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Federal PROBATION

a journal of correctional philosophy and practice

SPECIAL FEDERAL PROBATION AND PRETRIAL SERVICES ANNIVERSARY ISSUE: Revisiting the Foundation, Planning for the Future

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Introduction to Federal Probation and Pretrial Services Anniversary Special Issue: Revisiting the Foundation, Planning for the Future

The administration of criminal justice is the most sacred obligation of government.

Sam Ervin

BURIED WITHIN the federal judiciary, the Third Branch of government, lies a small but powerful group of people who contribute to this most sacred obligation. This special issue of *Federal Probation* celebrates the role of United States probation and pretrial services officers, and describes some important aspects of the system in which they work, and the goals for which they work.

On June 6, 1925, Congress passed the Probation Act, establishing the federal probation system. In this issue, as we consider the first 90 years of the federal probation system, we mark our history and our current status, challenging our system to a discussion about where we want to be at the 100-year celebration in 2025.

Today the federal probation system stands united with our federal pretrial services system. One rarely discusses one aspect of the system without touching on the other. The first federal pretrial services agencies were established 40 years ago, in 1975, after Congress passed the Speedy Trial Act of 1974. We have evolved in our pretrial services work and responsibilities, and again, look forward to setting goals for the 50-year celebration in 2025.

In this issue we mark in very real ways where the federal probation and pretrial services system is today. We present articles that describe our officers and our offenders, both statistically and descriptively. We recognize that it is the officers—who they are, their qualifications, their training, their beliefs—that influence the contributions of the system. The clients—defendants and offenders—are also described here, since it is at the intersection of the officers with the clients that results can occur. But the officers and the clients do not exist in an unadulterated relationship: The influences of law, culture and academia all matter. And the historical context has laid the groundwork.

To help establish that historical context, we reprint an article by Henry Chandler, first published in the June 1950 issue of this journal, celebrating the first 25 years of the Federal Probation System. Chandler opens by saying, "it does not seem likely that there will be any substantial change in the present functions of federal probation officers in the next 25 years." Among his suggestions are enlisting volunteer sponsors from the community and offering certificates of rehabilitation—two ideas that are not widely utilized today, although variations on them are being discussed and considered in some courts. Chandler challenges us to be able to answer the important question of how our clients do after successfully completing their term of supervision in the community. That is a question we have only recently been able to answer—but that we do answer in this issue. Chandler emphasizes his interest in maintaining high standards for officers, stating, "while a faculty for working with people is requisite, this faculty like an aptitude for law or medicine has to be sharpened by training and developed by experience."

Ronald Ward responds to this comment by laying out the history of training in the federal probation and pretrial services system. Ron is the current Chief of the Training and Safety Division and serves as the Director of the Federal Probation and Pretrial Services Training Academy (doing business since 2005), located at the Federal Law Enforcement Training Center in Charleston, SC. Beginning in 1950, the Judicial Conference of the United States and the Administrative Office of the U.S. Courts understood the need for national training, though the funding and method varied greatly over time. The addition of firearms skills to the long list of skills required by an officer catapulted the need and commitment to training for officers to a new level. While one can minimize the need for regular training in communication skills, for example, rare is the person who doesn't recognize the importance of skill training while carrying firearms.

Next, the Federal Judicial Center's Michael Siegel describes the Leadership Development Program, an integral part of the system's sharpening of staff to ensure the availability of leaders for its important work. Dr. Siegel expresses his pride in the probation and pretrial services officers and his long-held belief that ". . . people can change and we can help."

In an article originally published in the Sept. 2012 issue of *Federal Probation* and now republished here, Donna Makowiecki sets out a straightforward history of pretrial services. She reminds us that though earlier legislation supported the need for a system of bail in the United Sates, it was not until the implementation of the Speedy Trial Act in 1975 that federal courts were empowered to carry out the supervision and investigation of people charged with federal offenses.

That history is made more colorful through a very personal story written by Betsy Ervin, the granddaughter of Senator Sam Ervin, who

worked tirelessly for bail reform. After five years of serious work with Congress on this issue, he wrote, ". . . the history of the Bail Act demonstrates the kind of careful, objective, and deliberate study which should always precede changes in our highly complex system of criminal justice."

One hopes that this same kind of deliberate study is taking place now, as our 114th Congress considers major changes to the federal criminal justice system. Nearly all of these proposed changes will affect the work of probation and pretrial services officers. John Fitzgerald and Stephen Vance detail the current proposals and provide insight into their implications.

We close out the issue with two "internal" articles that elaborate on the system's recent work. Matthew Rowland, Chief of the Probation and Pretrial Services Office at the Administrative Office of the U.S. Courts, provides details on the assessment of the probation and pretrial services system that was boldly commissioned by the Judicial Conference of the U.S. Court's Committee on Criminal Law in Dec. 1998 and contracted to outside consultants in Fall of 2000. The ensuing assessment recommended that probation and pretrial services become a results-based organization, with an outcome measurement system. Rowland sets down the specific steps taken in the ten-plus years since the completion of that assessment in Sept. 2004, and describes the level of outcome data now available to officers through the Decision Support System.

The second internal article, written by James Johnson and Laura Baber, describes the current State of the System, using data to finely detail where the system stands in meeting its goals.

We wrap up this issue with the evaluation of one of the nation's most highly regarded academics on the community supervision being delivered by the federal probation and pretrial services system. Taxman describes our "post mass incarceration era" and the need for community supervision officers to view themselves with a "redemption script" if we hope to advance our current efforts to reduce recidivism. Taxman recommends three themes for improving delivery of public safety: a) addressing behavioral health disorders; b) improving the use of technology; and c) assisting people in assuming prosocial roles as citizens.

We are proud to introduce this special issue to our readers—those within and outside of the federal probation and pretrial services system. We hope that it will challenge readers to think progressively about what methods our system's employees can adopt and what contributions our officers can make for the good of the communities they serve. To this end we have incorporated a variety of voices, historical and contemporary, to build on the foundation of our field's history and the outside recommendations issuing from the Strategic Assessment some ten years ago; to consider the current state of affairs and proposed legislative changes; and to engage suggestions for using today's technology to provide instant feedback to our clients. We believe that sharing all of this with our readers will ignite creative thinking and a renewed commitment to our very important profession, so that we will indeed have new cause for celebrating in 2025, at the 100th anniversary of probation and the 50th anniversary of pretrial services in the federal system.

Nancy Beatty Gregoire
Deputy Chief
Probation and Pretrial Services Office
The Administrative Office of the U.S. Courts

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The Future of Federal Probation[1]

Henry P. Chandler
(Former) Director, Administrative Office of the United States Courts

IT DOES NOT seem likely that there will be any substantial change in the present functions of federal probation officers in the next 25 years. These functions are principally presentence investigation and the supervision of persons on probation and parole.

Presentence Investigation and Supervision

In the beginning of federal probation officers were concerned almost exclusively with the supervision of persons on probation and parole. The courts soon found, however, that it was helpful to them in deciding what sentence to impose, to have full information from the probation officers concerning the personality and associations of the offenders and an estimate of their capacity for rehabilitation. So the courts came to require presentence investigations and reports in a large proportion of the cases of conviction of crime. Rule 32c of the Rules of Criminal Procedure requires this unless the court otherwise directs. In the fiscal year 1949 a total of 23,704 investigations were made, of which 14,921 were presentence investigations, 7,261 were investigations of civilian prisoners preliminary to their parole from prison, and 1,522 were similar investigations for the Army for which the probation officers serve as parole agents. The number of persons under supervision in the same year was 29,726, of whom 21,557 were probationers, 4,555 were parolees, 2,550 were persons on conditional release, and 1,064 were parolees from the Army.

[1] This article was first published in the June 1950 issue of *Federal Probation*, which marked the 25th anniversary of the federal probation system.

Relation of Probation Officers to the Courts in Presentence Investigations

There is a substantial difference between the position of probation officers in presentence investigations and in supervision. In making presentence investigations they assemble and present the facts pertinent to the offender for the consideration of the court. Some courts desire a recommendation of action from the probation officers and some do not. In either case the task calls for a high degree of intelligence on the part of the probation officers in appraising the facts and presenting them in clear, logical, and balanced form. But the responsibility is in the court.

Comparative Independence of Probation Officers in Supervision

In supervision on the other hand, the responsibility for planning and action is in the probation officers, with only an occasional reference to the court or board of parole. The probation officers are really the treatment agents for the persons committed to them, just as the prisons, civil or military, are the agencies for treatment of the offenders in their custody. Generally after a court puts a person on probation he expects the probation officer to take charge of the case and conduct it. The probation officer is largely independent and thrown pretty much on his resources. It is only when there is a substantial violation of the probation and the question arises whether it should be revoked, that the case again comes before the court. Likewise cases of persons on parole, whether civil or military, are in the hands of the probation officers to be handled according to their judgment, up to the point of substantial breach of the terms of parole. It does not seem likely that this condition will change.

Dual Duty of Probation Officers to Supervise Probationers and Parolees

Another feature of federal probation that seems almost certain to continue is the dual duty of the officers to supervise for the courts persons on probation, and for the board of parole and the Army, paroled prisoners. A generation ago correctional authorities were not inclined to put the supervision of probationers and parolees in the same persons. They were apprehensive that if this was done the stigma of prison would attach to the probationers and the work with them would be less effective. There may still be some opinion of this nature which is not without reason. But in the Federal Government in any event economy makes it necessary to provide in many districts for the supervision of probationers and parolees by the same officers. This is particularly true in districts of large area and sparse population. It would involve unnecessary expense to have two sets of officers ranging over the same territory to supervise probationers and parolees when one could do the work. While it would be possible to make a separation in populous districts if the statute so provided, the present plan for the supervision of probationers and parolees by the same officers has become so firmly imbedded in the law that it does not seem likely that it will change.

After all there may not be any intrinsic difference between a man who is sentenced to prison for an offense and another man who for the same offense is put on probation. By and large persons committed to prison are doubtless more confirmed offenders than those who are put on probation, and therefore the task of rehabilitation is more difficult and success in it less likely. This is shown by the generally higher proportion of violations of parole than of probation. But the difference is one of degree and not of kind.

It does not appear from experience that probation officers are handicapped in supervising probationers because they are also supervising parolees unless their work load is too great. And that would be true if their load consisted entirely of probationers. The federal probation officers are asked to give their efforts to probationers and parolees without distinction except upon the basis of their individual needs as persons. There seems every reason to think that this policy will continue.

Now we reach the question raised by the title. What will the next quarter century bring in federal probation, or perhaps rather (because it is difficult to be a prophet) what should we like it to bring? I will put down some of the things that occur to me.

Qualifications of Probation Officers

High among the developments for which I hope, I place more general observance in the appointment of federal probation officers of the standard of qualifications recommended by the Judicial Conference of the United States. This has been the burden of my pleas in annual reports for the last 10 years and consequently I need not spend much time on it. But in my judgment the importance of it can hardly be overestimated.

In 1942 the Judicial Conference, in accordance with the report of a committee of judges which had studied the matter, recommended to the district courts minimum qualifications for probation officers. Among them were:

> A liberal education of not less than collegiate grade, evidenced by a bachelor's degree (B.A. or B.S.) from a college of recognized standing, or its equivalent; and
>
> Experience in personnel work for the welfare of others of not less than two years, or two years of specific training for the welfare work (a) in a school of social service of recognized standing, or (b) in a professional course of a college or university of recognized standing.

In recommending the standards quote, the Judicial Conference only recognized what is obvious, that the work of a probation officer is a professional task; that it requires unusual understanding of the factors of personality, environment, and association that influence human conduct; and that while a faculty for working with people is requisite, this faculty like an aptitude for law or medicine has to be sharpened by training and developed by experience. There are many difficult occupations, but I know of none in the field of the social sciences that seems to me harder or more baffling than that of a probation officer. The personal factors with which he deals are so intangible and elusive that unless he has the knowledge that a wide, general education, study of psychology and sociology, and the aptitude that some experience in working with people to help them can give, he can hardly hope to succeed. There are exceptions to all rules and occasionally an apparently unpromising person may develop into a good probation officer. But for every instance of that kind there are more instances of officers appointed without qualifications for the work, who are a drag upon the system. It is well known that when a court appoints a probation officer, whatever his training or lack of it for probation, the Administrative Office gives to him every help possible and does its best to build him up. That will continue to be the policy. Furthermore, I am proud of the caliber and the devotion of the federal probation officers as a class. I like to quote the observation of Dr. Sheldon Glueck of the Harvard Law School concerning the federal probation officers whom he met at a regional conference at Harvard in June 1942:

> But one could not help being greatly encouraged in observing the federal probation officers at the Conference. They gave the impression of dignified, mature, clear-headed and socially minded men; and at the lectures, especially the vital discussions guided by Dr. Arthur E. Fink, they proved emphatically that they were on their intellectual toes.

Nevertheless the fact is that of 108 officers who were appointed in the federal system during the period from January 1, 1943 following the recommendation of qualifications by the Judicial Conference, through December 15, 1949, only 63, or 58.3 percent, met the qualifications of both education and experience, and 15, or 13 percent, met neither type of qualifications. Nothing else I believe could do so much to lift the federal probation service in effectiveness and public esteem as for the courts to follow uniformly the very reasonable standards for appointment recommended by the Judicial Conference.

Increase in the Number of Probation Officers and Decrease in the Case Load

Through the consideration of the Congress in the annual appropriations, the number of probation officers has been increased in the period of a little more than 10 years since 1939 from 206 to 297, making possible, along with some reduction in the number of convicted offenders in the federal courts in recent years, a decrease in the average case load per officer from 160 at the end of 1939 to 103 at the end of 1949, or approximately 37½ percent. This has been very beneficial. Nevertheless an average case load for supervision, exclusive of presentence and preparole investigations, of 100 persons is recognized by all authorities in the field of corrections to be too much for the best work. Also the load varies widely in different districts and in some districts the load per officer is much above 100 persons.

I am not disposed to be dogmatic in the matter of case load or to set any rigid limit. A great deal naturally depends upon such factors as the nature of the offenders and the seriousness of their criminal tendencies, also the distances which have to be traveled by the officer to see them. But probation is a method of treatment which depends upon individual attention to the persons under supervision. Even in federal prisons where offenders are in custody, more and more effort is being made to study each individual inmate to find out what he needs physically, psychologically, vocationally, and socially to fit him to resume a place in society. Personal service is the sole stock in trade of the probation officer who has neither walls, bars, schools, shops, nor any like facilities. Therefore it would seem unnecessary to labor the point that the number of probation officers should be sufficient to enable them to give a reasonable amount of individual attention to the persons in their charge.

In the discussion of actual probation cases which occurs at the regional probation conferences, again and again it appears that in some crucial situation the probation officer was not in touch with the probationer and could not give the word or help, which might have saved

him from backsliding. On the other hand, probationers who succeeded after many falls were repeatedly and at short intervals helped in times of strain by the probation officer. The probation system with a sufficient staff costs so much less than imprisonment and can save so much in future crime avoided that the economy in the long run of providing for it adequately seems obvious.

Increase of In-Service Training

Regional conferences are held for probation officers in different parts of the country at intervals of 2 or sometimes 3 years. The main feature of the programs is discussions of cases of probation and parole led by most capable teachers of social work in different universities. These are highly beneficial; they give fresh understanding and insight and stimulate the officers in attendance. They are particularly helpful to officers who come from districts in which they work alone. The conferences are limited, however, to 5 days or less. It has long been recognized that something more in the way of in-service training is desirable, especially for new officers but not limited to them.

An experiment in this direction is being inaugurated in the probation office for the Northern District of Illinois. There the court, with the assistance and collaboration of the School of Social Service Administration of the University of Chicago, is setting up a training course in connection with the regular work of the office, for probation officers in the Midwest, who may wish to take it and whose courts may approve. It will be under the charge of the recently appointed chief probation officer, Mr. Ben S. Meeker who, following a period of service in the probation office of the district, has had a number of years of experience as a teacher in the field of social work at the University of Indiana.

Newly appointed officers in the district and officers coming to the district from other districts with the approval of their courts, will receive instruction in probation administration in which members of the faculty of the University of Chicago will co-operate. They will also do actual casework under special supervision. Chicago, because of its central location, is especially well adapted for a training center for a wide area. If the results after a period of experience bear out the promise of the plan, it may be that later similar centers can be provided for in a very few other strategic locations.

Separation of Probation from Imprisonment

A practice has been followed in some districts which is declining, of sentencing offenders to probation for an offense following a term of imprisonment on another count. This practice is inconsistent with the nature of probation as a method of treating offenders without custody. Practically it has a number of disadvantages and tends to weaken probation for the persons without prison experience for whom it is most efficacious.

Persons put on probation following a term in prison almost always resent it. They feel that they have paid the penalty for their crime in their imprisonment and that the added imposition is unjust. Also probation in these cases is frequently used by the court as a means of policing the offenders after their release from prison. They take the time and energy of the probation officers from those who receive simple probation and give more prospect of rehabilitation. Parole is a more appropriate means of providing for the transition of an offender from prison to the world outside for persons who have served terms in prison.

Some judges who make excellent use of probation consider that occasionally it is salutary even for a person who is put on probation to impose also a short jail sentence. This, as they express it, is to give the man a "jolt" and bring home to him that crime does not pay. They say that after he realizes this, he accepts probation cheerfully and co-operates with it. With all deference the advisability of such a policy seems very dubious. The contaminating effects of confinement and association with other offenders in even the best jails are likely to be so serious that if a man is a fit subject for probation, it would seem to be better to give him probation alone and not run the risk of even a short term in jail or prison. Certainly the practice of imposing probation after a substantial prison sentence in order to provide for checking up on the conduct of the offender is far removed from the primary concept of probation which is, through personal, friendly guidance, to help the offender change his attitude and adapt himself to the society in which he lives. It is therefore to be hoped that the practice of so-called "mixed" sentences, which have been and to some extent still are an appendage of probation in some districts, may go into disuse.

Jurisdiction Over Probation in Case of Removal from One District to Another

It is fairly common for a probationer to move with the approval of the court from the district in which he was tried to another district. Thus of 13,048 probationers received for supervision in the fiscal year 1949, 2,791 or something over 21% came by transfer from another district. Until 1948 when this happened the probation officer of the second district supervised the probationer while he was there, but as the agent of the court which placed the offender on probation. The court of the second district had nothing to do with the case. If the probationer misbehaved and the question came up whether probation should be revoked, all that the probation officer could do was to report to the officer of the district from which the probationer came and await instructions from that district. If it was decided to hold a hearing on the question of revocation of probation, the probationer with any witnesses to his misconduct while on probation had to be transported back to the district of trial.

This lessened the influence of the probation officer in the second district on the probationer because his control was indirect and action took some time even when the court of the first district was willing to act. Sometimes it appeared that after the probationer left the district in which he was tried, the court for that district was not greatly concerned with what he did somewhere else. The probationer was almost free as a practical matter from control by any court. Supervision of the probation officer in the district where he was could not be very effective.

A few years ago District Judge Thomas C. Trimble, of the Eastern District of Arkansas, suggested that when a probationer goes from one district to another, jurisdiction over him, if the courts of both districts approve, be transferred to the court of the second district. A law of this nature was enacted in 1948 and incorporated in substance in the revised Criminal Code (18 U.S.C. 3653) by a statute (approved May 24, 1949) correcting various inadvertent omissions and errors in the original revision.

It cannot fail to make for greater effectiveness in the administration of probation to give direct control of any probationer to the probation officer and the court of the district where the probationer is. After an offender is placed on probation, any question of revocation is

to be determined on the basis of his conduct while in that status. Consequently it is desirable that a probationer in any given district should be amenable to the court of that district, whether he was placed on probation by that court or by another. The probation officer should be able to deal with persons under his charge in the district in the same way irrespective of the district of origin of the probation.

The law properly makes the transfer of jurisdiction dependent upon the consent of the courts of both districts, because after all the matter is one for the discretion of the courts. It is to be hoped, however, that courts will generally exercise their discretion to give jurisdiction to the court of the district where the probationer is, and do so promptly whenever it appears that he is permanently moving from one district to another. This is necessary in order to give to the probation officer of the second district the support which he needs for good results.

Oversight by the Courts of Probation Supervision

I have said earlier that in the supervision of probationers and also parolees, a probation officer acts pretty much independently and is his own master. In large probation offices with a number of officers, if they are well organized, office policies are developed through conferences and general direction by the chief probation officer. Even there the supervision is conducted generally independently of the courts served except in the case of misconduct of probationers giving rise to the question of revocation and a hearing on that question.

I am convinced that it would be helpful to the probation administration if the courts would give somewhat more attention to the conduct of the probation offices and from time to time hold conferences with the staffs at which general policies could be discussed. Frequently questions arise long before conditions develop to the point of revocation of probation, in which it might be helpful to the probation officers to have the benefit of the views and advice of the judges on the policies involved. Such conferences would also give to the judges more understanding of the practical problems that come up, and be helpful to them in deciding the question of giving or withholding probation in other cases. Judge Henry N. Graven of the Northern District of Iowa, who makes it a practice to follow the progress of probationers in his district, lays emphasis on the latter aspect. He writes in the December 1949 issue of *Federal Probation* that, "Such a study has been helpful to me in deciding whether to grant probation and what to do in the matter of revoking, continuing, or extending probation."

I realize that most federal judges are hard pressed with their judicial work. It is only natural that they should think that when the court has a probation officer, he should take care of probation and they should not have to be bothered with it. But in probation, unlike imprisonment, the responsibility for the treatment is in the court. Over the country something like a third of the persons convicted of crime in the federal courts are being placed on probation. The wise or unwise handling of these persons during probation may have a great deal to do with their conduct during the rest of their lives and with the prevention of new crimes on their part. It also affects the respect for the court on the part of the public. In view of this it would seem that time given by the judges to occasional conferences with their probation officers or staffs, at which the officers would have an opportunity to report what was happening in the probation administration and to obtain the advice of the judges upon difficulties encountered, would be well spent.

Such conferences need not be held often and probably would not take more than a few hours in the course of the year. I see possibilities in them of aiding the judgment of probation officers and giving to them a sense of support by the courts which would greatly strengthen them in the discharge of their duties, arduous enough at the best. I hope that collaboration between the probation staffs and the judges along this line may develop in the coming years.

More Objective Studies of the Subsequent Records of Probationers

Until recently the only evidence of the success of federal probation in terms of conduct of probationers related to the period prior to their discharge from probation. At the present time about seven out of every eight persons, who are placed on probation by the federal courts, make good during that period. They are then, however, under supervision and there are safeguards against reversion into crime which are lifted on their discharge. It is a fair question which has been raised sometimes in hearings on appropriations for the probation service before appropriations committees of the House of Representatives, what kind of a record do probationers make after they are through with probation? Particularly do they continue to behave themselves as law-abiding citizens, or do they relapse into crime?

It has always seemed reasonable to suppose that persons who succeeded in probation extended over a substantial period and kept free of crime while in that status would continue to do so. But there is no inductive evidence of this, nothing beyond the probability in the abstract. A study is now in progress of the records of probationers discharged by the District Court for the Northern District of Alabama, which furnishes knowledge on the point for that area. The study is being made by Dr. Morris G. Caldwell, professor of sociology in the University of Alabama, with the collaboration of the probation staff for that district. While it is not yet completed, it has gone far enough to show that of the 403 persons completely studied, the number who committed felonies in periods ranging from 5½ years to 11½ years following the completion of probation was only 8, or 2%, and the number who were free from subsequent convictions of any kind, either felonies or misdemeanors, was 337, or 83.6 percent. If offenses not involving moral turpitude, such as breach of traffic regulations, were subtracted, the proportion with clean records in the years following their discharge from probation would be higher.

The facts disclosed by this study are gratifying. It would not be safe, however, to generalize too broadly from the results in one district. It is desirable that a number of similar studies be made in different parts of the country. Two others are now under way: one under the direction of the University of Pennsylvania in Philadelphia, and one under the direction of the University of Maryland in Baltimore. The more objective evidence we can get whether probation succeeds or not, the better it will be. If, as we think, such evidence will show a considerable success for this method of treatment, it will powerfully support the case for adequate appropriations. If it does not, we equally want to know that in order that we may re-examine the procedure to find out what is wrong with it, and try to correct it.

Assistance from Community Agencies

No probation officer and no group of officers in a large probation office can have within themselves the resources for dealing with the multiform problems that arise in probation. The only way that a probation officer or staff can accomplish the maximum results is to draw on the help of whatever agencies are in the community. In many localities, not only

large cities but rural areas in which there is a good community organization, they may be many and effective.

A probation officer in supervising a probationer works not only with the person but with his family and becomes a kind of mentor not only for the individual but the group. He comes against physical disease, mental difficulty, addiction to liquor or drugs, lack of education, inability to work, marital tensions, all of which affect the conduct of the probationer. There may be difficulties in any one of these fields and many others that need to be resolved if the probation officer is to have the slightest chance if helping the probationer to take his part in the world. That means that he needs to resort to clinics and hospitals for medical aid, to obtain the advice or service of psychiatrists, to secure vocational counsel, to bring into play the assistance of pastors, and in general to find in any situation the person or agency with the special knowledge and experience, usually professional, to meet it. The ability of a probation officer thus to draw on the community is especially important because of the large case load which in general federal probation officers are carrying. Much is being done in this way in many districts, but I believe that in the country as a whole there is opportunity for a much larger use of community helps, and I hope that it will be developed.

Alert probation officers are doing what they can to make their work known to the people of their districts. They make speeches about it and have articles printed in their local newspapers when they have a chance. Particularly they try to make it known to employers and to show to employers that probationers whom they recommend can be good employees.

Employment for Probationers and Parolees

The mention of employment touches upon what we all recognize as one of the most difficult and at the same time one of the most essential requisites for rehabilitation; that is, work. Employers quite naturally are disinclined to employ men with criminal records. With many the mere fact that a man has such a record, without any consideration of the individual circumstances, is enough to bar him from employment. During the recent war and before it when manpower was scarce and production was at a premium, this prejudice was to a considerable extent overcome. The War Production Board issued a letter referring to the need to utilize the productive power of all persons who were fit, and urging that if an applicant for employment seemed suitable at the time notwithstanding a past criminal record he be employed.

It was formerly a rule of the United States Civil Service Commission that nobody who had been convicted of a felony could be employed in government work until the expiration of 2 years after his release from prison or discharge from probation. During the war the Commission modified this to permit the employment of persons convicted of federal offenses upon a recommendation of the probation officer in the case of probationers, or of the warden of the institution in the case of inmates of institutions, except in positions offering temptations to dishonesty like those involving the handling of money. Not many months ago after an apparent recession from the liberal war policy, the Civil Service Commission re-adopted substantially that policy.

For a number of years employment has been high. During this time many employers, who formerly would not have a man with a criminal record in their shops, have found that such men who are properly vouched for can be reliable workers and have been employing them. Part of the credit for this is due to the care of probation officers in recommending for employment only probationers or parolees whom they believe to be good risks.

Now employment is becoming scarcer. It is not unlikely that in the months ahead it may become more difficult for men with criminal records, even when recommended by the probation officers, to secure work. But in instances in which the probation officers have won the confidence of employers in their recommendations, it seems not too much to hope for that something of the more liberal attitude which was built up during the war will continue. Certainly probation officers can do few things that will help them more in their work than to win and maintain understanding and friendly relations with the managers of industries and personnel and employment officers in their communities.

Judicial Finding of Rehabilitation of Probationers

In California and a few other states laws have been passed providing that when a probationer fulfills the terms of his probation and is discharged he may apply to the court and, if the court finds that by his conduct he has merited it, the court may make a finding that he has shown capacity for leading a law-abiding life and vacate the judgment of conviction. Such laws may help to meet the difficult situation in which the probationer finds himself when he is asked whether he has ever been convicted of a crime. Of course there is only one answer that he can truthfully make, and that is yes. That is true even if there is a law of the nature mentioned. But if he has a certificate from the court that he properly served his probation, and that his character is restored, it should carry weight with a reasonable employer who is concerned with the present trustworthiness of the man before him rather than the question whether he committed a crime at some time in the past. There is objection on the part of some persons to such statutes on the ground that when once a court has entered a judgment of conviction it is there, and it is not appropriate for the court to vacate the judgment. Perhaps the purpose could be served almost if not quite as well by a certificate of the court at the time of the offender's discharge that he has conducted himself properly and has shown to the satisfaction of the court that he is a law-abiding citizen.

Voluntary Sponsors of Probationers and Parolees

For extension of the opportunity for employment of probationers and parolees, understanding of the processes of probation and parole and sympathy with them on the part of employers as citizens is important. Probation officers can hardly give too much thought and effort to the development of good public relations in their communities. These may be helpful in yet another way; namely, in procuring the aid of probationers and parolees of men of understanding and large hearts as sponsors in individual cases.

The enlistment of sponsors who can be relied upon is not easy, and it probably is not possible on any large scale. Certainly a probation officer cannot expect to unload his duties on a voluntary sponsor. Nevertheless if probation officers proceed carefully they are likely to find here and there men who are not only willing but desirous to be friends to persons whose greatest need may be just for friendship. The good probation officer in his own person meets this need to a large extent if his attention is not divided among too many persons. But his friendship to a probationer need not and should not stand in the way of the friendship of others who can give help and who the probation officer can see have the wisdom as well as the heart to do it. One of the large service clubs of the country has taken as a special project the helping with counsel and friendship of offenders who want to mend their ways and get back on the right track.

It seems possible and desirable, provided the policy is judiciously developed, to secure a considerable re-enforcement of the probation officers through voluntary sponsorship of particular persons along the lines suggested.

Public Opinion and Appropriations for Probation

Finally, good public relations will be the basis for adequate financial support through appropriations by the Congress for the probation service. A request to an appropriations committee to appropriate more money in order to employ more probation officers or clerks and reduce the case loads, leaves the committee cold unless they become aware of the importance of probation in the prevention of crime, and conscious of a public sentiment that favors adequate financial provision for the probation service.

Conclusion

Apparently the proportion of convicted offenders placed on probation by the federal courts has remained about constant in the last 10 years. It has ranged between 30 and 35 percent. Whether the proportion will increase in the coming years, whether it is desirable that it should increase, I cannot say. Certainly with the present number of probation officers the load is high enough as it is. The continued exercise by judges of care in placing persons on probation so that the probation officers may use their energies on those who give the greatest promise of rehabilitation would seem to be necessary.

Sometimes when we see the commission of fresh offenses by persons who are on probation or parole we tend to get discouraged. Then criticism of probation and parole ensures. But we always need to have in mind that the commission of a criminal offense is the end product of factors of personality and association that began far back, long before the offender came into the courts. We have all had the experience of attending discussions of delinquency, whether juvenile or adult, in which speakers attributed the prevalence of crime to the lack of parental control in youth, the general habit of drinking, or to other detrimental influences in the community. All this may be true, but it does not change the fact that when an offender comes into court and is convicted, the court has to take him as he is, and do what it can do to convert him into a law-abiding citizen. It cannot change his parentage; it cannot obliterate the damage that may have been done to his character by the gangs of hoodlums with whom he has run. It can, if his offense is sufficiently serious, send him to prison or place him on probation.

There is strong ground for confidence from the experience which has been had, that for a substantial proportion of the offenders convicted in the federal courts population, probation, if properly administered, offers the best prospect of rehabilitating the offender and deterring him from future crime. The present is a time to take heart and go forward. Given probation officers possessing uniformly the requisite qualifications of mind and character, and given a sufficient number of such officers to do a thorough job, we have every reason to expect that federal probation will become stronger and more effective with the passing years. I hope that whoever reviews the record 25 years from now will find that this expectation has come true.

The History of Training in the Federal Probation and Pretrial Services System[1]

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The Early Period (1925–1950)

On June 6, 1930, Congress amended the Probation Act, enabling the probation system to operate as a centrally-administered, national organization. By 1930, the federal probation system was made up of eight salaried probation officers and a number of officers appointed on a volunteer basis. They were tasked with a supervision caseload of 4,280 probationers. Given the small number of federal probation officers, little is known about training between 1925 and 1930. In October 1930, the forerunner of today's Probation and Pretrial Services Office (not yet located in the Administrative Office of the U.S. Courts, but still part of the Justice Department), began distributing "Ye Newsletter" to provide insight and guidance to federal probation officers around the country (Meeker, 1960; Brown, 1997). In 1937, after significant growth in the system, the budding newsletter would be renamed *Federal Probation* (Meeker, 1960).

The year 1930 also saw the first federally sponsored probation training institute in Louisville at the University of Kentucky. The University's Department of Social Work, the State Division of Probation and Parole, and representatives from the federal probation system delivered the training to 32 federal officers, 38 state officers, and 7 students. A second institute was jointly organized with the National Probation Association in Connecticut and another was conducted in Minneapolis, Minnesota, in June 1931 (Flynn, 1940; Sharp, 1951). As the system began to grow in the 1930s, the federally organized training institutes that followed took place in two-year intervals in five regions of the country (Meeker, 1960). In her survey on probation training trends throughout the country, Helen D. Pigeon notes that the federally sponsored programs were among the most successful (1941).

Throughout these first decades when federal probation was still in its infancy, the preferred educational background and the core training needs to be addressed during the training institutes remained a constant source of contention. An early assessment of training by Frank T. Flynn debated the merit of university-based training versus on-the-job, apprenticeship training (1940). Correctional scholars and administrators contemplated whether probation constituted a "professional field distinctive and removed from social work" (Flynn, 1940). Evidence of the divisiveness of this issue is apparent in Flynn's comment, "more space than is available would be needed for a complete presentation of this phase of the problem, but in general the trend to accept work with delinquents as part of the field of social work is so significant among competent practitioners that further discussion seems pointless" (Flynn, 1940). Flynn recognized that despite the debate on the type of training needed, the general consensus was that probation officers should be highly trained professionals. His personal assertion was that on-the-job apprentice training was insufficient and that further specialized training was essential (1940).

A 1938 report by the Attorney General noted the growing agreement that probation officers should be equipped, trained, and competent to supervise offenders. The *Declaration of the Principles of Parole*, set forth at the National Parole Conference in 1939, expressed this need: "The supervision of the paroled offender should be exercised by qualified persons trained and experienced in the task of guiding social readjustment." The Attorney General called for "an initial period of training of at least four weeks and subsequent periodic instructions courses." (Summary article, *Federal Probation*, 1938). While training opportunities of this intensity

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and duration existed in parts of the country for state systems (Pigeon, 1941), the federal probation system did not realize this goal of a national, centralized training center until 1950.

Training institutes continued in the 1940s to serve as the federal probation system's chief method for administering training to newly appointed officers as well as in-service refresher training to experienced officers (Pigeon, 1941).The institutes relied on cooperation with the faculty of a host university and featured professors from the sociology, legal, and psychology departments. Guest presenters included leaders from the public health, mental health, and education fields, as well as representatives of the headquarters office. The training institutes also hosted speakers from the Federal Bureau of Prisons, the U.S. Parole Board, the U.S. Public Health Services, and the correctional programs of the military branches. The subject matter in these courses offered an extensive orientation and provided an overview of other topics such as "general social problems, the field of delinquency, specific problems in casework in probation and parole procedures, and focused attention on casework relating to behavior problems" (Pigeon, 1941).

Below is a sample two-day training agenda at one of these institutes in the late 1940s:

- Development of casework skills (8 hours)
- Techniques of probation and parole supervision
  - Techniques of presentence investigation[2]
  - Techniques of Interviewing
  - Handling offenders with serious personality disorders
  - Planning for release from institutions
  - Case Records and Case Recording
- Information, administration, and procedures (6 hours)
- Behavior Motivation and Crime Causation (1 hours)
- Business Session for Probation Officers (1 hour) (Sharp, 1951).

In 1940, oversight of the federal probation system was transferred from the Department of Justice to the Administrative Office of the U.S. Courts. In its 1945 Annual Report, the AO identified an important goal as the "expansion of the conferences (referring to regional in-service conferences) into a more intensive and definite program of in-service training in federal probation, particularly for new officers" (Meeker, 1951). In creating such a desired training program, administrators grappled with the realization that each district applied minimum personnel standards in the way it saw fit, resulting in the appointment of staff with a wide array of knowledge and professional experience. Louis Sharp, then Assistant Chief of the Division of Probation at the AO, wrote in 1951, "it has been recognized in the federal service for some time that desirable as the regional training institutes had been, the probation service had advanced to the point where something more was needed, particularly for officers coming new into the service" (Sharp, 1951). With the growing consensus that a uniform training program was needed, the creation of a national training center was approved in 1949 by the Judicial Conference of the United States (Meeker, 1951). The District of Illinois Northern, with the support of a chief judge who advocated strongly for centralized training, led the effort to bring this idea to fruition.

The 1950s and the Creation of the Federal Probation Training Center in Chicago

With the approval of the Judicial Conference, the AO collaborated with the District of Illinois Northern and the University of Chicago to create the first Federal Probation Training Center. Illinois Northern's Chief U.S. Probation Officer, Ben S. Meeker, was named the first national training director. The first national training class was held for two weeks in May 1950 at the university. The center's staff at its inception included an assistant director, a training officer, and a secretary librarian (Meeker, 1951).

Over the next 10 years, sessions were offered monthly; a total of 100 to 150 officers were trained annually. Officers were invited to return every four years for a week of in-service training. Special training sessions were conducted for chiefs, deputy chiefs, and supervisory officers in Chicago and at the AO. The mission of the training was to help equip officers to perform their duties effectively and provide a centralized location where they could come together and share ideas. Training center staff also conducted research to improve all facets of the important work of probation officers (Meeker, 1960).

During the course of the two-week program, officers participated in classes on the history of the probation system and the probation office's relation to other court units, government agencies, and community resources. The University of Chicago provided faculty from its School of Social Service Administration in addition to inviting guest lecturers. A report on the center's early training program indicated that trainees attended brief lectures from guests from: the Social Service Exchange, the Salvation Army, the Catholic Charities, the County Welfare Department, the Mental Hygiene Clinic of the Veteran's Administration, and the National Probation and Parole Association, and figures from academia such as correctional scholar Frank T. Flynn, renowned anthropologist Dr. Margaret Mead, and psychoanalyst Dr. Karen Horney. Trainees later observed court proceedings, learned about the motivations for criminal behavior through case studies, and were taken on field trips to area agencies. The center's main cadre was made up officer-instructors from the Northern District of Illinois and the Administrative Office, and evaluations revealed that trainees found the teaching of probation staff to be most relevant and beneficial (Meeker, 1951; Sharp, 1951).

The training center also sought to function as a hub for discussion on the best practices across the country. Training literature from a 1964 manual used by the training center summarized results from a national survey of probation officers. Among the topics included were how officers determine the frequency of home contacts, processes for verifying employment and education, confidentiality, and the need for pre-commitment counseling—a form of interview to relieve the offender's anxiety before being transported to a correctional facility to serve a sentence. The materials also highlight the methods of collecting restitution, the process of initiating violation proceedings, the treatment of probationers with addiction to narcotics, and the processes for transferring cases between jurisdictions. According to the manual, its aim was to "stimulate the further examination of specific supervision practices" (Federal Probation Training Center, 1964).

The Federal Probation Training Center in Chicago continued to operate until 1972, when the Federal Judicial Center assumed the responsibilities of training all federal probation officers.

In the 1960s, administrators continued to contemplate the core training needs of probation officers. A 1966 article in *Federal Probation* highlighted the need to change toward a more research-based approach to supervision of offenders: "Considering the

[2] Training in the area of presentence investigations began early on, but national guidance on procedures was not publicized until 1943 when the first policy monograph was adopted.

magnitude of crime and delinquency in the country, and the immense resources of time, money, and talent which must be devoted to solving or merely containing these problems, it is apparent that we are past the point where good intentions, intuition, trial and error, charismatic wizardry, or merely habit and tradition can remain the major determinants of policy and practice in the field of probation." The author stated that "the alternative is obvious: research and training" (Taylor et al., 1966).

The Judicial Conference and Administrative Office recognized the need to conduct research and dedicate more resources to education and training, but also saw the barriers to doing so at the AO and district court level. Administrators acknowledged that given the "limitations in staff, an ever-increasing volume of housekeeping functions, an overall lack of funds—and even of authority—it has been necessary for the judges themselves to devote considerable time… to the development of these programs" (Wheeler, 1966). Most research taking place at the time was conducted by universities operating within the constraints of regional and local grants.

The Federal Judicial Center

In 1967, the Federal Judicial Center (FJC or the Center) received statutory authority to conduct research and training for the judiciary and to provide guidance to the Judicial Conference of the United States. In 1971, the administration of training sessions was transferred from the Chicago Training Center to the FJC. The FJC operated the training program from the historic Dolley Madison house, the former home of the widow of President James Madison. The building also served as the headquarters of General George McClellan during the Civil War and later became the National Aeronautics and Space Administration building. The facility was located across from the White House in Lafayette Square, and officers were housed nearby at the Burlington Hotel (Huebner et al., 1997).

Newly appointed officers came to the FJC for a one-week training program, and the Center also developed programs for experienced officers, some of which were held at the Center headquarters and others conducted in each judicial district. By 1973, the Center developed training for chief probation officers, and in 1975, training expanded still further to include programs for probation officer assistants and probation clerks (Sisson, 2015).

For the first several years of the probation training at the FJC, all curricula and subsequent lesson modifications required the approval of U.S. Supreme Court Chief Justice Warren Burger. In providing training, the Center enlisted the assistance of chief probation officers and representatives from other judicial agencies. "They worked under the direction of several center staff members who had been hired for their experience with another institution that had a mandate to deliver a national training agenda—the military. The center's programs were organized, tightly scheduled and efficient" (Huebner et al., 1997). Training was delivered primarily through lecture and the use of visual aids, including a chalk board, flip charts, 16mm film presentations, and overhead transparencies. The Center also conducted in-service training for probation officers both on-site and on an exported basis. The in-service training at the center was conducted in three-year intervals (Anderson, 2015).

Following the enactment of the Speedy Trial Act of 1974, pretrial services offices were established as an experiment in 10 judicial districts, and the FJC quickly responded by establishing a training program for officers with pretrial services responsibilities (Lynott, 2015). The pretrial services component of training expanded with the 1982 signing of the Pretrial Services Act, which led to pretrial services officers being hired across the country. Pretrial Services would continue to be a part of the new officer training program.

During the 1970s the probation system tripled in size and training demands began to outgrow the facility at the Dolley Madison house. At this point most training programs were conducted in a leased federal facility near Union Station (Sisson, 2015). These programs were augmented by regional trainings.

In the late 1970s during the petroleum crisis, fuel shortages spurred FJC staff to evaluate how to use new methods of training on a national scale. Former FJC Management/Training Branch Chief Jack Sisson recalled sitting on a flight across the country and penning an idea on index cards for a new method to deliver training on a national scale. When he returned to Washington, he immediately began to create an official proposal, which was subsequently approved by Chief Justice Burger. The proposal resulted in the creation of a new training infrastructure: The development of training coordinators in 30 of the largest districts in the country. The training coordinator was responsible for organizing and facilitating training for each district's officers. After the program's efficiency and effectiveness were established early on, the program was adopted nationally and training coordinators were hired in all districts. To support an expanded training network, the FJC facilitated communication between training coordinators and FJC headquarters by sharing lesson plans, publishing training-related articles in *Federal Probation,* and creating a new national newsletter called, "What's Happening." Training coordinators were later used as adjunct faculty for regional training sessions and this concept proved to be an important, lasting change for the system (Sisson, 2015).

In 1986, the FJC entered into an agreement to use the University of Colorado's Continuing Education Center to conduct new officer and in-service training programs (Anderson, 2015). Training at this venue continued until relocation in 1989 to the Maritime Institute of Technology and Graduate Studies (MITAGS) in Baltimore, MD (Leathery, 2015; Lynott, 2105; Sisson, 2015). Training at MITAGS was expanded to two weeks and covered an array of topics, including pretrial services, presentence writing (especially useful due to the newly implemented sentencing guidelines), supervision, and courtroom testifying skills. With each new monograph issued by the AO to guide the practices of probation and pretrial services officers, the FJC provided subsequent training (Anderson, 2015). The FJC's new officer program also included a tour of the U.S. Supreme Court and, by 1993, a tour of the Administrative Office of the U.S. Courts, located in the newly-constructed Thurgood Marshall Federal Judiciary Building, which would also become headquarters to the FJC (Lynott, 2015; Siegel, 2015).

In 1995, the FJC discontinued the use of the MITAGS facilities and reduced the new officer training to one week. This remodeled orientation program concentrated on the core duties of probation and pretrial services officers and continued to provide materials to aid with in-district training. In April, 1998, the Center launched the Federal Judicial Television Network (FJTN) to provide educational and training programs throughout the judiciary, including probation and pretrial services (Buchanan, 2015).

The FJC continued to broaden its in-service training and provided "train the trainer" programs on many specialized subjects. The Center developed packaged programs in concert with subject matter experts, chiefs, managers, AO staff, and other court unit

executives and trained local court staff to deliver the programs in-district. The FJC also continued to develop robust manager training programs for supervisory and deputy chief probation officers and host chiefs conferences, which at this writing are still hosted by the FJC (Sisson, 2015; Sherman, 2015).

Another major accomplishment of the FJC was the 1992 creation of the Leadership Development Program (LDP). This program was a response to Criminal Law Committee concerns about the aging demographic of the system's leadership and the need to develop quality leaders. From its inception, the program sought to develop in its participants a personal approach to management, new skills in the area of change management, and an ability to benchmark the achievements of probation and pretrial services, broaden participants' understanding of judicial administration, and learn from the best practices of other probation and pretrial services officers across the country. Program participants complete a management practice report and an in-district project, and then apply their leadership skills in a temporary duty assignment with another district, governmental branch or agency, or a private corporation. By 2015, 865 probation and pretrial services staff had completed the program. On their paths to career advancement, many chiefs, deputies, supervisors, and senior officers have completed this important program (Siegel, 2012, 2015).

United States Sentencing Commission

With the passage of the Sentencing Reform Act of 1984, the United States Sentencing Commission was established. Before the Commission became operational, the constitutionality of the federal sentencing guidelines was challenged by over 200 federal judges. In 1987, while the debate over the guidelines was in full swing, the Sentencing Commission, in conjunction with AO and FJC staff, proceeded with training on the origin and application of the guidelines, and the FJC developed most of the materials for this training.

The training began with one judge and two probation officers from each district. To deliver most of the training, the Commission primarily relied on a probation officer (on temporary duty at the Commission) who had been previously trained on the sentencing guidelines. It was not until 1989 that the Supreme Court ruled that the guidelines were legal and must be applied in all sentencing proceedings. At that time, the Commission began to bolster its staff and expanded its guidelines training (Henegan, 2015). In 1987, the FJC incorporated the sentencing guidelines into the new officer curriculum and invited representatives from the Commission to teach these blocks of instruction (Lynott, 2015). The sentencing guidelines, presented by the Commission staff, continue to be a feature of the new officer program.

The AO's Office of Information Technology Systems

The AO's Office of Information Technology Systems Deployment and Support Division (SDSD) began training clerks and IT professionals in 1991 to use a Unix-based terminal system designed to collect quantitative data for both the Administrative Office and the probation and pretrial services offices in each district. In 2001, training conducted in San Antonio introduced officers to the newly developed, web-based PACTS case management system designed to serve as a database for maintaining client personal information, case information, case plans, and chronological case entries (chronos). In 2002, the SDSO expanded its delivery of training to include distance learning in the form of the first Electronic Learning Modules (ELMs). The training modules were posted online to accommodate the demanding schedules of the modern officer and provide time-efficient delivery of the subject matter. In 2008, interactive web-based training was introduced to support other probation-related systems, such as the Safety Incident Reporting System (SIRS), Access to LAw enforcement Systems (ATLAS), and Decision Support Systems (DSS), as well as to introduce new modules in PACTS. Since then, SDSD Probation Pretrial Services Project leads Malcolm Johns, Cindy Caltagirone, and Steve Moore have led their teams in providing training resources to continually support the essential IT systems upon which the system now relies, including iPACTS, PSX, and PACTS Gen3.

The Evolution of Officer Firearms and Safety Training

While various training programs in the federal probation and pretrial services system began around 1930, a December 1997 *Federal Probation* article written by Paul W. Brown and Mark J. Maggio noted that a review of 68 training agendas between 1938 and 1972 revealed no mention of officer safety training. Nonetheless, the November 1935 edition of "Ye News Letter," *Federal Probation's* predecessor, included a memorial to U.S. Probation Officer Joseph Delozier of the Northern District of Oklahoma, who died from an accidental gunshot wound after he dropped a personally-owned firearm on the ground, discharging the weapon and causing a fatal injury. As Brown and Maggio would observe, "interestingly, the article reflected no concern, warning, or controversy about Delozier being armed" (Brown & Maggio, 1997). By 1990 the Southern District of Texas appears to have established the first firearms program in the federal probation system. According to a Fifth Circuit senior judge, the first probation officer in that district was appointed in 1931 and proceeded to carry a firearm. It appears that the practice continued by other officers in that district without actual legal authority to do so (Brown & Maggio, 1997).

No official authority was granted to probation officers to carry firearms until 1975, when the Judicial Conference authorized probation officers to carry firearms, with their chief's permission, in the absence of a federal statute granting that authority.

National Firearms Training Program

In September, 1985, pretrial services officers were authorized by the Judicial Conference to carry firearms, subject to the same policy limitations in effect for probation officers. Also in 1985, the first national firearms training program was approved. In addition to physical training on the use of a firearm, the program included guidance on the appropriate use of firearms and officer safety. This program formed the core curriculum for all firearms training and, until issuance of the Director's Firearms Regulations for U.S. Probation and Pretrial Services Officers, served as the principal source of guidance on the safe handling and use of weapons. The national firearms training program materials approved in 1985 provided the first written guidance on the use of force (Brown & Maggio, 1997).

During the late 1980s and early 1990s, the national firearms program expanded, and the number of officers authorized to carry firearms across the nation continued to rise. The first firearms training program was implemented in 1987 when the first district firearms instructors were trained and certified in a two-week program presented by the FBI and AO instructors. The AO's Probation Division acted as the certifying agency, and the FBI conducted training exercises. By 1991,

the AO's Probation Division had assumed full responsibility for the firearms training. This practice continued and various sites throughout the country were used to conduct firearms training to certify instructors who in turn bore the responsibility of training and certifying officers in their respective districts.

Recognizing the need for alternatives to the use of lethal force, in March 1996 the Judicial Conference adopted a policy authorizing probation and pretrial services officers to purchase, carry, and use oleoresin capsicum (OC) spray, and approved the draft Safety Manual for the probation and pretrial services system (JCUS, 1996). The safety manual, which was distributed to officers in the field, included the use-of-force continuum, a model to govern self-defense responses by probation and pretrial services officers. To provide training on use-of-force considerations and defensive tactics, the AO developed instructor certification programs similar to those delivered to the firearms training programs. The FJC also provided safety training materials and FJTN programs to enhance officer safety. The AO's firearms and safety training continued until the establishment of the Probation and Pretrial Services National Training Academy.

Establishment of the Probation and Pretrial Services National Training Academy

As described throughout this writing, the role and training methods for the probation and pretrial services system have varied over the years. One goal has always been to create a national system and yet recognize the individuality of each district. It finally became evident that without a central training academy, much like other law enforcement agencies have, a national identity would not be fully recognized. In an August 2003 issue of *News and Views*, the internal newsletter of federal probation and pretrial services, an article written by the Chair of the Chief's Advisory Group reported that a survey of chiefs showed overwhelming support throughout the federal probation and pretrial services system for a national training academy (Howard, 2003). Support in the federal system for a national training academy was also conveyed by AO Assistant Director John Hughes in his weekly messages (Hughes, weekly message #91). In response, the AO created a Performance Development Working Group, of which the CAG chair was a member, along with six other chiefs and staff from the AO and FJC. The working group explored possible sites for the academy and discussed curricula needs for new officers. Subsequently, the working group recommended that the AO locate the academy at the Federal Law Enforcement Training Center (FLETC) in Charleston, SC, and that the new officer program be designed as a four-to six-week training. Further, the working group recommended that the AO continue to provide firearms and safety training and related certifications at the FLETC training site.

After lengthy dialogue, the AO and the FJC reached agreement on the training roles the two agencies would occupy. These roles were outlined in an August 4, 2003, issue of *News and Views*. The article reported that with the help of the Chiefs Advisory Group (CAG), the Office of Probation and Pretrial Services (OPPS) would develop and bring into existence a national academy for new officers, and the FJC would continue its new officer orientation program until the academy was operational. At that time, the FJC would shift its resources to meet the needs of experienced officers, specialists, and all levels of supervisory staff (Chiefs Advisory Group and OPPS, 2003).

Because of the inter-agency partnership with the FLETC, the academy could utilize state-of-the-art facilities, trained role players, student dormitories, and supporting instructors and staff at a reduced cost to the AO. Therefore, in late 2004, funding was secured and the AO hired 12 staff, 8 probation administrators, 3 support staff, and Sharon Henegan as the first academy director. The academy staff established a mission statement to provide federal probation and pretrial services officers with the training necessary to perform their duties effectively, efficiently, and as safely as possible while upholding the integrity, values, and dignity of the federal judiciary. In January 2005, the first new officer pilot program commenced. The initial program was three weeks in length and focused primarily on firearms and safety, but included classes on ethics and officer identity, overview of the federal court system, sexual harassment, diversity awareness, lifestyle management, and non-emergency vehicle operation training.

In January 2006, the program was expanded to five weeks, adding core classes to the curriculum such as pretrial services and presentence investigations and pretrial and post-conviction supervision. In January 2007, the training was expanded to six weeks, where it remains today, excluding a nine-month period in 2015 during which training was abbreviated to four weeks to offset a lengthy backlog of new officers awaiting training. To keep curriculum current and relevant, academy staff conduct annual reviews of all lesson plans, with the input of subject matter experts and incorporating the latest research in the fields of law enforcement, corrections, and educational teaching methodology. The training program also incorporates several electronic learning modules, live practical examinations in the form of courtroom testifying exercises, realistic field-based simulated interactions, written examinations, and other methods of student evaluation.

As the probation and pretrial services system has moved to implement the principles of evidence-based practices, the academy has sought to model this philosophy in all aspects of training. After pretrial and post-conviction risk assessment tools were developed, the academy provided stand-alone in-service training on the tools to prepare officers for certification in addition to including the tools in the new officer training program. With the emergence of core correctional practices research, the Probation and Pretrial Services Office (PPSO) developed and delivered Staff Training Aimed at Reducing Rearrest (STARR), a package of skills designed to increase the officer's effectiveness in building rapport with the defendant/offender, addressing criminal thinking with the aim of reducing recidivism. After several select districts were trained, the decision was made to move most of these training sessions to the training academy to take advantage of the many resources offered by the FLETC. Given the number of districts that have embraced the STARR training curriculum, the program will be fully integrated into the new officer curriculum in 2016. In the FLETC curriculum review conferences, it has been noted that among other law enforcement agencies, the probation and pretrial services new officer program always receives some of the highest remarks for student and subsequent supervisor satisfaction evaluations. To date, 2,562 probation and pretrial services officers have graduated from the new officer program at the academy.

Academy staff continue to deliver all firearms, safety, and search and seizure training at the FLETC campus. These comprehensive programs are designed to provide relevant and realistic experience in various training environments. These training programs are designed to certify instructors who return to their districts to oversee firearms qualification and training in these areas. The training programs provide instructor candidates with opportunities not only to improve their skill

level but also to learn how to engage in teach backs to their peers.

The firearms and safety branch of the training academy also reviews curricula regularly and applies evidence-based practices in developing and updating all components of these programs. The instructors receive continued training on the latest techniques, strategies, and delivery methodologies for firearms and safety.

The following statistics show the number of officers trained in Academy programs since the NTA's inception in 2005.

- Firearms Certification programs—1678
- Safety Certification programs—1222
- Search & Seizure Training program—269
- Post-Conviction Risk Assessment program—538
- Staff Training Aimed at Reducing Re-Arrest—789

The Academy also serves as the center for the PPSO Training and Safety Division and serves as a resource on the development, evaluation, and revision of all national policy for firearms, safety, search and seizure, restraints, and Use of Force, including the update of policy documents (e.g., Director's Regulations on Firearms and Use of Force) and the oversight of firearms and safety Office Reviews and After Action plans. In addition, the Academy serves as the clearing house and communication point for firearms and safety policy-related issues.

The current academy staff is made up of an Academy Director/Division Chief, two branch chiefs (training and skills and firearms and safety), probation administrators, and instructors on long-term detail to both the AO and the FLETC.

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People Can Change and We Can Make a Difference

Michael Eric Siegel
Federal Judicial Center

I AM GRATEFUL to federal probation and pretrial services for embracing the idea that "people can change and we can make a difference," which is enshrined in "The Charter for Excellence," that serves as the system's vision statement.[1] These simple but elegant words give voice to the underlying philosophy of the vast majority of federal probation and pretrial services officers I have met during my career in the federal judiciary.

What makes this philosophy or vision so noteworthy is that it is no longer popular, or even defensible, in the eyes of many of our fellow citizens and political leaders. For many in our country, cynicism has descended into the practice of criminal justice, as reflected in the stirring words of Robert Martinson in 1974 that "nothing works" in the rehabilitation of criminals.[2]

If we follow "nothing works" to its logical conclusion, we are likely to end up with a highly punitive system costing society billions of dollars for prisons and jails and imposing long criminal sentences with little chance of relief for offenders. Has anyone noticed our overcrowded prisons and state budgets that devote more money to prison construction and maintenance than they do to higher education?

The dedicated professionals who lead federal probation and pretrial services believe that rehabilitation is still possible; they are not cynical and are willing to experiment with programs and policies to prove it. The pages of this journal are filled with wonderful examples of system improvement projects that work. We have seen chiefs and their colleagues develop effective initiatives in cognitive re-structuring, employment preparation, education, reentry training, and so much more. The programs are premised on the hopeful approach that "people can change and we can make a difference." Program managers are dedicated, caring professionals with very high levels of integrity and a strong commitment to the public service.

For the past 20 years, I have had the great pleasure and honor of directing the Federal Judicial Center's Leadership Development Program (LDP) for Federal Probation and Pretrial Services. Over 800 officers, specialists, and managers from almost every federal district have completed the program. Several have been promoted to leadership positions within the system.

One of the requirements of the Leadership Development Program is for each participant to complete an in-district project, where they take a program, policy, or product in their district and seek to improve it. In short, we ask the participant to become a change agent in the system. Time after time, the participants delight and astound us with the daring projects they pursue. Consider representative projects for the LDP XII Class 2013-2015:

- Evaluation of a Veterans' Treatment Program
- Evaluation of Financial Literacy and Employment Programs
- Development of an Intervention Program for Female Offenders
- Development of a Family Orientation Program for Offenders
- Expansion of the District's Reentry Program in the Pretrial and Presentence Stages
- Development of a Sex Offender Management Team
- Implementation of a Rating System for Offenders

The completed district improvement projects have led to increased efficiencies in program administration and even, in some cases, in cost savings to the districts. The experience also changes the participants, as they become more familiar with the difficulties of translating vision into reality.

We also ask each Leadership Development participant to complete a "temporary tour of duty" (TDY) in an office other than their own for a period of 5-10 working days, to participate in the work of that office, and to observe the multitude of leadership approaches and styles in the public and private sectors. Some of the recent TDYs completed include:

- Nebraska State Senator Colby Coash's Office (Lincoln, NE)
- Cleveland High School (Rio Rancho, NM)
- Veterans' Health Administration System (St. Louis, MO)
- Missouri Attorney General's Office (Jefferson City, MO)
- U.S. Coast Guard Maritime & Security Team (Atlanta, GA)
- Environmental Protection Agency—Criminal Investigation Division (Washington, DC)
- Boys & Girls Club (Porter County, IN)
- The Pew Charitable Trust (Washington, DC)
- North Carolina Governor's Office (Raleigh, NC)

In their TDY placements, the leadership development participants glean new ideas about the use of technology for leadership purposes, powerful approaches to employee motivation, and creative budgeting options.

[1] "The Charter for Excellence" was developed at the 2000 and 2002 National Chiefs Conferences.

[2] Robert Martinson. "What Works? Questions and Answers About Prison Reform." *Public Interest* 35 (Spring 1974).

They complete reports emphasizing the ideas that can be reasonably successful in probation and pretrial, and those that will not work.

So the federal probation and pretrial services system has demonstrated a capacity to bring about change, not only in its clients—the offenders—but in its own staff. The leadership development participants have completed the substantial amount of program work—including conducting research and writing papers—in addition to their ongoing job responsibilities. I am in awe of their accomplishments.

Probation and pretrial services officers, managers, and specialists have demonstrated a belief in lifelong learning and in the transformational power of professional development. They have modelled the idea of the "reflective practitioner" described many years ago by Edgar Schon in his book *Educating the Reflective Practitioner*:

> In the varied topography of professional practice, there is a high, hard ground overlooking a swamp. On the high ground, management problems lend themselves to solution through the application of research-based theory and technique. In the swampy lowland, messy, confusing problems defy technical solution. The irony of this situation is that the problems of the high ground tend to be relatively unimportant to individuals or society at large, however great their technical interest may be, while in the swamp lie the problems of greatest human concern. The practitioner must choose.[3]

By choosing to confront Schon's "messy, confusing problem," the probation and pretrial services chiefs and their colleagues have illuminated for the system areas of tremendous opportunity for the successful rehabilitation of offenders and for the attainment of justice in our society.

I applaud federal probation and pretrial services for its belief that "people can change and we can make a difference," applied not only to the offenders with whom they work, but also to their own professional growth and development.

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[3] Edgar Schon. *Educating the Reflective Practitioner*. SF: Jossey-Bass, 1987, p. 3.

U.S. Pretrial Services: A Place in History

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[The following article originally appeared in the September 2012 issue of Federal Probation*, where it was part of a Special Focus section on the 30th anniversary of the Pretrial Services Act of 1982.]*

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 U.S. 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 nation-wide system of federal pretrial services agencies was vital to ensuring 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 nonappearance, 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 nonappearance, even though concerns were voiced regarding the risk of danger 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 (nonappearance) 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 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.

Pretrial Services—A Family Legacy

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AFTER BEING SWORN in as a United States probation and pretrial services officer for the Western District of North Carolina in September 1991, I arrived at the Maritime Institute of Technology and Graduate Studies campus in Maryland for my two-week training. Kate Lynott of the Federal Judicial Center facilitated the Pretrial Services track. As the designated pretrial officer for Asheville, I settled into class to learn the pretrial ropes. During the first class session, Kate, a pretrial expert, recounted the history of federal pretrial services. When Kate reached the 1960s, she mentioned the name Senator Sam J. Ervin, Jr. of North Carolina and his role in national bail reform. While Sam J. Ervin, Jr. is most widely known for his chairmanship of the Select Committee on Presidential Campaign Activities, informally known as the Senate Watergate Committee, I knew him as my grandfather. Armed with Kate's information on the history of pretrial services, I began to research my grandfather's role in bail reform and was stunned to learn the level of his involvement in my chosen field. What his contributions taught me for my work ahead was the necessity to keep the presumption of innocence first and foremost in my investigations of defendants pending trial, and to never forget that each person before me is an individual warranting his or her own detailed investigation in order for the court to make appropriate release decisions.

Prior to occupying one of North Carolina's Senate seats, my grandfather practiced law in Morganton, a rural region in Western North Carolina. During the period of prohibition in the 1920s and early 1930s, he represented many people charged with the illegal manufacture of moonshine liquor in the North Carolina mountains. In *Just a Country Lawyer: A Biography of Senator Sam Ervin*, Paul R. Clancy (1974) writes,

> [Ervin] became interested in bail reform because of his many legal contacts with moonshiners. "Their only vice was makin' moonshine likker and they felt that they were doin' no harm, that they had a prescriptive right to do that. They were honorable, paid their debts, told the truth." A prison official told him they made very well behaved inmates. Many of these upstanding citizens, unable to pay bail while awaiting trial, languished in jails where, as a former client wrote to him, there were many bad and disreputable men and he didn't want to associate with them. (p. 108)

As my grandfather knew, these men had homes, families, and friends in the region and that they were not going to leave. What they did not have was money with which to post bail. Furthermore, always at the forefront of my grandfather's mind was the presumption of innocence for every person charged with a crime. In his book *Preserving the Constitution*, my grandfather wrote,

> As a country lawyer who represented many poor people charged with bailable offenses, I became aware of the painful truth that multitudes of poor people, who were afterwards acquitted, were unjustly imprisoned while awaiting trial solely on account of their poverty. This is simply no way in which society can adequately compensate such persons for this wrong. (Ervin, 1984, p. 296)

On June 11, 1954, Sam Ervin was sworn in as a United States senator, interestingly enough, by then-Vice President Richard Nixon, the future president of the United States who would be investigated by the Senate Watergate Committee and would ultimately resign on August 9, 1974. During his twenty-year tenure in the Senate, my grandfather addressed numerous issues related to the United States Constitution and the rights of its people. While I do not agree with some of the positions my grandfather took while in the Senate, I do agree with his efforts to make the process of bail release available to all persons, and not just to those with money.

In order to substantiate his beliefs and concerns regarding bail reform, in January of 1961 when my grandfather became the Chairman of the Senate Subcommittee on Constitutional Rights, he sought out opinions of judges, lawyers, and law professors concerning constitutional issues. In *Preserving the Constitution*, he wrote, "Many of them suggested that the most serious problem was the unhappy plight of poor people imprisoned while awaiting trial because of their inability to give monetary bail" (Ervin, 1984, p. 296). Based on the responses from these experts, and because of his personal concerns about the plight of the pretrial incarceration of the poor in rural North Carolina, the Subcommittee began work to address bail reform.

Concern about unnecessary incarceration of defendants awaiting trial was not limited to the Senate subcommittee. At the same time studies were underway in New York, Philadelphia, and Washington regarding bail practices. The Vera Institute was created to study bail reform, with its first effort the

Manhattan Bail Project. In *Senator Sam Ervin: Last of the Founding Fathers*, Karl E. Campbell (2007) writes,

> Appalled by the numbers of poor defendants who spent months in jail because they could not afford bail, the founders of the Manhattan Bail Project worked to convince judges that most defendants, regardless of their economic status, could be released on their own recognizance and trusted to return for their day in court. Of the 2,195 defendants released at the urging of the Vera Foundation, only fifteen failed to appear for trial—a default rate far better than those who had been released on monetary bail. The Manhattan Bail Project was so successful that cities across the country started their own bail reform programs and Attorney General Robert Kennedy agreed to sponsor the National Conference on Bail and Criminal Justice in 1964. On the eve of the National Bail Conference, Ervin introduced a series of bills designed to reform bail practices in the federal courts. (pp. 189-190)

It should be noted that until this point no action had been taken by Congress on the issue of bail since the Judiciary Act of 1789. Subcommittee hearings were held in 1964, but Congress took no action. Based on testimony from Attorney General Kennedy, staff from the Manhattan Bail Project and the District of Columbia Bail Project, and a host of other interested entities, the Subcommittee realized that patches to the current system would not suffice; instead, large-scale reform was necessary.

On March 4, 1965, my grandfather introduced S. 1357, an omnibus bail reform bill. Sixteen senators were listed as co-sponsors. Included in this bill was a proposal to reflect the term "release" instead of "bail" in the heading of Chapter 207 of Title 18, representing the full-scale changes sought. Hearings were again conducted and with amendments, the bill was unanimously passed by the full Senate on September 21, 1965. The final bill included factors that courts are still required to consider in pretrial release, such as the nature and circumstances of the offense charged, the weight of the evidence and the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, prior criminal record, and any history of failure to appear. Despite the fact that the House failed to take action on the bill before adjournment in 1965, bail reform remained an important issue.

In his address to Congress on March 9, 1966, President Lyndon Johnson urged Congress to take steps to fight crime and specifically requested passage of bail reform. In the ensuing House hearings, amendments were made to the Senate bill. My grandfather wrote in his article "The Legislative Role in Bail Reform," written for the *George Washington Law Review* in March 1968, that a Senate-proposed release condition requiring supervision by probation officers was deleted. He stated,

> . . . according to the House report, since probation officers are agents of the court whose functions normally come into play only after conviction, then use at the pretrial stage might be prejudicial to the defendant. Additional supervisory duties would further burden the already pressed probation system.

Perhaps this language assisted in the formation of later laws relating to pretrial services officers and the differentiation between pretrial and probation officers.

The House adopted their amended version of the bail reform bill on June 7, 1966; two days later, the Senate passed the amended version. It should be noted that the only major opposition encountered in both the Senate and House hearings was voiced by professional bondsmen.

In a formal ceremony at the White House on June 22, 1966, President Johnson signed the Bail Reform Act of 1966 into law, stating, "so this legislation, for the first time, requires that the decision to release a man prior to trial be based on facts—like community and family ties and past record, and not on his bank account" (qtd. in Ervin, 1984, p. 301). In the words of the Act, "a man, regardless of his financial status—shall not needlessly be detained—when detention serves neither the ends of justice nor the public interest." Conditions of release were also included in the Act for defendants whose personal recognizance might not reasonably assure their appearance for trial, and included third-party custodians and restrictions on travel, association, or residence. I was amazed by how many aspects of this Act transcend time and how our pretrial language differs little in 2015. As my grandfather noted in his *George Washington Law Review* article, work on bail reform took five years to complete. He stated, "…the history of the Bail Act demonstrates the kind of careful, objective, and deliberate study which should always precede changes in our highly complex system of criminal justice" (Ervin, 1967).

During the various hearings prior to the passage of the Bail Reform Act of 1966, and afterwards in considering bail reform for the District of Columbia, discussions occurred regarding "preventive detention." The issue was again raised by President Richard Nixon, who wanted Congress to amend the 1966 act to "empower federal judges to deny bail to persons charged with federal crimes prior to trial if they found their release would pose a risk to the community" (Ervin, 1984, p. 303). In a letter to Professor Joshua Lederberg at Stanford University on behalf of the Subcommittee on Constitutional Rights, my grandfather voiced his concerns about this proposed amendment:

> . . . the pretrial jailing of so-called "dangerous defendants" . . . raises grave constitutional questions when considered in the light of the 8th Amendment's guarantee of reasonable bail, the due process clause of the 5th Amendment, the 6th Amendment's guarantee of access to counsel and the opportunity to participate in the preparation of a defense, and the due process and equal protection clauses of the 14th Amendment. In my view jailing people because of possible future misconduct repudiates the most basic principles of a free society and smacks of a police state rather than a democracy under law.
>
> Not only does the proposed pretrial detention unfairly deprive an individual of the opportunity to assist in his defense, but it may cost him his job, it is detrimental to his family life and it subjects him to the physical and psychological degradation of prison life. Moreover, I do not believe that judges are gifted with the prophetic powers necessary to determine accurately which individuals represent a danger to the community. The law would therefore result in the imprisonment without trial of many innocent persons and would be highly susceptible to abuse. (Ervin, 1969, p. 2)

In this letter my grandfather indicated that crimes committed by those released on bail actually decreased after passage of the 1966 act. For instances in which crimes were committed, the majority of those persons had been on release more than 60 days. His recommendation was to address the delays in which trials occurred and not to amend the act as passed in 1966. The letter concludes with the following summary: "In my judgment, it is infinitely better to strive for the constitutional

goal of speedy trial than to resort to the enticingly simple but desperate and unjust device of pretrial detention" (Ervin, 1969, p. 2).

Despite the Subcommittee on Constitutional Rights' concerns, the District of Columbia Court Reform Bill pass\ed Congress containing a preventive detention provision. My grandfather continued his advocacy for a speedy trial act and achieved its enactment during his last week in the Senate in 1974. The Federal Speedy Trial Act of 1974 also included the creation of 10 "demonstration" pretrial services agencies to prevent criminal conduct by defendants released on bond and to address nonappearance of those released. This act led to the Federal Pretrial Services Act of 1982, which extended pretrial services agencies to all federal judicial districts.

My grandfather's involvement in bail reform sparked a passion in me for pretrial work. Realizing the effort he put toward fairness for individuals facing trial, I took his words and efforts into my own day-to-day work and vowed to share what he and I both viewed as important in the pretrial arena. As part of this endeavor I was privileged to serve on the national Pretrial Services Working Group with an amazing group of pretrial experts to help update and teach our national policy guides, to present pretrial information at National Association of Pretrial Services Agencies conferences, to assist in the introduction of the federal Pretrial Risk Assessment Tool, and to help prepare a document designed to move pretrial supervision into the future. I encourage each person in the federal system to use his or her expertise on both a local and national level to further the pretrial objectives. As a result of my own involvement, I have been rewarded with knowledge and friendships lasting throughout my career and into retirement.

One aspect of pretrial work that warrants further effort is the need to increase the rate of release of defendants on bond. In recent years, release rates have declined, although instances of failure to appear have remained steady. While on bail release, defendants can continue with their employment, maintain contact with family members, and work closely with counsel to prepare the best possible defense. Recent research reflects that defendants who are released on bond preceding plea or verdict are more likely to be successful on post-conviction supervision. Furthermore, defendants who are released on bond frequently receive shorter sentences. By following the mandates of the Bail Reform Act of 1966 and subsequent laws regarding pretrial release, not only are we maintaining the dictates of the presumption of innocence, but we are also saving governmental monies when finances are tight. And there is no indication that this comes at the expense of public safety. We should never lose sight of the fact that pretrial services is the front door to the federal criminal justice system for defendants. Pretrial obligations are statutory and every defendant requires a personal investigation and assessment. It is often hard to take an adversarial position in recommending release, but it is incumbent upon each practitioner to put forth the best information available to the court for release consideration. By using the individual investigation, the Pretrial Risk Assessment tool and the officer's judgment, more recommendations for release can and should occur. And the skill of the United States probation and pretrial services officers in supervision will continue to assist in ensuring a defendant's appearance for trial.

During my research, I personally learned a great deal about my grandfather's beliefs about the criminal justice system, a system in which I worked for 34 years. One of his quotes speaks strongly to me. He wrote, "As a lawyer, legislator and judge, I entertained the abiding conviction that the administration of criminal justice is the most sacred obligation of government" (Ervin, 1984, p. 296). Throughout my career I, like so many others, worked hard to uphold the laws and to balance the rights of individuals against the safety of our communities. I have been extremely proud of this opportunity to honor my grandfather's work to "uphold this most sacred obligation of government."

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How Today's Prison Crisis is Shaping Tomorrow's Federal Criminal Justice System

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In addressing this [prison overcrowding] crisis—whether through legislation; executive action, such as clemency; or policy changes, such as amending the Sentencing Guidelines—policy-makers must not create a new public safety crisis in our communities by simply transferring the risks and costs from the prisons to the caseloads of already strained probation officers and the full dockets of the courts. Instead, lasting and meaningful solutions can be attained only if the branches work together to ensure that the correct cases are brought into the federal system, just sentences are imposed, and offenders are appropriately placed in prison or under supervision in the community.[1]

Introduction

In an attempt to alleviate overcrowding in the Federal Bureau of Prisons (BOP) and thereby conserve scarce resources for other federal criminal justice priorities, efforts are underway in each branch of government to reform federal sentencing and corrections practices. These reforms will have a significant impact on the resources of the courts and on the probation and pretrial services system in particular.[2] This article highlights several of the initiatives being pursued and describes how they could impact the resources and workload of the courts and responsibilities of judges and probation and pretrial services officers (officers).[3] We also identify the proposals about which the Judicial Conference has expressed views,[4] and discusses some of the unresolved questions that would need to be answered in order for these proposals to be effectively implemented.

Potential Workload Drivers

As of December 2014, the BOP housed 214,149 inmates, which is roughly 28 percent over its rated capacity. For the past several years, the Department of Justice (DOJ) has identified prison overcrowding as a significant management issue. In a July 2013 letter to the Sentencing Commission, the DOJ noted that "[n]ow with the sequester, the challenges for federal criminal justice have increased dramatically and the choices we all face—Congress, the Judiciary, the Executive Branch—are that much clearer and more stark: control federal prison spending or see significant reductions in the resources available for all non-prison

[1] *"Agency Perspectives": Hearing before the Over-Criminalization Task Force of 2014 of the H. Comm. on the Judiciary* (July 11, 2014) (statement of Hon. Irene M. Keeley, Chair, Committee on Criminal Law, Judicial Conference of the United States).

[2] The federal probation and pretrial services system is responsible for four primary functions in the criminal justice system: (1) preparing pretrial services reports for the courts; (2) supervising defendants released to the community pending trial, sentencing, sentence execution, or appeal; (3) preparing presentence investigation reports for the courts; and (4) supervising offenders serving a period of post-conviction supervision.

[3] The term "workload" refers to the number of investigatory reports or the number of persons on community supervision. Any increase in the number of investigatory reports or persons on supervision has an effect on the resources of the courts and the probation and pretrial services system.

[4] The Judicial Conference of the United States was created by Congress in 1922. Its fundamental purpose is to make policy for the administration of the United States courts, including the probation and pretrial services system. While the Judicial Conference approves national policies to guide the courts and probation offices in the individual districts, many districts also have local written policies that substantially supplement national policies. The Conference operates through a network of committees. One of the committees, the Criminal Law Committee, oversees the federal probation and pretrial services system and reviews legislation and other issues relating to the administration of the criminal law. This general mission is achieved by providing oversight of the implementation of sentencing guidelines; making recommendations to the Judicial Conference with regard to proposed amendments to the guidelines; and proposing policies and procedures on issues affecting the probation system, pretrial services, presentence investigation procedures, disclosure of presentence reports, sentencing and sentencing guidelines, and supervision of offenders released on probation and parole and on supervised release.

criminal justice areas."[5] In an August 2013 speech before the American Bar Association, the Attorney General stated that "although incarceration has a significant role to play in our justice system—widespread incarceration at the federal, state, and local levels is both ineffective and unsustainable."[6] In December 2013, the DOJ's Office of the Inspector General issued a report on the top 10 management challenges for the department, placing "Addressing the Growing Crisis in the Federal Prison System" at the top of the list.[7]

Other government agencies have raised awareness about the prison overcrowding problem as well. In April 2014, the Congressional Research Service prepared a report that noted the "historically unprecedented increase in the federal prison population" since the 1980s that has "made it increasingly more expensive to operate and maintain the federal prison system."[8] The report suggested that "policy makers might consider whether they want to revise some of the policy changes that have been made over the past three decades that have contributed to the steadily increasing number of offenders being incarcerated."[9] It suggested that policy makers consider options such as (1) modifying mandatory minimum penalties, (2) expanding the use of Residential Reentry Centers, (3) placing more offenders on probation, (4) reinstating parole for federal inmates, (5) expanding the amount of good time credit an inmate can earn, and (6) repealing federal criminal statutes for some offenses.[10] Finally, in June 2015, the General Accountability Office issued a report noting the eightfold increase in the federal inmate population since 1980 and the increase in operating costs (obligations) over time.[11] The report noted that in fiscal year 2014, the BOP's obligations amounted to more than $7 billion, or 19 percent of DOJ's total obligations.[12] Due in part to these and many other attempts to raise awareness about prison overcrowding, there are efforts in all three branches of government designed to address the problem.

Legislative Actions

There are several bills that have been introduced in the 114th Congress that would have an impact on the federal criminal justice system. Congress is considering legislation that would affect both "front-end" sentencing issues, such as lowering or eliminating mandatory minimums and expanding the safety valve, and "back-end" legislation, which would accelerate the release of inmates or otherwise shorten the amount of time that an inmate serves in custody.

On the front end, the "Smarter Sentencing Act of 2015" would expand the safety valve (18 U.S.C. § 3553(f)) to authorize more defendants to be sentenced below an applicable mandatory minimum penalty, lower mandatory minimum penalties in certain drug offenses, and make the "Fair Sentencing Act of 2010" (which reduced the disparity in penalties for offenses involving crack and powder cocaine) applicable to inmates who were sentenced before the Act was passed. Similarly, the "Justice Safety Valve Act of 2015" would expand the safety valve by allowing a judge to impose a sentence below a statutory minimum "if the court finds that it is necessary to do so in order to avoid violating the requirements of [18 U.S.C. § 3553(a)]."[13] While the Judicial Conference supports many of these front-end reforms, it is mindful that additional resources will be needed to keep pace with the new workload. For example, making the "Fair Sentencing Act of 2010" retroactive would result in thousands of additional inmates petitioning the courts for sentence reduction hearings. Moreover, shorter sentences will result in inmates commencing terms of supervised release sooner than originally forecast, which would have an effect on resources required.

One of the leading back-end bills is the "CORRECTIONS Act of 2015." This bill would require the BOP to develop a dynamic risk/needs assessment and create a system of earned credits that inmates could use to shorten the amount of time they must serve in prison. Inmates who are released early would be placed in home confinement or on a newly created term of "community supervision" and remain in the custody of the BOP but be supervised by probation officers. Although the probation officers already supervise some BOP inmates who have been released through the Federal Location Monitoring Program,[14] the scale envisioned by this bill goes far beyond the current supervision infrastructure. Accordingly, new procedures would need to be developed to ensure effective strategies for community supervision and approaches to address behavior not in compliance with the conditions of supervision. Estimating the impact of the "CORRECTIONS Act of 2015" on the number of offenders that would require community supervision is difficult because the system of early release is premised on a dynamic risk/needs assessment that the BOP has not yet developed. One recent article, however, suggested that the bill "would allow as many as 34,000 currently incarcerated inmates—more than 15 percent of the federal correctional population—to leave prison early, provided they successfully complete rehabilitation programs first."[15]

The "CORRECTIONS Act of 2015" also includes provisions requiring the Administrative Office of the U.S. Courts (AO)

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[5] Letter from Jonathan J. Wroblewski, U.S. Dep't. Of Justice, to Hon. Patti B. Saris, Chair, U.S. Set. Comm, (July 11, 2013).

[6] Attorney General Eric Holder, Remarks at the Annual Meeting of the American Bar Association's House of Delegates (Aug. 12, 2013).

[7] Office of the Inspector General, U.S. Dep't of Justice, Top Management and Performance Issues Facing the Department of Justice (2013).

[8] Congressional Research Service, The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options (2014).

[9] *Id.*

[10] *Id.*

[11] General Accountability Office, Federal Prison System: Justice Could Better Measure Progress Addressing Incarceration Challenges (2015).

[12] *Id.*

[13] Under 18 U.S.C. § 3553(a), the court is required to impose a sentence that is sufficient, but not greater than necessary, to comply with the sentencing purposes of: (1) reflecting the seriousness of the offense, promoting respect for the law, and providing just punishment for the offense; (2) affording adequate deterrence to criminal conduct; (3) protecting the public from further crimes of the defendant; and (4) providing the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. The court, in determining the particular sentence to be imposed, is also required to consider other factors such as: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3)the kinds of sentences available; (4) the kinds of sentence and the sentencing range as set forth in the sentencing guidelines; (5) pertinent policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense.

[14] Under the Federal Location Monitoring (FLM) program, the BOP may request U.S. probation offices to accept inmates directly onto supervision on some form of home confinement during the final 10 percent of the term of imprisonment, not to exceed 6 months (whichever is less). Typically, inmates referred to the FLM program bypass the traditional Residential Reentry Center (RRC) placement, or are placed on FLM after a brief stay in an RRC.

[15] John Gramlich, *The Prison Debate, Freshly Unlocked,* CQ Weekly, March 31, 2014, at p. 496 (available at: http://cdn1.cq.com/emailed/5tAUGYelpHhS186XDbCLeZm1_GY/weeklyreport-4449190.html).

and the DOJ to collaborate on two pilot projects. The first would require several districts to use evidence-based practices during an offender's reentry and for the AO to submit a report to Congress on the results of the study. The second pilot program would require several districts to adopt a system of swift responses to offender noncompliance and include notification to the court within 24 hours of whenever an offender violates any condition of supervision; it would also require the courts to hold hearings on such violations within one week. These practices would certainly increase the frequency of reporting violations and increase the number of hearings, consuming more time from judges, chambers, officers, clerks staff, and attorneys. The AO would be required to submit a separate report to Congress on the outcomes of this pilot.

Another back-end sentencing bill is the "Recidivism Risk Reduction Act." While it is similar in many ways to the "CORRECTIONS Act of 2015," there are several notable differences. For example, the "Recidivism Risk Reduction Act" would require the wardens to notify the sentencing court whenever an inmate has earned sufficient credits to be placed in prerelease custody (i.e., residential reentry centers or home confinement). The judge would have the opportunity to block the inmate's transfer to prerelease custody based on the inmate's post-conviction conduct, such as institutional behavior. The Judicial Conference considered and opposed a similar provision at its September 2014 session based on a recommendation of the Criminal Law Committee. The Committee noted that such decisions are in the nature of parole and more appropriately made by the executive branch, which has direct contact with the inmates and the most accurate and up-to-date information about their conduct and condition. The Committee also expressed concern that the legislation could erode determinate sentencing and otherwise undermine the "Sentencing Reform Act of 1984." It therefore recommended that the Judicial Conference "oppose . . . legislation that would require Article III judges to exercise powers that traditionally have been exercised by parole officials in the executive branch in deciding whether an inmate may be allowed to serve a portion of his or her prison sentence in the community."[16]

One bill from the 114th Congress contains several front-end and back-end proposals and may be the most wide-ranging sentencing reform bill under consideration. The "Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015" (the "SAFE Act") touches on issues such as over-criminalization, over-federalization, and evidence-based sentencing and corrections. Among other things, the bill would (1) create a presumption in favor of probation for many first-time, nonviolent defendants, (2) explicitly authorize the creation of specialty court programs, (3) expand eligibility for the safety valve, (4) focus mandatory minimum penalties on organizers, leaders, managers, and supervisors of drug-trafficking organizations of five or more participants, (5) make the "Fair Sentencing Act of 2010" retroactive, (6) expand compassionate release,[17] (7) eliminate the "stacking" of penalties for multiple convictions of 18 U.S.C. § 924(c) and limit the enhanced penalty provisions to cases in which a prior conviction has become final, (7) require the BOP to develop a risk and needs assessment system and offer earned sentence reduction credits, (8) promote greater use of graduated sanctions for supervision violations, and (9) require the DOJ to reduce overcrowding of pretrial detention facilities and reduce the cost of pretrial detention.

It is unclear whether these bills will advance in the 114th Congress, but if any are enacted, it could greatly change the way in which the judiciary sentences and supervises defendants and offenders for years to come.

Sentencing Commission Actions

The sentencing guidelines and policy statements promulgated by the U.S. Sentencing Commission (Commission) can substantially impact the size of the BOP's population. Moreover, its research and analysis of federal sentencing data can greatly influence how stakeholders in all branches of government attempt to solve the problem of prison overcrowding.

On January 17, 2014, the Commission published for comment several proposed amendments to the Sentencing Guidelines Manual, including one that would lower the offense levels in the Drug Quantity Table.[18] At least one of the factors motivating the amendment was overcrowding in the BOP. The Commission noted that "[p]ursuant to 28 U.S.C. § 994(g), [it] intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority."[19] At its April 10, 2014, public hearing, the Commission voted to approve the amendment, which became effective on November 1, 2014. The Commission projected that the lower offense levels impact 70 percent of all drug cases and reduce sentences by an average of 11 months.

Although the prospective application of the amended guidelines would have a modest impact on probation officers' workload, the retroactive application of the amendment creates substantial workload for the courts. The Commission has estimated that more than 46,000 inmates could be eligible for a sentence reduction based on the retroactive amendment. Reviewing each case consumes the resources of judges, clerks office staff, federal public defenders, and probation officers. If a reduction in the sentence is granted, BOP staff and probation officers must begin the process of developing and implementing a release plan. In its extensive deliberations about whether to support the retroactive application of the proposed amendment, the Criminal Law Committee carefully considered whether the courts and the probation and pretrial services system could effectively manage the increased workload that would result while ensuring effective reintegration into the community and protecting public safety. The Committee determined that the only way to mitigate the extremely serious administrative problems would be to delay the date that inmates can be released, but to authorize the courts to begin accepting and granting petitions on November 1, 2014. This delay in releasing inmates would allow the courts and probation offices across the country first to manage the influx of petitions and then, once the surge of petitions has been addressed, to pivot available resources to deal with the increase in the number of offenders received for supervision.

The Commission adopted the Committee's recommendation and delayed until November 1, 2015, the release of any inmate whose sentence was reduced. Almost 8,000 inmates could be released from BOP custody on that day (compared to a typical day in which 150 inmates are received for supervision).

[16] This "judicial parole" authority is different from the court's authority in 18 U.S.C. § 3582(c) to resentence an inmate. Although resentencing is a judicial function, determining where an inmate serves a sentence is an executive function.

[17] Under 18 U.S.C. § 3582(c)(1)(A), the court, upon motion of the BOP Director, may reduce the term of imprisonment based in part on the inmate's old age or other extraordinary and compelling reasons.

[18] U.S. Sentencing Commission, Request for Public Comment, 79 Fed. Reg 3279 (Jan. 17, 2014).

[19] U.S. Sentencing Commission, Notice of Final Priorities, 78 Fed. Reg 51820 (Aug. 21, 2013).

Thousands of additional inmates will be eligible for early release over the subsequent months, and those inmates will remain on supervision for several years. This surge in offenders received for supervision will require additional resources in the next few years, after which the number of cases received for supervision will return to historic levels.

In addition to its work in promulgating guidelines, the Commission impacts federal sentencing policy through its release of data and reports. In its list of priorities for the 2014-2015 amendment cycle,[20] the Commission noted that, among other things, it intended to continue its studies on recidivism and federal sentencing practices pertaining to imposition and violations of conditions of probation and supervised release. The results of these studies can greatly influence how Congress and others address the problem of prison overcrowding.

Executive Branch Actions

As part of the Attorney General's "Smart on Crime" initiative, the DOJ has announced several policy changes that will impact the workload of probation and pretrial services offices. One of the key initiatives is a new policy on charging offenses that carry mandatory minimum penalties when the defendant is viewed as a low-level, non-violent offender. The policy encourages an assistant U.S. attorney prosecuting a drug case to review the defendant's prior record and role in the offense, and if the defendant is deemed to be low risk, the indictment or information should not allege a specific drug quantity, thereby triggering no mandatory minimum. In fiscal year 2014, the DOJ charged a mandatory minimum in roughly half of the drug cases prosecuted, about 10 percent less often than in FY 2011. The result of fewer mandatory minimums, coupled with the lower guideline sentences, will be inmates released to supervision sooner than historically forecast, which of course affects the resources required for effective supervision.

The BOP has released a new policy on compassionate release cases. Under the new regulations, inmates with terminal medical conditions may be eligible for compassionate release if their life expectancy is 18 months or less (previously it was 12 months). Also eligible are: (1) inmates who have incurable progressive illnesses or debilitating conditions from which they will not recover, (2) inmates who are completely disabled and incapable of self-care, and (3) inmates capable of limited self-care but confined to a bed or chair 50 percent of waking hours. Under the revised regulations, inmates will also be considered for compassionate release when there are extraordinary or compelling circumstances that could not have been foreseen at sentencing, such as the death or incapacitation of the sole caregiver of an inmate's minor children.

In fiscal year 2012, the BOP recommended compassionate release in 39 cases. That number increased to 61 in fiscal year 2013, and 90 in fiscal year 2014. While those numbers are not staggering, it is clear that the BOP intends to use compassionate release to shift certain inmates from the prisons back into the communities and under the supervision of probation officers. The BOP has already revised the eligibility criteria for compassionate release, adding new factors related to the loss of the caretaker of the inmate's dependent children. Continued growth in the number of compassionate release cases is expected. What is noteworthy is that these cases require expedited review by a probation officer and often present unique complexities. For example, officers must assess whether it is in the best interest of the inmates' children to approve the inmates' prerelease plan. To make determinations correctly, officers will need specialized training, similar to that received by caseworkers who handle child protection matters. In addition, officers will need to collaborate extensively with state and local government child protection authorities.

Although many inmates who have been compassionately released would make good candidates for early termination of supervision, 18 U.S.C. § 3583 requires that they complete at least a year of supervision and specifies that early termination may occur only when "warranted by the conduct of the defendant released and the interest of justice." Since the supervision program is designed to deal with criminogenic risk and need, and not general medical or geriatric care, it makes little policy or financial sense to keep such offenders under supervision. Accordingly, the Judicial Conference has approved seeking legislation that permits the early termination of supervision terms, without regard to the limitations in section 3583(e)(1) of title 18, U.S. Code, for an inmate who is compassionately released from prison under section 3582(c) of that title. If enacted, the court would have the discretion to terminate a term of supervised release of an inmate who is compassionately released.

Another "Smart on Crime" initiative involves expanded use of alternatives to incarceration. In particular, the DOJ is promoting the implementation of federal pretrial diversion and reentry court programs. At the request of the Criminal Law Committee, the Judicial Conference authorized a study of the efficacy and cost-effectiveness of federal reentry court programs, whose results would be used in deciding whether any national models should be developed. Following consultation with the Criminal Law Committee and the Administrative Office of the U.S. Courts, the FJC proposed a comprehensive two-pronged study. The first prong is a multi-year evaluation of new (or relatively new) reentry programs that utilizes an experimental design with random assignment. This experimental study began in September 2011 and is now under way in five districts. The results of the randomized-experimental study are still pending, but preliminary reports from the research team and the districts involved in the study suggest that running these programs is significantly more expensive than standard supervision. The additional costs stem from the time needed by the court, probation officers, and attorneys to prepare for and conduct status hearings and respond to issues that arise. There are additional costs associated with the intense treatment that most program participants must complete. The DOJ's desire to expand these specialty court programs will certainly require more staffing and treatment resources for probation and pretrial services offices.

The second prong of the study is a retrospective process-descriptive assessment of selected judge-involved supervision programs that have been in operation for at least 24 months. The study was completed in 2013.[21] The process-descriptive assessment does not focus on reentry programs per se, but examines the broader range of judge-involved supervision programs.[22] It does not evaluate judge-involved supervision programs in general—or any one program in particular—but describes the population served by the

[20] U.S. Sentencing Commission, Notice of Final Priorities, available at: http://www.ussc.gov/sites/default/files/pdf/amendment-process/federal-register-notices/20140814_FR_Final_Priorities.pdf.

[21] Federal Judicial Center, Process-Descriptive Study of Judge-Involved Supervision Programs in the Federal System (2013).

[22] These programs employ the authority of the court to impose graduated sanctions and positive reinforcements while using a team approach to marshal the resources necessary to support an offender's reintegration, sobriety, and law-abiding behavior. The team, by definition, always involves a judge, and in the federal system, it also involves representatives of the probation office. Depending on the program, prosecutors, defenders, or service providers may also participate as team members. *Id.*

programs, the services provided, and how the participants fared.[23] Furthermore, it probes for relationships between outcomes and program characteristics, and it compares the services and outcomes of program participants with those of a group of offenders whose expectations of success at the start of supervision were similar but who did not participate in a judge-involved supervision program.[24]

Last, the DOJ announced that it was expanding the use of clemency petitions as a way to remove certain low-risk inmates from BOP custody who have already served at least 10 years of their sentence.[25] To facilitate inmates with their petitions, a non-government affiliated group called Clemency Project 2014 was created and has agreed to provide legal assistance to inmates interested in submitting a petition. The Clemency Project has received approximately 30,000 requests from inmates to have their cases reviewed. Inmates who meet the new eligibility criteria will have a volunteer attorney assigned to help draft the petition and submit it to the Office of the Pardon Attorney.

While the DOJ may be inclined to review more petitions and recommend clemency in more cases, it is clear that they do not intend to completely pardon these inmates, and that the DOJ expects supervised release to remain in place when an inmate's prison sentence is commuted. As such, officers can expect to receive these cases for supervision sooner than their projected release dates.

Conclusion

There has been increased interest in federal criminal justice reforms from all branches of government. This interest is driven by several factors, including overcrowding in the BOP, ongoing fiscal austerity, and emerging research on effective criminal justice practices. The Judicial Conference supports many of the initiatives that have been proposed; however, there are concerns about the resulting workload increases for the courts and the need for more resources, particularly for probation and pretrial services offices. There are also concerns that unless these efforts are better coordinated—so that the best information is available to decision-makers—the efficacy of the federal criminal justice system, and ultimately public safety, could be compromised.

Although the probation system alone cannot solve the BOP's overcrowding problem, it can play a role, whether by assuming responsibility for inmates released early under a new statute or serving as a more primary sentencing option in lieu of imprisonment. Supervision and court costs are just a fraction of prison costs. Therefore, it would be possible to use a portion of the savings generated by reducing the inmate population to pay for the judiciary's expanded activities in supervising offenders in the community. Such strategic resourcing is essential to the success of any justice reinvestment initiative. As former Attorney General Eric Holder noted when speaking on justice reinvestment, "In recent years, no fewer than 17 states—supported by the department, and led by governors and legislators of both parties—have directed funding away from prison construction and toward evidence-based programs and services, like treatment and supervision, that are designed to reduce recidivism."[26]

The success of the federal supervision program makes it an attractive option for policy-makers to consider. The federal system's recidivism rate has been half that of many states. The three-year felony rearrest rate for persons under federal supervision has been measured at 24 percent.[27] The percent of federal cases closed by revocation annually is approximately 30 percent.[28] In contrast, a Bureau of Justice Statistics (BJS) study looking at 15 state parole systems found a recidivism rate of 67.5 percent.[29] Similarly, while supervision violators constituted 33 percent of all new prison admissions in the states in 2011, violators constitute only 8 percent of the new admissions in federal prisons, according to another BJS report.[30] Also, an Urban Institute study found that the percentage of inmates in Federal Bureau of Prisons custody on revocation charges has been declining, going from 5.3 percent in 1998 to 3.4 percent in 2010.[31]

With adequate resources to retain and hire quality probation and pretrial services staff, provide needed rehabilitative treatment programs for offenders, and successfully implement evidence-based practices, the reforms under consideration have a great chance of success. Without such resources, however, the efficacy of these reforms could be diminished and the historically positive outcomes in the federal system could be jeopardized. Any discussions about strategies to reduce the federal prison population should also include strategies to ensure that the judiciary has the resources needed to absorb the additional workload. These should include the DOJ's continued support for the Judiciary's appropriations requests, closer coordination between the courts and the DOJ on new policy initiatives that may impact the operations or workload of the courts, and the expansion of existing interagency reimbursable agreements that result in savings to the DOJ and cover the costs incurred by the Judiciary.

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[23] *Id.*

[24] *Id.*

[25] Deputy Attorney General James Cole, Announcing the New Clemency Initiative (April 23, 2014) (available at: http://www.justice.gov/pardon/new-clemency-initiative).

[26] Attorney General Eric Holder, Remarks at the Annual Meeting of the American Bar Association's House of Delegates (Aug. 12, 2013) (available at: http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html).

[27] L. Baber, "Results-based Framework for Post-conviction Supervision Recidivism Analysis," *Federal Probation,* 74, no. 3 (2010).

[28] Judicial Business of the U.S. Courts, Table E-7A, available at: http://www.uscourts.gov/uscourts/ Statistics/JudicialBusiness/2012/appendices/E7ASep12.pdf; W. Rhodes, C. Dyous, R. Kling, D. Hunt, and J. Luallen, *Recidivism of Offenders on Federal Community Supervision.* Cambridge, Massachusetts: Abt Associates, 2012.

[29] P. Langan, D. Levin, *Recidivism of Prisoners Released in 1994.* Washington, DC: Bureau of Justice Statistics, 2002.

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Rowing in the Right Direction: Movement on the Recommendations on the Strategic Assessment of the Federal Probation and Pretrial Services System

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IN DECEMBER 1998, the Judicial Conference of the U.S. Court's Committee on Criminal Law met and discussed the pressures on the probation and pretrial services system. The pressures had their roots in workload growth and new technologies and research findings that required rapid change to operations. Since there was no indication that the pressures would abate, the Committee recommended to the Administrative Office of the U.S. Courts that a strategic assessment be undertaken and a plan be developed to aid the probation and pretrial services system in navigating the challenges in the years ahead.

Shortly after, the AO began the solicitation process for outside experts with experience with strategic assessments and planning. In September 2000, the AO contracted with the team of IBM, the Urban Institute, and Wooten Associates ("the consultants"). The consultants examined scores of the system's policy and planning documents, interviewed more than 300 stakeholders, and analyzed volumes of budget, staffing, and workload data. Based on that information, the consultants issued a report in September 2004 entitled *Strategic Assessment: Federal Probation and Pretrial Services System.* In the report, they made 16 recommendations, with the central theme being that the probation and pretrial services system should "become [more of] a results-driven organization with a comprehensive outcome measurement system" (See Figure 1).

The AO set out to implement the recommendations, tackling the most feasible and those of greatest importance first. In terms of importance, in consultation with the Chiefs Advisory Group, the AO prioritized those recommendations dealing with officer safety and post-conviction supervision, with the latter deemed most associated with public safety and representing the largest component of the system's work. That focus has since been expanded to include pretrial services supervision, with plans to include presentence reports and pretrial services reports in the near future.

Overall, considerable progress has been made in implementing the recommendations of the consultants. The AO's most significant achievement has been the creation of an automated system that independently obtains and interprets criminal records on persons under, and formerly under, supervision. The ability to collect and standardize arrest records from hundreds of federal, state, and local agencies had never been successfully done before, and the development of a study cohort of nearly 400,000 persons for a six-year period is equally unprecedented.

The rearrest data made available by the system has assisted in the development of the pretrial and post-conviction risk assessment devices ("PTRA" and "PCRA") and helped determine the impact of the AO's program entitled Staff Training Aimed at Reducing Rearrest (STARR). The rearrest data also helped confirm that Judicial Conference policies on earlier termination have not compromised community safety.

The rearrest data is shared with individual courts for their specific populations. The reports are posted in another application created by the AO called the Decision Support System ("DSS"), which has "business intelligence" and operational reporting functionality so districts can better gauge trends related to their outcomes. Relatedly, the AO has supported data quality efforts to ensure that the information relied on by the districts is accurate and timely.

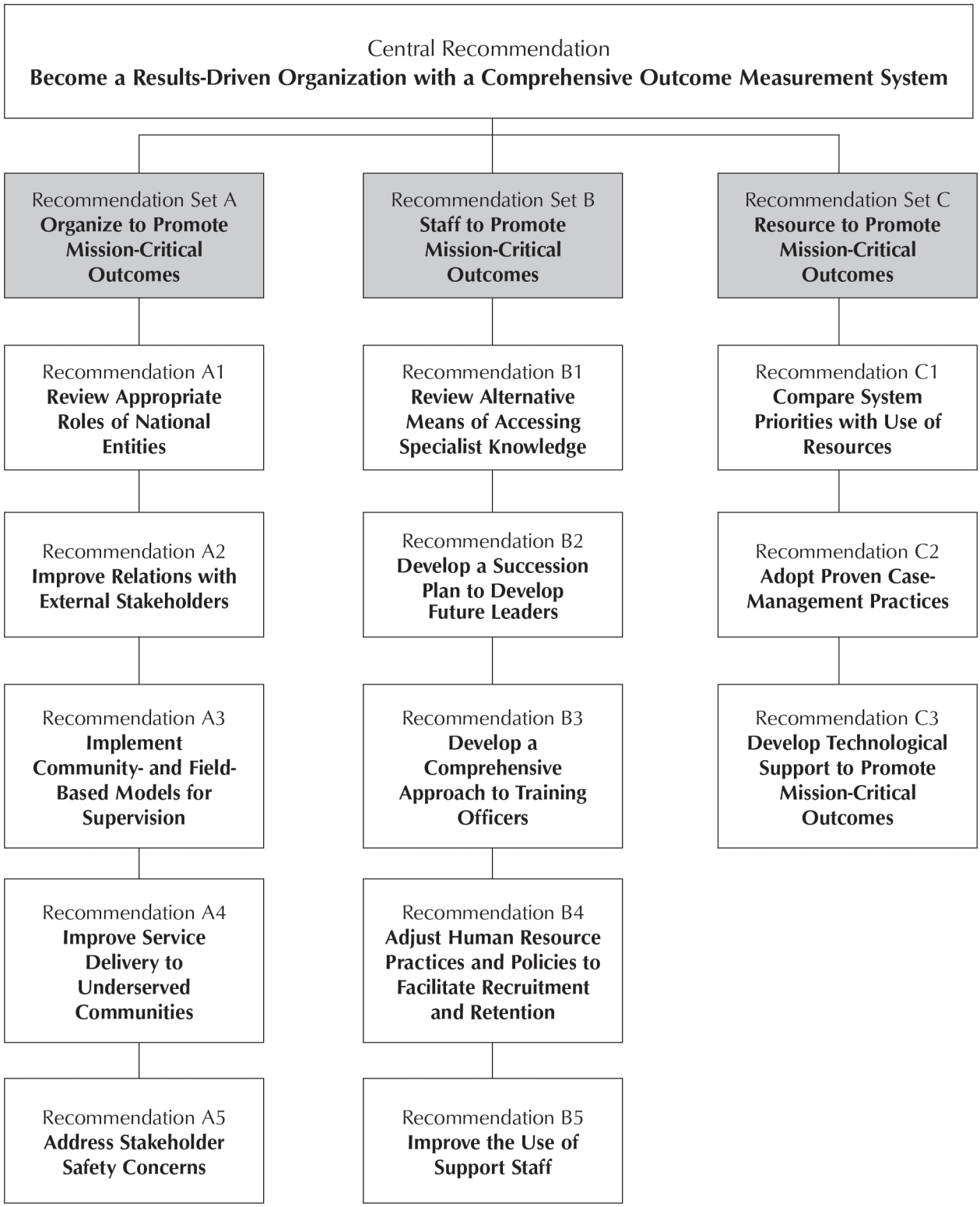
Another major accomplishment for the AO has been the establishment of a National Training Academy that provides new officers with core skills and safety training. When the consultants made their recommendations, new probation and pretrial services officers received less than one week of national training, and the curriculum did not include safety or firearms training. Now, new officers receive six weeks of comprehensive training that encompasses both operational and safety issues. The Academy, which is located in Charleston, South Carolina, also certifies district-based firearms and self-defense instructors to ensure the quality of ongoing safety training once new officers return to their districts. More recently, the Academy courses have been expanded to include training on the use of actuarial risk instruments, recidivism reduction, and safe enforcement of court-ordered search and seizure conditions.

While the AO has increased its investment in core skills and safety training for officers, the Federal Judicial Center has focused on helping courts with leadership development and succession planning, areas that the consultants had found lacking.

Also consistent with the consultants' recommendations, various policies and procedures have been revised to be more "evidence-based." Most of the revisions relate to prioritizing resources for the higher-risk and tailoring supervision activities to the specific criminogenic risk factors presented by the individual in that higher-risk population.

Based on the consultants' recommendations, the AO has also developed and

Figure 1: Recommendations Overview



supported a variety of technologies to make officers more mobile and in turn more effective and efficient. A number of other efforts were made to consolidate systems and generally make technology more of a tool, rather than an administrative record-collection system that provided no direct benefit to officers.

Other recommendations from the consultants have become less urgent or even unnecessary temporarily, if not permanently, because of changing circumstances. For example, the sluggish economy since 2008 and downsizing in the courts have made the issue of staff retention less pressing. Still other issues have not yet been worked on due to staffing and funding imitations. For example, improvements in supervision services to historically underserved communities, such as those in Indian country, have not been adequately addressed.

Below (Attachment A) is a more detailed account of the action taken on the various recommendations.

Attachment A: Recommendations and Actions Taken

Central Recommendation: Become a Results-Driven Organization with a Comprehensive Outcome Measurement System

1. Accomplished: Policy guidance has been modified to identify specific and measureable desired outcomes.
2. Accomplished: Performance baselines have been established, or are in the process of being established, in all major program areas. They include pretrial release rates for defendants at low actuarial risk of nonappearance or criminal activity, timeliness of presentence reports, and rearrest rates of persons under supervision and satisfaction of fines, restitution, and other special conditions.
3. Accomplished: Independent measures of outcomes have been developed through arrest records from other agencies and case processing times from clerks' office records.
4. Pending: Development of various measures, including user satisfaction, for pretrial services and presentence reports may commence this year, funding permitting. The results of user satisfaction surveys can be coupled with process measures already in place to determine the impact of current policies, procedures, and practices.
5. Pending: Using existing baseline data, establish specific performance goals in each subject area.

Recommendation A1: Review Appropriate Roles of National Entities

1. Accomplished: All key partner agencies participate in the Committee's biannual meetings, the U.S. Sentencing Commission, the Department of Justice, Bureau of Prisons, and the Federal Judicial Center.
2. Accomplished: There are a variety of Memorandums of Understanding (MOUs) between the AO and key partner agencies clarifying roles, expectations, and mutual goals.
3. Accomplished: Ongoing meetings between AO staff and staff from all key partner agencies help manage day-to-day affairs and ensure efficient operations of the federal criminal justice system.

Recommendation A2: Improve Relations with External Stakeholders

1. Accomplished: Provided electronic directories and data exchange systems to improve the flow of information between the courts and Bureau of Prisons to speed inmate designations and facilitate prisoner reentry back into the community.
2. Accomplished: Entered into MOUs with the U.S. Marshals Service and the Bureau of Prisons, respectively, to fund alternative to pretrial detention and to supervise low-risk inmates in the community, substantially reducing detention and incarceration costs.
3. Accomplished: Developed the electronic Law Enforcement Notification System (LENS) to notify federal, state, and local law enforcement of information on defendants and offenders as required by the Violent Crime Control Act and various other regulations.
4. Accomplished: Maintain membership on the Federal Reentry Round Table with various federal criminal justice partners to improve prisoner reentry and identify effective alternatives to incarceration.
5. Accomplished: Maintain membership on the Federal Offender Reentry Group (FORGe), linking reentry points-of-contact in the courts with the reentry coordinators in every BOP institution.
6. Accomplished: Established a pretrial outreach effort with prosecutors, defense attorneys, and judges to share strategies for reducing unnecessary pretrial detention.
7. Accomplished: Established court liaisons to serve as points-of-contact with the Bureau of Prisons and the Federal Bureau of Investigation on matters related to defendants and offenders affiliated with gangs, organized crime, and terrorist groups.

Recommendation A3: Implement Community- and Field-Based Models for Supervision

1. Accomplished: National policy has been revised to specifically provide for field-based supervision, including field activities during non-traditional business hours, such as evenings, weekends, and holidays.
2. Accomplished: Incorporated field-based scenario training for new officers at the national training academy.
3. Accomplished: The AO's office review process has been revised to specifically include assessment of the fieldwork conducted by each probation and pretrial services office, with results of the assessment being reported back to the chief judge of the district.
4. Accomplished: Developed national reports tracking field-based supervision activities, broken down by risk level and other client characteristics. Since release of those reports, field activity commensurate with client risk level has increased on a national level.
5. Accomplished: The judiciary has established a dedicated fund for courts to purchase and maintain mobile technologies to support field-based supervision activities.
6. Accomplished: Created or modified computer applications for officers to access case information remotely or otherwise facilitate officers' fieldwork: the Probation/Pretrial Document Imaging Module (PDIM) in PACTS, Access to LAw enforcement Systems (ATLAS), the Law Enforcement Notification System (LENS), the Electronic Reporting System (ERS), and the Offender Payment Enhanced Report Access (OPERA) system.

Recommendation A4: Improve Service Delivery to Underserved Communities

1. Accomplished: The AO has joined chiefs from several districts with large Native American and juvenile offender populations to develop strategies to address their unique treatment needs. To date, most of

those strategies have been carried out at the local level.
2. Accomplished: The AO has provided programs, such as Staff Training Aimed at Reducing Rearrest, to districts with historically underserved communities. In addition, districts have trained officers in Motivational Interviewing and Cognitive Behavioral Therapy to render treatment directly to defendants and offenders when outside treatment providers are unavailable.
3. Pending: The AO will investigate the possibility of using "tele-treatment" for defendants and offenders in remote locations or where treatment would be otherwise unavailable.

Recommendation A5: Address Stakeholder Safety Concerns

1. Accomplished: Established a National Training Academy, leveraging the considerable resources of the Federal Law Enforcement Training Center in Charleston, South Carolina. The Academy offers a comprehensive safety program that includes a six-week training program for new officers that embeds firearms and safety training in overall officer skill instruction. In addition, the Academy certifies, and cyclically re-certifies, instructors for each district who provide standardized in-house training and testing on safety and firearms issues. Academy staff also review each district's safety and firearms program and provide technical assistance upon request.
2. Accomplished: Developed a national Safety Information Reporting System (SIRS) to collect data related to safety incidents involving officers and district staff to understand the degree to which work is affected by safety issues. Data is tracked over time to identify trends and modify policies, procedures, and training accordingly.

Recommendation B1: Review Alternative Means of Accessing Specialist Knowledge

1. Accomplished: Based on the recommendation of the Committee, the Conference has endorsed seeking legislation that would make it easier for an officer with special skill sets in one district to perform services for another district. For example, officers with expertise in computer forensics can consult more freely with officers in other districts who supervise cyber-offenders and can aid in computer monitoring and searches.
2. Accomplished: Judicial Conference policy was changed to allow court units to reprogram funds across districts in connection with voluntary shared services arrangements, allowing for shared specialist positions between districts.

Recommendation B2: Develop a Succession Plan to Develop Future Leaders

1. Accomplished: With the AO focused more on new officer, safety, and operational training, the FJC has dedicate its resources to management and leadership training for experienced officers and managers that facilitates the development of future system leaders.
2. Accomplished: At their own expense, and coordinated by the Chiefs Advisory Group, chief probation and pretrial services officers hold two to three meetings a year to discuss administrative matters. The chiefs specifically decided to include their duties in the meetings to ensure a better flow of information and development of future leaders, calling the meetings Chiefs and Deputies Administrative Meetings (CDAMs).

Recommendation B3: Develop a Comprehensive Approach to Training Officers

1. Accomplished: A National Training Academy was established by the AO at the Federal Law Enforcement Training Center in Charleston, SC. The Initial Probation and Pretrial Training program (IPPT) was designed as a basic training program for newly-appointed federal probation and pretrial services officers. This six-week, 228-hour program comprises classroom training, laboratory training, practical exercise, and electronic learning models.
2. Accomplished: The National Training Academy developed a formal method of curriculum review based on current position descriptions and program data to ensure that training provided is both relevant and effective. In addition, the Federal Law Enforcement Training Center conducts an assessment of the effectiveness of new officer training, and most recently awarded the training program the highest possible rating.
3. Accomplished: The AO developed Staff Training Aimed at Reducing Rearrest (STARR) to help officers formally incorporate evidence-based techniques into their interactions with defendants and offenders. To date, 980 officers have been trained from 38 districts.
4. Pending: Initial research has shown STARR's effectiveness at recidivism reduction. However, the system still needs to develop the means to gauge retention and use of STARR skills by officers and a more formalized process to certify STARR instructors and coaches. In addition, follow-up research is needed to confirm that STARR has remained effective and test possible revisions based on emerging community corrections theory.

Recommendation B4: Adjust Human Resource Practices and Policies to Facilitate Recruitment and Retention

1. No Action: Since the consultant's recommendation, financial pressures have required a downsizing of probation and pretrial services staff. Buyouts, early-outs, and even lay-offs have taken precedence over recruitment and retention.

Recommendation B5: Improve the Use of Support Staff

1. No Action: Since the consultant's recommendation, the number of support staff has decreased by 56 percent, the result of both financial pressures and greater automation. With the reduction in support staff, no action has been taken on this recommendation.

Recommendation C1: Compare System Priorities with Use of Resources

1. Accomplished: Consistent with the Criminal Law Committee's strategic resourcing philosophy, the AO made changes to the staffing formula that supports the prioritization of supervision on the defendants and offenders who pose the greatest risk to the community. Defendants and offenders with the greatest risk of recidivism (as measured by actuarial risk prediction instruments) and with the greatest criminogenic needs receive a greater proportion of allocated staffing funds. Similarly, funding priority is reserved for the most complex and influential bail and presentence investigations.

Recommendation C2: Adopt Proven Case-Management Practices

1. Accomplished: Based on the Committee's recommendation, the Conference has approved policy revisions for post-conviction supervision that incorporate "evidence-based practices." Program and office reviews conducted by the AO now focus on districts' application of those practices.
2. Accomplished: The AO has put in place a structure to encourage officers to use the evidence-based practices embedded in Staff Training Aimed at Reducing Rearrest (STARR).
3. Accomplished: In 2010, the AO began an initiative called Research-to-Results. This initiative encouraged 16 districts to implement practices that research indicates are effective at reducing recidivism. The AO provided limited funding to districts that provided a compelling justification for their proposed best practice.

Recommendation C3: Develop Technological Support to Promote Mission-Critical Outcomes

1. Accomplished: The AO developed the Decision Support System (DSS), an enterprise data warehouse specifically for probation and pretrial services. DSS allows system leaders at the AO and in each district to monitor statistics on the volume and nature of cases at the national, circuit, district, and officer levels. DSS provides at a glance key outcome and process measures, such as rates for rearrest and revocation, employment, and collection of fines and restitution.
2. Accomplished: The AO created an automation infrastructure that allows it to study and report to stakeholders on its most important outcome: protection of the community by minimizing criminal activity during supervision and beyond. An electronic file suitable for sophisticated statistical analysis is maintained on all offenders who began supervision in fiscal year 2005 to the present. This file, which contains arrest information from official state and federal criminal records coupled with comprehensive data on offender, district, and community characteristics, represents over 400,000 offenders. The AO is actively working on a counterpart data file for persons who are investigated and supervised by pretrial services.
3. Pending: Additional modifications are still needed to the Probation and Pretrial Services Automated Case Tracking System (PACTS) to secure more uniform data on noncompliance, revocations, and certain case planning and intervention activities.

State of the System: Federal Probation and Pretrial Services

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PROBATION AND PRETRIAL services officers operate at the direction of the appointing court, and practices vary from district to district based on geography, applicable case law, defendant population, and court culture. However, consistency and collaboration are fostered by the policies endorsed by the Criminal Law Committee and approved by the Judicial Conference, the professional standards established by chief probation and pretrial services officers,[1] and centralized support from the Administrative Office of the U.S. Courts (AO) and the Federal Judicial Center (FJC). While practices and workload can vary significantly across districts, this article highlights key metrics that offer a picture of the state of the system.

The work of the system can be categorized into four discrete functions: (1) assisting the court with pretrial release decisions, (2) supervising defendants released to the community pending trial or sentencing, (3) assisting the court with imposition of sentence, and (4) supervising persons in the community on probation, supervised release, and other types of post-conviction supervision. This article will focus on the risk profile of defendants and offenders, key outcome measures such as rearrest rates and pretrial services release rates, types of offenses on which persons are charged and convicted in federal court, the system's staffing strength, and the education and experience profile of its officers. Trends for years 2011 to 2014 are highlighted.

Pretrial Services Risk Assessment and Release

Pretrial services officers prepare reports for courts to use in making release or detention decisions for defendants. The reports also provide courts with information useful for establishing appropriate conditions of release. In FY 2010, the AO completed development of actuarial risk assessment instruments for its pretrial and post-conviction populations. The Pretrial Risk Assessment (PTRA) informs pretrial services officers about defendants' actuarial risk of re-offending or failing to appear for court appearances if released on bond pending the adjudication of federal charges. Pretrial services officers use the PTRA to help determine whether to recommend release or detention for defendants. Actuarially, defendants with a PTRA score of 1 have a failure rate of 3 percent during the pretrial period, while PTRA scores of 5 have a failure rate of 35 percent. Coupled with officers' professional judgment, the PTRA provides officers with statistically valid and unbiased information to help the officer make a sounder recommendation to the court.

The number of cases opened at the pretrial stage, excluding pretrial diversion cases, fell from 107,307 in 2013 to 97,685 in 2014, a decrease of 9 percent. This decrease was system-wide. In 2014, 79 districts reported a decrease in pretrial services cases activated from the previous year. Although the decrease was system-wide, one district accounted for nearly 11 percent (1,043 cases) of the overall decrease in cases activated.

Table 1 shows the number of cases released to pretrial services supervision based on their PTRA risk level. As expected, defendants with lower risk scores are released at a higher rate than defendants with higher risk scores. A little more than 80 percent of the cases classified in PTRA risk categories 1-3 were released to pretrial services supervision in 2014, up from 77 percent the previous year. Although the risk level is a leading factor, the type of offense a defendant is charged with is another factor that may be associated with whether defendants are released pending disposition of their cases. For example, defendants charged with firearms or violent offenses are less likely to be released during the pretrial stage than defendants charged with public order or property offenses.

Although the overall number of pretrial services cases opened has decreased in recent years, the seriousness of the criminal histories has remained relatively stable. As Table 2 shows, nearly 38 percent of the cases opened in 2014 involved defendants who had prior

[1] The Charter for Excellence, which sets out the goals, values, and professional standards of the system, was adopted by chief probation and pretrial services officers at the 2002 National Chiefs Conference sponsored by the Federal Judicial Center.

TABLE 1.
Pretrial Release Rates by PTRA Score

	2011		2012		2013		2014	
PTRA Score	**Freq.**	**Pct.**	**Freq.**	**Pct.**	**Freq.**	**Pct.**	**Freq.**	**Pct.**
Category 1	5,221	19.6	7,542	30.4	7,990	32.4	7,435	32.9
Category 2	4,050	15.2	5,785	23.4	6,168	25.0	5,896	26.1
Category 3	3,213	12.1	4,554	18.4	4,917	19.9	4,800	21.3
Category 4	1,430	5.4	1,888	7.6	2,098	8.5	2,057	9.1
Category 5	349	1.3	481	1.9	464	1.9	462	2.0
Not Assessed	12,378	46.5	4,521	18.3	3,052	12.4	1,929	8.5
Total	**26,641**	**100.0**	**24,771**	**100.0**	**24,689**	**100.0**	**22,579**	**100.0**

Source: DSS Standard Report 1248, Tab (2)

felony convictions and 45 percent had prior misdemeanor convictions. Of those with felony convictions, more than 25 percent were drug-related convictions and more than 17 percent involved violence. Immigration, drugs, and property offenses continue to be the main offenses for which defendants are charged.

One of the goals of pretrial services is to provide information to the judge that will allow for the release of defendants who pose a low risk to reoffend and whose risks can be addressed through proper community supervision by the officer. In order to track this objective, the AO regularly calculates the system's release and detention rates. To provide additional context, the AO calculates the system's release and detention rates in two ways: both including and excluding undocumented aliens. A defendant's illegal immigration status can hinder the pretrial services officer's ability to find less costly, non-custodial options that will allow for the defendant's pretrial release. This year's detention rate is 73.1 percent when illegal alien cases are included in the calculation, compared to 47.9 percent when alien cases are excluded (see Table 3). Even when you exclude illegal aliens, the detention rate is still increasing, albeit very slightly.

Pretrial Services Supervision Outcomes

The desired outcome in all pretrial services cases is the successful completion of the term of supervision during which the defendant commits no new crimes, appears in court for all scheduled hearings, and complies with all conditions of release. Of the 51,064 pretrial services cases supervised during the 12 months ending December 31, 2014, only 2.5 percent had violations for new crime (see Table 4). In comparison, 12 percent of pretrial services cases with violations were technical violations, such as positive drug tests, failure to attend treatment, and failure to comply with location monitoring conditions. Defendants are also attending court hearings as scheduled. In each of the past three years, only one percent of defendants failed to appear in court as scheduled.

Post-Conviction Risk Assessment

The PCRA is the post-conviction risk assessment instrument, developed in 2010 to predict rearrest and revocation for post-conviction offenders under supervision. At times, the PCRA may classify an offender's risk at a level that differs, based on the professional judgment, from what the supervision officer deems appropriate. In those instances, based on the offender's needs and perceived risk, the officer may increase or decrease the supervision intensity of the offender, thus changing the supervision level. (Policy guidance calls for this change in supervision level when the officer feels the person's background is not adequately addressed through the PCRA, for example when an offender scores low based on minimal criminal history, but the criminal history is violent or includes a sex offense.) Table 5 shows the distribution by risk level and supervision level for cases under supervision in calendar year 2014.

Consistent with the risk principle of effective supervision, many districts have coped with funding shortfalls and reduced staffing by increasing the number and size of "low-risk supervision caseloads," in which offenders are minimally supervised, while more intense supervision and treatment resources are

TABLE 2.
Prior Criminal Record for Pretrial Services Cases Activated

Prior Record	**2010**	**2011**	**2012**	**2013**	**2014**
Cases Activated	111,806	111,978	107,960	107,307	97,685
Felony Arrests	51.7%	51.6%	52.1%	51.2%	49.8%
Convictions	39.9%	39.5%	39.9%	39.2%	37.9%
Violence	18.0%	18.1%	17.8%	18.0%	17.5%
Drug-Related	27.1%	26.7%	26.6%	26.0%	25.2%
Misdemeanor Arrests	59.6%	60.0%	60.1%	59.7%	58.9%
Convictions	46.0%	46.3%	45.8%	46.0%	45.0%
Violence	18.2%	17.7%	17.4%	17.4%	16.8%
Drug-Related	19.6%	20.3%	20.1%	20.1%	19.5%

Source: Table H-1; PSA Statistical Profile

TABLE 3.
Pretrial Services Detention Cases

	Detained		Exclude Immigration		Exclude Illegal Alien	
Year	Freq.	Pct.	Freq.	Pct.	Freq.	Pct.
2010	73,683	65.3	38,657	52.8	–	–
2011	73,026	70.7	38,185	55.9	–	–
2012	71,214	71.9	36,050	56.5	24,537	47.5
2013	71,266	72.1	35,253	56.2	24,391	47.6
2014	65,916	73.1	31,594	56.7	21,651	47.9

Source: Table H-14 (12-Month Period Ending December 31)

TABLE 4.
Pretrial Services Supervision Cases with Violations

	Violations					
	Failure To Appear		Re-arrest		Technical	
Year	Freq.	Pct.	Freq.	Pct.	Freq.	Pct.
2010	418	0.7	1,782	3.0	10,526	12.3
2011	509	0.9	1,630	2.7	10,036	12.3
2012	580	1.0	1,581	2.6	9,323	11.8
2013	573	1.0	1,577	2.7	9,299	12.2
2014	530	1.0	1,388	2.5	8,801	12.0

Source: DSS Standard Report 1244

TABLE 5.
PCRA and Supervision Level for Supervision Cases Received in 2014

	PCRA Risk Level		Supervision Level	
Risk Level	Freq.	Pct.	Freq.	Pct.
Low	19,117	35.7	16,179	30.3
Low/Moderate	21,048	39.3	20,391	38.1
Moderate	10,192	19.0	10,331	19.3
High	3,182	5.9	6,567	12.3
Total	53,539	100.0	53,468	100.0

Source: DSS Standard Report 1009

TABLE 6.
Conviction Offense Category by Year for the Time Period Ending December 31

	2012		2013		2014	
Offense Category	Freq	Pct	Freq	Pct	Freq	Pct
Drugs	63,263	47.7	62,778	47.5	63,356	47.6
Escape/ Obstruction	1,804	1.4	1,846	1.4	1,805	1.4
Firearms	16,129	12.2	16,322	12.4	16,554	12.4
Immigration	5,371	4.0	4,905	3.7	4,473	3.4
Other	309	0.2	143	0.1	103	0.1
Property	28,793	21.7	28,527	21.6	28,547	21.4
Public Order	3,788	2.9	3,445	2.6	3,089	2.3
Sex Offenses	5,237	3.9	6,195	4.7	7,325	5.5
Violence	8,020	6.0	7,941	6.0	7,970	6.0
Total	132,714	100.0	132,102	100.0	133,222	100.0

Source: Table E-3 (as of December 31)

focused on higher-risk offenders. The instrument is useful in identifying cases appropriate for low-risk supervision caseloads.

Drugs, property, and weapons offenses are the leading categories of instant offenses, and have remained so consistently over the past three years. More than 65 percent of persons under post-conviction supervision in 2014 were convicted of drug (47.6 percent), property (21.4 percent), and firearms (12.4 percent) offenses (see Table 6).

Early Termination

The use of early termination is consistent with the risk principle of evidence-based practices. The risk principle suggests that offenders be supervised at levels commensurate with their overall risk levels. Therefore, when an offender is statutorily eligible *and* meets Judicial Conference-approved eligibility criteria, early termination is consistent with the risk principle. This frees up resources to more effectively supervise higher-risk offenders. Not only is early termination an effective practice, it also provides a significant cost-savings to the probation and pretrial services system. In 2014, the probation and pretrial services system early terminated 7,673 offenders, (see Table 7), which yielded a savings of nearly $32.5 million or $4,363 per offender (see Table 8).

The desired outcome for post-conviction cases is the successful completion of the term of supervision during which the offender commits no new crimes and complies with all conditions of supervision. The majority of post-conviction supervision cases are closed successfully. In most instances, the offender's term expires; in some instances, the offender is released from supervision by the court before the expiration of his term. Revocations make up less than a third of post-conviction case closings. When cases are closed due to a revocation for reasons other than for a conviction for a new crime, the basis for doing so is frequently a technical violation. Last year, more than 17 percent of the revocations were for technical violations.

Rearrests and Revocations

Protecting the public is a part of the primary mission of the federal supervision system. In order to do so, officers utilize supervision practices that minimize offenders' involvement in criminal activity during and after supervision. An objective way to measure the effectiveness of such practices is to examine recidivism rates. Rearrest and revocation are the most commonly used measures of recidivism in the federal supervision system. According to the three-year rates for cases received during the years 2005 to 2009, both measures have remained relatively stable over the years. Rearrest rates have steadily declined since 2007, while revocations, with the exception of 2009, remained unchanged or declined each year since 2005. Since 2007, the three-year rearrest rate has decreased from 21.4 percent to 20.3 percent, while the revocation rate has decreased from 22 percent to 21.6 percent (see Figure 1).

The AO tracks rearrests for offenders for three years beyond their completed terms of supervision. For offenders who began supervision between fiscal years 2005 and 2009, the three-year post-supervision rearrest rate for major offenses was 15.1 percent, less than 1 percentage point lower than the three-year rate for the previous year. The types of offenses committed post-supervision are highly similar to those committed during supervision. Of those rearrested within three years after completing a term of supervision, 33.2 percent had a drug-related arrest, 26.8 percent were rearrested for a violent offense, and 24.2 percent were rearrested for a property offense (see Figure 2).

Maximizing Community Restoration

By using data from the Civil Criminal Accounting Module (CCAM), the AO can

TABLE 7.
Post-Conviction Supervision Cases Closed With and Without Revocation

	2012		2013		2014	
Type of Case Closing	**Freq**	**Pct**	**Freq**	**Pct**	**Freq**	**Pct**
Without Revocations	38,713	70.7	40,159	72.5	39,369	72.7
Early Term	7,239	13.2	7,460	13.5	7,673	14.2
Term Expired	28,105	51.3	29,543	53.4	28,618	52.9
Other	3,369	6.2	3,156	5.7	3,078	5.7
With Revocations	16,048	29.3	15,198	27.5	14,768	27.3
Technical	9,350	17.1	9,616	17.4	9,344	17.3
Minor	1,009	1.8	1,013	1.8	1,407	2.6
Major	5,689	10.4	4,569	8.3	3,951	7.3
Total Closed	132,714	100.0	55,357	100.0	54,137	100.0

Source: Table E-7A (12-Month Period Ending December 31)

TABLE 8.
Post-Conviction Early Termination Cost Savings

Fiscal Year	Total Cases	Avg. Days Supervised	Avg. Days Saved	Avg. Saved per Client	Total Savings
2010	6,626	825	467	$4,042.96	$25,337,212
2011	6,848	839	476	$4,121.44	$26,224,706
2012	7,239	864	479	$4,151.14	$28,169,629
2013	7,460	840	483	$4,180.52	$29,547,911
2014	7,673	862	504	$4,362.88	$32,459,810

Source: DSS Standard Report 1245

FIGURE 1.
Three-Year Rearrest and Revocation Rates, 2005–2009

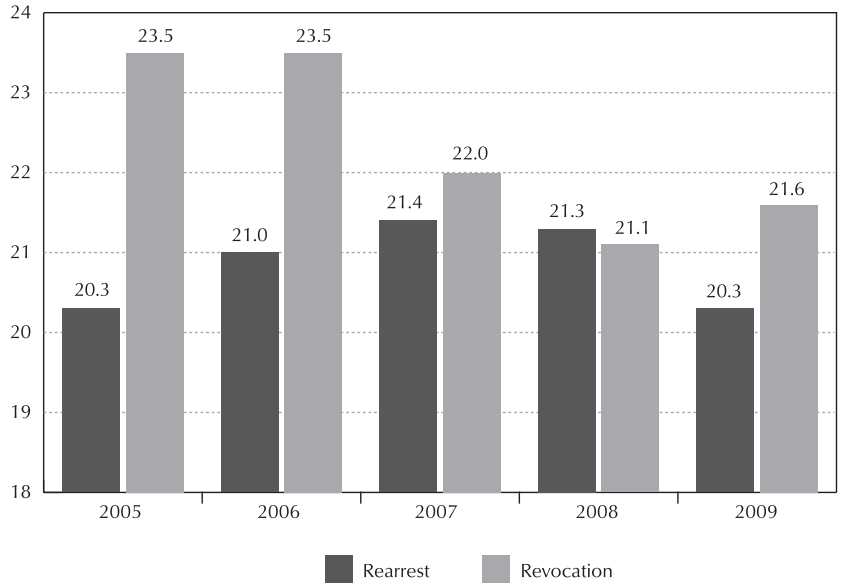
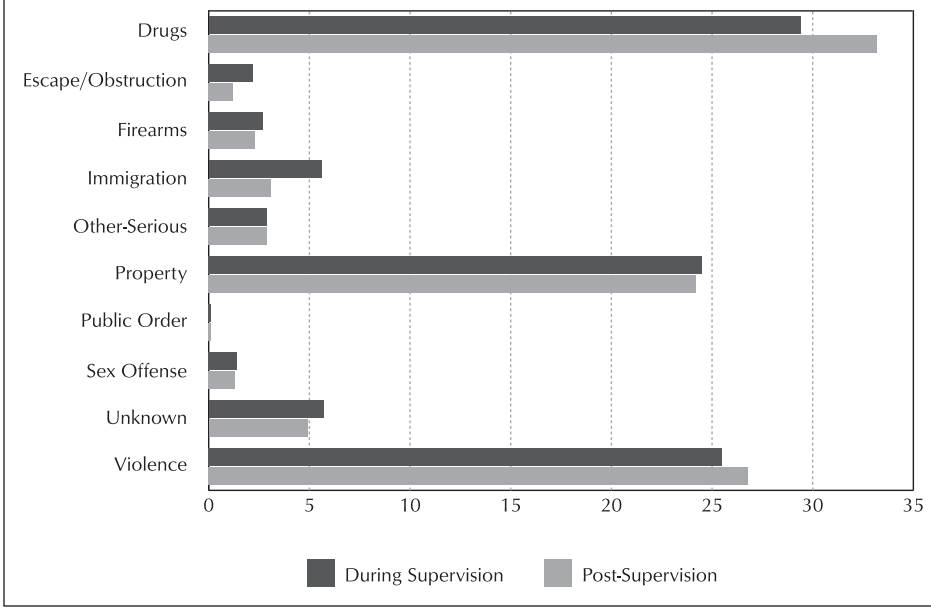


FIGURE 2.
Percent of Rearrests during Supervision and Post-Supervision by Offense



identify the amount of fines, restitution, and special assessments imposed. The Offender Payment Enhanced Report Access (OPERA) system allows officers to confirm fine and restitution payments made by supervisees (see Table 9). In addition to paying fines and restitution, offenders performed a total of 577,041 community service hours, or 70 percent of the total hours imposed by the courts.

Officer Staffing and Workload

To meet the challenges of an increasingly risky caseload, the system has more than 7,700 staff (up from more than 7,600 in 2013)—67 percent of whom are officers. Figure 3 displays the composition of staff by position. Officers are particularly well qualified. A little more than half hold masters or doctoral degrees. On average, officers worked more than seven years in a local community corrections system, social service agency, or police department before joining the federal probation and pretrial services system. Their average tenure with the federal judiciary is slightly more than 12 years (see Figure 3).

Historically, resources for the probation and pretrial services system have kept pace with the increased volume of cases. Though total staffing[2] increased by 1.4 percent from last year (from 7,649 to 7,754), there was a 0.6 percent decrease in officers (from 4,311 to 4,338).[3] The system has had a record number of officer hirings in 2015, but due to mandatory retirements, there has been no net increase in officers. As a result of the resourcing and workload situation, officers are being assigned a larger number of post-conviction cases.

It appears that officers' caseload sizes are beginning to taper off after a steady climb over the past several years (see Figure 4). When looking at officer caseloads, it is important to take into account activities officers perform in addition to supervising cases, such as writing presentence investigation reports and conducting pretrial services investigations. Although the average caseload volume for staff[4] in 2015 was 51.4, nearly as much of that volume comprised conducting pretrial services investigation reports and writing presentence investigation reports as it did supervising post-conviction cases (see Table 10). Caseload size may also be influenced by geographical factors that affect population density. Districts located in densely populated metropolitan areas tend to have higher crime rates and thus larger caseloads than districts in less populated rural areas.

Substance Abuse Treatment

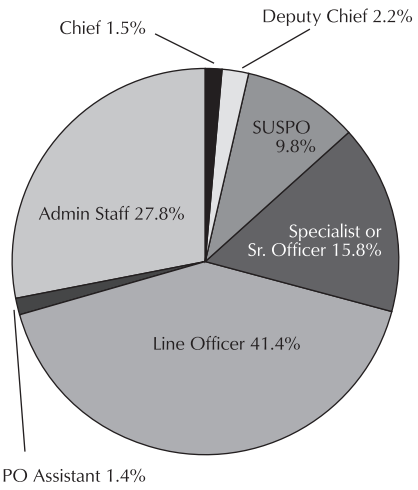
Federal offenders receive substance abuse treatment from a variety of sources: private insurance, state and local programs, self-help groups, the Department of Veterans Affairs, and judiciary-funded substance abuse treatment services. The cost of treatment services in an individual case depends on the type of treatment and duration of services needed to address the severity of the problem identified.

[2] Includes total number of FTE employees, year to date, as of last pay period in first quarter of the fiscal year.

[3] This represents total number of FTE employees with job classifications of line officer and specialist officer, year to date, as of last pay period in first quarter of the fiscal year.

[4] Represents full-time equivalent employees with the job classification of line officer or specialist officer and excludes supervisors, deputies, and chiefs with managerial responsibilities.

FIGURE 3.
Distribution of Staff by Position



Source: DSS CIRIS Personnel 2201

Of the 77,243 offenders in 2014 with substance abuse treatment conditions, 19,846 received judiciary-funded treatment services. Others received free community services or services paid for by private sources. The federal judiciary spent an average of $975 on each of those offenders for that year, for a total of $19,352,723. The total amount spent was nearly 45 percent less than the judiciary spent in 2010. Since 2010, the number of offenders with substance abuse conditions has increased 3.9 percent while those receiving court-funded treatment decreased by 38.6 percent. During that same time period, the percentage of offenders receiving judiciary-funded treatment decreased to 25.7 percent from 43.5 percent (see Table 11). The decrease in court-funded treatment is due to a variety of factors, including the availability of private insurance and reductions in treatment referrals to contract treatment providers necessitated by steep sequestration budget reductions.

Safety and Firearms

The AO and the district courts have made significant investments in safety and firearms training for officers to help ensure their safety in the community.[5] Last year, 400 safety-related incidents involving officers were reported. None resulted in death or serious bodily injury, which may be attributed to the quality of training provided. One of the more risk-laden responsibilities of officers, and the subject of a recently developed training program delivered by the AO, is conducting searches and seizures pursuant to special conditions of supervision. In the past year, the number of searches reported to the AO increased from 909 to 1,566[6] (see Figure 5 for breakdown on items seized).

[5] 18 U.S.C. §§ 3154(13), 3603(9), authorize officers—if approved by their district court—to possess firearms under rules and regulations of the Director of the AO. Roughly 66 percent of officers have been trained and approved to carry firearms; three districts have not approved their officers to possess firearms.

[6] Officers entered 909 reports into the Post-Search, Exigent, and Consent Report modules and reported 355 plain-view seizures. Officers used the new Computer Search Report module, which was released on August 24, 2014, to report an additional 302 computer search reports. However, those reports are not included in the data detailed in this report. This report focuses on preapproved (599), exigent (244), and consent (66) searches.

TABLE 9.
Fines, Restitution, and Special Assessments Owed and Collected

	Total Owed	Total Collected	Collected
Fines	$168,668,512	$90,215,948	53.5%
Restitution	$6,865,359,569	$380,904,253	5.5%
Special Assessments	$6,673,016	$5,504,292	82.5%
Total	$7,040,701,097	$476,624,493	6.8%

Source: OPERA. Data represent the 12-month period ending March 31, 2015. Includes a one-time collection of a $20 million fine from a corporation, which substantially increased the amount collected.

TABLE 10.
Staff and Officer Caseload Volume

	2014			2015		
Caseload Activity	**Total**	**Staff Caseload**	**Officer Caseload**	**Total**	**Staff Caseload**	**Officer Caseload**
PTS Investigation	103,777	13.6	24.1	94,532	12.2	21.8
PTS Cases Supervised	52,706	6.9	12.2	49,176	6.3	11.3
Presentence Investigation Rpts	73,231	9.6	17.0	69,119	8.9	15.9
Post-conviction Cases	186,367	24.4	43.2	186,002	24.0	42.9
Total Caseload Volume	416,081	54.4	96.5	398,829	51.4	91.9

Source: Statistical Table H-2; National PACTS Reporting Database, Workload Report; Statistical Table E-10.

TABLE 11.
Offenders Receiving Judiciary-Funded Substance Abuse Treatment

Fiscal Year	Offenders with SA Conditions	Received SA Treatment	SA Treatment Expenditures	Avg. per Offender
2010	74,367	32,318	$35,050,313	$1,085
2011	76,556	30,439	$32,119,339	$1,055
2012	78,785	28,375	$28,337,666	$999
2013	77,737	23,792	$21,264,932	$894
2014	77,243	19,846	$19,352,723	$975

Source: Table S-13 (12-Month Period Ending September 30)

FIGURE 4.
Caseload Volume FY 2010–2015

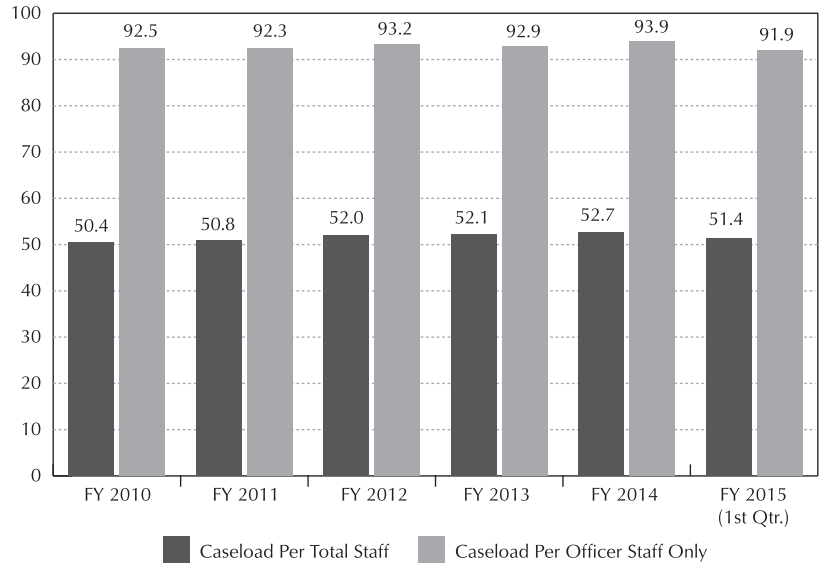
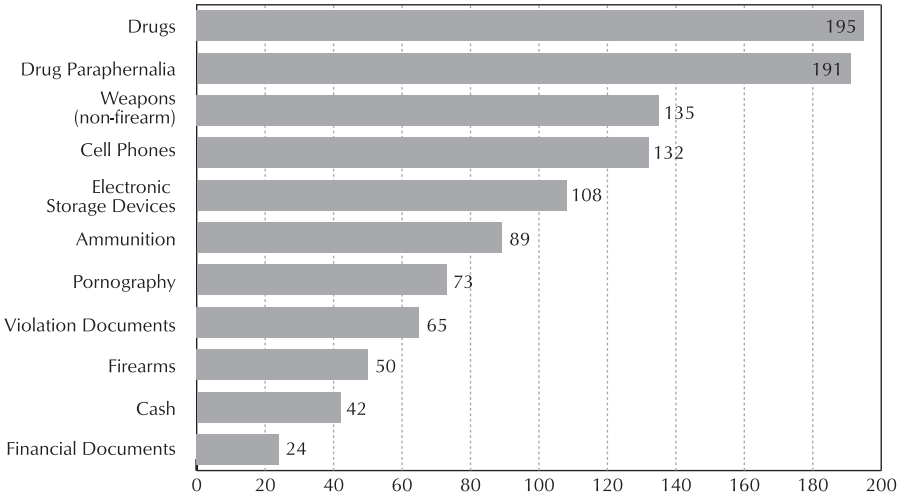


FIGURE 5.
Items Seized During Preapproved, Exigent, or Consent Searches



Source: SIRS, Search and Seizure Data Report

Presentence Investigation Reports

In addition to their supervision duties, probation officers conduct presentence investigations. In 2014, the number of presentence reports prepared by probation officers decreased 5.6 percent to 69,119. Of this total, 95 percent were presentence guideline reports, which are comprehensive investigative reports prepared in felony or Class A misdemeanor cases for which the U.S. Sentencing Commission has promulgated guidelines. Modified presentence reports, which are less comprehensive, represented 3.7 percent of total presentence investigative reports. Non-guideline reports, which involve offenses for which the Sentencing Commission has not promulgated guidelines, increased from 113 to 142. Including non-guideline reports, reports involving petty offenses, reports for treaty transfer cases, and supplemental reports to the Bureau of Prisons constituted the remaining 1.3 percent (see Table 12).

Conclusion

Overall, the state of the federal probation and pretrial services system is good. The system has well-qualified personnel who receive relevant training, risk assessment tools, and technology resources. The federal system's recidivism rate has been half that of many states. The three-year felony rearrest rate for persons under federal supervision has been consistently measured at between 20 and 21 percent. The percent of federal cases closed by revocation annually is less than 30 percent.[7] We see clear evidence, however, of increasing caseloads, and there are significant challenges ahead. The federal deficit and likely funding shortfalls, coupled with rising defendant and offender risk levels and proposed criminal justice reforms that may greatly increase demands, can quickly jeopardize the strength of the system.

[7] Judicial Business of the U.S. Courts, Table E-7A.

TABLE 12.
Presentence Investigations

	Presentence Investigations				
Year	Guideline	Non-guideline	Modified	Other	Total
2010	74,541	168	1,829	1,798	78,336
2011	77,209	280	1,692	1,398	80,579
2012	73,203	154	1,815	1,117	76,289
2013	70,592	113	1,627	899	73,231
2014	65,675	142	2,531	771	69,119

Source: Table E-10. Other includes reports for treaty transfers, supplemental reports to BOP, and reports involving petty offenses.

Community Supervision in the Post Mass Incarceration Era

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WHAT IS NEXT for community supervision? With the 90th anniversary of the federal probation system and the 40th anniversary of pretrial pilots in the federal system, now is the time to begin to outline the emerging themes for community supervision in a post mass incarceration era. The United States, through various reforms and crime control strategies, has had an agenda for nearly 30 years that increased the number of people who are incarcerated and the length of the sentence, as well as promulgating enforcement and punishment as the theme of community supervision. While the emphasis on evidence-based practices and using research to guide operations has fostered support for community supervision initiatives focused on offender change, these efforts are often pursued from a risk management perspective that is a component of the mass incarceration perspective. Numerous reviews of these crime control strategies have suggested that the great American experiment with incarceration has societal consequences where the costs outweigh the benefits, and the impact of mass incarceration policies on individuals, families, and communities is too great and affects many generations.

A post mass incarceration era propels us to examine how we can deliver public safety in a manner that serves the greater good for crime control but minimizes the unintended consequences of the incarceration-based punishment system. A number of unanswered questions exist, including how community corrections will handle the expected increase in people under supervision and how community supervision will prevent the backend use of incarceration through violations. In other words, what should community supervision, as a component of the justice system, pursue to mitigate the unintended consequences of mass incarceration?

Three themes emerge to advance community supervision in the next decade: specialized processes for individuals with behavioral health disorders, increasing and intelligent use of technology, and desistance. The next advancements in community supervision must build on the client-centered activities that are part of the cadre of core correctional practices, with an emphasis on integrating public health and citizenship initiatives within the justice setting. It is critical for community supervision to be viewed as a period of time to focus on competency development for the justice-involved person with attention to better management of his or her behavioral health disorders. Accountability, or the focus on conditions or requirements of probation that serve to facilitate offender change and restorative justice to the community, are important to making strides for being accountable for one's behavior, and the individual makes restoration or restitution to the community and/or victim for the harms done. These approaches build on core correctional practices, which have dominated the last decade as the "new model" and toolkit for officers, and emphasize behavioral techniques over monitoring and compliance-driven approaches. Core correctional practices is at the officer level of a set of activities including building working relationships between the justice actor and client; the justice actor uses reinforcements, disapprovals, and authority to assist the client in managing his or her own behavior, and the system emphasizes prosocial modeling, using treatments that include cognitive restructuring and social skills training.

Specialized processes for individuals with behavioral health disorders, technology, and desistance are geared to the goals and operational practices of the supervision agency that can support core correctional practices. These three recommendations for the future (or better yet, to begin right now) are designed to inculcate improvements into the mission and goals of supervision agencies to sustain efforts that promote societal goals of reduced criminal behavior through the individual becoming a contributing member of the community. Stated simply, these recommendations are focused on undoing some of the unintended consequences of mass incarceration and its impact on the culture of supervision agencies that focus on compliance management and risk management.

Administrative Office of the U.S. Courts Leading the Way

The Administrative Office of the U.S. Courts (AO) should be acknowledged for laudatory efforts to advance the practice of supervision, including all aspects of core correctional practices. The efforts to reengineer probation services have focused on the core features of evidence-based supervision: 1) use of standardized risk and need assessment tools, including an instrument developed for their own population (the Post Conviction Risk Assessment, or PCRA); 2) integration of risk and need assessment into supervision systems; 3) use of evidence-based treatments, including manualized services and cognitive behavioral treatments; and 4) use of tool kits to minimize the use of incarceration for violations of probation. All of these ongoing efforts are well supported by the research. The AO also has engaged in a campaign to educate managers and line staff on the research literature as part of an effort to provide a foundation for the implementation of core correctional practices

among its officers. These efforts, discussed elsewhere in this issue and others of *Federal Probation*, have moved federal supervision forward and positioned districts to implement important improvements to the system. The next three sections describe and discuss some recommendations for advancements in this post mass incarceration era.

Recommendation 1: Create Specialized Processes for Behavioral Health Clients

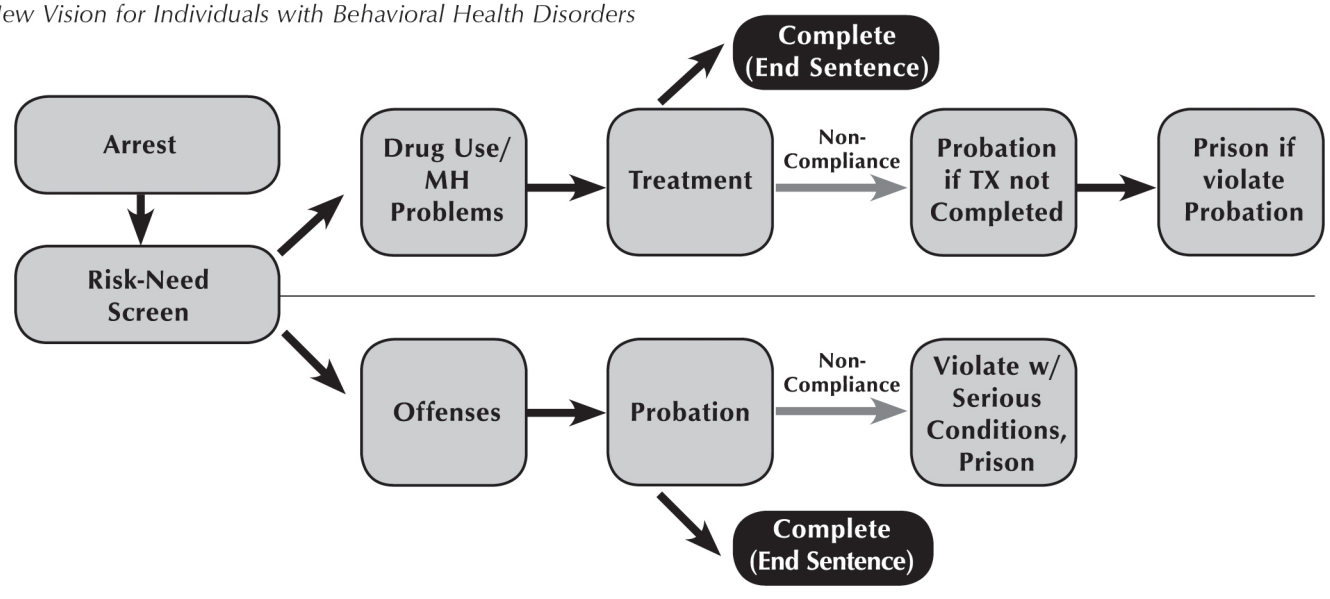
The rate of behavioral health disorders is greater among the justice-involved population (i.e., inmates, probationers, parolees, pretrial defendants, etc.) than among the general population. Substance use disorders are four times greater in the probation and parole population (approximately 36 percent of that population) than in the general population. Mental health disorders occur at twice the rate of the general population. But, the justice system handles most individuals with behavioral health disorders the same as other offenders—they are exposed to the same processes and opportunities for programming as other offenders. Essentially there is little regard for how the behavioral health status of an individual may affect his or her functioning or behaviors, or ability to be successful on supervision. During the past two decades, many new initiatives have been tried within the justice setting for substance abusers (and a few for those with mental health issues). Overall, research on such initiatives has found that using behavioral strategies within justice settings is feasible and can have positive impacts on client outcomes. But, there is a need to handle behavioral health clients through a different set of processes than the typical one used by the justice system and probation agencies. The future holds that the justice system will screen at any point—arrest, pretrial decisions, sentencing, and correctional initiatives—and make a determination that the individual will be moved to a different process that specializes in managing behavioral health disorder and using treatment, as depicted in Figure 1 below.

Rationale for a New Approach.

A range of initiatives has been tried for individuals with behavioral health disorders. Drug treatment courts, which began in the 1990s and now consists of over 800 courts plus many sibling courts (i.e., veteran's courts, mental health courts, prostitution courts, gang courts, etc.), demonstrated that new strategies can improve client outcomes. The drug treatment court model involves a partnership of the judiciary, treatment agencies, supervision agencies, prosecutors, and a defender jointly monitoring the progress of the individual, and the individual is directed to participate in drug treatment and other appropriate programming. The individual is drug-tested routinely, the justice partners are involved in status hearings to monitor the progress of the client, and the system uses sanctions and rewards to reinforce expected behaviors. Drug treatment courts have been instrumental in preparing justice officials to understand substance abuse disorders and to use behavioral strategies to address compliance and accountability with the conditions of the court. The major drawback is that there is a lack of capacity, due in part to the labor-intensiveness of this strategy (less than 5 percent of offenders with substance use disorders are involved in drug treatment courts), and the treatment courts are infrequently used for those with moderate- to higher-risk criminal behavior. In other words, drug treatment courts demonstrate that great strides can occur with the use of different strategies for drug-involved offenders.

Other initiatives exist that have shown promise in dealing with behavioral health needs of justice-involved individuals. The research on drug treatment courts demonstrates that the special programming reduces recidivism (but has little impact on drug use) (see Aos et al., 2014). Similarly, studies of probation intensive supervision programming with drug treatment (that is, generally with conditions of treatment, testing, and sanctions) finds an impact in the direction of reduced recidivism compared to standard probation (Drake et al., 2013). Recently, the Hawaii's Opportunity Probation with Enforcement (HOPE) program has demonstrated reductions in recidivism among a broad array of offenders. Similar to drug treatment courts, the effort focuses on swift attention to drug use behaviors by the judiciary and probation system—individuals appear in court as soon as a noncompliance is noted—as well as frequent drug testing and use of sanctions to handle negative performance. Reductions in

FIGURE 1.
New Vision for Individuals with Behavioral Health Disorders



recidivism are also observed in the few studies of this initiative (Hawkins & Kleinman, 2009). And, for mental health disorders, one small study has found that specialized probation caseloads for mental health clients have shown positive impact (Skeem, Manchak, & Peterson, 2011); mental health courts, modeled after drug courts, have not shown reductions in recidivism. Overall the lessons from this collection of studies are that justice-involved individuals with behavioral health disorders need different processes and procedures to assist them in addressing their behavioral health disorders that affect criminal behavior.

Collectively this body of literature has demonstrated that the justice system in its present form is not well equipped to manage those with behavioral health disorders. But a number of benefits exist to manage individuals with behavioral health disorders in a manner to reduce their symptoms and increase their functionality—this will serve public safety more effectively by addressing the factors that affect success on supervision (i.e., substance abuse and mental health). Lessons from the innovations of the past have emphasized the importance of having justice and treatment staff being knowledgeable about behavioral health disorders, particularly patterns of relapse and remission, to foster better outcomes and reduce recidivism. Having dedicated staff schooled in managing behavioral health disorders ensures that the individual receives appropriate treatment and the justice processes reinforce the treatment goals.

Separate Processes for Individuals with Behavioral Health Disorders.

As shown in Figure 1, treating separately from the onset of the criminal justice process those with behavioral health disorders emphasizes the need to address those behavioral health disorders. A separate process means that staff have different expectations, and that the compliance-driven culture of supervision will not interfere with a therapeutic approach focused on treatment engagement. The therapeutic approach can include accountability measures such as drug testing and perhaps liberty restrictions, to reinforce the importance of addressing the behaviors of the individual. In many ways, having a separate process facilitates both a harm reduction and public health approach. In terms of harm reduction, it reduces the potential exposure to incarceration of those with behavioral health disorders, since that environment does not understand behavioral health disorders. From the public health perspective, it allows the core functions to be modeled more closely after a therapeutic environment. That is, the screening, assessment, treatment referral, case management, and monitoring can use health guidance to reduce relapse. And, given the recent reforms in health care under the Affordable Healthcare Act, the justice system may be able to be reimbursed for performing these functions. Two federal programs are available, depending on the jurisdiction, to reimburse for case management-type functions: Medicaid Administrative Claiming (MAC) and Targeted Case Management (TCM). This means that the processes to handle individuals with behavioral health disorders, depending on the state, may be eligible for reimbursement for core functions. The potential to bring funding into justice agencies can be transformative—the additional funds can be used to reduce caseloads, perform more case management functions that include recovery management strategies, expand the use of clinical staff, and focus attention on the stability factors (housing, food, employment, vocational development) that often are not available in supervision agencies. Collectively, this integration with the healthcare framework is supported by recent healthcare reforms that are looking towards integrating care (particularly behavioral healthcare) into settings frequented by those in need. The justice system has the largest concentration of individuals with behavioral health disorders, and it makes sense that health care functions can be integrated into this setting.

Figure 1 provides an example of how to integrate a healthcare framework into justice processes. As shown here, a risk and need assessment administered shortly after arrest can indicate those that have a serious mental health disorder and/or substance dependence disorder. The distinction is that we are focusing attention on those whose criminal behavior is complicated by their behavioral health disorder, such as bipolar disorders, schizophrenia, etc., or substance dependence on opioids, cocaine, and methamphetamines. It excludes those that are involved in trafficking or those substance abusers whose use (for example, marijuana or alcohol) is part of a lifestyle involved in criminal behavior. Once it is determined that someone meets the criteria for the specialized process for behavioral health disorders, then the goal is to place that person in treatment to address the behavioral health issue. It is envisioned that the individual would be in treatment for at least 12 months and that other services (such as housing and vocational and educational training) could be offered when progress is made in treatment. This would give the opportunity to engage in evidence-based treatment as well as support services. Case management services would be part of the treatment process, and probation or other justice processes would occur when noncompliance with the treatment conditions, relapse, or other types of services would occur. The emphasis would be on recovery and functionality rather than punishment. Specialized processes, with experts in behavioral health services, should be able to facilitate better outcomes and reduce the use of back-end incarceration, since more individuals would be in recovery. A goal of the system is to engage the individual in quality treatment and case management to prevent relapse—with goals of increasing persistence in treatment and increasing the periods between relapse.

Technology to Augment Supervision Processes

The concept of face-to-face contacts, the main feature of community supervision, is soon to be altered. The complexity of supervision work—face-to-face contacts, collateral contacts, court appearances, review of an individual's progress, addressing compliance issues—requires solutions that can be enhanced through technology. The innovation of electronic monitors (i.e., ankle bracelets that allow for house arrest and area restrictions) in the 1990s is the beginning of a continuing and expanding effort to integrate technology into supervision. The lessons from the use of electronic monitors are that the technology can be effective but it needs to be integrated into supervision where officers (or some personnel) are monitoring the results.

Pattavina (2009) notes that "persuasive technology" is an untapped resource that allows the technology and the information generated from the technology to be used in behavioral interventions in correctional settings. That is, electronic monitoring and other data provide important information that can be used in supervision to help probationers/parolees learn their daily patterns and then use that information to make strides in their behavior. This is an untapped resource, especially given the rise of mobile technologies; in fact, the extensive availability of mobile phones in society suggests that this is a useful resource to supervision.

In the clinical field, a number of studies have been completed on technology-based

interventions, particularly for managing substance use and related behaviors (see Marsch, Carroll, & Kulik, 2013). One of the early studies by Hester and colleagues (2005) found that using the "Check-Up" format in a computer-based program significantly reduced 12-month drinking among problem drinkers. A study of the A-CHESS smartphone app found that participants of a residential drug treatment program reported significantly fewer risky drinking days than patients in the usual care group (Gustafson et al., 2014). These technologies draw upon the principles of using routine information and then providing feedback reports to the individual. They are very similar to health promotional apps that are used in behavioral management strategies such as FitBit, Weight Watchers, My Fitness Pal, and others that provide real-time activities that focus on goal setting, reminders, and information to the user about how well they are meeting their goals. Although there are no programs specifically for justice-involved individuals, a current study funded by the National Institute on Drug Abuse, MAPIT, is designed to assess a two-session motivational interviewing program that focuses on goal setting and feedback on probation (see Walters et al., 2014).

A common problem in supervision is missed appointments. Dentist offices and other healthcare settings have tackled this problem by providing reminder phone calls the day before the meeting. Now, technology-based reminders are being implemented to help people keep appointments and follow schedules; even the research is focusing on the advantages of these reminder systems. Essentially, these systems have several key features, such as being on all the time like mobile phones, being easy to use, and having the ability to tailor the message to the individual. The use of mobile technologies has certain advantages, because they are always available and they also have geospatial locating capabilities. The potential in the justice setting is limitless, because these technologies can be used to enhance outcomes by addressing issues related to attending supervision meetings and treatment, avoiding high-risk people or situations, and obtaining/maintaining employment. The technologies can provide real-time tips, reminders, and verification of progress on key indicators (Spohr, Taxman, & Walters, 2015).

Persuasive technologies can be useful in probation settings. First, monthly probation contacts can be transformed into brief interventions facilitated by mobile technology, computerized contacts and/or interventions, and electronic monitors. This is a major advance, because most change strategies should focus on micro-behaviors that occur daily instead of on monthly behaviors. In fact, if the justice system is interested in changing behaviors, then there is a need to make the "contacts" more frequent to provide the opportunities to give feedback, guide behaviors, and allow for redirection. Few people can make changes in behavior if they are only receiving feedback infrequently. Second, the persuasive technologies can help clients engage in more shared decision-making efforts. Shared decision-making, in which the use of authority is reduced to allow the individual to contribute to the decision, is an important part of developing ownership in long-term changes. This helps the individual learn to make better, informed decisions. That is, in order to help individuals learn to weigh the costs and benefits of certain decisions (the decisional balance clinical tool), it is important for the individual to have a role in that decision-making. This means that officers and justice-involved individuals need to assess the costs and benefits and then give the individual the opportunity to make a choice. The officer learns to provide feedback in a manner that allows individuals to make decisions with guidance as to their impact on criminal behavior or success on supervision. Finally, the technology can be used to assist individuals in better managing their lives. Reminders, feedback, and goal-setting are all important parts of supervision, but they depend on whether the individual officers routinely engage in core correctional practices. Technology is more consistent—officers can receive reminders and information from the computerized systems just as easily as the probationers/parolees can. These reminders can help reinforce when to use core correctional practices, as well as which practices to use (effective disapproval, positive reinforcers, etc.). This means that technology can advance fidelity to core correctional practices, a plus in transforming supervision.

Desistance and Prosocial Identity

Shadd Maruna (2002) states in *Making Good* that people reintegrating from prison tend to use two different narrative scripts: 1) the redemption script, where they can see themselves as new persons ready to meet the challenges of a crime-free lifestyle; or 2) the condemnation script, where they see themselves as societal failures with little choice but to resume old ways. According to Maruna and other researchers, desistance is a process by which the person ceases criminal behavior and assumes a successful adjustment as a member of the community. It normally occurs over time, with many ups and downs (similar to recovery from substance abuse or a chronic disease). A convergence of key factors that affect desistance has emerged from research, clinical science, and policy analyses but primarily centers on three concepts: citizenship, identity, and role perception.

1. Citizenship refers to the ability of an individual to assume a civil role in society. The role as a member of the community involves the rights of individuals, including voting, employability, ability to live and work freely, and civic activities. Citizenship refers to the individual having a productive role in the community, which includes responsibilities to the community.
2. Identity refers to how a person views himself or herself in society: as part of the community, a prosocial, productive individual; or as an "outlaw" or defier of authority. A person's identity affects the conception of who he or she is in society, including capabilities, options, and available choices.
3. Role refers to whether the person sees himself or herself in traditional roles as a parent, employee, student, or other contributing member of society.

The emphasis on concerns about citizenship was recently validated by the recent report by the National Academy of Sciences in *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Travis, Western, & Redburn, 2014).

An agenda of desistance would be transformative regarding the mission, goals, and operations of a supervision agency. Unlike traditional goals of rehabilitation, punishment, incapacitation, or retribution, desistance focuses attention on assisting the individual in assuming a prosocial role in society. Some of the core correctional practices focus on assisting the individual in employment or dealing with behavioral health disorders, but desistance would involve the supervision agency in helping facilitate the person's development into citizenship, prosocial identity, or traditional role. The condemnation aspects of supervision that reinforce the person's focus on their past and the wrongs of the past would need to be replaced by a focus on redemption, on how the individual can be a contributing member of society. This would require many of the cognitive behavioral programs, manuals, workbooks,

and other tools that the agency uses to be refocused on the future and moving forward.

To advance a desistance agenda, supervision agencies would need to integrate desistance into the mission and goals of the agency. It would not be sufficient to state that the emphasis is on offender change or even rehabilitation, because many agencies already have this in their mission statement. A restatement of the mission and goal that includes desistance is needed to help internal staff and external stakeholders become aware that something has changed and that the emphasis is now truly on fostering the process of desistance. Desistance is similar to positive psychology, which emphasizes personal growth instead of deviance or problem behavior. "Redemption scripts" or similar efforts to focus on the individual's role in society might be difficult to integrate into a compliance-driven culture that emphasizes rule adherence or "catching people violating the rules." Redemption scripts focus attention on personal development that allows a person to become or assume a prosocial identity. The shift is significant and would require the organization to adopt missions, goals, and operations that focus on desistance, building prosocial identities, and assisting the individual to navigate towards citizenship and traditional roles. While many of the core correctional practices might be useful, the tone and emphasis would need adjustment to be consistent with a desistance framework.

Summary

Great strides have occurred with core correctional practices in community supervision, including the proliferation of training and technical assistance programs to facilitate knowledge and skills about the improvements in community supervision operations. These efforts are built into organizations that have been influenced by the mass incarceration (and mass probation and mass criminalization) policies—the culture of many supervision agencies is focused on risk management strategies that embrace punishment, incarceration of "rule violators," and use of offender change and punishment strategies to reinforce the justice-involved individuals' perception of themselves as *lesser citizens*. A key lesson from the post mass incarceration reform era is that people in the justice system must be able to view themselves with a redemption script to advance efforts to reduce recidivism. The three recommendations are designed to facilitate this by: 1) treating individuals with behavioral health disorders in treatment-oriented processes (that are more akin to public health strategies, and that potentially can take advantage of the Affordable Care Act); 2) using persuasive technology to transform supervision to facilitate individual change by providing feedback loops that can be used to help develop better decision-making; and 3) promoting desistance goals through organizational endorsement of citizenship, identity, and role as important to the mission and goal of supervision agencies. In the next decade, structural changes in supervision fostered by the three recommendations in this article have the potential to dramatically transform supervision into the preferred sentence given the overall improvement in outcomes. These are exciting efforts that can serve to increase social justice and citizenship and reduce health disparities—all three efforts are important to addressing the negative consequences that emerged from the mass incarceration policies and practices.

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