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Introduction to Federal Probation's Special Focus on the 30th Anniversary of the Passage of the Pretrial Services Act of 1982

*Timothy P. Cadigan, Executive Editor
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This September's issue of Federal Probation introduces **Special Focus**, which opens with a celebration of the 30th Anniversary of the passage of the Pretrial Services Act of 1982. The Special Focus option for Federal Probation will allow us on occasion to devote less than a full issue to the topic chosen for that issue. We believe that this will provide flexibility to take on some topics that we have traditionally shied away from, for fear that they cannot carry an entire issue.

The highlights of this issue's Special Focus are: the re-validation of the pretrial services risk assessment used in the federal system, using prospective data rather than archival data; an excellent description of the genesis and early years of federal pretrial services by Retired Chief Pretrial Services Officer Donna Makowiecki; a look at an innovative Alternatives to Prison program in the Southern District of California; an examination of what we as a system can learn from nearly 30 years of effective pretrial services implemented in the Eastern District of Michigan; and an article that I'm sure you'll agree is the apex of this collection. We anticipated that the masterful explanation of real life in a border district that we solicited from Chief Pretrial Services Officer David Martin and Magistrate Judge James F. Metcalf would be enlightening, but the authors have exceeded our expectations and produced a major contribution to this journal.

Congress had intended many things when it enacted the Pretrial Services Act of 1982. Most of them have come to pass: nationwide pretrial services, pretrial services reports completed for 95 percent of all cases, failure to appear and rearrest rates that are among the lowest in the nation. In the last few years the federal pretrial services system has made significant progress in implementing evidence-based practices. Most important has been nationwide implementation of pretrial services risk assessment in the federal pretrial services system. However, as I noted five years ago in the special issue devoted to the 25th anniversary of federal pretrial services, the Pretrial Services Act's intent to reduce unnecessary pretrial detention has yet to be fulfilled.

On June 30, 2012, the federal probation and pretrial services system lost an irreplaceable colleague when Christopher T. Lowenkamp left to pursue other opportunities. No one did more during the past decade to bring us, sometimes kicking and screaming, into a truly research- and literature-based approach to community corrections, and we are deeply grateful for his expertise, rigor, and passion for evidence-based research. Pretrial services also lost a giant with the passing

of Dr. John Goldkamp, whose work in pretrial services constitutes the majority of the pretrial services literature. Therefore, we dedicate this issue to the extensive contributions Dr. Goldkamp made to pretrial services research.

After you have read this Special Focus on Pretrial Services, I hope you will agree that we have assembled a valuable collection of articles that enables readers to better understand the federal pretrial services system that Congress created 30 years ago. As a final note, as Executive Editor of *Federal Probation*, I do not take enough opportunities to thank our Editor, Ellen Fielding, for her editing skills, for the work she puts into assembling each issue, and for her developing understanding of criminal justice.

Thanks, Ellen.

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The Re-validation of the Federal Pretrial Services Risk Assessment (PTRA)

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THE UNITED STATES Pretrial Services system was created in 10 demonstration districts by Title II of the Speedy Trial Act of 1974. The Act authorized the Director of the Administrative Office of the U.S. Courts (AO) to establish in 10 judicial districts demonstration pretrial services agencies to help reduce crime by defendants released to the community pending trial and to reduce unnecessary pretrial detention. Five of the pretrial services agencies were to be administered by the Probation Division (now the Office of Probation and Pretrial Services) and five by boards of trustees appointed by the chief judges of the district courts. Title II also instructed the Director to compile a report on the effectiveness of pretrial services in these demonstration districts.

The fourth and final report on the *Implementation of Title II of the Speedy Trial Act of 1974* was published on June 29, 1979. That report concluded that pretrial services should be expanded in the federal system. The report effectively made pretrial services the first implemented evidence-based practice in the federal probation and pretrial services system. The passage of the Pretrial Services Act of 1982 began a process of establishing pretrial services in the remaining 83 federal districts. Pretrial services cases in the District of Columbia are not classified as federal pretrial services cases by the Pretrial Services Act of 1982; thus there are only 93 pretrial services offices.

The federal pretrial services system, like all judiciary units, is highly decentralized. Each district has a great deal of autonomy, with the Administrative Office of the U.S. Courts working through a system of Judicial Conference committees to develop national policies and implement new processes and procedures like a risk assessment tool. This article explains the process used to develop the Pretrial Services Risk Assessment tool (PTRA), beginning with an overview of the literature for pretrial services risk assessments, moving to an explanation of the choice to create a federal risk assessment instrument rather than use an existing one, and concluding with the methodology and results produced in the re-validation of the PTRA.

Literature Review

One area in which pretrial services originally led criminal justice research was actuarial risk assessment, with devices utilized in several of the larger cities, including Washington, D.C. and

New York, long before post-conviction assessment devices were utilized in those cities. Unfortunately, use of such tools, while continuing in those cities, did not spread to other agencies as rapidly as they did in post-conviction assessment. Risk assessment is an area with enough significant differences between post-conviction and pretrial services to prevent much sharing between them. For example, pretrial services focuses significantly on failure to appear, which is not a focus of post-conviction; in contrast, post-conviction focuses on long-term recidivism, something which historically does not concern pretrial services. Therefore, at least theoretically, there is little crossover between the two disciplines in the area of risk assessment.

While not a lot of work is being done in the literature on risk assessment in pretrial services when compared to post-conviction risk assessment literature, it is clearly the pretrial services area that has received the greatest research attention, and there are some studies of excellent quality (e.g., Toborg, Yezer, Tseng & Carpenter, 1984; Goldkamp & Gottfredson, 1988; Levin, 2006; VanNostrand, 2007; Goldkamp & Vilcica, 2009; Lowenkamp & Whetzel, 2009).

Toborg, Yezer, Tseng, and Carpenter provide an excellent place to begin the discussion to clearly identify the two types of selectivity bias inherent in the process. First, there is a group of arrested defendants who are detained; because of this detention, their propensity for pretrial arrest and failure-to-appear cannot be observed. This first form of bias is fairly common and is discussed in most research on pretrial services risk assessment initiatives. However, rarely seen is a discussion of the second form of selectivity bias, which involves defendants who are released under different scenarios: some are released without any restriction; others are released on various bond types or with various conditions that are based on individual characteristics (Toborg, Yezer, Tseng, & Carpenter, 1984:102). It is important to recognize possible errors so they can be reduced.

When a risk assessment tool was used, more defendants were released, on less restrictive conditions, and with no increase in failure-to-appear or rearrest rates, compared to similar defendants released without use of a risk assessment tool (Toborg, Yezer, Tseng, & Carpenter, 1984:105). The risk prediction tool Toborg, Yezer, Tseng, and Carpenter developed increased release rates by 12 percent, again with no appreciable increase in failure-to-appear or rearrest rates (Toborg, Yezer, Tseng, & Carpenter, 1984:58). Finally, their research concludes that the tool was more accurate for appearance than for safety (Toborg, Yezer, Tseng, & Carpenter, 1984:73). Risk tools, while tremendously useful in improving agency decision-making and ultimately release recommendations, have limitations. For instance, they are good at identifying groups of defendants who present various risks, but they cannot be totally accurate at the individual level (Toborg, Yezer, Tseng, & Carpenter, 1984:111). Low risk is not no risk, and that can be a difficult concept for decision-makers to support, so pretrial tools must do everything possible to limit errors. For example, when implementing a risk assessment tool, agencies need to convey to line staff the important limitation that the tool should not be followed blindly; therefore, permitting an officer to override the tool after staffing with the supervisor or some similar override methodology should be the standard.

Goldkamp and Gottfredson studied three urban jurisdictions and concluded that successful implementation of a risk assessment device requires strong judicial leadership (Goldkamp & Gottfredson, 1988:129). Goldkamp and Gottfredson identified some ways to maximize success when strong judicial leadership was absent, through ongoing training, assessment of the officer's use of the tool, and annual or bi-annual certification of the officer's skills in using the tool. As the experience of the federal system, which lacks judicial involvement in the implementation of the risk assessment, will ultimately demonstrate, failure to involve judges makes acceptance more difficult. In addition, the Goldkamp and Gottfredson study confirmed the major findings of Toborg, Yezer, Tseng, and Carpenter's earlier research.

One of the great strengths of the Goldkamp and Vilcica research is that it squarely takes on some of the most enduring "urban legends" of pretrial services risk assessment research. Most pretrial services agencies, including the federal system, continue to capture data on and analyze the variable of community ties. While some of the fascination with community ties stems from its identification as an important variable in the granddaddy of all pretrial services research, the

original Vera project, this variable likely endures because of its tremendous “face validity.” Its inclusion in the small number of long-standing important pretrial services variables is certainly not warranted by the research results of the last 20 years. However, most researchers merely ignore the variable of community ties, since the analysis does not bear out its value (e.g., Administrative Office of the United States Courts, 1979; VanNostrand, 2003; VanNostrand & Keebler, 2009; Winterfield, Coggeshall, & Harrell, 2003). Goldkamp and Vilcica take on the lack of value of community ties for pretrial risk assessment in an effort to remove this variable from its lofty perch.

Goldkamp’s analysis of factors influencing judicial decisions at the pretrial release decision, however, found that contrary to the intended effect of Vera-type information-based reform procedures community ties items did not play a significant role in shaping judges’ actual pretrial custody decisions—and were not helpful predictors of defendant risk (Goldkamp & Vilcica, 2009: p. 124).

The seemingly “obvious” importance of including judicial officers in the development, implementation, and ongoing use of a risk assessment device is not found in virtually any other research on the topic of pretrial risk assessment. Only Goldkamp and Vilcica’s findings discuss the issue of judicial involvement, not to mention endorsing the strong role it played in the Philadelphia research: “As a judicially developed and adopted policy, it stands alone in the nation in the first years of the 21st century—one might argue, in isolation—as an empirically informed approach to the problem of judicial discretion at the bail stage” (Goldkamp & Vilcica, 2009:129-30). This is an important finding for the federal system, as PTRAs were implemented without judicial involvement, which has clearly impacted the acceptance and use of the tool in the federal system.

Given Goldkamp and Vilcica’s vision of pretrial justice and their desire to improve the pretrial release process and reduce judicial discretion, it is almost shocking that they missed the importance of pretrial detention and made the tool detention neutral (Goldkamp & Vilcica, 2009:134). This is especially true since Philadelphia has operated pretrial services under federal court supervision due to jail overcrowding at various times during the 20-plus years of the guideline project in Philadelphia. Reducing unnecessary pretrial detention needs to be a core principle for pretrial services and judicial officers, given the negative consequences of pretrial detention at subsequent phases of the criminal justice system. The negative impacts on defendants have previously been documented in state, county, and local systems and will be established for the federal system in upcoming research by Oleson, Lowenkamp, and Cadigan.

Given that risk of failure to appear is only relevant in pretrial, we can’t rely on post-conviction risk assessment research to establish it. Levin merged data from the Bureau of Justice Statistics State Court Processing Statistics (SCPS) program, which compiles criminal justice data (including pretrial) from the 75 largest counties in the nation, with Bureau of Justice Assistance survey data from 200 of the nation’s pretrial programs. The merged datasets enabled him to study over 1,500 defendants on conditional release in 28 counties during 2000 and 2002. That research revealed that a defendant’s odds of failing to appear in a county that uses a quantitative risk assessment are .40 times lower than the odds faced by a defendant appearing in a county that uses qualitative risk assessment (Levin, 2006:10). In addition, if the county uses some mix of quantitative and qualitative measures, defendants are still less likely to fail to appear (Levin, 2006:10). This result is particularly relevant to the federal system, because it is the approach now employed. Finally, if the county uses some mix of quantitative and qualitative measures, defendants are also less likely to be rearrested (Levin, 2006:11).

The literature on pretrial services risk assessment clearly establishes several important premises: “objective risk assessment produces more non-cash release recommendations” (Coopridge, 2009:15); “Notwithstanding a broader definition of ‘pretrial failure’ and cutting field contacts in half, violation rates declined or remained stable since the implementation of objective risk assessment” (Coopridge, 2009:15); and predictive items identified in pretrial services risk assessment research change over time and therefore must be re-validated on an ongoing basis to ensure their integrity and effectiveness (e.g., VanNostrand, 2003; VanNostrand & Keebler, 2009;

Siddiqi, 2002).

One example of an established risk assessment finding likely to change is a relatively consistent finding in risk prediction research in the city of New York for the past 20 years: the predictive value of having a telephone in the residence of the defendant. Given the changes in telecommunications in the past decade, from the dominance of landline technology to increasing reliance on cell phone technology, it seems unlikely that future research will continue to find great predictive value for a landline phone in the defendant's residence (Siddiqi, 2002:2). Fortunately for citizens in New York City, the agency providing pretrial services has an excellent research operation that re-validates their risk prediction tool every three to five years as warranted. Ongoing re-validation is an essential step for all pretrial risk assessments and is the motivation for this research.

Pretrial Services Risk Assessment Tool

Actuarial risk assessments are new to the federal pretrial services system; in fact, this is the first tool developed and implemented in the federal pretrial services system since its inception in the early 1980s. One tool was previously developed for use in the federal pretrial services system by Dr. John Goldkamp and Dr. Barbara Meierhoefer. The tool was effective at identifying cases appropriate for release, tested effectively in 12 districts, and was submitted to the Judicial Conference Committee on Criminal Law for national implementation (Meierhoefer, 1994). Unfortunately, because it was named "Recommendation Guidelines" and was presented to the judges within two years of the implementation of Sentencing Guidelines, the tool was rebuked as too limiting to judicial discretion in the pretrial release decision. It took almost 18 years to overcome issues generated by the name of this tool.

The Administrative Office of the U.S. Courts works closely with the Office of Federal Detention Trustee, a Justice Department agency charged with administering and controlling the costs of pretrial detention in the federal system. That relationship led to a significant piece of research funded by the Office of Federal Detention Trustee using United States Court data and expertise to assist the researcher. The report on that research is titled *Pretrial Risk Assessment in the Federal Court* and has already led to the most significant improvement in the federal pretrial services system since its inception: the development and implementation of an actuarial risk assessment tool.

In addition to recommending a risk assessment tool, the Office of Federal Detention Trustee Report contains a number of interesting findings relevant to the operation of the federal pretrial services system. One of the primary goals of the system, reduction of unnecessary detention, is not being promoted by the staff, as they recommend detention more often than judicial officers actually detain defendants. Similarly, recommendations of detention by pretrial services officers rose each year, from 56 percent in 2001 to 64 percent in 2007. The report also observes that the risk posed by the defendants released increased slightly, from 2.85 in 2001 to 3.1 in 2007, as measured by the Risk Prediction Index (RPI). The Risk Prediction Index is a post-conviction measure of risk that was developed by the Federal Judicial Center and was implemented in federal pretrial services in 2004. However, it was only applied to or required to be completed on defendants who were released and subject to a condition of pretrial services supervision. For cases prior to 2004, the researcher abstracted the Risk Prediction Index score from the post-conviction record.

The study commissioned by the Office of Federal Detention Trustee tested for effectiveness the conditions of release known as alternatives to detention (substance abuse testing and treatment, third-party custody, halfway house placement, location (electronic) monitoring, and mental health treatment); the report contains a number of findings based on that analysis. First, low-risk defendants placed on location monitoring had an increased risk of failure compared to similar defendants who were not placed on location monitoring (VanNostrand & Keebler, 2009:32). In addition, location monitoring was greatly overused on low-risk defendants. The only alternative to detention to positively impact defendants at all levels of risk, provided there was a demonstrated need, was mental health treatment (VanNostrand & Keebler, 2009:32). All four other alternatives to detention negatively impacted low-risk defendants (VanNostrand & Keebler,

What impact does over-supervising or over-treating low-risk federal defendants have on their outcomes? For the most part we have operated under the assumption that “it can’t hurt” to have conditions in place. Unfortunately the research demonstrates that unnecessary alternatives to detention placed on low-risk federal defendants can and do hurt defendant outcomes by increasing their failure rates.

First, the lower risk defendants, risk levels 1 and 2, are the most likely to succeed if released pending trial and in most cases release should be recommended. An alternative to detention, with the exception of mental health treatment when appropriate, generally decreases the likelihood of success for this population and should be recommended sparingly (VanNostrand & Keebler, 2009:10).

In some areas, for example location monitoring, level one defendants (the best risks) on location monitoring were 112 percent more likely to fail than if they were not on this type of monitoring (VanNostrand & Keebler, 2009:32). The quick refrain from most pretrial services professionals is: Of course there are more violations, due to the technical violations being counted as failures. However, this analysis did not include technical violations; it included only failure-to-appear and rearrest violations. In addition, the finding is not limited to location monitoring; substance abuse testing and treatment defendants are 41 percent more likely to fail. There are similar results for third-party custodians and halfway house placements. On average defendants released to the alternatives to detention program who were lower risk, risk levels 1 and 2, were less likely to be successful pending trial, while defendants in the moderate to higher risk levels (risk levels 3, 4, & 5) were more likely to be successful if released to the alternatives to detention program (VanNostrand & Keebler, 2009:31). VanNostrand and Keebler establish, apparently for the first time with hard national pretrial services data, the risk principle in federal pretrial services, which states “that the intensity of the program should be modified to match the risk level of the defendant” (Dowden & Andrews, 2004:1).

Federal Risk Assessment

One of the major recommendations of the Office of Federal Detention Trustee research is that the pretrial services system should develop and implement an actuarial risk assessment tool. The Office of Probation and Pretrial Services hired a staff person proficient in the development of actuarial devices and ultimately developed the tool internally. The developed tool was piloted in several districts and the formal implementation of the tool began in January 2009. Currently there are 89 districts “live” using the tool on a majority of cases, 93 districts trained, and 93 with personnel certified in using the Pretrial Services Risk Assessment tool. National implementation was completed in all 93 districts by September 2011. Early results from the implementation show that the tool increases officer recommendations in favor of release, which is the desired goal of the implementation. There has as yet been no identified impact from the tool on release rates.

The Pretrial Services Risk Assessment tool was constructed using the same archival data employed in the Office of Federal Detention Trustee research. The PTRR tool is an objective, actuarial instrument that provides a consistent and valid method of predicting risk of failure-to-appear, new criminal arrest, and technical violations that lead to revocation while on pretrial release. The instrument contains 11 scored and 9 unscored items. The unscored items are for future revisions to the instrument, and this research addresses the issues raised by the unscored items. The unscored items are rated as either A or B and do not contribute to the current overall risk score. The scored items are given a number of points (0, 1, or 2). The points from the items are then added up to give an overall score. When administered correctly, the Pretrial Services Risk Assessment provides a score that allows for classification into a risk category. Those risk categories are then associated with rates of failure-to-appear, new criminal arrest, and technical violations leading to revocation.

When a defendant or material witness is arrested or summoned to appear before the court for an initial appearance, the magistrate judge typically requires a pretrial services report based on the investigation conducted by the pretrial services officer. The officer interviews the defendant to

gather information for the report, the length of which varies somewhat, due to time constraints. The pretrial services report contains defendant case information, including residence, family ties, employment history, financial resources, health (including mental health and substance abuse histories), and criminal history. Based on this information, the officer will provide the court with an assessment of whether or not the defendant is likely to appear for court proceedings in the future or presents a danger to the community. Finally, the last section of the report provides the officer's recommendation to the court for the release or detention of the defendant. The recommendation should be based on the Pretrial Services Risk Assessment, although the officer can depart from the tool's recommendation after staffing the results with his or her supervisor.

The implementation of the tool has generated great debate over the finding, represented in the scores of "0" for defendants charged with violent offenses, that violent defendants in fact performed better than most other defendants in terms of rearrest, failure-to-appear, and technical violations leading to revocation of pretrial release in the construction research. The results found in the federal study are consistent with other similar findings: "defendants charged with more serious offenses do not pose a high risk of rearrest pending trial" (Austin, Krisberg, & Litsky, 1984:30; VanNostrand & Keebler, 2009:21; Toborg, Yezer, Tseng, & Carpenter, 1984:56). However, this validation research further refines that initial finding, showing violent defendants failing at higher rates than other defendant offense categories.

To better assist pretrial services officers in identifying high-risk defendants, the AO chose to develop a risk assessment instrument tailored specifically to its population of defendants. In doing so the AO looked at two existing tools: one operational in the state of Virginia and one used in the District of Columbia. After reviewing them, the AO concluded that its population of defendants differed enough from that of other pretrial services populations (for example, only federal courts address immigration charges) to warrant development of a tool using federal data. The Pretrial Services Risk Assessment (PTRA) is an actuarial risk and needs assessment tool developed from data collected on federal defendants who started a term of supervision between October 1, 2000 and September 30, 2007. This tool is designed to identify and categorize cases by risk of failure-to-appear, rearrest, and technical violations leading to revocation (FTA/NCA/Revocation).

Construction and Validation of the PTRA

Data

The archival data used to construct and validate the PTRA came from the Probation and Pretrial Services Automated Case Tracking System (PACTS) [1](#). Criminal history records or rap sheets were used to identify any new arrest after the defendant's release. PACTS was the main source of data for scored elements on the PTRA; it included data on 565,178 defendants. The data was extracted from PACTS in June 2008 and consists of all persons charged with criminal offenses in the federal courts between October 1, 2001 and September 20, 2007 (FY 2001- FY 2007) who were processed by the federal pretrial services system. The prospective data for the re-validation was extracted from PACTS in June 2012 and consists of all persons charged with criminal offenses in the federal courts between October 1, 2010 and September 30, 2011 (FY 2011) who were processed by the federal pretrial services system and from the Electronic Reporting System (ERS), which officers use to complete the PTRA.

Data Elements

There are two sets of items included on the PTRA: scored and not scored. The first set of items are rated and scored and thus contribute to a defendant's risk score. Rated and scored items used to develop the PTRA were based on prior research by VanNostrand and the original construction research (Lowenkamp & Whetzel, 2009), and were available in PACTS. Using the extant research as a guide, available data elements models were constructed; the most predictive elements were ultimately included based solely on the data. Those elements are felony conviction (most predictive of available criminal history measures), pending felonies or misdemeanors, prior failures to appear, current charge, seriousness of current charge, employment, substance abuse, age, citizenship, education level, and home ownership. As a result of bivariate analyses, some interval and ratio variables were collapsed into ordinal measures. In the prior construction research, multivariate models and completeness of data were used to identify the most predictive

and practical data elements to be included on the instrument.

The second set of data elements are rated but not scored and do not contribute to a defendant's risk score. These items were identified as potentially predictive by the Pretrial Services Work Group (PSWG). One additional rated but not scored item was added based on pretrial services officers' input on what data they felt strongly needed to be added: alcohol abuse. A total of 9 factors were identified as potential predictors and included on the assessment. These potential predictors were included as "test items" and the analysis determined that these items, for the most part, do not warrant becoming rated and scored PTRAs items [2](#).

Sample

That re-validation file contained 32,455 defendants for whom PTRAs have been completed in 2011, the first full year of operations. The total number of cases with PTRAs completed is 32,475, and the number of PTRAs cases opened and disposed of is 5,077. The cases were opened between October 1, 2010, and September 30, 2011. Given that PTRAs were validated using archival data and officers have now completed assessments prospectively, it is important to ensure that the tool is still valid.

Findings

Table 1 displays the results of the test questions in relation to new criminal activity (NCA) and failure to appear (FTA), while Table 2 displays the results of the test questions in relation to NCA/FTA/Revocation. Adding current alcohol abuse and the various measures of foreign ties to the risk score produced no increase in the predictive ability of the PTRAs. Therefore, the authors recommend to the decision-making body that the nine unscored items not be added to the PTRAs and the collection of those items be discontinued.

TABLE 1.
Test Questions In Relation to FTA/NCA

Question	Failure Rate			
	Yes		No	
	N	%	N	%
Current Alcohol	33/625	5.3	200/4450	4.5
Foreign Ties	51/965	5.3	182/4110	4.4
Foreign Ties Who Contact with Ties	43/744	5.8	169/3719	4.5
Foreign Citizen	27/428	6.3	196/4381	4.5
Passport	60/1547	3.9	170/3431	5.0
Foreign Financial Interests	7/123	5.7	155/4808	4.6
Travelled Outside US	79/1928	4.1	148/3029	4.9
Foreign Travel For Business & Pleasure	13/183	7.0	220/4941	4.5

TABLE 2.*Test Questions In Relation to FTA/NCA /Revocation*

Question	Failure Rate			
	Yes		No	
	N	%	N	%
Current Alcohol	132/625	21.1	597/4450	13.4
Foreign Ties	92/965	9.5	636/4110	15.5
Foreign Ties Who Contact with Ties	73/744	9.8	557/3719	15.0
Foreign Citizen	38/428	8.9	650/4381	14.8
Passport	127/1547	8.2	581/3431	16.9
Foreign Financial Interests	12/123	9.8	691/4808	14.4
Travelled Outside US	189/1928	9.8	514/3029	17.0
Foreign Travel For Business & Pleasure	20/183	10.9	713/4941	14.4

TABLE 3.*Descriptive Statistics for Criminal History Sub-score, Other Factors Sub-score, and Total PTRA Score*

	N	Mean	SD	Min	Max
Criminal History Score	5077	3.32	1.54	0	9
Other Factor Score	5077	2.82	1.32	0	6
PTRA Score	5077	6.17	2.46	0	14

Table 3 presents descriptive statistics and total scores for the two instrument scales contained in the tool: Criminal History and Other.

Table 4 presents descriptive statistics and total scores for both outcomes contained in the tool: FTA/NCA and FTA/NCA/Revocation. As the table shows, the majority of defendants released in the federal system are successful.

The next set of analyses focused on assessing the PTRA's predictive ability. AUC-ROC (Area under the Curve-Receiver Operating Characteristics) ³ was chosen as the measure to assess prediction in large part because it is not impacted by base rates. Another convenient property of the AUC-ROC over a correlation coefficient is that AUC-ROC is a singular measure and does not have differing calculations depending on level of measurement of the variables being evaluated (Rice & Harris, 2005). Table 5 displays the AUC-ROC between risk scores and FTA/NCA/Violation revocation. As Table 5 shows, the AUC for the FTA/NCA outcomes only is .69. The AUC for the validation of all three outcome measures rose to .71. Based on these results, the PTRA appears to have very good predictive validity in terms of accurately classifying defendants' risk level.

TABLE 4.*Descriptive Statistics for Outcomes*

	N	Percent Failing	Percent Not Failing
FTA/NCA	5077	4.5	95.5
FTA/NCA/Revocation	5077	14.3	85.7

TABLE 5.*Failure rates by risk category and AUC-ROC values*

Risk Category	N	%	% FTA/NCA	% FTA/NCA/Revoke
Category I	1372	27.0	1.3	3.4
Category II	1406	27.7	3.4	8.5
Category III	1401	27.6	6.7	20.5
Category IV	698	13.8	12.5	29.9
Category V	200	3.9	11.6	31.5
AUC-ROC Risk Category	5077		0.68	0.71
AUC-ROC Total Score	5077		0.69	0.71

TABLE 6.*Failure rates by risk category and AUC-ROC values with Category IV and V collapsed*

Risk Category	N	%	% FTA/NCA	% FTA/NCA/Revoke
Category I	1372	27.0	1.3	3.4
Category II	1406	27.7	3.4	8.5
Category III	1401	27.6	6.7	20.5
Category IV	898	14.7	12.3	30.3
AUC-ROC	5077		0.69	0.71

Table 5 presents failure rates by risk category and associated AUC-ROC values. The results for the first four categories were expected based on the construction research. To put the AUC values into practical terms, we calculated the failure rates by two sets of outcome measures: FTA/NCA, the statutory standard, and FTA/NCA/Revocation, the standard preferred by judicial officers. These results are presented in Table 5. The uniform increase in failure rates across categories of risk and across the various samples continues to support the validity of the PTR. However, in Category V the FTA/NCA rate was twice as high in the original sample as it was in this sample. All looks good, except that Category V might not really be different from Category IV, or perhaps we are supervising Category V differently now and driving their failure rates down. It is speculative now, it may hold true, as we do further analysis in the future.

In Table 6 we collapsed Category IV and Category V from Table 5 into one category and reran outcomes and AUC-ROC values. This was done for completeness, since the change in the failure rates could have resulted from a concerted effort to provide more services to the highest-risk defendants, thereby driving their failure rates down. Obviously interpretation is key here, and if the plausible is true we should not collapse Category V into Category IV. Therefore, this is a significant decision. It should be noted that the reduction to four categories did not add to AUC-ROC values produced by the existing instrument, which is why we will continue to look at this in future research.

Discussion

As previously stated, the purpose of this article is threefold: (1) to present the methodology and results produced in the re-validation of the PTR; (2) to discuss the implications of the research on the unscored items currently collected in the PTR; and (3) to discuss future developments. Overall, the instrument as administered by officers does as well as the construction and validation samples. Even though the foreign ties items did not improve prediction, officers and the court still might want to know about the nature of foreign ties. The sample, though small, was fairly representative of the population served and allowed for re-validation of the existing tool items. Thus the overall results have demonstrated that the PTR provides adequate predictive validity.

The creation of the risk score and categories allowed for the re-validation of five risk categories: 1 through 5. Practically speaking, the instrument provided categorizations that are associated with the group failure rates that are differentiated and meaningful for meeting the risk principle.

Limitations and Future Research

Although this study was fairly comprehensive in scope, the dataset was small and thus may not be representative of the population served. In addition, there are a number of limitations and areas for future research that deserve mention. First, we have not investigated how scoring algorithms might be adjusted for each district. As with any measure, there is a distribution of AUC values when that test is calculated for each district. We did not generate analysis for individual districts due to small samples of data at the district level. Subsequent analysis could focus on assessing AUC values between risk scores and NCA/FTA/Revocation to ensure appropriateness of fit at the district level.

A second limitation is that the data used in this research came from an administrative dataset. While it proved useful for our initial task of creating and validating a risk assessment instrument, it will be important to conduct similar validation analyses once we have an ample sample of defendants that were actually assessed using the assessment protocol.

The third limitation involves the nature of the outcome measure being predicted. In this research we focused exclusively on the likelihood of NCA measured by re-arrest and not the severity of the offense. We found it important to assess and determine the likelihoods of re-arrest as a first step in the assessment process. Because we do recognize that there is more than one dimension to an assessment in the criminal justice system, future analysis will focus on predicting the dangerousness of a defendant by trying to predict the severity and type of NCA.

Policy Implications

Notwithstanding the limitations discussed above, two major policy implications stem from this research. First, the federal pretrial services system now has a re-validated risk assessment tool for use on defendants under its jurisdiction. The instrument can be used to identify higher-risk defendants for enhanced services (see VanNostrand & Keebler, 2009) and also to reduce services to low-risk defendants, conserving those resources for higher-risk defendants. The second major policy implication is the apparent need to add dynamic factors. Data analyzed in this study focused on static factors associated with changes in NCA/FTA/Revocation rates. Therefore, the addition of dynamic factors would seem to provide officers with an essential tool to monitor and reassess risk in a standardized way to ensure that supervision and services are having intended impacts. If intended impacts are not being achieved, then officers would be able to modify supervision services to reduce the risk and refine supervision methodologies.

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U.S. Pretrial Services: A Place in History

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ON SEPTEMBER 27, 1982, President Ronald Reagan added his signature to those of Speaker of the House Thomas O'Neill, Jr., and Senate President Pro Tempore Strom Thurmond to "An Act to amend chapter 207, Title 18 United States Code, relating to pretrial services." Thus was created the legislation known as the Pretrial Services Act of 1982, which established pretrial services functions "in each judicial district...under the general authority of the Administrative Office of the United States Courts."

The Act culminated efforts to correct inequities in bail-setting practices, ensure the release of those who demonstrated ties and favorable background, and establish use of alternative conditions to cash and surety requirements. Despite the significance of this legislation, the fanfare accompanying its passage was probably limited to the offices of the then-existing 10 demonstration sites and of those who had long championed the cause of bail reform. In retrospect, however, the authorization of a nationwide system of federal pretrial services agencies was vital to assuring equal and just treatment for all persons charged with federal offenses. How could a system, upon experiencing the objective input of defendant data as well as the careful oversight of imposed conditions, return to the dark ages of insufficient information and limited release options? The Act promised federal magistrate and district court judges throughout the country an enhanced ability to make truly informed decisions regarding the prospects of pretrial release and to more carefully adhere to the promises of the Eighth Amendment.

Antecedents

Similar to author Joseph J. Ellis's description of the American Revolution in his book, *Founding Brothers*, the Bail Revolution that commenced in this country in the 1960s can be seen as both unlikely and yet inevitable. Unlikely in that the knee-jerk requirement of mandating that cash, bonds, or property be posted in exchange for pretrial freedom was an institutionalized practice for nearly 200 years. Bond amounts tended to be based solely on the severity of the charged offense; although in many instances even those charged with minor offenses were held on exorbitant sums. The system took comfort from detaining defendants, as residence in the local jail would ensure that defendants were available for future court appearances and eliminate the possibility of additional criminal charges while the defendant was in release status—a potentially embarrassing prospect for the judge who permitted release.

Viewed from another perspective, however, bail reform nonetheless was inevitable, because greater awareness had been generated about the consequences of existing excessive, unequal, and discriminatory bail-setting practices. The quest for equal justice in release decisions was compromised in at least three distinct ways. First, research documented that those held in

custody were more likely than those released to the community to be convicted and, once convicted, would receive harsher sentences. Second, those with monetary assets were ensured release while the indigent remained detained to populate the local jails—thereby making wealth the sole determining release factor. And finally, private individuals, known as bondsmen, were empowered to become the deciding, unreviewable authority as to who would be released and who would remain in custody. Recognizing the effect of these developments on pretrial justice demanded an innovative approach to bail consideration. Although thinkers of the past lamented those accepted practices, someone had to step up to institute a revolution of change.

Enter Vera

One of the most decisive steps toward launching the Bail Revolution came from an outside catalyst, Louis Schweitzer, a retired chemical engineer who toured the Brooklyn House of Detention in 1961. That event prompted him to take action to spare the poor from pretrial incarceration. Fortunately, he had the smarts, the savvy, the means, and the contacts to confront an entrenched culture by generating evidence-based proof that the release of pre-screened defendants would not increase the failure-to-appear rate. His foundation was called Vera (after his mother); his venture, the Manhattan Bail Project, was overseen by social libertarian Herb Sturz and became the first empirical pioneering effort in the pretrial services experiment.

As part of a one-year agreement to analyze and impact bail procedures in Special Sessions and Magistrates Felony Courts of New York City, Vera generated a 40-item “scale of rootlessness” survey to measure risk of flight or non-appearance by focusing on “community ties.” In cases where own recognizance (OR) bonds seemed possible, staff confirmed defendant background the old-fashioned way—with reverse telephone directories, quests for relatives in courthouse hallways, and home visits. Usually within the hour staff would consider the rootlessness score against the charges and prior record and determine if an OR recommendation was warranted. If so, a one-page summary was prepared for review by the court and attorneys.

For any experiment to pass muster, it must embrace a scientific methodology. From the outset, Vera sought to determine as empirically as possible if the new practice of release consideration resulted in a higher proportion of release without significant increase in the failure-to-appear rate. Thus, defendants were randomly divided into an experimental group (with Vera intervention) and a control group (no intervention). Near the end of the contracted period, results showed that 59 percent of the Vera-endorsed group and 14 percent of the control group were released. Only three Vera cases failed to return—a lower percentage than was typical for the money-released defendants. The Vera group also saw a higher percentage of exonerations and a lower percentage of sentences of incarceration. Thus, failure to secure pretrial release seemed to indeed predict conviction at trial and result in lengthier and more costly sentences.

These noteworthy outcomes propelled the bail issue to the forefront of the national agenda, and in 1964 the first National Conference on Bail and Criminal Justice was held in Washington, D.C. The audience at the opening session included 450 interested parties, among them Supreme Court Chief Justice Earl Warren, seven Associate Justices, and Attorney General Robert F. Kennedy. The AG announced that pretrial detention was predicated on one factor: “Not guilt or innocence...not the nature of the crime...not the character of the defendant. That factor is simply money.” At his behest, federal prosecutors were directed to recommend release without bond when this was justified. Within a year’s time the number of own recognizance agreements tripled to 6,000 defendants, with no increase in the failure-to-appear rate. A Conference speaker noted: “Changes have flowed not out of a crisis created by judicial decisions outlawing prevailing practices, but rather from education, through empirical research and demonstration, which has spotlighted the defects in a system and the ways available to improve it.” The Bail Revolution was in full swing, impacting both federal and various local practices in a relatively short time.

With its eligibility point scale having received permanent status in the local New York system, Vera sought to perfect the scale, which consisted of five categories: family ties, job/school, residence, prior record, and miscellaneous. A defendant was considered qualified for a release recommendation if the final score reached five points and a local address was confirmed. The point scale itself was termed “revolutionary,” as it incorporated the use of scientific methods to

determine the efficacy of its predictions and otherwise created a standard for assessing the validity of other justice-related reforms.

Federal Bail Legislation

The climate created by the Vera study and the resultant National Bail Conference no doubt strengthened the impetus for passage of the first piece of federal legislation relating to bail since the Federal Judiciary Act of 1789. The Bail Reform Act of 1966, signed into law by President Lyndon Johnson, aimed to eliminate inequities in the existing federal bail system. To this end, the Act directed the assessment of risk of flight and non-appearance, identified the nature of the information to be utilized in an informed decision-making process, provided for imposition of conditions when OR release alone was not sufficient to ensure appearance, and mandated a presumption of pretrial release as well as release under least restrictive conditions. The President himself noted: "Under this Act, judges...would be required to use a flexible set of conditions matching different types of release to different risks." For the first time in its history, Title 18 of the U.S. Code included a section that gave judicial officers direction as to what factors should be considered in setting bond as well as a list of possible release condition options to be fashioned to address identified levels of risk.

Criminal justice thinkers believed the 1966 Act was a marvelous advance in the federal bail-setting apparatus; however, they noted two "deficiencies" that triggered eventual amendment. The Act restricted consideration of whether or not to release solely to risk of flight or non-appearance, even though concerns were voiced regarding the risk of danger posed to communities by released individuals. (Influential legislators of the time, primarily Senator Sam Ervin of North Carolina, thought the use of danger as a standard was outright unconstitutional.) In addition, the Act failed to create an agency to be responsible for the gathering of defendant information, preparing reports, and overseeing imposed conditions. The former issue was addressed when Congress passed and President Ronald Reagan signed into law the Bail Reform Act of 1984. That Act added consideration of safety to the community; expanded the number of possible release conditions; created standards for post-conviction release; and authorized preventive detention when clear and convincing standards (danger) or preponderance of the evidence standards (non-appearance) were reached. The use of cash-oriented bonds was de-emphasized, and the presumptions of innocence, release, and release under least restrictive conditions were reiterated as the core of the bail-setting process.

A Federal Pretrial Services Function

The second major concern—that the act failed to create an agency for information gathering and supervision—was resolved with the passage of the Speedy Trial Act of 1974. Under Title II, rule 4.02, Pretrial Services Agencies were authorized to "collect, verify, and report" defendant information with a recommendation for appropriate release conditions; provide supervision to released persons; report violations; arrange services; and perform additional functions as the court may require. Thus, a designated agency was empowered to assist the court in implementing the nearly decade-old Bail Reform Act.

In response to the 1974 law, 10 districts were selected for pretrial operations on a pilot basis. These districts were: California Central, Georgia Northern, Illinois Northern, New York Southern, and Texas Northern, to be overseen as part of the established probation office; and Maryland, Michigan Eastern, Missouri Western, New York Eastern, and Pennsylvania Eastern, founded under an independent Board of Trustees and overseen by a designated chief. During 1976 roughly 100 officers, at times called the "pioneers," were trained to perform the groundbreaking tasks of this newly created operation. Training included one week at the Dolley Madison House in Washington, D.C., and focused on legislative history, interviewing issues, legal matters, system interrelationships, procedural overview, client supervision, community resources, and program evaluation. The mutual problems workshop component addressed officer concerns with improving relationships with the court and law enforcement agencies; dealing with unemployed clients; updating reports for bail review hearings; streamlining forms and interviews; and conducting post-bail interviews.

In spite of the receptivity toward bail reform during the 1960s, early pretrial services work

proved to be frustrating and at times outright maddening. Not only were officers developing new skills to process and evaluate the accused for potential release, they were seeking viable ways to integrate the pretrial mission within existing court and law enforcement structures and cultures. Obstacles loomed at every turn, from cynical marshals and uncooperative defenders to distrustful prosecutors and skeptical judges. Even gaining access to a defendant in a timely manner could be a chore. Dan Johnston, the Director of the Des Moines Pretrial Release Project that was operational by the mid-60s, aptly captured the mood when he observed: “Most people thought we would fail within a week or two, we would fold up our tents and go home, that a reform which was dependent upon the reliability of those charged with crime was doomed to failure by its very premise.” Like the original staff of Vera, we too were thought of as the “Very Easy Release Agency”—unprincipled, liberal, naïve, and ultimately, disruptive to the status quo.

Folding up the tents was not an option. Instead, the original pretrial officers created a winning recipe of six major ingredients:

- Building relationships with other members of the system and keeping communication as open as possible.
- Being tenacious in gaining defendant access, making reasonable requests, advocating for release when warranted; and securing defendants those services that impacted risk whenever possible.
- Providing facts: in the words of Herb Sturz, “The main thing we’ve done is to introduce the system [of bail setting] to fact finding. With facts, we can open up options.” The days of “bail in the blind” were at an end.
- Establishing trust by following up on investigatory leads, conducting criminal records research, providing well-written background summaries with relevant information; and reporting violation behaviors.
- Generating solutions by locating available community resources, arranging assessments, finding third-party custodians, being creative in formulating plans that truly addressed risk. When concerns existed about the release of a defendant, the only answer to the question of “Who you gonna call?” was “Pretrial Services.”
- Continuing the practice of recording and analyzing statistical information to assess the impact of the agencies and determine whether the pilot project should become a permanent part of the federal system. Thus, from its inception these agencies sought to be evidence-based.

That formula proved successful. Pretrial services was shown by subsequent studies to provide invaluable services to the court and defendants, to support the highest ideals of the system, and to potentially release a higher proportion of criminal defendants, thus impacting detention rates and the problems incurred with overcrowding and financing correctional facilities. Based on reports of favorable outcomes, Congress passed the Pretrial Services Act of 1982, thereby establishing the function as a permanent part of the system and allowing courts to decide the method of its administration—either under the auspices of the probation office or as an autonomous unit.

The Future

Although 30 years have passed since the passage of the Act, the challenges of pretrial work have hardly lessened. One of the closing statements uttered after the 1964 National Bail Conference is as true today as it was nearly a half century ago: “Though the bail system in the U.S. has been enlightened in the past year by developments such as those summarized, there is a long way yet to go.” Pretrial services must continue to evaluate itself to ensure that it is truly an objective, empirically-based program, not just a perpetuator of the knee-jerk habit of imposing excessive conditions with unproven relationships to risk of non-appearance and danger. Research has already disclosed that over-supervision, especially of low-risk cases, has negative impact on defendant behavior and otherwise wastes valuable officer time and system resources. The detention rates in many districts beg the question: Do we really need to hold each person who is presently in pretrial custody or can a greater percentage be safely released?

Answers to questions about the impact of location monitoring, residential placements, and other

treatments and interventions are to be sought through careful analysis of data. That, in turn, requires the precise recording, input, and extraction of defendant information in each district. Without this level of quality of information, prediction becomes haphazard and the value of pretrial recommendations may plummet. Foresight into this need, coupled with a history of seeking evidence for developing bail practices, has already resulted in the generation of a pretrial assessment tool, based on seven years of data, that should only increase in validity with ongoing data collection and analysis. Although the original officers did a phenomenal job of integrating pretrial services functioning in the respective cultures of 10 districts; although numerous officers followed their lead to incorporate responsible pretrial practices across the nation; although administrators, researchers, work group members, and the field contributed to the perfecting of pretrial services operations—well, in the words of Al Jolson, “you ain’t seen nothing yet.”

Let the Revolution continue.

Material related to Vera was taken from Sam Roberts’ *A Kind of Genius: Herb Sturz and Society’s Toughest Problems* (2009); information regarding the National Bail Conference of 1964 was taken from a Conference transcript; and general history was excerpted from the author’s talk on the History of Pretrial Services delivered at the 2010 National Pretrial Services Conference, Atlantic City, N.J., and as extracted from the Annual Report of U.S. Pretrial Services, Eastern Pennsylvania, 2009 and 2010.

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I Had a Dream: Alternatives To Prison Solution Program (APS) in the Southern District of California

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I HAD A DREAM....

It was not nearly as lofty a dream as Dr. King's, where all persons might someday be treated equally. Instead, I dreamt that one day the federal criminal justice system might offer a means of rehabilitation as an alternative to conviction and custody.

My dream—a vision really—became a reality with an attempt to have our district create a reentry program. Our chief judge supported the effort, but at the time, the probation chief was unwilling to implement such a program. However, that did not discourage me; it led me instead in a different direction. It caused me to look at implementing change prior to conviction as opposed to post-conviction.

It made sense that if we could replace custody and conviction with education, employment, and drug treatment by providing accountability, resources, and support, we could change the direction of a client's life rather than saddling him or her with a felony conviction and a custodial sentence that would do little towards providing tools for change.

With a pretrial services chief and supervisor who shared my vision, an assistant U.S. attorney willing to take a chance, judges who believed in offering a second chance, and five very talented and committed pretrial services (PTS) officers, we began the Southern District of California's Alternatives To Prison Solution program (APS). We wanted to offer an alternative to those whose criminal act was aberrant and/or the result of present factors in his or her life that, if left unchanged, would create a likelihood of recidivism. It is a program where the client pleads guilty, but the plea is not entered and sentencing is deferred for one year. If the client successfully completes the program, the complaint is dismissed.

The clients are designated by the U.S. Attorney's office. Post-arrest, the client is given a notice to appear (NTA) and is transported to pretrial services. There an officer interviews the client, as would normally be the case with any client prior to his or her first appearance. Defense counsel also interviews each client before or after the pretrial services interview but prior to the PTS officer inquiring into facts of the arrest or case to ensure that the client wants to proceed (participation requires a guilty plea) and that no rights have been violated. In most cases, the client has waived and admitted to committing the offense. A personal surety bond is set in each case, secured by the client's signature. The notice to appear is generally set for the day following the client's delivery to pretrial services. Where the need for services or recourses is immediate,

we have the matter set for bond on the same day.

Within usually a week after the first appearance, we appear before the diversion judge for a change of plea and entry into the diversion program. The Contract for Participation is signed by the client, the defense attorney, the assistant U.S. attorney (AUSA), the pretrial services supervisor, and the magistrate judge. A plan of supervision and goals is established. The plea is held for one year, during which time the client remains under supervision of the court and pretrial services. If the client successfully completes the program, his or her complaint is dismissed. If, conversely, the client is terminated from the program or withdraws (participation is voluntary), the matter is set for bond revocation, new counsel is appointed, and the client's case is set for sentencing in the normal way.

The degree of supervision is determined on a case-by-case basis depending on the needs of the client. We have learned that one size does not fit all. Cases are staffed on an ongoing basis and the client's degree of supervision may be adjusted based on his or her performance or needs.

We developed the program utilizing evidence-based practices, many years of experience, and models of successful reentry programs and drug courts. It took close to two years to implement the program, with the first participants beginning in November 2010. We have had 227 clients enter the program. Thus far we have had 111 graduates. Due to the staggering of entry dates, graduations occur monthly. Including those who have graduated and those who are still participating, a total of 16 clients have been terminated; 10 due to noncompliance and 6 due to new criminal conduct.

In state court, a stayed sentence serves as a deterrent to reoffend; in federal court, a deferred entry of a felony can do the same. More so, the "hammer" so to speak of a felony keeps the client vested in his or her success. Participation is voluntary and we find that what begins as a means to stay out of custody evolves, with each success, into an opportunity to implement positive change. "Just tell me I won't go to jail" is soon replaced with "I can't wait to tell the judge that I'm clean, I have a job..." We see shorts and tee-shirts replaced by slacks and shirts. The clients learn the rewards that come from positive change. It is a collaborative effort. It works because the defense, the prosecutor, pretrial services, and the court are vested in the same outcome. It has caused all of us to examine how we have traditionally performed our jobs. I was shocked to hear myself suggest that a few days in custody might serve my client well. At a recent revocation hearing, I questioned a client's commitment and his appropriateness to continue in the program. I announced to the court, "I find myself sounding more like a prosecutor than defense counsel." As the AUSA addressed the court, she began with, "And at the expense of sounding like a defense lawyer..." She convinced the judge to give the defendant another chance, stating, "This is a program of hope. We look at the whole person." Pretrial services officers have had to reexamine how they have responded to noncompliance. We have all had to step out of our zones of comfort, but isn't that always required for change?

Many years ago, in approximately 1986, I had a sentencing hearing before the late John Rhoades. It was a large distribution of marijuana case with a client with a substantial history of substance abuse. He had been in and out of state custody but had never addressed his drug use. I proposed a non-custodial sentence that would allow placement in a residential drug treatment facility. The judge had never ordered a drug program as an alternative to custody. He gave the client an option: federal custody or twice the time in a residential facility followed by out-patient treatment. My client chose the latter and it stopped a pattern. It is no surprise to those who had the honor to appear before him that Judge Rhoades would think outside the box and take a risk. My point is: to move forward, we must think forward.

At the time, such a sentence was quite unusual. Today, it is a common request at sentencing. We have seen the same results in APS. We have been able to stop a pattern and do so with the benefit of the client not proceeding through life with a felony conviction, which we know is an impediment to success. Isn't it time that all of us involved in the federal criminal justice system address the need for rehabilitation and the roles we can play in effecting a change? Until we do, it is unlikely we will affect the rate of recidivism. And why not begin at the beginning, with

pretrial release and the possibility of diverting a conviction?

When we began the program, we faced a number of skeptics. I heard that some thought that federal court was not the place for “social work,” and “When did federal court become drug court?” After a year and a half, the cynicism seems largely replaced by kudos. It is time for rehabilitation to play a real role in federal court and not be left to a prison system that has failed miserably.

At the recent swearing in of the Honorable Cathy Bencivengo to the U.S. District Court, she was quoted on the role she played as a diversion magistrate judge:

To me it is an opportunity to offer hope and help to someone to enable him or her to change their destiny and in some cases the destiny of their children. When someone violates the law, our options are somewhat limited. We can punish more or less severely based on the circumstances, but we couldn't give the person a “do over.” We hope that the punishments we impose provide a lesson to modify future behavior, but having a federal felony conviction is not going to enhance anyone's life. For the diversion candidates, we have the option of granting that do over, to give them a chance to have a different outcome. The program never treats the defendant like a victim—poor you, your life has been hard so we are going to let you off this time. The program opens a door but each defendant has to work hard to get to the other side. We all reinforce the foundation of the program; the defendant is responsible for his or her outcome. The defendant has to change his or her life direction. All our help and positive support is nothing if the defendant does not accept that he is responsible for where he is in life and commit to moving in a new direction. I have watched people make painful life changes (particularly in the area of drug and mental health treatment) and I have seen them inspired by their personal success to keep at it when it gets hard, to admit when they backslid and reaffirm their commitment to doing better. I have seen people reunited with families and heard them say they want to be a positive role model for their children, had parents tell me we saved the defendant's life. The Diversion Program gives people a chance to learn to respect themselves and get the respect of others in response, to learn that trust can be earned and reestablished where it was destroyed by past lies and behaviors. I believe there is a place for this kind of program in the effective administration of justice as an alternative to prison for the appropriate candidates.

Status hearings are scheduled throughout the participants' diversion period. The frequency of hearings is determined by the clients' need for accountability. Our diversion judges applaud progress and assess goals. Noncompliance is addressed and sanctions are immediate. Graduations are nothing less than inspiring. I listen in awe as clients thank their pretrial services officers for their support and talk about achieving goals and setting new ones. They speak with pride of mending bridges, acquiring GEDs, and receiving first paychecks. We celebrate each success.

The diversion program is a work in progress. We have learned a lot. We know that addressing addiction is a priority, but that our clients first must have food, clothing, and shelter. We know the value of family support. We work hard—sometimes harder than our clients. We have suffered some setbacks but many, many more successes. We have laughed and we have cried. Mostly, we have made a difference. When was the last time any of us felt like that?

I have learned a lot in a year and a half. I know that by working together we can begin to fix a system in need of fixing. I have learned that a week in custody might do greater good than a month of hugs and leniency. I have learned, and have said, “Maintaining the integrity of this program has to mean more to me than any one client.”

Our program is unlike programs in any other federal court. I credit its unique features and its success to an exceptional group of stakeholders; a progressive prosecutor, a talented, hard-

working pretrial services supervisor and group of pretrial services officers, and magistrate judges who share a vision and see the valuable role they can play in implementing positive change.

Diversion works and has a place in our federal criminal justice system. It might not work in every district in the exact form we have created here in the Southern District of California, but even in districts outside that wonderful, quirky, trend-setting Ninth Circuit, there is a way of making it work.

Many of our clients come to us with years of dysfunction and a myriad of wounds. We are not so naïve as to believe that in a year we can change every life, but we have made a start.

I still have a dream....

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The Eastern District of Michigan: How Does It Consistently Achieve High Release Rates?

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UNITED STATES PRETRIAL SERVICES in the Eastern District of Michigan continually sets the standard in pretrial release rates in the federal system. The two authors of this article from outside the district have long marveled at how they do it and, perhaps more importantly, whether their results could be replicated in another district. The simple answer is that the Eastern District of Michigan has a strong culture of release that is maintained on a daily basis by all of the stakeholders in the release process, from the newest pretrial services officer to the United States attorney, the chief judge, and the bench generally. That culture is based on the need to balance the rights of the accused, including the presumption of innocence, with the need to protect the community and assure court appearance for pretrial defendants. That simple answer—"It's the culture, stupid"—also speaks to why it will be very difficult to replicate such results in another district.

This article is an amalgam of various efforts over nearly seven years to identify the root of this district's success with an eye toward replicating that success in one form or another. Timothy Cadigan, Pretrial Services Program Manager of the federal pretrial services system, has travelled to the district twice over the past seven years for that purpose. Dr. Marie VanNostrand was commissioned to do a formal assessment of the district, publishing the results in October 2010 as *U.S. Pretrial Services Performance and Outcome Assessment: Eastern District of Michigan*. Most recently, Federal Detention Trustee Michael Pearson travelled to the district in May 2012 with similar goals. All of those efforts have contributed to this article. While much is known, there remain some unknowns.

The U.S. District Court in the Eastern District of Michigan has long been recognized for its high release rates of pretrial defendants, which have significantly surpassed the national average for many years. In 2009, for example, the release rate for pretrial defendants excluding immigration cases was 79.3 percent in the district compared to 46.8 percent nationally, constituting a 32.5 percent higher release rate than the national average. Perhaps more important, the district has a history of pretrial release; in fact, one of the earliest federal initiatives on pretrial release sprang up in the Eastern District of Michigan in 1963. It was a relatively simple program, conducted by

the United States attorney, in which the assistant United States attorneys prepared pretrial reports for the court with the goal of achieving release on the defendant's own recognizance, and the judges found those reports quite useful (Goldfarb, 1965:189). Apparently this early beginning planted strong seeds.

The Eastern District of Maryland's above-average pretrial release rates over the years are well known within and outside the district. In fact the bench—including both Article Three and magistrate judges—take great pride in the long history of pretrial release here. Less well known are the outcomes on pretrial supervision, so Dr. VanNostrand's assessment adds substantially to our understanding of actual success in the district's release practices.

Summary of the Assessment of Pretrial Services in the Eastern District of Michigan

Pretrial release rates are an important measure of pretrial justice, as they reflect, in part, progress toward honoring the legal and constitutional rights afforded to accused persons awaiting trial. Yet the outcomes on release are just as important, because they reflect protection of the community, the integrity of the judicial process, and assurance of court appearance. The defendants released with pretrial services supervision had an overall success rate of 93 percent for the five-year period between 2004 and 2008. The pretrial supervision success rate in the district was higher than the national average of 87 percent for the same time period.

As it relates to the status of pretrial justice, the assessment revealed that the district released over 70 percent of pretrial defendants from 2006 to 2009 (excluding immigration cases) while achieving a 93 percent success rate for defendants released to pretrial supervision. The Eastern District of Michigan released 79.3 percent of pretrial defendants (excluding immigration cases) in the most recent year 2009; 32.5 percent above the national average. The district has consistently experienced release rates far above the national average for many years while achieving a 93 percent success rate for defendants released to pretrial supervision for the past five years. When asked the key question: "How does the district achieve such extraordinary release rates and pretrial outcomes?" the answer that stakeholders in the district give is "system culture." In this case, system culture refers to the beliefs and shared goals of the Pretrial Services Office, the U.S. Attorney's Office, the federal public defender, and the court. The system, including all stakeholders, shares the principle of pretrial justice as a primary goal and driving force during the pretrial process. All system stakeholders focus daily operations on attempting to balance the rights of the accused, including the presumption of innocence and the right to release on the least restrictive conditions, with the need to protect the community and assure court appearance for pretrial defendants. Thus, the extraordinary pretrial release rates and successful supervision outcomes are credited to the common goal of pretrial justice shared by the system stakeholders and the "system culture."

FIGURE 1.*Defendants Processed by Pretrial Services (FY 2002 to 2009)*

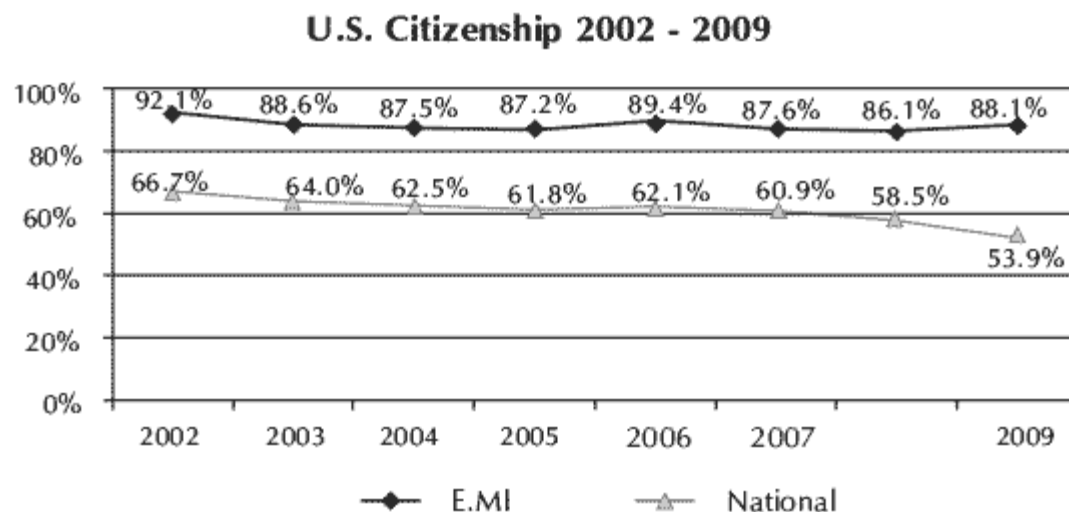
Supervision	Year	02	03	04	05	06	07	08	09	Total
No	Count	411	440	385	370	321	323	339	319	2908
	Percent	31%	31%	30%	31%	28%	28%	33%	26%	30%
Yes	Count	906	975	897	831	843	846	698	898	6894
	Percent	69%	69%	70%	69%	72%	72%	67%	74%	70%
Total	Count	1317	1415	1282	1201	1164	1169	1037	1217	9802

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services in the Eastern District of Michigan 10/1/2001 – 9/30/2009.

FIGURE 2.*Race/Ethnicity of Defendants Processed by Pretrial Services (FY 2002 to 2009)*

Race/Ethnicity	E. Michigan	National
White Non-Hispanic	37.2%	26.8%
White Hispanic	7.0%	45.5%
Black Non-Hispanic	53.1%	22.2%
Asian	1.7%	2.4%
Another Race	1.0%	3.1%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services 10/1/2001 – 9/30/2009.

FIGURE 3.*Citizenship of Defendants Processed by Pretrial Services (FY 2002 to 2009)*

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services 10/1/2001 – 9/30/2009.

There were a total of 9,802 defendants processed during fiscal years 2002 and 2009, ranging

from 1,037 to 1,415 defendants annually. The number of defendants and percent of cases released to pretrial services supervision can be found in figure 1.

The average age of the defendants processed during this time for the district was 36.4 years old, which was slightly older than the national average of 34 years old. Eighty-one percent of all defendants processed in the district were male, compared to 85 percent nationally. Figure 2 contains the distribution of defendants by race/ethnicity in the Eastern District of Michigan compared to the rest of the country.

Between 2002 and 2009, 88 percent of the defendants in the Eastern District of Michigan were United States citizens, compared to 61 percent of the defendants nationally. The percent of defendants who were U.S. citizens has changed over time, as can be seen in figure 3.

FIGURE 4.

*Education Levels of Defendants Processed by Pretrial Services
(FY 2002 to 2009)*

Education	E. Michigan	National
Less than high school	29%	38%
High school/GED/Vocational	60%	53%
College degree or higher	11%	9%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services 10/1/2001 – 9/30/2009.

FIGURE 5.

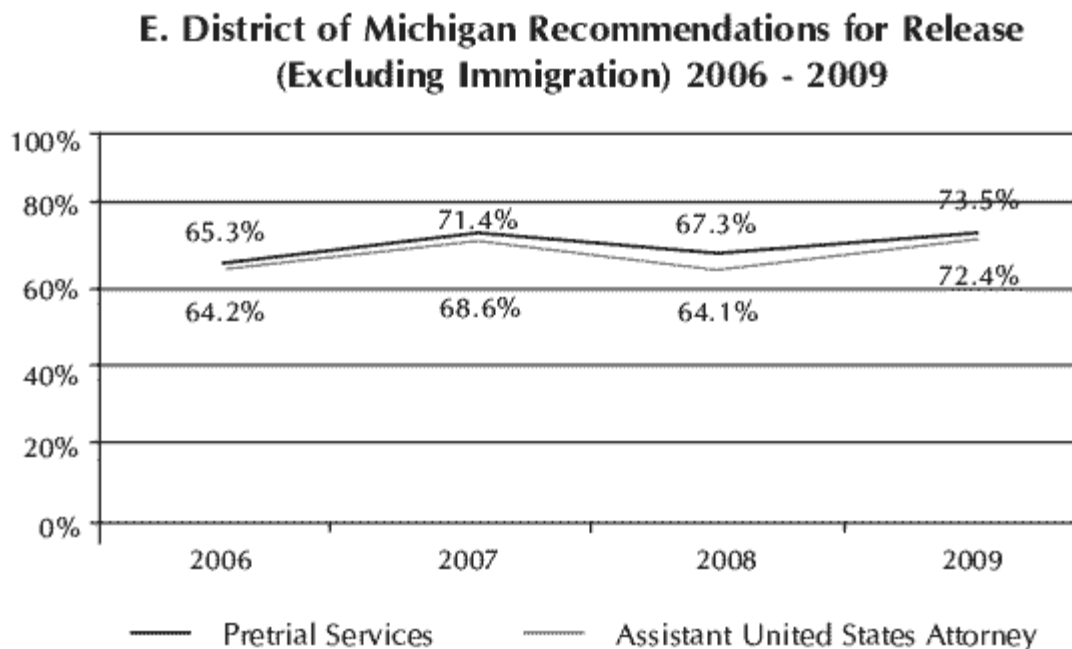
*Primary Charge of Defendants Processed by Pretrial Services
(FY 2002 to 2009)*

Primary Charge	E. Michigan	National
Drug	34%	33%
Theft/Fraud	34%	17%
Immigration Law	4%	27%
Firearm	12%	9%
Violent	5%	6%
Other	11%	8%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services 10/1/2001 – 9/30/2009.

FIGURE 6.

E. District of Michigan Recommendations for Release (FY 2006 to 2009)



Data Source: Judicial Business of the United States Courts Annual Report of the Director – H Tables (2006-2009).

The education levels for defendants in the district compared to the population nationally appear in figure 4.

Approximately one-third of all defendants in the district had a primary charge (defined as the most serious determined by charge classification and potential penalty) that was categorized as a drug-related offense, while another one-third were charged with theft/fraud-related offenses. When examining primary charge alone, research has shown that defendants with a drug-related primary charge have the highest risk of failure if released pending trial compared to other primary charge categories (*Pretrial Risk Assessment in the Federal Court, 2009*). Most notably, the district received more theft/fraud-related cases and fewer immigration law violation-related cases when compared to the national population. The primary charge distribution can be found in figure 5.

One of the primary functions of pretrial services is to provide information to judicial officers to assist them in making the most appropriate pretrial release decision. The chief mechanism to provide information to judicial officers is the pretrial services report. During fiscal year 2009, pretrial services officers in this district interviewed 97.5 percent of all defendants, compared to 61.2 percent nationally, and provided a full or modified report for 98.9 percent of all defendants, compared to 96.9 percent nationally.

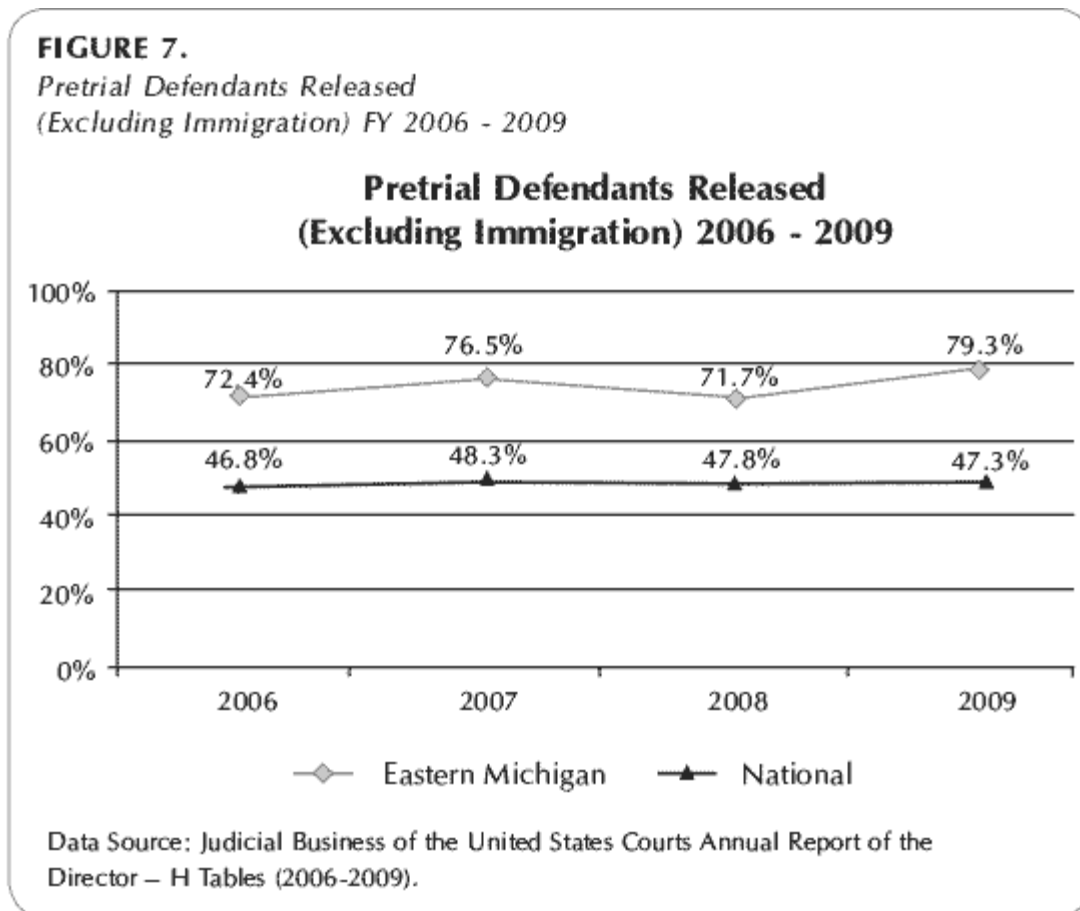
Recommendations for release are made by both pretrial services and the assistant United States attorney (AUSA). In 2006, the federal court system began distinguishing release rates by those that include and exclude immigration cases. For this reason, an examination of pretrial services and AUSA release rates was completed for fiscal years 2006 to 2009.

District recommendations for release by both pretrial services and the AUSA were significantly higher than the national average. For example, in 2009 pretrial services in the Eastern District of Michigan recommended 28 percent more pretrial defendants, excluding immigration cases, for release when compared to the national average; 73.5 percent vs. 45.5 percent respectively.

Similarly, the AUSA recommended release for 72.4 percent of all pretrial defendants, excluding immigration cases, compared to 39.9 percent nationally.

Pretrial release rates are a measure of pretrial justice. Admittedly there is no magic number for release rate, yet the Supreme Court provides guidance regarding release rates. The preventive detention aspect of the Bail Reform Act of 1984 was challenged in *United States v. Salerno* in 1987. ¹ In that case the court decided that the government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest. Pretrial detention in certain cases is not only appropriate but necessary to assure court appearance and community safety. Yet the court stated in its opinion: "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." When considering this statement we can infer that, at a minimum, release pending trial should occur more than half the time.

In the Eastern District of Michigan, the release rate for pretrial defendants excluding immigration cases has exceeded 70 percent since the data began being captured this way in 2006. When looking at all cases (including immigration), the district has released at least 65 percent of all pretrial defendants for the past 10 years (FY 2000-FY 2009). ² The pretrial release rates for the district compared with the rest of the country can be found in figure 7 below.



Most pretrial defendants are required to report in person to the pretrial services officer assigned to provide supervision. The reporting schedule is based on the nature of the alleged charges and the conditions of release set by the court. In addition, defendants are ordered with various conditions of release set by the court. To assist the defendant in meeting certain conditions of release, specifically those that are deemed to be alternatives to detention, the district expends alternatives to detention funding. In 2009, the district expended \$307,468 in ATD funding.

In FY 2008, a total of 86.1 percent of defendants released to pretrial services supervision had no documented violation of supervision (conditions of release). ³ For the defendants that did violate supervision, 69 percent did so pre-adjudication, 28 percent did so pre-sentence, and 3

percent did so pending appeal/surrender. When a violation occurred, pretrial services submitted a violation report to the court 92 percent of the time. At the violation hearings the court released 32 percent of the defendants with or without changes in conditions, while the remaining 68 percent were detained due to the violation. Pretrial services supervision outcome is defined as the success or failure of a defendant released pending trial. The purpose of pretrial release with supervision is to assure court appearance and the safety of the community during the pretrial stage. The primary measures of pretrial failure are failure to appear and danger to the community. For the purposes of this assessment, failure to appear was measured by a defendant's failure to appear for a scheduled court appearance or absconding from pretrial services supervision while pending trial. Danger to the community was measured by a pretrial release revocation due to a new arrest for a crime that was allegedly committed while the defendant was released pending trial. In addition to failure to appear and danger to the community, pretrial failure also included technical violations. Failure due to technical violations was measured by defendants who had their pretrial release revoked for violating technical conditions (reasons other than failing to appear or danger to the community). As a result, pretrial failure included any defendant who: 1) failed to appear for a scheduled court appearance or absconded from pretrial services supervision; 2) had pretrial release revoked due to a new arrest for a crime that was allegedly committed while the defendant was released pending trial; or 3) had release revoked for violating technical conditions (reasons other than failing to appear or danger to community). Defendants who experienced none of these and remained in the community during the entire time pending trial were deemed successful.

In 2008, defendants released to pretrial supervision had a 97.7 percent court appearance rate and a no new alleged criminal activity rate (the measure of community safety) of 98.6 percent. After factoring in a technical violation rate of 1.9 percent, the success rate on pretrial services supervision in the district in 2008 was 94.4 percent. An examination of supervision outcomes for the past five years revealed similar outcomes. The district had a higher success rate on pretrial supervision when compared to the national average. The success rate on pretrial services supervision nationally in 2008 was 87.8 percent (2.6 percent FTA/abscond, 3.2 percent alleged new criminal activity, and 6.4 percent technical violation).

To aid in their continued pursuit of pretrial justice, the pretrial services office in the Eastern District of Michigan commissioned a performance and outcome assessment. For the purposes of the assessment, the two primary measures of pretrial justice were pretrial release rates and supervision outcomes. Pretrial release rates are an important measure of pretrial justice because they reflect, in part, progress toward honoring the legal and constitutional rights afforded to accused persons awaiting trial. Yet the outcomes on release are just as important, because they reflect community safety, the integrity of the judicial process, and court appearance.

The district release rate for pretrial defendants, excluding immigration cases, has exceeded 70 percent since the data began being captured this way in 2006. The release rates for the rest of the country were less than 50 percent during the same time period. The defendants released with pretrial services supervision had an overall success rate of 93 percent for the five-year period between 2004 and 2008. The pretrial supervision success rate in the district was higher than the national average of 87 percent for the same time period. The common goal of pretrial justice shared by the system stakeholders and the "system culture" is credited with the extraordinary pretrial release rates and successful supervision outcomes.

Any review of national statistics will show that Michigan Eastern is unique in obtaining release on a higher percentage of cases than virtually any other district in the United States. Dr. VanNostrand's assessment, summarized here, documents that success enjoyed over many years by the district. It could be argued that that is the easy part, not because the research is easy to do (it isn't), but because the remaining task seems almost daunting in comparison: trying to pin down why this district enjoys such a long history of successful release and how its "culture of release" could be successfully replicated in another district.

The assessment also makes clear several factors that seem to make the district unusual and thus

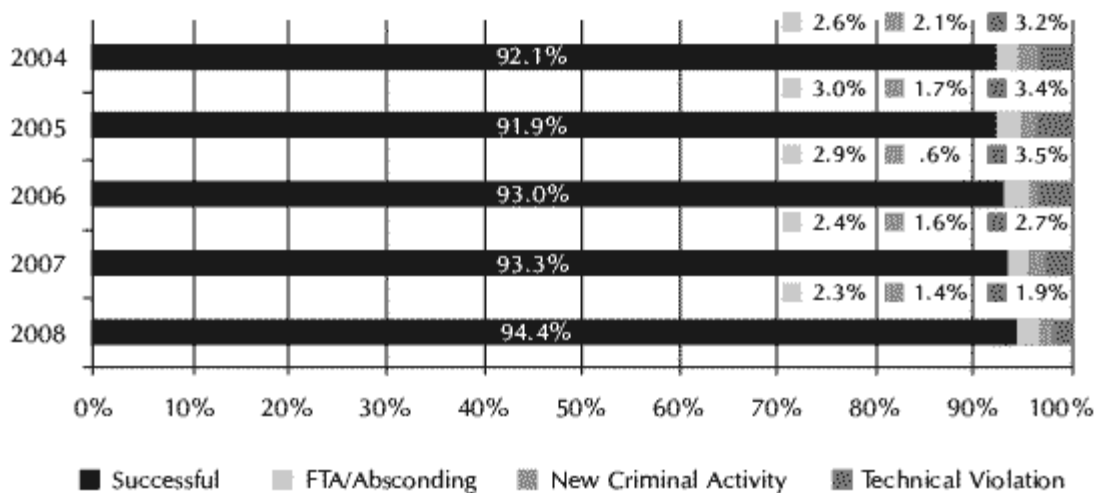
might make it difficult to replicate the Michigan Eastern results in another district. First, while this is technically a border district because it shares a border with Canada, the Eastern District of Michigan handles very few immigration cases. Obviously the national case averages are highly influenced by the number of immigration charge cases handled by the five border districts (Texas Southern, Texas Western, Arizona, New Mexico, and California Southern). Therefore, we excluded the border districts and recalculated a non-border district national immigration charge rate. We then found that there are 39 districts with more immigration charges than the Eastern District of Michigan. This is relevant to the current discussion because immigration cases are detained 96 percent of the time (VanNostrand & Keebler, 2008, p. 4). Furthermore, 34 percent of the cases handled in the district are theft/fraud, compared to a national average of 17 percent. Again this caseload figure favors release, as defendants charged with theft/fraud are the most likely to be released (VanNostrand & Keebler, 2008, p. 40). Second, figure 6 shows the high correlation between the release recommendation made by the pretrial services officer and the Assistant United States Attorney (AUSA). In any other district when officer recommendations mirror AUSA recommendations it is almost always a bad thing for pretrial release, as AUSAs for the most part recommend detention more often than pretrial services officers. The AUSA's recommendations for release in more than 70 percent of the cases in the Eastern District of Michigan is thus likely to be a significant factor in the district's success, that would be very hard to replicate in another district. Finally, the Eastern District of Michigan handles a caseload comprising significantly more United States citizens (See Figure 3) than the national average and United States citizens are significantly more likely to be released than non-citizens (PTRA User Manual 2.2, p. 19).

Chief Pretrial Services Officer Alan Murray presented his thoughts on his district's success in achieving high rates of pretrial release at the 2010 National Association of Pretrial Services Agencies (NAPSA) conference. Before becoming the current chief in the district, Alan previously served 18 years as a pretrial services officer there, effectively on the front line of the pretrial release battle. In fact, during many of his years as an officer, Alan handled the location monitoring caseload, arguably the highest-risk caseload in any pretrial services office. Walking around the district with Alan makes it immediately apparent that he knows seemingly all the various pretrial release players: judges, USAs, defense bar, assistant federal public defenders, agents, deputy marshals, etc. In fact, they do not exchange polite hellos and dignified handshakes, but shared stories; they have rolled up their sleeves and worked with him. Those relationships, built and maintained over many years, offer the observer a first-hand glimpse of what makes the district successful: relationships that evolve to create a culture. There is a pervasive trust among the various players, stakeholders, and participants that is not seen in many, if any, other federal districts. Alan's remarks at NAPSA, excerpted below, begin by expressing gratitude to two crucial though not politically relevant players: pretrial services officers and support staff.

FIGURE 8.

Pretrial Services Supervision Outcomes by Type (FY 2004 – 2008)

E. District of Michigan Pretrial Services Supervision Outcomes - 2004 - 2008*



*FY 2009 data was not used to measure outcomes because too many cases referred during this time remained open and the outcomes have yet to be determined.

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services in the Eastern District of Michigan 10/1/2001 – 9/30/2009.

Alan Murray's Remarks

The performance and outcome assessment that was conducted in the Eastern District of Michigan would not have been possible without the data itself. The individuals who made this data possible are the pretrial officers in the Eastern District of Michigan, who came before me and set the groundwork for the amazing data that is being presented today, the officers who currently work there, and the data entry clerks and support staff, who find errors and missing identifier information and get it corrected.

Historically, Detroit and Eastern District of Michigan are known for the Motown sound, cars, and we were the murder capital at one time. Now we lead the country in bankruptcy filings, unemployment, and federal release of defendants on bond. It is a very unique and wonderful thing to work in the Eastern District of Michigan as a pretrial officer. The first week of employment in 1987, they handed me the bail reform act of 1984, a copy of the Constitution, a federal criminal code book and kept using the words alleged and defendant in the same sentence.

No one was or is ever referred to as criminal or offender, by anyone in pretrial in the Eastern District of Michigan. The other things that are very special are that the magistrate judges, district court judges, federal prosecutors, and defense lawyers were and are willing to listen to pretrial services. It was not unusual for pretrial to meet with arresting agents, before court, or talk at side bar with the magistrate judge during an arraignment and come up with release conditions to ensure community safety or future appearance, and have those be the exact conditions of release that were ultimately imposed.

All pretrial services officers in this country are in the risk business. We should never be persuaded to not consider bond, just because a defendant is charged with a drug or gun offense.

In Detroit, we have historically seen a large number of drug distribution cases involving heroin, cocaine, and marijuana; we have always also had a lot of firearm and fraud cases; and we also

share a border with Canada and we are a port city.

I believe that there are several reasons why defendants on bond in the Eastern District of Michigan show up for all court hearings, do not get arrested for new criminal activity while on bond, and routinely self-surrender to the Bureau of Prisons:

Most of the defendants charged in the Eastern District of Michigan have been residents of the city or state for at least 5 years or were born there. Most defendants that have charges brought against them are either unemployed or have financial challenges. Even though a defendant may have a prior felony conviction, we do not rule out release on bond. If a defendant has a history of substance abuse, we do not view them as a drug addict, but an individual, who should receive drug treatment.

Being in the risk business means taking chances and coming up with the least restrictive conditions to ensure community safety and appearance at future court dates. That being said, we embrace the Bail Reform Act and what it stands for: we always seek alternatives to detention.

We start off by recommending unsecured bonds, reporting to pretrial services in-person because face-to-face contact works and officers are able to make a connection with the person that they are supervising. In office visits we have officers discuss personal challenges that the individual might have been facing prior to being arrested and charged, and we have collateral contacts with family members that reside with the defendant. We inform defendants of court dates, and offer services of drug treatment, mental counseling, self-surrender program, and GED classes.

While on bond, we maintain contact with the prosecutor assigned to the case, report noncompliance to the judges, prosecutor, and defense lawyer in a timely fashion, and request violation hearings when we think they are necessary. Each individual that is on bond and supervised is dealt with on a case-by-case basis and given the attention and respect that everyone is deserving of, regardless of the allegations that they face.

As you leave this session, I encourage you to return to your court, embrace the Bail Reform Act, look past the charges a defendant faces, and come up with conditions of release that will ensure community safety and appearance at future court dates. We are all in the risk business to make a difference in the lives of others, because what we do is important to the criminal justice process.

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Pretrial Services along the Border: A District of Arizona Perspective

David Martin

Chief U.S. Pretrial Services Officer, District of Arizona

Honorable James F. Metcalf

United States Magistrate Judge, District of Arizona, Yuma Division

PART ONE: The Pretrial Services Perspective

David Martin

WORKING IN A BORDER district, especially the district with the highest number of activations (bail investigations) in the country, provides some bragging rights. For example, someone from another pretrial services office might share how “busy” their office has been, having 100 bail investigations in the past month. My mental response runs: Only 100 investigations? We had that too—yesterday, in Tucson, and it was a slow day. Fortunately, my better judgment usually prevents me from making such a comment. This and the fear that they will retort by citing our overall detention rates, also the highest (by far) in the country, due to the high number of non-citizens prosecuted in this district.

I have had the honor of working in the federal pretrial services system since 1989. The first 14 years were spent in the Middle District of Florida, and now I have spent close to nine years in the District of Arizona. So, I have some perspective on the differences between Border and non-Border districts. I realize there are dedicated, highly skilled, and hard-working probation and pretrial services staff throughout the country dealing with the unique challenges posed in each of their districts. In the District of Arizona, I am particularly proud of our staff, who carry heavy workloads and yet perform pretrial services investigations and supervision work strongly grounded in pretrial services principles. This is evidenced by our release rates for U.S. citizens, which are well above the national average. Nevertheless, routine pretrial services activities common to most districts will not be the focus of this article. Instead, I will identify the specific challenges and business practices of managing the high volume of pretrial services investigations in the District of Arizona, and share some unique functions we perform to aid in the fair administration of justice.

In Part Two of this article, Magistrate Judge James Metcalf offers a judicial officer’s perspective on the use of pretrial services reports in the sentencing process, as well as an explanation of Operation Streamline (OSL), a Border Patrol initiative responsible for significantly increasing workload in our two Border offices: Tucson and Yuma.

Workload

Due to the emphasis on Border enforcement, pretrial activations (investigations) have increased 195 percent over the past three years, leaping from 7,424 in fiscal year 2008 to 21,879 in fiscal year

2011. In fiscal year 2011, pretrial activations in Arizona accounted for more than 19 percent of the nation’s investigations.

In fiscal year 2011, 91 percent of the investigations were abbreviated, “modified” reports on non-citizens. These reports contain the defendant’s basic identifying information, charges, immigration status, criminal history, assessments of nonappearance and danger, and a recommendation. The other 9 percent are full investigations that also include the defendant’s personal history, obtained from a defendant interview, and verifications made by collateral sources. The bulk of the charges, as you might imagine, involve immigration (81 percent) and drugs (15 percent).

Staffing levels have risen from 59 full-time equivalents (FTEs) as of September 2008 to 69 FTEs in September 2011. Many factors contributed to a less than dramatic increase in the number of employees, but the primary cause was a downward workload measurement formula adjustment on modified reports as well as financial plan reductions absorbed by our entire probation and pretrial services system.

Staffing levels are currently at 75 percent of full workload formula requirements, meaning staff are working tremendously hard to accomplish our mission.

Flip Flops

Throughout this article you will hear the term *flip flops*. In Arizona, this does not just refer to beach shoes; flip flops are a type of prosecution that appears to be unique to the District of Arizona. They are also referred to as “mixed complaints,” where a defendant is charged with a felony and misdemeanor. If the defendant rejects the plea offer, he is prosecuted for the felony. If the defendant pleads guilty to the misdemeanor, the felony is dismissed, and the magistrate judge sentences the defendant without a presentence report either at the initial appearance or some 5 days (Tucson) or 10 days (Yuma) later, during the detention/change of plea/sentencing hearing.

The types of flip flop charges generally seen in the District of Arizona are:

- **Immigration:** Illegal Reentry (8 U.S.C. § 1326)/Illegal Entry (8 U.S.C. § 1325)
- **Identity Theft:** Fraud and Misuse of Visas, Permits, and Other Documents (18 U.S.C. § 1546)/Fraud and Related Activity in Connection with Identification Documents (18 U.S.C. § 1028)
- **Marijuana:** Possession with Intent to Distribute (21 U.S.C. § 841)/Simple Possession (21 U.S.C. § 844)

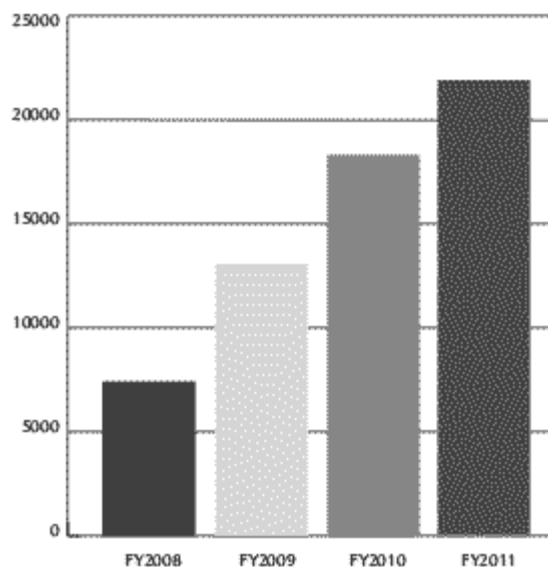
In the flip flop cases, the pretrial services officer prepares a modified report pursuant to the *Guide to Judiciary Policy’s (Guide)* national policy guidance on modified reports, and (more importantly) in accordance with his or her statutory responsibility in 18 U.S.C. § 3154(1)

to “collect, verify and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense...except that a district court may direct that information not be collected, verified, or reported under this paragraph on

TABLE 1.
Pretrial Services Investigations Completed

FY	INVESTIGATIONS COMPLETED
FY2008	7,424
FY2009	13,055
FY2010	18,292
FY2011	21,879

Table 2.
Pretrial Services Investigations



individuals charged with a Class A misdemeanor...”

Flow of Work:

Tucson:

In Tucson, Arizona, a typical workday begins with supervisors compiling “agent referral forms” provided by e-mail or fax from an assortment of federal law enforcement agencies. In addition, a large number of referrals appear on a list provided by the Border Patrol. Once these documents are reviewed, officers and officer assistants (who are anxiously wondering, “How many will it be today?”) receive their investigation assignments.

On a busy day, the officer assistants can expect 8 to 10 modified reports, while the officers may receive a few modified reports along with an interview case. Overall, the total number of investigations may reach 160, with about 10 of them being full investigations.

In the District of Arizona, pretrial services officer assistants are highly valued and well utilized, tackling the bulk of the modified reports. In addition, they manage a small low-risk supervision caseload, collect and test urine specimens, cover court hearings, conduct some full pretrial services investigations, and accompany officers in the field.

After getting a handle on the workload for the day, the duty supervisor makes investigation assignments. Officers are deployed to the Border Patrol Station to interview those defendants who are U.S. citizens or juveniles and have been arrested by Border Patrol agents. This requires a 15-minute road trip (30 minutes round trip) to the station—a time drain that is considered acceptable, as it offers the earliest access to interview the defendant. It also affords the officer more time to conduct a thorough investigation and prepare a written report for the initial appearance.

While this is occurring, officers are waiting for all other (non-Border Patrol) agents to transport their “status” defendants (those with a legal immigration status) to the courthouse for an interview. After the interview, written reports on the status defendants are generally provided to the magistrate judges for initial appearance so that a release decision can be made, if appropriate.

Due to the overwhelming number of newly arrested defendants and limited cell space, these status defendants are not interviewed in the Marshals Service interview rooms. The arresting agents must move these prisoners through the public corridors in belly chains and leg irons to the second-floor jury deliberation room where pretrial interviews are conducted. This unusual prisoner movement process was not always the norm. In 2004 the pretrial services office remodeled 720 square feet of office space to install 8 interview stations. When staffing levels increased, this office space was needed to house staff. The court then authorized pretrial services to use the jury deliberation room (645 square feet) to conduct defendant interviews. This room was remodeled to replicate the interview stations previously used. Although this prisoner movement process is not ideal for agents, defendants, or court personnel, it has proven to be effective.

The agents bring these status defendants in small groups around 11:30 a.m., which does not afford our officers much time to conduct interviews, verify information, explore release options, and prepare a written report for the initial appearances at 2:00 p.m. Straight felony non-status cases are also heard at this time.

Meanwhile, Border Patrol provides a list of Operation Streamline (OSL) cases, consisting of immigration flip flop charges. Officers and officer assistants hustle to complete these modified investigations so that defendants can be sentenced during the initial appearance at 1:30 p.m. If there is a juvenile, the hearing is held separately at 1:15 p.m.

At the conclusion of a busy day, a duty supervisor may have made 160 investigation assignments—almost a miraculous accomplishment!

Yuma:

In the Yuma office, the challenges are similar to those in Tucson. Staff work at a very fast pace almost every morning and into the afternoon, conducting criminal record investigations and writing bail reports to be submitted within a few hours. Magistrate judges almost always sentence defendants

charged with 18 U.S.C. § 1325 (illegal entry) or 18 U.S.C. § 1325/1326 (illegal entry/illegal re-entry after deportation) the same day they are brought to court. They rely on criminal history information provided by our officers to help determine different sentence lengths for each defendant. Due to the reliance on the accuracy of our criminal histories, our office also prepares criminal histories on those defendants charged with illegal entry, even though we receive no workload credit (funding) for this work. In fiscal year 2011, there were 5,311 investigations conducted on these petty offenses.

The normal court schedule is slightly different from the one in Tucson. New felony initial appearances are held at 1:30 p.m. and new misdemeanor Initial Appearances/Plea/Sentencing are held at 2:00 p.m. On Mondays, because of the additional arrests from the weekend, an additional group of 28 cases are brought in at 11:00 a.m. for Initial Appearance/Plea/Sentencing. (The Marshals Service can only safely manage 28 defendants in the courtroom at a time.) These are all one-count illegal entry (8 U.S.C. § 1325) defendants with little or no criminal history. For now, the great majority of straight misdemeanor and flip flop cases are sentenced the same day they are initially brought to court.

However, at times a defendant charged with illegal entry does not speak Spanish well and needs a special interpreter, usually for an indigenous language like Mixteco or Zapoteco. In these cases, the hearing will be rescheduled a couple of days later so the interpreter can assist telephonically. In addition, some flip flop cases involving citizens or Legal Permanent Residents (LPRs) charged with alien smuggling (8 U.S.C. § 1324) and aiding and abetting illegal entry (18 U.S.C. § 2) will also involve hearings held at a later date. On the other hand, flip flop cases charged with fraud or possession of false documents (18 U.S.C. § 1546 or § 1028) and illegal entry are treated the same as illegal reentry/legal entry flip flop cases.

Felony drug cases and other felonies are also brought in with felony illegal reentry cases for initial appearance and the detention hearing is usually continued until a few days later. Some of these cases stay in Yuma for further hearings, until sentencing, and some are transferred to a Phoenix judge. There are no Article III district judges in Yuma, so straight felony offenses are transferred to the Phoenix division for adjudication.

At the end of a busy day, the Yuma supervisor may have assigned 20 modified investigations, 40 petty offense investigations, and one or two U.S. citizen cases to three officer assistants and one officer. Even higher numbers have sometimes been seen during winter months when border crossings are encouraged by the mild desert weather.

Technology Aids in Flow of Work:

The Probation and Pretrial Services Automated Case Tracking System (PACTS) database has enabled our agency to share the workload throughout the district on the high number of modified reports generated in Tucson and Yuma. Although Yuma staff normally can manage their own workload, at times they will send some modified investigation assignments to Flagstaff. Flagstaff and Yuma staff also assist the Tucson office during the week, especially on busy Mondays, but the primary assistance to Tucson comes from Phoenix staff. On a busy Monday, the Tucson office may send 20 modified report assignments to Phoenix and up to 12 to Flagstaff and Yuma.

PACTS allows the officer or officer assistant to conduct the criminal records check and prepare a modified bail report so that it is accessible to any of the offices in the district. Before the ability to prepare the pretrial services report in PACTS, there were many faxes and paper files being sent to Tucson and Yuma. Now, the supervisor in the office where the modified report is prepared reviews and finalizes the report and then sends it to the duty e-mail box of the location where the hearing will take place, either Yuma or Tucson. The report also remains accessible in PACTS. The support staff prints these reports and scrambles to organize them for the duty officer assistant, who rushes to the initial appearance and distributes them.

This process allows border offices to share the “wealth” so the workload is more evenly distributed, eliminating any forced staff transfers to Tucson or Yuma.

Well-Oiled Machine

The heavy workload burden carried by the border courts is felt by all members of the court family. I find remarkable the camaraderie and team spirit demonstrated by all of the stakeholders. This includes the court staff, Clerk's Office, Probation Office, Public Defender's Office, U.S. Marshals Service and our agency, all performing our respective missions, but helping each other where and when we can. Out of necessity these offices have worked together to create a sleek, well-oiled machine, as streamlined and efficient as possible, continuously seeking further efficiency refinements, yet never losing focus on the fair administration of justice. Some ways that pretrial services in Arizona helps other members of the court family fulfill their responsibilities follow:

- *Send Referral List to Federal Public Defenders' Office:* Our office sends the daily referral list by e-mail to the duty assistant federal public defender (AFPD) by 11:00 a.m. so AFPDs and Criminal Justice Act appointed counsel can be assigned to represent defendants for the initial appearance. This ensures that during the initial appearance defendants have attorney representation who can advocate for release.
- *Send E-mail Message to Duty Magistrate Judge, Duty Assistant Federal Public Defender, and Duty Assistant U.S. Attorney:* The duty pretrial services supervisor provides a summary e-mail message of the defendants with legal immigration status and whether pretrial services is seeking detention or release. This prepares the court and attorneys to focus on those defendants whose release is being recommended.
- *Identify Defendants on Federal Supervision for "All in One Plea Agreements":* There is a section in the pretrial services report labeled "Federal Supervision." Information pertaining to the defendant's current federal probation or supervised release is contained in this section. It was created to identify those cases where an "All in One" plea agreement and "Related Case" issue would apply, as described below. In addition, the information in this section is sent by e-mail to the Clerk's Office, Public Defender's Office, and Probation Office.
- *Related Cases:* It is common for defendants who have been deported to Mexico to return to the United States. When a defendant who was previously deported and placed on probation or supervised release illegally reenters the United States, a violation report is filed with the court. A judge, or multiple judges, must adjudicate the new illegal reentry charge as well as the supervised release violation for the new offense. To prevent the involvement of two judges, pretrial services notifies the court of the "related case," which allows the Clerk's Office to assign both cases to one judicial officer. This also permits only one defense attorney to be appointed to handle both cases. This is a tremendous savings of judicial resources, and the court relies heavily on pretrial services to identify these cases at the initial stage of prosecution.

In the District of Arizona, a procedure entitled the "All in One" plea agreement has been developed to further address the "related cases" issue. In the "All in One" process, the defendant is permitted to plead guilty to the illegal reentry charge under the agreement to receive an enhanced sentence due to the supervised release violation. The period of supervised release or probation is then terminated. The pretrial services report is the best way of early identification of these types of cases. This is a huge time saver for the courts and a reduction of pretrial detention costs for the Marshals Service.

- *Upload Pretrial Services Reports into SECRIS for distribution to Attorneys:* Pretrial Services uploads certain pretrial services reports on flip flop cases into SECRIS—a secured court website that allows attorneys access to the reports prepared on their clients. This process is followed on flip flop cases in which detention/change of plea/sentencing is scheduled five days after the initial appearance. Attorneys value these reports because they help to ensure that defendants are sentenced appropriately based upon accurate criminal history.

You may be wondering why attorneys are permitted to retain pretrial services reports. In the District of Arizona, defense and prosecuting attorneys are permitted to retain pretrial services reports under local rule 57.1. This pertains to bail reports prepared on all defendants, not just those charged with flip flop offenses. This has been a longstanding practice authorized by our court in 2003. It is not consistent with the *Confidentiality Regulations* in the *Guide*, which require the pretrial services report to be returned to the pretrial services officer at the conclusion of the hearing. Nevertheless, this decision has proven to be beneficial to attorneys as they have more time to review the information in the report. There is also no longer a need for pretrial services officers to chase down

attorneys like they are shoplifters when they mistakenly scoop up the pretrial services report with their other case file documents and walk out of the courtroom.

Sentencing

As you will learn from Magistrate Judge Metcalf's section of this article below, the quality of the pretrial services report is especially important in appropriately sentencing defendants charged in flip flop cases in the Yuma office. In the Tucson division, the judicial officers rely upon the recommended sentence in the plea agreement and rarely review the pretrial services reports on flip flop cases. However, defense attorneys and prosecutors use them for quality control to ensure the accuracy of the criminal history records provided by the agents used to determine the recommended sentence in the plea agreement. When there are inaccuracies, the attorneys work to resolve the matter to ensure that the defendant is appropriately charged and sentenced. This process preserves the fair administration of justice while conserving judicial resources, by avoiding a more time-consuming and costly presentence report.

The next section of this article provides a judicial officer's perspective on the value of modified pretrial services reports in the sentencing process.

PART TWO: A Judicial Perspective on Sentencing

*Honorable James F. Metcalf
United States Magistrate Judge,
District of Arizona, Yuma Division*

The use of pretrial reports in sentencing has taken on a critical and somewhat unique application in sentencing for the tidal wave of petty offense cases arising out of illegal border crossings. In Yuma, Arizona, home of one of the busiest border courts in the country, the prosecuting agencies and the United States Attorney's Office have increased their filings in these cases dramatically over the last few years.

Operation Streamline

In December 2005, the then head of the Department of Homeland Security, Secretary Michael Chertoff, announced that U.S. Customs and Border Protection's Del Rio Border Patrol Sector would lead a multi-agency law enforcement initiative called Operation Streamline II that would target those who enter the United States in violation of law. The stated purpose of Operation Streamline was to focus on aliens who enter illegally and to prosecute all illegal aliens not released for humanitarian reasons. Additionally, each illegal alien undergoing criminal proceedings would also be processed for removal from the United States. The concept of the operation, as stated by the Department of Homeland Security, was to provide a comprehensive plan that would secure the border and reduce illegal immigration and that could be expanded or modified as operationally needed.

By 2008 Operation Streamline had been expanded to include all of the Yuma, Laredo, and Tucson sectors, and the Department of Homeland Security was reporting that 723,825 illegal aliens had been arrested in fiscal year 2008 and that more than 74,000 illegal aliens had been prosecuted under Operation Streamline.

As the sole court in the Yuma Sector, the United States District Court in Yuma, Arizona, receives a high volume of filings resulting from Operation Streamline. Table 3 demonstrates both the overall numbers and the recent increases at the Yuma court.

Court statistics indicate that the Yuma magistrate court processed 774 petty offense dispositions in March 2012, with 1,977 for the year to date. Those cases are currently processed with a single U.S. magistrate judge on duty in Yuma.

Procedures

The primary prosecuting agency for illegal border crossings is U.S. Customs and Border Protection, and the vast majority of cases are generated through apprehensions made by the United States Border Patrol. This is true in the Yuma Border Patrol Sector, which consists of an area along the Colorado River which is part of the international border with Mexico, continuing south and east

through an area of the border dividing the town of San Luis, Arizona from San Luis Rio Colorado, Sonora, Mexico; and then transitioning further east into an extremely rugged and remote desert region.

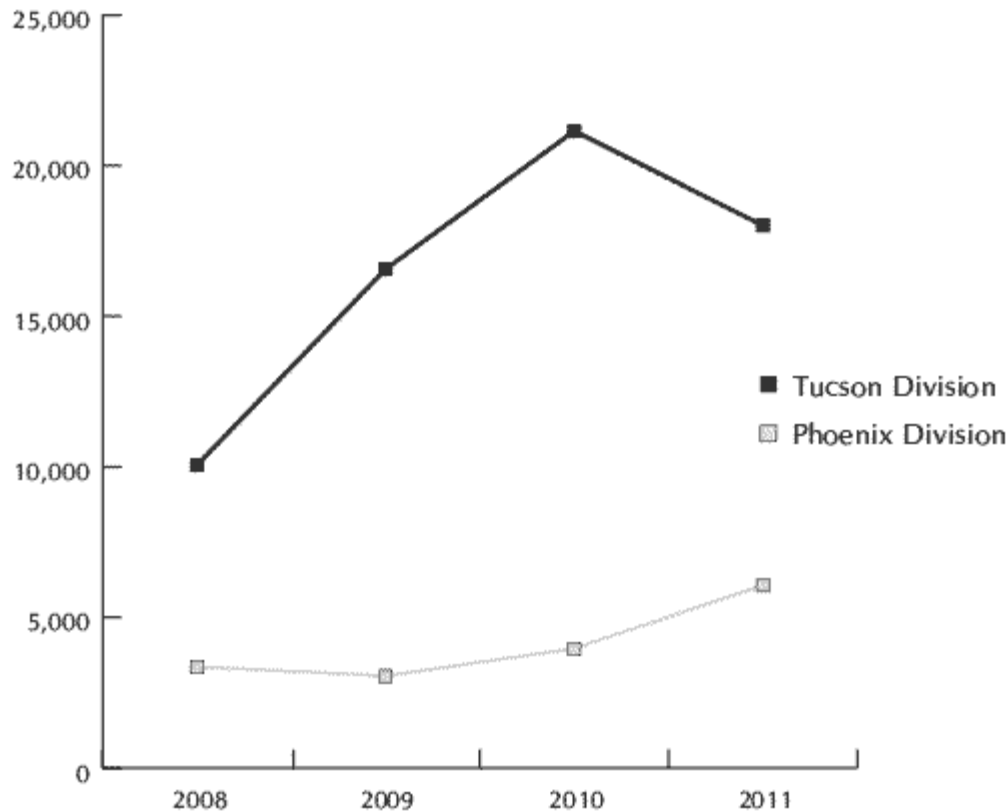
Individuals apprehended by agents of the United States Border Patrol in the Yuma area are initially screened at the Border Patrol station nearest to the area of apprehension. At the station, prosecution agents screen the apprehended individuals and prepare the initial complaints under various guidelines and with the cooperation with the United States Attorney's Office. Typically, the prosecutions department of the Yuma Border Patrol Sector will email the day's complaints to chambers and the Assistant U.S. Attorney's Office.

Table 3
Petty Disposition Information

Petty Disposition Information FY 2008 through FY 2011					
	2008	2009	2010	2011	Percent Increase '10 to '11
Phoenix Division Total	3,356	3,052	3,958	6,065	53%
Phoenix	75	45	65	27	-58%
Flagstaff	227	221	232	190	-18%
Yuma	3,054	2,786	3,661	5,848	60%
Tucson Division Total	10,059	16,565	21,149	18,015	-15%
District Total	13,415	19,617	25,107	24,080	-4%

Defendants found to be eligible for felony prosecution are typically charged under 8 U.S.C. § 1326, reentry after removal. Other, lower-level defendants who are eligible for felony prosecution are charged under a mixed complaint alleging 8 U.S.C. § 1326 and 8 U.S.C. § 1325. The vast majority of defendants are charged under 8 U.S.C. § 1325, the petty offense involving illegal entry to the United States. Defendants charged with both the mixed complaints and the single count 8 U.S.C. § 1325 complaints are processed under the Streamline program.

FIGURE 1.
Petty Dispositions FY08-FY11



The assistant U.S. attorney will review and approve the complaints. After all complaints have been approved, an assigned Border Patrol agent will upload the complaints to the Operation Streamline program developed jointly between the Border Patrol and the U.S. Courts. The complaints include an attached statement of facts that will list any prior criminal immigration history obtained by the Border Patrol at the time of the screening process. The agent will advise chambers that complaints have been successfully uploaded. Next, the case agents will report to the judge's chambers at an appointed time to swear-in the complaints.

The Yuma Pretrial Services Officers then conduct an abbreviated investigation consisting primarily of criminal history research of court databases. No interview is conducted by Pretrial Services. The officers prepare "Reports" in cases of defendants charged with mixed complaints involving both felony and misdemeanor charges and "Memoranda" for the defendants charged with the single petty offense. Defendants are interviewed by defense counsel in the morning before appearing in court.

Single Petty Offense Cases - Defendants charged with the single petty offense counts are typically initialed, have counsel appointed, plead guilty, and are sentenced on the same day. Sentencing of the defendants who plead guilty to the single petty offense is left completely to the discretion of the judge and sentences range from time served to six months imprisonment. In those cases, the pretrial reports and memoranda are of particular importance to the parties and the court, because the input from the pretrial services officer will likely form the basis for the presentations by the parties as well as for the court's determination of the appropriate sentence.

Flip Flop Cases - Defendants charged with mixed felony/misdemeanor charges are initialed, have counsel appointed, and typically submit to a determination on the record on the issue of detention due to their lack of legal immigration status and lack of ties to the United States. These defendants will generally waive a preliminary hearing at the initial appearance and return to court within 10 days for either a change of plea or status hearing regarding further proceedings.

In flip flop cases, the government will make a written plea offer that will include dismissal of the felony count in exchange for a guilty plea to the petty offense, along with a stipulated term of imprisonment, depending upon the defendant's criminal and immigration history.

The reports and memoranda prepared by the pretrial services officers are relied upon by the court, defense counsel, and the government at the time of sentencing, and are also relied upon by the court in determining whether or not to accept the plea agreements from flip flop defendants.

At the time of sentencing, defendants presented to the Yuma court under Operation Streamline waive a presentence report. These defendants are not interviewed by pretrial services, and they agree to proceed with the court relying on the pretrial report, waiving any confidentiality attached to the use of pretrial reports at sentencing. The obvious incentive for these waivers is the fact that the vast majority of defendants receive a greatly reduced sentence and likely one that is less than the time they would remain in custody awaiting preparation of a presentence report.

Requirement for Presentence Investigations: The avoidance of a presentence investigation is generally disfavored. Federal Rule of Criminal Procedure 32(c)(1)(A) requires that a presentence investigation and report be completed before sentencing unless:

- (i) 18 U.S.C. § 3593(c) or another statute requires otherwise; or
- (ii) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its finding on the record.

Similarly, 18 U.S.C. § 3552(a) references the mandate to probation officers to provide presentence reports as "required pursuant to the provision of Rule 32(c) of the Federal Rules of Criminal Procedure."

Thus, the general rule is that a presentence report is required. The Advisory Committee Notes to the 1966 Amendments observed:

The requirement of reasons on the record for not having a presentence report is intended to make clear that such a report ought to be routinely required except in cases where there is a reason for not doing so. The presentence report is of great value for correctional purposes and will serve as a valuable aid in reviewing sentences to the extent that sentence review may be authorized by future rule change.

There is an exception to this general rule provided in Federal Rule of Criminal Procedure 58(c) for a "petty offense for which no sentence of imprisonment will be imposed," in which case the court is directed to "give the defendant an opportunity to be heard in mitigation and then proceed immediately to sentencing." Fed.R.Crim.P. 58(c)(3). "The court may, however, postpone sentencing to allow the probation service to investigate or to permit either party to submit additional information." *Id.* It is rare, however, for illegal entry cases to not result in a prison sentence.

The history of presentence reports reflects an increasing pressure for their usage. Prior to the adoption of the Federal Criminal Rules, presentence reports were made only upon request of the court. Then, Rule 32 was adopted to encourage the use of presentence investigations and reports. The 1975 Amendments modified the rule to "make[] it more difficult to dispense with a presentence report" and authorized the court to do so only in cases of waiver or a finding that it was not necessary. 18 U.S.C. § 3552, Advisory Committee Notes to 1975 Amendments. See Pub. L. 94-64, § 2 (1975).

Then, in the Sentencing Reform Act of 1984, the rule was again modified to remove the authorization to dispense with the report in cases of waiver. See Pub. L. 98-473, § 215(a)(4) (1984). The Policy Statement of the Sentencing Guidelines explicitly declares that "[t]he defendant may not waive preparation of the presentence report." U.S.S.G. § 6A1.1(b). *But see* U.S.S.G. § 1B1.9 ("The sentencing guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction.").

In recognition of these policies, the Ninth Circuit has held that a defendant may not waive the preparation of a presentence report in violation of the rule and the Guidelines. “Because of the importance Congress and the Sentencing Commission have attached to the preparation of presentence reports, we hold that strict compliance with § 6A1.1 and Rule 32(c)(1) is required.” *U.S. v. Turner*, 905 F.2d 300, 301 (9th Cir. 1990).

Thus, in its present form, Rule 32 provides for only two exceptions. The first exception in Rule 32(c) concerns sentencing under 18 U.S.C. § 3593(c), which governs death penalty cases. However, the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (1994), added 18 U.S.C. § 3593, which eliminated the requirement for presentence reports in death penalty cases. The second exception in Rule 32(c) applies where the court makes an explicit finding on the record that the case record already contains sufficient information to enable the court to “meaningfully exercise” its sentencing authority.

The rule mandates that the court “explains its finding on the record.” Fed.R.Civ. Proc. 32(c)(1)(A)(ii). A conclusory finding does not suffice. In *U.S. v. Turner*, the Ninth Circuit found the district court’s finding inadequate where it simply “indicated that it did not need a presentence report because Turner had been in confinement since the preparation of the previous report in 1983.” 905 F.2d at 302. The court contrasted those findings with those approved of in *U.S. v. Whitworth*, 856 F.2d 1268 (9th Cir 1988), where:

the district court made extensive findings regarding the value of a presentence report under the facts of that case, concluding:

It appears to the court that there is literally nothing a presentence investigation could turn up which has not already been well documented, nothing a presentence report could relate which is not presently known. The facts of Mr. Whitworth’s life are, at this juncture, almost common knowledge.

Turner, 905 F.2d at 301-302 (quoting *Whitworth*, 856 F.2d at 1288).

Thus, despite any purported waiver, the court must still make a finding that there is sufficient information available to meaningfully exercise sentencing authority without a presentence report, including specific reasons that form the basis for the finding. In the Operation Streamline cases, those factors often include circumstances such as the defendant’s lack of status in the United States, the likelihood that the defendant would serve more time awaiting a presentence report than if he or she proceeded directly to sentencing, and the unlikelihood that any further investigation would produce any additional information that would be dispositive as to the sentence.

In reliance upon these factors, in the normal flip flop case, the Yuma court will rely on Rule 32(c) and dispense with the preparation of a presentence report.

Consideration of Pretrial Reports at Sentencing: That does not mean the Yuma court proceeds to sentencing unaided. In place of a Presentence Investigation Report, the border court will rely upon the information provided in the Pretrial Report.

The authority for such reliance is clear. Broad discretion is granted to the district court in the types of information it can consider in imposing sentence.

No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

18 U.S.C. § 3661.

In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information concerning the background, character and conduct of the defendant,

unless otherwise prohibited by law.

U.S.S.G. § 1B1.4. Thus, barring other limitations, reliance upon the pretrial services report is within the discretion of the court.

Importance of the Pretrial Reports to Addressing Operation Streamline: In light of the foregoing, the single most important resource for the parties and the court at sentencing is the pretrial report, which reflects either the existence or lack of any prior criminal or immigration history. Moreover, the pretrial report is the most important resource available for the court's determination of whether or not to accept a plea agreement from flip flop defendants charged with mixed complaints and allowed to plead guilty to a petty offense. Indeed, from the perspective of a sentencing judge in petty offense cases, the importance of the pretrial reports to the overall process cannot be overemphasized.

The pretrial services officers are well aware of the importance placed upon their work product in these cases and make great efforts to provide thorough and accurate information in a timely manner under difficult circumstances involving a high volume of cases. The information they obtain through their investigations can form the basis for differences in sentences from time served to several months imprisonment.

Summary and Conclusion

David Martin

The District of Arizona has experienced rapid growth, tripling pretrial services case activations over the past four years due to the emphasis on Border enforcement. Our pretrial services office has developed many business practices to assist members of the court family in absorbing this heavy workload. The value of the pretrial services reports goes beyond just release purposes. Judge Metcalf clearly expresses a judicial officer's perspective on the sentencing value of these reports. The reader may believe we have blurred or even crossed lines in how pretrial services reports are distributed and used to accommodate the heavy workload demands. Without question, though, the dedicated staff of the District of Arizona remain firmly focused on the fair administration of justice and serving the court to the highest level possible.

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The Evolution of Community Supervision Practice: The Transformation from Case Manager to Change Agent

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THE WORK OF community supervision continues to evolve and change, placing greater demands on Supervision Officers' knowledge, skills, and abilities. With the introduction of risk and need assessments into routine practice, Community Supervision Officers are now required to administer and score these instruments. Not only must Community Supervision Officers communicate this risk/need information to other criminal justice professionals, but they are asked to utilize this information for classification purposes and to interpret the information to develop case-management plans. Officers are also asked to make efforts to maximize offender compliance, plan and manage the client's rehabilitative services, and are often expected to facilitate positive prosocial changes in the clients that they work with.

With these increasing demands, community corrections agencies and their staff have paid more attention to the research on what works to reduce reoffending and, in doing so, struggle with the process of bringing empirically supported practices into the everyday work of community supervision (Taxman, 2008; Taxman, Henderson & Lerch, 2010). In this article, we briefly review what works in offender rehabilitation and what is known about community supervision. This is followed by some reflections on what we see as an evolution of the work of community supervision officers; that is, the evolution from "case manager" to what we term "change agent." This "change agent" role asks the officer to play a more substantive and direct role in facilitating client change in, dare we say, a "therapeutic" manner. Finally, we describe what we believe to be two key interrelated challenges that we consider to be critical in this transformation to evidence-based "change agent." They are: understanding the fundamentals of cognitive-behavioral interventions and clinically translating risk/need assessment into an intervention plan.

"What Works" and Community Supervision

Over the past 30 years, the research initiated by Andrews and his colleagues in Canada on offender treatment has shown that rehabilitative efforts can reduce reoffending (Andrews & Bonta, 2010; Hanson et al., 2009; Lipsey, 2009; Lösel & Schmucker, 2005). This "what works" body of evidence has demonstrated that rehabilitative efforts are not all equal: interventions can maximize their effectiveness via adherence to the principles of effective intervention known as the risk-need-responsivity (RNR) model of correctional treatment (Andrews & Bonta, 2010). There are currently 17 principles represented in the model; however, three of these principles have been at the core since 1990 (Andrews et al., 1990). They are the risk principle (match the level of service to the offender's level of risk; provide intensive services to higher-risk clients and minimal services to lower-risk clients), the need principle (target criminogenic needs or the dynamic

risk factors functionally related to criminal behavior such as procriminal attitudes and substance abuse), and the responsivity principle (match the style and mode of intervention to the abilities, motivation, and learning style of the offender; cognitive-behavioral interventions are generally the most effective with offenders).

In their most recent review (Andrews & Bonta, 2010), it has been shown that adherence to these three principles mediates the effectiveness of rehabilitative efforts with a step-wise reduction in recidivism and increases in adherence. Specifically, non-adherence to the three principles was actually associated with a small (2 percent) increase in recidivism ($r = -0.02$, $k = 124$). When treatment adhered to at least one of the principles, there was a small (3 percent) decrease in recidivism ($r = 0.03$, $k = 106$). Larger decreases were observed with increased adherence to the RNR principles: adherence to two principles demonstrated a 17 percent difference ($r = 0.17$, $k = 84$) and adherence to three principles ($r = 0.25$, $k = 60$) showed a 25 percent difference.

Although most of this evidence has been gleaned from studies examining formal treatment programs that are typically group-based, it is reasonable to expect that these principles are also relevant in the case of one-on-one supervision of offenders in the community. It is believed that community supervision has positive benefits by minimizing the criminogenic effects of imprisonment and facilitating the community integration of offenders (Abadinsky, 2009; Gibbons & Rosecrance, 2005). However, evidence on the effectiveness of community supervision questions its association with reduced offender recidivism. In a review of 15 studies that compared some form of community supervision with an alternative criminal sanction (e.g., prison sentence, fine), Bonta et al. (2008) found that recidivism was only two percentage points lower on average for offenders under community supervision. There was no decrease in violent recidivism associated with community supervision. Such findings, which contrast with the more positive results found in reviews of the offender rehabilitation literature, prompt the question of why this is so.

The answer to this question is only recently emerging, as researchers begin to pay more attention to what exactly goes on behind closed doors during supervision. Bonta et al. (2008) examined case files and audio-recorded supervision sessions of 62 probation officers with 154 clients in Canada. What they found was that adherence to the principles of risk, need, and responsivity was lacking. For example, the frequency of contact between officers and their clients was only mildly related to the offender's risk level (risk principle) and officers rarely intervened directly to facilitate change in important criminogenic needs such as procriminal attitudes and friends (need principle). Furthermore, officers exhibited cognitive-behavioral techniques of interpersonal influence in less than one-quarter of the audiotapes (responsivity principle). The findings strongly suggested that what goes on between the officer and client during supervision should more closely adhere to the RNR principles.

Research on applying the RNR principles to one-on-one supervision is almost nonexistent. This is somewhat surprising given that there is rich literature on the "core correctional practices" derived from the RNR principles (Andrews & Bonta, 2010; Dowden & Andrews, 2004). Researchers have only recently begun to pay more attention to the training of community supervision staff in how they interact with their clients during supervision. In 1996, Trotter developed a training program that followed some of the elements of the responsivity principle.

In this study, 30 probation officers were provided with five days of training on prosocial modeling, empathy, and problem-solving. After the initial training, 12 officers attended ongoing training sessions and applied the skills during supervision. The recidivism rate of 93 clients of the trained officers who continued their involvement in the ongoing training and applied these new skills was compared to 273 clients of officers who reverted to their routine supervision practices. The four-year reconviction rate was 53.8 percent for the clients of the officers who continued to apply the skills taught in training as evidenced by file reviews. The rate for the clients of the officers who engaged in routine supervision practices was 64 percent.

More recently, Canadian psychologists (Bourgon et al., 2010a, 2010b; Bonta et al., 2010) developed the Strategic Training Initiative in Community Supervision (STICS). This training program included three days of training and ongoing clinical support activities (i.e., refresher courses, individual feedback, and monthly meetings) with specific, practical, and concrete RNR-based intervention techniques and skills. After randomly assigning officers to training or no training, the results showed that STICS-trained officers significantly improved their behind-closed-door interactions (employed RNR-based skills and intervention techniques) with clients as measured by audio-recorded one-on-one supervision sessions. When client

recidivism was examined, it was found that clients supervised by STICS-trained officers had a two-year recidivism rate of 25.3 percent compared to 40.5 percent for clients supervised by the officers assigned to the control group (Bonta et al., 2010). This project has stimulated others to develop similar training programs, for example Staff Training Aimed at Reducing Re-arrest (STARR) from Lowenkamp and colleagues at the United States Office of Probation and Pretrial Services, and Effective Practices in Community Supervision (EPICS) from the Corrections Institute of the University of Cincinnati. The promising results of these efforts are only beginning to emerge (Robinson et al., 2011).

The Evolving Work of Community Supervision Officers

As our knowledge about the importance of what happens behind closed doors increases, we see a need to re-examine and re-focus the work of community supervision. Traditionally, community supervision has been dominated by a case-management approach to working with clients. In this approach, officers are expected to “manage” their clients and the services they receive. At a minimum, the community supervision case manager ensures that the client is complying with the sentence handed down by the court and documents the client’s behavior in this regard. With the introduction of risk/need assessments into community corrections, additional tasks are demanded. The community supervision officer must conduct risk/need assessments and share the results with a variety of criminal justice partners (e.g., courts). In addition, the officer may be responsible for more complex rehabilitative case planning that goes beyond simple compliance with the conditions of the sentence.

Case planning and the associated activities of the case manager vary considerably across jurisdictions. For jurisdictions with a strong emphasis on public protection, the case manager is primarily concerned with how the offender will fulfill the obligations of the sentence (e.g., completing community service, urine testing), monitoring the client’s compliance, and conducting surveillance of the client. For those jurisdictions with more emphasis on offender rehabilitation, the case manager identifies the client’s criminogenic needs and makes efforts to connect the client with appropriate services to meet these needs. The case manager typically acts as a broker and/or advocate for the offender to utilize community-based social services such as welfare programs, employment, housing and health (e.g., addictions, mental health, and medical) services. During face-to-face supervision, the case manager may engage in problem-solving with the client to resolve various barriers and/or obstacles the client faces in obtaining such services. Motivational interviewing techniques are also common. In terms of the work behind closed doors, the case manager primarily assists, motivates, directs, guides, and supports the client to receive appropriate services. With a case-management approach, the actual “change-work”—that is, the work of facilitating prosocial change—is considered to be the domain of the professionals who are actually providing the rehabilitation, treatment, and/or social services as opposed to the case manager.

On one hand, the case-management model can appear to line up quite nicely to the principles of risk and need. In terms of the risk principle, higher-risk clients (when identified via a valid risk/need instrument) can be provided with more services through more frequent contacts and more frequent referrals and connections to treatment and social services. Basic administrative policies, such as those requiring more contact with higher-risk clients, can be developed that attempt to enhance adherence to the risk principle. The case-management model can appear to adhere to the need principle if and when officers identify specific criminogenic needs and efforts are made to refer, connect, and assist the client in obtaining services that target those criminogenic needs. Finally, a well-laid-out case-management approach appears to adhere to a number of other more recently added principles (see Andrews & Bonta, 2010 for a full list of principles) such as the use of structured assessments and other organizational/administrative factors when the agency pays attention to such details as staff training, supervision policies, and organizational practices.

On the other hand, the case-management approach does lack specific attention to the responsivity principle. This principle is almost exclusively focused on the intervention itself regarding what goes on behind closed doors. Responsivity adherence requires the use of cognitive-behavioral interventions and structuring skills during interactions with the clients (Andrews & Bonta, 2010). In a case-management approach, what exactly is the “intervention”? In our opinion, the use of cognitive-behavioral interventions does not seem critical to case-management functions where the focus is on brokerage, advocacy, support, assistance, and social problem-solving. The therapeutic intervention or “change work” is the responsibility of the professionals providing the treatment and/or social services and the case manager is not *directly* responsible for facilitating change. In fact, analysis of audio-recorded supervision sessions by Bonta and colleagues (Bonta et al., 2008, 2010; Bourgon et al., 2010a) suggests that community supervision officers generally do not take

on an active or direct role in “change-work” with clients unless they are specifically trained to do so.

The recent work of STICS (Bonta et al., 2010; Bourgon & Gutierrez, in press; Bourgon et al., 2010a) and other similar new training initiatives (Robinson et al., 2011) suggest that community supervision officers take on a more active and direct role in the change process to be more effective. A closer look at these training programs illustrates how community supervision officers are being encouraged to take on the “change agent” role. At the heart of these training courses are fundamental therapeutic concepts, cognitive-behavioral intervention techniques, and structuring skills. Officers are taught to take on a “change agent” role where the dominant task is to engage actively in the therapeutic change process with the client while traditional case-management work is viewed as supplementary. This is a new demand on community supervision officers, challenging them to work with clients in a therapeutic manner and to employ skills and techniques that are firmly rooted in RNR principles so that they can directly facilitate personal, attitudinal, and behavioral change.

What’s Critical for the “Change Agent” Community Supervision Officer?

In our work with criminal justice professionals, we have noticed that this shift from a case-management to “change agent” approach is significant and challenging. One of the major challenges that we have observed concerns officers’ understanding of cognitive behaviorism and the practical implications of this model to “change work” that goes on behind closed doors. Another significant practical challenge for the “change agent” community supervision officer is translating traditional risk/need assessment information into a strategic therapeutic intervention plan. This intervention plan is not simply a case-management plan, but rather one that guides the day-to-day direct “change-work” the officer engages in with the client. Once the officer has this road map for change, the “change agent” can focus on initiating and facilitating attitudinal and behavioral change via cognitive-behavioral therapeutic processes. Provided these two challenges are addressed, along with learning concrete interventions and interpersonal skills and techniques, the evolution of community supervision officers from case manager to “change agent” can begin.

For the remainder of this article, we elaborate on these two challenges. First, we discuss cognitive behaviorism at the very practical level in terms of what goes on behind closed doors. We offer the reader what we consider to be the four fundamental steps or change tasks to facilitating change using a cognitive-behavioral model, with an emphasis on community supervision officers working with criminal justice clients.

Next, we discuss the difficulties community supervision officers often have regarding translating risk/need assessment results into a practical and useful change plan that takes account of all the pressures and realities of working with clients who are under supervision in the community. We present the STICS Action Plan to provide a concrete and practical framework to assist officers in understanding and interpreting risk/need assessments in order to develop a strategic therapeutic plan of change to work directly with the client.

Cognitive-Behavioral Interventions

There is substantial empirical evidence regarding the importance of utilizing cognitive-behavioral interventions with criminal justice clients (e.g., Bourgon & Gutierrez, in press; Cullen & Gendreau, 1989; Gendreau & Andrews, 1990; Lipsey et al., 2001; Landenberger & Lipsey, 2005; Lösel & Schmucker, 2005; Wilson et al., 2005). Often these programs use terms such as “triggers,” “thinking errors,” and “negative thoughts” and employ cognitive restructuring techniques such as “reframing” and “positive self-talk.” Today, it seems that just about every program and service purports to be cognitive behavioral. But what does cognitive behavioral really mean?

The simple answer is that in addition to the recognition of the fundamental principles of learning (e.g., reinforcement and punishment), cognitive-behavioral approaches recognize the role that cognitions or thoughts play in determining behavior. However, the answer to what constitutes effective cognitive-behavioral interventions in practice and behind closed doors is more complex. A few years ago, a discussion took place between the first author and his long-time colleague, Barb Armstrong. At that time, it was agreed that four practical steps or tasks are required to conduct cognitive-behavioral interventions effectively. They are: (1) identifying with the client the link between thoughts and behavior, (2) helping the client identify personal thinking patterns that cause that client’s problem behaviors, (3) teaching the client concrete thinking and behavioral skills, and (4) facilitating the client’s practice of and generalization of these new skills. On the basis of these four steps/tasks, we quickly recognized that there is considerable variation in

how effectively, if at all, each is accomplished via the multitude of programs and services that claim to be cognitive behavioral. For officers interested in acting as change agents, we believe that it is critical to understand each of these four steps/tasks and how they can promote or hinder effective change.

We would argue that the most critical step or clinical task, and the most difficult, is illustrating to the client the direct link between thoughts and behavior. To do this effectively, this causal link must be clear, explicit, and direct. In STICS, officers are taught how to show clients, in a concrete and practical manner, that *the reason they behave as they do is a direct result of their thoughts alone and for no other reason*. The “for no other reason” is crucial. In our experience, when a client is presented with a model of behavior that suggests, either explicitly or implicitly, that the cause for behavior is the result of external stimuli (i.e., things outside of the individual), it reinforces his/her problematic and procriminal thinking patterns. We do not believe that the model presented to clients should legitimize their excuses, justifications, and neutralizations for behavior.

With this in mind, the model avoids limiting the amount of personal responsibility clients can take for their thoughts, feelings, and behaviors; in other words, for the choices that they make. For example, many cognitive-behavioral interventions and models suggest that the external stimuli are “triggers” for certain thoughts and/or emotions. Clients are taught that it is their responsibility to manage the resulting events of these “triggers.” This “external event caused the internal event caused the behavior” outlook is exactly the kind of thinking we are attempting to change. Believing that circumstance is the reason and thus the justification for the behavior, and blaming outside forces for behavior, thoughts, and feelings leads to clients believing that they cannot control what they think, feel, and do (i.e., they are a victim), when in reality the opposite is true.

In our opinion, the direct causal link of thought to behavior is the crux of the matter. Either I am responsible for all of what I think, feel, and do or I am not responsible. If I am not responsible, then I have excuses. If I am responsible, then I recognize that I have choices and I cannot blame others, circumstances, or anything else but myself for my problems and for my successes. Practically, this must occur before the “change agent” can actually conduct any “change-work.” Once clients understand the direct causal link between their thoughts and their behavior (that the only reason for behavior is the thoughts) then they are in a position to begin to evaluate the costs and benefits of their behavior and of their thinking. In terms of change, the table is set for the client in the sense that the client is ready to accept that in order to change behavior, he/she must change his/her thoughts first. Once clients are at this stage, they are in a position to examine what it is they think and to examine the behavior that this thinking promotes.

The second step/task is helping the client to identify personal thinking patterns that cause that client’s problem behaviors. In the case of criminal justice clients, problem behaviors are those empirically related to crime, essentially the criminogenic needs. As the first step/task establishes to the client (and the officer for that matter) that all behaviors are the result of the client’s thoughts (over which they have choices and can exert control), the client is ready for the next step. However, identifying what thoughts, beliefs, and attitudes contribute to procriminal behaviors (in STICS, these thoughts are called Tapes) is not an easy skill, particularly with criminal justice clients who are characterized as impulsive, with poor self-reflection and self-awareness. But it is a skill nonetheless and, like all skills, it can be taught.

To accomplish these two tasks (i.e., the thought–behavior link and identifying personal thinking patterns and behaviors), the “change agent” provides structured activities for clients to learn and to practice self-awareness skills. This is done to identify specific thoughts and also to evaluate their contribution to specific behaviors. In addition, the “change agent” assists the client in recognizing and identifying the consequences of these behaviors. It is through concrete and practical examples that the client learns these skills and begins to recognize the complexity of thoughts, behaviors, and consequences. For example, it is easier for the client to understand that the thought, “Taking cocaine will make me feel better” results in the choice to buy and use cocaine and that there are many short-term (e.g., getting high, having fun with peers) and long-term (e.g., jail, nose bleeds, paranoia) consequences. However, it is harder to see the link between the thought “It’s my way or the highway” and the choice of using drugs and the consequences. The “change agent” accomplishes this task through exercises and interventions that specifically increase the client’s awareness of his/her own personal thinking patterns and abilities of observation of both internal and external events. The client is then in a position to evaluate whether or not the thinking and behaviors are “worth it” and at the same time recognize that he/she is completely responsible for the choices made, including the choice to

change.

It is at this point that the client is ready for the third task: learning cognitive *and* behavioral skills on how to think differently and thus how to act differently. The skills target both thinking and behavior. Given the importance of thinking, the first skill focuses on learning how to change thinking. Often referred to as cognitive restructuring, STICS calls this “Countering.” This skill should be clearly and directly linked to the change from procriminal to prosocial thoughts and behaviors. In addition to learning the skill of Countering, and particularly for moderate- and higher-risk criminal justice clients, the “change agent” must also teach the client a variety of prosocial behavioral skills (e.g., résumé writing, basic communication skills, negotiation/conflict resolution, and problem-solving). In accordance with the responsivity principle and in order to be practical and effective, all the skills outlined above should be concrete, simple, and presented to criminal justice clients in ways that are easy to learn.

The last task in effective cognitive-behavioral interventions is providing ample opportunities for clients to practice and generalize the new skills they are learning. Practice is a foundation for learning as it requires emitting behavior, receiving feedback about the behavior, and using that feedback to facilitate change and reinforce new patterns of thinking and behaving. Criminal justice clients need to use the new skills they are being taught within supervision sessions (e.g., doing role plays) as well as outside of supervision (e.g., trying communication skills with their partner) so that the process of learning and generalization may take place. The task for the “change agent” is to provide opportunities to use the skills, provide feedback, and encourage and reinforce the use of these new skills.

In summary, these are the four clinical tasks that the community supervision officer needs to do if he/she is going to play a direct and active role in facilitating change. These four tasks are the fundamentals of what we believe to be truly cognitive-behavioral intervention, a foundation of the responsivity principle of effective correctional interventions. Of course, how to actually accomplish these tasks behind closed doors is challenging, and that is most of what is taught in our STICS training: learning the skills and tools necessary to intervene in a concrete, direct, practical, and personally relevant manner for the client.

From Assessment to Change Plan

Prior to embarking with a client on this process, it is beneficial for the “change agent” to have a general strategic plan for change for each individual client. The assessment of the client’s risk and need factors can aid the officer in developing this action plan for prosocial change. Traditionally, risk/need assessment information has primarily been used to guide a series of criminal justice decisions rather than clinical intervention strategies per se. For example, risk/need assessments are used for sentencing decisions and institutional classification. In terms of interventions, risk/need assessment information may be used to identify client needs in order to match them to appropriate services. In community corrections, the risk/need assessments are often central in determining levels of supervision (e.g., type and frequency of client contact with the officer) and guide either the courts in mandating, or the officer encouraging, client participation in specific treatment services (e.g., substance abuse treatment for addicts).

Traditionally for the case manager, the role is one of identifying the specific set of criminogenic needs and to start the referral-admission process. Making the effort to connect the client to the program(s) and supporting and encouraging (i.e., enhancing motivation) this connection is primary. It matters little which program the client gets first, second, or third as most programs and services are designed to address discrete problems or needs (i.e., male domestic violent offenders, employment programs, substance abuse programs that sometimes target very specific drugs of choice such as cocaine, heroin, or methamphetamines). In this fashion, the case manager monitors and documents what needs were addressed.

The “change agent” approach, however, asks the officer to understand the risk/need assessments from a slightly different, and perhaps more complex, viewpoint. Here the question is not just about what the client’s needs are and what services can best meet these needs, but also where to start and how to intervene with a particular client. One difficulty is that the moderate- and high-risk clients present with multiple needs and these needs are interrelated. So how does the “change agent” discriminate which of the multiple needs is primary? To be strategic in facilitating change, the “change agent” attempts to identify and then tackle the more “basic” or primary criminogenic need, which should then influence the more “secondary” and interrelated criminogenic needs.

To answer this question, the cognitive-behavioral model provides clear and concrete guidance for the “change agent” on how to translate the results of a risk/need assessment into a coherent, comprehensive, strategic, and practical therapeutic plan to facilitate change. Rather than view risk and needs as a set of discrete and individual criminogenic factors, the client must be viewed from a holistic perspective taking account of all the information the risk/need assessment provides. However, considerable variability and difficulty are still associated with translating traditional risk/need assessments into a comprehensive and practical therapeutic “change plan.” In our STICS training, by providing officers with a solid foundation of cognitive behaviorism, it becomes easier to see the interrelatedness and hierarchy of different criminogenic needs. From this, we developed a helpful tool we call the STICS Action Plan, which helps community supervision officers to understand and practically formulate strategic intervention plans with each client.

The STICS Action Plan

Translating risk/need information into a strategic change plan can be a complex and challenging hurdle for community supervision officers. Besides the complexity of the individual’s risk/need profile, the officer must consider additional factors. One set of factors centers on administration of the sentence. This means that there are typically sentencing requirements, such as the variety of potential conditions/restrictions that the client must comply with. There are other “business”-related details the officer must be cognizant of, such as the policy directives and practices that may be in place for certain types of offender (e.g., specific directives regarding the supervision of sexual offenders) or for offenders of certain levels of risk (e.g., high-risk offenders must report to their probation officers in person at least three times per month).

A second set of factors centers on the client’s life itself. Criminal justice clients often have rather chaotic and unpredictable lives (e.g., unstable and sporadic employment, rocky relationships, unstable residences, and financial difficulties) and their situations often change frequently and dramatically over short periods of time. Probation officers must be sensitive to a client’s crisis and acute needs without such crises overwhelming and preventing the officers from actually engaging in “change-work.”

It is typically after these two sets of factors are addressed that the “change agent” can focus on criminogenic needs and facilitating change. The officer not only must be able to identify which criminogenic needs the client has, but must also determine which ones are most salient and which take priority over others. Officers must consider the resources at their disposal (i.e., treatment programs and related services) and the inevitable waiting list for admission. For the “change agent,” they must also take on active therapeutic work and start the process of facilitating attitudinal and behavior change.

In order to aid the officers with this complex task, the STICS Action Plan (see Appendix) provides a framework and is intended to provide an overall picture of the client’s risk/need factors. It is sensitive to the community corrections policies and the complexity of clients’ lives, and ultimately assists the officer in knowing what “change” efforts to focus on, and where. The STICS Action Plan is conceptually coherent with a cognitive-behavioral model and thus adheres to the RNR principles. In our work to date, the STICS Action Plan has been found to be a very useful and practical tool by a vast majority of the officers involved in the project. Below, we describe the steps to completing it.

The first step, following the formal risk/need assessment (typically done either immediately preceding or following sentencing), is to address the policies around supervision levels and reporting frequency. This step involves indicating what level of risk the client poses for reoffending and the overall need level (traditionally low, moderate, or high) to determine the specifics of supervision (e.g., frequency of reporting in person). We recognize that there are potential reasons for overriding this level of supervision (e.g., frequently seen with sex offenders who often have higher levels of supervision than what is indicated from actuarial risk/need assessments) and the Action Plan encourages documenting such reasons.

The second step involves identifying acute needs or crises that may require immediate attention. Common examples of these include suicidal ideation or behavior, and the presence of information suggesting an immediate threat of harm such as a homeless client in the middle of winter, a client who is currently psychotic, or a client with a history of domestic violence with evidence of recent escalation of marital discord and conflict. In essence, this step provides the opportunity for the officer to identify issues that require immediate attention before working on long-term prosocial changes.

The third step involves conceptualizing the client’s risk-need profile for intervention planning and ensuring

consistency with the cognitive-behavioral model of human behavior and change. This involves answering four very basic questions regarding the client in a specific order from highest to lowest priority in terms of facilitating change. More specifically: (1) Should intervention target procriminal attitudes and behaviors? (2) Should intervention target the client's interpersonal relationships? (3) What are specific problem behaviors that should be targeted? (4) Are there other minor criminogenic needs that require help? Answers to these questions, we believe, aid the officer in conceptualizing, prioritizing, and developing an overall personalized map of strategic change for each client, as well as providing concrete direction on where to start and where to proceed to facilitate cognitive-behavioral change.

As indicated by the cognitive-behavioral model, procriminal attitudes (i.e., thoughts, attitudes, values, and beliefs that promote procriminal behaviors) are considered to be the most central causal factor contributing to criminal behavior. We know from research that attitudes are one of the Big Four (along with history of antisocial behavior, antisocial personality pattern, and antisocial associates) and one of the strongest predictors of reoffending (Andrews and Bonta, 2010). Unfortunately, it is our opinion that the current assessment of procriminal attitudes in most risk/need assessments is weaker than the assessment of other criminogenic needs.

For example, the procriminal attitude/orientation subscale of the LS/CMI (Andrews et al., 2004) has four items whereas the substance abuse subscale, a weaker predictor of criminal behavior, has eight items. The employment/education section has nine items. In addition, the four items assess rather limited and very general procriminal attitudes; those towards crime, towards convention, towards the client's sentence and offence combined, and towards supervision and treatment combined. We believe that this weak assessment of attitudes explains why in our STICS study (Bonta et al., 2010) we found the following: of the 143 clients in the project, 55 percent were assessed as High Risk and 40 percent as Moderate Risk, but close to 60 percent of these clients were assessed as *not* having a problem with procriminal attitudes. For a cognitive-behavioral model which points to thinking as the primary determinant of behavior, it does not make sense that so few clients were assessed as having problems with procriminal thinking when 95 percent are moderate or higher risk to reoffend.

This seemingly contradictory information is really only a reflection of the method used to identify procriminal attitudes when one considers other indicators or proxy measures of procriminal attitudes that are available in almost all risk/need assessment instruments; namely criminal history and antisocial personality pattern. Given that behavior is a direct result of thinking, it is reasonable to evaluate client attitudes by also examining client history of criminal behavior and client antisocial personality pattern. It seems reasonable to assume that when a client's personality is antisocial and/or the client has a lengthy history of criminal behavior, then that client must also have strong procriminal attitudes and thinking patterns.

In the STICS Action Plan, the answer to the question of whether or not the officer should begin facilitating change in procriminal attitudes is answered by examining the results of three typically separate assessment sections: criminal history, antisocial personality pattern, and procriminal attitudes. The officer need only indicate low, moderate, or high in each of these areas. Unless all three are rated low, change efforts must begin targeting the client's thinking. In virtually all the cases that should receive correctional treatment services (i.e., according to the risk principle, those would be clients of moderate risk or higher), the "change agent" begins the process where it all starts: with the client's thinking.

The next question regarding criminogenic needs deals with whether or not interventions should focus on the client's relationships. As in the previous section, the STICS Action Plan utilizes much of the information found in the risk/need assessment and asks the officer to rate the level of need for all the different types of interpersonal relationship. This includes family of origin, marital or present family life, and the client's circle of friends and acquaintances. Using the LS/CMI as an example, the officer can look at the results of the Family/Marital section to get an idea of the criminogenic potential of the client's family of origin as well as their present family life (i.e., spouse or equivalent). The Companions subsection of the LS/CMI provides information on the client's peer group. This information is transcribed to the STICS Action Plan to aid in making efforts to address criminogenic relationships. The priority, however, remains facilitating the change in thinking as our cognitive-behavioral model holds that changing thinking leads to changing behavior, including choices regarding how and with whom the client interacts and for how long this interaction takes place.

The third section regarding criminogenic needs revolves around specific lifestyle choices. That means substance abuse, impulsive/ aggressive behavioral patterns, and poor education and employment lifestyle. Again, sections of most risk/need instruments directly assess these criminogenic needs. Similar to relationships, these specific criminogenic behaviors or lifestyle choices are secondary to thinking and attitudes but can provide a concrete context to facilitate change in client thinking.

The last section regarding criminogenic needs is examining highly detailed and very specific needs, which include housing, financial difficulties, and leisure/recreation activities. These criminogenic needs are relatively simple targets and link very nicely with many social/welfare/community services. In our experience, they are generally easier to address after having made significant progress in changing the procriminal thinking.

The fourth and final section of the STICS Action Plan is the identification of specific responsivity issues. These guide the officer in the way he/she interacts with the client and how he/she may present information and facilitate learning. This would include any noncriminogenic needs such as mental health issues (e.g., schizophrenia, developmental delays, depression, anxiety, childhood trauma), physical handicaps, and the like.

Overall, the STICS Action Plan was developed to be a concrete and practical tool for Community Supervision Officers at the same time as attempting to permit the flexibility and versatility that is required when working with individuals who are under community supervision. It attempts to provide a comprehensive and holistic view of the client, encourages adherence to RNR principles, and should be able to accommodate a variety of policies and practices that are inherent in community supervision work. Most importantly, we believe it can assist the Community Supervision Officer's evolution from case manager to "change agent" by guiding the understanding, planning, and implementation of direct one-to-one cognitive-behavioral interventions that can facilitate reductions in criminal behavior.

Conclusion

In today's world of community corrections, professionals whose job it is to supervise offenders are being asked to assume more and more responsibilities. From traditional supervision practices to case management, the profession of community supervision officer continues to evolve. Officers are beginning to take on a more direct and active role in the therapeutic change process. This new role challenges existing skills, abilities, knowledge, and resources.

To meet these new challenges of becoming a "change agent," we have presented what we hope to be some fundamental and practical information that facilitates this evolution. Guided by the empirically derived principles of risk, need, and responsivity, as well as clinical experience, we have attempted to translate from theory to practice what exactly cognitive-behavioral truly means. Similarly, through the use of the STICS Action Plan, officers may practically understand risk/need assessment information from a "change agent" perspective. We hope that this information can guide community supervision officers on the journey to becoming effective "change agents" with the individuals they supervise.

Appendix: STICS Action Plan

Instructions: Complete the form below by circling the appropriate scoring and writing any additional short notes or comments in the appropriate sections. Use all available case information (e.g., Risk/Needs Assessment Measure, case file) to score the various items.

Case Information**Decisions for Case Planning and Intervention**

1. What is the appropriate level of supervision/service for this client as indicated by the Risk Assessment measure?

Overall Risk Level	L LOW	M MED	H HIGH	Supervision Level Determination
Overall Need Level	L	M	H	Reporting Frequency (note monthly, weekly, etc.)

2. Is there any acute need or crisis requiring immediate attention?

Crisis, Acute Needs or Concerns	NO	YES	Specify:
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3. What are the client's criminogenic needs?**a. Should intervention target procriminal attitudes & behaviors?**

Criminal History	L	M	H			Target procriminal attitudes & behaviors
Antisocial Personality*	L	M	H	NO	YES	<input type="checkbox"/> ↓ procriminal & ↑ prosocial attitudes & behaviours
Attitude/Orientation	L	M	H			<input type="checkbox"/> Teach core cognitive & behavioural skills

b. Should intervention target the client's relationships & associates?

Family of Origin	L	M	H			Target interpersonal associates & relationships
Marital/Significant Other	L	M	H	NO	YES	<input type="checkbox"/> ↓ procriminal & ↑ prosocial ties & associations
Companions/Peers	L	M	H			Teach skills & access to prosocial rewards

c. What are the specific problem behaviors that should be targeted?

Substance Abuse/Misuse	L	M	H	NO	YES	Target substance abuse: ↑ relapse prevention skills
Aggression & Impulsivity	L	M	H	NO	YES	Target aggression: ↓ impulsivity & ↑ self-control
Employment & Education	L	M	H	NO	YES	Target ↑ employment, education & job skills

d. Are there other criminogenic needs (i.e., housing, financial, or leisure problems) that require help?

Housing/Financial Issues	L	M	H	NO	YES	Target residence: ↑ stability, ↑ financial skills/supports
Leisure & Recreation**	L	M	H	NO	YES	Target leisure time: ↑ prosocial pursuits & activities

4. Are there any special responsivity issues and/or noncriminogenic needs to note?

Noncriminogenic Needs				NO	YES	Specify:
Special Responsivity Issues/Concerns				NO	YES	Specify:

* Refers to a long-standing pattern of criminal behavior. Can include, but is not limited to, problems with impulsiveness, self-control, self-management, aggression, and violence (general, domestic, and sexual).

** Refers to the type and frequency of organized activities the individual engages when not working, evaluating the degree to which these activities are prosocial, conventional pursuits.

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The Importance of Coaching: A Brief Survey of Probation Officers

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RECENT ADVANCES in community corrections supervision practices are nudging probation and parole philosophy out of its 40 year stagnancy (Bourgon, Gutierrez, & Ashton, 2011). Research-based supervision models focus officers' face-to-face interaction with offenders on long-term behavior change rather than the long-standing focus on compliance.

These practice models share a common lineage and are based on core correctional practices as enumerated by Andrews and Carvell (1998). Core correctional practices include dimensions of effective correctional practice like relationship building, effective reinforcement, effective use of authority, modeling pro-social behavior, problem solving, and the use of community resources (Dowden & Andrews, 2004). Nationally, at least 60 different local jurisdictions and federal districts have implemented various examples of these models, including Trotter's model of working with involuntary clients (Trotter, 1999), Taxman's *Proactive Community Supervision Model* (Taxman, 2008), Bonta et al.'s *Strategic Training Initiative in Community Supervision* (STICS) (Bonta, Rugge, Scott, Bourgon & Yessine, 2008), Lowenkamp et al.'s *Staff Training Aimed at Reducing Rearrest* (STARR) (Lowenkamp, Robinson, Alexander & VanBenschoten, 2009), and *Effective Practices in Correctional Settings-II* (EPICS-II) (Lowenkamp, Lowenkamp, and Robinson, 2010).

Evaluations of these models demonstrate their value and effectiveness (Trotter, 1996; Bonta et al., 2008; Taxman, 2008; and Robinson, Lowenkamp, Holsinger, VanBenschoten, Alexander, & Oleson, 2012) and consistently show a relative reduction of recidivism of up to 25 percent. There is no longer a question of whether staff should be trained in these practices; rather, the question is: What is the most effective way to get staff to use these newly learned techniques when they engage with offenders? This question is based on what we know from research in Canada (Bonta et al., 2008) and the United States (Robinson,

VanBenschoten, Alexander, & Lowenkamp, 2011), that demonstrates that officers are slow to adopt and use these newly learned skills after initial training, even when the agency has made a commitment to implement a new practice model (for a summary of research on implementation in educational settings, see Hall, Loucks, Rutherford, & Newlove, 1975; and Hall & Loucks, 1977).

Workshop training models have been shown to be limited and to not produce the type of permeated use of skills necessary to impact recidivism (for thorough reviews see Backer, David, & Saucy, 1995; Rogers, 2003; Fixsen, Naoom, Blase, Friedman, & Wallace, 2005; Sholomskas, Syracuse-Siewert, Rounsaville, Ball, Nuro, & Carroll, 2005; Baer, Wells, Rosengren, Hartzler, Beadnell, & Dunn, 2009; and Bourgon et al., 2011). This emerging research indicates the importance of ongoing training and coaching. As a matter of fact, in a summary of their experiences, Joyce and Showers (2002) report that training in theory, modeling of new skills, and role play with feedback leads to 5 percent of the trainees using the new skill in their work environment. Adding on-the-job training or coaching to the training package increases that rate to 95 percent.

The current research seeks to understand the manner in which coaching assists officers in adopting and using newly acquired practice model skills. This is important, as understanding the mechanism by which coaching and booster sessions work to increase skill adoption and use helps to make these sessions more efficient and effective. Developing such an understanding is beneficial for several reasons. First, the responses to the survey provide useful information for evaluating the trainees' perception of the value of coaching. Second, possible barriers to the adoption and use of newly learned skills are identified. Third, information related to barriers to implementation helps to refine training curricula (both in class and coaching). Fourth, trainees can provide subjective assessments of how coaching improves the likelihood that they will use the skills with clients above and beyond the likelihood of use based on just training alone.

TABLE 1.
Coaching Survey Content

Item	Response
Who was your coach?	Check box multiple responses possible
The coaching sessions helped me to better understand how I can use the skills in my job.	Rating Strongly Agree, Agree, Disagree, Strongly Disagree
The coaching sessions allowed me to express concerns that I couldn't express in the classroom training.	Rating Strongly Agree, Agree, Disagree, Strongly Disagree
After the coaching sessions, I had a better understanding of how I could personally use these skills with clients.	Rating Strongly Agree, Agree, Disagree, Strongly Disagree
The coaching sessions allowed me the opportunity to ask questions about the skills	Rating Strongly Agree, Agree, Disagree, Strongly Disagree
The coaching sessions make it more likely that I will use the skills compared to just classroom training alone.	Rating Strongly Agree, Agree, Disagree, Strongly Disagree
How could we make the coaching sessions more beneficial to you?	Open text response

TABLE 2.
Coaching Survey Results—Percent that Strongly Agree or Agree with Statement

Survey Item	All	County	Federal
The coaching sessions allowed me the opportunity to ask questions about the skills	93%	92%	93%
The coaching sessions allowed me to express concerns that I couldn't express in the classroom training	83%	81%	85%
After the coaching sessions, I had a better understanding of how I could personally use these skills with clients ¹	88%	80%	93%
The coaching sessions helped me to better understand how I can use the skills in my job	92%	94%	91%
The coaching sessions make it more likely that I will use the skills compared to just classroom training alone	72%	70%	74%

¹ difference significant at .05 level.

Method

Training Curricula and Project Sites

The current study uses results of surveys administered at the conclusion of training efforts in two different systems. In the first project, training was provided to 90 senior probation officers in a large county probation system. The training included three days of classroom training in a curriculum called Integrated Behavioral Intervention Strategies (Lowenkamp & Koutsenok, 2011), which is a combination of motivational interviewing and EPICS-II skills. The three days of classroom training were followed by one-on-one, in-office coaching between the trainee and one of the trainers. These one-on-one interactions consisted of 20-30 minute discussions to uncover and resolve concerns about the skills, answer questions not covered in the training, and adapt any material to fit individual officer's needs. This was followed by 30-40 minutes of direct observation of the trained officer interacting with a probationer using the new skills. Finally, approximately 30 minutes were spent giving feedback and coaching.

The second training project was conducted in the U.S. Probation System and involved the development of STARR coaches. The training for STARR consisted of three classroom days and graduated practice. Graduated practice consisted of opportunities to practice the STARR skills with former offenders who

volunteered to interact with officers at the training. Trainers directly observed officers and gave the officers feedback on their skill use. In addition, following the trainings, staff submitted audio recordings and subsequently received ongoing feedback. In total, 95 officers took part in this training event.

Survey and Administration

In an effort to gain a better understanding of how the officers viewed coaching, we compiled a short seven-question survey guided by the constructs identified in the innovation diffusion literature (Rogers, 2003). The survey items are shown in Table 1. The current research focuses on the responses to the five items that used the four-point scale ranging from “strongly agree” to “strongly disagree.”

Surveys were administered through email using an online survey service following a modified version of a recognized survey method (see Dillman, 1978 and Schaefer & Dillman, 1998). The officers received an initial email that informed them of the purpose of the survey, that their participation was anonymous, and that they should expect an email with a link to the survey in about a week to 10 days. Over a period of three weeks, the officers received a total of three more emails asking them to complete the survey.

Analysis

Once the web links to the surveys were deactivated, all responses were collected and combined into one dataset. The four-point scale was collapsed into a dichotomous scale. The first category included the strongly disagree or disagree responses. The second category included responses that indicated that the respondent strongly agreed or agreed with a statement. We calculated percentages of responses that fell into the “agree or strongly agree” category for the entire sample. We also used chi-square test statistics to determine if there are any differences in the results based on the group an officer belonged to (county versus federal).

Results

The survey methodology used in this research produced a response rate of 70 percent (63/90) for the sample of county probation officers and a response rate of 91 percent (86/95) in the sample of federal probation officers. The combined response rate is 81 percent (149/185). The percentages of respondents strongly agreeing or agreeing with each of the statements on the survey are reported in Table 2. The tables show results for all respondents, as well as the results for the county and federal samples.

As indicated in Table 2, a high percentage of the respondents agreed with the statement that the coaching sessions allowed them the opportunity to ask questions about the skills and express concerns about the skills that they could not express in the classroom setting (93 percent and 83 percent for county and federal respondents respectively). A high percentage of respondents also agreed that the coaching sessions helped them better understand how they could use the skills with clients and how they could use the skills as part of their job (88 percent and 92 percent respectively). One difference between results from the two groups is that the percentage of county officers agreeing with the statement that the coaching sessions helped them better understand how they could use the skills with clients is lower (statistically significant at the $p < .05$ level) than the percentage of federal officers agreeing with that same statement. Finally, a somewhat lower percent, but still the overwhelming majority (72 percent), indicated that the coaching session increased the likelihood that they would use the IBIS/STARR skills compared to training alone.

Discussion

Results indicate that the respondents see the value in coaching and report that coaching increases the likelihood they will use the skills with clients. This is consistent with Bourgon et al.’s (2011) research indicating that the skill use increases as officers participate in a greater number of post-training booster sessions. This coalescing of research is valuable as we can begin to understand the mechanism by which coaching and booster sessions might work to increase the level of use. For example, the survey included in this research indicates that officers were more likely to develop a better understanding of the skills when given an opportunity to try the skills, and observed the applicability of skills to the clients they work with on a regular basis.

These findings coincide with the research on innovation diffusion, which indicate that simplicity, opportunities to try the new innovation, observable results, and relative advantage are all factors that predict if an innovation is likely to be adopted (Rogers, 2003). The ability to watch other practitioners use an innovation provides an opportunity to observe if an innovation is safe and/or beneficial. The more obvious

the evidence of rewards, the more likely the strategy will be adopted. Relative advantage refers to the participants' ability to identify whether (a) the benefits of using the new practice outweigh the risk of adoption; and (b) the new practice improves upon the existing strategies. The greater the perceived advantage, the more rapid the rate of adoption. To the extent that officers were able to resolve concerns and questions about the skills they were trained in, officers were able to better understand, or simplify, the new skills. To the extent that the officers were able to try the skills in a safe environment with support and coaching they received the opportunity to experiment with the skills and reduce their uncertainty about the value of the skills. Finally, the opportunity to increase understanding about the skills, receive answers to questions about the skills, and try them in a controlled setting possibly led to the firsthand observation of the value of the skills. As one officer recently commented, the more experience accrued in using the skills “. . . the more meaningful my interactions with offenders have become.”

Limitations

This research provides insight into how coaching might assist probation officers in the acquisition of newly learned skills. While the research adds to the understanding of how skills are acquired, the current study has limitations that should be considered when reviewing the results. First, the sample size is small and represents two community corrections systems. The research findings may not represent the perceptions of a larger sample of probation officers or a larger pool of probation systems. The second limitation is associated with the length of the survey used to gather the data. The survey used in this research is brief. The brevity of the survey prevents measuring the level of use or overall adoption of the skills. There is no claim that the survey adequately addresses all or any of the constructs known to predict innovation diffusion; however, the main constructs as identified by Rogers (2003) guided the selection of items to include on the survey.

Future Research

The current research focused on understanding a group of probation officers' perceptions of the impact of coaching. Future research will advance the understanding of the added value of coaching by expanding the survey to better measure how coaching impacts perceived benefits of the skills, self-efficacy in using the skills, and understanding. Future research should also focus on investigating the link between coaching and the level of use, and the rate of adoption by individual officers. Finally, future research should also focus on how coaching indirectly impacts clients' outcomes through the level of use of the skills.

Summary

The landscape of community corrections is evolving at a rapid pace. As agencies advance the implementation of evidence-based practices, supervision models are being developed to support the probation officer's use of core correctional practices and the philosophical shift associated with becoming a change agent. Early evaluations highlight the value of using core correctional practices and the role of coaching and booster sessions. Given the evidence supporting the effectiveness of core correctional practices and our knowledge of the importance of coaching, it is important to understand why implementation strategies like coaching might assist officers in adopting newly learned skills. The current study focused on understanding the impact of coaching by surveying a sample of probation officers.

The current study demonstrates why coaching might influence the adoption of newly learned skills. Analyses suggest that coaching provides an opportunity for participants to ask questions that are left unresolved after the classroom training and an opportunity to better understand how they might use the skills with clients and how the skills apply to their day-to-day jobs. Additionally, analyses suggest that coaching makes it more likely that participants will use the skills than if they just receive classroom training. Given the philosophical shift associated with adopting the use of core correctional practices, it might be unreasonable to expect that classroom training alone will establish competency and motivate officers to use the skills with clients. Policy makers, agency leaders, and trainers should take this into account when planning how to help probation officers transfer skills from the classroom to day-to-day work.

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Responding to Probationers with Mental Illness

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FUNDAMENTAL CHANGES IN mental health laws and policies have brought criminal justice professionals into contact with people with mental illnesses (PMI) at every stage of the criminal justice process (Council of State Governments, 2002). Often, police arrest PMI because few other options are readily available to manage their disruptive public behavior or to facilitate much-needed treatment or housing (Teplin, 2000). Jail and prison administrators repeatedly struggle to treat and protect PMI, judges grapple with limited sentencing alternatives for PMI who fall outside of specific forensic categories (e.g., guilty but mentally ill), and probation officers (POs) scramble to obtain scarce community services and treatments for PMI, attempting to fit them into existing correctional programs or to monitor them using traditional case management strategies (Lurigio & Swartz, 2000).

An estimated one million PMI enter or re-enter the criminal justice system every year in the United States (Morrissey, Meyer, & Cuddeback, 2007). The presence of PMI in the criminal justice system demands adjustments in routine case management practices, especially in the supervision of probationers—the largest and fastest-growing segment of the correctional population (Glaze & Bonczar, 2007; Pew Charitable Trust, 2009). Probationers' mental health problems are likely to be neglected unless mandated psychiatric services are a special condition of probation supervision (Lurigio & Swartz, 2000). Even in such instances, mental illness makes it difficult for afflicted probationers to comply with court orders. Moreover, their POs must overcome many obstacles to access services to treat their symptoms and criminogenic needs and thus reduce the risk of recidivism (Prins & Draper, 2009).

A recent study of jail detainees found that 15 percent of men and 31 percent of women met the diagnostic criteria for a serious mental illness (Steadman, Osher, Robbins, Case, & Samuels, 2009). Mental illness among probationers is estimated to be at least as high as it is among jail detainees (Skeem & Loudon, 2006). Nonetheless, only a few investigations have measured the prevalence of mental illness among probationers. All have found that PMI constitute a noteworthy percentage of the probation population. For example, at the end of 1998, a national survey conducted by the Bureau of Justice Statistics found that 16 percent (or 547,800) of adult probationers reported a mental illness (Ditton, 1999). Another study estimated that nearly 21 percent of probationers in Illinois met the diagnostic criteria for a psychotic disorder or a mood disorder with psychotic features, and nearly 20 percent were identified as at risk of suicide (Lurigio, Cho, Swartz, Johnson, Graf, & Pickup, 2003). The 2001 National Household Survey on Drug Abuse found that 27 percent of probationers reported symptoms of a mental disorder. These data suggest that more than a half million adult probationers in the United States struggle with serious mental illnesses and require a wide

range of interventions to alleviate their complicated medical and behavioral problems (Prins & Draper, 2009; Skeem, Emke-Francis, & Eno Louden, 2006).

Mental disorders are also prevalent in the general population of the United States. The primary burden of mental illness is borne by those afflicted with serious mental illness (6 percent, or 1 in 17). People with such disorders are concentrated in poorer communities as are people with criminal involvement (Kessler, Chiu, Demler, & Walters, 2005; Lurigio, 2011). In response to the overrepresentation of PMI in the criminal justice system and the difficulties associated with managing this population, criminal justice agencies have collaborated with mental health and drug treatment providers in the adoption of strategies to serve the needs of criminally involved PMI (Council of State Governments, 2002). The growth of specialized police and diversionary programs that address low-level criminal behavior by diverting PMI from the criminal justice system and into the mental health system has likely reduced the actual criminalization of PMI (Lurigio, Smith, & Harris, 2008). Nevertheless, the lack of accessible and affordable mental health care, among other factors, has contributed to the trans-institutionalization of PMI, who are often more likely to receive psychiatric treatment in a jail or prison than in a hospital or mental health facility (Lamberti, 2007).

Advocates, researchers, and legal scholars have called for the creation of specialized programs that are able to respond justly, fairly, and humanely to PMI at every stage of the criminal justice process (Lurigio & Swartz, 2000; Morrissey, Fagan, & Cocozza, 2009). During the late 1980s, traditional probation agencies began to recognize that they were ill-equipped to monitor PMI using standard caseload management techniques. Hence, several jurisdictions have developed specialized caseloads for probationers with mental illnesses (PROMI) (Skeem et al., 2006). In traditional probation practices, PROMI are typically assigned to a generalized caseload. Supporting the notion of specialized probation units, the Criminal Justice/Mental Health Consensus project recommended that probation departments place PROMI in reduced caseloads under the supervision of POs who have mental health training—an option that encourages tailored case management plans and linkages with treatment services. Although such initiatives were first launched more than 20 years ago and are now expanding, the implementation and effects of specialized probation programs have yet to be thoroughly explored (Council of State Governments, 2002).

This article examines the operations and impact of specialized probation services for PROMI. PROMI are defined as people who suffer from severe, debilitating, and chronic psychiatric disorders, such as schizophrenia, schizoaffective disorder, bipolar disorder, and major depression, which are defined on Axis I of the Diagnostic and Statistical Manual of the American Psychiatric Association (American Psychiatric Association, 2000). The article is divided into four sections. The first discusses differences between PROMI and standard probationers and describes a classic typology of the supervisory styles of POs, which can help explain their approaches to monitoring PROMI. The second section enumerates the key components of specialized probation for PROMI as well as the importance of positive PO-client relationships in achieving successful probation outcomes. The third presents the results of studies of the effectiveness of specialized probation programs for PROMI. Although the data are limited because of flawed research designs and sampling techniques, such programs appear to be somewhat useful strategies for monitoring this problematic group of probationers. The fourth suggests directions for future research and practices in the area of specialized programming for PROMI.

The Challenge of Monitoring Probationers with Mental Illness

PROMI present considerable caseload management challenges (Skeem, Encandela, & Eno Louden, 2003; Pettila & Skeem, 2004; Skeem, Emke-Rancis, & Eno Louden, 2006). For example, the service needs of PROMI differ from those of probationers with no mental illness and include psychiatric and substance abuse treatment, disability-based entitlements, housing, and a variety of other behavioral healthcare and social services. Furthermore, PROMI are at higher risk for recidivism and technical violations than are standard probationers (Skeem, & Eno Louden, 2006). The non-completion rate of all probationers is 35 percent throughout the United States (felony and misdemeanor), for all reasons (rearrests, technical violations, unsuccessful discharges, revocations, etc.) (Glaze & Bonczar, 2010).

PROMI can find it demanding to abide by the conditions of probation and to comprehend their legal status or obligations, owing to their psychiatric symptoms and related cognitive deficits. PROMI who have co-occurring substance use disorders are at especially high risk for continued involvement in criminal activities and future police contact (Lurigio, 2009). In the supervision of PROMI, POs are required to monitor and enforce the general conditions of probation as well as psychiatric treatment and other mandated services,

which complicate the monitoring process (Skeem et al., 2006). In addition, it is difficult to access and obtain services for PROMI without memoranda of understanding among probation agencies, POs, and providers (Lurigio & Swartz, 2000).

PROMI on Standard Supervision

Before the creation of specialty probation programs, standard caseload POs were responsible for supervising PROMI; this is still the case for many jurisdictions with no specialized probation programs. Officers had little guidance, training, or understanding of the complicated nature of psychiatric disorders and multiple morbidities, which resulted in poor outcomes for PROMI. For example, one study tracked 613 probationers for three years and found that the rearrest rate was 54 percent for PROMI as opposed to 30 percent for probationers without mental illness (Dauphinais, 1996). A factor that contributes to high recidivism rates among PROMI is the mismatch between their needs and the capacities of traditional probation agencies to meet those needs (Skeem et al., 2006). Probation protocols were simply never designed for supervising and case managing PROMI. Thus, the shortcomings of standard caseload protocols for monitoring PROMI prompted the development of specialized probation programs.

PO Supervision Styles

Traditional and specialized POs utilize different skills and approaches to supervision. Klockars' (1972) classic work identified four types of officer supervisory styles. The "law enforcers" emphasize the exertion of authority, rule enforcement, and surveillance. The "time servers" are the functional equivalent of law enforcers; however, they tend to satisfy only the minimal requirements of their jobs and exhibit no interest in improving their own skills or the system itself. The "therapeutic agents" endeavor to treat probationers by providing or brokering services and encouraging positive behavioral changes. These officers attend to individual probationers' specific needs by considering the psychological, familial, and social factors that adversely affect probationers' lives and hence their adjustment to probation. The "synthetic officers" adopt a hybrid approach that integrates the goals of both the law enforcement and the treatment roles. These types of officers attempt to balance the demands of both roles in a manner that optimally benefits probationers. However, the competing nature of these seemingly dual roles forces officers to face the dilemmas inherent in the pursuit of frequently conflicting goals: treatment and control.

Klockars' framework of styles suggests two key features of POs' approaches to monitoring that can be important in the supervision of PROMI (Skeem & Manchak, 2008). One feature is the integration of dual roles, allowing officers to achieve both surveillance and therapeutic goals. The second feature is the cultivation of positive relationships between POs and probationers in order to maximize the potential for rehabilitation and successful probation outcomes. An evaluation of probation programs found that a hybrid (synthetic) approach to supervision was more effective than either a sole surveillance or a sole treatment approach for PROMI and probationers without mental illness (Skeem & Manchak, 2008). In addition, probationers respond positively to a hybrid approach that encourages open communication, honesty, and problem-solving techniques (Pettila & Skeem, 2004). This approach is related to the theory of interpersonal procedural justice, which asserts that people feel less coerced when they are treated respectfully and understand the rationale for criminal justice professionals' decisions (Lidz et al., 1995; Taxman & Thanner, 2003/2004).

Specialized Probation

Specialized probation programs for PROMI differ across jurisdictions in terms of their supervisory approaches, policies, and day-to-day operations. For example, specialized POs can work within specialized probation programs or assist traditional POs with PROMI on their caseloads. Specialized programs can consist of exclusive PROMI caseloads or mixed caseloads that include both PROMI and non-PROMI (Skeem et al., 2006). In large jurisdictions with large populations, specialized POs can operate as a specialized probation "unit," whereas in small jurisdictions specialized POs can operate independently within a standard probation unit.

As noted below, specialized POs typically monitor reduced caseloads, which is crucial because PROMI require considerable PO time and attention. In general, this population has numerous problems (such as comorbidity with substance use disorders and developmental disabilities, poor physical health, housing and financial difficulties, homelessness, joblessness, and a lack of social support) (Veysey, 1996). These clients need habilitation as much as rehabilitation: "For probation services to be successful in the supervision of persons with mental illness, they must address the broad range of offender needs. This does not mean that

probation departments must provide all of these services. They must, however, collaborate closely with the community services agencies that provide mental health, substance abuse, health care, and other human services” (Veysey, 1996, p. 156).

Key Components of Specialized Probation

A national survey of probation agencies found that, despite their heterogeneity, specialized probation programs for PROMI share common features (Skeem et al., 2006). In general, specialty POs’ roles combine two important functions (Petrila & Skeem, 2004; Skeem & Manchak, 2008): the protection of public safety and the rehabilitation/recovery of offenders. The national survey defined specialty programs as those staffed by more than one PO who was responsible for supervising PROMI. The investigators identified 73 programs that met this criterion; 66 (90 percent) of them participated in the study. The sample also included 25 traditional probation programs, which served all offenders on probation, regardless of their behavioral healthcare needs. The researchers examined three general areas: structural characteristics, case management style, and implementation of treatment mandates. The investigators reported that prototypic specialized probation programs had five key features (Skeem et al., 2006): exclusive caseloads, reduced case-loads, officer training in mental health issues, resource integration, and problem-solving strategies to address probation violations.

Exclusive Caseloads. The first key feature of specialty probation programs for PROMI is staffing them with POs who exclusively handle mental health caseloads. The survey found that 84 percent of the sample of specialized programs handled only mental health cases; the others handled both PROMI and non-PROMI (i.e., mixed caseloads). The client eligibility requirements for specialty probation programs varied across jurisdictions. (See Petrila & Skeem, 2004, for specific examples.) An advantage of managing an exclusive mental health caseload is administrative efficiency (Petrila & Skeem, 2004). Unlike POs who supervise general probation case-loads, specialty POs have the opportunity to develop effective strategies and routines for supervising PROMIs when they are able to focus on attending exclusively to this needy population. Traditional probation programs typically have no supervisory protocols designed expressly for responding to the specific problems of PROMI.

Reduced Caseloads. The second key feature of specialized probation units is a reduced caseload. The average caseload of specialty programs was 48 (SD = 22.4), whereas the average caseload of traditional probation programs was 130 (SD = 64.3). The average caseload size among all the surveyed programs was 43 (SD = 16.4). Although most specialty programs had caseloads ranging from 30 to 50 PROMI, some programs exceeded the recommended maximum number. Of the total programs surveyed, 23 percent had caseloads that exceeded the number of cases prescribed by the program’s policies, with 10 cases as the median number exceeding the caseload limit. Among this group of programs, 21 percent had caseloads exceeding the recommended maximum by 30 or more cases. Specialty programs with larger caseloads were more similar to traditional programs in their approach to monitoring probationers than were specialty programs with smaller caseloads (Skeem et al., 2006). Nonetheless, “maintaining smaller specialized and exclusive mental health caseloads in the face of pressing demand for probation services is one of the most significant challenges facing the legal system today” (Petrila & Skeem, 2004, p. 11).

Officer Training. The third feature of specialized probation programs is officer training in mental health issues. Nearly 59 percent of specialty programs reported having officers with “substantial” training (for example, every few months), compared with the 5 percent of officers in traditional probation programs (Skeem et al., 2006). Approximately 41 percent of specialty programs and 43 percent of traditional programs reported that their officers had “some” training (for example, a few workshops). None of the specialty programs reported that their officers had received “little” training; in contrast, 54 percent of traditional programs reported that officers received “minimal” training in mental health issues. The majority of officers (56 percent) hired by specialized programs were formerly traditional officers who had interest and experience in the mental health arena. However, 17 percent of specialty programs for PROMI hired officers with master’s degrees in the field of mental health or a related area of education and practice (Skeem et al., 2006).

Although specialized probation programs vary in the content and frequency of PO training, programs that align with the prototypic specialized probation model provide 20 to 40 hours of initial and continued mental health training annually (Skeem et al., 2006). Others have suggested that cross-training for mental health and correctional staff in specialized probation programs can increase their mutual understanding and respect

for each other. In addition, cross-training greatly improves the working relationships between the two groups, which encourages a team approach to managing clients (Lurigio, 1996).

Resource Integration. A fourth key feature of specialized probation programs is a case management style that attempts to integrate internal and external resources to meet the needs of PROMI. Mental health treatment can be mandated by the court as a condition of probation; thus, external resources (such as treatment providers and social service agencies) are integral to the operations of specialized probation programs. Specialty POs are responsible for coordinating care with community treatment providers and social service agencies. A team approach is frequently used, encouraging POs and providers to collaborate in addressing the needs of PROMI. Specialized POs are also expected to attend team meetings, coordinate resources, and create and maintain positive relationships with community treatment providers.

Among the POs in specialty programs for PROMI in the national study, 82 percent were required to participate in meetings with external providers, and 68 percent of specialty programs paired their officers with a case manager (Skeem et al., 2006). Specialty POs also played an active role in officer-provider relationships. POs in specialty programs took a “very active role” with external treatment providers and funders to coordinate treatment for PROMI in 65 percent of the programs surveyed. Additionally, 32 percent were “somewhat active” and 3 percent were “minimally active.” Furthermore, 56 percent of specialized programs had POs who reported playing a “very active” role in organizing other types of external resources (e.g., Social Security Income, housing, transportation). The survey also found that 29 percent of the specialty POs were “somewhat active” in these activities and 15 percent were “minimally active.”

Compliance Management. The fifth key feature of specialized probation programs is the utilization of problem-solving strategies for addressing PROMIs’ failure to comply with treatment and other special conditions (Skeem et al., 2006), which is a challenge for most POs who supervise PROMI. Among those surveyed, traditional POs were more likely to respond to PROMIs’ noncompliance with treatment and other violations of probation by imposing sanctions (such as reports to the judge, verbal warnings, or incarceration) (Skeem et al., 2006). In contrast, specialty POs were more likely to respond to treatment noncompliance and other violations by using a variety of problem-solving strategies, including identifying obstacles to compliance and developing strategies to overcome those obstacles (Petrila & Skeem, 2004). The use of incarceration was employed more sparingly by specialty officers. Almost all (90 percent) of the specialty POs surveyed reported that jail was a last resort; however, only about half (56 percent) of POs in traditional programs shared this view.

The survey identified two notable instances in which specialized probation units clearly differed from the general prototype (Skeem et al., 2006). First, 15 percent of specialty programs were affiliated with mental health courts, and these programs were more likely to advocate court appearances in response to PROMI noncompliance. Second, 15 percent of specialty programs also reported that a brief jail stay was an appropriate response to PROMIs’ noncompliance. Officers viewed this tactic as a way to stabilize PROMIs’ medication or to serve as an incentive to encourage future compliance. The National Coalition for Mental and Substance Abuse Health Care in the Justice System recommended that a comprehensive vision of care for PROMI should accomplish the following tasks (Lurigio, 1996, p. 168):

- Build lasting bridges between the mental health and criminal justice systems, leading to coordinated and continual health care for clients of both systems.
- Involve clients in treatment decisions.
- Ensure public safety and the safety of offenders.
- Facilitate the successful integration of offenders into the community.
- Promote offender responsibility and self-sufficiency.
- Permit equal access to all healthcare services, including medical, psychiatric, substance abuse, and psychological interventions.
- Avoid discriminating against or stigmatizing PROMI.
- Accommodate clients with multiple needs and problems.
- Be sensitive and responsive to the special needs of women and people of color with mental illnesses by developing diverse, culturally sensitive programs.
- Require involvement of families in treatment and supervision plans of PROMI.
- Match services and treatments to each client’s specific problems and needs.
- Raise public awareness about PMI in the criminal justice system.

PROMIs' Relationships with Specialized POs

Research is starting to explore the relationship between specialized POs and PROMI. The officer-probationer relationship is different for traditional probation and specialty programs for PROMI (Petrila & Skeem, 2004). As mentioned earlier, specialty POs generally focus on the dual needs of working with PROMI; that is, public safety (control) and rehabilitation (care). Traditional POs tend to emphasize public safety and crime control over treatment. However, "these two roles are not completely at odds" (Petrila & Skeem, 2004, p. 12).

Three basic differences between traditional and specialized probation programs have been identified in terms of the relationship between POs and PROMI (Skeem et al., 2003). First, compared with traditional probation practices, POs in specialty programs for PROMI are perceived to be more relational, caring, supportive, and flexible. One study reported that PROMI scored specialized POs higher in relational characteristics of "caring/fairness" and "trust" compared with their rating of traditional POs (Skeem et al., 2007). Specialty POs address issues typically regarded as being beyond the purview of traditional POs, such as being a strong advocate for PROMIs and providing practical support (such as locating housing and arranging transportation) (Skeem et al., 2003; Skeem et al., 2007). The boundary-spanning role of specialized POs can favorably affect their relationships with clients. Second, positive officer-probationer relationships were perceived to be less contingent on compliance with the conditions of probation among PROMI in specialized probation programs than among those on standard probation supervision. Third, specialty POs emphasized establishing appropriate boundaries with probationers. They were especially concerned with maintaining the distinction between a supportive professional relationship and a personal friendship. Specialty officers reported difficulties in managing the conflicts that arose from their competing roles as rule enforcers and therapeutic agents (Skeem et al., 2003). These results beg the crucial question of whether and how these conflicts affect the outcomes of PROMI in specialty probation programs.

Effectiveness of Specialty Probation

Although research has described the structures and operations of specialized probation for PROMI, little is known about the effectiveness of such programs. Research is beginning to shed light on the outcomes of specialized probation supervision for PROMI. Described below are studies of stakeholders' perceptions and preliminary evidence of program effectiveness, including a discussion of the factors contributing to positive outcomes in these specialized probation programs.

Perceptions of Effectiveness

Research has examined the perceived effectiveness of specialized probation (Skeem et al., 2006). In one study, specialty and non-assessments regarding the utility of specialty caseloads, reduced caseloads, and mental health-related specialized training for officers. Both groups strongly agreed that these features were valuable; most officers surveyed believed that these three features were "very useful." When asked about the utility of specialty caseloads, 72 percent of traditional officers and 94 percent of specialty officers reported that specialty caseloads were "very useful." A total of 8 out of 10 traditional officers and 97 percent of specialty officers found reduced caseloads to be "very useful." Finally, 80 percent of traditional officers and 97 percent of specialty officers thought that training officers to work with PROMI was "very useful."

Traditional and specialty POs' opinions diverged regarding the practicality of these three features, with significantly fewer traditional officers reporting that these three features were "very practical." When asked about the practicality of specialty caseloads, only 12 percent of traditional officers but 80 percent of specialty officers viewed this feature as "very practical." Similarly, only 12 percent of traditional officers but 61 percent of specialty officers felt that having a reduced caseload was "very practical." Finally, only 16 percent of traditional officers but 89 percent of specialty officers reported that having trained officers was "very practical" (Skeem et al., 2006). Although most POs agreed about the utility of specialized caseloads, reduced caseloads, and officer training, traditional and specialty officers expressed different opinions about the practicality of these features. This finding suggests that traditional and specialized POs have different views on probation practices for PROMI.

POs' perceptions of the effectiveness of traditional supervision and specialized probation programs were also examined on three domains (Skeem et al., 2006): short-term risk of probation violation, long-term risk of reoffending, and PROMIs' well-being. Specialty officers were significantly more likely than traditional officers to report that their programs were "very effective" at reducing short-term risk of probation

violations among PROMI. Additionally, specialty officers were significantly more likely than traditional officers to report that their programs were “very effective” at improving the well-being of PROMI. Both traditional officers and specialty officers reported that their program was “somewhat effective” among PROMI at reducing the long-term risk of reoffending.

Outcome Studies

As stated above, research on the effectiveness of specialized probation programs is limited. To date, only one study has used a quasi-experimental design, comparing 183 PROMIs in specialty programs to 176 on traditional caseload supervision (Skeem et al., 2009). The researchers reported moderate reductions in recidivism and revocation rates among PROMI in both supervisory structures. The researchers also reported no significant difference in mental health symptoms when comparing PROMI in specialty programs with PROMI in traditional probation programs. Thus, these results suggest that lower recidivism rates among PROMI in specialty units are only partially attributable to the alleviation of mental health symptoms or improvements in functioning.

Specialty probation programs can be more effective when they incorporate correctional supervision practices that address criminogenic thinking and needs (Andrews & Bonta, 1998). These core correctional practices also include “establishing firm, but fair and caring, relationships with offenders, and using problem-solving strategies rather than threats of incarceration” (Skeem et al., 2011, p. 121). However, research suggests that enhancing program fidelity (the alignment between program models and program practices) improves program effectiveness only slightly, which is counter to prevailing notions about the proper implementation of correctional programs. In addition, the success of specialized probation programs (and standard program supervision) depends on the ability of POs to link PROMI with evidence-based services that treat their co-occurring substance use disorders and help meet their practical needs, such as housing (Skeem et al., 2011).

Other studies have examined the relationship between specific components of specialized probation units and probation outcomes. Research indicates that the quality of the relationship between PROMI and POs is related to compliance with probation conditions and overall probation outcomes (Skeem et al., 2003). The Dual-Role Relationships Inventory (DRI-R) is an instrument developed to examine officer-probationer relationships (Skeem et al., 2007). It measures three factors: “Caring and Fairness” (e.g., “X cares about me as a person”), “Trust” (e.g., “X trusts me to be honest with him or her”), and “Toughness” (e.g., “X makes unreasonable demands of me”). The higher the quality of dual-role relationships, as assessed by the DRI-R, the lower the rates of probation violations, probation revocations, and new arrests. In order to improve outcomes for PROMIs, proponents of specialized programs argue that POs should be trained to adopt the positive, dual-role relationship qualities that are reflected in the inventory’s factors (Skeem et al., 2007).

Other research suggests that the quality and strength of PO-PROMI relationships promote successful probation outcomes (Eno Loudon, Skeem, Camp, & Christensen, 2008; Skeem et al., 2007). Relationships between PROMI and POs are weakened by the use of overt coercion and the exertion of “negative pressures” on clients (Eno Loudon et al., 2008; as cited in Skeem & Eno Loudon, 2006). Relationships are strengthened by services that meet probationers’ needs (such as housing) (Watts & Priebe, 2002) and by the attainment of procedural justice (that is, fairness and transparency in decisions that affect probationers’ lives) and shared decision-making in treatment planning (Skeem et al., 2007). Problem-solving strategies encourage a care-oriented working relationship between POs and PROMI (Skeem et al., 2003). Although the mere provision of mental health services has some impact on recidivism and positive outcomes, the association between services and outcomes is much more complex and bidirectional (Solomon, Draine, & Marcus, 2002; Skeem & Eno Loudon, 2006). Mental illness itself usually is not the cause of criminal behavior and therefore the treatment of mental illness alone is unlikely to reduce continued criminal behaviors (Epperson et al., 2011; Lurigio, 2011).

Specialty POs’ relationships with PROMI are important, but so, too, are relationships between POs and community-based service providers. Officer-provider relationships are critical in ensuring the level of communication necessary to properly monitor PROMIs’ adherence to the conditions of probation. A positive officer-provider relationship contributes to lower rates of probation violation. Service providers should not function as law enforcement agents or ancillary probation officers (Roskes & Feldman, 1999). In previous studies, providers who acted as extensions of the probation authority (i.e., as rule enforcers) increased the risk of technical violations and sanctions (Draine & Solomon, 2001).

Research Limitations

Research on specialized probation programs has shortcomings (Epperson, 2010). Specifically, studies have involved selection bias, which resulted in the overestimation of the benefits of specialized probation. Using single-group, pretest/posttest, or quasi-experimental designs and excluding from analyses of outcomes those PROMI who failed to complete their sentence (mortality threats) have constrained the validity of findings in evaluations of specialized probation units. The comparisons used in many studies have also been flawed. For example, in some studies, specialized probation was compared with traditional probation supervision; ideally, specialized probation should be compared with other specialized programs. Moreover, studies have been unable to adequately assess the proportion of PROMI in the probation population who actually participate in specialty mental health probation. As a whole, previous evaluations of specialized probation programs for PROMI have been methodologically weak, failing to minimize potential selection bias or to address the issue of program fidelity (Epperson, 2010). The generalizability or external validity of the results is also limited due to shortcomings in sampling and measurement.

Future Directions

Research

Research should advance knowledge regarding the implementation of specialized probation programs for PROMI by examining the case selection process, core program components, program fidelity, and penetration effects (Epperson, 2010; Wolff, Epperson, & Fay, 2010). Specifically, studies of case selection should enumerate the steps of the intake and supervisory process. Case targeting, selection criteria, recruitment, and enrollment also should be examined. Although research describes the key features of specialized probation (e.g., Skeem et al., 2006), it has not yet assessed how these features independently affect the implementation and effectiveness of such programs.

Research should explore the impact of core components, including reduced caseloads, on program implementation, effectiveness, and sustainability. Indeed, the success of specialty probation programs might be contingent on maintaining a reduced caseload, which allows POs to concentrate on the multifarious individual needs of PROMI (Petrila & Skeem, 2004). Research also should focus on program fidelity and assess specialty probation programs' adherence to the established core components. Knowing which core components are most critical to producing positive outcomes is crucial in building an evidence base for program expansion and improvement. Furthermore, research should explore whether specialty probation units improve outcomes in the overall PROMI population by raising awareness of the mental health needs of probationers in a department. In addition to the directions noted above, research should elucidate the effectiveness of specialized probation, which can be operationalized in a number of ways (Wolff et al., 2010). Assessing effectiveness in terms of criminal justice criteria could include measuring violations, arrests, convictions, revocations, and jail days. Additionally, effectiveness should be assessed with respect to mental health outcomes and could include measuring treatment compliance, symptom reduction, and alcohol or drug use.

A major limitation of research on specialized probation is the lack of internal validity and generalizability of the results of evaluation of such programs. Researchers can rectify the selection bias problem discussed earlier by adopting high-order research designs that include random assignment and comparison of probationers monitored in other specialty programs, not simply on standard probation supervision (Wolff et al., 2010). Cost-effectiveness research for specialized probation programs also must be undertaken to investigate the costs associated with intensive supervision, arrests, court processing, and jail days (Wolff et al., 2010).

Practice

The training of POs on mental health issues has been variable (Petrila & Skeem, 2004). Implementing standard training guidelines for POs working with PROMI would help POs in both specialty units and standard caseload assignments. Training curricula should include modules on the signs and symptoms of mental illnesses, the effects and side-effects of psychiatric medications, and the establishment and maintenance of a positive relationship between PROMI and POs. Specialty program officers also should be trained in evidence-based programming in corrections, which could benefit both PROMI and non-PROMI (Petrila & Skeem, 2004).

Maintaining the confidentiality of clients' clinical information is paramount (Petrila & Skeem, 2004). POs, treatment professionals, social service providers, and court personnel are all involved in the monitoring of

clients in specialty probation programs. The professionals in these various entities must collaborate to efficiently and effectively coordinate activities and resources to assist and supervise PROMIs. The Health Insurance Portability and Accountability Act (HIPAA) guidelines dictate the confidentiality of healthcare information. Specialty probation programs would benefit from standard agreements consistent with healthcare regulations, which PROMIs would then sign. The consent to release and exchange information would allow advocates, service providers, and POs to share important client information. Establishing a standard agreement would also protect clients and help formalize the relationship between specialty officers and PROMIs. The level of confidentiality is notably diminished between PROMI and specialty POs who work on standard case management units or in specialty probation programs, and therefore privacy expectations must be shifted and safeguards must be instituted to protect the confidentiality of clients' clinical histories and current mental health conditions and treatments (Skeem et al., 2003).

An increased emphasis on monitoring PROMI without greater access to treatment can be detrimental to client success. The delicate balance of the two primary roles of a PO—protection of public safety and the rehabilitation of PROMIs—can be precarious. However, with the continued growth of specialty probation programs, the preservation of this balance must remain a priority. In the words of Petrila and Skeem (2004), “As the opportunities to join these problem-solving agencies arise, communities must strive to maximize the administrative efficiencies and unique therapeutic potential of both [criminal justice and mental health] systems while avoiding the possibility of merely increasing surveillance of probationers” (p. 15).

TABLE 1.
Elements of Specialized Programs for PMI

Collaborative Planning and Administration

Defining, Identifying, and Assessing Target Population

Matching Individuals to Supervision and Treatment Options

Setting Conditions of Community Supervision

Developing an Individualized Case Plan

Providing/Linking to Treatment and Services

Adherence to Conditions of Supervision and Care Plans

Specialized Training and Cross-Training

Sharing Information and Maintaining Confidentiality

As shown in Table 1, in terms of logistical strategies, specialized probation units should incorporate several essential elements that are instrumental in ensuring their successful design and implementation (Prins & Draper, 2009). For example, the planning of such programs requires the input and commitment of stakeholders from several areas of practice, including criminal justice, mental health, and substance abuse. Recognizing the heterogeneous nature of PROMI and the reality of limited budgets and treatment resources, the priority targets for specialized units must be carefully defined. This will ensure that PROMI with the greatest needs and highest risk are selected for services.

To avoid net-widening, a special program's target population of PMIs and its criteria for client eligibility must be clearly defined and communicated to the regular probation staff that transfer or refer probationers to specialized mental health units and to the judges who sentence them to such programs. Without this

communication, inappropriate clients (e.g., persons with substance use disorders only or recalcitrant clients with no mental illnesses or psychiatric histories) could be “dumped” into the program, increasing the difficulty of keeping caseloads down to a manageable size. Moreover, repeated rejection of inappropriate placements might make judges and probation staff less willing to refer appropriate candidates to the program. When everyone involved in referring clients to the program understands client eligibility requirements, such problems can be minimized from the outset.

Another essential feature involves the careful matching of services with the risk and criminogenic needs of clients, which include trauma, housing, and addiction (Epperson et al., 2011). The matching process also includes the proper categorization of PROMI for varying levels of monitoring and supervision and the referral of probationers to evidence-based service programs and treatments. In addition, more creative and less restrictive measures should be instituted to respond to technical violations. Violations often are a function of clients’ symptoms or difficulties in following directions. A failure to report, for example, might result from cognitive impairment, delusions, confusion, or side effects of medication.

As a rule, incarceration or other harsh penalties should be avoided when responding to technical violations. More effective options include relapse prevention techniques and progressive sanctions. POs can view technical violations as opportunities to build closer therapeutic alliances with PROMI and to assist them in avoiding future, and more serious, problems, including subsequent criminal activity. POs are well-advised to find alternative strategies for handling the technical violations of probationers with mental illnesses. According to Veysey (1996), “if community supervision staff adhere to rigid sanctions for technical violations with regard to treatment compliance, special-needs clients—particularly those with mental illness—are likely to fail” (p. 158).

Specialized probation programs demonstrate some promise in meeting the needs of PMI who are criminally involved. As the research and implementation of specialized probation programs evolve, we will gain a better understanding of the extent to which this type of specialized programming can reduce the overrepresentation of PMI in the criminal justice system. Developing probation strategies tailored to the complicated problems of PROMI is clearly a step in the right direction.

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Contemporary Origins of Restorative Justice Programming: The Minnesota Restitution Center

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THE CONVENTIONAL WISDOM expressed by many writers on the history of restorative justice traces its contemporary origins to victim-offender meetings held in Kitchener, Ontario, Canada in 1974. For just a few examples of the numerous authors repeating this idea, see Coates (1990); Immarigeon (1996); Zehr (2002); Peachey (2003); Umbreit and Armour (2010); and Beck, Kropf, and Leonard (2011). In contrast, this article presents evidence for a very different view of the contemporary origins of restorative justice programming, one that traces its roots back to 1972 and the Minnesota Restitution Center (MRC). [1](#)

While the term “restorative justice” was not in common use when the MRC was established, its program clearly met what later came to be seen as the core principles of restorative justice: repairing harm, stakeholder involvement, transformation in community, and government roles and relationships (Van Ness and Heetderks Strong, 2006; Bazemore and Schiff, 2004). The MRC amounted to a formal program implemented in accordance with an explicit and detailed plan (Fogel, Galaway, & Hudson, 1972). When implemented in 1972, no descriptions were available of comparable corrections programs detailing how victims and their offenders would be brought together to discuss the criminal incident, reach agreement on the damages sustained, and plan for repairing the damages and restoring the crime victim and community. In this respect, the MRC was unique and, as far as the originators were aware, the first of its kind in contemporary times.

This article describes the early history of the MRC, its restorative justice features, problems with implementation and research protocol, effects, and eventual transformation.

Background

In 1970, two University of Minnesota graduate students, [2](#) each with experience working in the criminal justice system, engaged in a series of informal discussions about what they saw as needed changes in the way court and corrections systems operated. Penal reform was an important issue at the time in Minnesota, as it was in the rest of the country, and a major theme of the discussions was how alternatives to prison could be designed and how it might be feasible to structure more meaningful roles for crime victims. Discussing the theme of crime victim involvement in the justice process inevitably led to the notion of offenders making good the damages done to their victims. The key questions were: What are some ways community corrections programming might ensure that victims are given structured opportunities to meet with their offenders in a reparations scheme, and how could these programs serve as alternatives to incarceration? Based on these discussions, the two submitted for publication an article about using restitution in the justice system (Galaway & Hudson, 1972). They also prepared a brief concept paper outlining how victims and offenders could be involved in a reparations scheme operating as an alternative to prison.

The concept paper was submitted in early 1971 to the then newly appointed and very controversial Commissioner of the Minnesota Department of Corrections, Dr. David Fogel. Upon taking up his position in Minnesota state government, Dr. Fogel had expressed strong dissatisfaction with the operations of his department and sought new ideas that fit within his developing approach to what he later came to call the justice model for corrections (Fogel, 1979; Fogel and Hudson, 1981). At the time, one of the graduate students was completing a research project in the Department of Corrections; learning of Dr. Fogel's interest in new ways of dealing with old corrections problems, he drafted and sent along the concept paper. The Commissioner expressed agreement with the ideas in the paper but requested a more extensive discussion covering such operational issues as staffing, key activities, timing, and budget of the proposed community corrections reparations program. Accordingly, the students prepared a detailed plan in the summer of 1971; in late fall, Commissioner Fogel had a modified version of it submitted to the state criminal justice funding body, the Minnesota Crime Control Board. At the same time, the graduate students and Dr. Fogel prepared a paper for publication that amounted to a summary version of the funding proposal along with an implementation plan (Fogel, Galaway, & Hudson, 1972). This published paper amounted to a detailed blueprint of how the proposed MRC program would operate, the way offenders would be selected from the state prisons, and the manner in which victims and offenders would be involved. This 1972 publication was, as far as can be established, the first contemporary description of what later came to be called a restorative justice program within a corrections setting (McCold, 2006).

In spring of 1972 the MRC was funded on a matching basis with federal money and state funds provided by the Minnesota Department of Corrections. The first director was appointed at that time. By August, staff had been hired and negotiations completed with the state paroling authority about the release of male prison inmates to the Center. Within one month the MRC opened its doors as a community-based, residential corrections program operated by the Minnesota Department of Corrections. In September, 1972 the first prison inmates had been selected, met with their crime victims, and negotiated a reparations agreement and were paroled from the Minnesota State Prison to the Center. The planned emphasis of the program was to bring victims and offenders together to negotiate a reparations agreement covering the form of restitution to be made, the amount of damages to be repaid, the expected schedule of repayments, and the ongoing contact to be maintained between victims and their offenders.

The intention was to house the program in a residential area of the Twin Cities of Minneapolis-St. Paul, but because of the restrictive nature of zoning bylaws, this proved to be impossible and the MRC ended up on the seventh floor of the downtown Minneapolis YMCA. But even this proved to be a challenge and overtures to locate the program there were initially turned down by the administrator of the YMCA. Largely due to an editorial in the Minneapolis newspaper encouraging the YMCA to allow the program to locate there, the YMCA Board of Directors changed the administrator's policy, allowing MRC residents to move in after transferring on parole from the Minnesota State Prison. While the original plan was to select program residents from both the Minnesota state women's prison and the men's prison, the idea of housing both in a single community residence was seen as too controversial and, in fact, became impossible because of the single sex housing requirement of the YMCA. Given that many times more men than women were serving state prison time, thus offering a larger pool of eligible inmates, the program was restricted to male prison inmates. MRC residents were supervised by an eight-person staff who helped them obtain and hold steady jobs from which they could pay back their crime victims and the community for the damages done, and also contribute to the financial support of their families, most of whom were on social assistance.

The Idea of Restitution in Justice Systems

The idea that offenders should be held responsible for restoring the damages done to their crime victims is quite straightforward, deriving from the view that crime is an offense by one person against the rights of another, rather than being primarily an offense against the state. Since victims of property crimes suffer losses, it makes sense that these offenders be held responsible for restoring the losses caused. While the use of restitution predates our criminal justice system, up to the early 1970s offenders were only infrequently ordered to make good the damages done to their victims. If ordered by judges, usually as an occasional condition of probation, restitution payments were not carefully monitored or enforced by probation staff (Schafer, 1970). However, for years articles had been published calling for offenders to make good the damages done to their victims. Among these were restitution proposals made by scholars and practitioners such as Irving Cohen, Albert Eglash, and Stephen Schafer (Galaway & Hudson, 1975).

In the 1940s, Cohen argued that restitution should be a central focus of probation work (Cohen, 1944). In the 1950s, Albert Eglash, a psychologist, wrote articles arguing for the therapeutic benefits of what he called creative or guided restitution (Eglash, 1958). Several years later, Eglash elaborated his views and made early use of the phrase, "restorative justice" (Eglash, 1977), defining it as equivalent to creative restitution. Eglash identified these key characteristics of creative restitution or restorative justice: 1) being directly related to the criminal offense; 2) involving an active, effortful role on the part of the offender; 3) being constructive and helpful for the victim; and 4) helping repair the damages done in the criminal incident (Eglash, 1977).

In the 1960s, Steven Schafer made a series of proposals for a reparations system (Schafer, 1960, 1965, 1968, 1970). He criticized the lack of attention given to crime victims and the failure to recognize that victims (rather than the state) are the direct parties damaged by criminal offenses. He saw that having offenders pay back their victims for the damages they had done was a way to empower victims and move them back to the central place they had originally held in administering justice in pre-modern societies.

Program Operations

The MRC used the ideas of Cohen, Eglash, and Schafer, incorporating the idea of reparations by offenders to their victims as a central focus of a residential, community-based corrections program. Besides its emphasis on victim-offender involvement in a restitution scheme, important features of the MRC program were: 1) its operation as a diversion from the Minnesota State Prison; 2) its incorporation of a rigorous evaluation research design; and 3) its staffing by men and women, many of them ex-offenders.

Diversion from the state prison

Eligible inmates selected for the program were male property offenders from the Minneapolis-St. Paul area who had been sentenced to the maximum-security Minnesota State Prison. While the original aim was to divert property offenders from the prison immediately before their admission, administrative requirements set by the Minnesota State Parole Board meant that inmates were not scheduled for their initial parole hearing until four months had elapsed after prison admission. With the exception of this initial prison time served by inmates selected for the MRC, the program operated as an alternative or diversion from the prison. A key assumption underlying the design of the MRC was that confining property offenders in the prison was largely a waste of taxpayer money, doing nothing for the direct victims of the crime.

Evaluation research design

The evaluation design for the MRC was based on a belief in the importance of using research to demonstrate the manner in which and extent to which program operations achieved intended results, reducing the frequency of returning to prison. To do this, an experimental design was implemented concurrent with beginning program operations. The way this worked was that property offenders recently admitted to the state prison were chosen for the program using a table of random numbers. These randomly selected inmates became the experimental (MRC) group and were offered an opportunity to participate in the program, while those not selected made up the control group remaining in prison to complete their sentences. While random selection was the gold standard of internal validity used to test the effects of new drugs in the 1970s, this was not so much the case with social action programs such as the MRC.

Operationally, the evaluation research involved MRC staff approaching members of the experimental group in prison and offering them an opportunity to meet with their crime victims, enter into a reparations agreement with them, appear before the parole board, and then be released on parole to live at the MRC and complete their parole agreements as these incorporated the restitution requirement. The Minnesota Parole Board had agreed in advance to release the randomly selected members of the experimental group four months after prison admission. However, the commitment of the parole board was not unqualified and it was clearly stipulated that the Board would reserve the right to override the random selection procedures in exceptional cases, not releasing selected members of the experimental group. For research purposes, these would make up another comparison group. Similarly, members of the control group remained in prison to serve out their sentences, averaging five years. The random selection approach was seen to be ethical since the program did not have the capacity to handle all state prison inmates meeting program criteria and random selection meant that every eligible inmate had an equal chance of being assigned to the MRC program.

Staff

Eight full-time staff made up the initial complement at the MRC, all employees of the state of Minnesota Department of Corrections. Half of these staff had served prison time and were either on parole or had been discharged from it. This was probably the first group of state corrections staff with full-time restorative justice duties. A feature of the program was to offer relatively short-term employment during which staff would be trained in working with victims and offenders and then be expected to move on to other corrections settings, using their knowledge and skills to develop other types of victim-offender programming. Another feature of the staffing arrangements was the practice of hiring as full-time staff members selected offenders completing the program. Within the first year of operations, two offenders had completed a major portion of the program and were hired as staff. The main responsibilities of staff included contacting victims and offenders, inviting them to participate in the program, mediating the victim-offender meetings, and, following parole to the MRC, monitoring the offender's completion of his parole/restitution agreement. Additionally, and with the aim of helping change beliefs and attitudes about the operations of the justice system, staff persons were expected to speak at public gatherings, especially about the effects of imprisonment, presumed benefits of the MRC program, and role of crime victims in the justice system.

Restorative Justice Features of the MRC Program

Repairing harm and stakeholder participation

A key feature of restorative justice (Van Ness & Heetderks Strong, 2006; Bazemore & Schiff, 2004) is that offenders and victims are together involved in resolving how to repair the harm caused by the criminal incident. Repair and healing are the primary goals, and victims, offenders, and communities are to have the opportunity to be actively involved in the justice process as early and as fully as possible. Key components of the MRC program closely mirrored those later described in detail by Van Ness and Heetderks Strong (2006), as these involved meetings between victims and offenders, communication between the parties at the meetings, and agreement. The program focused on providing structured opportunities for victims and offenders to participate together and arrive at an agreement to make things right. In this way, offenders were held accountable for the harm they caused and the reparations agreement documented the requirement that they repair and heal harms not only to the victim but also to the community.

Inmates randomly selected for the program had been convicted of property crimes, including forgery, breaking and entering, and theft. Having defined the target population for the program, the MRC program designers established a set of procedures covering intake and preparation, the actual victim and offender meetings at the prison, and the follow-up series of meetings when the paroled offenders met with their victims making their restitution payments. The main staff activities involving offenders during the intake phase of the program were screening all new admissions to the state prison, identifying those meeting eligibility criteria for the MRC, deciding on the number to be offered an opportunity to participate in the program, meeting with the randomly selected inmates to explain the program, and securing their willingness to participate.

Victim-related activities involved MRC staff using court and prison records to identify and locate victims, then contacting them and explaining the program and their anticipated role in it. Victims were asked to participate by traveling to the state prison, meeting with their offender, and negotiating a restitution contract. Upon securing the victim's agreement to participate, MRC staff scheduled a date and time for the victim-offender meeting at the prison. When first contacted, most victims had many questions about what was expected and often expressed concern about meeting with the person who had victimized them. Staff often had to schedule several meetings with victims to address their anxieties over the prospect of meeting their offender. At the same time, victims often expressed some degree of curiosity about the person who had harmed them, as well as the idea of coming to the state prison to meet their offender. The state prison was clearly a safe environment for holding the meetings and in this way satisfied what were undoubtedly safety concerns of the victims.

MRC staff mediated the victim-offender meetings at the prison. These meetings began with introductions, followed by staff explaining the purpose of the meeting and the process to be followed. Each party was encouraged to ask questions, and victims were encouraged to explain why they were attending and what they wanted from the meeting. The aim was to help introduce and focus the meetings by having the parties talk directly with each other, helping them see each other as people, not as stereotypical victims and offenders. Victims were asked to explain the effects the criminal offense had on them and their feelings about it, and they often asked the offender why he chose them as the target. Offenders typically explained

their motivation for the offense and expressed regret for it. Discussions then commonly turned to what the offender was prepared to do to repair the harm by making amends. Victims responded to the offender's offer of reparations, usually very generously. Victims and offenders often reached agreement quickly on how the losses would be restored. MRC staff wrote up the restitution agreement and all parties signed it. This agreement covered the amount of damages to be repaid, the form of payment in terms of either money or services, and the schedule of payments to be made once the inmate had been released on parole to the MRC. The agreement was then included as a condition of the offender's parole. Upon parole release to the MRC, offenders were expected to live at the downtown Minneapolis YMCA, abide by program rules, obtain work, pay toward the support of their families who were commonly receiving welfare payments, and make restitution to their victims. MRC staff monitored restitution compliance according to the agreement signed by the parties, supervised the release arrangements, and dealt with any problems in getting the restitution completed.

Ongoing contact between the paroled offenders and their victims was required, particularly when making restitution payments. Victims were encouraged to visit with their offenders at the MRC as well as in their homes and close relationships between the two parties often developed. A dramatic example occurred at the time of the first Thanksgiving holiday after opening the MRC. Food was donated, a meeting hall obtained, and MRC residents, staff, victims, and all of their families came together and held a traditional turkey dinner celebration.

In 1971, when the MRC was designed, the graduate students who drafted the original program were not aware of any other systematic attempts in modern times to structure victim-offender meetings within a corrections context to negotiate a restitution contract. Consequently, many opinions were offered about how foolish it was to attempt bringing victims and offenders together to negotiate the amount and type of damages and the redress to be made. Involving offenders with their victims was seen by many as impractical and foolish, if not outright dangerous. Restitution amounts, many argued, could not be fairly determined. Victims either would be unwilling to meet with their offenders or, if they did come to meet at the prison, would act vindictively and maliciously, making it very difficult to come up with a restitution contract. Offenders, many argued, would refuse to participate or would minimize and rationalize the damages done.

As it turned out, the "experts" were generally wrong on all counts. During the first year of operations, 31 of 44 (70 percent) victims met with their offenders at the Minnesota State Prison and negotiated a restitution contract, even though they knew in advance that engaging in such an activity might well mean the offender would serve a very short prison sentence (Galaway & Hudson, 1975). No victim who met with his or her offender acted maliciously or vindictively. In fact, the opposite was commonly the case, with almost all victims trying to accommodate offenders, making it easy on them when deciding on the total amount of damages and restitution to be repaid and the schedule for the repayment. MRC staff were directed to push the mediation sessions toward reaching agreement on full, not partial restitution, covering the damages incurred by all conviction offenses as well as the out-of-pocket costs incurred by traveling to the state prison to meet with offenders.

Inclusion has been identified (Van Ness & Heetderks Strong, 2006) as the most important restorative value, and the MRC program ensured that all victims, offenders, and affected community members had structured opportunities to participate as fully as they wished. This value of inclusion meant that because some of the victims identified for the program had insurance coverage for at least part of the value of the goods stolen, staff contacts were made with the central office of the association of state insurance brokers. The procedure established with this association was for them to be contacted when a case arose in which insurance was involved and the insurance companies would provide representation at the victim-offender meetings or community service hours would be required as a parole condition, rather than financial restitution to the insurance companies. Most insurers declined the opportunity to participate directly and supported the notion of community service hours. A representative of the state insurance association did, however, participate as a member of the MRC advisory board. This group met regularly offering advice to the program director on significant issues affecting the MRC and was composed of local government officials, representatives of large Twin City corporations, and social welfare organizations.

While the major emphasis of the MRC was on offenders making financial restitution, there were cases, including those commonly covered by insurance, where no victim could be identified or a victim was not willing to meet with the offender. Symbolic restitution in the form of community service was set in these

cases. A substitute victim was identified, usually a representative from a community non-profit agency who came to the prison and met with the offender. By transforming the amount of damages sustained in the criminal incident into the state minimum wage, the parties easily reached agreement on the amount and schedule of community service work hours to be performed at the agency upon the offender's prison release to parole in the MRC.

Transformation in Community and Government Roles and Relationships

This key feature of what has come to be called a restorative justice program (Van Ness & Heetderks Strong, 2006; Bazemore & Schiff, 2004) turned out to be a major emphasis of the MRC program. From its inception, an explicit goal of the MRC was to disseminate information to community groups about the concept of restitution and its applications in the justice system and in victim-offender involvement (Minnesota Restitution Center, Minnesota Department of Corrections, 1972). Preparing and disseminating this information was aimed at improving the justice system, particularly at giving victims and the larger community more meaningful roles in what came to be called restorative programming efforts. A clear aim of the MRC was to distribute information that would lead others to develop victim-offender programming. Towards that end, in 1972-73, MRC distributed over 500 copies of a program booklet explaining the concept of restitution, the role of crime victims, operational procedures, and program goals. This document served as a model for many of the restitution and victim-offender mediation and reconciliation programs that developed throughout the United States and Canada in the coming years. Also, in 1972, many corrections officials from other states and Canada visited the MRC, editorials about MRC were published in the Minneapolis and St. Paul newspapers, several articles were submitted and eventually published in professional journals (Hudson & Galaway, 1974; Galaway & Hudson, 1974), and presentations were made at community forums as well as at annual meetings of the Midwest Sociological Association and American Society of Criminology.

Community outreach activities carried out by MRC staff, often accompanied by victims and their offenders, included public speaking engagements with a variety of community groups. These presentations dealt with an alternative view of how the justice system might operate, the importance of victims playing significant roles, and the place of reparations. During one of these meetings held with court officials in a suburban Minneapolis county, history repeated itself in a way reminiscent of the situation a thousand years ago when the sovereign took over restitution or "composition" payments to victims, replacing them with fines payable to himself. So in a similar way, contemporary county officials expressed a lack of interest in making greater use of restitution on the grounds that it would reduce the amount of fine income for the county. For these government officials, victims receiving reparations was a lesser concern.

Another early MRC staff outreach activity was planning an international symposium on restitution that was held in November, 1975. The purpose of the symposium was to change the nature of relationships between the administration of justice and the role of victims and the community (Hudson & Galaway, 1977). It was in his paper at this symposium that Albert Eglash first used the term "restorative justice," equating it with creative or guided restitution. A second symposium, held in 1977, explored theoretical and philosophical rationales for the use of victim-offender involvement in restitution schemes (Galaway & Hudson, 1978). In 1979, a third symposium provided a forum for describing and exploring the results of research conducted on victim involvement, financial restitution, and community service sanctions for both adult and juvenile offenders (Galaway & Hudson, 1980). The intention of these symposia was to promote the role of crime victims and the use of reparations in the administration of justice and ultimately to stimulate the introduction of different types of victim and offender programming efforts.

Perhaps the most widespread impact of the MRC was serving as a pilot program for the large number of victim-offender programs that followed, including what came to be called victim-offender reconciliation programs, victim-offender mediation programs, and especially offender restitution programs in both the United States and Canada. For example, three major U.S. federal funding initiatives for restitution programs took place in the years after opening the MRC. In 1976, the National Institute of Law Enforcement and Criminal Justice funded seven financial restitution projects for adult offenders, and in 1978, four additional projects were funded. In 1979, this agency also funded seven community service projects for adult offenders and in 1978, the federal Office of Juvenile Justice and Delinquency Prevention funded 56 juvenile projects involving both financial restitution and community service sanctions for juvenile offenders. Additional restorative justice projects were started with federal funds through state planning agencies matched with local government resources. Major evaluation research projects were also carried out on federal program

initiatives by private consulting firms and universities. In 1979, just over a half dozen years after the inception of the MRC, a survey of state agencies identified 67 formal restitution projects for adult offenders, along with a variety of other types of victim-offender programs (Hudson, Galaway, & Novack, 1980).

The MRC was a pioneering program, probably the first restorative justice program implemented in a corrections setting in North America in contemporary times. In this respect the MRC was a demonstration program, holding closely to what later came to be seen as the core principles of a restorative approach: Repairing harm, stakeholder involvement, transformation in community, and government roles and relationships. The MRC program was a radical innovation in corrections practice, perhaps too radical for its long-term survival, since it dealt with randomly selected offenders housed in the maximum security Minnesota State Prison, diverted them after four months although they had average sentences of five years, involved their crime victims in structured victim-offender meetings aimed at negotiating reparations, and used a staff composed of ex-offenders.

Implementation Issues/Lessons Learned

As with most innovations, the MRC program had implementation problems, some fatal for its continued existence. Carrying out the research design, in particular, led to a series of difficulties that put the future of the MRC in question. The most dramatic problem occurred as a result of the random selection procedures. In early 1973 during the second year of MRC's operation, after much effort by police and considerable publicity in local media, a notorious Minnesota thief was convicted and incarcerated in the Minnesota State Prison. As sheer chance had it, his name was randomly selected to the MRC experimental group. Staff then began the usual process of contacting the inmate to discover if he wanted to pursue developing a reparations agreement with his victims. Not surprisingly, he was quite willing. Beginning contact was then made with some of the many victims. The commissioner of the state corrections department, the successor to David Fogel (who had left for a position in Illinois), became aware of the situation and immediately directed the MRC director to stop any further work developing a restitution contract with the convicted thief. Instead of complying with a direct order from his superiors in the Department of Corrections, the director took a strong position against the commissioner, arguing that it was his obligation to take the randomly selected offender before the Parole Board for release consideration. The Parole Board could then make a decision about releasing the offender. The commissioner would not tolerate this and, after numerous warnings, fired the director on the grounds that local police and community members would be enraged at the prospect of bringing a notorious offender before the Parole Board for release four months after having been sentenced to prison. He argued that regardless of whether the Parole Board would release the offender, which was highly unlikely, the very fact of requesting release to the MRC would be viewed badly by the public, let alone by officials in the office of the state governor and Minneapolis-St. Paul police. After being fired, the former director filed a lawsuit in federal district court against senior managers in the Department of Corrections, arguing that his civil rights had been violated by his termination. Eventually, when the case was heard, the district court rejected each of the former director's arguments. Having lost in the district court, the former director then appealed to the Eighth Circuit of the Federal Appeals Court and, again, lost his case.

The effect of this situation was to put the MRC and its staff in a very negative light with state corrections administrators, Parole Board members, and, especially, officials in the governor's office. MRC staff members were increasingly seen as out of control and the program too radical for a state bureaucracy. The random selection procedures were increasingly ignored by the paroling authority. Inmates began to be required to serve longer portions of their sentences in prison before being considered for release to the Center.

A related implementation problem concerned the extent to which restitution would be used as a sole or partial sanction. As originally designed, MRC was to use offender restitution to crime victims as the primary if not sole intervention and, upon its completion, the offender was to be discharged from parole. The evaluation was designed to test the effects of this strategy as it encompassed three major phases: direct victim-offender meetings for the purpose of negotiating restitution agreements; the ongoing repayment process involving person-to-person offender/victim contacts; and the completion of restitution in accordance with the written plan. The confounding factor in this plan was that property offenders sentenced to the state prison typically had extensive conviction histories with multiple prior incarcerations in jails and prisons. Similarly, the inmates randomly selected for the MRC program had extensive conviction histories, most often for crimes involving relatively small amounts of damages, only a few hundred dollars on average.

Their average prison sentences, however, averaged five years. The issue for the Parole Board was how to balance the lengthy sentences with the small amount of restitution to be paid. The few hundred dollars in restitution could easily be repaid in a relatively short period of time, but the Parole Board was unwilling to discharge the offender from parole just because the required restitution had been completed. Instead, the Board required offenders to remain on parole with supervision provided by MRC staff. It was agreed that having completed his restitution requirements and demonstrated good behavior, the offender could leave residency at the MRC and return home with regular supervisory meetings back at the Center. This resulted in restitution no longer being the sole sanction or independent variable in the program. Consequently, a diffuse set of activities were carried out as parole supervision took on more prominence in the program and trying to tease out their research effects relative to the restitution sanction became increasingly problematic.

Compounding this problem were the common chemical dependency issues of property offenders in general and MRC residents in particular. Faced with the alcohol and drug problems of residents and the inevitable legal problems these could potentially cause, staff made referrals to treatment services in the community and required attendance at structured group and individual counseling sessions as part of the MRC program. Twice-weekly group counseling sessions were initiated, along with individual counseling sessions with residents and, in many cases, their family members. The effect of this mixed set of interventions—restitution, parole supervision, counseling activities of various sorts—was to further complicate any attempt at attributing research effects (Hudson, 1977).

The rigid application of the experimental design used to evaluate the MRC program was inappropriate. Excluding the notorious thief would not have seriously compromised the internal validity of the research, although his exclusion would have limited the external validity of results. But that would have been a very small price to pay in comparison to the antagonism generated by confronting administrative and political authorities. Although the MRC procedures for first offenders and repeat offenders were the same, appropriate outcome data analyses could have partitioned the population of offenders into more homogeneous comparison groups to discover outcome differences among such pre-existing groups of offenders.

The research design simply failed to fit with the developmental stage of the demonstration program and would have been more fitting for a mature, stable program. Flexibility was needed in the research design so that it could be altered and tailored to changing programming circumstances. But the experimental design concurrently implemented with program operations was inflexible, not amenable to change, nor geared toward providing the quick feedback of information so badly needed in an innovative program. The research called for the program standing still, not changing on the basis of feeding back preliminary research results for fear of contaminating the internal validity of the research. But program managers could not wait several years until information from the experimental design was available to support making changes to program interventions.

The MRC was designed to operate as a diversion from the state prison for selected property offenders, but consistent with many restorative justice programs since established, the MRC program ended up having contrary effects to those intended (Bazemore & Schiff, 2004). Preliminary evaluation results showed that while MRC residents spent significantly shorter periods of time in prison, they also spent significantly longer periods of time on parole than did the controls. Overall, members of the experimental group served significantly longer periods of time under supervision (prison and parole) than did the controls. While the MRC was designed as a diversion from prison, and managed to operate that way, it also had the effect of enhancing sanctions by adding to the total length of time spent by offenders under supervision (Minnesota Department of Corrections, 1975).

As Bazemore and Schiff have demonstrated with their research (2004), this result of extending and spreading the net of social control turned out to be a common feature of many restorative justice programs, indeed of many so-called diversion programs. Many programs funded as alternatives to more severe sanctions ended up serving offenders who, in the absence of the diversion program, would not likely have received more severe sanctions. For example, in many programs restitution was most commonly added as a requirement to existing sanctions, especially a probation order. In the absence of the restitution program the offenders would most likely have simply received a sentence of probation. With the restitution program now in place, they received probation with a restitution requirement. Consequently, when offenders failed to complete the restitution requirement they were at risk of being imprisoned. In effect, restitution programs

setting out to reduce the use of incarceration may well have ended up increasing it, while at the same time making claims they operated as diversion programs.

The Aftermath of the Center

In its second and third year of operations, in 1973 and 1974, the MRC began to undergo a series of dramatic changes. As noted, the parole board became more restrictive in releasing inmates to the MRC while also increasing the length of prison time to parole release consideration. This had the effect of reducing the number of inmates released to the MRC, and because most of the costs were fixed in relation to staffing, per unit resident costs escalated. As a result, corrections administrators made the decision to have the program cease operating as a residential facility. The number of restitution staff was reduced and staff responsibilities changed to solely developing restitution agreements with state prison and reformatory offenders. Also, victim involvement was dropped and inmates developing restitution agreements with program staff were released at their conventional parole release dates to be supervised by regular state parole officers.

With the abolition of the state Parole Board and advent of state sentencing guidelines in 1981, the restitution program took on another form. A much-reduced staff of three persons housed in the central office of the Department of Corrections became responsible for developing and maintaining a clearinghouse on restitution literature, providing technical assistance to Minnesota counties, and undertaking research on restitution and community service. Largely at the initiative of the director of the Restitution Program, a pilot community service project was initiated in a county jail and soon spread to many Minnesota county jails. Operated as a partnership between the Minnesota Department of Corrections and the Minnesota Department of Natural Resources, the Minnesota Sentencing to Service Program was intended to provide a labor force for environmental benefit. Hours worked by jail inmates were in lieu of their sentences and in this way the program was an alternative to serving time in jail. The original residential restitution program operated by the state Department of Corrections had, in less than a decade, evolved into a community service program for county jail inmates.

Political considerations, changes in state legislation, design and implementation failures, all combined with the radical nature of the MRC program, played an important part in its transformation and eventual demise. This is not, however, to diminish the importance of the program having been established in the first place, the manner in which it served as a model for the numerous restorative justice programs that followed, and the critical role played by David Fogel while serving as commissioner of the Minnesota Department of Corrections. Without his leadership and vision, the original idea for the MRC would have quickly sunk under the cynicism of what then passed for corrections thinking. As the evidence presented here has attempted to show, the MRC was truly a restorative justice program, probably the first of its kind to operate in contemporary times within a corrections context.

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The Re-validation of the Federal Pretrial Services Risk Assessment (PTRA)

¹ PACTS (Probation/Pretrial Services Automated Case Tracking System) is an electronic case management tool used by probation and pretrial services officers in all 94 federal districts to track federal defendants and offenders. At the end of each month, districts submit case data into a national repository that is accessible to the Administrative Office of the U.S. Courts (AO), Office of Probation and Pretrial Services.

² This research presents results on the unscored or test items; however, policy decisions concerning ultimate changes to the PTRA will be determined by the appropriate group or committee, not the authors.

³ The AUC measures the probability that a score drawn at random from one sample or population (e.g., defendants with a re-arrest) is higher than that drawn at random from a second sample or population (e.g., defendants with no re-arrest). The AUC can range from .0 to 1.0 with .5 representing the value associated with chance prediction. Values equal to or greater than .70 are considered good.

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The Eastern District of Michigan: How Does It Consistently Achieve High Release Rates?

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¹ United States v. Salerno, 481 U.S. 739 at 755 (1987).

² Judicial Business of the United States Courts Annual Report of the Director – H Tables (2000 - 2009). <http://www.uscourts.gov/Statistics/JudicialBusiness.aspx>.

³ It is important to note that FY 2009 data was not used because too many cases referred during this time remained open and the outcomes have yet to be determined.

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The Evolution of Community Supervision Practice: The Transformation from Case Manager to Change Agent

¹ This article was originally published in the Irish Probation Journal, Volume 8, October 2011, and is reprinted with permission.

² Guy Bourgon, Leticia Gutierrez and Jennifer Ashton are with Public Safety Canada. We would like to thank Jim Bonta and Tanya Ruge, who are integral to the Strategic Training Initiative in Community Supervision team. Our special gratitude is extended to the probation officers and their managers who have allowed us to look at what goes on behind closed doors and have begun their own transformation into change agents. The views expressed are those of the authors and do not necessarily represent the views of Public Safety Canada. Correspondence should be addressed to Guy Bourgon, Corrections Research, Public Safety Canada, 340 Laurier Ave. West, Ottawa, Ontario, Canada, K1A 0P8. Email: Guy.Bourgon@ps.gc.ca

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Responding to Probationers with Mental Illness

¹ The authors thank Dr. Faye Taxman for her very helpful and insightful comments on an earlier draft of this article.

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Contemporary Origins of Restorative Justice Programming: The Minnesota Restitution Center

¹ Many of the early documents from the MRC are archived at the University of Minnesota Social Welfare History Archives, Archives and Special Collections, Minneapolis, MN: University of Minnesota Libraries.

² One of whom is the author of this article.

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