Petersilia puts this clearly into perspective: "One of the biggest challenges now facing corrections is to regain control of the profession. One direct and effective way to do this is through research. Those who can quantify what they do, with whom, and to what benefit will have a competitive edge" (1991). In 1991, she reported on how much was being spent annually on research on the basis of each U.S. citizen:

Health	$32.00
Environment	$ 4.00
Education	$ 1.20
Criminal Justice	$ .14

It is very difficult for probation officers to compete with research agencies for research funds. It is far more efficient to work collaboratively with researchers toward our mutual goals. Researchers need to be intimately familiar with our field, as their work helps to guide and direct our focus.

It is fundamental logic that the aforementioned areas - leadership, discipline, publicity and research - are interrelated and tend to support and counterbalance one another. If we have strong leadership, a specific discipline should follow (or vice versa),

the public will then be allowed in, empirical data will be demanded, and goals will be defined and redefined. All it takes is for one of these components to break loose to destroy this homeostasis and we're off and running.

And, finally, let's stop bashing ourselves; let's admit once and for all that society is a better place because of us. Perhaps we would have a better self image if we looked to history for some answers. In 1974, U.S. District Judge Lawrence W. Pierce attempted to help corrections take a giant step forward with his analysis of rehabilitation and not utilizing recidivism per se as the measure of effectiveness. He introduced the concept of "Net Social Gain," which meant that we were no longer to be credited only with model citizens, but, if they committed fewer crimes, or those chronically unemployed worked for a short period, etc., then all benefits accrued by society were to be considered (1974). This "Improved Functioning in the Community" would be the focus.

Although elementary logic would dictate that recidivism, per se, provides only a single measurement and therefore limited value, "Researchers have continued to use a variation of recidivism as the primary outcome measure" (Boone, 1994). Although areas of social functioning which could adequately measure "net social gains" have been, in the interim, identified, just how to assess and measure these areas has not. Alas, until recently, Judge Pierce's ideas have remained dormant. The funding by the National Institute of Justice of APPA's Alternative Outcomes Measures project (Matthews, 1994), is a most exciting, and potentially promising project. It is deserving of our full support, and the future of this profession may well depend on it. I, for one, think we'll fare well and am feeling better already.

References

Benekos, Peter J., "Beyond Reintegration: Community Corrections in a Retributive Era," ***Federal Probation*** (March 1990).

Boone, Harry N., Jr., "'An Examination of Recidivism and Other Outcome Measures," ***Perspectives,*** Winter 1994.

Cohn, Alvin W., "Contemporary Correctional Practice: Science or Art?," ***Federal Probation*** (September 1970).

Cohn, Alvin W., "The Failure of Correctional Management--Revisited," ***Federal Probation*** (March 1979).

Cohn, Alvin W., "Behavioral Objectives in Probation and Parole: A New Approach to Staff Accountability," ***Federal Probation*** (December 1982).

Cohn, Alvin W., "The Failure of Corrections Management--Reviewed: Present and Future Dimensions, ***Federal Probation*** (June 1991).

Dulaney, William L., "The News Media and Corrections," ***Federal Probation*** (June 1970).

Ellsworth, Thomas, "Identifying the Actual and Preferred Goals of Adult Probation," ***Federal Probation*** (June 1990).

Evans, Joseph P., "A Profile of the Practitioner in a Correctional Setting," ***Federal Probation*** (September 1961).

Fogel, David, "The Politics of Corrections," ***Federal Probation*** (March 1977).

Glaser, Daniel, "Achieving Better Questions: A Half Century's Progress in Correctional Research," ***Federal Probation*** (September 1975).

Harris, Louis, "Changing Public Attitudes Toward Crime and Corrections," ***Federal Probation*** (September 1968).

Harris, PM., T.R. Clear, and S.C. Baird, "Have Community Service Officers Changed Their Attitude Toward Their Work?," ***Justice Quarterly*** (June 1989).

MacPherson, David P., "Probation and Corrections in the Seventies," ***Federal Probation*** (March 1971).

Mangrum, Charles T., "Corrections' Tarnished Halo," ***Federal Probation*** (March 1976).

Mangrum, Charles T., "A Positive Self-Image for Corrections," ***Federal Probation*** (June 1981).

Marshall, Franklin H. and Gennaro F. Vito, "Not Without the Tools: The Task of Probation in the Eighties," ***Federal Probation*** (December 1982).

Matthews, Timothy, "Evaluation of Probation and Parole Programs: The Development of Alternative Outcome Measures," ***Perspectives,*** Winter 1994.

Newman, Charles L., "Let's Sell' Corrections: A Straight Talk to Probation Officers," ***Federal Probation*** (June 1965).

Petersilia, Joan, 'The Value of Corrections Research: Learning What Works," ***Federal Probation*** (June 1991).

Pierce, Lawrence, "Rehabilitation in Corrections: A Reassessment," ***Federal Probation*** (June 1974).

Shireman, Charles H., "Casework in Probation and Parole: Some Considerations in Diagnosis and Treatment," ***Federal Probation*** (June 1963).

Young, Don J., "Correctional Workers Must Speak Out," ***Federal Probation*** (December 1967).

Wallach, Jo and Rudy Sanfilippo, "We Need People to Change People," ***Federal Probation*** (September 1970).

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The Scope of Judicial Immunity for Probation and Parole Officers

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Introduction

Two types of immunities are generally available to public officials: judicial immunity and qualified immunity. Public officials who enjoy judicial (absolute) immunity are exempt from liability in what they do because they perform judicial functions, hence lawsuits filed against judges are usually dismissed without trial on the merits if the judicial immunity defense is raised and successfully established. By contrast, qualified immunity means that the public official is immune only if he or she did not violate a clearly established constitutional right of which a reasonable person would have known.' Judges and prosecutors enjoy absolute immunity when performing "judicial or adjudicatory" functions, but are given only qualified immunity in other functions, such as those considered administrative in nature. Other public officials enjoy only qualified immunity.

Quasi-judicial immunity is a variation of judicial immunity. It holds that some public officials, such as probation and parole officers, enjoy the same immunity as judges when performing certain functions, but enjoy only qualified immunity in most of what they do. For the purposes of this article and as applied to probation and parole officers, the term "judicial immunity" is deemed included in quasi-judicial immunity and therefore a single term -judicial immunity - is used.

Immunity of Probation and Parole Officers

Probation and parole agencies throughout the country are configured in various ways.[2] Some are state agencies, while others are local; some combine adult and juvenile services, others separate them. In general, parole agencies are located in the executive branch of government, while probation agencies are usually under the supervision and control of judges - although in some cases they may come under a state agency umbrella. In some states, the decision to parole and parole supervision are made and administered by separate and autonomous agencies; in others they come under one and the same department.

Most courts hold that parole boards enjoy judicial immunity when making decisions to release or not to release an inmate.[3] They are not vested with judicial immunity, however, when performing supervisory functions. Other courts have held that parole board officials, at a minimum, are entitled to qualified or good faith immunity.[4] The United States Supreme Court, however, has not decided the issue of the type of immunity given to parole board members.

Probation officers are generally under the control and supervision of judges; in fact, in a number of states judges are considered the supervisors of probationers, although actual supervision functions are carried out through probation officers. Probation and parole agencies vary in organizational structure, but they are akin in function in that both supervise convicted defendants. Probation and parole officers have claims to immunity because they work in agencies that have traditionally enjoyed judicial immunity. Decided cases have not made distinctions either between the role of probation and parole officers, except in instances when state law specifies the distinction. There is justification, therefore, for considering probation and parole officers together when determining the extent of their immunity.

The Functional Analysis Approach. Probation and parole officers generally enjoy qualified immunity.[5] There are instances, however, when they are afforded judicial immunity. To determine when judicial immunity is given, the United States Supreme Court has used the "functional analysis" approach, meaning that judicial immunity is given based on the function performed rather than on the individual to whom it attaches.[6] Under this test, the determinant is whether the function performed is "intimately related to the judicial process" as to deserve judicial immunity.' Other courts use the term "an integral part of a judicial or quasi-judicial proceeding" to determine if the function is judicial or not.[8] A judge performing a judicial function enjoys judicial immunity, but not when performing an administrative function. Similarly,

probation and parole officers who perform judicial functions enjoy the same immunity as judges, but not when performing administrative duties, One state supreme court says that the test of whether a challenged administrative action is functionally comparable to a judicial action depends on a number of factors, such as "whether a hearing was held to resolve an issue or controversy, whether objective standards were applied, whether a binding determination of individual rights was made, whether the action is one that historically the courts have performed, and whether safeguards exist to protect against errors,"" adding that "when an administrative action resembles judicial action, the rationale behind granting judges immunity - the need for independent and impartial decision making - applies with equal force."[10]

At least two federal Courts of Appeals (the 1st and the 7th Circuits), however, refuse to draw a distinction between administrative and adjudicatory duties, at least as applies to parole board members, citing the difficulty and undesirability in distinguishing adjudicatory acts from administrative acts. These courts fear that making such distinctions would lead to lawsuits that would disrupt the board's functions." They prefer the simplified doctrine of extending judicial immunity to parole boards when performing both administrative and adjudicatory functions. This approach, however, is more the exception than the rule among courts that have considered the issue.

The "Acting Under the Direction of a Judge" Approach. Some courts reject the "functional analysis" approach, opting instead for the "acting under the direction of a judge" standard. For example, most federal courts of appeals have held that probation officers enjoy judicial immunity when preparing or writing a presentence investigation report,[12] the assumption being that probation officers are under orders from the judge to prepare the report, hence judicial immunity is vested in the officer. Under this approach, the question asked in each case is: Was the officer acting under the direction of a judge when performing that function?[13] If the officer is found to have been carrying out a court directive, a second question is then asked: Was the officer acting within the authority granted by the court?[14] If the answers to both questions are "yes," judicial immunity follows; conversely, if one of the answers is 'no," judicial immunity is withheld. If the officer acted contrary to the direction of the court or beyond the authority granted, judicial immunity does not apply.[15] This standard affords greater immunity protection to probation officers in particular because many of their functions are performed by virtue of judicial directive. In fact, it can be argued that just about anything a probation officer does is in compliance with judicial directive. This includes the preparation of a presentence investigation report, day-to-day supervision in accordance with the conditions set by the judge, and revocation based on violations of probation conditions. The "acting under the direction of a judge" standard raises a different issue, however, which may be just as difficult to resolve: When is an officer acting under a judicial directive? Does the directive have to be written or would an oral directive suffice? Does a general directive (such as the imposition of a set of probation conditions) bring the act under judicial immunity, or is a specific order (such as a directive to keep the probationer under home arrest) necessary? Moreover, when is an officer acting within the authority granted by the court?

Immunity Resulting From a Discretionary Function. If the function performed does not fall under judicial immunity, immunity may nonetheless be afforded if the function performed is discretionary rather than mandatory. Discretionary function has been interpreted by at least one court as applying "to decisions involving the making of policy, but not to routine decisions made by employees in the course of their day-to-day activities, even though the decision involves a choice among two or more courses of action.[16] The "making of policy" as opposed to "routine decisions" is what generally distinguishes a discretionary from a mandatory or ministerial function. In addition, another court states:

> "We recognize that parole officers' supervisory decisions require the exercise of discretion. The crucial point, however, is that the discretionary immunity exception applies only to basic policy decisions. Parole officers' supervisory decisions, however much discretion they may require, are not basic policy decisions. Such decisions are ministerial in nature.""

A recent decision by the 9th Circuit Court of Appeals involving a federal case is instructive on the issue of when a function of a probation officer is discretionary. In essence, it reiterates the holding that whether a function is mandatory or discretionary can be determined by how the law or departmental regulation is worded. In Weissich v. United States,[18] action was brought against the Bureau of Alcohol, Tobacco and Firearms and the United States Probation Service on allegations of negligent failure to warn and negligent supervision. Such failures allegedly resulted in the death of William Weissich, the Marin County (California) district attorney who prosecuted the defendant. The defendant was later released and, while on probation, murdered the prosecutor.

A lawsuit was filed but was dismissed by a federal district court on summary judgment. On appeal by the plaintiff, the 9th Circuit Court of Appeals affirmed the dismissal, saying that contrary to plaintiff's assertions, the guidelines of the United States Parole Service (USPS) did not impose a mandatory duty on probation officers to warn a foreseeable victim of a risk of harm posed by probationers. The court concluded

that "if a policy allows room for implementing officials to make independent policy judgments, the discretionary function exception protects the acts taken by those officials in the exercise of this discretion."[19]

The lesson from this decision is clear: the mandatory or discretionary nature of a probation or parole officer's function can be determined by agency guideline or regulations, hence care must be taken in drafting guidelines so that the provisions thereof reflect agency preference in the way a function is to be performed. Careless wording may lead to liability where none otherwise exists. This case is also instructive in its interpretation of the federal guidelines for warning foreseeable victims of possible risk. The court concluded that, as worded in the federal guidelines, such warning is discretionary rather than mandatory, hence removing the possibility of civil liability based on non-adherence to agency guidelines. The court added, however, that the "discretionary function exception does not apply when a federal statute, regulation or policy specifically prescribes a course of action for a government employee to follow."[20] This suggests that in the absence **of a statute,** agencies have the discretion to designate a function as mandatory or discretionary as long as such duty is not mandated either by law or the Constitution.

Provisions of the federal manual that were invoked and interpreted by the 9th Circuit in Weissich should provide guidance to other probation agencies if they are to minimize liability stemming from injury to a member of the public as a result of negligent failure to warn.[21] In essence, the manual provides that the determination of foreseeable risk depends "upon a selective, case-by-case evaluation" based upon three factors: the probationer's job, prior criminal background and conduct, and the type of crime for which the offender was convicted. The term "reasonably foreseeable risk" is defined as "that the circumstances of the relationship between the probationer and the third party, e.g., employer and employee, suggest that the probationer may engage in a criminal or antisocial manner similar or related to his or her past conduct."[22] The manual then provides that if the officer determines that no reasonably foreseeable risk exists, no warning should be given. Conversely, however, if the probation officer determines that a reasonably foreseeable risk exists, the option is given to the officer to take any of the following courses of action: "(a) give no warning, but increase the probationer's supervision sufficiently to minimize the risk, (b) give no warning, but preclude the probationer from the employment; or (c) give a confidential warning to the specific third party sufficient to put the party on notice of the risk posed." This approach exhorts the officer to pay careful attention to instances of foreseeable risks, but suggests rather than prescribes courses of action that may be taken. This affords a measure of protection to the public but does not enhance officer liability because the courses of action listed are discretionary rather than mandatory.

Immunity and the Good Faith Defense. If the officer is unprotected by either judicial or discretionary immunity, the good faith defense then applies, meaning that the officer will be held liable only if he or she violated a clearly established constitutional right of which a reasonable person would have known.[23] This constitutes qualified immunity, and its meaning has evolved over the years. In the words of one court: "[W]hen parole officers act outside any judicial or quasi-judicial proceeding and so are not entitled to absolute immunity, they nonetheless may be shielded by qualified immunity."[24]

The good news is that these three types of immunity (judicial, qualified and discretionary) generally shield an officer from civil liability: the bad news, however, is that court decisions are not consistent nor easy to apply.

The good news is that these three types of immunity (judicial, qualified and discretionary) generally shield an officer from civil liability; the bad news, however, is that court decisions are not consistent nor easy to apply. Much depends on the perception of the trier of fact; therefore, despite the standard, imprecision abounds.

The Probation and Parole Officer and Judicial Immunity - Imprecise Boundaries

As indicated above, if the function performed is not determined to be "intimately related to the judicial process," most courts refuse to extend judicial immunity. In one case, the 8th Circuit Court of Appeals said: "Probation and parole officers are entitled to absolute immunity when they are engaged in adjudicatory duties. In their executive or administrative capacity, probation and parole officers are entitled only to a qualified, good faith immunity."[25] In a case involving parole supervision, one state supreme court said that "whether a challenged administrative action is functionally comparable to judicial action depends on various factors, such as whether a hearing was held to resolve an issue or controversy, whether objective standards were applied, whether a binding determination of individual rights was made, whether the action is one that historically the courts have performed, and whether safeguards exist to protect against errors."[26] In another case, the court opined that "much of the work of a probation officer is administrative and supervisory," and then concluded

that "such activities are not part of the judicial function; they are administrative in character."[27]

Some courts, however, have extended judicial immunity to probation or parole officers when performing functions other than preparing a presentence investigation report. These are in such instances as making statements in the pretrial report[28] making a pre-parole report;[29] preparing for a revocation hearing;[30] testifying in a revocation hearing;[31] activities related to the revocation process;[32] and submitting parole violations to the parole board. In these cases, courts have said that the functions performed are judicial or adjudicatory in nature and analogous to those performed by judges or prosecutors.[33]

By contrast, the following functions were not considered judicial in nature, hence liability could be imposed:[34] Sending an inmate to non-court ordered treatment;[35] failure to report known drug violations to court;[36] calculating prison discharge date;[37] holding parolee in jail for one month pending hearing;[38] presenting violation report and requesting the issuance of warrant;? enforcing probation conditions; issuance of a violation of parole report;[40] seeking probation revocation;[41] and negligent parole supervision.[42]

The public duty doctrine generally shields officers from liability for crimes committed by probationers and parolees.

It is evident from the above that the question of when a probation or parole officer enjoys the same immunity as judges is far from resolved. First, there is the issue of what test should be used to extend judicial immunity -the "functional analysis" or the "acting under the directive of a court" test. Second, what specific functions come under either or both standards? Consensus prevails that judicial immunity should be extended when probation officers prepare a PSIR, but beyond that the immunity landscape becomes murky. Perhaps by necessity, courts decide these issues on a case-by-case basis, hence consistency is elusive. A review of cases decided in the last few years reveals, however, that the trend is toward expanding the parameters of judicial immunity as it is applied to probation and parole officers. In the words of one writer: "The modern trend . . . has been to grant more and more immunity to public officials on the theory that without such immunity public officers and employees will be unduly hampered, deterred, and intimidated in the discharge of their duties."[43]

Are Probation and Parole Officers Liable for Negligent Supervision and Failure to Protect?

Most courts have held that supervising probationers and parolees is not in the category of a judicial function, hence liability attaches.[44] This despite the reality that, in many jurisdictions, the judge is technically the supervisor of probationers and simply delegates that authority to probation officers. It reinforces the concept that immunity is not based on who performs the function (de facto or de jure), but what function is being performed.

A more narrow but important issue on the matter of supervision, given the refusal of courts to grant judicial immunity to this function, is whether officers can be held liable for crimes or injuries committed by probationers and parolees against a member of the public while the offender is under supervision and, if so, when? The answer lies in an understanding of the public duty doctrine and its exceptions.

The Public Duty Doctrine in Probation and Parole. The public duty doctrine in tort law holds that "no liability may be imposed for a public official's negligent conduct unless it is shown that 'the duty breached was owed to the injured person as an individual and was not merely the breach of an obligation owed to the public in general ....'"[45] This means that public officials have the duty to protect the public in general, but not a specific person in particular. The police, for example, are pledged and have an obligation to protect the public, but cannot be held liable for injuries committed against a particular member of the public on grounds of failure to protect. The same principle applies to probation and parole officers, the protection of the public being one of the main purposes of probation and parole. The public duty doctrine generally shields officers from liability for crimes committed by probationers and parolees. A different rule would be onerous because it exposes probation and parole officers to liability risks that make their task difficult and employment financially risky.

In addition to the public duty doctrine that insulates officers from civil liability, at least one state supreme court in a state tort case has held that "parole officers are immune from liability for allegedly negligent parole supervision if their action is in furtherance of a statutory duty and in substantial compliance with the directives of superiors and relevant regulatory guidelines."[46] The same court adds that this rule "does not require an additional showing that the parole officers' actions were reasonable once it has been shown that the officers performed a statutory duty in compliance with the directives of superiors and relevant guidelines."[47] Thus, compliance with statute, directives of a superior, and regulatory guidelines may provide protection to officers in cases stemming from negligent supervision. Conversely, however, in one case the court looked at the wording of state law to deter-

mine if the probation officer was negligent in failing to report probation violations, concluding that the statute "informs a probationer that the judge who placed her on probation will be notified of any violation," hence interpreting the provision as mandatory. The court then added that "although it does not specify who will provide that information to the judge, the probation officer is often the only individual in a position to do so. "[48] This argues for care in the way statutes are crafted, the safer option being to make the reporting of violations discretionary rather than mandatory.

Despite the public duty doctrine protection, there nonetheless are instances when liability is imposed by the courts. Decided cases have held that liability attaches in the following instances:[49] when a special relationship has been created;[50] the existence of an identifiable victim or group of victims;[51] when the function performed is mandatory or ministerial;[52] when there is an unauthorized change of probation condition? and when there is foreseeability of risk or harm to others.% The problem with these exceptions to the public duty doctrine, however, is that they are subjective and can be interpreted in different ways. For example, "special relationship" defies clear definition and can lead to results that are difficult to reconcile. Similarly, the determination of when a foreseeable risk of harm to others does exist can also be subjective.

The "Special Relationship" Exception to tbe Public Duty Doctrine. The concept of "special relationship" is the most comprehensive among the various exceptions to the public duty doctrine. It is based on the Restatement (Second) of Torts, Section 315, which provides that:

> "There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless
>
> "(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
>
> "(b) a special relation exists between the actor and the other which gives to the other a right to protection."

In a case involving an alleged failure to protect by the police, the 9th Circuit Court of Appeals devised a four-pronged test to determine the presence of a special relationship. These are: (1) whether the state created or assumed a custodial relationship toward the plaintiff; (2) whether the state was aware of a specific risk of harm to the plaintiff; (3) whether the state affirmatively placed the plaintiff in a position of danger; or (4) whether the state affirmatively committed itself to the protection of the plaintiff.[55] (Ballistreri v. Pacifica Police Department, 855 F.2d 1421, 1988). In another case involving the death of a juvenile in a juvenile detention facility, the Ohio Court of Appeals said that for "special relationship" to exist, the following must be shown to exist: (1) an assumption by the municipality through promises or actions, or an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipal agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) the injured person's justifiable reliance on the municipality's affirmative undertaking.[56]

Despite attempts at providing guidelines, it is clear that "special relationship" is a concept so vague and situational that judges and juries can pour meaning into it on a case-by-case basis, hence diluting its precedential value. In egregious cases it is tempting for courts or juries, after listening to shocking facts that led to serious harm, to first come to a conclusion that in the interest of fairness damages must be awarded, and then fall back on "special relationship" to justify the award. In the words of one probation chief, who has been sued on the grounds of negligent supervision, "When the jury or judge sees orphans or a widow daily in the courtroom you know your case is lost."[57] In these cases, "special relationship" tends to be defined in terms of idiosyncratic circumstances surrounding the case that are rarely duplicated in other cases.

"Special relationship" includes instances when the state "takes charge" of a person. The Restatement (Second) of Torts provides that: "One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm."[58] In one case, a state supreme court concluded that parole officers had in effect "taken charge" of the parolees they supervise because of the following factors:[59]

- Parole officers have the statutory authority under state law to supervise parolees;
- "The state can regulate a parolee's movements within the state, require the parolee to report to a parole officer, impose special conditions such as refraining from using alcohol or undergoing drug rehabilitation or psychiatric treatment, and order the parolee not to possess firearms;"
- "The parole officer is the person through whom the state ensures that the parolee obeys the terms of his or her parole;" and
- "Parole officers are, or should be, aware of their parolees' criminal histories, and monitor, or should monitor, their parolees' progress during parole."

Taken together, the court concluded that the parole officer had "taken charge" of the parolee for purposes of liability under state tort. Said the court: "When a parolee's criminal history and progress during parole show that the parolee is likely to cause bodily harm to others if not controlled, the parole officer is under a duty to exercise reasonable care to control the parolee and to prevent him or her from doing

such harm."[60]

Other courts reject the view that the parole officer has "taken charge" of the parolee or probationer. In Lamb v. Hopkins,[61] a Maryland court held that probation officers do not "take charge" of probationers such as to establish possible liability under state tort law. The court based that conclusion on the "lack of custodial relationship and the relative freedom the probationers have in conducting their day-to-day affairs." Two years later, the South Dakota Supreme Court held that state tort law "did not give rise to any duty on the part of probation officers to control the dangerous propensities of probationers" because there was "no custodial relationship involved in this case, we conclude that the officers did not take charge of the probationer."[62] A Virginia case, decided three years after Lamb v. Hopkins, came to the same conclusion, saying that state law which empowered the officers to supervise parolees "does not contemplate continuing hourly or daily dominance and dominion by a parole officer over the activities of a parolee," hence the parole officer had not "taken charge" of the parolee.[63]

Obviously, courts are in disagreement as to whether there is liability under state tort law based on whether an officer has "taken charge" of a probationer or parolee as to be held civilly liable for that person's actions. The problem, however, is that in this "era of the victim," some judges and juries, given certain cases, may be inclined to hold the state and its officers responsible for injuries caused by a probationer or parolee on the general public. In one of his columns, William F. Buckley, Jr. writes about the concept of "transcendent justice" in reference to the jury decision in the Reginald Denny trial in Los Angeles. Says Buckley, "[T]he role of the jury is tantalizingly inexact. It is from time to time explicated that juries in fact will defy factual evidence in order to perform what they consider to be transcendent justice" (1993). When this happens, established legal principles take a back seat to the demands of a less legalistic but more morally defensible approach to "doing what is right."

In an earlier case involving possible civil liability of municipalities and municipal officials for violating the civil rights of an employee, the United States Supreme Court invoked the principle of "equitable loss-spreading" in remanding a case to the lower court for hearing on possible damages.[64] The court expressed preference for shifting the cost of official misconduct and public injury to the government since it can best afford to bear it. Since a member of the public has been injured, "transcendent justice" and "equitable loss spreading" may be convenient justifications for making the state pay for the injuries inflicted, not so much because the state is at fault, but because justice demands that the injuries to the public be compensated, and that the loss be equitably spread among members of society through the state rather than being visited on one individual who has already suffered as a victim.

In liability cases, civil or criminal, an essential element for guilt or blame is causation, defined as "the fact of being the cause of something produced or of happening" (Black's Law Dictionary 1971). For liability to be imposed, proof must be adduced that the act or omission caused the loss or injury. In probation and parole supervision cases, plaintiffs usually allege that negligent failure to revoke despite condition violations led to the injury. The scenario presented to the trier of fact is convincing: if the parolee or probationer had been revoked and taken off the streets, the injury would not have happened. This is logical, except that it fails to take into account the public duty doctrine which precludes automatic liability for injury, the fact that revocation is often discretionary with the officer or agency, and that the immediate act would have been committed anyway despite intense supervision by the officer or agency. Some courts are inclined to submit the issue of causation-in-fact to the jury to determine if a reasonable jury might conclude that, were it not for some form of officer negligence, the injury would not have occurred.[65] In egregious cases, the jury's likely reaction could be, "There but for the grace of God go we."

Conclusion

The issue of immunity for probation and parole officers gains importance in the face of a changing clientele for community corrections. Offenders who hitherto were kept in prison are now being placed on probation or parole because of prison congestion. Community corrections are supervising more serious offenders and the probation and parole population continues to escalate. There is hardly any relief in sight; in fact, the trend appears to be in the opposite direction. Given the nature of the clientele and sheer population volume, it is safe to predict that more offenses will be committed by probationers and parolees each year.

A study of cases indicates that the framework for analyzing liability cases against probation and parole officers starts with determining whether the officer sued enjoyed judicial immunity when performing the task that led to the alleged injury. If the functional analysis test is used by the court, the focus of inquiry is whether the function performed is comparable to a judicial function so as to be vested with judicial immunity. If the "acting under judicial directive is used, two questions are asked: Was the officer acting under judicial directive and, if so, was the officer acting within the scope of authority given? If the officer is not entitled to judicial immunity, the next query is whether discretionary immunity applies. In these cases, the vesting of immunity depends on whether the officer was "making policy" or performing a "routine decision." If the officer was making policy, immunity applies; but if the function performed was a routine decision,

immunity is denied. If immunity is denied, the next inquiry is: Was there negligence on the part of the officer or agency? If negligence was present, was it simple, gross or willful? Under state tort law, liability for negligence in probation or parole liability cases is imposed only if the negligence was gross or willful. If gross or willful negligence was involved, the next inquiry is whether the "good faith" defense applies, meaning whether the officer violated a clearly established constitutional right of which a reasonable person would have known.

It is evident from the above discussion and analysis that the scope of judicial immunity for probation and parole officers is imprecise and difficult to delineate. Various states have different rules and, in some cases, judicial decisions are far from consistent. The analysis used by a court to define the limits of immunity becomes important because it usually determines whether liability attaches or not, yet that analysis is usually dictated by judicial preference rather than by a predetermined rule. Given the zigzag course some courts have taken, it is risky for any observer to dispense suggestions that might reliably guide an officer's course of action. The safest advice is for officers to be familiar with the standards used by courts in their jurisdiction and to faithfully comply with those standards. In case of doubt, an officer is best advised to follow the orders of his or her superior - be that the judge or the parole board - and be able to document that action accordingly. Chances are that following the orders of a superior will exempt an officer from liability, except in cases where the order is illegal, immoral or in blatant violation of individual rights.

The scope of judicial immunity for probation-and parole officers is imprecise and difficult to delineate.

It may be "Pollyannaish" to expect consistency from the courts on the issue of how much immunity probation and parole officers enjoy. As in other areas of law, state courts can be idiosyncratic on the issue of judicial immunity. It can be said, however, that the drift appears to be toward greater immunity protection for probation and parole officers, except in egregious cases when the higher demands of "transcendent justice" and "equitable loss-spreading" may force a more convenient but perhaps less just result.

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Endnotes

[1]Harlow v. Fitzgerald, 457 U.S. 800 (1982)

[2]See Edward R. Rhine, et al., Chapter 2, "Organization and Administration of Paroling Authorities," *Paroling Authorities: Recent History and Current Practice,* St. Mary's Press, 1991.

[3]*Cole v. Nebraska State Board of Parole*, *997* F.2d 442 (8th Cir. 1993); ***Evans*** *v. Dillahunty*, 711 F.2d 828 (1983); *United States v. Irving*, ***684*** F.2d 494 (7th Cir. 1982); *Sellars v. Procunier*, 641 F.2d 1295 (9th Cir. 1981); ***Pate v. Alabama Board of Pardons and*** *Paroles*, 409 F.Supp. 478 (M.D.Ala. 1976).

[4]*DeShields v.* ***United States Parole Board Commission,*** 593 F.2d 354 (8th Cir. 1979).

[5]*Jones v.* ***Moore, 986*** F.2d 251 (8th Cir. 1993).

[6]*Butz v. Economou*, ***438*** U.S. 478 (1978).

[7]*Ray v. Pickett*, ***734*** F.2d 370 (8th Cir. 1984).

[8]*Taggart v.* State, 822 P.2d 243 (Wash. 1992).

[9]Id. at 248.

[10]Id.

[11] ***Johnson v. Rhode*** *Island* ***Parole Board*** *Members*, ***815*** F.2d 5 (1st Cir. 1987); ***Walker*** *v. Prisoner Review* ***Board, 769*** F.2d 396 (7th Cir. 1985).

[12]*Dorman v.* ***Higgins,*** 821 F.2d 133 (2nd Cir. 1987); *Demoran v. Witt*, 781 F.2d 155 (9th Cir. 1986); ***Hughes*** *v. Chesser*, 731 F.2d 1489 (11 th Cir. 1984); *Spaulding v.* ***Nielsen,*** 599 F.2d 728 (5th Cir. 1979).

[13]*Acevedo v. Pima County Adult Probation* ***Department,*** 142 Ariz. 319 (Ariz. 1984; *Praggastis v. Clackamas* ***County, 305*** Or. 419 (1988).

[14]*Jones-Clark v.* ***Severe,*** 846 I? 2d 1197 (Or. App. 1993).

[15]*Zavales v.* ***State of Oregon, 809*** P. 2d 1329 (1991).

[16]*Jones-Clark v.* ***Severe,*** 846 P.2d 1197 (Or. App. 1993).

[17]*Taggart v.* ***State,*** 822 P.2d 243,253 (Wash. 1992).

[18] *Weissich v.* ***United States, 4*** F.3d 810 (1993).

[19]Id. at 814.

[20]Id. at 813.

[21]See in particular, ***Guide to Judiciary*** *Policies* ***and Procedures*** *Probation* Manual, Vol. X, Chapter 4, Section 4302 (1983).

[22]Id.

[23]*Harlow v.* ***Fitzgerald, 457*** U.S. 800 (1982).

[24]*Taggart v.* ***State,*** 822 P.2d 243 (Wash. 1992).

[25]*Evans v. Dillahunty*,, 711 F.2d 828, 830-31 (8th Cir. 1983).

[26] *Taggart v. State,* 822 P.2d 243 (Wash.1992).

[27] *Acevedo v. Pima County Adult Probation Department,* 142 Ariz. 319 (Ariz. 1984).

[28] *Triparti v. US. INS, 784* F.2d 345 (10th Cir. 1986).

[29] *Chitty v. Walton,* 680 F.Supp. 683 (D.Vt. 1987).

[30] *Farrish v. Mississippi State Parole Board, 836* F.2d 969 (5th Cir. 1988).

[31] *Cooney v. Park County, 792* P.2d 1287 (Wyo. 1990).

[32] *Kipp v. Saetre,* 454 N.W. 2d 639 (Minn. App. 1990).

[33] See in general, supra note 18, at 40.

[34] In general, see Mark Jones & Rolando V. del Carmen, "When Do Probation and Parole Officers Enjoy the Same Immunity as judges?" *Federal Probation,* December 1992, at 39. The cases mentioned in this section are taken from that article, with additions.

[35] *Crawford v. State, 566* N.E.2d 1233 (Ohio Sup.. 1991).

[36] *Zavalas v. Department of Corrections, 809* P.2d 1329 (Or. App. 1991).

[37] *Brunsvold v. State, 820* P.2d 732 (Mont. Sup. 1991).

[38] *Mee v. Ortega, 967* F.2d 423 (10th Cir. 1992).

[39] *Gelatt v. County of Broome,* 811 F.Supp. 61 (U.S.D.N.Y.) 1993).

[40] *Jones v. Moore, 986* F.2d 251 (8th Cir. 1993).

[41] *Park County v. Cooney, 845* P.2d 346 (Wyo. Sup. 1992).

[42] *Taggart v.* State, 822 P.2d 243 (Wash. 1992).

[43] Francis M. Dougherty, "Probation Officer's Liability for Negligent Supervision of Probationer." 44 ALR 4th 639.

[44] See *Taggart v. State,* 822 P.2d 243 (Wash. 1992).

[45] Id. at 254.

[46] Id. at 253.

[47] Id. at 253.

[48] *Zavalas V. Department of Corrections, 809* P.2d 1329 (Or. App. 1991).

[49] See in general, Richard D. Sluder & Rolando V. del Carmen, "Art Probation and Parole Officers Liable for Injuries Caused by Probationers and Parolees?" *Federal Probation,* December 1990, at 3-12.

[50] *Sterling v. Bloom, 723* P.2d 755 (Idaho, 1986); A.L. v. Commonwealth, 521 N.E.2 1017 (Mass. 1988).

[51] *Division of Corrections v. Neakok,* 721 P.2d 1121 (Alaska 1986).

[52] *Johnson v. State, 447* P.2d 352 (Cal. 1968); Acevedo v. Pima County Adult Probation Department, 690 P.2d 38 (Ariz. 1984).

[53] *Semler v. Psychiatric Institute, 538* F.2d 121 (4th Cir. 1976).

[54] *Georgen v. State,* 196 N.Y.S. 2d 455 (Ct.Cl.N.Y. (1959); Rieser v. District of Columbia, 563 F.2d 462 (D.C. Cir. 1977).

[55] *Ballistreri v. Pacifica Police Deparfment, 855* F.2d 1421 (1988).

[56] *Piccuito v. Lucas County Board of Commissioners,* 591 N.E.2d 1287 (Ohio App. 1990).

[57] Author's conversation with an Arizona Chief Probation Officer in Arizona during the Annual Institute of the American Probation and Parole Association in Philadelphia on September 20, 1993.

[58] Section 319..

[59] *Taggart v. State,* 822 P.2d 243 (Wash. 1992).

[60] Id. at 255.

[61] 492 A.2d 1297 (1985).

[62] *Small v. McKenna, 403* N.W.2d 410 (S.D. 1987).

[63] *Fox v. Custis, 372* S.E.2d 373 (1988).

[64] *Owen v. City of Independence,* Missouri, 445 U.S. 622 (1980).

[65] *Taggart v. State, 822* P.2d 243 (Wash. 1992).

References

William F. Buckley Jr., "Community Pressure on Jury Only Complicates Tough Search for Justice," *Houston Chronicle,* October 27, 1993, at 23A.

Black's Law Dictionary (West Publishing Company, 1971), Fifth Edition, at 200.

NIC UPDATE

Networking in Community Corrections

by Rick Faulkner, Correctional Program Specialist, NIC

For several years, the National Institute of Corrections (NIC) has sponsored networking among groups of professionals in the field of community corrections in an effort to foster an exchange of ideas, programs and information about this ever-changing and dynamic profession.

For example, NIC has supported networking among the Chairs of state parole systems. This has allowed the executive decision makers to exchange ideas and share problems between state systems and to improve communication and understanding. This group of "Parole Chairs" has been meeting annually in Chicago, Illinois with minimal assistance required from NIC.

Another group of executives has been drawn from states which have an oversight responsibility for local community corrections through "Community Corrections Acts." These states have empowered local communities or districts to locally operate community corrections services rather than leaving the administration and delivery of probation and parole supervision to the state. This group is known as the "Capacity Building Network" and generally meets once a year as a total group; a subgroup meets annually based on a theme of mutual interest.

The NIC also responded to the request of two executives from major urban populations: Chicago and New York By convening chief probation officers from a limited number of cities, it is possible to have a profound impact within the probation departments supervising the largest numbers of felons and misdemeanants in the nation. This group of up to 15 chief probation officers are from judicial- and executive-operated departments; each of them serves as the chief executive officer for the operation of probation supervision. They are known as the "Urban Chiefs Network" and meet twice each year, with support from NIC.

In February 1994, another networking group was formed. This group is comprised of state executives who have as their primary responsibility the management of statewide probation and parole supervision. This first gathering was to explore the need for this network and what benefits might be derived from this group. Because there are a large number of states that could participate in this network, the NIC focused on invitations to relatively new administrators, as well as a few seasoned executives, in a group of 14 states. This meeting was hosted by the Community Corrections Division of the Georgia Department of Corrections in Atlanta. The network group toured a "boot camp" program operated by the Community Corrections Division for probation cases only from the Atlanta area. This sharing of ideas and viewing of programs was very beneficial to the participants, who found new and innovative ways to enhance and improve their state programs. This first meeting made it clear that there is a benefit for this group to come together in this type of forum. The information shared among these executives was very timely and the mutual concerns were profound. It is anticipated that this group of executives known as the "DOC Network" will meet once each year to explore their problems and successes.

By convening chief probation officers from a limited number of cities, it is possible to have a profound impact within the probation departments supervising the largest numbers of felons and misdemeanants in the nation.

The NIC does not set agendas for these networks of executives; it has, by supporting this type of gathering, allowed the networking groups to choose among their membership the most profitable direction to take. It is from this type of autonomous structure that a free exchange of ideas has been fostered - providing benefits to all of the participants as well as keeping NIC advised about issues of concern to these major departments and agencies.

Probation Violation and Revocation Policy: Opportunities for Change

by Peggy B. Burke, Senior Associate, Center for Effective Public Policy, Washington, D.C.

Introduction

While headlines continue to report the costly and inexorable growth of prison and jail populations, the nation's probation agencies continue to manage almost two-thirds of all those individuals under correctional supervision. These agencies are striving to redefine their roles in light of shrinking budgets, growing case loads, and more difficult clients.

One of the most promising arenas in which probation agencies continue to "re-invent" community supervision is that of probation violation policy - particularly regarding those violators with no (or only minor) new criminal charges. The response to such violators -from significant incarceration time at one extreme, to continuation on probation with no adjustments to supervision strategy at the other- offers an exciting opportunity for probation agencies to target the use of resources according to agency priorities, control workload, and involve staff in policy development. Agencies that have examined and redesigned revocation policy have been able to reduce significantly the use of jail time and admissions to prison as a response to violations. Perhaps more importantly, these agencies have found that examining violation policy has provided a new window on supervision itself. The experience has enabled agencies to redefine the purposes of supervision under severe resource constraints, to take a fresh look at how probation officers can and do shape the use of intermediate sanctions for violators, and to experiment with collaborative policy development - a process that is essential as agencies continue or move toward a policy which guides the use of intermediate sanctions at the sentencing stage.

The Significance of Probation Violation and Hevocation for American Corrections

Since the late 1980s it has been clear that back-door admissions to prison contribute significantly to prison populations. Between 1977 and 1987, the number of admissions to prison nationwide as a result of parole violations increased by 284 percent (Austin, 1989). This far exceeded the rate of growth in court admissions for the same period. In at least one state (California) the system was

> ...spending more resources on recycling prisoners released to parole than on new offenders being sentenced directly by the courts. In 1987, there were 62,729 prison admissions in California. Of this number 31,581 (or 50.3 percent) were parole violators (Austin, 1989).

A significant portion of these admissions did not involve new criminal charges. Though the situation may not have been as dramatic in other states, the trend was clear.

The situation in jails is similar. As offenders await final hearings, many are detained in local jails as well as in state correctional facilities. Still others serve significant jail time as a sanction for violation.

Despite the problems in acquiring comprehensive information, there is now a clear understanding that technical violators of probation and parole represent an increasing percentage of total admissions to jail and prison. The potential dimensions of this population are staggering. In a recent period of only three years (1987-1990), the population of individuals on probation and parole grew by almost 700,000 (or 27 percent) to a total of 3.3 million (BJS, 1987 and 1990). Even a modest revocation rate among a population of this size could have a devastating impact upon prison and jail resources. In fact, the rate of admissions from this population continues to grow. The limited information that is available nationwide on departures from probation and parole to incarceration reveals that the number of these without a new sentence (where most technical violators would be included), increased by almost 40 percent between 1987 and 1990, a rate significantly higher than the 27 percent growth in probation and parole populations generally (BJS, 1987 and 1990).

National Institute of Corrections' Technical Assistance Project on Probation Violation and Revocations Practices

In 1991, given a growing understanding of the importance of this issue and great interest on the part of probation agencies nationwide, the National Institute of Corrections (NIC) funded a national technical assistance project. The purpose of the project, which operated between July 1991 and November 1993, was to assist to probation agencies

- to examine their own practices with respect to probation violations; and

• to design new responses to violations that would rely more heavily upon intermediate sanctions than on incarceration.

Growing out of an earlier NIC effort focused on parole violation (NIC, 1991), this effort shifted attention to probation violations. Twelve jurisdictions applied for assistance and four were selected. They were:

• the Adult Probation Department of the Superior Court of Arizona in Pima County (Tucson);

• the Connecticut Judicial Department's Office of Adult Probation sited in the New Haven Geographic Area Court;

• the State of Iowa Department of Corrections with Iowa's Sixth Judicial District Department of Correctional Services located in Cedar Rapids; and

• the Michigan Department of Corrections, Adult Probation Office sited in Macomb County in collaboration with the Michigan Office of Community Corrections.

The assistance was provided by the Center for Effective Public Policy with a number of consultants and with Toborg Associates as a subcontractor.' Because local agency practice and culture vary so widely, the approach to the assistance was highly individualized. Within the broad purposes of the project, the strategy was to assist agencies to conduct their own process of discovery about current practices, to identify the problems associated with these practices, and to design changes that would move the agency to a more policy-guided set of responses utilizing intermediate sanctions.

Outcomes Reported by Participating Jurisdictions

Targeting Resources. Participating probation agencies have been able to target the use of resources - bedspace, community programs, agent time, court time, paperwork burden -by rethinking and adjusting their violation policy and practice. In Macomb County, Michigan, commitments to prison and jail for technical violations have decreased somewhat and, more significantly, average jail time for low level technical violators has been reduced by half. In Cedar Rapids, Iowa, the Sixth District Office of Correctional Services now has a lower rate of revocation to prison for technical violators than any other urban district in the state. It also has a higher utilization of violator program resources than any other locality in the state.

In Pima County, Arizona, the Office of Adult Probation is anticipating significant reductions in time between filing a petition to revoke and case disposition, largely because many technical violators will be handled through a new administrative hearing process.

In New Haven, Connecticut, probation officers are using specific criteria to assess violation behavior and report higher utilization of that state's community resources for violators than before the effort.

Rethinking Supervision. A less expected but welcome outcome of the project has been a chance to rethink supervision. In the words of one project participant, Jeanette Bucklew, Deputy Director, Division of Community Services (Iowa), "The spinoffs are phenomenal. They turn you right back to the front door of your business because you have to question and challenge who you're working with and how you're working with them."

Responses to violation are natural outgrowths of an agency's supervision strategy - explicit or not. When is a violation a failure, and when is it an obstacle that requires some change in supervision strategy? Of course, careful definition of failure leads inevitably to a definition of success - what are we trying to achieve through supervision? Every probation agency in the nation can benefit from taking a hard look at what it is trying to achieve.

Sixth Judicial District Department of Correctional Services Cedar Rapids, Iowa

As the Iowa policy team proceeded with its work, the need for clear thinking about the philosophy underlying supervision responses to probation violation emerged. The team drafted a new policy directive regarding response to violation which begins with a statement of philosophy. (Exhibit 1 provides excerpts from the policy directive.)

As each team grappled with how and why they responded to probation violations, the question of purpose kept resurfacing. It is virtually impossible to assess the effectiveness of violation policy without asking why an agency is supervising probationers. What does it hope to achieve? Are its main goals to seek out violators and remove them from probation? Are its main goals to identify problems an offender is having and provide resources which allow the probationer to remain in the community? Are the goals some combination or middle ground? The policy teams were pressed to engage in these discussions and to engage in clarifying basic thinking about probation.

As resources continue to shrink and caseloads increase, it becomes ever more important to "think outside the box" as one of the policy team put it. By giving the team free reign to consider policy options, an opportunity is created to do such thinking about the task of probation.

Exhibit 1

Excerpts From Policy

Sixth Judicial District

Department of Correctional Services

Cedar Rapids, Iowa

Regarding the purpose of the policy:

The purpose of this policy is to provide a coherent framework to guide agent decisionmaking when a violation of supervision occurs. A clear understanding of the steps to be taken when responding to violation behavior should increase the autonomy of the Agent.

Regarding the philosophy underlying responses to revocation:

The mission of our agency needs to be considered first and foremost when determining how we respond to violations of supervision. The principles in our mission statement...direct this response...to selectively and proactively intervene with the offender to reduce the likelihood of future criminal behavior and promote compliance with the supervision strategy.

Regarding expectations about violations:

Violations of conditions of supervision are inevitable. Offenders have spent 18+ years learning a way of living and it is not realistic to think that the issues/forces that brought them into the system have any magic "quick fix cures"...The goal of responding to violation behavior is to manage offender risk, to the extent possible and consistent with community safety, by using the least restrictive intervention necessary to promote future compliance with the supervision strategy.

Regarding the principles underlying violations policy:

- There will be a response to every violation (zero tolerance);
- Responses to violations are proportional to the severity and risk posed by the offender and the specific violation;
- Development of an upper threshold above which we are not going to move an offender in response to lower risk violation behavior;
- Use of the least restrictive control necessary to respond to the behavior;
- Consistency in handling similar violating behavior given similar risk;
- Responses to violations should have the potential for long-term positive outcomes in the context of an overall supervision strategy; and
- Responses to violations address both offender needs and risk; however, risk is the overriding consideration.

Understanding the Costs of Violation Policy. One of the virtues of looking carefully at current practice is that the resource implications of the process become more apparent. A concern about the use of prison and jail space sparked an interest in this topic initially. However, as agencies examine the process more closely, the fact that this entire endeavor is labor-intensive becomes clear. As the policy group in Pima County began to attach more quantitative information to their map of the process, they began to understand exactly what was required to generate a revocation. They came to the realization that it was not simply jail or prison space that was at issue, but the time of agents, support staff, and the court - including judges, clerks, bailiffs, prosecutors, and defense attorneys. This pattern is repeated in other agencies to varying degrees depending upon procedural requirements. This has generated efforts, in some agencies and courts, to streamline procedures and to create other mechanisms to respond to violations that do not require the case to be returned to court. Administrative hearing procedures and more clearly defined responsibilities for supervising probation officers are but two of the options under consideration.

Harnessing the Energy of Staff. Another positive outcome of the effort has been that it offers an opportunity to bring various stakeholders to the table to discuss supervision and violation practices. It provides an opportunity for probation staff at all levels to discuss and develop a coherent strategy regarding the goals of probation and the use of intermediate sanctions for violators. Such a dialogue can tap the considerable knowledge, expertise, and energy that reside in an organization, especially when the participants know that their contributions will make a difference. The fact that there is so much to gain from such discussions regarding violation practices provides incentives for all participants to "make it work."

Ingredients of Success

Although the process evolved quite differently from one jurisdiction to the next, each participating agency developed a policy team to carry out the work; went through the process of rethinking the purposes of responding to violations and how that fit with agency mission; analyzed their current practice both through mapping their case flow and by assembling a data base about cases; arranged their intermediate responses into a continuum; and developed a policy framework to guide practice.

Each of these aspects of the process is illustrated by a brief account from each of the four participating jurisdictions.

Chartering a Policy Team. Each agency formed a working policy team composed of probation staff from varied levels of the organization. The team included-or was chartered by-the chief executive of the agency. Top management, middle management, and line staff played a role. In each jurisdiction the bench was involved in either an advisory capacity, as a member of the working group, or in an oversight role as leadership of the court. Discussions included prosecutors and defense bar and to some extent the providers of community-based services. With top management direction, the teams in each jurisdiction were heavily involved in analyzing current practice, defining and/or operationalizing the purposes of violation policy, drafting new policy, and in gathering information about the availability of resources for probation violators.

Office of Adult Probation (OAP)
Connecticut Judicial Department

OAP formed a policy team based in the New Haven Office comprised of 10 line officers, the chief probation officer and his deputy, along with a senior member of the state's central office staff. For more than a year the team met weekly, sorting out current practice, existing resources, drafting proposed policy, and planning for training of new officers. The result has been a dramatic change in the way New Haven handles violations. Additionally, each of the remaining probation district offices throughout the state has formed a project team, emulating the effort in New Haven.

Individual members of the policy groups - as line officers, supervisors, or other staff - provided invaluable input on the reality of day-to-day operations; ensured that there was a clear understanding and support for changes from the bottom to the top of the organization; provided guidance on needed training in order to implement change; and mobilized the energy of committed and knowledgeable individuals with an investment in change.

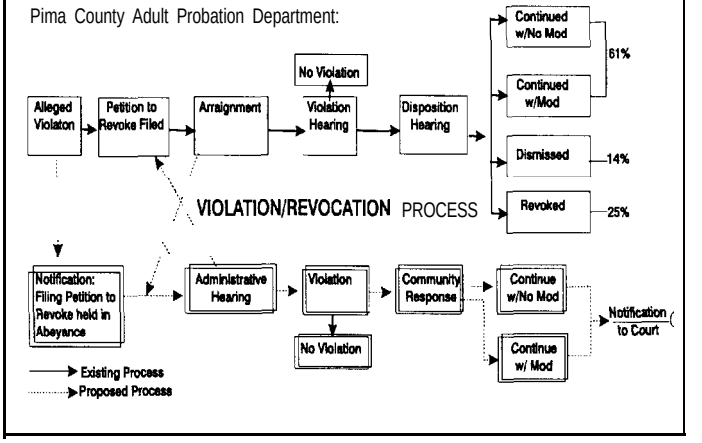
Mapping the Violation Process. From the time an alleged violation comes to the attention of a probation officer to the point at which a revocation decision is made, a long and complex process can take place involving many individuals and influenced by many factors including policies, regulations, available bedspace, common practice, the operating style of the probation officer or his/her supervisor, the nature of the violation, and/or the violator's record on probation. Mapping the steps in the process -what they are, what sequence they are in, who the key decisionmakers are, what the alternative outcomes of each step are, the expected timelapse from one step to the next - can help an agency understand current practice more clearly. Often, even though each part of the process may be well understood by some staff, no one person understands the entire process completely. By engaging in the mapping process together, a policy team can begin to understand collectively the process they are trying to improve. The process of struggling to put all of the pieces together and understand their relationships can be a valuable rite of passage for the team in establishing its unique value to the organization.

Adult Probation Office
of the Superior Court in
Pima County (Tucson), Arizona

A mapping exercise by the policy team in Pima County revealed just how complicated the process was and how many court appearances were required to secure revocation. Variations from one part of the office to the other also became apparent. This map became the "common ground" that allowed the policy group to communicate more clearly to the bench and prosecutor's office about potential changes. Exhibit 2 presents a summary version of the Pima County "map" including proposed changes in the process.

By examining the outcomes of decisions at each stage, the team can begin to ask why certain practices are followed and to what effect. For instance, one participating jurisdiction learned that the current process completely excluded middle management. Revocation proceedings were initiated without any oversight by management or any policy guidance. This provided insight and an incentive valuable to shape a more policy-driven practice in the future and to utilize mid-level managers as a resource in the process.

Exhibit 2:
Pima County Adult Probation Department:



Establishing a Quantitative Baseline. Because data about the violation and revocation process is so often inadequate, participating jurisdictions typically created a data base on current practice in order to be able to answer the question "What are we doing now?" Invariably, the data reinforced some conventional wisdom about the process, but challenged others. In one jurisdiction, the probation agency learned that:

- they were typically using intermediate sanctions less with younger offenders than with older offenders - the opposite of what they thought they were doing;
- patterns of community interventions did not seem to be consistent with supervision strategies they had adopted with their case management system; and
- despite a heavy rate of referral to community treatment, there was a low rate of treatment completion.

Another value of completing baseline analysis prior to changing policy, is that it is possible to "simulate" the effect of proposed policy changes on existing cases in order to begin to assess potential impact.

Macomb County Probation Dept.
Michigan Dept. of Corrections

Despite an initial assumption that Macomb County handled probation violators in the community more often than did other counties in the state, baseline analysis revealed that significant jail time was being devoted to probation violators, even those who fell in the least severe and least risky categories. The development of probation violation decision guidelines addressed this situation by spelling out recommended sanctions and recommended jail sentence lengths (where jail was recommended) for offenders with different levels of violation severity and risk.

Defining a Continuum of Intermediate Sanctions. Each of the participating jurisdictions devoted considerable effort to defining a continuum of sanctions. To begin, they examined the intermediate sanctions available to them: what were they, where were they located, how were they funded, how could they be accessed? Then, the groups considered how the sanctions related to one another: which provided more or less control, more or less intrusiveness, more or less intensity of treatment and for what types of needs.

Identifying available sanctions. In some jurisdictions, identifying the resources and making sure that probation officers were familiar with them was an important task. In other jurisdictions, the underlying rationale for their use was more of an **issue.** Did intensive supervision, for instance, fall on a continuum designed to provide varying degrees of control - or was it to be used as simple punishment for a probationer who presented little risk, but was uncooperative in reporting? What costs (budgetary and opportunity) were associated with the use of sanctions? And what were the trade-offs among sanctions? Should some rough equivalencies be developed between sanctions so that x days on intensive supervision were equivalent to y days in jail?

Considering how sanctions relate to one another and to violation behavior. The groups found that the scaling of sanctions was more difficult than it appeared and presented many conceptual and philosophical difficulties. They found it necessary to ask what interests they were trying to serve through these sanctions:

- The management of risk, certainly;
- The provision of treatment services, usually as they assisted in the long-term management of risk; and
- The imposition of proportionate punishment, primarily to assure some system credibility among probationers and the community.

Office of Adult Probation, New Haven
Connecticut Judicial Department
Responses to Violations: Three Ranges

Higher levels of severity and risk of violation tend to receive higher levels of sanctions.

LOW RANGE	MEDIUM RANGE	HIGH RANGE
Home/Field Visits	Residential Treatment	Warrant
Increase Contact	Non-Residential Treatment	Summons to Appear
Counseling	Charitable Contributions	Residential Treatment
Reprimand	Community Service Hours	Day Incarceration Center
	Curfew	Electronic Monitoring
	Urinalysis	Intensive Supervision
		Alternative Incarceration Center
		Extension of Program
		Court Reprimand

How do sanctions serve these interests? How do they converge and conflict, and how is it possible to resolve areas of conflict? Each of the teams spent significant effort considering the interests that each sanction could serve, its weight in

relationship to other sanctions, and what a logical continuum or framework might be. One conclusion they reached was that, at least in the design stage, it is helpful to think about sanctions along several dimensions, perhaps including risk management or control, treatment, and punishment. Even given these difficulties, the teams were all able to create a continuum from which to begin.

Putting it All Together: Developing a Policy Framework. The availability of intermediate sanctions, even when arrayed in a logical continuum, does not assure that they will be used, or used in any rational or consistent fashion. In order to shape the use of these sanctions, participating jurisdictions worked to develop specific policy frameworks to guide probation officers as they decide what response is appropriate for specific violations. The policy framework is the rationale that tailors sanctions to particular violators.

Sixth Judicial District
Department of Correctional Services
Cedar Rapids, Iowa

The Iowa team drafted policy that includes, in addition to philosophy, clear statements of objectives, definitions of such terms as "classes" of violations depending on severity, risk levels of offender, high risk behavior, and agent, supervisory, and judicial level responses. To the text of the policy they added a graphic representation (see Exhibit 3) of how violation severity, offender risk, behavior risk, and organizational level interact to generate a typical sanction.

In general, the policy frameworks have two dimensions: 1) what level of response is appropriate given the severity, risk, and need inherent in the violation; 2) at what level of the organization will the decision regarding the violation response be made.

Exhibit 3
Sixth **Judicial District, Cedar Rapids, Iowa**
Factors Considered in Violation Responses
Assess Level of Response

Violation Severity	Offender Risk Level	Behavior Risk Level	Level of Decision Making
CLASS A	High	High	Judicial
		Low	Supervisory
	Low	High	Supervisory
		Low	Agent
CLASS B	High	High	Judicial
		Low	Supervisory
	Low	High	Agent
		Low	Agent

In general, the policy frameworks developed by the participating team give specific areas of discretion to the probation officer. The officer is encouraged to utilize whatever resources are at his/her disposal to respond to low severity and low risk violations. As severity and risk increase, some jurisdictions examined the use of an administrative hearing process to allow a higher level of review over the imposition of community service time, day reporting, curfew or similar options. Policies typically guide probation officers to bring to the attention of the court those violations that indicate highest levels of risk to the community, and/or the highest levels of violation severity.

Policies developed under this project vary greatly from one jurisdiction to the next, as do the individual intermediate sanctions that are available. However, there is great similarity among the jurisdictions in the nature of the policy: to make explicit the targeting of certain types or levels of sanctions to specific types of offenders and offenses.

Assessing Impact. While this article is being developed, the process of change is still continuing in all four jurisdictions. In the two jurisdictions where efforts are still under way to pilot implementation, positive impact is already reported in terms of generating interest and a willingness to examine these issues more broadly. In Iowa, for instance, the effort in the Sixth Judicial District is now being reviewed by **all** of the districts in the state regarding how to bring about changes in violation responses statewide. In addition, the Sixth Judicial District has been more successful than any other district in the state in utilizing violator program beds provided by the department of corrections as a response to prison-bound probation and parole violators. In Pima County, Arizona, the court has obtained outside resources to continue efforts to develop an administrative hearing process in order to reduce the burdens placed upon the court by revocation cases. This new administrative hearing will use the specific policy regarding the use of intermediate sanctions for violations that has been developed by the probation department's policy team. This would enable intermediate sanctions to be accessed administratively rather than going through a lengthy court process.

As was noted earlier, it is difficult to understand current practice without establishing a baseline of both descriptive and quantitative information about revocation practices. To understand the effects that policy changes are having requires a similar analysis effort which compares the post-implementation data against the baseline.

In two of the jurisdictions - Macomb County, Michigan and New Haven, Connecticut - new policy has actually been piloted or implemented. Initial assessments of impact are quite

Macomb County Probation
Michigan Department of Corrections

The team is in the process of comparing operations under revised probation revocation policy in Macomb County against a database of offenders from 1991. Although only about a third of the current cases have dispositions, preliminary findings indicate that the revocation rate to prison or jail has been reduced from 40% to 24% (of those on whom warrants had been issued) and that jail/prison sentence length for revocations had also been reduced substantially, from an average of 12 to an average of 6 months.

encouraging. In these two jurisdictions, there are indications that probation officers are doing their jobs differently, They are more systematically and consistently considering intermediate sanctions as a response to probation violations. In Macomb County, fairly extensive quantitative analysis was conducted prior to policy development, providing a baseline against which to measure changes in practice. The analysis supports the conclusion that the probation office in Macomb County has significantly reduced its impact on jail space from responses to probation violations.

Lessons From the Project

Several key lessons have emerged from work with agencies on the topic of probation violations. They provide a helpful perspective on the state of current practice among probation agencies today. They also provide a framework interested agencies can follow as they examine their own operations.

Examining violation practice provides an opportunity to sharpen an understanding of the mission of probation. Examining responses to violations of probation requires defining failure. Under what circumstances is an offender's behavior either serious or risky enough to be considered as a failure and worthy of revocation and incarceration? Of course, if we explore our definition of failure, that leads inevitably to an exploration of the definition of success In order to define success, it becomes essential to define goals. The paradox of an environment beleaguered by increasing workloads and decreasing resources is that examining goals is a luxury we can't afford, but also a necessity we can't avoid. Shrinking resources and growing populations make an examination of mission more urgent today than ever before. Examining violation practice offers a practical point from which to begin.

The need for explicit policy regarding violations is clear and pressing. Experience with a number of probation and parole agencies around the nation indicates that it is typical to find almost no written policy to guide the actions of probation (or parole) officers in responding to violations. In the absence of written policy, it is reasonable to assume that different agents will do their jobs very differently, based upon their individual philosophies, styles, and knowledge of community resources. However competent and dedicated the individual staff are, this implies a lack of coordinated effort toward achieving the agency mission and toward effective use of scarce resources.

Streamlining violations procedures [as opposed to policy) can ***yield substantial cost and workload savings,*** Use of prison and jail space is one obvious cost of probation revocation. A careful look at how agencies process violations reveals that the cost in terms of agent and supervisor time, court personnel and judicial time, and paperwork burden may also be quite significant. In one participating jurisdiction, a rough analysis indicated that as much as the equivalent of an entire full-time courtroom with all of its personnel might be consumed in probation revocation hearings; this process was yielding only one revocation for every three cases that were handled. An agency may need to be prepared to make certain procedural as well as policy changes in order to streamline the process and make efficiency gains.

Creatinggreater a availability of community sanctions is not enough to ensure their effective use. Probation agencies must prepare to target their use through sound policy. Despite the interest in intermediate sanctions programs, the most challenging aspect of shifting violation and revocation practice, is shaping how such programs are accessed and used in order to achieve supervision goals more effectively.

For years, probation agencies have been in the business of administering or brokering resources that have come to be known as intermediate sanctions. In terms of punitiveness, intrusiveness, or treatment intensity, they can certainly be thought of as falling between the extremes of straight probation on the one hand and incarceration on the other. What is harder to find, however, is the agency where these intermediate Sanctions are structured into a framework that guides their use. Some agencies have developed one or more continuums that are related to the level of risk, severity, or need revealed by specific violations and violators. More often, however, these resources are grouped into an undifferentiated set of resources which each agent draws upon as he or she sees fit. The need for policy to structure such a continuum, as well as the norms that will channel certain violations/violators into sanctions is pressing, both at the violation stage as well as at the initial sentencing stage.

Conclusion

Remarkable gains have been realized by agencies as they have crafted policy-driven responses to probation violations. They have forged agreements about the purposes of supervision and

of violation responses. They have developed a better understanding of available sanctions and how they can be used to achieve the desired outcomes of supervision. They have structured policy to guide responses to violations and are well into or on the way to implementation. They are already seeing payoffs in better use of resources and a different way of doing business.

The probation violation and revocation arena offers the ideal opportunity to take on these difficult tasks. It is a relatively narrow but uncharted area for most agencies. Yet the potential benefits of refining practice accrue to a wide range of potential stakeholders. This experience will be helpful to other agencies as they take on the task of refining violations policy. More importantly, it provides valuable experience and precedent as agencies develop policy to guide the use of intermediate sanctions at the sentencing stage.

Additional information may be obtained from the jurisdictions which participated in this project. Contact: James E. Mayer, Deputy Chief, Adult Probation Department, Superior Court in Pima County, 110 W. Congress, 8th Floor, Tucson, AZ 85701, (602) 740-3800. Robert J. Bosco, Director, Office of Adult Probation, Connecticut Judicial Department, 2275 Silas Deane Highway, Rocky Hill, CT 06067, (203) 563-1332. Gary Hinzman, District Director, Sixth Judicial District, Department of Correctional Services, 951 29th Ave., S.W., Cedar Rapids, IA 52404, (319) 398-3675. Ken Aud, Supervisor, Macomb County Probation Department, Michigan Department of Corrections, Macomb County Building, 9th Floor, Mt. Clemens, MI 48043, (313) 469-5330.

Endnote

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References

Austin, James. 1989. ***Parole Outcome in California: The Consequences of Determinate Sentencing, Punishment and Incapacitation on Parole Performance.*** San Francisco: National Council on Crime and Delinquency.

Bureau of Justice Statistics, ***Correctional Populations in the United States, 1987.*** U.S. Department of Justice, 1989, pp. 23 and 125. And Bureau of Justice Statistics, ***Correctional Populations in the United States,*** 1990. U.S. Department of Justice, 1992, pp. 27 and 117.

Bureau of Justice Statistics, ***Correctional Populations in the United States, 1987.*** U.S. Department of Justice, 1989, p. 27. And Bureau of Justice Statistics, ***Correctional Populations in the United States, 1990.*** U.S. Department of Justice, 1992, p. 29.

The earlier effort by NIC in the area of parole is reported in ***Parole Violation and Revocation: Lessons for Policy Development*** by Peggy Burke, John Bellassai, and Mary Toborg. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections, 1992. One of the four jurisdictions - the South Carolina Department of Probation, Parole, and Pardon Services - has reported its experience in detail in "A Reassessment of Violations Policy and Practice" by Richard Stroker in ***Community Corrections Quarterly,*** U.S. Department of Justice, National Institute of Corrections, November 6, 1991.

Additional Resources

Burke, Peggy, Linda Adams and Becki Ney. ***Policy for Parole Release and Revocation: The National Institute of Corrections 1988-1989 Technical Assistance Project.*** U.S. Department of Justice, National Institute of Corrections, Washington, DC (1990).

Burke, Peggy B., John P. Bellassai and Marty A. Toberg. ***Parole Violation and Revocation: Lessons for Policy Development.*** Technical Assistance Report, National Institute of Corrections (January 1992).

Del Carmen, Rolando V. and Harlee Field. ***Model Guidelines for Probation Revocation.*** Unpublished report. National Institute of Corrections, Washington, DC (February 1985).

Parent, Dale G., Don Wentworth, Peggy Burke and Becki ***Ney. Responding to Probation and Parole Violation.*** Unpublished report. U.S. Department of Justice, National Institute of Justice, Washington, DC (1992).

South Carolina Department of Probation, Parole and Pardon Services. ***Violations Guidelines and Administrative Hearings.*** Unpublished report. Columbia, SC (November 1993).

Stroker, Richard P. "A Reassessment of Violations Policy and Practice." ***Community Corrections Quarterly, No. 6, National Institute of Corrections, Washington, DC (1991).***

Vigdal, Gerald L. and Donald W. Stadler. "Alternative to Revocation Program Offers Offenders a Second Chance." ***Corrections Today,*** Vol. 56, No 1, pp. 44-47 (February 1994). □

Alabama's Comprehensive Judicial Approach to Problems of Chemical Abuse Within Society

by Marty Ramsay, State Coordinator, Alabama Court Referral Program

Court systems throughout the United States are faced with a wide array of difficulties stemming directly from alcohol and drug abuse. The recent emphasis on apprehension and punishment of offenders involved with drugs has dramatically increased drug-related case filings - forcing judges and court administrators to develop new case management techniques and alternative sentencing practices. Nationwide, jails and prisons are overcrowded. Several state correctional facilities have programs devoted totally to dealing with problems related to abuse of and addiction to alcohol and other drugs. Judges are faced with defendants who come before them repeatedly on a variety of charges which are related to their chemical abuse problem. The Alabama judiciary has long recognized that it is ill equipped to deal with addiction to alcohol and other drugs of abuse and to keep abreast of community programs designed to educate and rehabilitate defendants in an effort to curtail the number of substance cases entering their courts.

In 1985, a subcommittee to Alabama's Judicial Study Commission was appointed to determine what resources were needed in the court to address this problem. The result of this in-depth study is the current court referral program consisting of four components: the Level 1 and Level II education programs; the Level III program, which consists of referrals to local community mental health centers or other programs certified by the Department of Mental Health and Mental Retardation for assessment and placement in inpatient, intensive outpatient, or other appropriate mental health programs; and the Court Referral Officer (CRO) Program which provides comprehensive case management services for courts, as specified in the Mandatory Treatment Act of 1990. The services provided by the CRO include:

1. evaluation of defendants arrested for alcohol and/or other drug offenses
2. referral of defendants to alcohol or other drug education or treatment programs
3. monitoring of defendants
4. drug screening of defendants
5. diversion of certain felony offenders meeting the guidelines in §12-23-6, ***Code of Alabama 1975***
6. evaluation and referral of juveniles
7. case management of defendants, including juveniles
8. referral to adult basic education courses approved by the State Department of Education.

Auburn University conducted a formal evaluation of the drug assessment programs in Alabama and El Cajon, California, in 1991. The evaluation was supported by the State Justice Institute. The 121-page evaluation study concluded that, "In Alabama the significant reduction of recidivism in the 31-45 age group and the female gender classification, as well as the absence of significantly higher rates despite the significantly higher proportion of multi-offense defendants in the CRO area provides evidence of the effectiveness of the CRO program. While no overall estimate of effectiveness is possible as was derived from the El Cajon, California program, the reduction was from 22.4 percent recidivism in the control to 12.1 percent in the CRO area. The 46.1 percent reduction in the rate is quite comparable to that found in El Cajon."

In November 1991, a presentation on Alabama's court referral network and the Mandatory Treatment Act was made to court officials, including a number of chief justices, at the National Conference on Substance Abuse and the Courts. Described as a national model for judicial intervention, the Alabama court referral program was also nominated to receive the Justice Achievement Award.

The programs offered within the Court Referral Program are as follows.

Level I

The Level 1 schools were designed to provide didactic information for defendants who are first offenders and have not been determined to have a problem with alcohol or drugs. Information is presented in four 2-1/2 hour sessions for a total of 10 hours. The course presents a clear picture of the physical, psychological and sociological effects of alcohol and drugs. The legal aspects of an alcohol/drug-related behavior, the effects of addiction and available community resources are also presented.

Level II

This 28-hour program consists of 24 hours of didactic information, coupled with group exercises designed for individuals determined to have an incipient problem with alco-

ho1 and/or other drugs of abuse. Students are also required to attend four open self-help group meetings during the program. This "treatment-ready" course is designed to provide the information covered in Level I as well as to focus on denial, guilt, poor self-esteem and anger, which are generally recognized as often-contributing factors to alcohol and drug problems. Additionally, instructors introduce class members to self-help groups, family dynamics, recovery and relapse and alternatives to drinking and drug use which can help students identify and constructively deal with their problems. Level II defendants are usually given a suspended jail sentence and placed on a minimum of six-months' monitoring, including alcohol or drug testing, conducted by the CRO or program designee.

Level III

The Level III program consists of direct referrals to local community mental health centers or other Department of Mental Health and Mental Retardation approved programs for further assessment to determine the most appropriate placement of defendants identified as having a serious substance abuse problem. Generally, defendants referred to a Level III program are placed in either an intensive outpatient program or an inpatient program. As other needs arise, the mental health centers or other appropriate providers are able to refer defendants for other services upon consultation with the CRO. Level III defendants are given suspended jail sentences and placed on probation and extended periods of monitoring, as determined by the CRO and the judge. Defendants report to the CRO at least monthly as a part of the monitoring requirements. They must verify their progress toward completion of case management goals and court orders as terms of probation. They must also submit to random drug testing.

Court Referral Officer Program

The fourth component of the Court Referral network is the Court Referral Officer (CRO) Program. The CRO Program concept is based upon research findings that defendants who are placed in appropriate rehabilitation programs by courts and monitored by the courts for compliance generally remain in those programs and show greatest progress toward behavior modification. While family, friends, relatives and employers can be very persuasive in getting some addicts into treatment, only the judge can offer the choice of jail or rehabilitation for the offender's alcohol or drug problem. Intervention from the bench with a contrite defendant who understands his options can be one of the more effective means of causing a defendant to modify his behavior and increase the likelihood that he will not return to court to answer additional charges related to substance abuse.

CROs and court referral programs are key ingredients in Alabama's comprehensive approach to the successful adjudication of alcohol/drug-related cases. Utilizing Operational Screening Criteria (OSC) developed by the Administrative Office of Courts, as well as validated testing instruments, CROs provide a thorough evaluation. Based upon a five-step approach, the OSC consists of the following:

Step 1 Inspection of driving and/or criminal record.

Step 2 Verification of BAC and/or laboratory report.

Step 3 Administration of the Mortimer-Filkins Questionnaire or other AOC-approved evaluation/assessment instrument to all defendants.

Step 4 Consideration of other external factors available such as information from family/significant others; employment, social and drinking history; age; marital status; health; and general overall appearance.

Step 5 Classification of defendant according to the guidelines for referral developed by the AOC.

CROs develop case management plans specifically designed for each defendant's individual needs, and make appropriate recommendations for each defendant. This important information will ensure court placement of each defendant in the most appropriate program as a supplement to traditional judicial sanctions. It should be emphasized that the court referral program is not recommended as a substitute for traditional judicial sanctions. Court referral programs provide excellent resources to educate or rehabilitate defendants.

The Court Referral Program has been a tremendous asset to the Unified Judicial System in Alabama. There is now widespread use of CROs by judges for all alcohol and drug related offenses. CROs evaluate and refer more than 25,000 defendants per year in Alabama.

Official state recognition of the value of the court referral network came in 1990 with the passage of the Mandatory Treatment Act (Act 90-390) by the Alabama legislature. This act mandates evaluation and referral of all defendants with alcohol and/or drug related convictions and authorizes the evaluation of any offender where chemical dependency is suspected as the underlying cause of the commission of the crime.

The Mandatory Treatment Act also provides for the diversion from prosecution of offenders charged with certain possession offenses. Drug testing, case management and monitoring of treatment attendance, and court orders as well as

attendance at self-help groups, are included in the services CROs provide.

A judicial survey, conductedstatewide in 1993, indicated the quality of services received by circuit, district, municipal, and juvenile judges as follows:

Excellent services:	54 percent
Good services:	29 percent
Fair services:	7 percent
Poor services:	0 percent
No CRO providing coverage:	10 percent

The success of a program can be measured by the people involved. The Auburn study concluded that recidivism was reduced as a result of the CRO Program. The goal for the future will be to continue to serve the courts, reduce recidivism, and improve the quality and the effectiveness of the CRO Program.

For further information about the Alabama Court Referral Program, please contact Mr. Marty Ramsay, State Coordinator, Court Referral Program, (or Mr. Angelo V. Trimble, Director, Municipal Court Operations Division), Administrative Office of Courts, 300 Dexter Avenue, Montgomery, AL 36104. (205) 242-0831.

• • • Announcing • • •
APPA Charter Members Club

The American Probation and Parole Association would like to invite its charter members to participate in the APPA Charter Members Club. The APPA Charter Members Club will have its next meeting at the APPA 19th Annual Training Institute in Phoenix, Arizona, September 11-14, 1994. If you are a charter member and are interested in becoming a part of the club, please contact Rudy or stop by the APPA registration desk in Phoenix for more information.

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Rudy is a charter member of APPA and a retired officer from the Union County Probation Department, Elizabeth, New Jersey.

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Restorative Case Management

The Evolution of Correctional Case Management

by Ray Ferns, Director of Community Corrections, Central and Eastern Oregon

Why do you think you are here? Various scenarios were rambling through my mind as I tried to filter out the conversations and noise reverberating throughout twenty-some-odd scattered cubicles on the third floor of the state office building.

George was waiting in the cramped reception area with a ***host of other probationers and parolees. George was supposed to come to the office and see me once a month. In the 10 - 20 minutes we spent together at this monthly meeting, I was supposed to say or do something that would influence George so that he would not continue committing crimes. After al! this is the Department of Corrections and I was a correctional counselor.***

As George sat ***down in the arm fess, uncomfortable,*** or***ange colored chair beside my paper strewn desk, the first words from my mouth were: "Why do you think you are here?" Simple enough question - direct and straightforward As George began to open his mouth in response, the thought struck me - I wasn't sure why I*** was ***there.***

Over the last 16 years, I have continually returned to the question "Why do you think you are here" in an effort to make some sense out of what I do and why.

The notion of restorative case management is for me a result of that ongoing search to find a meaningful purpose to correctional counseling. More than anything else it is a concept that clearly defines for me the purpose of Corrections and a process that has meaning and can be successful.

Restorative Case Management is derived from two compatible concepts: ***restorativejustice,*** which serves as the ethical foundation and ***cognitive restructuring,*** which serves as the correctional counseling model. Combined, these two concepts form a rational method of correctional counseling which can have a significant impact on the criminal justice system and in particular the functions of corrections throughout the United States.

The theoretical framework for restorative justice is based on work from Howard Zehr, Dan VanNess and Martin Wright. The recent writing of Kay Pranis contributed greatly to this description of restorative justice and the evolution of restorative case management.

First, let me attempt to describe the concept of restorative justice, which is the ethical foundation of restorative case management. Restorative justice defines crime as an act against another person or the community. Thus, criminal behavior is really a violation of personal and community harmony. The criminal justice system as one component of society has a role and interest in the resolution of crime. Pragmatically, this interest is carried out through a process which holds offenders accountable to restore, give back, or make whole the community as well as the individual victim. Victims and victim participation in this restorative process is a central element in restorative justice.

In the restorative model the efficiency of the correctional system is not based on punishments. Rather, efficiency is based on the degree or extent to which restoration has occurred. The offender may experience a degree of suffering as a direct consequence, but the consequence alone is not viewed as the primary means of impacting behavior.

Responses to crime remain a function of the criminal justice system. However, crime control is viewed as a much larger problem which is best addressed as a social systems problem. The criminal justice system can respond to crime and attempt to repair the harm, but it can only have a marginal impact on the actual level or occurrence of crime.

Responsibility and accountability are key actions needed by offenders to repair harm. Thus, correctional intervention focuses on ways that offenders can learn and demonstrate prosocial, responsible behaviors. The outcome is measured by how much reparation was achieved.

Crime resolution involves victim and offender reconciliation processes. Offenders' motivation and ability toward reparation helps to determine their involvement in the correctional system. Offenders are responsible for their choices, behaviors and lives, but individual communities are responsible for the socioeconomic and environmental conditions which foster or support crime. Thus, interventions in the cause of crime is the responsibility of the individual, the community and governments.

Restorative justice advocates the use of community service, victim/offender reconciliation, offender work crews, restitution and related interventions as a "catalyst for change" in correctional programs.

The restorative justice model emphasizes the use of expanded community supervision systems as a **primary method** of providing for community protection. The restor-

ative justice philosophy emphasizes cost effective sanction alternatives while de-emphasizing the retributive use of incarceration.

Restorative justice focuses on developing intervention models which build on strengths instead of identifying weaknesses. The emphasis in specific interventions with offenders is not restricted to examining their lack of insight but rather their capacity for responsibility and their capacity to choose.

The central issue in restorative justice lies in how we, as a system or culture, define accountability. "Genuine accountability means, first of all, that when you offend you need to understand and take the responsibility for what you did ... and offenders need to be encouraged to take responsibility for making things right, for righting the wrong. Understanding one's actions and taking responsibility for making things right - that is the real meaning of accountability." (Zehr, 1990).

Cognitive Restructuring:

The earlier works of Dr. Samenow and Dr. Yockelson; Dr. Goldstein's specific interventions for youthful offenders; and the more recent work of Dr. Ross and Dr. Fabiano have all contributed greatly to the direction and foundation of restorative case management. For the purpose of this paper, the specific writing of Dr. John Bush, Ph.D., ***Criminality and Self-Change,*** revised 1/89, were heavily drawn upon.

The basic premise in cognitive restructuring is that thinking drives behavior. To effectively change or intervene in behavior, you must first change or intervene in how people think

Intrinsic to the notion of cognitive restructuring is the understanding that changing internal patterns of thought can only come about through the process of self awareness and self motivation. Thus, cognitive restructuring is really a process of cognitive and personal selfchange. In this distinction, we recognize that cognitive restructuring is not forced upon people - it is not brainwashing or a system of punishments dealt out to the offender to condition new ways of thinking. Rather, it is an awareness of the connection between thoughts, feelings, behaviors and a meaningful opportunity to change the way offenders think, which includes the opportunity for offenders to learn prosocial skills. Cognitive ***skill*** building is an essential element in the process of cognitive change.

Cognitive restructuring as a correctional intervention is not based on a particular theory of criminology. Rather, the intervention deals with offenders in the here and now. The only exploration into causal relationships is an exploration into the offender's patterns of thought and the relationship between those cognitive patterns and the offender's criminality.

Cognitive restructuring as an intervention is based on simple facts confirmed by practitioners, often correctional officers, in their work with offenders. These facts are: offenders have the ability to recognize their own patterns of thinking, feeling and acting; that offenders can also recognize how these patterns support and influence continued criminal behavior; that offenders can effect personal change by making different choices in their lives.

Cognitive restructuring seeks to motivate offenders to change through a process of discovery rather than a process of externally imposed sanctions. In this process, offenders are taught to recognize the reality of their life situation and their role in that reality. This discovery that "I have found the enemy and the enemy is me" serves as a cornerstone in the process of providing a meaningful opportunity to change.

Often, the reality of the offender's life includes the reality of jail, arrests, courtrooms, and parole agents. The fact that this reality can change and that offenders don't have to accept this reality is personal empowerment and can serve as motivation for change.

Developmental Delays in Cognitive Skills

A considerable amount of correctional research reflects that many offenders lack certain cognitive skills which are essential for the development of prosocial behaviors. Offenders often demonstrate impulsive behaviors which tend to be centered on their immediate gratification without much consideration for how their behavior affects other people. Often offenders react to situations without much analysis of what this reaction will eventually lead to. "They act without analyzing the situation or calculating the consequences of their actions. Advice, warnings, or punishments often seem to have little impact on them because they fail to reflect back on their behavior and its effects." (Ross & Fabiano; 1988).

Managing Sanctions and Changing Behaviors

The introduction of graduated systems of punishments or sanctions is a better management of resources. However, such systems will have minimal impact if the offender does not make a cognitive connection between their actions and the resulting consequences. If the intent of sanctions is to change behavior and not simply to punish or isolate offenders, then the correctional system must insure that attempts are made all along the correctional continuum to teach offenders new ways of thinking. Offenders must begin to understand and appreciate the significance of how they think; how such thinking shapes their behavior; how the consequences they are experiencing are a result of such patterns of thinking and behaving.

The cognitive approach to understanding and building interventions is based on sound, experienced research. It is a methodology which can be easily applied throughout the correctional setting. Many established cognitive skills programs

are taught by correctional staff and offer encouraging results with offenders as well as staff who feel a new degree of encouragement and success in themselves and the system.

Offender Case Management

Understanding that thinking drives behavior, this approach views behavior as the result of cognitive process and seeks interventions first in that cognitive process. Thus, offender case management becomes a process of understanding offender cognition, of expanding the offenders awareness of their cognitive processes, of creating motivation for offenders to change dysfunctional cognitive processes and of providing offenders with opportunities to learn new cognitive prosocial skills.

Restorative Case Management

The intent of restorative case management is to provide an ethical foundation and specific direction for function of offender case management.

This approach represents a significant shift in the focus of correctional case management. Case planning in restorative case management examines the offender's level of cognitive distortion, cognitive skill defects, the level of antisocial behaviors, and the offender's ability to provide restoration to communities and victims. These four factors are the fundamental elements of case management and together they drive individual case management decisions.

Protection of the public continues as a major function of restorative case management. The offender's risk to commit crimes and behaviors which reflect such risk, are responded to through systems of cost effective, graduated sanctions or restrictions. However, unlike traditional correctional case managers, parole agents using restorative case management constantly work toward gaining an awareness of the offender's cognitive patterns and how those patterns are linked to continued criminal behaviors. As these patterns are revealed, the parole and probation agent works with the offender to increase the offender's awareness of these patterns, and change them.

A fundamental objective of the restorative case management approach is to insist that offenders be given a meaningful opportunity to change. Simply put, we expect offenders to exit the system more capable of living viable, productive and responsible lives than they were able to when they first entered.

Not unlike the Balanced Approach (Moloney, Romig, Armstrong 1988: 10), the restorative case management approach requires new offender case management practices and agency priorities. These practices and policies need to work to strengthen and expand correctional programs within communities. Together, restorative justice and cognitive restructuring form a philosophy of cost effective correctional interventions that enhance victim empowerment, offender accountability, and community involvement.

Over the years I have read and written thousands of probation and parole violation reports with statements like: "This offender has chosen to ignore the court, or, has willingly chosen to continue in a life of irresponsible criminal behavior." Such statements assume that offenders understand the relationship between the way they think and the behaviors that are born from such patterns. If we assume that irresponsible behaviors are learned, is it not reasonable to assume that the thinking patterns that support such behavior are also learned? What if you can't see the choices in acting and responding to situations? Getting offenders to see and believe they have meaningful choices is key to the concept of restorative case management. This awareness comes for offenders through the process of understanding the connection between the offenders patterns of thought and their behavior.

Prisons and the Use of Incarceration

Restorative case management is not a banner for the abolishment of prisons. If anything, this concept provides a clearer description for the potential role and use of prisons. Clearly, there are offenders who simply for the protection of the public cannot be allowed to be free in society. There are also offenders who will not respond to any notion of change. However, the vast majority of incarcerated offenders can benefit from a "meaningful opportunity to change" which means providing that opportunity inside and outside of prison walls.

The prison experience can provide a significant opportunity for offenders to reflect on and learn from their mistakes in judgment and thinking. While incarcerated, they can learn from their mistakes and they can be taught new cognitive and social skills. Incarceration settings can also provide offenders with an opportunity to be confronted by their victims and for the process of victim/offender reconciliation to begin. Offenders can also learn and appreciate the importance of giving back to communities through offender/community restoration projects, such as volunteer fire protection, forest crew projects, park clean-up and restoration projects.

Directives vs. Discoveries

In traditional correctional case management, parole and probation agents are taught to seek out information relative to the offenders behaviors: Who are you running with? Where are you living? Where are you working? Have you paid your restitution? These are the typical areas of concern and information gathering.

Restorative case management does not abandon such areas of concern. However, when the offender is making choices

to ignore or disobey, the agent seeks to understand such choices by gaining an understanding of how the offender is thinking. Once the offender describes clearly how and what they were thinking related to the choices they have made, the parole agent works with the offender to interrupt and change the offenders thinking patterns. Thus, the intervention focuses in on creating awareness and guidance toward cognitive choices and prosocial behaviors.

Restorative case management focuses on the concept of self change. The notion is that for personal change to be meaningful and long lasting, the motivation for change must be internalized. Offenders must recognize the relationship between their patterns of thought and behavior, perceive a need to change those patterns, and must believe in their ability to actualize such changes. When this occurs, offenders have established a strong motivation for self change. In this model, the relationship between the change agent (parole agent) and the offender becomes more of an alliance or partnership than the traditional enforcement role. To build this relationship, the change agent must be a skilled listener, negotiator, investigator and facilitator.

As a skilled listener, the change agent is trying to see or conceptualize through the offender's language their thinking patterns which support poor choices or "antisocial" behavior. The change agent listens for rationales which disengage the offender from responsible thinking and responsible actions. Any movement away from responsibility through words and actions are "red flags" signaling the change agent that this thinking and behavior is maintaining the offender's cycle of antisocial behaviors.

The change agent is also observing body language. What unspoken messages are being sent and to what extent do those messages support distorted thinking patterns? It is through this process of active listening that the change agent demonstrates investigative skills. The process of unraveling the offender's cognitive distortions, patterns of thinking which drive behavior, is the investigative skill necessary for the successful change agent.

For this module to be successful, the offender must reveal cognitive patterns to the change agent. Thus, the process implies honest and truthful disclosure of cognition on the part of the offender. The change agent then works with the offender on more of a mutual alliance with an understanding that the offenders thoughts won't be judged or evaluated. Rather, these thoughts will simply be recorded so that together the offender and the change agent can examine them to determine if there are common or underlying patterns which emerge from certain situations in the offenders history. This alliance is really a voyage of discovery for both the agent and the offender. The purpose of this voyage is for ***the offender to discover*** the reality of their existence and their role and responsibility in that reality. It is this new awareness and discovery that serves as a powerful motivation or catalyst for change.

The partnership also acknowledges the change agent's responsibility to involve the offender, guide the offender by working with the offender in their own personal change areas or specific social skill areas which will enhance the offender's likelihood of successful personal change. The offender's awareness of the need to change their patterns of thinking is useful only to the extent that the offender has the social skills to act in a prosocial manner and be successful.

Restorative case management is a voyage with a destination or outcome of personal change. Change agents are in fact navigators on this voyage who point out obstacles and alternate courses, and work at moving the personal change process forward. Clearly, the offender, as co-navigator, is ultimately responsible for the direction, course, destination, and pace of their personal change. It is this process of discovery, and mutual interest in the final destination which significantly distinguishes restorative case management from traditional corrections management by directives. The notion that offenders will be motivated toward new behaviors based upon a system of negative, imposed consequences is **not** consistent with this model. This model would recognize the need to manage offenders in the most cost effective, humanistic manner possible and that, for offenders who represent too high a risk to the public, incarceration is a meaningful tool to manage that risk.

Restoration

Whatever the setting, the model suggests a continuing mission of creating an awareness in the offender's life between the way the offender thinks, feels and acts, and the potential pathway for personal change.

Personal self change is also an acknowledgment of responsibility. Responsibility is the cornerstone to accountability and restoration to victims and communities. The fact that personal change has occurred for the offender is only significant to victims to the extent that through the process of personal change the offender has directly given back to victims, that restoration has occurred through a process of acknowledgement and accountability.

How do offenders give back in comparison to what has been lost? or taken? The answer lies with the victim and is only truly achieved when the victim believes that restoration has occurred.

Restoration is not vengeance or revenge. Rather, restoration is a process of actions on the part of the offender which demonstrates an acknowledgement of the total harm that has been done and deeds or action which attempt to repair that harm. Restoration is a process. The process can include sim-

ply hearing what victims have to say, allowing victims to verbalize their feelings regarding the crime, acknowledging victims' rights to feel however they are feeling, and meaningful actions to make whole or give back The quest for restoration is a voyage of discovery and healing in which the offender responds to reasonable courses directed by the victim. That is the victim's right, the offender's responsibility, and a cornerstone of restorative case management.

From Concept to Function

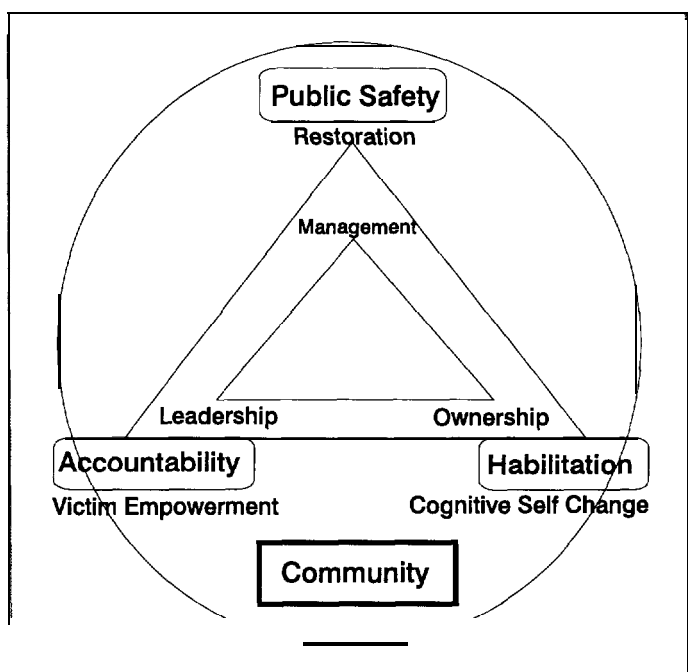
Victim/offender reconciliation programs (VORP), Victim Impact Panel, Offender Work Crew, and Community Service Programs are "restorative" in many ways. Such programs bring the concept of restorative case management into focus by seeing responsibility and accountability as functions of reparation. The ethical principals and purpose described in restorative justice frames the purpose for such programs, giving the sometimes "shotgun" method of conditions of supervision a meaningful purpose.

All across the United States and Canada, cognitive based programs are emerging at an alarming rate. Correctional systems in Colorado, Idaho, Oklahoma, Oregon, Vermont, Virginia and Washington are beginning to experiment with a variety of cognitive based programs such as Cognitive Self Change, Moral Reconation Therapy, Reasoning and Rehabilitation, Breaking Barriers to mention only a few. The motivation behind the use of such programs is as varied as the approaches from simply wanting inmates to behave better to wanting to create a meaningful opportunity for offenders to change. Restorative case management establishes these programs as an overall emerging correctional strategy as opposed to just another wave of correctional programs. For correctional professionals from security personnel to wardens, from caseworkers to directors, restorative case management offers both context and content for daily interactions with offenders and peers. The notion that changing the way you spend time in your head can impact the way you experience life then becomes the focus of counseling as well as daily interactions.

Why are you here? (continued) ... George, you're here because you committed a crime. In the commission of that crime, people suffered. It is my job to make sure you understand and appreciate who has suffered as a result of this crime and how you can take responsibility for what you have done. It is also my responsibility to offer you a ***meaningful opportunity to change. This is how we will start ,..***

Summary

Restorative case management is built on a premise that corrections has a purpose and that personal change is possible. Restorative case management recognizes the importance of victims in the criminal justice system and the inherent value of restoration; the responsibility of correctional systems to provide to all offenders an opportunity for personal change through a continuum of correctional services and sanctions; that to effect personal change offenders must recognize the relationship between their thoughts and their criminal behavior; that cognitive restructuring is not forced upon people, it is not using external controls to effect new patterns of thought, it is not brainwashing; that the process of creating personal change includes an opportunity for offenders to learn new prosocial skills; that the need to change must be internalized and valued by the offender; that the parole agent must be a skilled investigator, listener, facilitator, and motivator; the value of alliances as opposed to directives in the process of guiding personal change in others; an emerging correctional philosophy of cost effective correctional interventions that enhance victims' empowerment, offender accountability and community involvement.



References

Alford, Daryl and Katherine Larson. "Cognitive Problem Solving: An Effective Model for Implementing a Comprehensive Training Program in a Correctional Setting." ***Journal of Correctional Education, 38,*** issue 2. (1987): 71-75.

Goldstein, A.P. & H. Keller. ***Aggressive Behavior Assessments and Interventions.*** Pergamor: New York. (1987).

Keilitz, I. & N. Dunivant. "The Relationship Between Disability and Juvenile Delinquency - Current State of Knowl-

edge." ***Remedial& Special Education.*** (1986): 18-26.

Kohlberg, L. "Stage and Sequence: The Cognitive Developmental Approach to Socialiition." In D. Goslin (ed.) ***Handbook of Socialized Theory and Research.*** Chicago; Rand McNally. (1969): 347-480.

Larson, K.A. "Remediating Problem Solving Skills." ***Journal of Correctional Education, 39,*** issue 2. (1987): 70-73.

Maloney, D., D. Romig & T. Armstrong. "Juvenile Probation: The Balanced Approach." ***Juvenile and Family Court Journal: 39 (3).*** (1988).

Ross, R. & E. Fabiano. "Rehabilitation Theory Education: A Cognitive Model for Corrections." ***Journalof Correctional Education, 39,*** issue 2. (1988) 44-47.

Umbreit, M.S. "Restorative Justice: Having Offenders Meet With Their Victims Benefits Both Parties." ***Corrections Today.*** (July 1991).

Van Ness, D.W. "Restorative Justice." In B. Galaway and J. Hudson (eds.) *Criminal* ***Justice, Restitution*** *& Reconciliation.* Monsey: Willow, NJ. (1990)

Wiley, L. "Teaching Critical Thinking in Prison Classroom." ***Journal of Correctional Education, 39,*** issue 2. (1988): 90-96.

Zehr, H. ***Retributive Justice, Restoration Justice.*** Mennonite Central Committee: Akron, PA. (1985).

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Notice

On July 1, 1994, a new telephone system will be installed at the Council of State Governments and telephone numbers for all staff of the American Probation and Parole Association (APPA) will change. Old telephone numbers will be disconnected on July 1. Please revise your records to reflect the following new telephone numbers.

APPA Staff Directory

(effective 7-1-94)

Bancroft, Patricia	**606-244-8205**
Boone, Harry	**606-244-8197**
Crowe, Ann	**606-244-8198**
Fulton, Betsy	**606-244-8196**
Godwin, Tracy	**606-244-8215**
Goodnow, Michael	**606-244-8195**
Haertzen, Margaret	**606-244-8203**
Matthews, Timothy	**606-244-8192**
Morrison, William	**606-244-8212**
Reeves, Rhonda	**606-244-8193**
Stuban, Mistene	**606-244-8211**
Swinford, Yolanda	**606-244-8194**
Wack, Patricia	**606-244-8216**
Wiley, Moria	**606-244-8207**
Wilkerson, Lynda	**606-244-8209**
Switchboard	***606-244-8000***
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The Increased Felonization of Probation and Its Impact on the Function of Probation:

A Descriptive Look at County Level Data from the 1980s and 1990s

by W. Wesley Johnson, Assistant Professor, Juvenile Corrections and Substance Abuse
Sam Houston State University
and Mark Jones, Assistant Professor in Criminal Justice
East Carolina University

During the 1980s there was a dramatic increase in the use of prison alternatives. Between 1980 and 1989 the number of state probationers increased by 126 percent (Bureau of Justice Statistics, 1989). This paper utilizes county level data to examine the demographic changes among probation caseloads during the 1980s and 1990s. Particular attention is given to the impact these changes have had on the role and functioning of probation.

In his historical analysis of the evolution of the prison, Foucault (1977) stated that the nature of punishment is becoming more subtle and "gentle." Foucault suggested that social control has a dual nature and that the real power that punishes is hidden, and that societies may eventually be composed of "punitive cities" in which sanctioning rituals are administered through hundreds of "tiny theaters of punishment." Cohen (1985) and Scull (1977) predicted a move toward more inclusive community control processes and away from more exclusive institutional control structures. Marx (1988) and Gordon (1990) suggested that larger proportions of the citizenry are being placed under government control in more subtle, less visible ways, such as community-based supervision programs.

The conceptual ideas expressed in these classic social control works are being operationalized in courts throughout the United States by the increased reliance on probation as the primary sanction for dealing with convicted felons. As of December 31, 1990, one in every 43 adults and one in every 24 males in the United States was under some form of correctional control (BJS, 1991). Austin and Brown (1989) stated that in past years, researchers and policymakers have placed too much emphasis on imprisonment rates as a measure of governmental control over the populace. They suggested that total control rates, which includes offenders under community-based supervision as well as those incarcerated, provide a clearer picture of what is going on in terms of governmental control of the "criminal" population.

The placement of felons on probation is not new. Gordon (1990) refuted the idea that judges have gotten "soft" in recent years by placing increased numbers of offenders on probation. She stated that probation has been the most common form of official punishment for quite some time, and that it is not a new phenomenon. Gordon stated that the perception of felony probation being a recently instituted form of criminal sanction has come about because of improved data collection methods since the 1970s. Numerous other studies (Morris and Tonry, 1990; Petersilia et al., 1992; Ellsworth, 1992) have brought attention to the fact that crowding in penal facilities and backlogs in court dockets are forcing an increased reliance on community-based sanctions as a sentencing outlet for felony offenders.

The study which received the most attention in the 1980s was RAND's examination of felony sentencing practices in two California counties (Petersilia et al., 1985). The BAND study suggested not only that probation is being used increasingly as a felony sentencing tool, but that this increased reliance on felony probation constitutes a threat to public safety. RAND's conclusions concerning recidivism rates and threats to public safety have been questioned in subsequent studies (McGaha, Fichter and Hirschburg, 1987; Vito, 1992), but the RAND study along with others (BJS, 1991; Champion, 1988) leave little doubt that felons are accounting for a greater percentage of probation caseloads.

Amid all of the research that has been conducted on community-based sanctions in recent years, there are two areas which have not been adequately addressed. First, much attention (Byrne et al., 1992; Fields, 1993; McCarthy, 1987; Morris and Tonry, 1990) has been focused on recently created intermediate sanction programs such as intensive probation, specialized caseloads, boot camps, and electronic monitoring, to the ne-

glect of regular probation supervision. This is the case despite the fact that these intermediate sanction programs service only a small percentage of offenders compared to regular probation. Camp and Camp (1993) report that as of January 1, 1993, there were 1,610,973 probationers under regular supervision in 45 jurisdictions; but only 59,079 were under intensive supervision in 36 jurisdictions; and only 7,678 were subject to electronic monitoring in 21 agencies.

The disproportionate amount of attention focused on these intermediate sanctions is due in part to the fact that these programs are new,' thus giving fresh opportunities for academic research, and a new sense of direction and purpose for probation (see Tonry, 1990). Also, these intermediate sanctions are viewed by some as the answer to prison crowding, though that hope has not been fulfilled.

The second area which has been neglected is research using desegregated data collected at the county level to examine the increased "felonization" of regular probation services. Some researchers have focused on either recidivism or the changing role perceptions of probation officers (Harris et al., 1989; Sluder et al., 1991).

While some probation agencies have become proficient in gathering and recording data, the informal, localized and decentralized nature of probation across the United States has inhibited sophisticated data analysis within some probation agencies. This paper highlights the need for improved data collection at the local level. With so much attention being directed at recently instituted intermediate sanctions and attempts to alleviate prison crowding, "regular" probation service has been forgotten by most researchers. While policy research has focused on crowding in prisons, little attention has been given to crowding at other steps in the justice process, including regular probation supervision. Since the vast majority of sentenced offenders are under regular probation supervision, it behooves researchers and policy makers to redirect some attention toward what is happening in this area. In this paper, county-level data is obtained from local probation agencies in three East Texas counties to determine if there has been significant change in the composition of probation caseloads according to seriousness of offense.

Data and Methods

The data for this paper was obtained from a probation agency which administers services for three East Texas counties with a combined population of approximately 66,000. The data reflect annual averages for 1979-1991.

During this period, there were several factors that had a significant impact on Texas probation services. Between 1983-1991, Texas experienced a 42 percent increase in the number of offenders placed on probation, while there was only a 28 percent increase in the arrest rate for the same time period (Flanagan and Maguire, 1992). Probably most influential, though, has been the use of capacity limits on prison population brought on by inmate lawsuits such as Ruiz v. Estelle.[2] A consent decree resulting from Ruiz v. Estelle limited prison populations to no more than 95 percent capacity.[3]

Between February and September, 1987, the Texas prison system closed its doors to all new admissions 21 times, causing a tremendous backlog in county jails that continues to exist (Cuvelier and Jones, 1992). This backlog has grown to such proportions that Texas has recently begun a state jail system in attempts to relieve some of the pressure on local jails.

Analysis and Results

Table 1 shows the total number of probationers under supervision for the period 1979-1991. Not surprisingly, the raw numbers of supervised probationers increased by 96.4 percent These numbers indicate a much larger increase in the use of probation than for the entire state of Texas (42 percent) and indicates that there is substantial variation in use of probation among Texas counties. These increases are significant considering they far exceed the population growth for Texas (19.4 percent) and the three counties of interest (17.8 percent) for the same time frame. It is also observed that the use of probation has increased more rapidly than the total arrest rate (68 percent) for the state of Texas for the period 1979-1991 .

TABLE 1
TOTAL PROBATION: 1979-l991

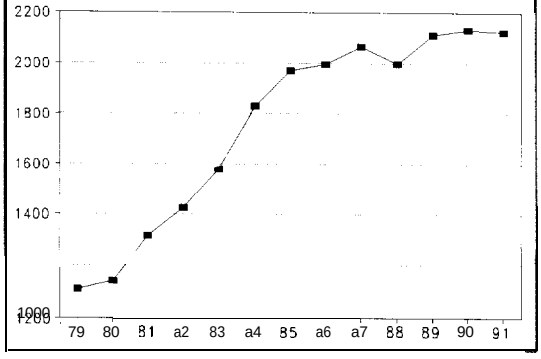
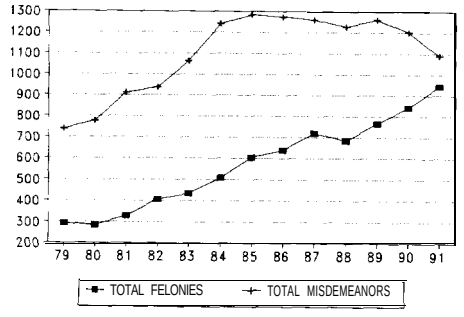


Table 2 shows the number of misdemeanants and felons under supervision for the same time period. Note that the number of misdemeanants under supervision peaked in 1985 and has gradually decreased since then, with a slight increase in 1989 occurring before a sharp decline in the early 1990s. Notwithstanding a number of factors, this current decrease suggests a shift in law enforcement's focus toward felonious offenses and an increase in the use of suspended sentences by the courts.

TABLE 2
FELONIES AN MISDEMEANORS: 1979-I991



Note that the number of misdemeanants accounts for a large proportion of the overall probation population for the time period. Despite that fact, the overall probation population stayed about the same from 1989-1991, even though the number of misdemeanants actually decreased for that time period. These data indicate that the number of felony probationers increased dramatically during this time period, with the exception of slight decreases from 1979 to 1980 and from 1987 to 1988. This increase represents an overall increase for the time period of over 200 percent, compared to a much smaller, relative percentage increase in the number of misdemeanants. This evidence reflects the increasing felonization of probation supervision. Certainly, for these three counties, probation is being utilized more often for felony offenders and less often for misdemeanants.

TABLE 3
CASES PER PROBATION OFFICER: 1979-1991

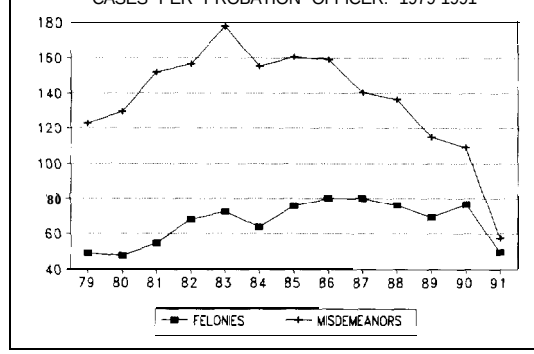
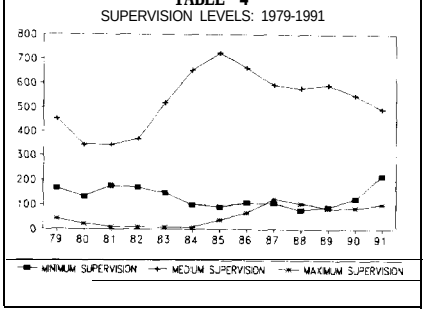


Table 3 provides the ratio of probationers to probation officers for the time period. The sharp decrease from 1990-1991 is not explained by a decrease in the number of probationers but by an increase in the number of probation officers due to a recently instituted funding formula developed by the state of Texas. This funding formula rewards counties that, in accordance with state-created guidelines, successfully divert prison bound offenders into community corrections programs. Again, note the sizable decrease in the ratio of misdemeanants to probation officers while the felon-officer ratio consistently increased or remained the same, except for the period 1990-1991.

Table 4 shows the change in supervision levels for the time period. One might expect that as the percentage

TABLE 4
SUPERVISION LEVELS: 1979-1991



of felons on probation increases, there should be a corresponding increase in the percentage of cases under maximum supervision. While no conclusions regarding the increasing felonization of probation supervision can be made based on the results shown in Table 4 the number of medium supervision cases has gradually declined since 1985, and the number of minimum and maximum level cases has remained fairly constant. There has been a slight increase in the number of minimum level cases occurring in the last three years. These trends may be influenced by actual changes in demographics of probation populations or may be the effect of changes in the substance and operation of classification instruments. A specification of this effect would require a longitudinal assessment of classification instruments, and though intriguing, such an assessment is beyond the purview of this study.

TABLE 5
PROBATION REVOCATIONS 1979-1991

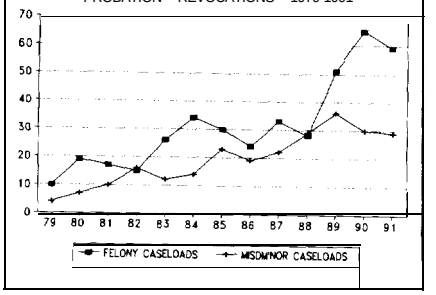


Table 5 shows the changes in revocations from 1979-1991 for felonies and misdemeanors. While the number of revocations, though erratic, has increased dramatically, there has been a leveling off of caseload sizes (see Table 3). This evidence suggests several possibilities. One explanation could be that probation officers are either providing closer or better supervision, or that felony probationers are less motivated to abide by the conditions of probation. Another explanation may be that probation officers are seeking to reduce their personal risk and are responding to more dangerous probationers by initiating revocation procedures.

TABLE 6
REVOCATIONS AND CASELOADS: 1979-1991

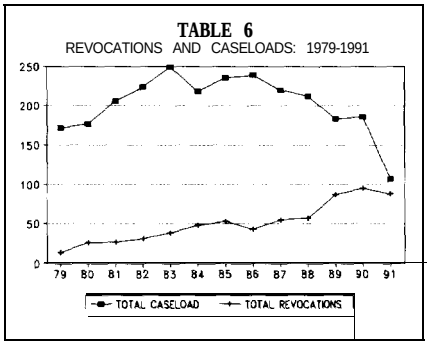


Table 6 demonstrates that there is a negative correlation between caseload size and number of revocations. This demonstrates either that probationers are being more closely scrutinized and watched, indicating a change in the direction of probation's mission during the time period, or it may indicate that more serious offenders, those more likely to fail, are being placed on probation now than in years past.

Policy Implications

The rapid increase in probation populations and the significant rise in the number of felony probationers has created a number of managerial and training issues. One issue that should be addressed by probation administrators is the need to train and equip officers to deal with the increasing numbers of felons. Such training would include the legal and mechanical use of firearms and increased emphasis on self-defense training.

If probation administrators do indeed decide, in attempts to respond to a more dangerous probation population, to place more emphasis on such reactive strategies as firearms training and self-defense, administrators need to be concerned that other proactive forms of intervention such as interpersonal communication or interviewing techniques are not neglected. Considering the current state of fiscal resources available to probation departments, the ability to provide training programs which achieve both proactive and reactive training objectives will certainly be a challenge.

Another problem caused by the rapid growth in probation populations is the increases in the size of probation offices. Recently, Texas has implemented a ratio-funding system that has reduced the size of probation caseloads. While this has had a significant effect on supervision and revocations, it has the potential to expand the scope of supervision demanded of department and unit supervisors. In some instances, department personnel may have doubled in size and responsibility. In order to maximize effectiveness, training programs need to assess the quality and quantity of demands being placed upon managers by recent changes in the nature of probation and develop programs which respond to those demands.

The effectiveness of line officer training varies, and the ability of unit and department managers to respond to line officer needs is critical to the success of managerial units. Considering the changing nature of probation, departments which fail to develop sufficient data bases and analyses to measure changes in the nature of probation caseloads beyond the intuitive, subjective realm will be forced to dedicate resources to reactive, crisis management strategies and will be limited in their ability to provide line officers with meaningful responses to emerging management and service problems.

Endnotes

'Actually, some intermediate sanctions, such as boot camps and ISP have been tried before. Programs resembling boot camps, both on a conceptual and practical level, have been tried and abandoned numerous times throughout American history (see Rothman, 1990). ISP was tried in the 196Os, and several ISP programs were funded by the Law Enforcement Assistance Administration during the 1970s. The intention behind those programs was not to relieve prison and jail crowding. Initial ISP experiments were designed to test the effects of lower caseloads on recidivism rates. The closer supervision afforded by these ISP programs demonstrated no appreciable effect on recidivism. Funding for most of these programs was discontinued.

[2]503 F. Supp. 1265 (S.D. Texas 1980).

[3]The ***Ruiz*** case was recently settled and the population cap has been lifted.

References

Austin, James and Marci Brown. "Ranking the Nation's Most Punitive and Costly States." ***NCCD Focus*** July: l-7 (1989).

Bureau of Justice Statistics. ***Probation and Parole 1990.*** Washington, D.C.: U.S. Department of Justice (1991).

Byrne, James M., Arthur J. Lurigio and Joan Petersilia (eds.). ***Smart Sentencing: The Emergence of Intermediate Sanctions.*** Newbury Park, CA: Sage (1992).

Camp, George M. and Camille Graham Camp. ***The Corrections Yearbook 1993: Probation and Parole.*** South Salem, NY: Criminal Justice Institute (l993).

Champion, Dean J.. ***Felony Probation: Problems and Prospects. New*** York: Praeger (1988).

Cohen, Stanley. ***Visions of Social Control.*** Cambridge: Polity Press (1985).

Cuvelier, Steven J. and Mark Jones. "Local Programs and State Dollars: Performance Reward Funding and Intergovernmental Relations in Texas Criminal Justice." ***Journalof Contemporary Criminal Justice 8(4):*** 299-316 (1992).

Ellsworth, Thomas (ed.). ***Contemporary Community Corrections. Pros***pect Heights, II: Waveland (1992).

Fields, Charles (ed.). ***Community-Based Corrections: Innovative Trends and Specialized Strategies.*** Hamden, CT: Garland (1993).

Flanagan, Timothy J. and Kathleen Maguire. ***Sourcebook of Criminal Justice Statistics-1991.*** Washington, D.C.: U.S. Department of Justice (1992).

Foucault, Michel. *Discipline and Punish: The Birth of the Prison. New* York: Vintage (1977).

Gordon, Diana R. ***The Justice Juggernaut: Fighting Street Crime, Controlling Citizens, New*** Brunswick: Rutgers University (1990).

Harris, Patricia M., Todd R. Clear and S. Christopher Baird. "Have Community Supervision Officers Changed Their Attitudes Toward Their Work?" ***Justice Quarterly 6 (2): 233-246*** (1989).

Marx, Gary T. ***Undercover:*** *Police Surveillance* ***in America.*** London: University of California (1988).

McCarthy, Belinda R. *Intermediate Punishments: Intensive Supervision, Home Confinement and Electronic Surveillance.* Monsey, NY: Criminal Justice (1987).

McGaha, Johnny, Michael Fichter and Peter Hirschburg. "Felony Probation: A Re-Examination of Public Risk." ***American Journal of Criminal Justice*** 11: l-9 (1987).

Morris, Norval and Michael Tonry. ***Between*** *Prison* ***and Probation: Intermediate Punishments in a Rational*** *Sentencing System.* New York: Oxford University (1990).

Petersilia, Joan, Susan Turner, James Kahan and Joyce Peterson. ***Granting Felons Probation: Public Risks*** *and Alternatives.* Santa Monica: RAND (1985).

Petersilia, Joan, Arthur J. Lurigio and James M. Byrne. "Introduction: The Emergence of Intermediate Sanctions." In James M. Byrne, Arthur J. Lurigio and Joan Petersilia (ads.) *Smart Sentencing: The Emergence* ***o f Intermediate Sanctions,*** ix-xv. Newbury Park, CA: Sage (1992).

Rothman, David J. *The Discovery* ***of the Asylum: Social Order and Disorder in the New*** *Republic.* Boston: Little, Brown (1990).

Scull, Andrew. ***Decarceration - Community Treatment and the*** *Deviant:* ***A Radical*** *View,* Second Edition. Englewood Cliffs, N.J.: Prentice Hall (1984).

Sluder, Richard D., Robert A. Shearer and Dennis W. Potts. "Probation Officers' Role Perceptions and Attitudes Toward firearms." *Federal Probation* ***55 (3):*** 3-11 (1991).

Tonry, Michael. "Stated and Latent Functions of ISP." ***Crime and De/nquency36*** (1): 174-191 (1990).

Vito, Genarro F. "Felony Probation and Recidivism: Replication and Response." In Lawrence F. Travis, III, Martin D. Schwartz and Todd R. Clear (eds.) ***Corrections: An*** *Issues Approach,* 193-209. Cincinnati: Anderson (1992).

The Role of Mission Statements in Community Corrections

APPA Issues Committee Report

The APPA Issues Development Committee has submitted this report for your review and comments. The purpose of presenting this issue paper in Perspectives *is to seek comments and feedback from the membership. Please send your comments by August 15, 1994 to:*

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Have you ever had trouble trying to explain the purpose of your job and community supervision to your friends or family? When a building maintenance employee at the Johnson Space Center was asked a similar question, the response was simple: "my job is to help put a man on the moon." That employee had a clear sense of the agency's mission and how the day-to-day work of sweeping floors was *con*nected to the overall mission. This report is designed to provide a brief exploration of the concept of mission and mission statements; show how and why they are useful to organizations; review their history in community corrections; and discuss how an organization would go about developing, and then using a mission statement.

What is a Mission Statement?

Mission can be defined simply as "a broad, general statement which describes the operational philosophy of a correctional organization" (Dupree, n.d.). In other words, mission identifies the basic purpose of the organization - what it exists to do. The key consumers of the mission statement - staff of the organization and the outside world - include constituents both within and outside the justice system. Mission statements should identify the organization's constituencies, its responsibilities to them and theirs to the organization, the role of the organization in the larger justice system and its role in the community (Dupree, n.d.).

To be of value, however, mission statements must inform and relate to actual operations. "At their best, agency mission statements in criminal justice set internal goals and priorities for staff and create a common standard for evaluating individual and agency effectiveness. For the outside world, a good mission statement should leave little doubt about the fundamental purpose of the agency and should clarify in the public mind what tasks and service outcomes the agency is responsible for" (Bazemore, 1992). In many community corrections organizations, however, there is no link between mission and the day-to-day operations of the organization. This increases organizational liability with little possibility of increasing effectiveness.

Mission in Community Corrections

In the aftermath of Proposition 13, the importance of a clearly articulated mission was repeated again and again (Nelson and Harlow, 1980). During the period 1978-84, a number of books, papers and monographs addressed the issue of the mission of probation and its importance to agency effectiveness and survival following the devastation of probation budgets in California. As California's experience became widespread, many organizations - including the National Institute of Corrections and National Institute of Justice - began to study and write about government agencies under fiscal stress. Authors increasingly echoed that resource management under conditions of uncertainty, complexity and conflict requires examination of key factors affecting your organizational capacity, including organizational mission (Miron, 1979).

To be of value, mission statements must inform and relate to actual operations.

More recently, Corbett identified the importance of a clear and compelling mission to the survival of probation agencies. He notes that: 'An agency that cannot offer a clear and convincing statement of its reason for being will not survive the rough and tumble of competition for shrinking tax dollars" (Corbett, 1991).

A key characteristic of "excellent" organizations is that they are value-driven.

Osborne and Gaebler, in *Reinventing Government* (1992), contrast mission-driven government with the traditional bureaucratic model. The former is guided by its fundamental purpose and the need to accomplish it while the latter is driven by rules and budgets. Mission-driven organizations, they contend, are more efficient, more effective at producing results, more innovative, more flexible and have higher morale.

Mission as a Key Organizational Concept

Clarifying an organization's purpose is a prerequisite for proactive planning. According to management theorist Peter Drucker (1973): "Unless basic concepts on which business have been built are visible, clearly understood and explicitly expressed, business enterprise is at the mercy of events." Identifying the essential purpose of the organization lays the foundation on which an organization's structure, strategy and rewards can be built. Said another way: mission defines where an organization intends to go; strategy estimates the best way to get there; structure is how you organize your resources to implement your strategy; and rewards respond to the "what's in it for me" issues. Successful attainment of organizational goals then starts with mission: "knowing what our business is and what it should be" (Drucker, 1973).

Laying the groundwork for success is not the only reason organizations need to develop meaningful missions. Institutional survival is a matter of maintaining values and a distinctive identity just to survive. It is critical that an organization make choices which make clear its core values, the nature of the enterprise, its distinctive aims, methods and roles (Selznick, 1957).

Values and Mission

An organization needs to have a clear definition of its core values and central business purpose if it is to survive and be successful. Values and purpose come together and form the heart of a mission statement, articulating for all to see what we are in the business to accomplish, and how we are going to conduct ourselves in that endeavor. According to one law enforcement official, "The role of the mission statement is to focus on the purpose of the organization, to call attention to what is important, and to set organizational goals to align practices with values." (Selznick, 1957) Without a clear understanding of the core purpose of the organization, aligning practices with values is next to impossible.

A key characteristic of "excellent" organizations is that they are value-driven. Just as Osborne and Gaebler called for mission-driven organizations, Peters and Waterman (1982) found that those whose values were clear and integrated into the organization's culture, structure and strategy were more likely to be seen as "excellent." In much the same way that mission is the foundation of strategy and operations, values form the foundation for mission.

In Search of Mission

It would appear that we should understand the importance of mission from all that has gone before in the way of study, writing and exhortation. Why are we still talking about mission and getting quizzical looks from so many people? If all the experts agree that a clear mission statement is crucial to organizational survival, why do so few organizations have one? And for many that have a mission statement, why is it so irrelevant to so many in the organization? Part of the problem is no doubt what Covey (1989) points out: that creating an organizational mission statement takes time, patience, involvement, courage, integrity and skill. It is not a quick fix, and will take time to show results. All evidence points to the value of both the development process and the end result. Many organizations complacently point with pride to their mission statement as an end result, but can't tell you who wrote it, when it was developed or what it really means.

Critical Elements

In order for a mission statement to be meaningful and serve a useful purpose, it has to meet several crucial tests. Those considering developing a mission statement, or revitalizing a moribund one, should consider the following points:

. **Mission statements are organization specific.** One size does not fit all. One reason is that the importance of defining a mission is about the process as well as the product. Copying most or all of the words used by another organization ignores the value of the process.

The mission statement must come from the organization. It should state, in clear and unambiguous language,

the reasons why that organization exists, which is its central purpose. It should show why the organization is unique and why no one else can do what it does. It should also be clear about why the organization is essential to the justice system and to the community.

• **The development of the mission statement should be a broadly and deeply inclusive and participative process.** Staff at all levels should be involved, as should key constituents and stakeholders outside the organization. The process will be long and challenging, but it is crucial to bring the issues, perspectives and concerns of all these people to the table. Only when consensus is reached will a mission statement emerge that will have the support of all key stakeholders.

• **The mission statement should be the centerpiece of the organization.** It should be the foundation for the structure and strategy, for policies and programs, for rewards and compensation. It should be the polestar which guides the organization. The mission statement should not be something which is dusted off once a year for inclusion in the annual report.

• **The mission statement should be a dynamic document.** Things change, mandates are added, priorities shift, resources are cut. The community corrections organization does not exist in a static environment. The mission statement should be reviewed periodically, and when it seems to have lost some of its usefulness or appears to be slightly out of synch with values and events, it should be revised.

• **The mission statement should inspire staff.** Steven Covey (1989) has succinctly and powerfully summarized their value for organizations. 'An organizational mission statement - one that truly reflects the deep shared vision and values of everyone in that organization - creates great unity and tremendous commitment. It creates in people's hearts and minds a frame of reference, a set of criteria or guidelines by which they will govern themselves. . ..They have bought into the changeless core of what the organization is about." A good mission statement reflects the values and beliefs of the organization and its people, and it should be capable of moving people to action.

• **The mission statement should form the basis of organizational accountability, internally and externally.** By clearly stating your intended destination, "we intend to put a man on the moon," it becomes easier to develop evaluation criteria, e.g., "we are adrift in space." In a recent monograph, Petersilia (1993) presents a new approach for assessing the performance of community corrections. The model she proposes starts with a mission statement and then adds goals, methods and performance indicators.

The other side of this is to not promise that which is not achievable or that for which you don't intend to be held accountable. One of the first things attorneys suing community corrections staff latch on to are poorly conceived mission statements which appear to "prove" the organization neglected its duties; e.g., to protect everyone from everyone.

How to Get Started

The process of developing a viable mission statement is challenging. To begin, the discussions should be wide-ranging and inclusive. Generally the process should begin with some clarification of the vision and values of your organization. The non-negotiables of your organization, such as statutory mandates, must be included.

It is important not to rush the process. Those who participate must feel that their involvement is meaningful. Stephen Covey suggests that the process can and even should take up to six months in an organizational context. Time is important to building consensus and commitment; so is involvement. People who are involved in the process of developing the mission statement will be committed to the process and to the product.

The mission statement should not be something which is dusted off once a year for inclusion in the annual report.

Conclusion

"Like all correctional services..., community corrections (sic) are in trouble. Goals are confused, philosophy is in doubt, financial support has been sharply curtailed, and related resources are shrinking. The search for solutions must begin with a redefinition and clearer understanding of the purposes. We must start with an exploration of very fundamental questions. What kind of business should we be in? What should we do and why? This policy development must precede the identification of strategies, programs and activities for achieving our purposes... Until this is done, probation will meander" (Cushman, n.d.). In today's rapidly changing and highly competitive world, organizations that choose to "meander" face extinction. Living, viable mission statements provide a way to steer rather than simply meander.

For examples of mission statements, please see p. 51.

References

Bazemore, Gordon. "On Mission Statements and Reform in Juvenile Justice: The Case of the Balanced Approach." *Federal Probation Quarter&,* vol. 56, no. 3. (September 1992).

Corbett, Ronald I?, Jr. "How Did We Get In This Mess" in Cochran, Donald, et al. Managing *Probation With Scarce Resources: Obstacles and Opportunities*. Washington, D.C.: National Institute of Corrections. (1991).

Covey, The Seven Habits of Highly Effective People. New York: Simon & Schuster. (1989).

Cushman, Robert C. "Probation in the 1980s - A Public Administration Viewpoint" in McAnany, Thomson and Fogel. (n.d.).

Drucker, Peter. *Management: Tasks, Responsibilities, Practices. New* York: Harper and Row. (1973).

Dupree, David. "Defining Correctional Purpose - A Guide to Mission Statement Development." Boulder, CO: National Academy of Corrections. (n.d.) (mimeo).

Miron, H.. Jerome, et al. Managing *the* **Pressures** *of inflation in Criminal Justice: Participant's Handbook.* Washington, D.C.: University Research Corporation, (1979).

Nelson, E. Kim and Nora Harlow, "Responses to Diminishing Resources in Probation: The California Experience." University of Southern California, School of Public Affairs. (1980). (mimeo).

Osborne, David and Ted Gaebler. *Reinventing Government.* Reading, MA: Addison Wesley. (1992).

Peters, Thomas J. and Robert H. Waterman, Jr. *In Search of Excellence: Lessons from America 's Best-Run Companies.* New York. Harper and Row. (1982).

Petersilia, Joan. *Measuring the Performance of Community Corrections*. Washington, D.C.: Bureau of Justice Statistics. (1993).

Selznick, Philip. *Leadership in Administration: A Sociological Interpretation. New* York: Harper and Row. (1957).

The APPA Issues Development Committee consists of the following individual: Greg Markley, Chair (TX), Bob Bosco (CT), Bill Burrell (NJ), Susie Cohen (CA), Barbara Gunter (OK), Paul Herman (MO), Anne Hyde (SC), Jim Mills [TX), Carol Stewart (KY), Don Stiles (AZ,), and John Zoller (GA).

Request for Site Proposals

Bids are open for the *following* APPA Training Institutes:

APPA 23rd Annual Training Institute 1998

Completed applications to host this Institute must be received by **July** 22, **1994,** in order to be considered. The Board of Directors will select this site at their meeting in Phoenix, Arizona, September 11, 1994.

APPA Winter Training Institute 1998

Completed applications to host this Institute must be received by **December** 9, **1994,** in order to be considered. The Board of Directors will select this site at their meeting in Charleston. South Carolina, January 8, 1995.

Any board member, affiliate group or state agency wishing to request consideration of a particular city for either of the above Institutes must complete an application to host that Institute. In order to be considered by the Board of Directors, completed applications must be received by the deadline specified above for each of these Institutes.

Further information and *applications* may *be* obtained from:

Yolanda Swinford
American Probation and Parole Association
c/o The Council of State Governments
3560 Iron Works Pike, P.O. Box 11910
Lexington, KY 40578-1910
(606) 244-8194

Examples of Mission Statements

As the committee prepared this report, we requested and received several examples of mission statements used in a variety of community agencies. Please be aware that these are examples of current practice, and may or may not reflect the committee's recommendations.

Sacramento County Probation Department, California

The mission of the Sacramento County Probation Department is to promote safety by serving the courts and the public interest to the full extent of our resources and statutory authority. The department mission is achieved by:

- ***Administrative*** Services: Providing policy direction, program coordination, community liaison and communication facilitation within the department; planning for resource acquisition and allocation; and developing initial and ongoing training programs for all personnel.
- ***Prevention/Early Intervention Services:*** Developing programs and policies to provide delinquency prevention and early intervention services to at-risk juveniles and crime prevention services to adult offenders; providing assistance to other agencies and community-based organizations involved in delinquency **and** crime prevention/intervention projects, and supporting a status offender program which emphasizes counseling and family reunification.
- ***Court Services:*** Providing the courts of Sacramento County with timely reports and recommendations that are clear, factual, concise, well-reasoned and in full accord with statutory and case law and Judicial Council rules.
- Field Services: Enforcing court orders through monitoring offenders to hold them accountable to the sanctions and conditions imposed by the courts; acting as a broker of community services; providing information and rehabilitative support to probationers and to their families; and providing foster placement services for juveniles.
- ***Institutional*** Services: Delivering quality programming and services to youth in custody and to their families; and providing foster placement services for juveniles; providing an opportunity for personal growth, social development, accountability, responsibility and a commitment to good citizenship.

Family ReEntry, Inc., Norwalk, Connecticut

The mission of Family ReEntry, Inc. is to promote and develop innovative and cost-effective programming to empower offenders and their families to build the positive family relationships that reduce community dependency and further crime.

Onondaga County Probation Department, New York

The Onondaga County Probation Department will:

* Provide presentence and predispositional investigations and reports to the various courts to aid in sentencing.
- Supervise persons sentenced to or placed on probation while attempting to protect the public and rehabilitate the offender.
- Provide Intake services for Family Court.
- Provide Pm-Trial Release services and other Alternatives to Incarceration Programs.

* Accomplish the above in an efficient, cost-effective and quality manner within all legal and constitutional requirements and consistent with the Rules and Regulations of the New York State Division of Probation and Correctional Alternatives.

Bucks County Adult Probation and Parole Department, Pennsylvania

The Bucks County Adult Probation and Parole Department provides supervision services for all people placed on probation or parole. It is hoped that through the supervision services, our clients will be able to lead a law-abiding life in the future. We recognize that not all of our clients will respond to probation and parole supervision and we are, therefore, prepared to bring back before the court, all of our clients who are thought to be in violation of their probation/parole sentence. We also complete pre-sentence and pre-parole reports that are provided to the court as an aid in the disposition of cases. It is our hope that through the provision of our services, the community will be a safer place to live as we help probationers and parolees find a law-abiding way of life.

Oregon Department of Corrections, Salem Community Corrections Branch

The Oregon Department of Corrections' mission is to reduce the risk of criminal conduct through a partnership with communities, with a continuum of community supervision, incarceration, sanctions and services to manage offender behavior.

The fundamental value in the continuum of probation, prison and parole is the principle that the least restrictive method be used to manage offender behavior, consistent with public safety.

IARCA Calls for a Comprehensive National Policy on Crime in America

As we go to press, the Omnibus Crime Bill (HR 3355) is still a waiting final action by Congress. Although the bill will likely be a part of legislative history by the time this issue reaches our constituency, APPA feels that IARCA's position statement raises many salient issues which will be timely for years ***and administrations to come.***

IARCA Positions: The International Association of Residential and Community Alternatives (IARCA) urges Congress and President Clinton to amend the proposed Crime Control and Law Enforcement Act (H.R. 3355) to set forth a comprehensive national policy on crime in America which includes articulated principles and policy statements based on sound data and research.

IARCA urges Congress and President Clinton to re-examine the current prison construction program and to redirect a larger portion of federal funds into Section 2101, "Alternative Punishments for Young Nonviolent Offenders" at the federal, state and local levels, thereby reserving finite prison cells for violent, predatory offenders.

IARCA urges Congress and President Clinton to place a high priority on eliminating the factors that contribute to crime and to expand approaches that reduce recidivism of criminal offenders, especially nonviolent offenders.

Supporting Arguments: IARCA believes that a comprehensive approach to crime should address the root causes of crime and utilize community-based solutions to nonviolent crime, as well as provide traditional responses for violent crime. Simply adding more police officers and prison space is not the most effective solution to crime. Crime is a complex problem and will require a complex multi-faceted approach to prevent and reduce crime in America.

IARCA believes that a comprehensive approach to crime should encourage the formation of public private partnerships. Community-based public private partnerships are a cost-effective means of preventing crime and providing a wide range of correctional supervision options. Comprehensive crime legislation should include incentives for localities to build public private partnerships for crime prevention, youth services, substance abuse treatment and development of intermediate punishment options for nonviolent offenders. Such partnerships mobilize community resources, increase offender accountability and restore public confidence in our criminal justice system.

IARCA does not believe that the proposed "crime bill" sets forth a comprehensive national crime policy for the United States. It lacks a statement of principles, a thorough presentation of the statistics on crime in the last decade and comprehensive policy statements pertaining to both violent and nonviolent crime.

IARCA believes that the crime bill should be based on a foundation of principles and policies in order to prevent criminal justice decisions from being driven by assumed public perception and media images. An examination of current crime statistics indicates that policymakers seem to be reacting more to the media's portrayal of crime and the public's perception of rising crime than to actual incidents of crime. The majority of all crime is nonviolent, and the incidence of violent crime during the first six months of 1993 declined 3 percent compared to the same time period in 1992.

IARCA believes that a crime bill should incorporate the following principles:

- Community-based punishment, not prison, should be the ***presumptive choice*** for nonviolent offenders.
- America's criminal justice system should do ***more*** than punish the offender - it should also rebuild lives, restore victims and communities and prevent future crime.
- There should be a graduated system of ***intermediate*** punishments to deal with offenders along with a continuum of services and treatment.
- Prison should be reserved for ***violent, predatory offend***ers who pose a safety risk to the public.
- Offenders should be held ***accountableand*** punished for the crimes they commit, but there should be a limit to revenge.
- The ***least restrictive*** and least costly means of sanctioning offenders should be implemented consistent with ***public safety*** needs.
- Law enforcement and the criminal justice system cannot reduce crime alone but must ***collaborate*** with social services, mental health, health, educational, employment and other human service agencies.
- Inmates should be ***gradually transitioned to*** society upon release from prison to reduce their likelihood of returning to a life of crime.

• Private agencies provide needed services to offenders ***in the community*** and thus play an integral part in crime control and crime prevention.

IARCA believes these basic tenets should serve as the framework for a national crime policy because (1) crime is a multi-faceted problem and it must be dealt with through a variety of crime control and crime prevention strategies; and (2) these principles can guide policymakers in determining which approaches are effective in punishing offenders and in reducing and preventing crime. Once these principles are adopted, they should set the stage for the development of a series of comprehensive policy statements at the federal, state and local levels.

IARCA believes that U.S. prisons could be used more effectively. Many prisons are crowded with nonviolent offenders and are forced to release violent offenders. In state prisons, almost one-half (45.4 percent) are incarcerated for other than violent crimes. Correctional practitioners indicate that anywhere from 20 percent to 30 percent of inmates could be safely placed in intermediate punishment programs. While IARCA supports the incarceration of violent, serious offenders, it believes there should be a greater use of intermediate punishment options for appropriate nonviolent offenders. This will enable scarce, valuable prison space to be used to lock up violent offenders for even longer periods of time.

Because the vast majority of crime is nonviolent, taxpayers should not have to pay for the construction of 10 new regional prisons as outlined in the Senate version of the crime bill. This version of the crime bill authorizes three times the funding for the construction of 10 new regional prisons than for the expansion of intermediate punishment programs for young nonviolent offenders. IARCA believes that building prisons should not be the primary way the federal government deals with its crime problem. These regional prisons should not be built until intermediate punishment programs are fully funded and implemented. The crime bill should include incentives for states to adopt policies that promote the expansion and utilization of intermediate punishment options for nonviolent offenders. Then if there is a need for additional prison space for violent offenders, a prison construction program should be initiated.

IARCA believes that the crime bill should promote the expansion of successful approaches in reducing crime. Research indicates that some of these successful approaches are community-based facilities, cognitive restructuring, relapse prevention, structured family intervention, social relearning, intensive supervision accompanied with education and treatment, risk and need assessments, life skills development and careful matching of the offender with treatment services. In 1990, only 2.4 percent of all prisoners were in community facilities compared to 97.6 percent in prisons,

In November 1993, IARCA released the findings of national research which showed that community-based treatment is effective in reducing crime in America and is far more cost-effective. Nearly two-thirds of the research studies (64 percent) report reductions in recidivism (re-arrests) of 10 percent to 50 percent when offenders participate in certain types of intensive treatment and supervision in community-based settings. After one to two years following treatment, 25 percent recidivated compared to 62 percent released from prison.

IARCA believes that the crime bill should emphasize the need for transition services and aftercare for youthful offenders and that boot camps must have these transition services and mandatory aftercare programming to effectively reduce recidivism of boot camp graduates. Additional research should be conducted on current boot camps to determine their effectiveness and that demonstration projects should be set up before broad-based expansion is undertaken.

IARCA supports President Clinton's emphasis on family and community reunification and prevention strategies and agrees that the proposed crime bill should promote these strategies as a way of reducing crime in America.

IARCA believes that the mandate to adopt pre-detention laws will increase jail crowding and reduce the use of successful community-based programs. Nationally, over one-half (51 percent) of the inmates held in local jails are pre-trial detainees. By requiring additional pre-detention laws, there will be more defendants jailed and fewer will be eligible for pretrial services supervision. National research indicates that the majority of defendants supervised in the community show up in court and remain arrest-free.

IARCA does not support requiring states to adopt federal-style sentencing guidelines. Most are now aware that these guidelines have resulted in a substantial increase in nonviolent and low-level drug offenders to be housed in federal prisons. In federal prisons, one-third (34.3 percent) are categorized as low to minimum security risks. Since the adoption of federal sentencing guidelines, more low-level drug offenders have been incarcerated while probation sentences have been reduced. In addition, research has shown that more African-Americans have been incarcerated and for longer sentences as a result of these guidelines.

IARCA, founded in 1964, represents more than 250 private agencies ***operating over 1,500 residential and other intermediate sanctions throughout the United States and an additional 600 individual members.***