



JOURNAL

JOURNAL OF THE CENTER FOR FAMILIES, CHILDREN & THE COURTS

VOLUME 3 ❖ 2001

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The *Journal of the Center for Families, Children & the Courts* welcomes submissions addressing contemporary issues in family and juvenile law, the administration of family and juvenile courts, and the provision of court-connected services to children and families. The journal seeks to foster dialogue among various practical and academic disciplines, and so invites contributions from the fields of law, court administration, medicine and clinical psychology, the behavioral and social sciences, and other disciplines concerned with the welfare of children and families.

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MISSION STATEMENT

The *Journal of the Center for Families, Children & the Courts* is a periodical dedicated to publishing a full spectrum of viewpoints on issues regarding children, families, and the interplay between these parties and the courts. Focusing on issues of national importance, the journal encourages a dialogue for improving judicial policy in California.

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Editor's Note

The Judicial Council of California is pleased to present the 2001 issue of the *Journal of the Center for Families, Children & the Courts*. The Judicial Council and the

California courts have made it a priority to improve delinquency proceedings as part of an overall effort to improve proceedings involving children and families.

Though filings and dispositions have fallen in California over the past few years, juvenile delinquency remains a serious problem. Meanwhile, there is ongoing debate in both

Responding to Juvenile Delinquency:

Efforts to address and prevent juvenile offending

and the conditions that give rise to it.

the juvenile justice system and the general public about the relative values of punitive and rehabilitative responses to crime.

The articles in this issue take the discussion in a somewhat different direction, attempting to answer the question, What are the appropriate responses to a particular offense? For a crime is, at its base, not merely a violation of the law, but a tragedy—for the victim, for the offender, for their families, and for the community. After a crime, how can the offender truly take responsibility for his or her act? What can the community do to prevent future offenses? Attempting to repair the damage of crime, giving due consideration to its causes and effects, is, in a real way, the true pursuit of justice.

This edition, *Responding to Juvenile Delinquency*, focuses on the efforts of courts, court-connected professionals, and communities to address and prevent juvenile offending and the conditions that give rise to it. To highlight important issues and promising programs and approaches, the journal has gathered articles by judicial officers, attorneys, social and mental health workers, and academic researchers who specialize in juvenile justice. Willie McCarney, justice of the peace in Belfast, Northern Ireland, presents a comprehensive overview of the worldwide restorative justice movement, which promotes offenders' acceptance of responsibility for their crimes and reconciliation among all affected parties. Dana Royce Baerger, John Lyons, Peter Quigley, and Eugene Griffin report the results of their research on the mental health profiles of young male and female detainees. They find significant differences between them and recommend that juvenile justice professionals recognize these differences when deciding issues of placement, programming, and treatment.

Probation officer Judith Cox and attorney James Bell document an invidious effect of the punitive approach to delinquency: the disproportionate confinement of youth of color. After discussing the reasons for the problem, they present a blueprint for reform based on efforts in Santa Cruz County, California. Tom Leversee and Christy Pearson discuss the myths and realities associated with sexually abusive youth. Citing empirical research, they distinguish young abusers from adults and advocate a balanced approach to dealing with abusive youth. Drawing on a study of 40 years of research, social worker Michael Clark describes the factors common to successful approaches to rehabilitative youth work and illustrates their application through the strength-based approach.

The second section of the journal is a forum for addressing important and timely issues relevant to children and families in the court system that fall outside the focus topic's scope. Here, Madeline Wordes and Raelene Freitag of the National Council on Crime and Delinquency present a structured model for effective decision making by child protective agencies. The importance of intervening appropriately cannot be underestimated, both in terms of protecting children from abuse and neglect and preventing future delinquent behavior. In a related area, Referee Sherri Sobel and attorney Nancy Shea argue that a dependent child's continuing problems are not by themselves valid grounds for denying family reunification once the problems leading to the original removal have been resolved. They lay out a framework of legally required services that parents themselves can access for their child, thereby allowing the child to leave out-of-home placement.

In the Perspectives section, Howard Snyder of the National Center for Juvenile Justice provocatively presents a dilemma about the relation of academic research to politics. Finally, long-time youthful offender Evans Lowry shares his thoughts on the juvenile justice system and his hopes for the future.

The journal's goal is to disseminate information and encourage scholarly discussion of issues concerning children and families in the California court system. Although focusing on issues of national importance, the journal encourages a dialogue for improving judicial policy in California. We hope that the journal continues to fulfill its mission as a useful information and research tool and provider of thought-provoking perspectives. We welcome comments and suggestions for improvement.

—Audrey Evje



Contributors

DANA ROYCE BAERGER, J.D., PH.D., is an attorney and licensed clinical psychologist who specializes in issues related to children, families, mental health, and the legal system. Currently she works at Northwestern University School of Law's Clinical Evaluation and Services Initiative, an interdisciplinary research project dedicated to reforming the provision and use of clinical information in juvenile court proceedings. She received her J.D. from Cornell University and her Ph.D. in psychology from Northwestern.

JAMES BELL represented incarcerated youth as a staff attorney at the Youth Law Center in San Francisco for 20 years. Currently he is the director of the W. Haywood Burns Institute for Juvenile Justice Fairness and Equity, which assists jurisdictions both in the United States and abroad, and co-director of the Community Justice Network for Youth, a national network of programs for youth of color. Mr. Bell has worked extensively in several states on issues involving the disproportionate representation of youth of color in the juvenile justice system. He has been named Advocate of the Year by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention and is the recipient of the Kellogg National Leadership Fellowship, the American Bar Association's Livingstone Hall Award for Outstanding Juvenile Advocacy, and the Clinton White Attorney of the Year Award from the Charles Houston Bar Association.

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JUDITH A. COX, assistant chief probation officer in Santa Cruz County, California, has a degree in social work from Kent State University in Ohio and has been a social worker in public child-welfare systems in Ohio and Colorado. She is the chairperson of the Santa Cruz Detention Reform Task Force, which is sponsored by the Annie E. Casey Foundation and the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Ms. Cox has presented nationally on detention reform and disproportionate minority confinement for OJJDP and on juvenile justice and mental health system integration for the California Institute of Mental Health and the California Board of Corrections.

RAELENE FREITAG, M.S.W., PH.D., is a senior researcher at the National Council on Crime and Delinquency's Children's Research Center. She has many years of experience in child protection and has also worked in law enforcement and mental health. Dr. Freitag received her Ph.D. in urban studies from the University of Wisconsin—Milwaukee.

Contributors, continued

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EVANS LOWRY, age 17, recently moved from the San Francisco Youth Guidance Center to the Glen Mills Schools outside Philadelphia, Pennsylvania. He plans to get his high school diploma, then attend and graduate from college. Someday Evans hopes to start his own record label, to be called Omega Records, and plans to retire as the company's CEO.

JOHN S. LYONS, PH.D., is director of the Mental Health Services and Policy Program at Northwestern University School of Medicine, where he is a tenured associate professor of psychiatry, medicine, and preventive medicine. Over the past decade, he has worked with 22 states on issues of designing and implementing services for children and adolescents.

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PETER QUIGLEY is a fellow with the National Council on Crime and Delinquency. He has worked with national and state leadership to use research to inform policy regarding juvenile justice and delinquency prevention.

NANCY M. SHEA is a senior attorney at Mental Health Advocacy Services, Inc., a public-interest law firm in Los Angeles. A 1989 graduate of the University of California, Los Angeles, School of Law, Ms. Shea focuses on issues involving children's mental health and the coordination of services for children with serious emotional and developmental disabilities. Since 1989, she has represented special-needs children who are under the jurisdiction of the dependency or delinquency court. She has provided technical assistance and trainings on education and mental health matters to attorneys, bench officers, and social workers. Ms. Shea has advocated for legislative changes as well as litigated several cases that have led to reforms in the delivery of services to special-needs children.

HOWARD N. SNYDER, PH.D., is the director of systems research at the National Center for Juvenile Justice. His work has offered the country an accurate understanding of juvenile crime and victimization trends and the activities of the juvenile justice system. He has studied the nature of violent crime against children, differences in the daily cycles of violent crime by and against juveniles, racial and gender disparity in justice system processing, the structure of juvenile delinquent careers, the juvenile court's response to offenders, and the outcomes of juvenile cases transferred to criminal courts. He received his Ph.D. in social psychology from the University of Pittsburgh.

HON. SHERRI SOBEL, a referee in the Edmund D. Edelman Children's Court, Superior Court of California, County of Los Angeles, has worked in children's law for 18 years. As an attorney, she represented families in juvenile court, Courts of Appeal, and special education hearings in state and federal courts. She has written, lectured, and trained attorneys and bench officers in San Diego and Los Angeles and spoken across the country. She is a trained neutral and has been a special-education mediator for the state of California. She is most proud of her children, Ian and Abby.

MADELINE WORDES, PH.D., is director of policy and programs at the National Council on Crime and Delinquency. Dr. Wordes currently directs several projects, including national evaluations of both child abuse prevention and juvenile justice intervention programs. She holds a Ph.D. in ecological-community psychology from Michigan State University.

Restorative Justice

An International Perspective

In April 1994, Judge F.W.M. McElrea, a senior district court and youth court judge in New Zealand, described the state of the criminal justice system to a conference of district court judges:

While there is a variety of views about the theory of punishment, the one thing about our criminal justice system today that seems to be agreed by all is that in practice it is not working. Crime rates keep climbing and prison populations keep growing, at considerable expense in human and financial terms. The needs of neither offenders nor victims are satisfied. The existing theoretical bases of punishment seem bankrupt. The deterrent aspect of imprisonment is questioned by the failure of longer prison sentences to reduce serious crime.¹

Little has changed in the years since Judge McElrea offered this succinct summary of the problems confronting the criminal justice system. Indeed, these problems have intensified to such an extent that it seems fair to say that the system is in crisis. But today's crisis presents an opportunity for significant reform. An important response to that crisis is restorative justice—an idea whose time has come.

WHAT IS RESTORATIVE JUSTICE?

A definition of *restorative justice* is not as straightforward as it might at first appear. Restorative justice is not a unitary concept and is therefore difficult to define.² In some ways it is an "Alice in Wonderland" sort of term, in that it means whatever the speaker wants it to mean. While most commonly used to describe a response to offending behavior, it is also used to describe a range of complementary and broadly related developments that lie outside the sphere of criminal justice responses to conventional crime. The term *restorative justice* has been used to describe everything from micro approaches—e.g., standalone victim-support projects—to macro approaches—e.g., South Africa's Truth and Reconciliation Commission or the gacaca system of justice in Rwanda dealing with those accused of genocide. This article concentrates on restorative justice as a response to offending behavior, focusing on a variety of practices that seek to respond to crime in a more constructive way than is conventionally achieved through the use of punishment.

A TRULY REVOLUTIONARY MOVEMENT

A revolution is occurring in criminal justice. A quiet, grassroots, seemingly unobtrusive, but truly revolutionary movement is changing the nature, the very fabric of our work.³

This is how the U.S. Department of Justice's National Institute of Corrections introduces a recent set of articles dealing with restorative and community justice. Paradoxically, restorative justice is moving from a peripheral grassroots movement to center stage, its ideas migrating from the margins to the mainstream, at a time when society has reached unprecedented levels of punitiveness.



WILLIE MCCARNEY, PH.D.

*Lay Magistrate, Belfast,
Northern Ireland*

This article outlines the phenomenal growth of restorative justice around the world. Concentrating on restorative justice as a response to offending behavior, the article focuses on a variety of practices that seek to respond to crime in a more constructive way than is conventionally achieved through the use of punishment. By evaluating the diverse programs that claim to implement restorative justice, the article demonstrates the need to establish common principles for its use. ■

Punishment in response to crime and other wrongdoing is the prevailing practice in most modern societies. Those who fail to punish naughty children and offending youths and adults are generally labeled as permissive. Over the past 100 years or so the pendulum has swung from punitive to permissive and back again. The problem has been that neither approach appeared to work. The punitive-permissive continuum (depicted in Figure 1) provides a narrow perspective and limited options. The choice is either to punish or not to punish; the only variable is the severity of the punishment.⁴

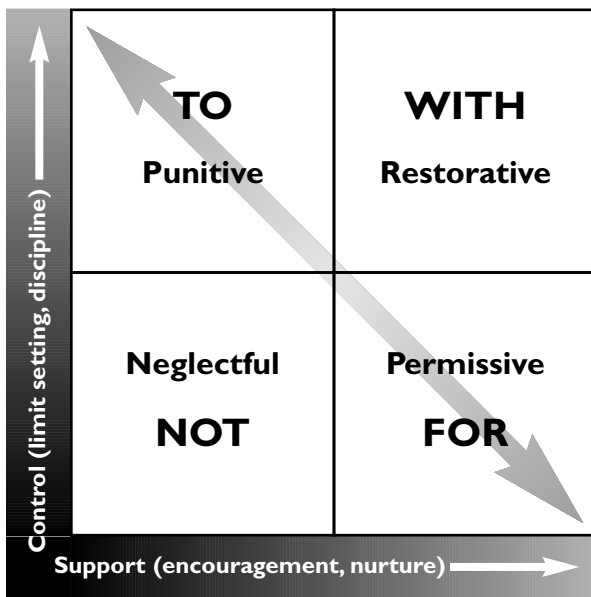
Figure 1. Punitive-permissive continuum



According to Ted Wachtel, executive director of the International Institute for Restorative Practices in Bethlehem, Pennsylvania, we can construct a more useful view of social discipline by looking at the interplay of two more-comprehensive variables—control and support.⁵

Control is defined as discipline or limit setting and *support* as encouragement or nurturing. Using these two variables, we can combine a high or low level of control with a high or low level of support to identify four general approaches to social discipline: neglectful, permissive, punitive (or retributive), and restorative (see Figure 2).

Figure 2. Social discipline window



SOURCE (Figs. 1 and 2): T. Wachtel, *Restorative Justice in Everyday Life* (1999), at www.restorativepractices.org/Pages/anu.html.

As Figure 2 shows, Wachtel subsumes the traditional punitive-permissive continuum within a more inclusive framework. The permissive approach consists of low control and high support, a scarcity of limit setting, and an abundance of nurturing. Opposite permissive is the punitive (or retributive) approach, high control and low support. The third approach, with an absence of both limit setting and nurturing, is neglectful. The fourth possibility is restorative. This approach features high control and high support. It confronts and disapproves of wrongdoing while supporting and valuing the intrinsic worth of the wrongdoer. *Control* in this context means control of wrongdoing and not control of the individual.

Wachtel explains the use of the four keywords *not*, *for*, *to*, and *with* in his “social discipline window.”⁶ If we are neglectful toward troubled youth, we do *not* do anything in response to their inappropriate behavior. If we are permissive, we do everything *for* them and ask little in return. If we are punitive, we respond by doing things *to* them. If we respond in a restorative manner, we do things *with* them and involve them directly in the process. A critical element of the restorative approach is that, whenever possible, *with* also includes victims, family, friends, and community—that is, those who have been affected by the offender’s behavior.

Restorative justice fits into the picture here. But will this new revolutionary movement really change the nature and very fabric of our work, or is it just another passing fad?

The first thing to say is that restorative justice is not new. In fact, it is as old as most people’s histories. In my own country, Ireland, the Brehon law system, which operated from prehistory up to the 17th century, contained many of the elements of restorative justice. The victim and offender were seen in the context of their community. The emphasis of judgment was on restoring the status quo rather than simply on retaliation and retribution. The same is true of the other countries we will look at.

FEATURES OF RESTORATIVE JUSTICE

Restorative justice is not a grand system imposed by “experts” but has deep roots in ordinary people’s values, needs, and experiences. These drive the primary goals of intervention and the process itself. Specifically, because crime is viewed first as harm to victims and victimized communities, the justice intervention must focus on repairing the harm—“healing the wound”—that crime causes. The process necessarily elevates the role of the victim and focuses on the victim’s needs. At the same time, it allows for victim, offender, and community input and involvement in a process that seeks to find common ground

and attend to the mutual needs of each co-participant. Restorative justice thus uniquely comprises three dimensions: the central and elevated role of the victim, the general focus on repair, and the procedural emphasis on seeking mutual involvement and support for the three co-participants and explicitly promoting the role of each in producing justice outcomes.

REPAIRING HARM

Currently, when a crime is committed, two primary questions are asked: Who did it, and what should be done to the offender? The latter question is generally followed by another question about the most appropriate punishment and, when a child or young person commits the crime, about the most appropriate treatment or service. Viewed through the restorative “lens,” however, crime is understood in a broader context than that suggested by the questions of guilt and punishment. In restorative justice, three very different questions receive primary emphasis: What is the nature of the harm resulting from the crime? What needs to be done to make it right or repair the harm? Who is responsible for making it right or repairing the harm?

THE “CENTRALITY OF THE VICTIM”

The centrality of the victim is a distinguishing feature of restorative justice. The moment the justice system does not view the victim as the central person, it becomes offender-based, and then we get the usual excusing, condoning, and explaining responses to the offender’s behavior that are ultimately self-defeating and hopeless. Our current system, particularly when dealing with adults, gives first priority to the offender: Did the offender do this, or did he not do it? If he did do it, what is a just, deserved, appropriate, measured, and consistent response? The problem with this approach is that it does not take into account the victim’s interests. Emphasizing similarity of outcomes among offenders, particularly adults, can promote an unjust disparity in outcomes among victims.⁷

EMPHASIS ON THE THREE CO-PARTICIPANTS

For the victim, restorative justice offers the hope of restitution or other forms of reparation, access to information about the case, and the opportunity to be heard and to have input into the case, as well as expanded opportunities for involvement and influence. For the community, there is the promise of reduced fear and safer neighborhoods, a more accessible justice process, and increased accountability, as well as the obligation to participate in

sanctioning crime, restoring victims’ sense of well-being, reintegrating offenders into the community, and preventing and controlling crime. For the offender, restorative justice requires accountability in the form of obligations to repair the harm to individual victims and victimized communities as well as the opportunity to develop new competencies, social skills, and the capacity to avoid future crime.

As an overall goal, restorative justice seeks to address and balance the rights and responsibilities of victims, offenders, and communities against those of the government. In this way, it improves upon the conventional criminal justice system, which focuses on the “public interest,” embodied in the government, as the principal consideration to be taken into account in the decision whether to prosecute an offender.⁸

In integrating the interests of the three co-participants, restorative justice builds on what James Dignan⁹ has called the “three Rs”: responsibility, restoration, and reintegration. I would like to add a fourth R, for respect.

Responsibility. One of the primary aims of most restorative justice approaches is to engage with offenders to help them come to appreciate the consequences of their behavior, both on themselves and on their victims. Only then can they take responsibility for those consequences.

Restoration. A second aim is to encourage and facilitate the provision of appropriate forms of reparation by offenders, toward either their direct victims (provided these victims are agreeable) or the wider community.

Reintegration. A third aim is to seek reconciliation between victim and offender where this can be achieved. Even if it cannot, the process strives to reintegrate both victims and offenders into the community as a whole following the commission of an offense.

Respect. A fourth aim, informing the first three, is to treat all participants with respect. People need to feel that they are being treated with respect and consideration, no more so than after an offense, which often occasions a sense of shame in the victim, the offender, and the offender’s family. Law professor Erik Luna of the University of Utah stresses the importance of respect in restorative justice:

Successful restorative sanctioning begins with a single principle that structures the entire process: respect. As used here, respect is a sense of dignity, worth and recognition accorded one’s self, another individual, a physical object or an abstract concept. Crime and a criminal lifestyle are driven, to a large extent, by the pursuit of respect by the offender and a lack of respect for those affected by the offence. From the viewpoint of the victim, crime is the ultimate statement of disrespect for her privacy, autonomy, property, security and general well-being. For the community and its members, offending is

a sign of disrespect—of law and authority, the concept of civility, the benefits of organized society, and so on. The human tendency is towards reciprocity, to meet disrespect with disrespect, leaving victims and communities to reject the offender as being worthy of dignity.¹⁰

It is easier to respect the victim than the offender. But respect is essential if there is to be any hope of breaking the spiral of offending behavior. Respect offers the best hope of dissolving alienation.

Respect implies a belief that the individual has within him- or herself the capacity to grow and change. It implies an understanding that, out of defensiveness and inner fear, individuals can and do behave in ways that are incredibly cruel, horribly destructive, immature, regressive, antisocial, hurtful. Respect implies that, for all his or her failings, the individual is still part of the community. It implies an acceptance by the community that the offender exists as a valued person with a separate identity.

When people find that their community understands them, they develop a set of growth-promoting or therapeutic attitudes toward themselves that are the first step in the change process. But this is not letting the offender off the hook. Most offenders find the thought of taking responsibility for themselves a frightening prospect and would rather leave it to the court. Shirking responsibility is easier than shouldering it. The restorative process supports the offender in facing up to his or her responsibilities. Respect is the key that will unlock the door and allow the rehabilitation process to begin.

RESTORATIVE JUSTICE PROCESSES

The restorative justice processes considered in this article are all built on the philosophy of the three Rs outlined above. The importance of the fourth R is sometimes overlooked. But without respect, the prospects for successful outcomes are greatly diminished.

The two main restorative justice approaches are family group conferencing and victim-offender mediation. Family group conferencing comprises a number of distinctive models. We will look at the New Zealand model, the Wagga Wagga model, neighborhood sanctioning boards, and circle sentencing. The subsequent section discusses victim-offender mediation.

FAMILY GROUP (OR COMMUNITY) CONFERENCEING

The family-group-conferencing approach to criminal justice originated in New Zealand in 1989 as a result of several factors.¹¹ One was a movement that resulted from the anger felt by New Zealand's Maori and Pacific Island

communities toward the previous youth justice system. That system regarded young people as individuals in their own right, not as members who had obligations to their wider family and whose wider family had obligations to them. This anger helped spur an attempt to include ancient Maori traditions of resolving disputes within the criminal justice process. The second major factor was the international recognition of victims' interests and the way in which they had been overlooked in the past. Third, international recognition that institutions as then constituted were part of the problem and not the solution led to calls for reform.

The result was enactment of a radical new set of practices for dealing with young offenders under the Children, Young Persons and Their Families Act of 1989. The vision of New Zealand's legislation was to harness community strengths and community wisdom and to connect victims and offenders as individual people in a way that the criminal justice system had previously failed to do.

Quite apart from the issues pressing for change in the way young offenders were dealt with, there was a concern on the "care" side that professionals were failing to keep children safe through professional case management and that the community needed to be involved to bring its collective wisdom and strengths to the problems of child abuse and neglect. At the time, a number of pilot programs involved families in the development of care plans to help resolve neglect and abuse cases and to promote child protection. Today New Zealand's welfare system uses conferencing as the central diversionary device on the dependency side.

Conferencing encourages the participation of a wide collection of people who are "concerned" in some way about the offense.¹² They include those who are concerned for the well-being of either the victim or the offender, those who have concerns about the offense and its consequences, and those who may be able to contribute toward a solution to the problem presented by the offense. This collection of people—who might also include those who are indirectly affected by the offense—have been described as making up a "community of interest,"¹³ and the whole approach is sometimes referred to as a "communitarian" model.¹⁴ However, the community in question is not a geographical entity as such, nor does it comprise "representatives" (whether elected, appointed, or self-appointed).

The New Zealand Model

The New Zealand conferencing approach has a number of distinctive features, as set out by McElrea:¹⁵

1. It is integrated and fully incorporated into the youth justice system as a whole (which deals with those over the age of 14 but not older than 17).
2. There is an effective “gate-keeping” procedure whereby both traditional means of obtaining a suspect’s appearance at court—arrest and summons—are carefully restricted. The aim of this procedure is to ensure that young persons are diverted from court wherever possible. Thus, no arrest can be effected unless it is needed to prevent further offending, absconding of the young person, or interference with witnesses or evidence.
3. Furthermore, no summons can be issued without first referring the matter to a youth justice coordinator, who will then convene a family group conference (FGC), which recommends for or against prosecution, with a presumption in favor of diversion. All members of the FGC (including the young person) must agree to the proposed diversionary program, and its implementation is essentially consensual.
4. Where the young person has been arrested, the court must refer all matters (charges) that are not denied to an FGC, which recommends a disposition to the court. This usually consists of a plan of action incorporating a “restorative outcome” (e.g., apology, financial reparation, work for the victim or for the community, a curfew, or some undertaking relating to future behavior). The plan normally nominates persons to supervise its implementation, and the court is asked to adjourn proceedings for a suitable duration to allow for this to happen. Occasionally, an FGC recommends a sanction for imposition by the court.
5. Apart from murder and manslaughter, which for public-policy reasons are excluded from the youth court, every offense (including indictable-only offenses and all the other very serious charges) must be dealt with by means of a family group conference. In the case of indictable-only charges, the young person’s case may be adjudicated in adult court. The young person who wishes to admit the charge may be given the right to remain in the youth court and be dealt with there rather than be transferred to the adult court. In practice, the emphasis is on keeping such cases in the youth court unless all the options and strengths of the family- and community-based youth court have been exhausted and no other options remain.
6. All FGCs are facilitated and convened by a youth justice coordinator, who is an employee of the department of social welfare. Those in attendance will be the

young person, members of the (extended) family, the victim (if willing to participate), a youth advocate (if requested by the young person), a police officer (usually from the specialist youth aid division), a social worker (in certain cases only), and anyone else the family wishes. The last category could include a representative from a relevant community organization (for example, an addiction treatment agency or a community-work sponsor).

7. The youth court nearly always accepts FGC plans. Outstanding successes have been achieved in instances of very serious offending without the need for any formal court sanctions. If the plan is carried out as agreed, the proceedings are usually withdrawn. If the plan is not implemented satisfactorily, the court can impose its own sanctions. In both serious and nonserious cases where family or community intervention has been ineffective and it has fallen to the court to sentence the youth, the court has a wide range of sanctions available. Such instances, however, are quite rare. If there is a referral to the district court, the available sanctions include imprisonment for up to five years. The court thus acts both as a “quality-control” mechanism that is capable of coming into play in the event of patently unsatisfactory recommendations, and as a “default” procedure in cases where plans break down.

The New Zealand-style FGC model is now well established in New Zealand and has been exported to other jurisdictions. Australia has developed its own unique model; however, family group conferencing was introduced to South Australia in early 1994¹⁶ and later to Victoria¹⁷ and Queensland.¹⁸ New South Wales uses family group conferencing as its main way of dealing with offenders. It is widespread across most states of the United States of America. Pilot programs operate in Belgium. In the United Kingdom, all of the youth offending panels are operating family group conferencing as part of their options for dealing with young people. It has been introduced in South Africa. A range of programs is in use in Northern Ireland, some operated by the police, some by the probation service, and some by voluntary groups.

The Australian Model

An Australian model of conferencing evolved from John Braithwaite’s theory of reintegrative shaming.¹⁹ It originated in 1989 within a police district in Wagga Wagga, New South Wales, and is generally known as the Wagga Wagga model. It differs in a number of key respects from both the New Zealand model and also from the victim-offender mediation model, which is discussed below.

1. The Australian variant is police-led, in the sense that the police not only decide which cases might be appropriate for conferencing but also are expected and encouraged to convene and facilitate the conferences. This represents a clear break from the values and practice base associated with victim-offender mediation, which emphasizes the need for a scrupulously independent mediator who should be capable of eliciting the trust of both main parties. As a result of the criticism surrounding this lack of independence, coordination of conferences in New South Wales has recently shifted from the police to the office of juvenile justice.
2. The conference itself is carefully scripted—not only to ensure consistency, but also to ensure that the “restorative” nature of the process is maintained,²⁰ even though those delivering it may be unfamiliar with it and relatively untrained (in comparison with conventional mediators).
3. The approach has been consciously developed as a distinctive model of policing that emphasizes crime prevention. It is sometimes referred to as “restorative policing”²¹ or “restorative community policing”²² and is seen by many of its supporters as an effective method of transforming police attitudes, role perceptions, and organizational culture.

Following the developmental work in Wagga Wagga, police-based restorative conferencing techniques have been introduced in other Australian jurisdictions, notably Canberra and Sydney. They have also been “exported” to several other countries: the United States,²³ Canada,²⁴ the United Kingdom,²⁵ and Northern Ireland.

In Thames Valley, England, the Wagga Wagga model is evolving along lines that bring it closer to the New Zealand model of FGC. All those personally affected by an offense are invited to attend and take part in the official police cautioning session.²⁶ Participants may include any victims and their supporters; those in caring relationships with the offender, such as parents, partners, or siblings; and, sometimes, members of the wider community. The name of the proceeding changes depending on who is in attendance: it is called a “restorative caution” if the victim is not present, a “restorative conference” if the victim is present, and a “community conference” if members of the wider community attend.

Sentencing Circles

“Circle sentencing” is a recently updated version of practices adapted from the traditions of Canadian aboriginals as well as those of indigenous people in the southwestern United States. It is based not only on the concept of

mutual forgiveness but also on the *responsibility* placed on every member of the community to forgive.

There is a strong belief that, when the State takes ownership of the process of crime and punishment, it draws away from the community and loses touch with the wishes and needs of the people. As with other restorative justice approaches, supporters argue that designing a circle-sentencing program that is applicable to every community in the country, or, indeed, in the state, is not possible. Every community has the right to decide how it should deal with offenders. The offense arises within the community, and that is where the solution must be found.

The modern version of circle sentencing involves a partnership between traditional circle rituals and criminal justice procedures in which victims and their supporters, offenders and their supporters, judge and court personnel, prosecutor, defense lawyers, police, and all community members who have an interest in the proceedings come together. The judge presides over the process but sits among the participants and is just another member of the circle, contributing like everyone else. The aim is to work consensually to devise an appropriate sentencing plan to meet the needs of all interested parties. At the end of the day it is the judge’s responsibility to incorporate the plan into a formal court sentence. But the plan does not deal just with the needs of the offender or with the needs of the victim and the offender; it will have all kinds of cross-commitments and covenants about what various people have agreed to do. Judge Barry Stuart of the Territorial Court of the Yukon, who has presided over more than 300 sentencing circles, recalls only three occasions on which the circle failed to reach a consensus and he was forced to make the decision. The judge does have the authority to impose a prison sentence if appropriate, and this could be the decision of the circle; in actual practice, however, prison sentences are rare.

In Saskatchewan, Judge Bria Huculak and her colleagues began using sentencing circles in 1992, building on Judge Stuart’s experience in the Yukon. “In the first year,” Huculak says, “we made it up as we went along, learning from our mistakes.”²⁷ What they now have is a process that combines aspects of victim-offender mediation, aboriginal peace-making circles, and democratic discussion. The aim is to identify the harm done by an offense and to identify appropriate ways of responding to it and, if possible, repairing it.

The key ingredient is a safe atmosphere in which people can discover the real issues and needs. Anyone from the public can observe. The judge outlines the basic facts of the case and asks the offender to respond. Then, one after another, everyone in the circle has an equal opportunity to

say what he or she wishes. “My role is broadly like that of a facilitator,” explains Huculak. “I’m in control, but I say very little. I strive for consensus, not total agreement.”²⁸ People can choose not to comment at any stage, but at a later point they are always given an opportunity to speak. Sometimes, a “talking piece”—an object held by the person talking until he is ready to hand it to his neighbor—is handed round. “It’s not a linear process,” Huculak observes. “It’s more like a spiral, or like peeling the layers of an onion. What happens is very demanding on the accused. The idea that they’re getting off easy is not realistic. They have to account for their behavior in a very direct way.”²⁹

But what about the vulnerability of the victim, particularly in more serious cases such as rape or other violence? Sensitivity is crucial, says Huculak. “The victim often feels a sense of shame for being victimized. The offender and his family may also feel ashamed. People need to feel that they are being treated with respect and consideration. But they also often want to ask questions of the offender—to ask, for instance, ‘Why me?’”³⁰ Deep feelings often emerge, and Huculak does not see her role as reining people in. “I tell participants that no one is required to cry, but if they feel they want to, that’s OK.”

The process may take six or seven hours. Sometimes, sentencing circles recommend novel sentences to the judge. Prison sentencing is much reduced. One offender, whose drunk and dangerous driving had caused the death of his father, had to spend the next year or so explaining his crime and waywardness at public meetings of young people as part of his punishment. A variety of penalties may be imposed, including “close community support” and “accountability.”³¹ The judge can overrule the proposed action plan but rarely does.

Even in cases where offenders may not have seen their families for years, family members do turn up. The process helps make better connections. The family members realize they could have a role.

Today in Saskatchewan sentencing circles are used in only a small percentage of cases, but a new courtroom in Saskatoon has been specially designed for them. Several other Canadian provinces are now using similar approaches.

Huculak says: “At the end of a day in a traditional courtroom, judges may leave disappointed. In circles, I usually leave feeling hope for the offender, hope for their rehabilitation, hope for the victims, and hope for a safer community.”³²

One difficulty with circle sentencing is that such practices are likely to be relevant only to communities with a strong sense of identity and a relevant set of traditions. Even this is unlikely to be sufficient if the offenders them-

selves have become alienated from their traditions.³³ This problem, however, is not unique to circle sentencing.

Neighborhood Sanctioning Boards

Neighborhood sanctioning boards have a long history in the United States and the rest of North America. These are closer to the victim-offender mediation model³⁴ than to family group conferencing. Variants of this model—called “neighborhood sanctioning boards,” “community panels,” or “neighborhood justice centers”—have become established in North America, Australia, and Norway (where they are known as “municipal mediation boards”). They deal with cases involving disputes that are referred by either the police or the courts and attempt to mediate by using trained independent mediators or mediators selected from a community panel. If the mediation is successful, the prosecution is dropped.

A somewhat different variation on the same theme is illustrated by the adoption of “community reparative boards” in the state of Vermont in the United States.³⁵ These boards have been used mainly for offenders convicted of nonviolent and minor offenses after the court has sentenced them to participate in the process. The community reparation board is a small group of citizens who have been intensively trained for the purpose. Their role is to conduct public, face-to-face meetings with offenders, during which they discuss the nature of the offense and its negative consequences. The members of the board then develop a set of proposed sanctions, which they discuss with the offender until all the parties agree on a set of reparative measures that the offender is to undertake within a given time period. The primary emphasis is placed on encouraging offenders to learn ways to avoid reoffending. The offender’s progress in discharging these undertakings is monitored, and after the period (90 days) has elapsed, the board submits a report to the court indicating the extent to which the offender has complied with the sanctions.

“Children’s hearing panels” in Scotland share with mediation and conferencing processes a procedure founded on informal and inclusive discussion involving the child and the family. Attendance is compulsory, however, and the victim is not included. The panel is not obligated to facilitate or encourage the production of restorative outcomes. Although the procedure does have some restorative “potential,” it would require major modification of the process for this potential to be realized, which modification would, in turn, require legislative reform.

In England, on the other hand, a Home Office White Paper in 1997 spoke of the need “to reshape the criminal justice system ... to produce more constructive outcomes

with young offenders.”³⁶ It proposed the creation of a youth panel scheme based on the three key restorative justice principles. First-time and less-serious offenders who pled guilty would be referred to a new, noncriminal “youth panel” for a specified period (not less than 3 months nor more than 12 months) by way of disposal.³⁷ This panel would seek to involve the offender and others (including the offender’s family and the victim—provided they consent—and youth justice workers) in drawing up an agreed “contract.” The contract would seek to achieve reparation for either the victim or the community and also rehabilitation and support for the offender (which should assist with the aim of reintegration). Moreover, once the contract had been successfully completed and “signed off” by the youth court, the original conviction would be regarded as expunged for the purposes of the Rehabilitation of Offenders Act.³⁸

The Youth Justice and Criminal Evidence Act of 1999³⁹ seeks to implement these proposals. Under section 6 of the act, the responsibility for establishing a youth offender panel (and also for supervising the offender’s compliance with any agreement reached) would rest with the youth offending teams introduced under the 1998 Crime and Disorder Act.⁴⁰

Although the primary purpose of any agreement reached with the offender is said to be the “prevention of re-offending by the offender,”⁴¹ restorative outcomes feature prominently (though not exclusively) in the terms of the programs specified in the act. They include financial or other reparation to a (direct or indirect) victim, attendance at a mediation session, and unpaid work for the community.⁴² The act rules out the imposition of physical restrictions on the offender’s movements or electronic monitoring of his or her whereabouts.⁴³ The act also specifically prohibits the imposition by the youth court of any other sanctions.⁴⁴ These latest proposals represent a much more radical set of reforms to the English criminal justice system than those contained in the Crime and Disorder Act. Indeed, they could encourage the development of a New Zealand–style conferencing procedure, though they do not require it. Alternatively, they could come to function more along the lines of the Scottish children’s hearing system, but with a restorative focus.

VICTIM-OFFENDER MEDIATION

Mediation has a long tradition in many countries around the world. However, victim-offender mediation (VOM), as most widely used today, originated in 1974 in Elmira, Ontario, under the influence of the Christian Mennonite movement.⁴⁵ The primary emphasis of VOM is on the

quest for “reconciliation” between victims and offenders. Thus the disputants themselves are central to the process.

Victim-offender mediation involves a process of dialogue between victims and offenders relating to the offense. It provides a safe and structured setting and a trained mediator for any meeting between the parties. It gives victims the chance to tell offenders about the physical, emotional, and financial impact that their offenses may have caused and offers an opportunity to ask them unanswered questions. It also enables victims to participate in discussions about what may be required of the offender to make amends and may help victims psychologically to bring about a “closure” of the incident, enabling them to put the matter behind them. It requires offenders to face up to the reality of what they have done but also offers them the opportunity to begin to restore their own reputations and sense of self-worth.

Mediation may be direct (face-to-face) or indirect (where the mediator acts as a go-between). The direct approach is more common in North America, while the indirect approach is more common in Britain, where it is frequently included in “cautioning-plus” schemes (mostly aimed at juveniles). Precourt programs generally involve police cautioning. Court-based schemes operate either by way of adjournment or deferment. Some programs operate postsentence, including during the period prior to an offender’s release from custody.

Victim-offender mediation services are not operated formally in New Zealand. They are an inherent part of family-group-conferencing processes, and a good number of police diversion programs use a type of victim-offender mediation as part of police diversion from court and from family group conferencing. In New Zealand, family group conferencing is held back as a high-level intervention; to avoid overwhelming the FGC process, every effort is made to use police diversion as a lower-level option for a wide range of offenses.

In New Zealand’s adult system, private groups using restorative justice approaches are popping up all around the country as adult restorative justice movements grow stronger. These groups are offering themselves as alternative possibilities for diversion from the adult criminal court. Often, too, after an offender’s admission of guilt, the judges in adult courts are now beginning to request a community conference and consider its recommendations in sentencing.

In 1998, Mark Umbreit⁴⁶ estimated that victim-offender mediation services operated in more than 290 communities in the United States, with a similar number operating in Germany, 130 in Finland, 54 in Norway, 40 in France, and 26 in Canada. There were 20 in England,

8 in Belgium, 5 in Australia, 2 in Scotland, and 1 in South Africa. The first youth-targeted victim-offender mediation in Russia took place in October 1998, and VOM has recently been introduced into China. Clearly, its use has continued to expand since Umbreit's survey three years ago.

INTEGRATING RESTORATIVE JUSTICE INTO THE JUSTICE SYSTEM

When we come to consider the extent to which restorative justice has been integrated into the justice system we find, once again, that there is a range of models.

THE SUBSIDIARY MODEL

Restorative justice programs can operate in a subsidiary role to “plug the gaps” in the current system. This method of implementation, however, gives short shrift to many of the principles of restorative justice. One of the main shortcomings of the retributive criminal justice system is its failure to adequately acknowledge the personal harm experienced by victims. Court-ordered compensation by the offender to the victim attempts to redress that failing, while community-service orders attempt to redress the debt to the community. But there is no attempt in either case to repair any relationships that may have been damaged as a result of an offense, and indeed, neither victims nor offenders are greatly empowered by the award of compensation because they are not involved in the decision-making process. These are coercive measures, and one of the key attributes of restorative justice is that it is non-coercive.

THE STANDALONE MODEL

Restorative justice programs can operate outside the existing criminal justice system in a supplementary capacity, rather than as an alternative to it. The defining characteristic of this “standalone” model is simply the absence of any statutory authorization for the program. On the whole, these tend to be experimental, pilot-type projects; hence there is a considerable degree of diversity among them. It is possible to find examples of all four of the restorative justice models outlined above operating as standalone programs, including the majority of victim-offender mediation schemes, some family-group-conferencing initiatives, Vermont-style community reparative boards, and sentencing circles.

The criminal justice contexts within which they operate are also highly variable. Some are pretrial initiatives, which might be either police-based or accessed by a prosecutor. Standalone police-based schemes include those combining a traditional caution with the possibility of

mediation and possibly reparation, often referred to as “caution-plus.” In some parts of Scotland, standalone mediation and reparation schemes receive referrals directly from the independent prosecutor, or procurator fiscal, provided both parties consent.⁴⁷ Most of the court-based victim-offender mediation schemes also operate as standalone schemes, and some also accept referrals at the post-sentence stage.

Standalone restorative justice initiatives offer a number of benefits. This is particularly true during the experimental and developmental phases of a particular process or program, when there may be an acute need to explore different forms of practice and to test and refine those that have been developed within different criminal justice and institutional contexts. They also can be used to extend boundaries beyond existing practice limits, particularly in relation to older or more serious offenders.

PARTIALLY INTEGRATED MODELS

In some instances, programs are partially integrated into the system.

The HALT Program: The Netherlands

In the Netherlands, for example, the HALT⁴⁸ program was originally developed in the 1980s for young offenders who committed acts of vandalism against Rotterdam's public transit system. The program was designed to provide speedier, more effective action at a time when petty crime was rising and the regular criminal justice system was felt to take too long and to deliver ineffectual sanctions.⁴⁹ Police can refer offenders under the age of 18 to HALT programs provided they admit guilt and consent to the referral, the offense is minor, and they have not been referred in this way on two previous occasions. After consultation with both parties, the HALT coordinator offers the offender a program consisting of work relevant to the offense and, if possible, of benefit to the victim, payment of damages, and, in some cases, an educational component. Offenders are required to wear distinctive clothing while performing reparative tasks. This requirement would appear to put the emphasis on stigmatic shaming, which sits uneasily alongside claims that HALT is a “restorative” approach.

Since its introduction, the HALT program has received official backing from both the ministry of justice, which now funds 50 percent of its cost, and local authorities, which fund the balance. This support has fueled an expansion in the number of HALT programs to 70, thereby making it available to half of the local authorities in the Netherlands. In The Hague, one-third of all young offenders—around 700 per year—are referred to HALT.

About 95 percent of HALT cases are successfully completed; unsuccessful cases are referred to the police for prosecution. Forty percent of HALT participants are said to reoffend, compared to 80 percent of those who are prosecuted.⁵⁰

Despite these apparent successes, the scope of the HALT program is still relatively restricted in terms of the types of offenses and categories of offenders it covers and in the sense that its coverage is by no means geographically universal. Moreover, reactive measures such as HALT may be an inferior substitute for primary crime prevention measures such as teaching conflict resolution to schoolchildren.

The STEP Program: Northern Ireland

The aim of the Royal Ulster Constabulary's (RUC) STEP program is crime prevention—to provide socially disadvantaged young people at the beginning of a criminal career with a pathway to responsible membership in the community.

While the police are the lead agency, a key strength of STEP is its multiagency approach. A strong partnership has been formed with local colleges of education, the probation board, the training and employment agency, and the youth service.

STEP's target group is young people who are unemployed, socially disadvantaged, and not yet habitual offenders. The program consists of 10 weeks of challenging interventions designed to tackle issues of offending behavior and equip the individual with skills, including interview skills, that will move him or her toward employment.

Initially this project was aimed at young people over 16. However, it soon became apparent that more success might be achieved with 14- to 16-year-olds. In developing this project, the RUC in Northern Ireland entered into a transnational partnership with Stockholm, Rotterdam, and the town of Fucecchio, Italy, all of which were conducting similar projects. The partnership allowed the exchange of information and facilitated research and the development of new methods of intervention. Initial indications are that the program has been an outstanding success.

Penal Mediation: France

In common with a number of other European countries, France has introduced a system of "penal mediation" in recent years.⁵¹ Under the Law of 4 January 1993, the state prosecutor now has the discretion to refer offenders under the age of 18 to mediation as an alternative to prosecution. The practice of penal mediation is encouraged by the ministry of justice and by associations for the assistance of victims. As a result, recourse to the measure is increasing

steadily, though mainly it is applied to minor offenses committed by first-time offenders.

Under this program, victims' interests appear to be adequately safeguarded because victims not only have to give their consent for mediation to proceed, but may also seek reparation from the offender before a judge if they are dissatisfied with the outcome of the mediation process. However, there have been concerns about the extent to which the offender's interests are safeguarded under the penal mediation procedure.⁵² Offenders do have a formal choice whether to take part in mediation, and most agree to it because they are likely to be informed that the alternative is prosecution. If the mediation is successfully concluded, the prosecutor terminates the prosecution. If, however, the mediation is unsuccessful and the prosecutor refers the matter to court, the offender's position is seriously disadvantaged because guilt is now assumed. Moreover, the offender may be more likely to be convicted than he or she would have been before the introduction of penal mediation in 1993, when relatively minor offenses might not have been prosecuted.

These examples show that, even where victim-offender mediation is given legislative backing, care still needs to be taken to ensure, first, that its application is not excessively restricted and, second, that an appropriate balance is achieved between the various sets of interests that are in play.

Reparation: New Zealand

The New Zealand Criminal Justice Act of 1985 made reparation a victim-focused sentencing option in its own right.⁵³ Initially it applied only to property offenses. Its application was extended in 1987 to cover cases in which victims had suffered emotional harm, and again in 1993 to enable courts to consider any offer of reparation made by an offender when imposing any sentence. The measure was intended to establish reparation as a sentence of first resort that would also provide opportunities for victims and offenders to negotiate the amount of reparation payable. Some probation officers have used reparation as a basis for victim-offender mediation. It was also intended to make offenders more accountable for what they had done. Reparation orders requiring payment for both property loss and for emotional harm are widely used as formal orders in the adult system, and it is increasingly common to see adult restorative justice conferences held. The challenge awaiting the adult court is to see those reparation orders more particularly embedded in the mainstream of the adult criminal system.

In the youth court, family group conferences operate as a matter of course. One of the formal orders that the youth

court can make is a reparation order requiring the formal return of money following a family group conference.

Reparation Order: England and Wales

In England and Wales, the Crime and Disorder Act of 1998⁵⁴ introduced the reparation order as part of its youth-justice reform package, though the measure is only due to be implemented nationally after it has been piloted in four geographical locations.

There are a number of differences between the English legislation and that in New Zealand. First, the reparation order is restricted to offenders between the ages of 10 and 18. Second, the English legislation introduces a presumption in favor of such orders and requires a magistrate to give reasons for not imposing one in cases where the court has the power to do so. However, a reparation order cannot be combined with many other types of orders. Third, the English legislation enables courts to impose “in-kind,” rather than financial, reparation. Fourth, the courts will be able to order offenders to make reparation either to the victim or the community, though the victim’s consent will need to be obtained before reparation can be awarded to an individual. Victim-offender mediation is encouraged but is not compulsory.

The English legislation assigns responsibility to the new multiagency “youth offending teams” that local authorities will be obliged to establish once the act comes fully into force. Each team will consist of police and probation officers and staff from social services (juvenile justice staff) and health and education services. In New Zealand, by contrast, responsibility is given to the probation service.

Concerns have been expressed that the U.K. act may not have given sufficient priority to a restorative justice approach over more traditional retributive responses. This is not surprising, given that efforts to introduce restorative programs continually run into opposition from a powerfully entrenched retributive criminal justice system.⁵⁵

THE FULLY INTEGRATED MODEL

The most effective way of securing restorative justice’s undoubted potential is to adopt a fully integrated approach. Establishing restorative justice as a response that operates at the heart of the criminal justice system is much more likely to result in real justice and avoid the problems of marginalization and subordination to other interests than are standalone programs or partially integrated compromise approaches. Even under a fully integrated system, some implementational difficulties are likely to be experienced, but these are less likely to be systemic in nature

than the problems associated with the other, more restrictive implementational options.

No jurisdiction has yet sought to fully integrate a restorative justice approach into its criminal justice system. New Zealand has come closest by incorporating family group conferencing at the heart of its youth justice system. Paradoxically, it was never intended to be a restorative justice system: it was intended to deal with the concerns of Maori and Pacific Islanders and with their exclusion from matters affecting their young people, to deal with victims’ interests more effectively, and to recruit the community’s assets to replace institutions that were not meeting young people’s needs. The new system was in fact planned and put into place before restorative justice was properly understood to be such a powerful driving force in these matters. It was New Zealand’s good fortune that it had a legal system in place that supported restorative justice so seamlessly. Chief Judge David Carruthers⁵⁶ points out that practice has in fact led the law in implementing restorative justice approaches in New Zealand. The most successful models have been able to use the law and enhance restorative justice practices and processes without that outcome ever being the full intention of the original legislation. However, several jurisdictions in Australia have introduced legislation that seeks to incorporate such an approach into the justice system. These include South Australia, New South Wales, and Queensland.

SCOPE OF RESTORATIVE JUSTICE INITIATIVES

The tendency in many parts of the world has been to restrict the scope of restorative justice initiatives to minor offenders as opposed to more serious (or persistent) ones, and to juveniles rather than adult offenders. This tendency is one reason for the marginalization of these programs. The New Zealand experience argues strongly in favor of the principle that restorative justice should not be confined to cases below a given level of seriousness or to particular categories of offenders, whether on grounds of age or prior criminal experience. In New Zealand, only the more serious cases are referred for conferencing,⁵⁷ and all of those but the most serious (murder and manslaughter) are referred automatically.⁵⁸ Consequently, the most serious 20 to 30 percent of offenses result in conferences. Chief Judge David Carruthers and Allen McRae, youth justice coordinator in Wellington, believe that the most serious cases are the best cases for restorative justice conferencing.⁵⁹ Research from North America and Britain also demonstrates that victim-offender mediation can be used successfully with very serious offenses.⁶⁰

“POINTS OF ENTRY” FOR RESTORATIVE JUSTICE INTERVENTIONS

The New Zealand experience supports a “multiple-entry-level” model in which restorative justice interventions might, in principle, be available at all stages of the process from arrest to postsentence. Of the offenses committed by young people in New Zealand, between 80 and 85 percent will be diverted by Police Youth Aid using a variety of techniques, ranging from simple warnings to formal cautions, from visits to parents to mini-conferences, to meetings with victims. Dr. Gabrielle Maxwell and Professor Allison Morris of Victoria University of Wellington, New Zealand, are currently researching police diversion to learn what works and what doesn't. Their research should provide us with useful information.

Of the remaining 15 to 20 percent of youth offenses, half will go to family group conferences by way of simple referral by police, rather than by court order. The cases are accepted by the conference coordinator and the conferences held and finalized without court involvement. This group often involves extremely serious offending—aggravated robbery, rape, sexual violence—but if there is complete agreement and a fully accepted plan that is monitored and completed, the court is not involved at all.

The last 7 to 10 percent go to youth court. These are usually the result of arrests or conferences not resulting in agreement. Even in these cases, the court must direct that a conference be held before it can exercise jurisdiction. Sometimes the court is required to make decisions about custody, bail terms, or other issues in the meantime.

Where the system works well, there is a high police diversion rate, a high occurrence of non-court family group conferences (because that shows the agencies trust one another to work together and ensure successful outcomes), and a low number of children coming to court. Before the legislation was introduced, approximately 12,000 young offenders were appearing in court each year. The number dropped to 2,500 in the year after the legislation was introduced.

THE EFFECTIVENESS OF RESTORATIVE JUSTICE

Research to date shows a high level of participation among victims and offenders and a consensus that they are being dealt with fairly. Evaluations of the main restorative justice approaches consistently report that a high proportion of cases result in an agreement being reached. As noted above, Judge Barry Stuart's experience in the Yukon shows agreement reached in 99 percent of cases. High levels of

compliance—ranging between 70 to 100 percent⁶¹—are reported for agreements that involve the payment of compensation or performance of other types of reparation. There is evidence⁶² that the compliance rate is higher for restitution obligations that are reached in the course of mediated agreements than for those imposed by the courts (81 percent and 58 percent, respectively).

Restorative justice evaluations also demonstrate that, for many victims, material reparation is less important than symbolic forms of reparation.⁶³ These include the tendering of an apology, a desire for information or the right to express feelings, and even an opportunity to display civic responsibility (including a desire to “help” the offender or reduce the likelihood that someone else will be victimized in the same way).⁶⁴ Initial findings from RISE⁶⁵ in Canberra show that victims whose cases were randomly assigned to police-led conferences were much more likely to receive an apology from their offenders than those whose cases were assigned to court.⁶⁶

IMPACT ON REOFFENDING

The research findings with regard to the impact of restorative justice on offending are inconclusive. But before we dismiss this approach as ineffective, it is important to remember that no matter which model is used, it will have relatively limited impact on reoffending when set against the kinds of factors that are known to be associated with offending behavior.⁶⁷ Consequently, provided the recidivism rate for offenders is no worse, the high levels of satisfaction recorded by victims and others provide ample justification for continuing to promote restorative justice approaches.

Some studies suggest cautious grounds for optimism that, under the right conditions, restorative justice approaches can have preventive effects. Young people who participate in a victim-offender reconciliation program are significantly less likely to reoffend than those assigned to the normal criminal justice process, and the reconvictions of those who do reoffend are less serious than the reconvictions of those assigned to the normal criminal justice process.⁶⁸ Family group conferences are more likely to be successful in reducing subsequent reoffending where they are memorable events, evoke remorse, and lead young people to attempt to make amends for what they have done.⁶⁹

Recent reports from New Zealand suggest that family group conferencing can be very effective in reducing offending behavior. Judge David Carruthers has reported⁷⁰ outstanding success using restorative justice practices in the Wellington, New Zealand, area. Youth offending has declined by about two-thirds over the last three years. One of the key factors in that decline has been the use of family

group conferences to identify patterns of offending and then to coordinate the community and government agencies to establish programs and projects aimed at prevention.

RESOURCES AND TRAINING

Restorative justice is resource-intensive and will not be successful unless sufficient resources for its implementation are made available. For this reason alone, investing scarce resources in dealing with minor offenses, which might be dealt with by way of police caution or the like, makes little sense. Family group conferencing should be reserved for more serious offenses, as is the case in New Zealand.

Danny Graham,⁷¹ an attorney with the Criminal Justice Section of the Canadian Bar Association, expresses concern that the capacity to implement restorative justice programs has often been absent in Canadian communities because programs have been underfunded and undersupported, particularly by governments. Many organizations in Canada have received funding to provide diversion programs or alternative measures that have restorative components but are not restorative justice in the full context of what is meant by the term.

In addition to resources, successful restorative justice programs require trained personnel to implement them. Some leading experts have expressed concern at the proliferation of programs and projects organized by people who have little understanding of the philosophy and concepts underpinning restorative justice. Judge David Caruthers notes that no one has ever identified and valued the skills required to run a family group conference properly. One crucial part of the process is dealing with people so that the meeting runs smoothly and productively and is respectful of everyone who participates. Equally important are the connections that the coordinator or facilitator makes with the community. Key people from the community must be invited and able to support the family decisions by action, resources, and intervention. Getting the right people to attend seems to be a crucial matter, and empowering the community to be involved in conferencing and to support family decision making also is important.

PROCEDURAL SAFEGUARDS FOR RESTORATIVE JUSTICE INTERVENTIONS

On the positive side, the models discussed above represent some of the most promising approaches for changing the nature of the sanctioning function in youth justice. On the negative side, the movement to devolve justice to the neighborhood level is fraught with dangers, ranging from

concerns about “net-widening” (broadening the reach of the system to take in more offenders) to power imbalances between young offenders and adults in conferencing settings, to insensitivity to victims, to the “tyranny of community” in cases where community dynamics have resulted in a variety of abuses.

Clearly there is a need for procedural safeguards to protect the legitimate interests of both victims and offenders and to secure the “balance” between their respective interests.

From the victim’s point of view, one of the paramount requirements is the avoidance of further harm in the course of dealing with the offense (often referred to as “secondary victimization”). Consequently, victims should be offered the chance to take part in whatever restorative justice processes might be made available, and they should be provided with sufficient unbiased information and guidance to enable them to reach an informed decision. However, they should on no account be coerced into taking part in the process.

The same principle applies with respect to the decision-making process itself, particularly in relation to the more serious cases. Victims are entitled to make their views known if they wish to. They should not be made responsible in any way for the decision that is reached. The responsibility for the final decision, at least in serious cases, must ultimately rest with criminal justice personnel, not with victims. Indeed, the retention of an effective mechanism for providing judicial oversight of the process in such cases offers a valuable safeguard for victims, offenders, and the wider community alike. It is unlikely that the cost of ensuring judicial oversight can be justified for less serious cases (those that are not initiated by the courts themselves). Here, other forms of safeguards (which apply equally to offenders) may be more appropriate. They include the promulgation of good practice standards, appropriate and accredited training procedures, and effective complaint procedures in case of grievances.

From the offender’s point of view, effective safeguards to guard against wrongful conviction and excessive punishment are needed. Consequently, offenders should always have recourse to a judicial hearing if they do not admit the charges brought against them. In principle, it is highly desirable that offenders’ participation in any restorative justice process should be based on *their* informed consent. However, it is also reasonable to expect them to accept responsibility for acts they admit to and for making reasonable amends to those who have been harmed by them. Ultimately, if they are unwilling to do this voluntarily, the victim’s right to justice demands that the normal judicial process will be initiated, and so, to

that extent, an offender's freedom of choice will inevitably be subject to constraint.

Because of the element of indirect coercion that may be involved, and also the risk that offenders may, under pressure, undertake obligations that are excessive in relation to the harm caused, other safeguards may also be advisable. One possibility is for legal advice to be made available to offenders before they agree to take part in a conference. Another possible safeguard is for a legal advisor to be on hand to offer counsel regarding the final outcome. However, there are genuine concerns over the part that lawyers might play if given unrestricted "rights of audience" within conferences, particularly if these were used to convert conferences into a more adversarial (and thus less appropriate) form of procedure.

The issue of standards and safeguards is important whatever mechanisms and procedures are adopted for the delivery of restorative justice interventions. It is particularly key where these interventions are intended to operate as alternatives to existing criminal justice procedures, which, whatever their other imperfections might be, normally incorporate judicial safeguards to protect individual rights. To ensure adequate protection for the legitimate interests of all the parties, therefore, and also to maintain public confidence in restorative justice programs, it is strongly advisable to devise, promote, and enforce a comprehensive set of practice standards that will seek to secure the integrity of all such programs.

DRAFT PRACTICE STANDARDS

Shortly after the Ninth United Nations Crime Congress in 1995,⁷² the NGO Alliance on Crime Prevention and Criminal Justice (New York) created the Working Party on Restorative Justice. The working party was made up of interested NGOs (nongovernmental organizations) in consultative status with the United Nations as well as other NGOs and individuals who had practical, research, or academic expertise in the subject. The working party prepared a draft document titled "Preliminary Draft Elements of a Declaration of Basic Principles" for consideration by the Tenth Crime Congress in April 2000.⁷³

"BASIC PRINCIPLES" INSTEAD OF "STANDARD MINIMUM RULES"

The UN has promulgated sets of norms related to many aspects of criminal justice. Sometimes these are in the form of basic principles, sometimes standards, and sometimes conventions or treaties. Principles give guidance to member nations, standards impose duties on nations, and treaties or conventions bind countries by agreement.

One of the UN's administrative and practical concerns when it adopts standards is that they often lead countries to request UN technical support to implement them. Such requests should not be unexpected; if the UN proposes standards it expects countries to follow without providing them (particularly developing countries) the resources to do so, it invites violations. The UN has limited funds, and if it is to establish standards and expect countries to meet those standards, it should have sufficient funds to help them do so. If it does not, it should not adopt the standards in the first place. To avoid this problem in the area of restorative justice, the UN has drafted basic principles instead of standards. They are designed to give guidance, not to impose duties on countries.

No country is required to use restorative justice programs. By contrast, every country has prisoners, victims, law enforcement officials, juveniles, courts, and so forth. The UN standards that have been adopted on those topics automatically apply to every country. But not every country will choose to use restorative processes, so the development of guidelines for those countries that do should not impose a burden on those who don't. The principles permit countries that are considering implementation of restorative justice to draw from the experience and wisdom of other countries, so that they can establish these programs in ways that are most likely to be effective. In other words, they provide guidance.

UN ACTION ADVANCING RESTORATIVE JUSTICE

Representatives from nearly 200 governments assembled in Vienna from April 10 to 17, 2000, for the Tenth Congress on the Prevention of Crime and the Treatment of Offenders. At the conclusion of the congress, the delegates approved a summary resolution known as the "Vienna Declaration." This resolution included recognition of the growth of restorative justice programs and called on governments to increase their use of restorative justice interventions.

The Canadian and Italian governments called on the UN to distribute the draft principles prepared by the Working Party on Restorative Justice and to solicit comments from governments and others. In addition, they asked the UN to convene a meeting of experts to review those comments and suggestions and to propose modifications or alternatives to the UN's Commission on Crime Prevention and Criminal Justice.

The commission met immediately after the Crime Congress, and on the first morning, 20 countries signed on as co-sponsors of the Canadian-Italian resolution. After lengthy discussion on the wording, the commission

adopted the resolution and provided that the secretary-general should report on progress at the 2002 commission meeting. It referred the resolution to the Economic and Social Council (ECOSOC), which adopted the resolution on July 27, 2000.

In September, the Centre for International Crime Prevention sent a letter to member states, intergovernmental organizations, NGOs in consultative status with the UN, and institutes of the UN. The letter asked for comments on the “desirability and means of establishing common principles on the use of restorative justice programs in criminal matters” and on the contents of the draft principles attached to the resolution. The deadline for replies was March 1, 2001.

It was agreed that if the Centre received replies from fewer than 30 nations, this would be taken as an indication of insufficient interest and no further action on the basic principles would take place. If the secretariat received 30 or more replies, it would convene a meeting of experts to review the comments received and examine proposals for further action, including development of basic principles on the use of restorative justice. The secretariat received a sufficient number of replies and the experts’ meeting was held in Ottawa, Canada, in October 2001.

OVERVIEW OF THE BASIC PRINCIPLES

The draft declaration consists of two parts: a preliminary resolution and an annex containing the basic principles themselves. The resolution refers to previous UN documents on the topic, showing that the annexed basic principles are consistent with a long progression of previous UN actions.

The first section of the annex provides definitions of several terms used in the basic principles: *restorative justice program*, *restorative process*, *restorative outcome*, *parties*, and *facilitator*. The second section covers the use of programs and provides that

- the programs should be generally available and voluntary;
- the programs should be used when facts are not contested;
- the fact of participation by the offender should not be used as evidence of guilt if the matter goes to trial;
- the process should be fair for both victims and offenders;
- all the parties should be protected against threats and intimidation; and, finally,
- when the restorative process cannot be used, the offender should still be encouraged to assume responsibility for reparations, and both victim and offender should be aided in their reintegration into the community.

Section three covers the operation of these programs, providing for

- the development of guidelines and standards;
- the protection of fundamental due process rights;
- the confidentiality of discussions in proceedings;
- the abandonment of prosecution when an agreement is reached;
- the return of the matter to the referring authority (police, prosecutor, or judge) for a decision about how to proceed when no agreement is reached; and
- the use of the same approach when an agreement is reached but not kept.

Section four deals with facilitators. They should be drawn from the community as a whole; familiar with local cultures and traditions; and impartial and fair in regard to the parties, affording them dignity and respect. The facilitator is responsible for creating an environment that is safe for each of the parties. The document notes that this is particularly important if any of the parties is particularly vulnerable. Therefore, facilitators should receive both initial and ongoing training.

The final section provides that regular consultation between those responsible for restorative programs and officials in the criminal justice system should occur; research into both the processes and the outcome of these programs should be carried out; and new programs should be continually developed.

RESTORATIVE JUSTICE HAS COME OF AGE

This article outlines the phenomenal growth of restorative justice and demonstrates the need to establish common principles for its use. The philosophy and practice of restorative justice are now being discussed at the highest levels and worldwide. The UN has established the year 2002 as a date for states to review their practices in support of crime victims, including “mechanisms for mediation and restorative justice.”⁷⁴ Clearly, restorative justice has moved from the periphery to center stage.

At the same time, it is clear that support for restorative justice in many countries’ justice communities is less than total. The reservation typically relates to whether the theory and principle can be anchored in consistently sound working practice. We can only hope that the drafting of basic principles by the UN will provide that anchor and bring about greater support for restorative justice within the justice community. If this occurs, the “quiet revolution” will indeed change the very nature and fabric of our work.

NOTES

1. Frederick W.M. McElrea, *Restorative Justice—The New Zealand Youth Court: A Model for Development in Other Courts?* 4 J. JUD. ADMIN. 34 (Aug. 1994).
2. James Dignan & Michael Cavadino, *Towards a Framework for Conceptualising and Evaluating Models of Criminal Justice From a Victim's Perspective*, 4 INT'L REV. VICTIMOLOGY 153 (1996); Joanna Shapland, *Reparative Justice: Complexity and Apple Pie 2* (1992) (unpublished paper presented at the Third European Colloquium on Crime and Public Policy).
3. Eduardo Barajas, Jr., *Moving Toward Community Justice*, in COMMUNITY JUSTICE: STRIVING FOR SAFE, SECURE, AND JUST COMMUNITIES 1 (Nat'l Inst. of Corr., U.S. Dep't of Justice 1996), at www.nicic.org/pubs/1996/013227.pdf.
4. Ted Wachtel, *Restorative Justice in Everyday Life: Beyond the Formal Ritual*, at www.restorativepractices.org/Pages/anu.html.
5. *Id.*
6. *Id.*
7. For example, if two thieves snatch purses containing goods of identical monetary value, they will receive the same sentence. However, the crime may have a different impact on each victim. If one victim were carrying two hundred dollars and a lipstick, while the other carried a \$200 pocket watch that had belonged to her dead husband, the loss to the second victim would be much greater. Equal sentences would not do justice to these very different losses.
8. Many other contemporary approaches to justice policy incorporate elements of restorative justice without completely adopting it. Therefore, this article will not consider victim support services, victim impact statements, or victim allocation rights because they focus only on the victim.
Other programs have developed in parallel with restorative justice and help to meet its goals. Conflict resolution, based on a process of mediation, is an important development. One conflict resolution technique, alternative dispute resolution (ADR), is widely used in a variety of sectors, including disputes within families and schools, commercial disputes, and those involving environmental conflicts or complaints relating to health-care and medical matters. Clearly the ADR process is relevant because civil disputes could escalate to the criminal level if not resolved. However, because of pressures on time and space, we will not deal with it here.
In another parallel development, schools in Northern Ireland, England, New Zealand, and Australia (and, I am sure, in many other countries) are increasingly using restorative justice approaches to problems of discipline with a view to preventing suspensions, expulsions, and exclusions—a development reflecting the recognition that when the school community has been affected by “crime,” the community needs to be fully involved in restoring its balance. Margaret Thorsbon's research in Australia, which focused on 73 schools in Queensland, showed markedly improved outcomes for all parties from a restorative justice approach to disciplinary problems. In a similar vein, restorative justice approaches are now being used widely in prisons for the same reasons—to substitute a communitarian response for an offender-based one to breaches of the community's rules.
9. James Dignan, *The Crime and Disorder Act and the Prospects for Restorative Justice*, 46 CRIM. L. REV. 48 (Jan. 1999).
10. ERIK LUNA, REASON AND EMOTION IN RESTORATIVE JUSTICE 3 (N.Z. Ctr. for Conflict Resolution 2000).
11. Letter from David Carruthers, Chief District Court Judge, New Zealand, to Willie McCarney (on file with author).
12. Warren Young & Allison Morris, *Reforming Criminal Justice: Reflecting on the Present and Imagining the Future* 10 (Oct. 1998) (unpublished paper presented at the International Youth Conference).
13. *Id.*
14. Dignan & Cavadino, *supra* note 2, at 169.
15. Frederick W.M. McElrea, *The New Zealand Youth Court: A Model for Use With Adults? in RESTORATIVE JUSTICE: INTERNATIONAL PERSPECTIVES* 69 (Burt Galaway & Joe Hudson eds., Criminal Justice Press 1996).
16. JOY WUNDERSITZ, THE SOUTH AUSTRALIAN JUVENILE JUSTICE SYSTEM: A REVIEW OF ITS OPERATION (S. Austl. Attorney General's Dep't 1996).
17. ANN MARKIEWICZ, JUVENILE JUSTICE GROUP CONFERENCING IN VICTORIA: AN EVALUATION OF A PILOT PROGRAMME (Univ. of Melbourne 1997).
18. HENNESSEY HAYES & TIM PRENZLER, MAKING AMENDS: FINAL EVALUATION OF THE QUEENSLAND COMMUNITY CONFERENCING PILOT (Griffith Univ. 1998).
19. JOHN BRAITHWAITE, CRIME, SHAME, AND REINTEGRATION (Cambridge Univ. Press 1989). Braithwaite defines two distinct types of shaming: stigmatic and reintegrative. Stigmatic shaming, designed to mark the offender as an outcast, disintegrates the bonds between the offender and the community. Reintegrative shaming, which condemns the crime rather than the criminal, re-forms the bond by requiring the offender to express remorse, apologize to the victim, and repair the harm caused by the crime.

20. JOHN McDONALD ET AL., REAL JUSTICE TRAINING MANUAL: CO-ORDINATING FAMILY GROUP CONFERENCES (Piper's Press 1995); Paul McCold, Police-Facilitated Restorative Conferencing: What the Data Show 2 (Nov. 1998) (unpublished paper presented to the Second Annual Conference on Restorative Justice for Juveniles).
21. McCold, *supra* note 20, at 2.
22. LAWRENCE W. SHERMAN ET AL., EXPERIMENTS IN RESTORATIVE POLICING: A PROGRESS REPORT TO THE NATIONAL POLICY RESEARCH UNIT ON THE CANBERRA REINTEGRATIVE SHAMING EXPERIMENTS (RISE) (Austl. Nat'l Univ. Press 1998).
23. Five separate police departments, the best known of which is Bethlehem, Pennsylvania, use restorative conferencing techniques. PAUL MCCOLD & BENJAMIN WACHTEL, RESTORATIVE POLICING EXPERIMENT: THE BETHLEHEM, PENNSYLVANIA, POLICE FAMILY GROUP CONFERENCING PROJECT (Cmty. Serv. Found. 1998); McCold, *supra* note 20, at 2.
24. The Royal Canadian Mounted Police, based in Regina, Saskatchewan, use conferencing.
25. At least three police forces, including Thames Valley, Humberside, and North Nottinghamshire, use the model.
26. When a juvenile has been arrested for an offense and admits guilt, he or she may be asked to come to the local police station, accompanied by one or both parents. There a senior uniformed police officer (rank of inspector or above) meets with the family and informs the offender that the police will not press charges on this occasion. The officer formally warns the offender that, if he or she breaks the law again, the police will take the case to court. A record is kept of this official caution. In the event of future court appearances, the police will present the record to the bench, after a finding of guilt, as evidence of a "previous offense." An official police caution is normally only given in the case of first or minor offenses.
27. Bria Huculak, Presentation to the International Conference on Restorative and Community Justice: Inspiring the Future (Mar. 2001).
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
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54. Crime & Disorder Act, 1998, ch. 37 (Eng.).
 55. Dignan, *supra* note 9, at 53.
 56. Carruthers, *supra* note 11.
 57. Because conferencing is both time- and resource-intensive, less-serious offenses are dealt with by the police through cautions or other diversionary practices without referral to courts or conferences.
 58. Gabrielle Maxwell, *Crossing Cultural Boundaries: The Experience of Family Group Conferences 2* (Nov. 1998) (unpublished paper presented at the Conference on Implementing Restorative Justice in the International Context).
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 60. *See, e.g.*, Mark S. Umbreit, *Victim-Offender Mediation With Violent Offenders*, in *THE VICTIMOLOGY HANDBOOK* (Emilio Viano ed., Garland 1990).
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 62. Mark S. Umbreit & Robert B. Coates, *Cross-Site Analysis of Victim Offender Mediation in Four States*, 39 *CRIME & DELINQ.* 565 (1993).
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Mental Health Service Needs of Male and Female Juvenile Detainees

Traditionally, the topic of juvenile delinquency in the United States has focused primarily on male delinquents.¹ The characteristics and needs of female delinquents have received less attention even though, as far back as 1994, 24 percent of all juvenile arrestees were female.² Indeed, in 1996 alone, nearly three-quarters of a million girls (723,000) were arrested.³ Nonetheless, there is no substantive body of research on female delinquents, perhaps partly because most female detainees are arrested for nonviolent "status" offenses such as running away.⁴

A growing body of literature attests to the considerable mental health needs of juvenile delinquents.⁵ Adolescents arrested and adjudicated within the juvenile justice system do not only meet criteria for conduct or other behavioral disorders, but also for psychiatric conditions such as major depression.⁶ More than one-third consistently exhibit symptoms of major affective disorders.⁷ Notably, limited epidemiological data suggest that female delinquents suffer from psychiatric disorders to an even greater extent than males.⁸

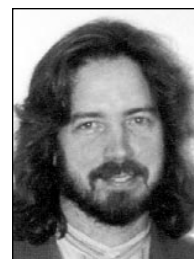
There are several reasons to suspect that the mental health needs of adolescent girls in the juvenile justice system would be different from those of adolescent boys. The majority of studies investigating rates of psychiatric problems such as depression or suicide risk among nondelinquent adolescents have consistently found that females exhibit higher rates than males.⁹ This gender difference is typically even more pronounced among samples of delinquent youth. For example, one study found that the prevalence of mental health need among delinquent males was 27 percent, compared to 84 percent among delinquent females, with females exhibiting significantly more depressive and anxious symptoms.¹⁰ Similarly, another study examining the prevalence of *Diagnostic and Statistical Manual* (DSM-III)¹¹ disorders among a sample of female delinquents found a general prevalence rate of 3.4 diagnoses per individual, with 66.7 percent of the sample manifesting major depressive disorder and 47 percent manifesting an anxiety disorder.¹² Moreover, incarcerated female delinquents evidence rates of posttraumatic stress disorder that exceed not only those found in the general population, but also those found among incarcerated male delinquents.¹³ Finally, self-reported data have indicated that more than 50 percent of female delinquents have attempted suicide and that 64 percent of that number have attempted suicide more than once.¹⁴

In his influential studies of detained juveniles, Richard Dembo has provided empirical evidence for the hypothesis that male and female juvenile delinquents differ both in their mental health characteristics and their mental health needs. Dembo's research has consistently demonstrated that delinquent adolescents of both genders manifest substance abuse problems and disrupted emotional functioning.¹⁵ Moreover, Dembo and his colleagues have shown that the majority of adolescents involved with the criminal justice system have suffered serious physical abuse and sexual victimization.¹⁶ However, although Dembo has linked early abuse and victimization to later delinquent behavior for both males and females, his research suggests that victimization is a far more salient factor in female delinquency. In two studies



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Using data collected from a stratified random sample of 473 youth adjudicated to be delinquent by a juvenile court, we examined the

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different mental health service needs presented by boys and girls. Comparisons were made according to a variety of clinical symptoms, risk factors, domains of functioning, co-occurring disorders, and caregiver characteristics. The female delinquents in the sample manifested significantly more depressive and anxious symptoms than their male counterparts, presented a greater suicide risk, and evidenced more severe abuse histories and traumatic aftereffects of that abuse. In contrast, the male delinquents showed significantly more conduct and behavioral disturbance than did their female counterparts, had more extensive criminal histories, and exhibited a significantly higher incidence of learning disabilities. ■

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examining gender differences in mental health service needs among delinquent adolescents, Dembo and his colleagues found that girls' problematic or criminal behaviors were typically related to an abusive, sexually exploitative, or traumatizing home life, whereas boys' criminal activities were typically related to their involvement with antisocial peers.¹⁷ Indeed, in focus groups, delinquent girls have identified their experiences of sexual abuse and exploitation as a significant concern.¹⁸

If rational criteria are to be used to guide future level-of-care decisions for behavior-disordered juveniles, then accurate and reliable ways to document juveniles' mental health needs are a necessity. The aims of the present needs-based planning project were to identify the mental health needs of detained juveniles from three Midwestern counties and to compare female and male juvenile detainees in order to evaluate whether their mental health needs varied by gender.¹⁹

METHOD

A stratified random sample of petitioned and adjudicated cases was drawn for the present study. The sample was drawn from three counties: an urban, a suburban, and a rural locale. Subjects were drawn from the population of juvenile petitions received by juvenile court services from 1995 to 1996. General-needs assessment data were collected from juvenile court records in the three counties, and mental-health-needs data were collected from case folders.

All data used in the present study were contained in the youths' folders. The youths' mental health needs were evaluated by means of the Children's Severity of Psychiatric Illness (CSPI) scale, a measure that assesses psychiatric symptomatology, risk behaviors, co-morbidity, caregiver capacities, and home, peer, and school functioning via 25 clinically relevant dimensions. In general, the anchor points follow a pattern wherein 0 = no evidence of that dimension, 1 = a mild degree of that dimension, 2 = a moderate degree, and 3 = an acute or a severe degree. In prior studies, the CSPI has been demonstrated to be an accurate and informative measure of mental health service need,²⁰ and research on its psychometric properties has demonstrated that it meets accepted psychological standards. Sample CSPI dimensions can be found in the appendix.

RESULTS

This section discusses the results of the study. These results show a distinct risk profile for female detainees and point out the need of this population for specialized mental health care.

DEMOGRAPHIC CHARACTERISTICS

Demographic characteristics of the sample are shown in Table 1. Of the sample of 473 delinquent adolescents, the majority (83.3 percent) were male. Nearly half (42.2 percent) were African American, and more than one-third (36.7 percent) were white. Approximately 17.4 percent of the sample were Hispanic, and the remainder consisted of Native American, Asian American, and multiracial adolescents. Approximately one-third (34.4 percent) of the juveniles were 16 years old, 28.4 percent were 15 years old, and 14.7 percent were 14; 20 percent of the sample were juveniles age 13 or younger. The majority (87.6 percent) had been in the custody of their parents at the time of arrest; 6.8 percent were in the custody of relatives, and 5.9 percent were in the custody of nonrelatives or the Department of Children and Family Services (DCFS). Just over three-quarters (78.2 percent) had their biological mother living at home at the time the juveniles entered the system, but only 28.1 percent had

their biological father living at home. Nearly one-quarter (23.2 percent) had been previously diagnosed with special-education needs, and 18 percent had dropped out, been suspended, or been expelled from school. Of those still enrolled in school, 25.8 percent had a history of habitual truancy. Finally, 21.5 percent of the sample evidenced moderate to severe alcohol abuse problems, and 34.3 percent of the sample evidenced drug abuse problems. Only 7 percent of the sample had ever received substance abuse treatment, and only 18.5 percent had ever received mental health treatment. Of these demographic and environ-

mental characteristics, only one was different for male and female detainees: significantly more female detainees evidenced alcohol abuse problems.

MENTAL HEALTH NEEDS

Female delinquents evidenced significantly more impairment than males on seven indices of the CSPI: Emotional Disturbance, Suicide Risk, Elopement Risk, Adjustment to Trauma, Severity of Abuse, Sexual Development, and Caregiver Knowledge. Results are shown in Table 2.

Table 1. Demographic Sample Characteristics

Sex		School Status	
Male	83.3%	Attending	63.9%
Female	16.7%	Dropped out	11.8%
Age		Suspended	2.1%
Under 13	20.0%	Expelled	4.1%
14	14.7%	Graduated/GED	1.3%
15	28.4%	Unknown	16.9%
16	34.4%	Truancy	
Race		No history of truancy	19.0%
African American	42.2%	Occasional truancy (1–2 days/month)	17.7%
Caucasian	36.7%	Frequent truancy (2–10 days/month)	12.6%
Hispanic	17.4%	Habitual truancy (> 10 days/month)	13.2%
Other	3.7%	Not in school ^a	16.7%
Custody		Unknown	20.7%
Parents	87.6%	Substance Abuse	
Relatives	6.8%	Alcohol abuse problems (moderate to severe)	21.5%
DCFS	5.9%	Drug abuse problems (moderate to severe)	34.3%
Household Composition		Substance Abuse Treatment	
Biological mother living at home	78.2%	Outpatient	5.1%
Biological father living at home	28.1%	Inpatient	1.9%
History of Special-Education Needs		Mental Health Treatment	
	23.2%	Outpatient	11.0%
		Inpatient	7.5%

^aIncludes students on temporary leave due to circumstances such as pregnancy; does not include students who have graduated.

Table 2. CSPI *t* Scores of Male and Female Juvenile Detainees

CSPI Index	Male	Female	<i>t</i>
Neuropsychiatric Disturbance	0.0016	0.00	-0.93
Emotional Disturbance	0.45	0.76	3.16 ^b
Conduct Disturbance	1.66	1.48	-2.09 ^a
Oppositional Behavior	1.29	1.21	-0.89
Impulsivity	1.09	1.18	0.88
Contextual Consistency	1.50	1.32	-0.97
Suicide Risk	0.0068	0.17	2.32
Danger to Others	1.34	1.36	0.10
Elopement Risk	0.19	0.67	3.69 ^c
Crime/Delinquency	2.17	1.86	-3.14 ^b
Sexual Aggression	0.14	0.11	-0.41
School Dysfunction	1.94	1.77	-1.21
Family Dysfunction	1.13	1.24	0.77
Peer Dysfunction	1.79	1.66	-0.91
Adjustment to Trauma	0.24	0.46	1.86
Medical Status	0.13	0.15	0.36
Substance Abuse	0.87	0.86	-0.10
Severity of Abuse	0.22	0.58	2.38 ^a
Sexual Development	0.19	0.71	3.69 ^c
Learning Disability	0.48	0.27	-2.21 ^a
Caregiver Supervision	1.13	1.21	0.56
Caregiver Motivation	0.51	0.68	1.28
Caregiver Knowledge	0.61	0.84	1.62
Placement Safety	0.37	0.53	1.41
Multisystem Needs	0.76	0.80	-0.46

^a*p* < .05 ^b*p* < .01 ^c*p* < .001

Almost one-quarter (22 percent) of the female delinquents met criteria for an emotional disturbance, compared to 11 percent of the male delinquents. Approximately 13 percent of the female delinquent sample either had a history of or were currently at risk for a suicide attempt, compared to 6 percent of the male sample. More than one-quarter (27 percent) of the females presented an acute or recent risk of elopement (running away), compared to only 6 percent of the males. Fifteen percent of the female delinquents had a moderate or severe history of abuse, compared to 2 percent of the male delinquents,

and 16 percent of the female delinquents evidenced either posttraumatic stress or marked adjustment problems based on prior abuse, compared to only 6 percent of the male delinquents. Moreover, more than one-third (37 percent) of the females evidenced a mild to severe disruption in their sexual development, compared to only 9 percent of the males. In addition, notable or significant deficits in the caregiver's ability to understand the youth were present for 27 percent of the females, compared to 12 percent of the males.

Male delinquents evidenced significantly more impairment on three of the CSPI indices: Conduct Disturbance, Crime/Delinquency, and Learning Disability (Table 2). Almost two-thirds of the male delinquents (60 percent) met criteria for a conduct disturbance, as did just under one-half (49 percent) of the female delinquents. Not surprisingly, the majority of male delinquents (83 percent) evidenced previous criminal or delinquent behavior, compared to 67 percent of the female delinquents. Finally, roughly twice as many males (36 percent) as females (18 percent) met criteria for a learning disability.

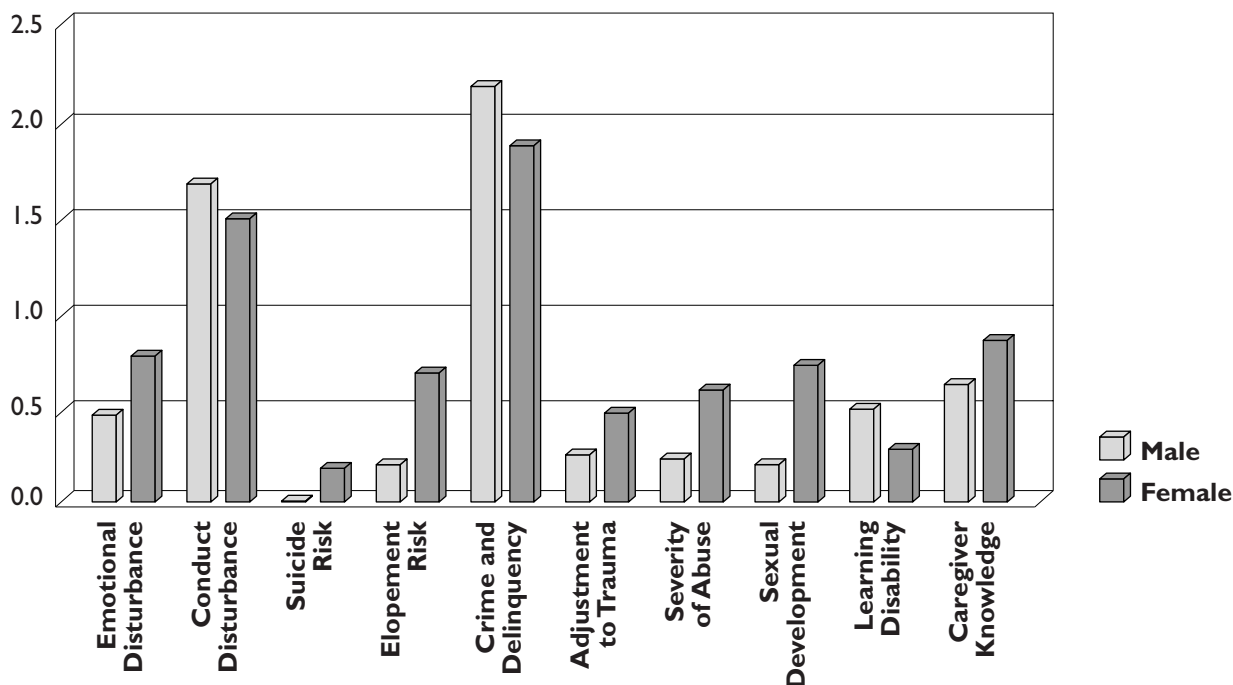
Finally, when a total CSPI score was created by summing CSPI ratings on all indices, an independent-samples *t* test revealed a trend for female delinquents to present a greater level of overall mental health need than male delinquents.²¹ Comparisons of male and female delinquents' significantly divergent CSPI *t* scores are shown in Figure 1.

DISCUSSION

Consistent with prior research, female delinquents in the current sample manifested significantly more depressive and anxious symptoms than their male counterparts, and they presented a greater suicide risk. They had more severe abuse histories, they suffered significantly more traumatic aftereffects, and their sexual development had been disrupted to a larger degree. In addition, their caregivers were rated as being less proficient at understanding their needs and concerns, and, perhaps not surprisingly, the girls had significantly more extensive histories of running away.

In contrast, the males in the current study evidenced significantly more conduct and behavioral disturbance than did their female counterparts. Moreover, they had more extensive criminal and delinquent histories, and they exhibited a significantly greater prevalence of learning disabilities.

The constellation of problems presented by the female delinquents in the current sample is not only consistent with prior research, but the problems also appear to be highly interconnected with one another. For example, as

Figure 1. CSPI t scores of male and female juvenile detainees

with the young women in the present study, female delinquents in general tend to have experienced greater and more severe sexual abuse than have male delinquents.²² Sexual abuse has been found to have a variety of detrimental effects on subsequent emotional development, such as high levels of depression, suicide ideation and attempts, anxiety disorders, oversexualized behavior, and posttraumatic symptomatology,²³ all of which are represented in the current results. Moreover, sexual abuse often prompts girls to run away from home,²⁴ which is in turn the most common offense by which girls enter the juvenile justice system. Indeed, although females accounted for only 26 percent of all juvenile arrests in 1997, they accounted for 58 percent of all runaway arrests.²⁵ These statistics were reflected in the current study, which found females to have a much more extensive history of running away than males. Thus, there tends to be substantial overlap between the populations of young women who have been abused, who have a high rate of psychiatric disturbance, who are repeat runaways, and who are involved in the juvenile justice system.

Along similar lines, it makes sense that young men who evidence conduct and behavioral disorders would have more extensive involvement in criminal activities. The results of this study are therefore consistent with prior research into male delinquency, which has shown

that the criminal activities of male detainees tend to be the result of their general involvement with an antisocial peer group.²⁶ Moreover, it is not surprising that a significant prevalence of learning disabilities exists among the current sample of male delinquents, as academic success and school competence have been identified as major protective factors against involvement in delinquency.²⁷

The results of the present study suggest that male and female delinquents have different precipitants of their involvement with the juvenile justice system, as well as divergent service needs. The female delinquents in the current sample demonstrated a higher level of need for psychiatric treatment, particularly treatment aimed at alleviating the behavioral effects of abuse. In contrast, the male delinquents demonstrated a higher level of need for structured ecological interventions aimed at increasing their involvement with socially adaptive peers, reducing their involvement in a delinquent lifestyle, and remedying educational deficits.²⁸

We should note that the present study contains certain limitations that can help clarify directions for future research. First, the present study relied on retrospective chart reviews and did not include clinical interviews. This reliance precluded an accurate estimate of the prevalence of prior abuse in the current sample. Inclusion of clinical interviews of subjects would enhance future studies of

psychopathology and victimization among delinquent populations. Second, the current sample was only 16.7 percent female; a larger percentage of females within a sample of delinquent youth may permit more meaningful conclusions regarding gender comparisons of psychiatric and posttraumatic disturbance. Thus, future studies may find it useful to oversample female delinquents. Third, the absence of a nondelinquent adolescent comparison group necessarily limits the generalizability of the current results to adolescents not involved in the juvenile justice system.

Despite these limitations, the current study echoes prior research in this area in suggesting that female delinquents evidence significantly more depressive, anxious, and posttraumatic symptomatology; more severe past abuse; and more extensive histories of running away than do male delinquents. Given the growing body of literature that attests to the greater level of mental health need among females entering the juvenile justice system, it is critical that programming for these young women address their abuse histories and their psychological concerns. Currently, there is a notable absence of programming specifically directed toward delinquent females. In his comprehensive meta-analysis of delinquency intervention and treatment programs, Mark Lipsey found that only 2.3 percent exclusively served girls and 5.9 percent primarily served girls.²⁹ No programs served boys and girls equally. Thus, 91.8 percent of the programs surveyed exclusively or primarily served boys, despite the fact that in 1992 females represented more than 20 percent of juvenile detention admissions to public facilities.³⁰

Given the results of this and other studies regarding psychiatric disturbances among court-involved girls, it may be time for juvenile temporary detention centers to reevaluate their admissions policies to reflect that female detainees do not match the traditional profile of the male delinquent. Perhaps most important, these females have greater mental health needs and more severe histories of abuse. Thus, diversion programs—including group homes or small residential treatment centers—may provide more appropriate and effective settings for many female delinquents. These diversion programs may also serve to reduce the growing detention-center population in a way that is consistent with the female detainees' needs.

Even if juvenile courts do not develop diversion programs, screening can be improved within detention centers. Many facilities do screen for acute suicidal risk, and some screen for substance abuse disorders. However, detention centers typically do not screen for more general mental health needs or for prior sexual victimization. Questions about these issues can easily be incorporated

into routine intake procedures. At the very least, this information could help detention centers in assigning the growing number of females to specific units within female dormitory space, rather than to generic female sections.

Upon discharge, those female detainees who evidence significant levels of mental health need should be referred to appropriate treatment. For example, a judge might order a female to comply with outpatient treatment as a condition of her release. Such community-based treatment is not only likely to reduce the incidence and intensity of behavior problems among this population, but it is also the most appropriate way to manage issues with long-term psychiatric implications (e.g., prior sexual abuse or sexual victimization). Empirical evidence suggests that such community-based treatment may also reduce recidivism.³¹

Detention center and probation staff should receive training that sensitizes them to the issues of mental illness and prior abuse among the female detainee population. Indeed, it is important that detention center and probation staff learn to identify depressive, anxious, and posttraumatic disorders among female detainees. Once identified, female delinquents who evidence significant levels of mental health need should be referred to appropriate treatment. Ideally, detention centers would offer mental health services that address issues of particular salience to this population, including past abuse, sexuality, family conflict, and vocational aspirations. Ideal detention centers would also offer medication evaluations for female detainees who evidence acute psychiatric symptoms.

Finally, though beyond the scope of this article, findings regarding the differences between female and male detainees call into question the wisdom of laws that mandate the transfer of detainees accused of certain serious offenses from juvenile to adult court. Mandatory transfer laws appear to use a traditional model of the male delinquent in that they are aimed at kids who are involved in repeated or severe criminal delinquent activities. Girls, however, enter the system more often for activities that do not result from a delinquent lifestyle, but rather from prior sexual exploitation or trauma.³² Changing transfer laws to allow discretionary, judicial review of factors such as mental illness and abuse history may prevent the transfer of those offenders who would benefit from treatment, yet still allow for transfer of the most egregious cases. In addition, future research should continue to investigate the characteristics and correlates of the female delinquent population. It seems likely that their pathways to deviant behavior differ from those of their male counterparts and that, as a result, interventions will have to target their unique needs and problems to be effective.

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Samples of Anchored Dimensions From the Childhood Severity of Psychiatric Illness (CSPI) Rating Form

APPENDIX

The Children's Severity of Psychiatric Illness (CSPI) scale is a measure that assesses psychiatric symptoms, risk behaviors, co-morbidity (i.e., the occurrence of multiple disorders in a child or adolescent), caregiver capacities, and home, peer, and school functioning via 25 clinically relevant dimensions. In general, the anchor points follow a pattern wherein 0 = no evidence of that dimension, 1 = a mild degree of that dimension, 2 = a moderate degree, and 3 = an acute or a severe degree. Excerpts from the measure are being reproduced here "as is." Readers interested in obtaining copies of this measure should contact Dr. John Lyons, Northwestern University, 339 East Chicago, Wieboldt Hall 7th Floor, Chicago IL 60611.

Emotional Disturbance:

- 0 This rating is given to a child with no emotional problems. There is no evidence of depression or anxiety.
- 1 This rating is given to a child with mild to moderate emotional problems. There is a brief duration of depression, irritability, or impairment of peer, family, or academic functioning that does not lead to gross avoidance behavior. This level would be used to rate either a mild phobia or anxiety problem or a subthreshold level of symptoms for other disorders such as sleep disturbance, weight or eating disturbances, and loss of motivation.
- 2 This rating is given to a child with a moderate to severe level of emotional disturbance. This could include major conversion symptoms, frequent anxiety attacks, obsessive rituals, flashbacks, hypervigilance, depression, or school avoidance. Any diagnosis of anxiety or depression would be coded here. This level is used to rate children and adolescents who meet the DSM-IV criteria for an affective disorder.
- 3 This rating is given to a child with a very severe level of emotional disturbance. This would include a child or adolescent who stays at home or in bed all day because of anxiety or depression or one whose emotional symptoms prevent any participation in school, friendship groups, or family life. More severe forms of anxiety or depressive diagnoses would be coded here (e.g., meeting criteria in excess of the diagnosis). This level is used to indicate an extreme case of one of the affective disorders.

Elopement Risk:

- 0 This rating is for a child with no recent history of running away and no ideation involving escaping from the present living situation or treatment.
- 1 This rating is for a child with no recent history of running away but who has expressed ideas about escaping the present living situation or treatment. The child may have threatened to run away on one or more occasions or may have a history (lifetime) of running away but not in the past year.
- 2 This rating is for a child who has run away from home once or run away from one treatment setting within the past year. Also rated here is a child who has run away to home (parental or relative) in the past year.
- 3 This rating is for a child who has (a) run away from home or a treatment setting within the past 7 days or (b) run away from home or a treatment setting twice or more overnight during the past 30 days. The destination was not a return to the home of a parent or relative.

Severity of Abuse/Neglect:

- 0 This level is used to indicate a child with no history of any form of physical or sexual abuse and no history of neglect.
- 1 This level is used to indicate a child with a history of mild abuse or neglect. This could include a child who is occasionally hit or touched inappropriately. Occasional neglect, such as leaving a child at home with no adult supervision, would also be rated here.
- 2 This level is used to indicate a child with a moderate level of abuse. This would include a child who has been fondled on an ongoing basis but not penetrated. However, this might also include a child who has been penetrated on one occasion. This level would also include a child who is physically abused on an ongoing basis and may require medical attention.
- 3 This level is used to indicate a child with a history of severe abuse. This would include a child who has been sexually penetrated on multiple occasions and over an extended period or forced to perform sexual acts on other children or adults. This would also include a child who has been severely physically abused to the point that he or she required serious medical attention (e.g., hospitalization). This level would also indicate a child who has experienced extreme neglect (e.g., severe malnutrition, starvation).

Addressing Disproportionate Representation of Youth of Color in the Juvenile Justice System

As we pay tribute to the 100th anniversary of the juvenile court, we face serious questions about the court's survival and the treatment of children in trouble with the law. Although juvenile crime is decreasing significantly, the number of juveniles in confinement is growing at an alarming rate.¹ This phenomenal increase in youth incarceration is resulting in overcrowded conditions that stretch the capacity of most facilities to the breaking point, endangering staff and youth alike. Here in California, the Board of Corrections Executive Steering Committee recently recommended that more than 1,200 additional beds be constructed for the detention of young people.

If past practice is prologue, young people of color will fill most of those new beds. Juvenile justice professionals, now more than ever, must decide whether to continue to incarcerate young people of color in numbers that cannot be justified by crime statistics alone or to address the problem. This article discusses the reasons for disproportionate confinement of young people of color and the positive steps taken by some jurisdictions toward reducing that disparity.

THE SOCIAL CONTEXT OF DISPROPORTIONATE CONFINEMENT

Shortly after the establishment of the first juvenile court in 1899, W.E.B. Du Bois, one of the most significant American thinkers of the 20th century, wrote in his seminal work *The Souls of Black Folk* that "the problem of the Twentieth Century is the problem of the color-line."² Also around that time, psychologist G. Stanley Hall coined the term *adolescence*, describing it as a period between the ages of 12 and 20 that encompasses a developmental state distinct from other periods of life.³

Today, color and adolescence have converged in a way that has led juveniles to be confined in numbers that should give pause to any civil society. In California, for example, young people of color constitute an astounding 86 percent of youth incarcerated in long-term treatment facilities.⁴ If one were to divide the juvenile justice system into subparts, there would be several points at which decisions are made regarding young people of color and their families. For example, decisions about where to patrol and whom to arrest, charge, and prosecute can widen the net for youth of color.⁵ Although there is probably no deliberate, knowing racism in the majority of cases, the fact remains that young people of color are represented in juvenile justice systems in numbers that cannot be accounted for by law violations alone.⁶

Certain societal factors contribute mightily to the disproportionate number of young people of color in confinement. Not the least of these are the attitudes and beliefs some hold about youth and families of color. The juvenile justice system is full of implicit messages legitimizing the notion that youth of color are beyond rehabilitation, thereby making it permissible to warehouse them in conditions of



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In California and across the country, the juvenile justice system confines many more minority youths than can be justified by the offense rates of those same groups. In this article, probation officer Judith Cox and attorney James Bell discuss the reasons for this disproportionate confinement of young people of color. They then present a blueprint, based on the positive steps taken by Santa Cruz County, California, that jurisdictions can use to reduce that disparity. ■

confinement that are often overcrowded and dangerous.⁷ Though some believe that institutional racism is significantly responsible for minority overrepresentation in the juvenile justice system, only a few jurisdictions have participated in self-examination of their policies and practices to determine whether they are race-neutral.

Our society generally holds certain assumptions about youth of color that subtly contribute to their overrepresentation in the system. These beliefs hold that young people of color are prone to violence and criminal activity, they do not attend school or work, and, worst of all, they expect to be incarcerated and therefore are not uncomfortable with being securely confined. Such assumptions reflect an expectation of failure that in turn is internalized by these young people, who do in fact fail.

Economic factors are particularly significant. Jeremy Rifkin, in his important book *The End of Work*, introduces the concept of “economic irrelevance,”⁸ the condition of those segments of our population who have no possibility of contributing to society because their members have neither desirable skills nor significant purchasing power. Many of the youth of color in the juvenile justice system reflect this circumstance, which results in structural decisions that do not include them in a productive future.

Decision-makers in the juvenile justice system also are influenced by essentially racist theories, articulated by supposed intellectuals, about criminal predisposition among youth of color.⁹ Some politicians have used such pseudoscience to create a political climate in which it is acceptable for a United States senator to refer to young people as “superpredators” in a Senate committee hearing.¹⁰

Legislatures all over the country have enacted laws to “get tough” on juvenile crime by reducing the distinctions between juvenile and adult court. Approximately 30 states now impose mandatory minimums for certain crimes, for instance, while 42 others afford youth less and less confidentiality while in juvenile court.¹¹ In the last two decades, these attitudes, economic factors, and legislative measures have combined to change the face of juvenile justice from a majority of white youth to a majority of kids of color,¹² even though the proportion of white and nonwhite youth crime has remained roughly the same.¹³

National statistics reveal that in most states, African-American youth are overrepresented at every decision-making point in the juvenile justice system. For example, although African-American youth age 10 to 17 constitute 15 percent of the U.S. population, they account for 26 percent of juvenile arrests, 31 percent of delinquency referrals to juvenile court, and 46 percent of juveniles transferred to adult criminal court after judicial hearings.¹⁴

In 1991, the long-term custody rate for African-American youth was nearly five times the rate for white youth.¹⁵ As the numbers indicate, the disproportion grows as youth go deeper into the system.

African-American youth are not the only juveniles disproportionately affected by the juvenile justice system. Recent data reveal that Latino youth are overrepresented in detention facilities at a rate nearly one and a half times their percentage in the at-risk juvenile population.¹⁶ Furthermore, the rate of Latino youths overrepresented in corrections facilities is almost twice the percentage of the population of at-risk Latino youths.¹⁷ Indeed, as demographers begin to measure Latino youth as a separate category, these numbers may increase.

THE EVOLUTION OF SYSTEMIC RESPONSES TO DISPROPORTIONATE CONFINEMENT

The response of policymakers to the skyrocketing disproportionate confinement of young people of color has changed over time but has not really addressed the issue. In the 1980s, reports by The Sentencing Project on racial disproportion in adult corrections raised awareness about the problem among the power elite and policymakers.¹⁸ Youth advocates leveraged this awareness to prompt the U.S. Department of Justice to begin studying the level of minority disproportion in the juvenile justice system. Amendments to the Juvenile Justice and Delinquency Prevention Act (JJDP A)¹⁹ in 1988 required states to “address” the issue,²⁰ and four years later the issue was elevated to one that, theoretically, would affect funding.²¹ The issue even got its own acronym: DMC, for “disproportionate minority confinement.” As a result, states began to conduct studies and found that, with the exception of Vermont, all states confined young people of color at a rate higher than their representation in the general population. For example, Minnesota reported a minority juvenile population of 12 percent and a minority juvenile detention rate of 59 percent.²²

In the next phase, strategies began to be developed to address the situation, but it is no exaggeration to say that they were not much more than hand wringing. Next came avoidance. For example, if a study of disproportionate confinement revealed that young people between the ages of 13 and 15 living in certain ZIP codes were overincarcerated, the jurisdiction would take the “youth-development” approach. Rather than attacking the problem head on by actually addressing the particular needs of those youth, policymakers would institute after-school programs, tutoring programs, antiviolence programs, and Boys and Girls Clubs for preteens.

Although many of these are, no doubt, fine programs, this response fails entirely to address the issue. It says, in essence, that the problem lies with the youth themselves, who need to be helped to change their ways if they are to stay out of the system. Under this assumption, there is no need to focus on the racial bias in the system's operation. Not surprisingly, the number of youth of color in the system continued to grow at astonishing rates.

To address this problem, an intentional strategic approach is required—one that brings together key players like judges, police, public defenders, community organizations, and prosecutors to take a fresh look at current practices and procedures. One such jurisdiction is Santa Cruz, California. Seattle and Phoenix are also taking similar approaches to address this important problem through their Building Blocks for Youth Initiatives.

DISPROPORTIONATE MINORITY REPRESENTATION IN SANTA CRUZ COUNTY

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has provided resources to selected jurisdictions across the United States to address disproportionate minority confinement. The OJJDP publications documenting the lessons learned from these sites suggest that the overrepresentation of minority children in juvenile institutions is caused by many factors that exist in multiple domains: the juvenile justice system, socioeconomic factors, the educational system, and the family setting. In recognition of the complexity created by the multisystemic aspect of the problem, it is generally recommended that many stakeholders be engaged in a broad-based effort to address the issue. In Santa Cruz County, the probation department's work to reduce disproportionate minority confinement was, in fact, initiated in the context of a task force co-convened by Chief Probation Officer John Rhoads, the county's Latino Strategic Planning Collaborative, and the Latino Affairs Commission. The task force recognized that multiple systems affect detention rates of minority youth, and, therefore, the task force conducted a system-by-system review and made recommendations. Among the justice agencies participating in the task force, the probation department was the only agency that elected to engage in a departmental effort to address disproportionate minority confinement. The following account of the work being done by the Santa Cruz County Probation Department is offered as a resource for other probation departments wishing to engage in similar efforts. Appendix B points out areas in which other juvenile justice agencies might begin to examine their processes.

THE COUNTY

Santa Cruz County is located on Monterey Bay, 85 miles south of San Francisco. The county is bordered by Monterey County to the south, Santa Clara County (Silicon Valley) to the east, San Mateo County to the north, and the Pacific Ocean to the west. With a population of approximately 250,000, Santa Cruz is considered a mid-size county in California. It has a substantial Latino population, accounting for 33 percent of the children ages 10 through 17. In the past decade, children referred to the juvenile justice system have experienced a rate of gang involvement and heroin use higher than children in other California communities of similar size. Latino children represented nearly 64 percent of the children detained in the county's secure juvenile detention facility (juvenile hall) on any given day.

IDENTIFYING THE ISSUES

Before critically analyzing the problem, the probation department undertook several developmental steps. The people who work at the Santa Cruz County Probation Department were not unlike justice practitioners all over the United States. Santa Cruz practitioners knew about disproportionate minority confinement and could see the racial disparity in the detention facility. Managers read research on the topic and conducted a local study of the problem. The study basically supported what was already thought to be true: that the minority children who were brought to the department by local law enforcement and detained by the court were in juvenile hall because they had more serious offense histories and presenting offenses than their nonminority peers. In other words, practitioners felt that there were justifiable reasons that minority children were detained. The staff in Santa Cruz also documented that minority children experienced more risk factors than other children and concluded that the improvement of social and economic conditions would be a prerequisite to solving the problem. Probation workers, of course, had very little control over these aspects of the children's lives.

The conclusions drawn from local studies were not entirely inaccurate; however, they presented only a narrow view. Practitioners discovered that by examining policies, procedures, practices, and programs, the department could identify many elements over which it did have control: clients who experienced barriers to service or lack of access, multiple points of subjective rather than objective decision making, many examples of cultural insensitivity, and unnecessary delays in the court process, which contributed to longer stays in detention.

The department's examination has now become an ongoing effort directed toward continuous improvement rather than a defense of the status quo. While it remains true that there are societal issues that subject minority children to the risk factors for delinquency, the work in Santa Cruz illustrates that the practices of individual justice agencies can exacerbate or alleviate the disparity at each decision point.

TAKING IT STEP BY STEP

A close examination of the data and practices at each decision point in the justice system process can reduce disproportionate minority confinement. In addition, the effort to address DMC may, in turn, reduce recidivism, because it eliminates barriers to service and uses programs that employ evidence-based best practices. The following is a step-by-step account of how the Santa Cruz County Probation Department addressed DMC at the departmental level.²³

Administrative Emphasis, Support, and Leadership

The first step in getting started at the agency level is to embrace the reduction of DMC as a key organizational objective. Accordingly, departmental resources, personnel practices (recruitment, hiring, and training), outcome indicators, and service and program strategies must all support the effort. The agency administrator must play a leadership role in the development and direction of the work. A cultural competence plan for the agency should be developed, and a cultural competence coordinator must be appointed to oversee progress.²⁴ Placing a general emphasis on cultural competence creates a foundation for the ongoing efforts of a core workgroup, which is charged with the responsibility to develop and oversee a workplan addressing DMC.²⁵

Decision-Point Mapping and Data Review

The second step in the agency effort to address DMC is to map the key decision points in the juvenile justice process: arrest, booking, detention, release, and placement.²⁶ There must then be a determination regarding the availability of collected data by ethnicity for each decision point. In Santa Cruz, arrests, bookings, detentions, and program placements are measured by ethnicity on a quarterly basis. If data by ethnicity are not available, a data development agenda must be created. As data become available, the core workgroup should regularly track trends for each decision point and review the data to mark progress or identify problems.

Creating and tracking outcome indicators for detention alternatives and dispositional programs is an effective

way to monitor issues of equal access and program effectiveness. In Santa Cruz, the core workgroup regularly reviews a number of data sources. In cases that ultimately result in an out-of-home placement order, the core workgroup examines the number of days children stay in secure confinement from the initial booking to the date of the dispositional hearing. The workgroup also reviews the number of days in secure confinement from the dispositional hearing to the actual placement of the child in a residential program. The data are presented by gender and ethnicity. The core workgroup can, therefore, monitor the efficiency of the court process and the placement effort that follows the dispositional order. If there is disparity in court processing or placement time by ethnicity or gender, a more detailed inquiry into causal factors is undertaken. Through this process, the core workgroup is often able to identify areas that need improvement in the system. Currently in Santa Cruz, there is no disparity in either court processing or placement time by ethnicity. However, a previously identified problem resulted in the development of a culturally competent drug treatment program now operating for Latino boys.

Objective Criteria for Decision Making

Once the key decision points have been identified, objective criteria for the decisions made at each point must be developed and monitored. For example, the decision that an intake officer at probation makes to hold a child in secure detention pending an initial hearing should be based on a quantifiable set of risk factors. This risk instrument must be free of criteria that may create an unintended racial bias. If, for instance, extra risk points are added for gang involvement or lack of employment, more minority children than other children may be detained for the same offense.

Many stakeholders would argue that gang involvement should result in added points on a risk-based scale; however, the identification of a child as a gang member often involves subjective judgments, and further, determining whether and when a child is no longer a gang member is problematic. It is, therefore, preferable to assign points based on objective, identifiable risk factors such as severity of the current offense or past record of delinquent acts or to use gang criteria only after they have been proven in court. The development of objective criteria for each decision point should involve all the stakeholders.

It is also important to base assignments to and removals from intensive supervision caseloads on clearly stated risk-based criteria, thereby ensuring that the level of service is appropriate to the risk level of the child being supervised in the community. For example, a Latino child

who is assigned to an intensive gang caseload based on the label “gang member,” rather than his or her offense history, will be subjected to a level of scrutiny that could result in longer periods of incarceration. Placing low-risk children in high-level supervision can result in more arrests and confinement time because they are likely to be charged with technical violations. In spite of this problem, youth with nonviolent and minor offense histories are often placed on high-intensity service plans that are not needed to ensure community safety.

Culturally Competent Staff

Ensuring that staff in key positions are culturally competent and have bilingual capacity is key to reducing DMC. Therefore, it is necessary to establish guidelines to ensure that staff have the skills and abilities to provide services to a diverse client population. An inventory of caseloads and clients should be conducted to determine cultural and language profiles. Staff assignments should place bilingual personnel in key positions. All staff should receive ongoing training in cultural sensitivity, cultural competence, and the dynamics of DMC. In Santa Cruz, the client base in juvenile caseloads is 46 percent Latino, and, therefore, 44 percent of the juvenile probation officers are bilingual. Thirty-three percent of the officers are bicultural (Latino/Anglo) and have direct experience with, and knowledge of, Latino cultural customs and values.

Partnerships With Families

Programs and services may exclude probationers’ families or fail to address their needs, thereby resulting in high failure rates for program participants. Ensuring that barriers to family involvement in both judicial proceedings and probationary programs are eliminated can have a positive impact on reducing DMC. Family conferencing and parental outreach at all levels can help remove these barriers. Informational sessions or written materials also help families understand and participate in the court process.

A lack of understanding about the purpose of the personal questions asked by probation officers during interviews for intake and social study reports often makes parents feel threatened and defensive. If parents do not understand the purpose of the detention hearing and the importance of their ability to supervise their child, they may appear uncooperative and thereby increase the likelihood of a detention recommendation for their child. This dynamic can be particularly acute when ethnic, cultural, socioeconomic, or language differences create communication challenges.

If agencies are to establish healthy partnerships with parents, they must have a way to consider parental atti-

tudes about programs and services. The use of customer surveys and parent advocates can help identify barriers to service that negatively affect family involvement. These communication tools can also increase parents’ basic understanding of the court process.

It is important to ask parents whether agency or court efforts to communicate with them are clear and effective. Based on feedback from parents, agencies may need to adjust or augment their hours of operation, the tone and language of their official letters, and the content of their parental orientation programs and brochures. Parents may also be asked to comment on and assist in planning services for their children.

In Santa Cruz, the probation department has contracted with two or three parents to provide advocacy and liaison activities with other families going through the system. These parent partners also represent the voice of parents on planning councils, where they assist in developing programs and services. Santa Cruz also employs a bilingual, bicultural specialist who conducts family conferences to facilitate the development of service plans based on strengths and concerns identified by family members. Another strategy to increase family involvement at site-based programs, such as the juvenile hall and day treatment programs, is to invite families to participate in activities on culturally significant days of celebration.

Alternatives to Formal Handling and Incarceration

A lack of diversion options or inadequate alternatives to secure detention can result in increases in DMC. In addition to applying risk-based detention criteria, jurisdictions must create two or three tiers of community-based alternatives to detention. Involving community-based organizations and the children’s parents in the operation of these supervision programs can help ensure cultural competence and parental support. Programs that provide crisis response,²⁷ strength-based work,²⁸ and wraparound services,²⁹ in addition to tracking and supervision, are particularly successful.

In Santa Cruz, improvements to detention alternatives include electronic monitoring with a wraparound service component provided by a community-based agency. Partnership with a community-based agency can help children connect with healthy activities while they go through the judicial process. Establishing the goals of these alternatives and tracking their outcomes can help ensure that the only children released are those who do not pose a public-safety risk. If children attend their court hearings and do not reoffend while in the community, the court and district attorney can confidently use these alternatives without fearing that public safety will be compromised.

Use of these programs should be tracked by ethnicity. In addition, more than one level of supervision should exist so that the court has an escalation option to use as a response to technical violations, rather than resorting to confinement. For children in postdispositional status, stakeholders should agree on a continuum of court-approved administrative sanctions that the probation officer can impose in lieu of formal court filing for technical violations.

The Santa Cruz probation department has been able to double the number of children diverted from the juvenile justice system by adding four new diversion programs. These diversion programs provide a variety of service strategies, including assessment and educational services for first-time alcohol and substance users, peer court, neighborhood accountability boards, cognitive-behavioral groups, youth development services, and family support. The programs are geographically accessible and employ partnerships with local law enforcement, community-based organizations, and citizen volunteers.³⁰

A Full Continuum of Treatment, Supervision, and Placement Options

A lack of postdispositional options, particularly culturally sensitive programs, can result in overreliance on secure detention by the courts. Stakeholders must carefully define and develop the local continuum of services and ensure that minority youth have equal access at each level. Once again, it is important to review each program for cultural competence. The Standards of Accessibility for Latino Services in Appendix C can be used as an assessment instrument.³¹ Best practices, as documented in research, must be used at each step in the continuum when developing new programs.

The ability of the system to quickly move children out of secure detention into detention alternatives, placements, or programs will reduce juvenile-detention bed days. A lack of adequate options for minority children will result in a disproportionate number of them remaining in detention. Therefore, calculation of length-of-stay data by ethnicity can illustrate the need for additional placement or supervision programs. The data can also indicate which programs are not effective in preventing recidivism. In Santa Cruz, a family preservation program, a school-based day treatment program, and a culturally sensitive residential drug treatment program have helped reduce DMC by eliminating gaps in the local continuum of services. The last program, initiated upon a determination that Latino boys with substance abuse issues were spending a longer time awaiting placement than other children, has elimi-

nated the disparity in confinement rates between Latino boys and other children.

EFFORTS YIELD RESULTS

The results of the work in Santa Cruz have been remarkable. The Latino population in secure detention on any given day in 1997 and 1998 was 64 percent, compared to 33 percent in the general population of children ages 10 through 17. In calendar year 1999, that percentage dropped to 53 percent, and, for the first half of 2000, to 46 percent, a reduction of 18 percent.

The Office of Juvenile Justice and Delinquency Prevention has developed a standard equation for assessing the relationship between the proportion of minorities in the juvenile justice system and in the overall juvenile population. The index is calculated by dividing the percentage of minority children detained (or involved in the system at whichever point is being measured) by the number of minority children in the overall juvenile population. An index value of more than 1 indicates overrepresentation, and 1 represents proportional representation. Before Santa Cruz County began its work on DMC, the county's index value for Latino children in detention was 1.9, similar to the nationally reported figures. The index is currently 1.4. Moreover, the percentage of Latino children committed to the California Youth Authority in Santa Cruz County was reduced from 84 percent in 1998 and 1999 to 33 percent in 2000. This is particularly notable, because researchers have documented that differences in detention rates of ethnic minorities become greater as children progress through the system.

The work of reducing DMC is an ongoing process that is never entirely complete. The work of one agency, or even the efforts of the entire juvenile justice system, may not eliminate DMC; however, the Santa Cruz probation department has demonstrated that one agency can make a difference. This is particularly true of probation departments, which are responsible for many of the key decision points in the juvenile justice continuum.

CONCLUSION

Efforts like those in Santa Cruz and other jurisdictions are courageous and important attempts to address the needs of young people of color, their families, and the governmental systems that serve them. We hope that this article will spur you to begin the process of examining your own systems to ensure that your policies and practices are not contributing to an unwitting increase in disproportionate confinement of youth of color.

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10. See, e.g., *Juvenile Courts in the 21st Century: Hearing Before the Subcomm. on Youth Violence of the Senate Comm. on the Judiciary*, 105th Cong. (1998) (statement of Sen. DeWine, Member, Sen. Comm. on the Judiciary).
11. PATRICIA TORBET & LINDA SZYMANSKI, JUVENILE JUSTICE BULLETIN: STATE LEGISLATIVE RESPONSES TO VIOLENT JUVENILE CRIME: 1996–97 UPDATE, at tbl.2 (Office of Juvenile Justice & Delinquency Prevention 1998), [at ojjdp.ncjrs.org/jjbulletin/9811/confidential.html](http://ojjdp.ncjrs.org/jjbulletin/9811/confidential.html).
12. See Judicial Detention Alternatives Initiative, Rising Detention Populations Have Caused Overcrowding (Apr. 25, 2000), [at www.aecf.org/initiatives/juvenile/rising.htm](http://www.aecf.org/initiatives/juvenile/rising.htm).
13. See PETER ELIKANN, SUPERPREDATORS: THE DEMONIZATION OF OUR CHILDREN BY THE LAW 114 (Plenum Press 1999).
14. POE-YAMAGATA & JONES, *supra* note 5, at 7, 8, 12.
15. *Id.* at 3.
16. *Id.* at 20–21.
17. *Id.*
18. See, e.g., MARC MAUER, YOUNG BLACK MEN AND THE CRIMINAL JUSTICE SYSTEM: A GROWING NATIONAL PROBLEM (The Sentencing Project 1990).
19. Pub. L. No. 93-415, 88 Stat. 1109 (1974) (codified as amended at 42 U.S.C. §§ 5601–5785 (2000)).
20. Juvenile Justice and Delinquency Prevention Amendments, Pub. L. No. 100-690, 102 Stat. 4434 (1988).
21. Juvenile Justice Amendments, Pub. L. No. 102-586, 106 Stat. 4982 (1992).
22. OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, MINORITIES IN THE JUVENILE JUSTICE SYSTEM 4 (U.S. Dep't of Justice 1999), www.ncjrs.org/pdffiles1/ojjdp/179007.pdf.
23. The Santa Cruz County Probation Department has benefited from the expertise and experience of others. James Bell and Dr. Juan Sanchez, executive director of Southeast Key Program, Inc., have offered valuable perspectives regarding the work on DMC being done nationally and have raised the level of cultural awareness generally.
Many of the steps taken in Santa Cruz are closely related to the Juvenile Detention Alternatives Initiative, which is supported by the Annie E. Casey Foundation. See ROCHELLE STANFIELD, OVERVIEW: THE JDAI STORY: BUILDING A BETTER JUVENILE DETENTION SYSTEM (Annie E. Casey Found. 1999), *available at* www.aecf.org/initiatives/jdai/pdf/overview.pdf. Bart Lubow of the Annie E. Casey Foundation has offered support, technical assistance, and guidance.
The department has also benefited from the assistance of Sue Burrell of the Youth Law Center, San Francisco, who offered technical expertise and support to the work on detention reform and overcrowding sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The OJJDP material on DMC is helpful and informative, as are a wide array of research articles and studies that were reviewed throughout the process.
The aforementioned individuals and organizations helped the department to view the entire landscape and created a context and foundation for the work. An administrator who can provide these types of learning opportunities for his or her staff will find the effort well rewarded.
24. The concept of *cultural competence* appears throughout the article. The following discussion relates particularly to staff and program development. Cultural competence is drawn from a model used in the provision of mental health and social services to identify a set of behaviors, attributes, and policies that enable an agency to work effectively in cross-cultural situations.

NOTES

It is critical to point out that cultural competence is not a fixed characteristic of an agency; rather, it is an ongoing developmental process that agencies and individuals engage in to address diversity in the community-service area. Thus, it is not surprising that cultural competence is often defined as a “system” or a “model.” For instance, in their seminal treatise *Towards a Culturally Competent System of Care*—widely applied at all levels of mental health and other private and public service systems—Terry Cross, Barbara Bazron, Karl Dennis, and Mareasa Issacs define cultural competence as a system that “acknowledges and incorporates at all levels the importance of culture, the assessment of cross-cultural relations, vigilance toward the dynamics that result from cultural difference, the expansion of cultural knowledge, and the adaptation of services to meet culturally unique needs.” TERRY L. CROSS ET AL., *TOWARDS A CULTURALLY COMPETENT SYSTEM OF CARE* 13 (Georgetown Univ. Child Dev. Ctr. 1989).

As this definition illustrates, cultural competence is developed in a program as an intrinsic and pervasive part of service delivery planning and implementation, not as an isolated set of guidelines to be adopted by a program and placed on a shelf. By the same token, cultural competence itself is not a performance outcome that can be numerically quantified and measured. Rather, cultural competence is demonstrated through a cluster of measured activities—such as the Standards of Accessibility for Latino Services (Appendix C)—tailored to the program’s mission and designed to promote access and culturally appropriate services for the program’s client population.

25. See Appendix A.

26. See Appendix B.

27. The term *crisis response* refers to the availability of clinical services in the home at the time of family crisis. Typically, a specially trained mental health clinician, social worker, probation officer, or family advocate responds to a call for assistance and works with the family and child to mediate or resolve a problem that might otherwise result in a law enforcement response or out-of-home placement.

28. The term *strength-based work* refers to a service approach in which the family and child are considered full partners with the probation officer in developing a service plan and resolving problem situations. The probation officer is not viewed as the “expert” with special knowledge but, rather, as a resource for the family. The service strategy is based on the strengths and assets of the family and child rather than on a model that delineates deficits and problems.

29. The term *wraparound services* refers to an individualized care strategy that is characterized by the formation of a child and family team. A care coordinator asks the family to identify all those individuals who either care about the child or can offer support or resources. The team meets regularly to identify strengths and concerns that become the foundation for a service strategy. Service plans are adjusted regularly, and a “never-give-up” philosophy prevails. Typically, flexible funds and a menu of “benefits” or resources are available for whatever purpose the family and child team deems necessary.

30. Many traditional diversion programs are not culturally or developmentally appropriate for minority youth, and these youth therefore fail to complete the programs at a much higher rate than nonminority youth. Furthermore, in many communities, the police or probation department operates the diversion programs. Participants are not truly diverted out of the juvenile justice system. Every effort should be made to create diversion programs and opportunities for minority children that they will find meaningful. The use of community volunteers or mentors can help children succeed in completing program requirements. The vast majority of children who commit a minor offense will not reoffend. Therefore, children should not be elevated into a formal court process simply because they fail to complete the technical requirements of a diversion program. Instead, an administrative record of the diversion failure can be created and then considered as part of the social history if there is a subsequent law violation.

31. See Appendix C.

APPENDIX A

APPENDIX

**Santa Cruz County Probation Department
DMC Workplan Checklist**

Program Elements	Yes	No	In Progress or Under Dev.
Stated administrative value	X		
Working group charged with outcomes and goals	X		
Cultural competence coordinator	X		
Cultural competence plan	X		
Regular cultural competence training	X		
Staff reflects bilingual, bicultural levels of client base	X		
Key positions have bilingual staff	X		X
Key decision points mapped	X		
Data available for each decision point	X		X
Quarterly review of decision-point data (trends)	X		
Customer surveys identify service barriers			X
Parental involvement at all levels			X
Detention alternatives with community partners and more than one level of alternative	X		
Tracking outcomes of alternatives by ethnicity	X		
Risk-based detention criteria without racial bias	X		
Stakeholders involved in development of risk assessment instrument	X		
Efficient court and placement system with short length of stay in detention—measure length of stay by ethnicity	X		
Clear criteria for assignment to intensive caseloads	X		
Clear criteria for removal from intensive caseloads			X
Administrative sanctions for probation violations			X
Sufficient diversion options	X		
Extensive graduated continuum of services with wraparound services and community partners	X		
Culturally competent residential programs	X		X

APPENDIX

APPENDIX B

SANTA CRUZ COUNTY
Disproportionate Minority Confinement
Map of Juvenile Justice Decision Points

Level I

Agency	Decision Points
Local law enforcement	Field deployment of personnel
Probation department	Intensive caseload assignments

Discussion: At Level I, local law enforcement agencies are making decisions about the level of personnel deployment in various communities. These deployment decisions can affect minority populations disproportionately. In many cases, these deployment decisions are made on the basis of calls for service; therefore, the documenting of calls for service by neighborhoods in conjunction with community mapping can illustrate which communities need services and resources. Law enforcement agencies should develop clearly defined policies and criteria that guide all deployment decisions.

Also at this level, probation departments are making decisions about which clients will be served on intensive caseloads, which may increase arrest rates owing to the higher level of scrutiny to which they are subject. Clearly defined policies and risk-based selection criteria should guide intensive caseload placements. Criteria should also exist to determine when a client can be removed from intensive supervision.

Level II

Agency	Decision Points
Local law enforcement	Decision to warn or divert <i>or</i> Cite and release <i>or</i> Arrest
	<i>If a probation violation:</i>
Probation department	Administrative sanction or arrest

Discussion: At Level II, officers are faced with a decision to warn, divert, sanction informally, cite and release, or arrest. Juvenile law in California requires a “least restrictive” response. Departmental policies, training, and practices should reflect this legal requirement. Efforts should be made to identify and eliminate barriers to releasing minors to parents. Cultural competence and bilingual capacity can affect outcomes. Probation departments may develop a

continuum of court-approved administrative sanctions that are employed prior to arrest for probation violations. Statistics on warnings, diversion or informal sanctions, citations, and arrest should be reported by ethnicity. Suggested booking criteria should be jointly developed by local law enforcement and probation to guide officers when making a decision to transport to secure detention. In addition, law enforcement agencies should track the rate of arrests versus citations to determine whether they are choosing in-custody bookings rather than citations at a rate higher than other jurisdictions or whether their use of citations for similar offenses varies by ethnicity.

Level III

Agency	Decision Points
Juvenile hall staff	Immediate release following booking <i>or</i> Hold for intake probation officer

Discussion: At Level III, the law enforcement officer or probation officer has decided to bring the minor to the juvenile hall (secure detention facility) for booking. The institutional staff must decide whether to release the minor to a responsible adult or hold him or her for the probation intake probation officer. Cultural competence and bilingual capability are useful in contacts with parents. A risk-based detention criteria scale, which does not add unfair risk points for minority youth (e.g., gang membership, employment), should be utilized at this decision point. The use of the scale must be standardized and objective and must be scrutinized constantly.

Level IV

Agency	Decision Points
Probation intake	Release to parent/other agency <i>or</i> Release directly to home supervision <i>or</i> Hold in custody for detention hearing

Discussion: At Level IV, the intake probation officer gathers additional information pertinent to the decision to detain

or release. The risk-based detention scale is adjusted accordingly. Cultural competence and bilingual capability are necessary. Objective and standard criteria should be applied. Staff should work diligently to eliminate barriers to a release to parents. Sufficient culturally competent, community-based alternatives to detention are critical.

Level V

Agency	Decision Points
District attorney	No file or File or Order further investigation <hr/> If petition is filed: Decision re: type and number of offenses charged Decision to recommend or oppose release to a detention alternative Decision on plea agreements

Discussion: At Level V, the district attorney makes a series of decisions that can affect DMC both at the time of filing and following adjudication, as the minor faces continued exposure to detention based on prior record. The district attorney must develop a position on the use of detention alternatives. Effectiveness of detention alternatives should be measured so that the district attorney, court, and probation can see if minors who are released to the community do make court appearances and remain free of new law violations. The district attorney’s office must understand and concur with the objective risk-based detention scale utilized. A system should be developed to objectify and measure requests for investigations, filing decisions, plea agreements, and positions on dispositional outcomes. Statistics on each decision point should be measured by ethnicity. Procedures guaranteeing that individuals with similar past records committing similar crimes are treated the same must be employed and actual practices tracked by ethnicity.

Level VI

Agency	Decision Points
Probation department	At detention hearing: Recommend or oppose detention alternatives Recommend home supervision or electronic monitoring

Discussion: In California, probation officers can release minors to home supervision but must set the matter for a detention hearing. The court then makes the final determination whether to detain or allow continued participation in home supervision. Many times the intake probation officer will not release to home supervision, and the minor will remain in custody until the detention hearing. The probation officer may then recommend home supervision or a higher level of supervised release such as electronic monitoring. The use of these detention alternatives must be measured by ethnicity and must be available to youth in all areas of the jurisdiction. Culturally competent program providers, community partners, and parents can all be utilized to provide a higher level of supervision. Utilization of these alternatives should be tracked by ethnicity.

Level VII

Agency	Decision Points
Public defender and defense advocates	Active only on legal aspects of defense or Employs defense advocates to actively fashion release and dispositional plans with parents, relatives, and programs

Discussion: The defense bar can affect DMC by providing bilingual and bicultural services, tracking cases by ethnicity, and ensuring adequate staffing levels of attorneys and investigators to allow for thorough preparation of cases. Defense firms can go beyond legal advocacy by employing “defense advocates” or social workers who work along with attorneys and actively develop pre- and postadjudication programs and release plans. These advocates contact family members, schools, relatives, and other community resource providers in an effort to present a viable plan to probation and the courts. The defense must understand the risk-based detention scale and actively review the initial scoring of the instrument by probation. Defense advocates ensure that family members are present at hearings and that they understand their role in supervising their children. Defenders should track family contacts, plea agreements, and other service indicators by ethnicity. Defense counsel can actively participate in the establishment of risk-based detention criteria and a continuum of administrative sanctions for probation violations.

APPENDIX **Level VIII**

Agency	Decision Points
Court	Decision to release Decision to utilize home supervision Decision to utilize electronic monitoring Decision on conditions of release Decisions in response to violations of conditions of release Decisions on extensions of jurisdictional time frames Dispositional decisions Decisions on probation violations

Discussion: At this level the court exercises a series of decisions that are in large part informed by legal considerations; however, the court's attitude toward and confidence in risk-based assessments for detention decisions can greatly affect DMC. The efficiency of the court process and the judge's response to violations of his or her orders will also affect the profile of the population in secure detention. A wide array of culturally competent dispositional options must be available to the court. Judges can play a key role in identifying system barriers

for minority youth and families that contribute to DMC. Courts should map dispositional and detention decisions by ethnicity to ensure that youth with similar histories and presenting offenses are handled similarly. The courts need to recognize that a well-articulated continuum of pre- and postdispositional services provides the opportunity for making incremental adjustments in response to both the negative and positive behaviors of the offender.

Level IX

Agency	Decision Points
Probation department	Placement and dispositional options

Discussion: The time frame within which youth are removed from secure detention to the community or placement program is a key variable affecting DMC. The availability of a wide array of culturally relevant dispositional programs is vital. Probation departments should track the time it takes to move youth to services by ethnicity and develop alternatives to secure detention once the jurisdictional order is made. Probation departments must track their utilization of dispositional programs by ethnicity to ensure that youth are receiving equal access to treatment. When a department develops case and service plans, the use of family conferencing can ensure that the plan meets the family's needs.

APPENDIX C

APPENDIX

Standards of Accessibility for Latino Services

- A. All materials are available in Spanish and are culturally sensitive and appropriate.
- B. Services are actively marketed in the Latino community.
- C. All services, including the entry points to services (reception, information, and referral), have bilingual availability and are of equal quality.
- D. Services are located in areas readily accessible to the Latino community.
- E. Services are culturally competent.
- F. Agency leadership is culturally competent, aware of the special needs of the Latino community, and effective in empowering the Latino community.
- G. When recruiting new staff, the agency advertises vacant positions in locations and publications readily accessible to the Latino community and actively conducts outreach to ensure equal employment opportunities for Latinos.
- H. The Latino community is adequately represented on agency policy and advisory boards.
- I. Services are evaluated annually, in part according to these standards of accessibility. If services are accessible and appropriate, the client population will reflect the needs of the Latino community.
- J. Client demographics are representative of the agency's service and geographic areas.
- K. The agency conducts a regular client-feedback process and adjusts services according to customer input.

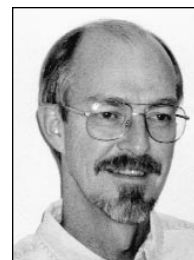
Eliminating the Pendulum Effect

A Balanced Approach to the Assessment, Treatment, and Management of Sexually Abusive Youth

Policies governing the assessment, treatment, and management of sexually abusive youth have oscillated over the last 20 years, in a process described by Gail Ryan as the *pendulum effect*.¹ In the early eighties, society denied the existence of any problem regarding the sexual behavior of adolescents. Even abusive and criminal sexual behavior was dismissed or minimized to avoid labeling an adolescent as a sexual offender² or in the belief that deviant sexual behavior was due to experimentation or the normal aggressiveness of male adolescents.³ This attitude led to a failure to identify, intervene early, and treat those adolescents who clearly posed a risk for future sexually abusive behavior both in adolescence and on into adulthood. It also prevented the identification of therapies aimed at interrupting the developmental trajectory of sexually abusive behavior during childhood and adolescence, when the opportunity to affect growth and development is greater.

Since the early eighties, professionals working with sexually abusive youth have succeeded in convincing parents, teachers, judges, and policymakers that the sexually abusive behavior of children and adolescents must be identified as such and responded to with early intervention and treatment. Perhaps we have done our job too well: the pendulum seems to have swung to the opposite extreme.⁴ Public policy has forsaken rehabilitative measures for increasingly punitive ones, even as research regarding sexually abusive adolescents has increasingly called into question the old assumption “once a sex offender, always a sex offender.” Policies and legislation supporting community registration and notification have been instituted and applied to juveniles as well as adults in response to high-profile cases that involved the most dangerous minority of the adult sex-offender population. The application of punitive policies to sexually abusive youth is driven more by fear and anger than by thoughtful reasoning based on empirical research.⁵ No evidence currently available allows a determination whether such practices protect children or deter potential abusers.⁶ Indeed, these policies, when instituted without differential consideration of each young offender’s maturity or developmental stage, may well harm the children and adolescents involved and even increase the risk of subsequent abusive behavior.⁷

A new, more balanced approach is necessary. The 1993 *Revised Report From the National Task Force on Juvenile Sexual Offending* reflects the consensus of a national task force of experts.⁸ The stated purpose of the report is to “articulate the current thinking about a comprehensive system’s response to sexually abusive youth.”⁹ Addressing community protection in its first two assumptions, the report identifies the community as the “ultimate client.” Community safety is described as taking “precedence over any other conflicting consideration, and ultimately, is in the best interest of the sexually abusive youth.”¹⁰ But community safety is only one of the important interests at issue. In the rush to protect our communities, we risk endangering the rights and welfare of our children. The struggle to find the proper balance is eloquently portrayed in the



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The term *sex offender* tends to evoke in the public mind the high-risk offender who ends up in the headlines. Research with adult offenders has been used to convince the public and the courts that neither sexually abusive youth nor adult sexual offenders can be cured and that both remain in need of lifetime treatment strategies to prevent recidivism. However, recent research focusing on sexually abusive youth contradicts the assumption “once a sex offender, always a sex offender.” In spite of this research, many of the laws and policies enacted to address the problem of sexually abusive youth are based on these old assumptions. This paper compares our old assumptions with the results of contemporary research. It then addresses the implications of this research for the risk assessment, treatment, and management of sexually abusive youth and discusses its implications for future public policy. ■

The authors would like to thank Gail Ryan for her comments and contributions to this article.

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following statement from Chaffin and Bonner's article "Don't Shoot, We're Your Children":

To the extent that we can identify those truly at risk and work productively with them, our communities will be safer. But in the process, we should not forget that these are our children. And as professionals committed to children's rights and welfare, we should think carefully about their rights and welfare before responding to their behavior.¹¹

With the swing of justice policy toward punitive measures, the question has become how to effect a more balanced approach: to provide adolescents with effective, empirically tested intervention, treatment, and management strategies while ensuring the community's safety.

JUVENILE SEX OFFENDING

Adolescents do commit a significant number of illegal acts. From 1986 to 1995, there was a 98 percent increase in the number of delinquency cases involving offenses against persons.¹² Reported assaults, homicides, and violent sexual offenses committed by adolescents all increased significantly over that time.¹³ In 1995, adolescents committed a total of 1,714,300 identified criminal offenses. Specifically, adolescent offenders committed nearly 16,000 sexual assaults.¹⁴

Possibly because of this increase in violent behavior, especially sexual assaults, by young offenders, research in the mid-eighties devoted much attention to this population. One study based on clinical experience documented that juveniles at that time constituted 40 percent of the total number of arrests for sexual offenses (excluding prostitution).¹⁵ Male adolescents may have committed 20 percent of forcible rapes in this country and 30 to 50 percent of all childhood sexual assaults.¹⁶ In 1986, adolescent males accounted for 19 percent of arrests for forcible rape and 18 percent for other sexual offenses.¹⁷ More recent studies identified juveniles as committing as many as 13 percent to 16 percent of rapes and 18 percent of other sexual assaults.¹⁸ In addition, adolescent offenders were found to be responsible for more than 50 percent of the identified sexual abuse of boys and at least 25 to 30 percent of identified sexual abuse of girls.¹⁹

These statistics provide only an approximation of the numbers of sexual offenses committed by adolescents; reliance on reported cases probably leads to underestimation of the true incidence. Moreover, because of inconsistencies in definition, failure to include all sources of reports in some statistics, and reticence of victims and their families to report sexual offenses, exact numbers are impossible to calculate.²⁰

CHARACTERISTICS OF SEXUALLY ABUSIVE YOUTH

Research regarding sexually abusive youth has primarily focused on population characteristics and basic categorization. Initially, researchers conducted studies of demographic characteristics, psychological factors, levels of hostility, cognitive distortions, sexual and physical abuse histories, referring and previous offense history, and other delinquent behaviors to describe the population and define the problem.

CATEGORIZATION

Many research efforts have focused on identifying similarities and differences among juveniles who commit sexual offenses. One influential way to categorize adolescent offenders is to distinguish youth who molest younger children from those who assault others their age or older. Judith Becker, for example, identifies four types of offenders. Most offenders share characteristics from each category:

- The youth with a well-established deviant pattern of sexual arousal
- The antisocial youth whose sexual assaultive behavior is only one modality of exploiting others
- The adolescent with a psychiatric condition that compromises his or her ability to regulate and inhibit aggressive and sexual impulses
- The youth who lacks adequate social and interpersonal skills and, therefore, turns to younger children for sexual gratification and social interaction²¹

In 1986, O'Brien and Bera developed a separate typology of adolescent offenders consisting of seven distinct categories.²² Each category describes the offending behavior and considers motivational, psychological, and situational factors that contribute to it. The categories range from the younger adolescent who attempts to explore and experiment with developing sexual feelings to the adolescent who displays an acute psychotic disorder and has a history of psychological, family, and substance abuse problems that contribute to more aggressive sexual behavior.

Whereas adolescents who sexually offend were once considered a homogeneous group, these and other research efforts regarding this population indicate otherwise. Adequate assessment of each individual is needed to accurately plan for treatment and rehabilitation.²³ Once the different types of sexually abusive adolescent have been more clearly defined and categorized, researchers and clinicians can develop additional theories to explain sexually deviant

behavior and further assist in the development of treatment or rehabilitation options.

DEMOGRAPHIC CHARACTERISTICS OF OFFENDERS AND VICTIMS

The modal age of male adolescents referred for offense-specific treatment in a recent national sample was 14 years.²⁴ In earlier work, Groth, Longo, and McFadin had found the mean age of youth referred for the first time for a sexual offense to be 16.²⁵ In studies assessing offender characteristics, the mean age of the 305 offenders was 14.8.²⁶ Another study found a median age of 14.7 years in its sample of 221 sexually abusive adolescents.²⁷ Therefore, the average age of adolescents being identified for sexual offenses during the eighties and nineties appears to be 14 to 16 years. Today, it is not uncommon for significantly younger adolescents and even prepubescent children to be identified and referred for sexually abusive behavior.

Sexually abusive youth typically come from dysfunctional families. Often, these adolescents have experienced a history of abuse, both sexual and physical. Even more often, they have experienced neglect, loss of a parent, disruptions of care, or domestic violence. One study found that 11 percent of the young offenders had been sexually abused and that 16 percent had been physically abused.²⁸ Another study, which included sexually abusive youth who had been abused, found that 19.8 percent had been sexually abused and that 54.2 percent had been physically abused.²⁹ Another study found that 62 percent of intrafamilial offenders had been sexually abused, with 53 percent of this group having been abused by relatives.³⁰ Fifty-one percent of extrafamilial offenders had been sexually abused, and about half of this group had been abused by a relative.³¹ Other researchers found that a similar percentage (42 percent) of adolescent sexual offenders were sexually abused prior to committing their offenses. The majority (66 percent) of the abusers of these adolescents were unrelated males; in 11 percent of the cases, the perpetrator was unknown.³² Physical abuse was reported by 47 percent of the adolescents in this study.³³ Evidence also indicates that adolescent molesters have been sexually victimized more often than adolescent rapists or non-sexual violent offenders and have experienced significantly higher levels of family violence.³⁴ Most recently, in prospective studies of child victims of abuse and neglect, researchers found that neglected children became sexual perpetrators more often than children who had been physically or sexually abused.³⁵ Children who had been physically abused or sexually abused were equally likely to perpetrate abuse as adolescents.

Adolescents are most likely to sexually assault younger children.³⁶ In a national sample of 1,616 male youths with sexual offenses, 63 percent had victims younger than 9 years of age.³⁷ The most frequently reported age was 6 years old. Although many had only one identified victim, some had many, so the average number of victims per offender was 7.7. Almost 26 percent of this sample had committed some sexually abusive behavior before the age of 12. Only 7.5 percent of this sample had previously been charged with a sexual offense. One review of the literature on sexual offenses committed by adolescents reported that between 46 percent and 66 percent had victims under 10 years old.³⁸ Another study reported that 61.6 percent had victims under the age of 12 and that 43.8 percent had victims under 6 years old.³⁹ Overall, the majority of victims of sexually abusive adolescents most often are between the ages of 6 and 12 years.⁴⁰

Most sexual assault victims are female. One group of researchers reported that 72 percent of abusers admitted having assaulted females, 18 percent admitted having assaulted males, and 10 percent admitted having abused both male and female victims.⁴¹ This is consistent with two other studies that found percentages of female victims to be 68 percent and 77 percent respectively.⁴² Victims who are as old as or older than their abusers are likely to be female. As the age of the victim decreases, the likelihood that the victim is male increases. Young sexual assault victims are predominantly male.⁴³ Another study of adolescent sexual offenders confirms this pattern. All but 3 of the 34 sexual offenders in this study who had male victims assaulted male children.⁴⁴

Most victims were known to the sexually abusive youth; in fact, victims are usually related to their abusers.⁴⁵ One study found that rape of younger children unknown to the sexually abusive adolescent was rare.⁴⁶ Forty percent of child victims of rape were relatives of the youth who perpetrated the abuse, and 57 percent of child victims of rape were acquaintances. The majority of victims of "indecent liberties," offenses such as fondling and sexual touching but not penetration, also were relatives and acquaintances of the sexually abusive adolescent.

The finding that most victims were known to the abusing youth presents a serious problem: not only are young children being victimized, but the cycle of sexual abuse also appears to have a very early onset. It is likely that some of these young sexual assault victims will continue the cycle by going on to commit sexual offenses as they get older. Therefore, this probability must be considered when developing treatment options and policy recommendations regarding sexually abusive youth.

TREATMENT OF SEXUALLY ABUSIVE YOUTH

Treatment programs only began to develop throughout the states in the mid-eighties. Prior to the eighties, adolescents who committed sexual offenses were often diagnosed as having an "adolescent adjustment reaction"⁴⁷ or were considered simply to be experimenting sexually in the course of entering puberty. Few states provided treatment programs for sexually abusive youth. One particular study surveyed state-operated treatment programs for adolescent sexual offenders and found that the earliest program began in 1979. Eighteen of the 30 programs participating in the study began in 1985. The majority of these programs imposed mandatory treatment, including sex education, group and individual counseling, victim empathy development, understanding of thinking errors that contributed to the sexual offenses, assertiveness training, and social skills acquisition training.⁴⁸

The number of treatment programs has increased significantly in the last 20 years, as has the research devoted to empirical exploration of the consequences of specific treatment modalities for sexually abusive youth. There are now believed to be over 800 treatment programs specifically designed for adolescents who sexually offend.⁴⁹

TREATMENT GOALS

The National Adolescent Perpetration Network (NAPN) is a network of more than 900 multidisciplinary professionals from programs across the country providing treatment and interventions to sexually abusive youth.⁵⁰ Articulating the consensus of the organization, the NAPN's 1993 *Revised Report* suggests that the goals of treatment plans for sexually abusive youth should include (1) identifying the sexual abuse cycle and patterns associated with abusive behavior; (2) facilitating the abuser's acceptance of responsibility for abusive behavior; (3) addressing offenders' own experiences of loss, trauma, and victimization; (4) helping the abuser develop empathy with his or her victim; (5) helping the abuser reduce instances of deviant sexual arousal; (6) identifying the abuser's cognitive distortions, irrational thinking, or "thinking errors"; and (7) encouraging the abuser to develop appropriate relationships with others.⁵¹

The majority of treatment programs employ cognitive-behavioral interventions to seek the long-term goals suggested by the NAPN report.⁵² The treatment goals of these programs include (1) reducing denial and increasing accountability, (2) increasing empathy for victims, (3) facilitating the attainment of insight into motives for sexual offenses, (4) assisting youth in understanding their

own victimization, (5) providing sex education, (6) decreasing the use of thinking errors that contributed to the sexual abuse, (7) developing appropriate interpersonal and social skills, (8) learning anger management skills, and (9) providing family therapy to address family dysfunction and facilitate the reintegration of youth who have been placed back into the family.⁵³

Joyce Lakey, a social worker who has treated adolescent male sex offenders, has recommended additional guidelines for the treatment of sexually abusive youth. She makes prevention of reoffending the primary goal of treatment. She emphasizes that, to reach this goal, youth in treatment must accept responsibility for their offenses and identify the events, thoughts, and feelings that were precursors to their sexually abusive behaviors. Deviant sexual fantasies and masturbatory practices need to be altered, and offenders must gain control over their impulses and learn to effectively manage their anger. As did others, Lakey emphasized the need for the adolescents to develop empathy for victims and become aware of how their actions can affect others.⁵⁴

Today, treatment is provided in many forms. Treatment programs offer group, family, and individual counseling, sex education, and psychological assessments.⁵⁵ Despite their different focuses, most programs for sexually abusive adolescents include the same three basic elements: a cognitive-behavioral framework, a relapse-prevention program, and psychosocial-educational model. The cognitive-behavioral approach is based on the belief that behavior results from experience and aims to restructure the erroneous thinking and deviant behaviors that ultimately led to the sexually abusive behaviors. A relapse-prevention program teaches self-management skills to assist the youth in identifying and interrupting the chain of events that may lead to a relapse of sexual offending. Basically, this program entails teaching the youth to recognize the specific factors that contributed to their sexually abusive behavior and, in response, to use newly taught skills to avoid repeating this behavior. The psychosocial-educational model uses peer groups, educational classes, and social skills development in treatment.⁵⁶ Percentages of more specific treatment modalities were obtained in one survey of treatment providers. Development of victim empathy (96 percent), anger management (94 percent), sex education (93 percent), social skills training (92 percent), and reduction of thinking errors (88 percent) were the most frequently implemented modalities.⁵⁷ These results vary somewhat from those of a previous study, in which sex education was used by 97 percent of respondents' programs, development of victim empathy by 93 percent, social skills training by 87 percent, anger management by

43 percent, and identification of thinking errors by 23 percent.⁵⁸

Most recently, innovative treatment programs have incorporated developmental, contextual, and ecological approaches. Programs have also become more aware of the need to increase the resources that can moderate the risks in an adolescent's life and functioning. Increasing personal competence and providing positive social experiences and a supportive environment at home, at school, and with peers have been shown to reduce the risk of delinquency and dysfunction for all youth. An evolving consensus has developed among professionals working with sexually abusive youth that a holistic and individualized treatment approach may improve outcomes for these young people.⁵⁹

ASSESSING TREATMENT EFFECTIVENESS: RISK FOR REOFFENSE

One method of assessing the effectiveness of treatment on sexually abusive youth is to review recidivism rates. This method is inadequate because reports of recidivism often reflect only those adolescents who are arrested for sexual offenses and then reported to a correctional agency or those who are followed on a short-term basis.⁶⁰ Such recidivism studies, however, can be used as a guide on which to base further research. They indicate trends and allow comparisons between types of sexually abusive youths. Recidivism studies also provide a general picture of what sexually abusive youth do following treatment.

Overall, recidivism rates of adolescent sexual offenders are low for repeat sexual offenses but can be significantly higher for nonsexual offenses.⁶¹ Recidivism rates for sexual offenses range from 3 to 16 percent,⁶² but 10 percent is believed to be the typical recidivism rate for sexually abusive youth.⁶³ However, recidivism rates for sexual offenses ranged from 8 to 37 percent in the seven studies discussed in Righthand and Welch's review of the literature on recidivism rates. Rates for nonsexual offenses ranged from 16 to 54 percent.⁶⁴ Alexander reviewed data from eight follow-up studies and found that the combined recidivism rate in the adolescent sexual offender population was 7.1 percent.⁶⁵ Worling and Curwen compared sexually abusive youth who had successfully completed treatment with those who had not entered treatment or had dropped out prematurely. In comparison with the untreated sample, they found a 72 percent reduction in sexual recidivism in the treated group along with a 41 percent reduction in nonsexual violence charges and a 59 percent reduction in nonviolence/nonsexual charges.⁶⁶

In some cases, however, methodological flaws and small sample sizes render estimates based on previous

research unreliable. Even so, providers tend to overpredict the risk in individual cases because they have not had valid tools for risk prediction. Further research that is empirically sound will enhance our ability to accurately determine the rate of reoffending in this young population.

OTHER DIFFERENCES BETWEEN ADULT SEX OFFENDERS AND SEXUALLY ABUSIVE YOUTH

During the eighties and early nineties, much of what had been learned about the assessment, treatment, and management of the adult sex offender was applied to interventions with sexually abusive youth.⁶⁷ Certainly, one of the predominant assumptions was "once a sex offender, always a sex offender." The data on recidivism cited above indicate that there is no evidence to support this assumption in the case of sexually abusive youth.⁶⁸ Some authors, having reviewed the data on recidivism, suggest that there appears to be a significant subgroup of sexually abusive adolescents who do not persist into adulthood.⁶⁹ Becker and Kaplan hypothesized the following three paths for a youth following a first sex offense: (1) a dead end (no further crimes), (2) a general delinquency path, and (3) a sexual-interest path involving continued sexual offending and, in some cases, the development of deviant sexual arousal patterns.⁷⁰

The Association for the Treatment of Sexual Abusers (ATSA), in a 2000 position paper, identified "important distinctions" between sexually abusive youth and adult sex offenders. These included a "significantly lower frequency of more extreme forms of sexual aggression, fantasy, and compulsivity among juveniles than adults."⁷¹ Psychosocial deficits such as low self-esteem, poor social skills, and pervasive inadequacy were cited as more likely explanations for sexually abusive behavior in juveniles in contrast to the paraphilic interests and psychopathic characteristics that are more common in adult offenders.⁷²

Moreover, according to Ryan, sexually abusive youth differ from their adult counterparts in the areas of growth and development. Whereas the personality characteristics and behaviors of adults are generally stable over time, children and adolescents are still learning about themselves and the world and are in the process of growing and developing.⁷³ The treatment of sexually abusive youth "can capitalize on their developmental immaturity.... [W]ith a combination of new growth and new experiences, many youth can return to health."⁷⁴ Clearly, the research cited above provides the basis for the growing consensus that sexually abusive youth are more amenable to treatment than adults and that recidivism rates can be significantly reduced by the successful completion of specialized treatment.⁷⁵

LEGAL ATTEMPTS TO ADDRESS YOUTH OFFENDING

In response to the rise in violent acts committed by children and youth, more than 45 states have made substantive changes to their criminal and juvenile laws. Most of these reforms—including juvenile court waivers, resulting in more juveniles being tried as adults; stricter sentencing guidelines; changes in the confidentiality of juvenile records; registration requirements; and community notification requirements⁷⁶—have focused on protecting the community by punishing and monitoring youth, rather than by rehabilitating them. Many cities and counties have adopted additional responses. For example, within the last two years in Colorado, many counties surrounding Denver have passed residential zoning ordinances that forbid more than one person on the sex offender registry from living in the same home in a residential zone.⁷⁷ These ordinances apply to foster homes, group homes, and other residential treatment facilities. As a result of these ordinances, specialized residential treatment facilities may be required to move or to exclude the youth they specialize in treating. In one case, a facility was forced to move from the neighborhood in which it had operated for more than 10 years even though there was no evidence that it had compromised community safety.

Related specifically to registration and community notification, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was enacted in 1994.⁷⁸ The Jacob Wetterling Act is a federal law passed after 11-year-old Jacob Wetterling was kidnapped in 1989. He has never been found. This act required all states to implement registration programs for sex offenders, including the identification and registration of lifelong sexual predators. Megan's Law, passed in 1996, amended the Jacob Wetterling Act to mandate that all states develop notification protocols to allow public access to information about sex offenders in the community.⁷⁹ Megan's Law was passed after 7-year-old Megan Kanka was raped and murdered by a twice-convicted child molester who was living in her neighborhood. Congress consulted neither professionals working in the area of sexual abuse nor organizations focused on the problem of sexual aggression (for example, ATSA, NAPN, the American Professional Society on the Abuse of Children) prior to the passage of these laws.⁸⁰ Had they done so, the laws might have more effectively addressed the unique problems of young abusers.⁸¹

As initially written, community notification laws were designed to ensure that community members would be informed of potentially dangerous sex offenders residing in their communities.⁸² The federal guidelines allow the

states discretion in their application of the notification requirements.⁸³ The state law enforcement agency designated to enforce the requirements is responsible for deciding what information is relevant and necessary to protect the public from a specific person who is required to register. This local responsibility permits flexibility in the categories of offenders who are subject to notification and in the scope, form, and content of the notification. For example, different states use different methods of notification, including media release, door-to-door distribution of notices, mailed or posted fliers, accessible registration lists, Internet registries, and community meetings.

Most states require notification for sexually violent offenses and sexual offenses involving a victim who is a minor. Typically, these states' registries do not differentiate between high- and low-risk offenders. Even though federal law does not require registration or notification regarding juveniles who commit sex offenses, adolescents adjudicated or convicted of a sexual offense are currently required to register in 28 states.⁸⁴

EFFECTIVENESS OF NOTIFICATION LAWS

Little research has been conducted to determine which approaches to community notification are most effective or whether notification is effective at all in reducing recidivism and increasing community safety.⁸⁵ The State of Washington conducted a 54-month study to measure the impact of community notification on recidivism and found that the difference in recidivism between the notification and comparison groups was not statistically significant.⁸⁶

Meanwhile, research has identified a number of problems with and "unintended consequences" of public notification.⁸⁷ These include its potential harm both to innocent persons who are not sexual abusers and to actual offenders identified under the law. For example, families have been harassed, offenders have been unable to find housing and have been the victims of vigilantism and harassment, and victims of sexually abusive behavior have been identified.⁸⁸ In the last case, an offender who abused a family member may be required to submit to comprehensive community notification, possibly revealing the victim's or family's identity and potentially resulting in further victimization.⁸⁹ Reports from New Jersey and Colorado indicate that offenders' family members and victims have reported fewer juvenile sex offenses and incest offenses to avoid the impact of public notification on their families.⁹⁰ One of the unintended consequences of notification laws in New Jersey has been a reluctance to prosecute juveniles for sex offenses so they will not be subjected to lifelong registration. Consequently, some sexually

abusive youth are not receiving needed specialized treatment. For the same reasons, social workers and child protection workers in several states are sometimes reluctant to report cases involving sexually abusive behavior by adolescents. These youth are instead “quietly and privately” referred to sex offender treatment specialists without legal intervention.⁹¹

These instances point out the difficult ethical dilemmas that treatment providers face. They may have a solid basis for believing that their clients do not constitute a threat to community safety while also believing that conforming to certain laws and policies will result in harm to their clients. In these cases, the ethical dilemma does not arise out of any tension between community safety and the welfare of the adolescent. Rather, the dilemma arises because the law’s *method* of protecting the community may unnecessarily harm the youth.

Legal and constitutional issues leave many of these laws and ordinances in a sort of legal limbo. Community notification laws have been challenged on the grounds that they violate basic constitutional guarantees of fair notice, due process, privacy, and equal protection as well as the prohibitions against *ex post facto* laws and double jeopardy.⁹² A Colorado county district court recently overturned a zoning ordinance similar to the one cited above⁹³ that forbids more than one person on the sex offender registry from living in the same home in a single residential zone. In this case, the foster mother of two sexually abusive children challenged it. The court held that the ordinance violated the constitutional rights to freedom of association and to personal choice in family matters. The court also held that the ordinance violated the federal Fair Housing Act.⁹⁴

PUBLIC POLICY AND WHAT WE KNOW ABOUT SEXUALLY ABUSIVE YOUTH: MOVING IN OPPOSITE DIRECTIONS

Public policy has continued to become increasingly punitive and less rehabilitative. As discussed in this article, however, evidence exists to contradict the old assumption “once a sex offender, always a sex offender” in the case of juvenile sexual offending. To forgo rehabilitation based on that faulty assumption is to waste an opportunity to add productive members to the community we are trying to protect. It is clear that sexually abusive youth are very heterogeneous in terms of their characteristics, reoffense risk, and treatment needs. Nevertheless, certain distinctions from adult offenders seem to hold true across the board. The most significant differences between young and adult

sex offenders, discussed above, support a growing research-based consensus that sexually abusive youth are more amenable to treatment and that successful completion of specialized treatment can significantly reduce recidivism among young offenders.

Much of the extreme public sentiment that has driven changes in the law reflects misinformation and ignorance about the different risks, treatment needs, and responses to treatment that exist with juvenile offenders. For example, when evaluating the issue of broad community notification, it is important to consider the impact that this notification may have on sexually abusive youth. In the research that John Hunter has been conducting to develop a typology of sexually abusive adolescents, he states that abusers of children “may be youths who lack the self-confidence and social skills to successfully attract and interpersonally engage same-age females.”⁹⁵ Furthermore, ATSA describes community notification involving juvenile offenders as “likely to stigmatize the adolescent, fostering peer rejection, isolation, increased anger, and consequences for the juvenile’s family.”⁹⁶ The peer rejection and isolation that could result from broad community notification might actually increase the risk of recidivism among sexually abusive youth whose impaired social and interpersonal skills were a contributing factor in turning to younger children for sexual gratification and social interaction.

Moreover, Hunter and Lexier posit that punitive policies could interfere with treatment. They suggest that the new legislative mandates “may make it more difficult to clinically discern whether clients’ denial is indicative of character pathology and thus of a poor treatment prognosis or of anxiety and realistic fear of the emotional and legal consequences associated with full disclosure.”⁹⁷ This concern is well founded.

RECOMMENDATIONS REGARDING ASSESSMENT, TREATMENT, AND MANAGEMENT OF SEXUALLY ABUSIVE YOUTH

Returning to the original question, how can the pendulum effect be eliminated so that professionals are able to implement empirically validated intervention, treatment, and management strategies while at the same time ensuring the safety of the community? Juvenile justice and treatment systems must protect the community, respect the rights and welfare of all children and adolescents, and support low- to moderate-risk youth to return to a more healthy and nonabusive developmental path.

We already know a great deal about accomplishing this complex task. Research, continually updated, should guide clinical and legal interventions with sexually abusive

youth. Responses regarding the intervention, treatment, and management of sexually abusive youth must be based on differential assessment of the individual characteristics of each youth. A continuum of services should be available in every community that provides the appropriate level of care based on the level of risk and treatment needs of the sexually abusive youth.⁹⁸ This continuum of services should include

- community-based treatment with specialized outpatient treatment and short-term psycho-educational programs
- home-based services while the youth is attending specialized outpatient treatment
- therapeutic foster-care homes that are trained to manage sexually abusive youth while they attend specialized outpatient treatment
- specialized group homes designed to manage sexually abusive youth while they attend specialized outpatient treatment
- residential treatment centers with varying degrees of security and specialized treatment programs for sexually abusive youth
- high-security youth corrections facilities with specialized treatment for sexually abusive youth
- posttreatment support systems
- supervised apartments

The continuum of services should provide for a consistent treatment orientation and philosophy and for effective communication among treatment providers as the youth moves to less restrictive levels of care. Treatment should be provided at the least restrictive setting possible based on consideration of community safety and the youth's individual treatment needs. Community safety should always take precedence in cases in which treatment needs and community safety conflict and cannot be reconciled.

The National Task Force on Juvenile Sexual Offending has pointed out the difficulties, such as insufficient facilities for placement, of implementing an ideal continuum of care.⁹⁹ In these cases, it is important that the lack of placement options be documented in order to justify the need for additional resources. It is also unrealistic to expect that all communities will be able to fund a comprehensive continuum of care for sexually abusive youth. In the absence of a comprehensive continuum of care, it is important to use flexibility and creativity in providing

treatment interventions in ways that meet the individual treatment needs of youth and at the same time ensure that community safety is not jeopardized.

As noted earlier, sexually abusive youth constitute a heterogeneous population. To enhance our ability to provide differential diagnosis and treatment, we must continue the encouraging research directed at creating a juvenile sexual offender typology and then linking offender classification with risk assessment and treatment needs.¹⁰⁰ This typology should attempt to differentiate clearly between those youth who have committed sex offenses exclusively and those who commit sexual abuse as a part of a larger pattern of both sexual and nonsexual delinquent behavior.¹⁰¹ The development of this typology supports the use of a more fine grained approach to treating young sex offenders than the "one-size-fits-all" approach still prevalent.¹⁰²

The Juvenile Sex Offender Assessment Protocol (J-SOAP),¹⁰³ developed by Robert Prentky and Sue Righthand, and the Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR),¹⁰⁴ developed by James Worling and Tracey Curwen, reflect promising recent gains in attempts to formulate standardized risk assessment instruments. To the degree that we can identify those youth who clearly present an ongoing danger to the community, management strategies can be designed to address this segment of sexually abusive youth.

In advocating for the effective management of sexually abusive youth, the Association for the Treatment of Sexual Abusers suggests the following in regard to community notification: "Until research has demonstrated the protective efficacy of notification with juveniles and explored the impact of notification on the youth, their families and the community, notification—if imposed at all for juveniles—should be done conscientiously, cautiously, and selectively."¹⁰⁵

ATSA recommends community notification in "only the most extreme cases" based on a risk assessment by a skilled and trained professional. Enhanced community monitoring and supervision provide better means of enhancing community safety than does notification.¹⁰⁶ Indeed, a previous study found that community notification did not have a significant impact on recidivism.¹⁰⁷

Enhanced community monitoring and supervision can be provided in an effective manner by using the external supervision component of the relapse prevention model. The relapse prevention model, although originally developed to address substance abuse problems, has increasingly been found effective in addressing other dysfunctional and abusive patterns of behavior, including sexually abusive behavior.¹⁰⁸ When the youth has successfully completed the internal self-management components of his

treatment, the external supervision component of relapse prevention focuses on the following goals:¹⁰⁹

- Enhancing the effectiveness of supervision by monitoring specific risk factors that are related to the youth's abusive behaviors
- Increasing the efficiency of supervision by creating an informed network of collateral contacts that assist the case manager in monitoring the youth's behavior. The youth is expected to inform all members of this community support and supervision team of his high-risk factors and of the cognitive, social, and problem-solving skills that he will utilize in order to reduce his risk of relapse
- Creating a collaborative relationship between the professionals providing transition and after-care services to the youth

This collaborative approach is further supported by the Center for Sex Offender Management:

To strengthen the offender's internal control and impose external controls on his behavior, offenders are best managed by multidisciplinary teams that include, at a minimum, supervising probation or parole agents and treatment providers who work together to individualize the supervision and treatment plans according to unique challenges faced by and posed by a specific offender. Research and experience indicates that victim and community safety is best achieved when parole and probation agents and treatment providers work with advocates for victims and community members in supervising individual offenders. Thus, collaboration is an important principle in sex offender management.¹¹⁰

It could be argued that this scheme represents a form of "notification" that serves the best interests of both the youth and the community.

Multisystemic therapy (MST) is an intensive family- and community-based treatment model that has demonstrated positive results in one study involving sexually abusive adolescents.¹¹¹ MST is designed to intervene in the multiple systems in which dysfunctional patterns of interactions may be evident, including family, peer group, and school. MST could be integrated into a collaborative multidisciplinary approach in order to further enhance community supervision and monitoring.

Robert Freeman-Longo has identified numerous instances in which reactive and rigid laws and policies resulted in unwarranted harm. For example, an 18-year-old male in Michigan was convicted of indecent exposure after engaging in a senior prank that involved "mooning" the school principal. He was required to register as a sex

offender for 25 years and subjected to community notification. In some states, even normative, consensual sexual behavior is illegal for juveniles and has resulted in charges being pressed, which can also trigger sex offender registration.¹¹² These cases and many others point out the need for some degree of judicial discretion in the disposition of cases involving sex offenses. Trained and well-qualified evaluators could assist judges and magistrates in the disposition of these cases.

Much of our public policy in response to sexually abusive behavior by adolescents is tertiary prevention—that is, it is designed to prevent the continuation of sexually abusive behavior by an identified perpetrator. Although these efforts are important and necessary, the best approach in addressing sexual abuse is primary prevention: to prevent it before it begins. Secondary prevention efforts designed to intervene with children known to be at increased risk to develop sexually abusive patterns of behavior should also receive more time, energy, and resources.¹¹³

Primary prevention involves a clear understanding of what the problem is. Without this understanding, preventive efforts are futile. One agency in Denver has made a significant impact in training treatment providers to recognize what constitutes normative sexual behavior in children and adolescents versus behavior that is coercive or developmentally inappropriate.¹¹⁴ These training workshops focused on assisting adults to recognize that sexual behavior alone is not deviant, but that the nature of the interaction between the parties involved will reflect whether sexual abuse is occurring. Factors to consider when evaluating whether abusive sexual behavior occurred include the presence or absence of coercion, consent, and equality between the parties. Adults working with children and adolescents need to become knowledgeable about normative sexual behavior and behavior that may constitute a red flag. Further training, not only of treatment providers but also of educators and parents, will assist in the area of primary prevention.

In addition to understanding what defines sexually problematic or abusive behaviors, treatment providers, educators, and other adults working with youth need to understand the factors that may increase the risk of sexually abusive behavior. There is well-documented evidence in the literature regarding the etiological antecedents in the early childhood of sexually abusive youth. This information needs to be communicated to those working with youth. Treatment should not only focus on understanding unhealthy and abusive sexual behavior, but it should also assist in the development of adequate coping responses to stressors experienced in the youth's environment. We

know that many sexually abusive adolescents come from families and environments that can be both chaotic and abusive. Additional efforts should be made to assist families to find help once the abuse is discovered as well as to help family members understand the difference between normative sexual play between children and abusive sexual behaviors.

To counter community fear and anger, community members must be educated about sexually abusive youth in the following areas:

- Differentiating sexually abusive youth from adults in terms of the characteristics of the offender, types of offenses, risk of reoffense, and response to treatment
- How ostracizing or harassing sexually abusive youth can stand in the way of successful reintegration into the community¹¹⁵
- Understanding that sexually abusive youth will and do live in their communities and that it is in their best interest to see these youth succeed.¹¹⁶ The ultimate goal of no new victims requires a supportive and caring community

These goals will not be easy to achieve. In the case of residential facilities, communities need to be educated about and experience programs that succeed without jeopardizing community safety. Residential programs should provide forums for education and dialogue with the surrounding neighborhood and be responsive to community concerns. One Colorado facility actually invited neighbors into the facility before it opened.

It is evident that adolescents commit a significant number of sexual assaults. Certainly there is a need for treatment professionals and policymakers to work together to develop effective and conscientious responses to this problem. Moreover, the broader issues regarding constitutional guarantees need to be addressed by the federal court system and the U.S. Supreme Court.¹¹⁷ Enhanced community safety and respect for the rights and welfare of all of our youth and families do not need to be mutually exclusive goals. It is in all of our best interests to eliminate the pendulum effect.

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 56. Knopp et al., *supra* note 55, at 191.
 57. *Id.*
 58. Sapp & Vaughn, *supra* note 48, at 135.
 59. Telephone interview with Gail Ryan, Director, Perpetration Prevention Program, Kempe Children's Ctr. (Mar. 9, 2001). For a discussion of more holistic and individualized treatment approaches, see *infra* notes 98–102 and accompanying text.
 60. James R. Worling & Tracey Curwen, *Adolescent Sex Offenders Recidivism: Success of Specialized Treatment and Implications for Risk Prediction*, 24 CHILD ABUSE & NEGLECT 965, 966 (2000).
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 75. Alexander, *supra* note 65; Worling & Curwen, *supra* note 60.
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 77. See, e.g., Jefferson County Zoning Resolution #00-073 (Feb. 1, 2000).
 78. Jacob Wetterling Crimes Against Children & Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 2038 (1994).
 79. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996).
 80. Freeman-Longo, *supra* note 6, at 2–3.
 81. For the ATSA's position on community notification and the effective legal management of sexually abusive youth, see *infra* text accompanying notes 89–92. *Child Maltreatment*, the journal of the American Professional Society on the Abuse of Children, devoted an entire issue to treatment of young sexual abusers. See *Interventions With Adolescent Sexual Abusers and Children With Sexual Behavior Problems*, 3 CHILD MALTREATMENT 314 (1998). In that issue, the editors express concern about cases in which children as young as 10 or 12 have been subjected to registration and notification laws. They advocate, to the extent possible, the identification of and effective

interventions with those youth who truly do exhibit risk of continuing their sexually abusive behavior into adulthood. They also argue, as noted earlier, that the rights and welfare of children should be considered before responding to their behavior. *See* Chaffin & Bonner, *supra* note 7, at 315–16.

82. COMMUNITY NOTIFICATION, *supra* note 6.

83. Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children & Sexually Violent Offender Registration Act, 64 FED. REG. 572, 581–82 (1999).

84. *Id.*

85. Freeman-Longo, *supra* note 6, at 4.

86. COMMUNITY NOTIFICATION, *supra* note 6.

87. Freeman-Longo, *supra* note 6, at 4; COMMUNITY NOTIFICATION, *supra* note 6.

88. Freeman-Longo, *supra* note 6, at 3; COMMUNITY NOTIFICATION, *supra* note 6.

89. Ass'n for the Treatment of Sexual Abusers (ATSA), Community Notification Position Statement (Nov. 1996), at www.atsa.com/ppnotify.html [hereinafter Position Statement].

90. Freeman-Longo, *supra* note 6, at 15.

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92. Position Statement, *supra* note 89, at 2.

93. *See* Jefferson County Zoning Resolution #00-073 (Feb. 1, 2000); *see also supra* text accompanying notes 76–77 (discussing state law responses to increase in juvenile offending).

94. *See* George Lane & Stacie Oulton, *Sex Offender Rule Loses in Court*, DENVER POST, Mar. 20, 2001, at B-1.

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99. *Revised Report*, *supra* note 8, at 32–33.

100. ATSA, *supra* note 71, at 2.

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106. *Id.*

107. *See* COMMUNITY NOTIFICATION, *supra* note 6 (discussing study of the impact of Washington state's notification law).

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110. CTR. FOR SEX OFFENDER MGMT., *WHY DO WE NEED TO TALK ABOUT MANAGING SEX OFFENDERS IN COMMUNITIES?*, at www.csom.org/prevedu/education.html#.

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113. Gail Ryan, *Perpetration Prevention: Primary and Secondary*, in *JUVENILE SEXUAL OFFENDING*, *supra* note 4, at 434.

114. Ryan, *supra* note 7, at 29.

115. CTR. FOR SEX OFFENDER MGMT., *HOW CAN CITIZENS HELP SUPPORT THE MANAGEMENT OF SEX OFFENDERS IN COMMUNITIES?*, at www.csom.org/prevedu/education.html#.

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Change-Focused Youth Work

The Critical Ingredients of Positive Behavior Change

The basic mission of working with challenging adolescents is to induce positive behavior change. This mission has two levels. First, agency and court personnel work to secure the compliance of adolescents with the rules and requirements of the law and of their respective programs. This first level generally focuses on promoting lawful behavior, consistent attendance at school, family stability, and abstinence from illicit drugs and alcohol. Progressive, more ambitious agency staff strive for a second level of change. Their programs move beyond compliance to seek sustained and autonomous behavior change, facilitated by empowerment and personal “growth,” but they do not always receive appropriate support.

Nationally there is public debate on the relative effectiveness of punitive, supervisory, and rehabilitative approaches in modifying delinquent behavior. Public policy has increasingly focused on punishment and monitoring of young offenders, at the expense of treatment. At the same time as this debate and policy shift were occurring, the American Psychological Association (APA) supported a research initiative that assembled the world’s leading outcome researchers to review 40 years of psychotherapy outcomes and detail the subsequent implications for direct practice. The initial findings of this research offer relief and encouragement to practitioners of remedial work with challenging adolescents: treatment *is* effective in helping human problems. As the authors of the study, Mark Hubble, Barry Duncan, and Scott Miller, observe in the introduction to their anthology on the effective catalysts of positive behavior change: “Study after study, meta-analysis, and scholarly reviews have legitimized psychologically-based or informed interventions. Regarding at least its general efficacy, few believe that therapy needs to be put to the test any longer.”¹

Ted Asay and Michael Lambert, commenting on previous studies, report, “These reviews leave little doubt. Therapy is effective. Treated patients fare much better than the untreated.”² Asay and Lambert cite additional findings about therapy that encourage the rehabilitative efforts of adolescent work; data suggest that the road to improvement is not long. After as few as eight to ten sessions, 50 percent of clients showed clinically significant change; 75 percent of clients significantly improved with six months of weekly treatment.³

Nevertheless, treatment and rehabilitation efforts are under close scrutiny and scorned by many. Gordon Bazemore and Mark Umbreit, developers of the restorative justice model, explain this scorn: “[I]t is difficult to convince most citizens that juvenile justice treatment programs provide anything other than benefits to offenders (e.g., services, recreational activities) while asking them for little or nothing in return.”⁴

The debate has in fact been worthwhile in the development of treatment approaches. As Robert Coates reports, “The debate has had its impact upon practice, forcing practitioners to be even more thoughtful in developing intervention strategies.... The debate about the value of rehabilitation has had considerable positive effects on rehabilitation efforts. More attention is being directed at how caseworkers and others can have positive impact on the client and on the client’s social network.”⁵



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This article focuses on improving the effectiveness of the therapeutic approach in inducing positive behavior change in youth. It discusses new information gained from an extensive meta-analysis that reviewed 40 years of therapy outcome studies. This important research sought to identify the ingredients of positive behavior change. The study shows that, although treatment has been found effective, no single approach or theory among the more than 400 recognized therapy models has proved to be reliably better than any other. Regardless of many claims made, there are no clear “winners.” The research postulates that the effective aspects of treatment are transtheoretical—that is, that any model’s effectiveness is due to factors that are common to all therapies. The article discusses these “four common factors”—client factors, relationship factors, hope and expectancy, and model and technique.

In applying this information to work with adolescents, the article points to research-informed strategies—including the strength-based approach—that can translate some of

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therapy's complex practices into commonsensical and usable methods for educators, community youth staff, and juvenile court personnel. The goal of the article is to increase the use of the therapeutic approach by all who participate in adolescent work. ■

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Although the APA research examined psychotherapy outcomes, its findings also are critically important to the treatment initiatives of remedial youth work. Regarding this research, John J. Murphy, a proponent of strength-based strategies in the field of education, states: "[T]he empirical evidence ... has profound implications for the manner in which practitioners approach clients of any age and in any setting."⁶

COMMON FACTORS

Having concluded that treatment is effective, the APA study made a second finding that is at least equally significant: None of the numerous treatment models studied has proven to be reliably better than any other.⁷ Barry Duncan and Scott Miller report: "Despite the fortunes spent on weekend workshops selling the latest fashion, the competition among the more than 250 therapeutic schools amounts to little more than the competition among aspirin, Advil, and Tylenol. All of them relieve pain and work better than no treatment at all. None stands head and shoulders above the rest."⁸ This conclusion has been repeatedly upheld in subsequent studies.⁹

If no theory or model can claim that it is better than the others, then what accounts for the overall efficacy of treatment? Researchers, including Michael Lambert and Mark Hubble, sifted back through four decades of outcome data to postulate that the beneficial effects of treatment largely result from processes *shared* by the various models and their recommended techniques.¹⁰ Simply put, similarities rather than differences in the various models seem to be responsible for change. Each of the varied treatment models aids change by accessing certain common factors that, when present, have curative powers. Lambert concluded from extensive research data that there were four of these common factors:¹¹

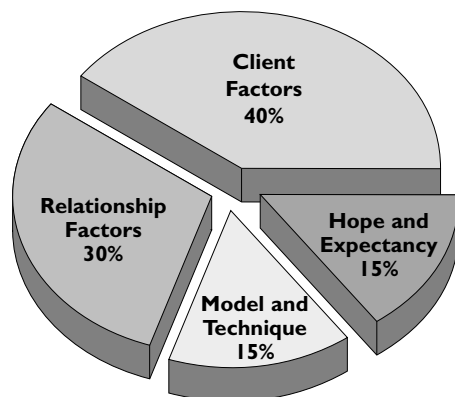
- Client factors—the client's preexisting assets and challenges
- Relationship factors—the connection between client and staff
- Hope and expectancy—the client's expectation that therapeutic work will lead to positive change
- Model/technique—staff procedures, techniques, and beliefs

These factors that raise the effectiveness of treatment are *transstheoretical*—that is, all of the various treatment theories and approaches recognize their importance to some degree. Without intentionally focusing on them, all therapies seem to be more effective when they promote these common factors in their own unique ways.

Hubble, Duncan, and Miller speak to this important research finding:

In 1992, Brigham Young University's Michael Lambert proposed four therapeutic factors ... as the principal elements accounting for improvement in clients. Although not derived from strict statistical analysis, he wrote that they embody what empirical studies suggest about psychotherapy outcome. Lambert added that the research base for this interpretation for the factors was extensive; spanned decades; dealt with a large number of adult disorders and a variety of research designs, including naturalistic observations, epidemiological studies, comparative clinical trials, and experimental analogues.¹²

Hubble, Duncan, and Miller also drew upon Lambert's earlier work that rated some factors as more influential in changing behavior than others and ascribed a weighting scale to them. Lambert then ranked and prioritized the common factors according to their amount of influence on positive behavior change. The figure on page 61 depicts the four factors and their percentage contribution to positive change (100 percent represents total positive behavior change).

The Four Common Factors in Positive Behavior Change

SOURCE: M. J. Lambert, *Psychotherapy Outcome Research: Implications for Integrative and Eclectic Therapists*, in *HANDBOOK OF PSYCHOTHERAPY INTEGRATION* (John C. Norcross & Marvin R. Goldfried eds., Basic Books 1992).

CLIENT FACTORS

Client factors—not what youth and their families receive from staff, but what they possess as they enter the doors of our agencies—are the largest contributor to behavior change (40 percent). Client factors are both internal (optimism, skills, interests, social proclivities, aspirations, past success) and external (a helpful uncle, employment, membership in a faith community). Client factors also include fortuitous events that are controlled by neither the agency nor the youth—an abusing boyfriend moving out and away from the family, a chance school experience instilling renewed interest, a lesson “hitting home” as, for example, when a close friend or peer is seriously harmed by illicit drug use.

In other words, client factors include what youth bring to treatment programs and, just as important, what influences their lives outside the programs. This coin of behavior change is two-sided: one side involves the youth’s preexisting abilities, while the other side includes the youth’s involvement and participation in agency programming.

Involvement and participation are difficult to encourage. The difficulties lie both in building trust and finding effective ways to encourage adolescents to participate and in persuading staff to build interest and program appeal by breaking from the norm of dictating behavior and allowing youth increased choice and autonomy.

Many treatment programs are not individualized (regardless of their claims), nor do they offer true choices in programming. Furthermore, staff often resist youth

input. The views and opinions of adolescents can be markedly different from those of adults; consequently, adults may be resistant to seeking input from teens or to integrating a teen’s ideas about “what works” in his or her own treatment or, more broadly, about revisions in programming. It’s important for staff to recognize that acknowledging and accepting the beliefs and positions of adolescents is not the same as agreeing with or acquiescing in them.

Such an approach affirms the youth’s role in his or her treatment. Indeed, the common-factors research confirmed just this point, that the youth and his or her family, not the staff or providers, make treatment work. This does not mean that program structure or staff efforts are useless. It does, however, suggest that the instruction in remedial interventions offered by universities and training institutes may not be worthy of the robust attention we give them. Duncan and Miller advise: “The data points to the inevitable conclusion that the ‘engine’ of change is the client. The implication is that perhaps we should spend our years more wisely gaining experience [in] ways to employ the client in the process of change.”¹³

The Strengths Model

The strength-based model of youth work draws primarily upon client factors as a foundation for treatment, though it incorporates all four common factors to some degree. Recent efforts have applied this approach to juvenile delinquency and juvenile drug courts.¹⁴ Juvenile court workers have favored a strength-based approach because it uncovers and makes use of adolescents’ preexisting abilities.¹⁵ It is drawn from numerous positive models of potential, optimism, and possibility, including the strengths perspective,¹⁶ resilience,¹⁷ optimism,¹⁸ hardiness,¹⁹ asset-building,²⁰ empowerment,²¹ motivational interviewing,²² and solution-focused approaches.²³ The goal of strength-based practice is to activate an individual’s sense of responsibility for his or her actions, thereby altering his or her delinquent behavior. This practice approach does so by applying the science of positive behavior change. Interest and efforts are aimed at *initiating* positive movements, beginning the “first steps” necessary to change the trajectory of an individual young person’s life. The approach is not so much a collection of techniques to apply *on* someone as it is the efforts or goals we would strive to achieve *with* another. It focuses more on what the youth has rather than what he or she does not have. It considers the successes of youth and families rather than what they have failed at. The approach works to resolve presenting problems but does so through a focus on potential rather than pathology.

The strengths approach also encourages a balanced view of the individual's weaknesses and strengths and of efforts to raise motivation—necessary components for building solutions to presenting problems. Many are drawn to strength-based work because it not only boosts the resolution of presenting problems but it also nurtures what is best about an individual. Promoting the good life for an individual involves more than removing what is wrong. Martin Seligman, advocating a revival of a strength-based approach in psychology, calls on us to “learn how to build the qualities that help individuals and communities, not just to endure and survive, but also to flourish.”²⁴ The strength-based model, because it focuses on client factors, facilitates this process.

RELATIONSHIP FACTORS

Relationship factors make up about 30 percent of the contribution to change. *Relationship* means the strength of the alliance that develops between youth and staff. Relationship factors include perceived empathy, acceptance, warmth, trust, and self-expression.

Perceived Empathy

Communication studies consistently report that verbal communication is prone to error; the listener does not always receive the message in full.²⁵ Parts of the intended message are either not adequately articulated by the speaker or not correctly understood by the listener. A dialogue between two people resembles listening to a radio that crackles from weak reception: even if one listens closely, much of the transmission will be garbled or missing.

Perceived empathy involves youths' belief that they are listened to and understood. Relationships develop as staff become committed to understanding their clients and make consistent efforts toward “filling in the gaps” of communication. An important technique for improving communication is “reflective listening,” in which the staff member constantly checks the accuracy of what he or she believes the youth has said. My experience in training youth staff is that most personnel, regardless of whether they have previously been trained in reflective listening, seldom, if ever, use this technique. It is simple to understand but tough to use consistently and correctly.

Evidence also shows that “accurate empathy” is a condition of behavior change. William Miller and Stephen Rollnick state: “Accurate empathy involves skillful reflective listening that clarifies and amplifies the client's own experiencing and meaning, without imposing the therapist's own material. Accurate empathy has been found to promote therapeutic change in general and recovery from addictive behaviors in particular.”²⁶

Compliance can occur without the adolescent feeling understood, *but real change cannot.*

Perceived empathy is a term that corrects a previous bias in research. Most outcome studies measured empathy and the strength of the staff-client alliance through counselor (adult) reports. But in fact it is the youth-participant's assessment of the alliance that matters more. As Karen Tallman and Arthur Bohart report, “[f]indings abound that the client's perceptions of the relationship or alliance, more so than the counselor's, correlate more highly with therapeutic outcome.”²⁷ Further research by Alexandra Bachelor found that the client's perception of the alliance is a stronger predictor of outcome than the counselor's view.²⁸

The tendency to privilege staff evaluations over the adolescent's perceptions is rampant in agency youth work. For example, once when I was providing onsite technical assistance to an established juvenile drug court, I had a chance encounter with a group of juvenile probationers who were milling outside the court building awaiting their weekly progress review hearings. I introduced myself and began an impromptu conversation, eventually asking them to offer their personal evaluations of their drug court program. Their responses were both forthcoming and enthusiastic. Encouraged, I brought this information to the next staff meeting, only to find that the program staff members immediately dismissed all this important information because of its source.

Acceptance

Acceptance relates to the extent that any treatment program fits into the family's and adolescent's worldview and beliefs. Alan Kazdin found that the client's ability to accept a particular procedure is a major determinant of its use and ultimate success.²⁹

More recent studies found a greater acceptance of treatment and better compliance with interventions when rationales were congruent with clients' perceptions of themselves, the target problems, and the clients' ideas for changing their lives.³⁰

An acid test for any youth program lies in the answer to the question, To what extent are interventions predetermined? That is, are adolescents turned into passive recipients of prepackaged programming, or is programming flexible enough that it can be customized to the individual? Progressive youth programs make an effort to instill participation and inclusion of youth. In workshops on strength-based programming, many staff are surprised to learn that there is more leeway to alter and adapt programming than they first believed. The results of this effort can be remarkable. As John Murphy notes, “The notion of acceptability reflects good common sense: people tend to do what makes sense to them and what

they believe will work. It is hardly profound to suggest that the best way to determine what is appealing and feasible for people is to ask them.³¹

It is in this “asking” that profound differences in efficacy are realized. Solution-focused therapists Ben Furman and Tapani Ahola report that the relationship is developed and the alliance strengthened as youth and their families are allowed to have a say in problem definition and goal setting and in deciding what methods or tasks will be used to reach those goals.³²

There are extenuating circumstances to consider when one allows youth participation at this advanced level. In the mandated arena of some agency treatment programs, because of court referrals to them, participation is not “voluntary” (at least not in the same manner and context as outpatient therapy or counseling). These types of programs may impose a goal of “abstinence from alcohol and other drugs” on an adolescent. This goal will remain in force whether the participant agrees to it or not. However, we can still seek the youth’s thoughts and possible ideas for *his or her individualized methods* to achieve that goal. A recent article on strength-based practice argues that programs need to stay close to the youth’s and family’s definition of the problem (and their own unique methods), as they are the ones who will be asked to make the necessary changes.³³ C.R. Snyder, Scott Michael, and Jennifer Cheavens echo this idea, arguing that staff must listen closely to program youth. If staff do not listen to youth, they may establish therapeutic goals “that are more for the helper than for the helped.”³⁴

Warmth/Self-Expression

These two conditions for building relationships are intertwined. Extending warmth (attention, concern, and interest) occurs in tandem with allowing a youth self-expression. All staff must understand and embrace a long-held credo from the counseling field: Listening is curative. As Karen Tallman and Arthur Bohart report, “Research strongly suggests that what clients find helpful in therapy has little to do with the techniques that therapists find so important. The most helpful factor [is] having a time and a place to focus on themselves and talk.”³⁵ Others have found that giving traumatized individuals a chance to “tell their story” and engage in “account making” is a pathway to healing. A rather obscure but interesting earlier study showed that paying juvenile delinquents to talk into a tape recorder about their problems and experiences led to meaningful improvements in their behavior, including fewer arrests.³⁶

It would be wise for staff to critically examine how they try to build alliances with teenagers, both programmatically and individually, as they interact with them. Duncan

and Miller state emphatically, “Clients’ favorable ratings of the alliance are the best predictors of success—more predictive than diagnosis, approach, counselor or any other variable.”³⁷ It is worth noting that when both client factors (40 percent) and relationship factors (30 percent) are considered, up to 70 percent of positive behavior change has been accounted for.

HOPE AND EXPECTANCY

The next contributor to change (15 percent) is hope and expectancy—that is, the youth’s hope and expectancy that change will occur as a result of receiving community services. In actual practice, staff can encourage hope and expectancy by (1) conveying an attitude of hope without minimizing the problems and pain that accompany the youth’s situation; (2) turning the focus of treatment toward the present and future instead of the past; and (3) instilling a sense of empowerment and possibility to counteract the demoralization and passive resignation often found in adolescents who have persistent problems.

Conveying an Attitude of Hope Without Minimizing the Problem

Instilling hope has more complexity than simple encouragement (“You can do it”). Challenging youth need to believe that taking part in programming will improve their situation. Therefore, during the orientation phase of programming, many successful programs provide convincing testimonials of success and program efficacy occurring early in services. Snyder, Michael, and Cheavens relate that the adolescent must sense that the assigned staff member, working in that particular setting, has helped others reach their goals.³⁸

Troubled youth and their families often feel “stuck” in problem states. This feeling can be based partly on negative attitudes that allow no escape from problems (i.e., “I can’t change,” “You don’t understand—I *have* to hang out with my using buddies”). Strength-based work can instill hope while also acknowledging problems and pain. One strength-based strategy encourages staff to allow the adolescent’s problem to coexist with the emerging solution. In many instances within remedial youth work (and throughout the helping professions), there is a mindset to conquer, eliminate, or “kill” the problem. Oftentimes it is helpful and much more expedient to *allow the problem to remain*, to coexist with an emerging solution or healthy behavior that is being developed.

Bill O’Hanlon, a strength-based author and therapist, describes a helpful metaphor that originated in an old vaudeville routine: Two ingratiating waiters approaching the narrow kitchen door repeatedly defer to the other.

"After you," one offers. "No, please, after you," the other replies. Finally, at the same moment, they both decide to act and turn into the door simultaneously, only to wedge their shoulders in the small opening. O'Hanlon advises adult staff to consider the idea of "creating a second door" and allowing conflicting feelings and conditions to coexist.³⁹ A youth can feel scared and hopeless about his ability to begin abstinence from drugs and yet marshal the confidence to avoid using "just for today." A painfully shy young woman can simultaneously fear the crowded gathering and find the courage to join it. Trying to convince her that "there's no need to be shy" or that "there's nothing to be afraid of" is an uphill climb with dubious results. The conflicting dichotomies of continuing drug use or movements toward sobriety, hesitancy or action, fear or confidence, rather than being framed as an "either/or" choice, can coexist as "both/and." Staff need not eliminate the negative to instill the positive.

This is a not just a meaningless play on words. There is a popular slogan among practitioners of strength-based approaches: "The person is not the problem; the problem is the problem." Strength-based practice takes that idea a step further to assert that the problem is actually the person's *relationship* to the problem.

Becoming Future-Focused

Focusing on past failures usually results in demoralization and resignation. Hope is future-focused. When a youth worker keeps remedial efforts focused on the future, positive outcomes are enhanced.⁴⁰ The "problem" is generally found in the present and its roots in the past. The "solution," however, is generally started in the present with efforts aimed at the *future*.

Furman and Ahola report that the *single most useful thing* youth workers can do in the time they spend with troubled adolescents is to get the kids to look ahead and describe what is happening when the problem is envisioned as "solved" or is not considered to be as bad.⁴¹ These European therapists, using strength-based practice, believe that if goals are to be immediately helpful and meaningful to the adolescent and family, they must first be conceived and constructed through visions of a "problem-free future." It is through this looking ahead, a "harnessing" of the future, that goals for present actions (first steps) become known.⁴²

An important way to do this is by employing "miracle," or outcome, questions:⁴³ "What if you go to sleep tonight and a miracle happens and the problems that brought you into this mess are *solved*? But, because you are asleep, you don't know the miracle happened. When you wake up tomorrow, what would you notice as you go

about your day that tells you a miracle has happened and things are different?" "What else?" "Imagine, for a moment, that we are now six months or more in the future, after we have worked together and the problems that brought you to our agency have been solved. What will be different in your life, six months from now, that will tell you the problem is solved?" "What else?"

The miracle question is the hallmark of the solution-focused therapy model. A "miracle" in this context is simply the present or future without the problem. It is used to orient the teen and family toward their desired outcome by helping them construct a different future. Helping an adolescent and family establish goals needs to be preceded by an understanding of what they want to happen. When (if) workers find no past successes to build on, they can help the family form a different future by imagining a "miracle." As many youth workers have experienced, it often is difficult to stop a family from "problem talk" and to start the search for solutions. The miracle question is designed to allow the adolescent and family to "put down" the problem and begin to look at what will occur when the problem is not present. If youth are prompted to imagine what a positive future might look like for themselves, they automatically begin to view their present difficulties as transitory. The miracle question is used to identify the youth's goals to reach program completion or other successful criteria.

The miracle question is followed by other questions that shape the evolving description into small, specific behavioral goals: "What will be the smallest sign that this (outcome) is happening?" "When you are no longer (skipping school, breaking the law, etc.), what will you be doing instead?" "What will be the first sign this is happening?" "What do you know about (yourself, your family, your past) that tells you this could happen for you?"

Empowerment and Possibility

Youth programs encourage hope and expectancy when they help adolescents establish goals and act to realize them.

All programs will list large (macro) outcomes or final goals to reach graduation and program completion. Similarly, most remedial plans are established for large issues and long-standing presenting complaints. These plans usually list large problem behaviors to be resolved by a specified date set many months into the future. The problem is that these goals are too big. Instead, day-to-day goal setting should "think small." Goals should be shaped into small steps. According to the "one-week rule" of strength-based practice, a worker and an adolescent should never mutually establish any goal that cannot be reached in the next seven days. Some youth staff go beyond this and use

a “48-hour rule” to make a goal seem more obtainable and to begin behavior change. Short time frames propel “first steps” and start small incremental movements to change. “What can you do after you get home today? by tomorrow afternoon?”

Snyder, Michael, and Cheavens call for interventions to first induce “personal-agency thinking” (e.g., “I *can* do it”) and then set mutual, concrete, and obtainable goals to enhance “pathways thinking” (e.g., “here’s *how* I do it”).⁴⁴ Youth agencies would do well to focus staff retreats on these two conditions alone in revising their programs and practices. They could easily spend a day examining where and how their programming enhances agency and pathways thinking and then vigilantly work to increase those conditions. These two conditions help turn the wheel of behavior change.

Psychologists Stephen Ilardi and Edward Craighead found that a large portion of client improvement occurs in the first three to four weeks of treatment. Interestingly, this improvement happens before clients learn the methods or strategies for change that programs stand ready to teach. How could change begin to occur before program direction, teaching, and support can be delivered? These practitioners note that the instillation of hope and expectancy of change is not simply a precondition for change; it *is* change.⁴⁵

MODEL AND TECHNIQUE

Another small contributor to change (15 percent) is assigned to model and technique: staff procedures, techniques, and beliefs, broadly defined as our therapeutic structure and healing rituals. It is humbling to consider that a majority of what universities and institutes teach and expound constitutes one of the smallest contributions to change. Furthermore, programs and techniques are deemed helpful only to the extent that they promote the other common factors.

Nevertheless, the strategies and methods that staff provide to youth are helpful, yet for reasons that are contrary to popular beliefs. Tallman and Bohart explain:

Clients utilize and tailor what each approach provides to address their problems. Even *if* different techniques have different specific effects, clients take these effects, individualize them to their specific purposes, and use them. ... In short, what turns out to be most important is how each client uses the device or method, more than the device or method itself. Clients then are the “magicians” with the special healing powers. [Staff] set the stage and serve as assistants who provide the conditions under which this magic can operate. They do not provide the

magic, although they may provide means for mobilizing, channeling, and focusing the client’s magic.⁴⁶

It appears that, rather than mediating change directly, techniques used by staff simply activate the natural healing propensity of adolescents. Therefore, it is important to use techniques and develop requirements that facilitate adolescents’ progression in this process.

PRACTICE IMPLICATIONS

Certain issues and opportunities arise in revising programs to incorporate strength-based techniques:

1. All youth staff can become change-focused.

Duncan and Miller list several interesting research findings regarding youth staff in direct service roles:⁴⁷

- Andrew Christensen and Neil Jacobson, in their evaluation of counselor effectiveness with clients, found no differences between professionals and paraprofessionals or between more and less experienced therapists.⁴⁸
- Hans Strupp and Suzanne Hadley found that experienced therapists were no more helpful than a group of untrained college professors.⁴⁹
- Jacobson (1995) determined that novice graduate students were more effective at couples’ therapy than trained professionals.⁵⁰

It may be surprising to learn that there is little or no difference in effectiveness regardless of training and experience. But these research findings are not so startling or disheartening when one considers that therapy clients (and especially challenging youth) are not passive recipients of clinical expertise but rather active and generative participants in the process of change. Rather than diminishing the importance of experience or credentials of expertise, these findings show that novices and paraprofessionals were somehow better able (in these instances) than experienced professionals to activate the all-important common factors.

Indeed, the findings offer important support to the youth worker. Knowledge of the four common factors penetrates the mystique surrounding “therapy” and illuminates what is truly “therapeutic”: positive behavior change. By applying strength-based techniques in their work, more staff members can begin to build the all-important alliance and work to enhance these factors of change with youth and their families. Because of the complexity of many presenting problems, professional therapy and therapeutic treatment will always be needed as adjunct services to youth programs. All professionals

working with adolescents, however, can share those techniques that most effectively induce positive behavior change.

A further issue with becoming changed-focused involves our field's use of mental health diagnoses. Although a diagnosis can be very helpful in providing information and direction for subsequent treatment efforts, Duncan and Miller note one problem that can occur from the rendering of diagnosis. To establish a diagnosis is akin to taking a "snapshot"—a moment-in-time photograph. The problem is that a diagnosis conveys the idea that conditions and behaviors described by the diagnosis are static and constant, even permanent. Strength-based practitioners, however, offer a different—and far more productive—view of the reported problems:

The magnitude, severity, and frequency of problems are in flux, constantly changing. In this regard, clients will report better and worse days, times free of symptoms, and moments when their problems seem to get the best of them. With or without prompting, they can describe these changes—the ebb and flow of the problem's presence and ascendancy in their daily affairs. From this standpoint, it might be said that change itself is a powerful client factor, affecting the lives of clients before, during, and after (treatment).⁵¹

Viewing adolescents through a change-focused lens, listening and remaining alert to how they are changing, will help staff recognize their resources and the strengths that are enabling and supporting their progress.⁵² Staff can utilize two lines of inquiry to help identify this change. First, questions can be asked about "pretreatment change": "After serious trouble has occurred, many people notice good changes have already started before their first appointment here at this agency. What changes have you noticed in your situation? How is this different from before? How did you get these changes to happen?"⁵³

Numerous studies have found that a majority of clients make significant changes in their problem patterns in the time between scheduling their initial appointment and actually entering treatment.⁵⁴ Just experiencing some type of start or initiation of change can begin positive movement. Single-subject research recorded similar responses from youth and families newly assigned to my juvenile probation caseload.⁵⁵ The important point is that teens and families rarely report these changes spontaneously. Staff must ask questions about these changes or they remain hidden. Many believe that if problems are ignored, they seem to move underground, where they grow and fester and return even stronger. However, when solutions are ignored, they simply fade away unnoticed and, more important, remain *unused*.

The second (and ongoing) line of inquiry identifies change that occurs between appointments or program sessions. When change is found, we need to investigate and amplify: "How did you do this?" "How did you know that would work?" "How did you manage to take this important step to turn things around?" "What does this say about you?" "What would you need to do to keep this going (do this again)?"⁵⁶

When sitting down with a youth during a scheduled report time, many staff will check on issues by using a preformed mental list of questions. These questions become routine: "Were there any violations of program rules this week?" "Have all urine drops been 'clean?'" "Are you in compliance with all program requirements?" "Have you missed any school this past week?" "Have you made all treatment sessions since our last meeting?" These questions are important, but they do not represent a full line of inquiry. When inquiries become routine, they narrow the investigation and bypass many other instances of change. Open-ended questions that search for positive changes should be asked as well.

2. Staff should share the "expert" role with the youth and family.

Adults have become accustomed to guiding and directing youth. Although dispensing advice and setting limits will always have a place in our work, the common-factors research suggests that we must share the lead with them if we want to improve treatment outcomes. Regarding this, several issues are worth noting:

First, as encouraging as this common-factors research is to some, it may be considered threatening to others. Treatment providers or other staff may feel their treatment experience and conventional roles are being called into question. A balance must be struck between the experience and expertise of the counselor and the inclusion of the common factors for effective service delivery. Professional expertise will still be required and in great demand for working with youth, but the strategies that professionals employ will make a big difference in whether they succeed. To be a committed student advocate of change requires a focus not on technique but on the client (i.e., the youth and his or her family) as the common denominator in behavior change. Duncan and Miller address this change of focus: "Models that help the therapist approach the client's goals differently, establish a better match with the client's world view, capitalize on chance events, or utilize environmental supports are likely to prove the most beneficial in resolving a treatment impasse."⁵⁷

Second, staff may be skeptical regarding the exact implications of the common-factors research. For example,

regarding sharing the expert role with challenging youth, staff may think that means they are to acquiesce to stated immature or illogical desires of the youth they work with. In fact, they should not. Any goals stated by the youth that are not interdependent for healthy relationships or that jeopardize health and safety (their own or others') should never be agreed to. Staff can understand without agreeing, however, and they can identify without acquiescing.

Adopting a strength-based approach means reconfiguring our notions of accountability. This second issue—sharing the expert role—involves a review of accountability. Quite simply, current work that favors the views of professional staff over those of the client serves to place too much responsibility for change on the shoulders of staff.

To provide a more thorough explanation of this approach requires first removing a commonly held misconception about strength-based practice. Some critics believe the ultimate goal of strength-based practice is naïvely centered on establishing a positive relationship. They also mistakenly assume that the worker is compelled to give the client Pollyannaish compliments, even in the face of the client's obvious wrongdoing and personal chaos—for example, telling a shoplifter that he is “skillful” or reframing drug dealing as demonstrating “fiscal competence.” Although it is true that a positive relationship and compliments have an important place in this approach, they are only important for their capacity to foster behavior change and help people rise above their difficulties. If complimenting clients to ensure a positive relationship is an end to itself, it becomes a narcissistic enterprise. Staff engaged in youth work must challenge adolescents to move beyond their difficulties and help them marshal strengths to meet those challenges.

Compare how both approaches regard accountability. The traditional or current problem-solving approaches entrenched in our field require staff to work hard at understanding the problem, to ascertain who is responsible, how the problem originated, and how it is maintained. Accountability is realized when an adolescent owns up to the wrong. Admission is paramount for the assumption of responsibility. Strength-based practice, on the other hand, does not assume that the ownership of guilt is somehow automatically curative.

Consider an idea forwarded by Don Trent Jacobs from the sports psychology field. When an athlete has performed poorly, the coach spends little time reviewing the error or fixing blame before beginning corrective work. In the sports model, coaches are discouraged from waiting for the athlete to verbally assume responsibility or to assume responsibility passively. Instead, they quickly

review the error and focus on encouraging behavior change. Accountability and responsibility for a negative performance are assumed when the athlete begins to change his or her performance.⁵⁸

Insoo Berg, co-founder of the solution-focused therapy model, has reported that the problem-focused model and its emphasis on moving the offender merely to “own up to the guilt” about the past does not hold the offender sufficiently responsible for change in the future. Moreover, too much time and energy are spent determining the causal relationship rather than expecting and demanding changes.⁵⁹ The strengths approach with challenging teens holds that accountability is realized through behavior change, not passive admission. From the beginning of contact, there is an expectation that the teen will *do something* about the immediate concern. Strength-based practice is based on the belief that starting “first steps” and initiating action are all-important.

When staff views are favored over those of clients, staff indirectly assume too much responsibility for change, which should rest instead with the client. For this reason, some strength-based agencies have the client, with assistance, write his or her own reports to the court. The client then continues this process by verbally delivering his or her progress summary directly to the judge during the court hearing. Ownership of the treatment plan (and, consequently, empowerment) is thereby increased.

Third, staff may be reluctant to invite more participation—to share the lead with a youth—if they believe their clients are not up to the task. Indeed, some youth may be troubled—and causing trouble to others—yet the vast majority are also capable and competent to begin and sustain needed changes. Dennis Saleebey states:

If there are genuinely evil people, beyond grace or hope, it is best not to make that assumption about any individual first. Even if we are to work with someone whose actions are beyond our capacity to understand or accept, we must ask ourselves if they have useful skills and behaviors, even motivations and aspirations that can be tapped in the service of change to a less-destructive way of life.⁶⁰

Regardless of its stated values, the juvenile justice field continues a steady diet of finding, diagnosing, and treating failure and pathology. But if practitioners believe that adolescents and family members have strengths, practitioners can then look for and find them to use in their work with their clients. Research cited by Anthony Maluccio found that workers consistently underestimated client strengths and had more negative perceptions of clients and their ability to change than the clients had of themselves.⁶¹ Strength-based work asks workers to forgo this pessimism

and allow an optimistic view. Larry Brendtro and Arlin Ness give a good description of this dichotomy:

[S]ome might argue that optimism about antisocial youth is itself a thinking error, a Pollyanna illusion that nasty kids are really little cherubs. However, pessimism is seldom useful and often leads to feelings of powerlessness, frustration, and depression. In contrast, optimism feeds a sense of efficacy and motivates coping and adaptive behavior, even in the face of difficult odds.⁶²

Forty years of motivational research have shown that an optimistic view pays off: if you expect that change will occur with your clients, your expectation of change will influence their behavior.⁶³ The worker's belief in the client's ability to change can be a significant determinant of treatment outcome. Indeed, Norman Cousins found that helping efforts are more effective when the worker believes in the client's capabilities and believes that the client can surmount the obstacles to positive behavior.⁶⁴ Believing in the client is all-important—it is the axis around which this model turns.

The reverse can also be true. Staff can approach an adolescent with negative expectations, expecting very little if not the worst. One on-site agency evaluation, which included a review of the orientation materials distributed to all prospective youth and families beginning the referral process, found 12 sanctions listed for breaking program rules and only 5 incentives for successful participation. The staff obviously expected that participants would break the rules and communicated that expectation to incoming youth. In fact, this was not the staff's real intent; they revised their materials to incorporate a more equal ratio of incentives and sanctions.

3. Treatment should not simply fix what is broken—it should nurture what is best.

When we incorporate the common-factors research and allow greater participation by the youth and family, they become catalysts for greater gains. Programs need to look beyond the reduction of delinquent behavior to facilitate aspirations, vocational interests, and hobbies *as identified by the youth* or through vocational assessments. Adolescent programs can provide new learning opportunities for youth, helping them find interest, fun, and peer camaraderie without illegal behavior and illicit drug use. Adjunct mentor programs, developed specifically for assisting youth programming, offer tremendous support along these lines.

Strength-based mentoring programs are now being developed along the lines of the trade guilds that operated in Europe in the Middle Ages, in which the youth entered into an apprenticeship that was mutually benefi-

cial to both master and apprentice. A current example of such a relationship might be the matching of a youth with computer interests to an adult who works with computers professionally. The key is matching the adult to the youth, giving consideration to the youth's vocational interests or life's passions. This change in mentoring model is occurring because many current mentoring relationships are inherently awkward—they end up not making sense to either the teen or the adult. Little thought is given to the suitability of a particular match; only the benefit to the youth of spending time with a responsible adult is considered. But because this arrangement is imposed on the youth, its impact on his or her life is inherently limited. In our drive to establish positive adult role-modeling relationships, we have paired teens to adults without a shared rationale that identifies a reciprocity of interests and benefits. A reciprocal mentoring model based on apprenticeship, on the other hand, can lead to relationships that are both natural and *mutually* rewarding.

Gordon Bazemore, Laura Burney Nissen, and Mike Dooley caution that “treatment programs” or remedial services are only one component of an asset-building strategy for challenging adolescents. These authors call on us to raise our sights to increase positive relationships and opportunities for adolescents. It is imperative that opportunities be developed in the youth's own community. Youth programs should consider developing opportunities where a youth participant can

actively *practice and demonstrate skills* in a way that strengthens a community connection.... [T]he best context for such learning is one in which there is mutual commitment to a common task and, through this task, the opportunity for developing effective ties. The best historical examples are the classic apprenticeship models in craft and trade occupations, the master-student relationship in the arts, and the extended family business—all of which provided natural ties between young and old and a clear transition to adulthood.⁶⁵

4. There should be a greater concentration on building a therapeutic alliance between staff and youth.

Two issues are crucial to building alliances with youth:

The alliance must be formed quickly. This article has explained how influential the staff-youth alliance proves to be in inducing positive behavior change. The common-factors research also indicates, however, that staff *must work fast* to build the alliance. Paul Mohl and others point out that the impact of establishing the alliance *early in treatment*, generally by the fourth or fifth meeting, is critical for treatment outcome.⁶⁶

Many programs begin with intensive orientation. One example is “Jump Start” in the Santa Clara County, California, juvenile drug court. In this program, new participants attend intensive orientation sessions to become familiar with program requirements during their first 30 days of participation in the program. These “jump starts” can be very helpful in orienting the new participant to program regulations.

Upon close inspection, however, most intensive orientations are primarily one-sided. They are solely constructed for the youth to come to understand and become acclimated to the program structure, schedule, and requirements. Instead, to establish the alliance between staff and client quickly, orientations should focus more on reciprocity. That is, it is not enough to warmly greet new participants and introduce the staff to them in round-robin fashion. Adult staff must take a corresponding intensive “jump” by making a concerted effort to meet, quickly become familiar with, and even charm the incoming participant. Some may chafe at the recommendation for staff to court and “woo” incoming adolescents, but the research is clear: the youth’s perceptions of the alliance determine the outcome of treatment. Skeptics need only consider the largest outcome study ever undertaken, the NIMH Treatment of Depression Collaborative Research Project, which found that improvement was only minimally related to the type of treatment received but was *heavily determined* by the client-rated quality of the relationship.⁶⁷ Even if this study could be ignored, approximately one thousand other studies on alliance building report the same finding.⁶⁸

Alliance building is as varied as the client. There is a difference between “easy” and “simple.” It is simple to understand how important the alliance is to outcome and to place a majority of our emphasis there. To say that alliance building is *easy* is quite another matter. All youth are different and, because of different personality styles, they will evaluate the conditions of a positive alliance in differing ways. Alexandra Bachelor found that almost half of all clients wanted to be listened to (empathic reflections) and respected, while another 40 percent wanted more “expert” advice from staff to promote direction and allow self-understanding (to “make sense” of issues). A smaller group wanted input and saw the alliance as a 50-50 partnership in which they felt the need to contribute and have as much input as the staff (counselor).⁶⁹ Duncan and Miller state: “The degree and intensity of [staff/counselor] input vary and are driven by the client’s expectations of our role. Some clients want a lot from us in terms of generating ideas while others prefer to keep us in a sounding board role.”⁷⁰

Staff working with adolescents must not only court and woo new participants, but they also need to survey them continually about their perceptions and ratings of the staff-youth alliance. Simply put, you cannot modify or alter your approach to a youth based on his perceptions if you don’t know what his perceptions are. Duncan and Miller cite a critical effort that has profound implications for staff-youth interactions: “Influencing the client’s perceptions of the alliance represents *the most direct impact we can have on change.*”⁷¹

POSTSCRIPT

This common-factors research has only recently been published. Presently, many in the fields of psychiatry, psychology, and social work are grappling with its findings. Armed with this knowledge, adolescent staffs and community treatment providers can begin to become familiar with the techniques that engage the common factors. All who work with youth will benefit from these empirical findings on the pathways to change.

This article does not impeach current efforts, but rather the belief that staff and providers are the “engine” of change. Researchers have bemoaned the fact that inquiries of treatment outcome over several decades have studied all the wrong elements—the models, techniques, and staff—while ignoring the most important contributor to change: the youth and his or her family. Staff expertise will always be vital and needed, but only if it changes one’s focus to guiding the three critical ingredients to motivation—the youth’s resources, perceptions, and participation. Youth and family motivation is not static or fixed but dynamic, and it can be *influenced and increased*. Aligning direct practice efforts to influence and increase the common factors can help advance youth along this motivational continuum.

Most articles, whether research-oriented or practice-based, generally end with a call for further research. Although qualitative and quantitative analysis is invaluable to improve our practice methods, research cannot accomplish this mission unless workers first assimilate it. Scholarly articles today end with a call for “more research” so routinely that it has become almost as standard as a de facto signature line. Consider, however, that the four factors common to all successful treatment have been illuminated by literally thousands of research studies. So, without denying the importance of research, this article does not end by urging more. Instead, it encourages all who work with adolescents to stop and review this compelling research. Keeping in mind the necessary continuum of “research, policy, and practice,” youth workers should routinely pause to integrate research. Now is that time.

NOTES

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9. *Id.* (citing studies).
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38. Snyder et al., *supra* note 34, at 182.
39. Conversation with Bill O'Hanlon, strength-based therapist (Oct. 12, 2000).
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Improved Decision Making in Child Maltreatment Cases

Delinquency prevention efforts ideally encompass a broad array of interventions, from smaller class sizes in early school years to after-school recreation to gang crisis intervention and mediation to intensified motorized police patrols.¹ But even more fundamental to preventing delinquency is the reduction of child maltreatment.² An emerging body of research points persuasively to a strong link between the experience of abuse or neglect and subsequent delinquent behavior.

The National Council on Crime and Delinquency has conducted a number of actuarial research studies designed to develop tools to categorize juvenile parolees and probationers on the basis of their likelihood to repeat delinquent behavior. Repeatedly these actuarial studies identify prior history of abuse or neglect as a key indicator for subsequent delinquency.³ Other studies have found that maltreated children were significantly more likely to engage in behaviors considered high risk for delinquency, including teen pregnancy, drug use, lower grade-point averages, and assaultive behaviors, and had more reported mental health problems than nonmaltreated children in matched control groups.⁴ Court-referred juvenile offenders were found to include a striking proportion of youth who had previously been victims of substantiated abuse or neglect (66 percent of male offenders and 39 percent of female offenders).⁵ In a longitudinal study comparing maltreated children with a matched control group, the maltreated children were more likely to be arrested for juvenile offenses (27 percent compared to 17 percent for the control group) and were arrested more often (an average of 3 arrests compared to 2.4 for the control group).⁶

Preventing child abuse and neglect ultimately involves its own array of interventions. This article does not address primary or secondary prevention efforts, though these are of no less importance. It describes one demonstrably effective and attainable tertiary prevention strategy. “Tertiary prevention efforts” are those directed toward families who have already come to the attention of a child protective service agency and are designed to reduce the likelihood that children in those families will experience abuse or neglect in the future. Significant reduction in child abuse and neglect was achieved simply by improving the decision-making process in child protection agencies.

DECISIONS IN CHILD MALTREATMENT CASES

Decision making in child maltreatment cases is a daunting task with potentially grave consequences. Each case is unique, often involving complex and confusing facts, and the stakes—the safety and welfare of a child—are very high. Errors can result in children remaining in unsafe circumstances or in needless allocation of scarce resources and unwarranted interventions. Added to these concerns, child protective service (CPS) workers—the first line of decision-makers—are often overworked, overwhelmed by the gravity of the choices they must make, and, too often, new to the job and inexperienced.



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The decisions child protective agencies make are complex and critical to reducing further maltreatment and potential delinquent behavior. Given the numbers and severity of cases that present to child agencies, the difficulty of making appropriate discretionary decisions, and limited staffing and services, agencies are looking to structured decision-making systems to help them respond appropriately to reports of abuse and neglect. This article describes principles and elements of the structured decision-making (SDM) system developed by the Children’s Research Center of the National Council on Crime and Delinquency and reports results of studies on the use of this tool. ■

According to a 1993–94 survey, nearly 3 million children were identified as the victims of maltreatment.⁷ Not all abused or neglected children are reported to official agencies; even so, CPS agencies across the country daily receive thousands of phone calls reporting possible abuse and neglect. Approximately 40 percent of these official reports are screened out in the initial call and not assigned for investigation.⁸ About one-third of the investigated reports of child maltreatment are confirmed. Over 800,000 abused or neglected children had officially substantiated CPS cases in 1999.⁹

The system fails when the agency does not respond adequately and the abuse or neglect continues. The problem of ensuring adequate CPS response is national in scope: more than 30 states have experienced class-action lawsuits concerning the delivery of child protective services. The decision-making environment facing CPS agencies is increasingly complex because of a confluence of factors:

- While actual referrals to CPS agencies have declined slightly over the past several years, this modest reduction follows more than a decade of robust increase. Few agencies have been able to keep pace with referrals, so that existing workforce strength lags far behind the amount of time needed to conduct adequate investigations and provide adequate services.
- Scarcity of workers, especially in certain communities, results in both continued exacerbation of staff shortages and employment of staff with nontraditional academic preparation and experience.
- Because of rapid staff turnover, workers with minimal experience often conduct investigations and provide services.

Child protection assessment and service delivery require a vast array of skills and knowledge. Clear analysis and good judgment are required in deciding which cases to investigate and which cases to focus the agency's greatest attention on. But in this environment, even the most expert child welfare workers tend to reach different decisions about the safety of children when presented with the same case information.¹⁰ Many agencies are seeking improved decision-making models as a fundamental step toward improving outcomes.

One promising decision-making tool for CPS workers is the structured decision-making (SDM) system. This article describes the principles and elements of the SDM model developed by the Children's Research Center of the National Council on Crime and Delinquency.

THE SDM MODEL

SDM is a strategy designed to reduce revictimization of children by improving the efficiency and effectiveness of CPS agencies. This improvement is accomplished by (1) increasing the consistency, objectivity, and validity of child welfare decisions and (2) focusing resources on families at the highest levels of risk for revictimization. SDM is currently in use in all or part of a number of states, including Alaska, California, Georgia, Michigan, Minnesota, New Hampshire, New Mexico, Ohio, Rhode Island, and Wisconsin.

UNDERLYING PRINCIPLES OF THE SDM MODEL

The SDM model is based on four primary principles:

1. Decisions can be significantly improved when they are structured appropriately. Therefore, every worker in every case must consider a set of specific criteria using highly structured assessment procedures. Using common criteria across workers and across cases increases the consistency and accuracy of decisions.
2. Priorities assigned to cases and services delivered must correspond directly to the assessment process. Even the best assessments are of little use unless the actions taken are related to the results of the assessment. Yet in many systems currently, families are served with "one-size-fits-all" approaches: regulations often require the same level of contact with a family (i.e., one contact per month) regardless of the family's assessed risk level, and case plans often require parenting classes and counseling regardless of the family's identified strengths and needs. Instead, SDM ensures that the agency's highest priority is given to the most serious/highest-risk cases. SDM further increases the likelihood that agencies will address specifically identified service needs while reducing the often-automatic referrals to readily available, yet sometimes unnecessary, services.
3. Virtually everything that an agency does—from providing services in an individual case to allocating budgetary resources—should be a response to the assessment process. Data obtained from use of the SDM model provide a rich source of information on the range and extent of services needed in the community and shed light on the impact and effectiveness of agency policy and practice.
4. A single, rigidly defined model cannot meet the needs of every agency. Organizational structures, agency mandates, governing statutes, and regulatory environments

vary significantly from state to state. Rather than importing a decision system wholesale, each jurisdiction should tailor the system to its local needs and design a process that builds acceptance and local expertise into the model.

PRINCIPAL COMPONENTS OF THE SDM MODEL

The SDM model consists of a set of assessment tools along with related definitions, policies, and procedures. Each tool is designed specifically for use at a particular key decision point in the life of a CPS case. By focusing on individual decision points for each tool, rather than considering all case information as a whole, the SDM model enhances clarity and allows agencies to more effectively monitor compliance with established policies and procedures.

Although SDM is a highly structured system, it is not rigid. No set of factors can account for all unique case and family characteristics, and no set of definitions can encompass the vast array of case features. Therefore, most SDM tools incorporate an override provision that allows a worker to change the assessment-indicated decision when necessary. In this way, SDM does not replace worker judgment but forms a dynamic partnership between structure and judgment.

INITIAL INTAKE ASSESSMENT

At the time of referral, a worker must determine whether the report raises concerns that fall within the mandate of the CPS agency. Although statutes and regulations often define abuse and neglect, application of the definitions tends to be inconsistent. Reports of similar conduct to a CPS agency may result in an investigation at one time but not another. SDM's initial intake assessment tools include expanded and concrete examples to illustrate the kinds of situations the agency would investigate. The tools not only help screening workers improve consistency but also are useful for articulating agency policy to mandatory or voluntary reporters.

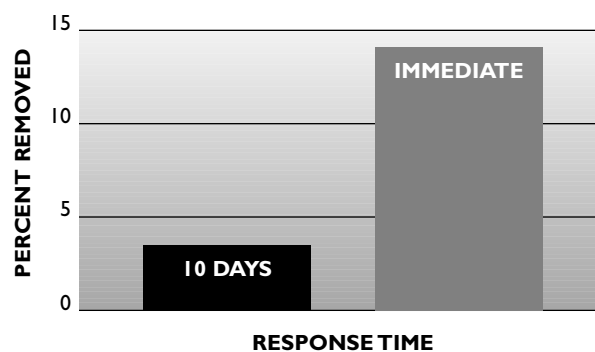
RESPONSE PRIORITY ASSESSMENT

Once a worker has decided to assign a referral for investigation, he or she turns to a set of response priority tools that help determine how quickly to respond. Ideally, every call would receive an immediate response, but there are times when more calls come in than the available workers can process. A good triage process ensures that those calls deserving an urgent response will get one.

Response priority tools are typically built to address major categories of maltreatment (i.e., neglect, physical abuse, sexual abuse) and consist of decision trees that lay out a logical sequence of 3 to 10 critical questions. By answering these questions in order, a worker is guided to a response-time recommendation based on the characteristics of the report. Most jurisdictions sort referrals into two or three response times, such as immediate, 3-day, or 10-day. As with all SDM tools, the final step of the response priority assessment is to consider whether there are unique circumstances that warrant an override of the tool-derived decision.

Aggregate information from SDM jurisdictions suggests that the response priority instruments are effective. One way to examine effectiveness is by comparing the rates at which children are removed from their homes during the initial stage of the investigation. For investigations in which a nonimmediate response is recommended there should be very few instances in which conditions warrant removal of a child. Conditions severe enough to result in removal would warrant an immediate response so that the child is not left in dangerous conditions before the investigation begins. Thus, the rate of removal is expected to be far higher in immediate-response investigations, reflecting that the allocation of resources is appropriate—that is, a worker is immediately dispatched when conditions warrant. Application of the response priority assessment in over 20,000 referrals in California counties using SDM resulted in removals of children in 14 percent of all immediate-response cases, compared to only 3 percent in nonimmediate-response cases (Figure 1).¹¹

Figure 1. Removal rate by response time



SOURCE: CHILDREN'S RESEARCH CTR., COMBINED CALIFORNIA COUNTIES: STRUCTURED DECISION MAKING CASE MANAGEMENT REPORT, JANUARY–DECEMBER 2000, at A1 (Children's Research Ctr., Nat'l Council on Crime & Delinquency (2001).

SAFETY ASSESSMENT

The next key decision point occurs as the worker completes his or her first face-to-face contact with the child and family. Whether using a systematic assessment tool or individual clinical judgment, every worker in every case effectively makes a safety decision at the moment he or she takes custody of a child or leaves without the child. The safety assessment is a determination of the imminent threat of harm to the child if he or she remains in the home.

In SDM, the safety assessment consists of three parts. In the first section, the worker answers a set of 10 to 12 questions to establish whether conditions in the home pose substantial immediate danger to a child. The importance of the assessment is twofold. First, it ensures that critical areas are not overlooked. Second, it ensures that consistent safety standards are applied. This consistency contributes to equity in removal decisions. If workers observe no safety issues, children are not removed.

If one or more safety factors are present, the worker proceeds to the second section of the assessment, identification of possible in-home interventions. The tool lists actions, services, or agreements that can be put in place to ensure child safety while the investigation proceeds. This step documents the agency's reasonable efforts to prevent removal and, more important, facilitates a dialogue between the worker, the parent, and, in some cases, the extended family or community that clearly articulates the agency's safety concerns and helps to create a safety plan. In situations where no safety plan would adequately ensure child safety in the home, removal is the only option. The third step in the assessment is to record the final decision.

Although safety assessments may be characterized as simple checklists, their value cannot be overstated. Simplicity is, in fact, key to successful implementation, because CPS investigators are required to make safety decisions within very limited time frames. By allowing an investigator to focus on a relatively small set of important factors, safety assessments help investigators avoid mistakes and improve consistency.

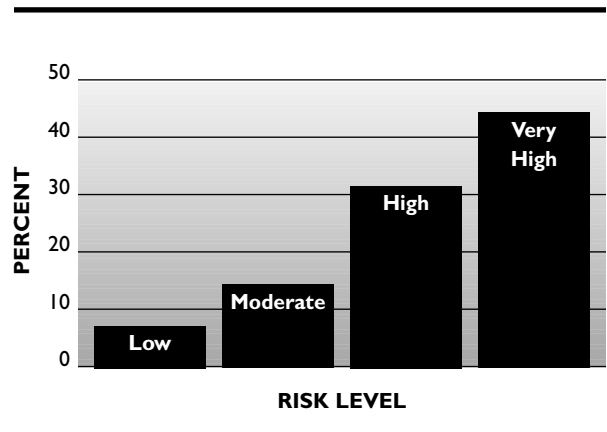
RISK ASSESSMENT

The heart of the SDM model is its actuarial risk-assessment tool. (See appendix for an example.) Unlike almost all other CPS risk-assessment approaches in use, SDM risk assessment is based on actuarial research. This methodology has produced tools that demonstrate more reliability and validity than consensus-based tools.¹² Higher reliability and validity translate into decision making that is equitable for families and that optimizes an agency's resources.

When a highly reliable and valid risk assessment forms the backbone of a comprehensive decision-making system, an agency is well positioned to better protect children from revictimization.

In SDM, *risk* has a very specific definition: it is an estimate of the likelihood that a child who has come to the attention of a CPS agency will be victimized during the next 18 to 24 months. Recidivism rates for lower- and higher-risk families vary substantially. As shown in Figure 2, for example, in the California SDM model 93 percent of investigated low-risk families did not experience another substantiation within two years of the index investigation.¹³ In contrast, among very high risk families nearly half of those investigated once had at least one more substantiation within two years.¹⁴

Figure 2. Cases resubstantiated within two years, by risk level



SOURCE: CHILDREN'S RESEARCH CTR., CALIFORNIA PRELIMINARY RISK ASSESSMENT 6 (Children's Research Ctr., Nat'l Council on Crime & Delinquency 1998).

The Actuarial Method

Prior to the appearance of actuarial risk assessments, consensus-based risk assessments were developed to bring some structure to the risk-assessment process. These consensus-based tools were typically developed by a group of child-protection experts, who used existing research, along with their experience, to determine what factors to include in the tools. The SDM approach differs in its construction. The SDM process begins similarly, with experienced workers proposing characteristics that could be observed during an investigation and that they believe will distinguish families who will experience recurrent abuse from those who will not. Often, workgroups generate lists of 150 to 200 items. Here the similarity ends. Instead of

using a consensus process to hone the list to a more manageable number of items, SDM uses actuarial research to measure all of the items in a large sample of actual cases. This measurement often consists of a retrospective review of case files for investigations that occurred 18 to 24 months prior to the study. For example, if the case file reflects that at the time of the investigation it was known that the primary caregiver had been diagnosed with alcohol dependency, and the study includes an item for alcohol dependency, it would be coded as such for the primary caregiver. Each of hundreds of files is similarly coded for each of hundreds of characteristics. Only information known at the time of the investigation can be used to code the items.

The second step is to open the remainder of each case file, so that workers can determine whether the family experienced subsequent negative events. Multiple events indicative of negative outcomes are measured. These can include re-referrals, resubstantiations, subsequent injuries, subsequent severe injuries, and subsequent out-of-home placements. Multiple outcome measures are needed because no absolute measure of recurrence exists. Much maltreatment goes undetected, and single measures such as referrals and substantiations can reflect quite varied practices. Checking the risk tool for validity on the basis of multiple outcomes helps reduce any potential bias that could result if a tool were to be built on a single measure.

Next, analysis of the relationship between case characteristics and outcomes is conducted to identify a set of characteristics that have the strongest correlation. These items are used to construct the risk assessment. Our research has consistently found that the most valid tools include separate indexes for estimating future neglect and future abuse. The tools are quite brief; each index typically includes around 10 items. Moreover, many items include concrete and easily observable and verifiable characteristics such as ages and number of children. This enhances both the reliability and accountability of the risk assessment. For example, items such as “low self-esteem” are more subjective. Even with clear definitions to guide whether to assess a parent as having low self-esteem or not, it is more difficult to have multiple workers reach the same conclusion. In contrast, it is likely that multiple workers would consistently agree on the number or ages of children. It is also easier for a supervisor to review case files and confirm that the worker accurately completed the risk assessment when items are concrete. To the extent that these concrete items are capable of accurately estimating risk, they are incorporated into the risk-assessment tool.

Decisions Based on Risk

Because the risk tool accurately categorizes substantial differences in outcomes for families at various risk levels, knowing the risk level of a particular family helps target scarce agency resources. Low-risk families have a low rate of future substantiations, with or without agency intervention, so there is little benefit in allocating resources to them. In contrast, higher-risk families are substantially more likely to maltreat their children without agency intervention. More important, there is reason to believe that CPS intervention with higher-risk families is very effective. In several southeastern Wisconsin counties using SDM, low- and moderate-risk families had about a 14 percent re-referral rate regardless of whether the CPS agency provided postinvestigation services. In contrast, high- and very high risk families who were provided CPS services after the investigation had re-referral rates that were only about half as high as families in the same risk classification who did not receive services.¹⁵

These data support the SDM principle that risk level should guide the decision whether to open a case for ongoing services after the initial investigation. Higher-risk cases should be opened and provided with CPS services, while lower-risk cases may be effectively served by community agencies or may need no service at all.

Differential contact standards are a second application of risk level to decision making. In SDM, the higher the risk level of an open case, the more time a worker is expected to be in contact with the family. Differential contact standards set an expectation for worker contact and reflect the reality that certain cases consume far more worker time than others. Uniform standards that set the same expectation for worker time regardless of case characteristics simply do not reflect the need for variation. More important, without risk-based contact standards, worker time may accumulate among cases that are demanding but not necessarily high risk. In other words, workers can end up spending much time on activities that contribute little to the safety of children.

Limits of Risk Assessment

Although actuarial risk-assessment tools are highly effective, they have certain limitations. First, they are not predictive. That is, results of the risk assessment should not be considered a prediction of future behavior but only as a classification: they place a family in a group of families that share certain characteristics and have a known outcome rate. No tool can predict with certainty whether a family will maltreat a child in the future. A large percentage of even the highest-risk families will not maltreat their children again, and a small percentage of the lowest-risk

families will do so. For this reason, risk level would be an inappropriate basis for the decision whether to remove a child from his or her parents. That decision is more effectively made by the safety assessment.

Second, the effectiveness of the method depends on the quality of the case files reviewed. It is possible that as knowledge of child abuse and neglect expands and case practice, including effective documentation, is strengthened, so too will actuarial tools capture increasingly robust items. There may be characteristics other than those typically appearing on current tools that are more highly correlated with outcomes but have been inconsistently documented in case files. Actuarial tools may miss these. Therefore, workers using tools have the right, and even the responsibility, to override a tool's risk estimate when they believe that a family presents unique considerations not captured by the tool. As mentioned above, this partnership between structure and judgment optimizes the value of the highly valid and reliable actuarial tools with the check-and-balance system of trusting the worker's knowledge and skill to identify exceptions.¹⁶

Finally, actuarial risk assessments are not designed to examine every aspect of a family that might be relevant to decisions about the most appropriate interventions for reducing the likelihood of future abuse or neglect. As a result, actuarial risk tools cannot form a basis for case planning. The family strength and need assessment is far better suited for this task.

FAMILY STRENGTH AND NEED ASSESSMENTS

Families served by CPS agencies differ not only in their likelihood of experiencing recurrent problems, but also by their specific constellations of strengths and needs. Only by systematically assessing every family across a comprehensive set of domains does it become possible to identify the particular areas in which services are most needed.

SDM strength and need assessments typically consist of 10 to 12 critical domain areas, such as substance abuse/use, mental health, social support, and basic needs. The family is scored in each domain according to a scale ranging from "strength" to "severe need." (See Figure 3.) Each response within an item has a score based on how critical an issue is to reducing subsequent child abuse or neglect. Comparison of the scores on each item helps to identify the need areas to be addressed first. Case plans, then, typically focus on up to three main areas of need while incorporating identified strengths. When strength and need assessments are repeated over time, they help assess progress.

Figure 3. Sample item from California Family Strength and Need Assessment

SN I. Substance Abuse/Use

(Substances: alcohol, illegal drugs, inhalants, prescription/over-the-counter drugs)

a. Teaches and demonstrates healthy understanding of alcohol and drugs	+3
b. Alcohol or prescribed drug use	0
c. Alcohol or drug abuse	-3
d. Chronic alcohol/drug abuse	-5

REASSESSMENTS

The risk assessment tools designed for the initial investigation typically do not work well at reassessment because they do not assess progress toward change. Reassessment tools better handle this function.

At regular intervals in the life of a case, reassessments help guide decisions about when to close the case, refocus case plans, and reset contact standards if the case remains open. Reassessments include some of the most significant risk factors considered in the initial risk tool and evaluate progress toward the case plan's goal. Using this tool helps reduce the potential for cases to remain open—continuing to consume agency resources—despite diminishing returns from the investment of CPS services.

Reassessments are particularly vital for children in out-of-home care. Based on local agency statutes and regulations, reunification must occur within specific time limits. Children returning to their parents must have lower risk levels at reassessment, and their parents must have demonstrated acceptable visitation. The final step toward reunification is an assessment of safety concerns. If any of these three conditions—risk level, visitation, or safety—falls below the acceptable level, the child will not be returned home. The decision model also incorporates the required time limits. Based on the time already in care and the age of the child, a decision tree guides the worker toward a recommendation either to continue to provide reunification services or to change the permanency-plan goal.

IMPLEMENTATION ISSUES

A decision model such as SDM requires several critical changes in work culture:

- A change from clinical judgment alone to a partnership between research, structure, and judgment

There is often initial resistance to SDM by a small segment of workers who prefer to continue to make decisions based on their own knowledge, experience, and values. Alternatively, some workers are prone to rely too mechanically on tools without exercising their responsibility to override results where appropriate. Skilled supervisors can help staff achieve the optimal balance between research, structure, and judgment.

- Refocusing resources toward higher-risk families, regardless of whether an investigation is substantiated or not

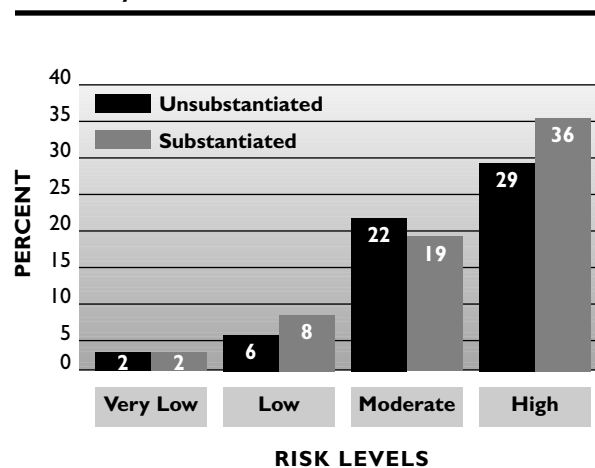
Practice in many jurisdictions has evolved in ways that make substantiated cases far more likely to be opened than unsubstantiated cases regardless of risk level. On the one hand, there is a reluctance to close lower-risk cases that are substantiated, even though an overwhelming percentage of low-risk families will not maltreat again. On the other hand, unsubstantiated or inconclusive higher-risk cases are rarely opened. Without evidence to support a court order, it is often suggested, there is little a CPS agency can do.

Children's Research Center research in New Mexico provides strong evidence that recurrence has little to do with current substantiation status. New maltreatment was about as likely in unsubstantiated cases as in substantiated ones when controlling for risk level. It is true for inconclusive or unsubstantiated cases, however, that families must be allowed to voluntarily accept or reject services. The SDM impetus to open all higher-risk cases, regardless of substantiation status, requires a commitment to work toward engaging a family in services based on a mutual concern for the child's safety and well-being. While this effort to engage families will sometimes fail, the New Mexico findings strongly suggest that when we fail to engage higher-risk families in treatment-oriented services today, those same families will probably consume investigation resources tomorrow. More critical, a child may be harmed while the system waits for evidence to substantiate. (See Figure 4.)

- Using data to inform decisions throughout the agency

While SDM has tremendous value for guiding decisions in individual cases, its value is enhanced when an

Figure 4. Unsubstantiated and substantiated cases, by risk level



SOURCE: D. Wagner & B. Meyer, Using Actuarial Risk Assessment to Identify Unsubstantiated Cases for Preventative Intervention in New Mexico 14 (1998) (paper presented at 12th National Roundtable on CPS Risk Assessment).

agency uses aggregate data to make policy, program, and financial decisions. For example, the family strength and need assessment provides a thorough picture of the needs profiles of all families served by the agency. This information can serve as a basis for dialogue with community organizations about matching available services to actual needs.

EVALUATION OF SDM MODELS

Rarely has any new child welfare program or concept been as thoroughly examined as SDM. This examination is ongoing and is useful in both confirming that the model is working and pointing out areas requiring improvement. In addition to regularly gathered management data, several controlled research designs have examined the impact of SDM models. This section reports key findings from those studies.

Michigan began using SDM in 13 counties in 1992. An evaluation of SDM's effectiveness was conducted three years later.¹⁷ Approximately 900 families investigated by the 13 SDM counties were compared to a similar number of families investigated by a matched set of 13 comparison counties. All families were followed for 12 months after the index investigation.

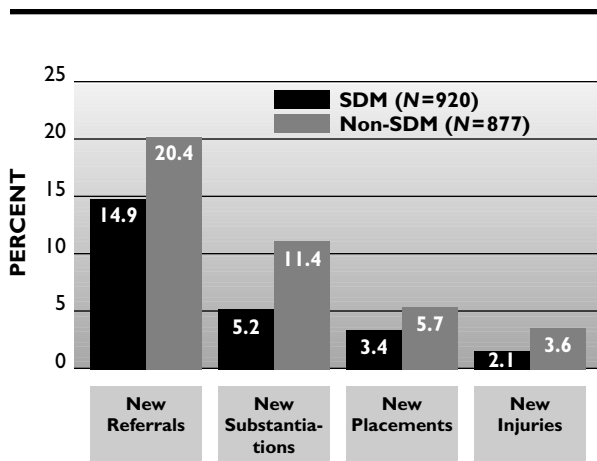
The study found that SDM jurisdictions apparently made more effective decisions about which families to serve postinvestigation. Even though SDM counties

closed a higher percentage of cases immediately upon concluding the investigation, closed cases in SDM counties had fewer subsequent referrals, substantiations, injuries, and placements than did closed cases in non-SDM counties. SDM counties were also more effective at getting targeted services to families with specific identified needs. For example, among all families identified as needing family counseling in SDM counties, about 40 percent actually received family counseling. While this percentage is far below optimal, only 25 percent of families with an identified need for family counseling received it in non-SDM counties.

Finally, in terms of ultimate outcomes, families in SDM counties experienced significantly fewer new referrals, new substantiations, subsequent injuries, and foster placements compared to families in non-SDM counties. Figure 5 shows that for every outcome measured using official statistics, counties using SDM lowered the rates of child maltreatment.

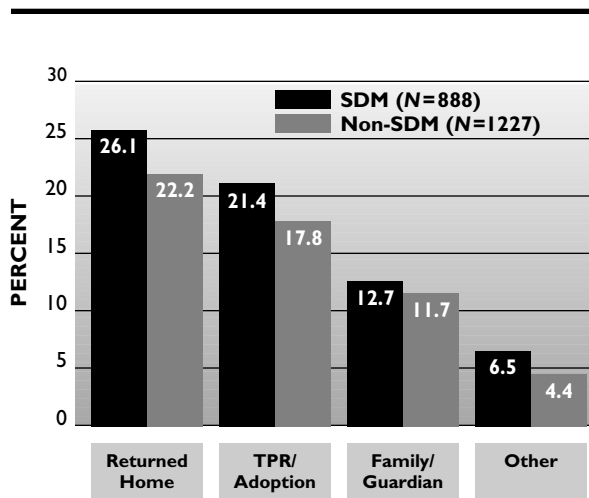
The reunification assessment was evaluated in another study of SDM in Michigan.¹⁸ Figure 6 shows that significantly more children were moved to permanency in SDM counties (67 percent) than in non-SDM counties (56 percent). Even more striking, increased permanency was achieved in all permanency-status categories.

Figure 5. Cases with new child maltreatment outcomes in a 12-month follow-up in SDM and non-SDM counties



SOURCE: S. C. BAIRD ET AL., MICHIGAN DEPARTMENT OF SOCIAL SERVICES STRUCTURED DECISION MAKING SYSTEM: AN EVALUATION OF ITS IMPACT ON CHILD PROTECTIVE SERVICES 17 (Children's Research Ctr., Nat'l Council on Crime & Delinquency 1995).

Figure 6. Cases achieving permanency within 15 months of entering foster care in SDM and non-SDM counties



SOURCE: D. WAGNER ET AL., EVALUATION OF MICHIGAN'S FOSTER CARE STRUCTURED DECISION MAKING CASE MANAGEMENT SYSTEM 21 (Children's Research Ctr., Nat'l Council on Crime & Delinquency 2001).

CONCLUSION

SDM is not a panacea for the vast and complex issues facing CPS agencies. While SDM is an excellent teaching tool, it is not a substitute for comprehensive conceptual and theoretical education for workers. SDM may help newly hired workers learn critical decision-making skills more quickly, but it should not replace efforts to reduce rapid turnover in the first place.

Moreover, while SDM can help in the allocation of existing CPS resources in ways that bring about the greatest reductions in subsequent victimization, existing resources may be insufficient to achieve optimal results. SDM can effectively categorize families on the basis of risk and identify critical needs to be addressed, but if services to meet those needs do not exist in the community, categorization alone will simply not be enough.

Implementing SDM is far from a "turnkey" operation. It is not enough for an agency to hand out a new set of assessment forms. SDM's full value depends on careful preimplementation planning, comprehensive training, and continued attention to the quality of implementation. It takes no small effort to make the paradigm shifts discussed in this article, especially when many CPS jurisdictions have a full plate of regulatory changes, automation issues, and a plethora of new policies, programs, and initiatives competing for attention.

It is encouraging, however, that even faced with the enormity of its task, a CPS agency can implement SDM with sufficient quality to achieve a measurable reduction in child victimization. The Michigan evaluation studies cited in this article suggest that, all else being equal, jurisdictions implementing SDM can achieve improved outcomes. SDM represents one practical and efficient way to improve the nation's CPS systems and, in turn, help reduce harm to children.

NOTES

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11. CHILDREN'S RESEARCH CTR., COMBINED CALIFORNIA COUNTIES: STRUCTURED DECISION MAKING CASE MANAGEMENT REPORT, JANUARY–DECEMBER 2000, at A1 (Children's Research Ctr., Nat'l Council on Crime & Delinquency 2001).
12. S. Christopher Baird et al., *Risk Assessment in Child Protective Services: Consensus and Actuarial Model Reliability*, 78 CHILD WELFARE 723 (1999); S. Christopher Baird & Dennis Wagner, *The Relative Validity of Actuarial and Consensus-Based Risk Assessment Systems*, 22 CHILD. & YOUTH SERVICES REV. 839 (2000); see GEORGE FALCO, CLINICAL VS. ACTUARIAL RISK ASSESSMENT: RESULTS FROM NEW YORK STATE (Office of Program Evaluation, N.Y. Dep't of Soc. Servs., in press).
13. The index investigation is the first investigation that occurred during the study period. For some families, this is the first-ever investigation, while others had prior CPS investigations as well.
14. CHILDREN'S RESEARCH CTR., CALIFORNIA PRELIMINARY RISK ASSESSMENT 5 (Children's Research Ctr., Nat'l Council on Crime & Delinquency 1998).
15. High risk: closed after investigation = 28% re-referral rate vs. open for service = 15% re-referral rate. Very high risk: closed after investigation = 45% re-referral rate vs. open for service = 24% re-referral rate. See DENNIS WAGNER & PAT BELL, THE USE OF RISK ASSESSMENT TO EVALUATE THE IMPACT OF INTENSIVE PROTECTIVE SERVICE INTERVENTION IN A PRACTICE SETTING (Children's Research Ctr., Nat'l Council on Crime & Delinquency 1998).
16. In practice, SDM override rates generally range from 2 to 8 percent. Lower rates may suggest that tools were being used too mechanically, without attention to unique

NOTES circumstances. Rates above 10 percent raise serious doubt about the tool's validity and utility or the effectiveness of training in the appropriate use of the tool.

17. S. CHRISTOPHER BAIRD ET AL., MICHIGAN DEPARTMENT OF SOCIAL SERVICES STRUCTURED DECISION MAKING SYSTEM: AN EVALUATION OF ITS IMPACT ON CHILD PROTECTIVE SERVICES (Children's Research Ctr., Nat'l Council on Crime & Delinquency 1995).

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CALIFORNIA FAMILY RISK ASSESSMENT OF ABUSE/NEGLECT

APPENDIX

Family Case Name: _____ Family Case #: _____
 County Name: _____ County #: _____ Office: _____
 Worker Name: _____ Worker #: _____ CPS Referral Date: ____/____/____ Assessment Date: ____/____/____

Neglect	Score	Abuse	Score
N1. Current investigation is for neglect a. No.....0 b. Yes.....1	_____	A1. Current investigation is for physical, sexual or emotional abuse a. No.....0 b. Yes.....1	_____
N2. Number of prior abuse/neglect investigations a. None.....0 b. One.....1 c. Two or more2	_____	A2. Prior abuse investigations a. None.....0 b. Physical/emotional abuse1 c. Sexual abuse2 d. Both b and c3	_____
N3. Number of children in the home a. Two or fewer0 b. Three or more1	_____	A3. Prior CPS service history a. No.....0 b. Yes.....1	_____
N4. Number of adults in home at time of investigation a. Two or more0 b. One/none.....1	_____	A4. Number of children in the home a. One.....0 b. Two or more1	_____
N5. Age of primary caregiver a. 30 or older0 b. 29 or younger.....1	_____	A5. Caregiver(s) abused as child(ren) a. No.....0 b. Yes.....1	_____
N6. Characteristics of primary caregiver (check & add for score) a. Not applicable.....0 b. Parenting skills are a major problem.....1 c. Lacks self-esteem1 d. Apathetic or feeling of hopelessness.....1	_____	A6. Secondary caregiver has a current substance abuse problem a. No, or no secondary caregiver0 b. Yes (check all that apply) ___ Alcohol abuse problem ___ Drug abuse problem1	_____
N7. Primary caregiver involved in harmful relationships a. No.....0 b. Yes, but not a victim of domestic violence.....1 c. Yes, as a victim of domestic violence2	_____	A7. Primary or secondary caregiver employs excessive and/or inappropriate discipline a. No.....0 b. Yes.....2	_____
N8. Primary caregiver has a current substance abuse problem a. No.....0 b. Alcohol <i>only</i>1 c. Other drug(s) (with or without alcohol)3	_____	A8. Caregiver(s) has a history of domestic violence a. No.....0 b. Yes.....1	_____
N9. Household is experiencing severe financial difficulty a. No.....0 b. Yes.....1	_____	A9. Caregiver(s) is an over-controlling parent a. No.....0 b. Yes.....1	_____
N10. Primary caregiver's motivation to improve parenting skills a. Motivated and realistic0 b. Unmotivated1 c. Motivated but unrealistic2	_____	A10. Child in the home has special needs or history of delinquency a. No.....0 b. Yes (<i>check all that apply</i>) ___ Diagnosed special needs ___ History of delinquency1	_____
N11. Caregiver(s) response to investigation and seriousness of complaint a. Attitude consistent with seriousness of allegation and complied satisfactorily0 b. Attitude not consistent with seriousness of allegation (minimizes)1 c. Failed to comply satisfactorily2 d. Both b and c3	_____	A11. Secondary caregiver motivated to improve parenting skills a. Yes, or no secondary caregiver in home0 b. No.....2	_____
TOTAL NEGLECT RISK SCORE	=====	A12. Primary caregiver's attitude is consistent with the seriousness of the allegation a. Yes.....0 b. No.....1	_____
		TOTAL ABUSE RISK SCORE	=====

INITIAL RISK LEVEL

Assign the family's risk level based on the highest score on either scale, using the following chart:

Neglect Scale	Abuse Scale	Risk Level
___ 0-4	___ 0-2	___ Low
___ 5-7	___ 3-5	___ Moderate
___ 8-12	___ 6-9	___ High
___ 13-20	___ 10-16	___ Very High

OVERRIDES

Policy: Override to Very High. Check appropriate reason.

- ___ 1. Sexual abuse cases where the perpetrator is likely to have access to the child victim.
 - ___ 2. Cases with nonaccidental physical injury to an infant.
 - ___ 3. Serious nonaccidental physical injury requiring hospital or medical treatment.
 - ___ 4. Death (previous or current) of a sibling as a result of abuse or neglect.
 - ___ 5. Positive tox screen (any drug, including alcohol) of mother or child.
- Discretionary: Override to increase one risk level
- ___ 6. Reason: _____

FINAL RISK LEVEL: ___ Low ___ Moderate ___ High ___ Very High

Supervisor Review/Approval

Date

____/____/____

Taking a Risk With At-Risk Kids

A New Look at Reasonable Efforts

In countless juvenile courts all over the United States, the same scenario is enacted day after day: Standing before a bench officer, a family in crisis is adjudicated into some form of dependency oversight by the court and child welfare agencies. And during the pendency of the case, a boilerplate set of services is offered to assist the family in ameliorating the problems that brought the child into the system.

Unfortunately, the services provided to children and families often do not address their underlying problems, even though the law requires that services respond to the unique facts in each case. This is particularly true for a specific group of children: those who come before the court with full-blown problems separate and apart from, even if caused by, the current family dynamics. These problems may include mental health concerns, undiagnosed special education needs, and unassisted developmental delays. For some families, the child's needs and the parent's inability to meet them is the only dependency issue. When child welfare services do not address the underlying problems, often the result is that children remain under the jurisdiction of the court, even when the parents are capable of providing appropriate care.

The courts and family service agencies have a mandated responsibility to protect children and, when possible, to preserve families. American law has historically respected parents' interest in the care, custody, and management of their children. The Constitution protects this interest, and any governmental attempt to interfere with it must be justified by a legitimate state interest and accompanied by adequate procedural safeguards.¹ Unless the child's health and welfare are at issue, decisions about housing, education, religion, discipline, and other issues are left to the parent. The dependency system's purpose is to protect children in families that have deteriorated to the point where the children's health and safety are at issue. However, the dependency court can rapidly become a surrogate parent for the whole family, in essence mandating a way of life for the family consistent with an institutionalized view of how a "family" should look.

A new perspective on the reasonable efforts required by federal law to reunify families is needed if we are to assist these at-risk children and their families more effectively. The safe and timely reunification of the family will require the family services agency to pursue a two-pronged approach: (1) to respond to dysfunctional family dynamics by providing services to the parents, both alone and conjointly with the child, and (2) to provide the child with an independent set of community-based services that will be waiting in place when the parents are ready to reunify with the child. The issues and suggestions presented in this article attempt to address how to use more community resources outside the usual dependency resources so that more children may be sent home more quickly.

REMOVAL AND REUNIFICATION

A lengthy study undertaken by the Child Welfare League of America found that the best place for children is in their own homes with their own parents.² The study



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This article proposes a new approach to assist special-needs children and their families in dependency court. The courts have historically viewed the federal "reasonable efforts" requirement as a means of providing services to parents. For some children and families, reasonable efforts to reunify the family should be enlarged and recategorized to include community resources that are mandated for special-needs children under federal entitlements. The authors propose that courts and family service agencies help parents become advocates for their children's special needs, thereby allowing the courts to terminate jurisdiction more quickly and ultimately reducing the number of families in dependency. ■

looked at how children fared in foster care or at home even if their parents were less than parental. It does not take much to conclude that even children who were poorly parented preferred home to foster care. Obviously, children who are neglected and abused cannot remain at home, but that does not alter the fact that most children want to *be* home.

Congress endorsed this belief by enacting the Adoption Assistance and Child Welfare Act in 1980.³ The mandate to the states was clear: Make reasonable efforts to maintain the child in his or her family home. The act authorized appropriation of federal funds to prevent placement outside the family home, to reunify families if possible, or to provide a permanent plan for the child if reunification proved impossible.⁴ Each state was required to devise a case plan for the family in the event of the child's removal in order to return the child as quickly as possible in light of the circumstances of removal⁵ or, if no return was possible, to proceed to a stable, permanent plan.

In California, the Welfare and Institutions Code has set out the process and procedure by which this return is to be accomplished. The goal is to prevent a child's placement outside his or her home and to facilitate reunification if appropriate.⁶ Section 300 of the Welfare and Institutions Code states: "It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life"⁷ Services focus on preservation of the family. Section 300 also sets out the grounds for removal, which include physical abuse or neglect or sexual abuse of any child and severe abuse of a child under age 5 by a parent or another person whom the parent knew or should have known posed a danger to the child.⁸ The statute also permits removal of a child whose sibling has been abused or neglected and who also faces a substantial risk of abuse or neglect.⁹

"Services to the family" has historically meant the use of a social services agency's battery of referrals to assist parents in overcoming whatever detrimental behaviors led to the child's removal. This is usually a boilerplate that includes drug rehabilitation; domestic violence prevention, anger management, and parenting classes; and a formula of individual, conjoint, and family therapy intended to address the family's needs. The assumption, however, is always that parents are the perpetrators of the family's problems and that the children are victims. This is not, however, an accurate assessment in homes where the children have become violent or otherwise "out of control" because of a combination of family structure and their own special needs arising from "disabilities." Historically these are the most difficult children to return home once they have entered the dependency system. If there is no

alternative way of responding to these children's situations, they will go from foster home to group home to hospital or delinquency. They will be absorbed into the system permanently; no family structure, either natural or foster, will appear capable of caring for them by itself.

Even so, when the child welfare department or the court has determined that the parents pose little or no risk to these children, they should be allowed to return home. Frequently, this does not happen because of the system's focus on the parents' problems and the social worker's inadequate knowledge or understanding of policy. Especially when there is more than one child, the tendency is to get the "healthy" kids home and leave the most troublesome for later, even though appropriate services are available in the community to help these children return home and their parents cope. The discussions that follow set out a legal framework and process through which attorneys and the courts can access legally mandated community resources to assist troubled children.

LEGAL FRAMEWORK FOR COMMUNITY RESOURCES

The children discussed in this article meet the legal definition of *disability*, which qualifies them for services from at least one of California's three service delivery systems: local educational agencies such as school districts, mental health agencies, and regional centers for the developmentally disabled. This section summarizes the pertinent provisions of the federal and state laws that govern these services. It concludes by describing the joinder provision that the juvenile court may use when a recalcitrant agency fails to meet its legal obligations to a child.

SPECIAL EDUCATION

Prior to 1970, legal involvement in the education of children with disabilities consisted of legislative, administrative, and judicial activity either permitting or requiring their exclusion from public education. Finally in 1970, Congress, persuaded by parents and compelled by federal court decisions mandating the education of children with disabilities, passed the Education of the Handicapped Act.¹⁰ This statute remains the backbone of the federal law governing special education. The act itself has been amended and renamed several times, most recently as the Individuals With Disabilities Education Act (IDEA).¹¹ Its basic purposes have, however, remained consistent over the years: "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs [and] to ensure that the rights

of children with disabilities and parents of such children are protected¹² The statute and the implementing regulations¹³ set forth in great detail the substantive and procedural rights of disabled students. California passed its own statutes and regulations implementing the federal requirements.¹⁴ To qualify for special education and related services under IDEA, a child must be at least 3 and no older than 21 years of age¹⁵ and must satisfy both parts of a two-part test. First, the child must fall within one or more of the 13 categories of disability defined by IDEA.¹⁶ Second, the student's need for special education and related services must be a result of his or her disability.

The cornerstone of any special education program is the Individualized Education Program (IEP), the written document that memorializes the essential components of the child's appropriate educational program.¹⁷ The IEP is developed at regularly scheduled meetings that provide an opportunity for parents, educators, the child, and others to discuss and collaboratively develop the child's educational program. In addition to specially designed instruction, IDEA requires that the IEP include any related services that the child requires in order to benefit from special education. These services include "transportation, and ... developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only)."¹⁸ The term also includes "parent counseling and training" and the "early identification and assessment of disabling conditions in children."¹⁹ Though there are no specific timelines for implementation of the IEP, the federal regulations direct the school to implement the IEP "as soon as possible following the [IEP] meetings."²⁰

In addition to the IEP process, IDEA and its predecessors require procedural safeguards "designed to afford parents or guardians of handicapped children meaningful involvement in the educational placement of their children."²¹ These safeguards—including the rights to examine records, receive notice of changes to the IEP, and present complaints²²—constitute a powerful tool with which parents may challenge the school's recommendations for the education of their child.

MENTAL HEALTH SERVICES

In California's mental health service delivery system, two programs, AB 3632 and Medi-Cal, create an entitlement to services. The component of the latter program that

serves children is called Early and Periodic Screening, Diagnostic, and Treatment (EPSDT). Children are eligible for EPSDT services from birth until they turn 21.

AB 3632 Mental Health Services

The California Legislature passed Assembly Bill 3632 in 1984.²³ This law, as subsequently amended, requires the state Department of Mental Health or community mental health (CMH) services to provide psychotherapy and other mental health services to help children with disabilities benefit from their educational programs.²⁴ The regulations define AB 3632 mental health services as including individual, group, or family psychotherapy; collateral services; intensive day treatment and rehabilitation; evaluation and monitoring of psychotropic medication; and case management.²⁵ These services are available to any legally disabled student who needs them. If the student is identified as emotionally disturbed, he or she may be placed in a residential treatment facility.²⁶

To obtain AB 3632 mental health services for a special education child, the school district must refer the child to the appropriate CMH unit. At that time, CMH evaluates the child and returns to an IEP meeting with recommendations for services. Once the services are written on the IEP, they become an entitlement and CMH must provide them. All the procedural safeguards available under IDEA also attach to AB 3632 mental health services.

Medi-Cal Services (EPSDT)

Children with mental disabilities are entitled to receive a broad array of home- and community-based mental health services under California's Medi-Cal program. These services are provided to all Medi-Cal-eligible persons through CMH. The EPSDT program, established as part of the federal Medicaid Act,²⁷ requires the state to ensure that diagnostic and treatment services are given to children "to correct or ameliorate defects and physical and mental illnesses and conditions covered by the screening services, whether or not such services are covered under the State plan."²⁸ The key to accessing CMH services is a determination by a mental health provider that a specific service is necessary to correct or ameliorate a mental illness. Once a mental health provider determines the appropriate CMH services needed to correct or ameliorate the mental illness, CMH has an obligation to provide the services.

Medi-Cal covers many services, including, but not limited to, individual or group therapies or interventions; rehabilitation services that improve daily living skills and social and leisure skills; crisis intervention; crisis residential treatment services; and targeted case management and

EPSDT supplemental services, which include family counseling, transportation to needed services, and other case management services.²⁹

In a class-action lawsuit, a federal court in Los Angeles concluded that the Medicaid Act requires Medi-Cal to provide Therapeutic Behavioral Services (TBS), a new mental health service.³⁰ TBS provides short-term, one-on-one assistance to children or youth whose serious emotional problems, such as assaultiveness, poor impulse control, or self-injurious behavior, are too difficult for their families or foster placements to handle. The service is designed to intervene with children experiencing a transition or crisis and to enable them to overcome the behavioral obstacles to living at home.³¹ Children can access TBS at home, at school, in a group home, or in the community, in the evening and on weekends, and at other times and places as needed. The availability of this service is critical to the safe return of a child to his or her parents.

REGIONAL-CENTER SERVICES

Regional centers were established in California by the Lanterman Developmental Disabilities Services Act³² to help meet California's obligation to persons with developmental disabilities. Nonprofit corporations that contract with the state Department of Developmental Services have established 21 regional centers throughout California, each serving a specified geographical area.

Regional centers must provide initial intake and assessment services to persons with developmental disabilities, individuals who are at high risk of giving birth to a child with a developmental disability, and infants who have a high risk of becoming developmentally disabled.³³ Once someone meets the eligibility criteria, he or she is entitled to services from the regional center.

To be eligible for regional-center services, a child must have a developmental disability, including mental retardation, cerebral palsy, epilepsy, autism, or another nonspecified condition that either is related to mental retardation or requires treatment similar to that required for individuals with mental retardation.³⁴ The condition must also arise before the person is 18; continue, or be likely to continue, indefinitely; and constitute a substantial disability for the individual.³⁵ Conditions that are "solely physical in nature" or that are "solely learning disabilities" or "solely psychiatric disorders" do not qualify as developmental disabilities. It is, of course, possible for an individual to require services from both the mental health system and the regional-center system to treat a single condition.

Once the regional center finds that someone is eligible for services, the next step is to prepare the Individual Program Plan (IPP).³⁶ This written document is developed by

the IPP planning team. The team includes the "consumer,"³⁷ his or her parents, anyone else who knows the consumer and can help in developing the IPP, and representatives of the regional center.³⁸ The plan must describe the child's needs, the goals and objectives of the program, and the services and supports needed to meet them.³⁹

The services and supports that may be required to meet the individual needs of a regional-center consumer are very broadly defined⁴⁰ and include such things as transportation, behavior modification services, respite care, special equipment such as communication devices or computers, parent training, infant stimulation programs, recreation, social skills training, and any other service or support that is required to allow the individual with a developmental disability to live as productive and normal a life as possible in a stable and healthy environment.⁴¹ Decisions on services and supports, including who will supply them, must be made by agreement of the planning team at the IPP meeting.

The Lanterman Act requires regional centers to implement the IPP by securing needed services and supports;⁴² advocating for civil, legal, and service rights;⁴³ identifying and building circles of support;⁴⁴ ensuring the quality of community services;⁴⁵ and developing innovative programs.⁴⁶ The California Supreme Court has held that the Lanterman Act entitles all persons with developmental disabilities to the services and supports specified on the IPP. While the regional center has discretion on *how* to implement the IPP, the center has no discretion on *whether* to implement it.⁴⁷ The Lanterman Act also includes fair hearing procedures, which allow the consumer to challenge the regional center's decision to deny eligibility or services or to reduce or terminate a current service.⁴⁸

For the children discussed in this article, the availability of regional-center services is a critical component in returning them to their parents. Regional centers can provide a full array of services and supports to these children and families. For those children who do not meet the eligibility criteria, there is no similar service delivery system.

JOINDER MOTIONS

Welfare and Institutions Code section 362(a) authorizes the dependency court to join any agency or private service provider that the court determines has failed to meet its legal obligation to a dependent child pursuant to an IEP or IPP. Once the court has joined an agency or a service provider, it may order the agency or service provider to provide services to the child only if the child's eligibility has already been established through an agency's administrative process.⁴⁹ Each of the agencies above—the local

educational agency, mental health agency, or regional center—as well as other agencies or private service providers, could be joined for failing to meet a legal obligation under this provision. For instance, a school district could be joined for failing to assess a child's eligibility for special education services in a timely manner or a regional center could be joined for failing to provide a service that is on the IPP.

THE DEPENDENCY PROCESS: COMPETING APPROACHES

When a child has been removed from his or her home, the local child welfare agency has the responsibility to protect the child, investigate and remedy the problem that led to removal, and reunify the family if possible.⁵⁰ If the child welfare agency determines that it must continue to detain the child, it must immediately petition the juvenile court to hold a detention hearing.⁵¹ At this hearing, the court must determine whether “reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home . . . , and whether there are available services that would prevent the need for further detention. . . . If the child can be returned to the custody of his or her parent . . . through provision of those services, the court shall place the child with his or her parent . . . and order that the services shall be provided.”⁵² The court may order case management, counseling, emergency shelter care, in-home caretakers, respite care, homemaker services, transportation, parenting training, or any other services that could help alleviate the need for the child's continued removal. If the court orders the child detained, it must also order services to be provided as soon as possible to reunify the child and his or her family if appropriate.⁵³ The court must determine at each step of the dependency process whether reasonable efforts were made to provide services.⁵⁴ The problem is that these reasonable efforts to reunify the family usually focus on remedying the parents' behavior because the law guarantees parents due process. The parents' rights regarding their children underlie the statutory scheme.

THE TRADITIONAL AGENCY APPROACH

In most cases currently, the department does not obtain services to ameliorate the child's behavior, and, even if the parents resolve their problems, the child is placed out of his or her home in a setting both expensive and isolating. A certain insidious progression takes place when the child welfare agency assumes full responsibility for the family's rehabilitation. First, the parents come to rely on the agency's assistance and guidance and do not usually ques-

tion the appropriateness of their child's placement. If they do, they are often told that the child requires “structure” and that the placement is better for him or her.

When children with disabilities unnecessarily remain in dependency, it is typically because their serious emotional and behavior problems lead them to appear “out of control.” Moreover, the parents seem to lack the skills to successfully represent their child before the various service delivery systems that may be obligated to assist him or her. As a result, the child welfare agency takes full responsibility for the child, and the parent is either shunted aside or fades into the background.

Another, more complicated situation arises when the child is removed because of the parent's drug addiction or abuse of the child. The parent subsequently rehabilitates, but the child welfare agency refuses to send the child home because of his or her own behavior.

Let's look at an example. The child has undiagnosed special education needs, and the mother, who may also have those needs, has coped in life by using street drugs. Living in a situation that is increasingly unable to meet his needs, the child begins to act out at home, at school, and in the community. The school does nothing; the behaviors are not so antisocial that the police have become involved. The mother, at her wits' end, resorts to beating the child with a belt. At school, teachers notice the marks and call the child welfare agency, which files a petition for removal. An investigation reveals the mother's drug use, her inability to get proper services for her disabled child, and her use of physical discipline on a regular basis. The mother is contrite and loving. She enters a drug rehabilitation program, readily follows the court order against physical discipline, and begins to test clean and work well in her drug treatment program. The child, however, now living in foster care or with a relative, has spiraled more and more out of control.

Given the mother's rehabilitation, the court would, at this stage, explore the possibility of returning the child home with services to the family. However, the mother is still fragile, and the child has moved from relative to foster home to group home and is displaying behaviors that indicate his inability to handle a home situation without on-site services. Because the court has made orders only with respect to the mother's treatment (except, perhaps, to order some therapy for the child), the mother is not in a position to have the child return home, even though she poses little risk to him any longer.

A parent's poor relationship with a child can compound the problem. Often a parent's prior habits or failure to establish parental authority have caused the child to mistrust the parent and refuse to follow his or her rules.

Alone and frightened, in an out-of-home placement, the child does not behave in a manner consistent with a return home and therefore ends up living in a group home even though the problems that led to the removal have been resolved. The child's emotional problems frustrate the parent, who believes he or she can no longer provide parental authority of any kind. This frustration, coupled with the child's self-destructive behavior, leads the parent to abandon the child.

When a court continues the child's out-of-home placement without recognizing the changed posture of the case, it helps the parents and the dependency system to "judicially abandon" these children and allows the child welfare agency to take over their care, custody, and control. And at a very basic level, by agreeing to out-of-home placement and thus abdicating the responsibility of providing the advocacy that tells children they are valued, the parents effectively tell their children that they are not worth the effort of parenting and, thus, prolong the cycle of dependency.

The effects are far-reaching. All recent studies on the physical separation of children from their parents, including studies of children of divorce, indicate that the long-term consequences of removing children from their parents' home are far more serious than previously thought. In many instances, these problems can be avoided. If the original cause of the child's removal from the home has been alleviated or ameliorated, but the child continues to live in a group home solely because of his or her behavior, the only appropriate recommendation is to return the child to his or her parents' home.

The issue in these cases is not *whether* the child should remain in placement, but *how* the child can return home. For financial, emotional, and practical reasons, and as a matter of public policy, children who are not at risk of abuse or neglect at home should return home. Each removal of a child from his or her home costs the government money, and each more restrictive placement costs more money, up to thousands of dollars a month for placement in a group home. By returning these children home, the courts can help save much of this money and redirect the rest to provide effective in-home services. It does not take a therapist to know that a child who is cared for and protected by a natural parent has a better chance for adult success than one who is not.

THE COMMUNITY RESOURCE APPROACH

The court and attorneys should reject the existing paradigm. Through the use of IDEA- and state-mandated services, parents can act as advocates for their children, building a relationship of trust and eliminating the need

for dependency jurisdiction. The right of parents to raise their children coexists with the right of children to adequate services to meet their needs.

Thus, the child welfare agency should strive from the very beginning of the dependency process to eliminate parents' dependence on social services—that is, to enable parents to make competent decisions for themselves and their children—as soon as possible. The longer the social service agency "makes the rules" for the family, the less time or incentive parents have to learn to advocate for their children. In other words, the agency should seek to foster an atmosphere that requires minimal social services to protect the child, maximizes parents' ability to lead an autonomous life, and, thus, permits provision of services for the child at home.

The phrase "at home" does not necessarily mean that the child is *physically* in the home. A child can be placed at home⁵⁵ while residing in a group or residential facility. This placement can be accomplished expeditiously by using special education or mental health residence options, each of which can be controlled by a parent's choice and neither of which requires an agency agreement. Parents can access these resources while the family is still receiving child welfare services. To realize this goal, all parties in dependency proceedings must focus, not on mere provision of services to the family, but on empowering parents by teaching them how to advocate for alternative community resources.

Let's consider one such situation. Joe C. is 8 years old. He has been diagnosed with fetal alcohol syndrome and has a history of severe and uncontrollable assaultive behavior. At birth, he was removed from his mother's custody and placed with his paternal grandparents for almost three years. He was then returned to his mother, only to be removed again shortly thereafter. After his mother objected to another placement with his paternal grandparents, the court placed Joe with his maternal grandmother and uncle, in whose home he was physically and emotionally abused. Removed from that home, he was placed in a group home because of his increasingly hostile behavior. His paternal grandparents continued to request placement, and Joe began weekend visits with them. The paternal grandparents reported that Joe's behavior at home on weekends was acceptable. The group home, by contrast, continued to report that Joe's behavior was out of control and imposed more and more restrictions on him. In one month, according to the group home, his behavior required 50 instances of "proning," a method of restraint that required five adults to hold Joe down. While the number of episodes of proning decreased when the visits began, they began escalating when Joe was not permanently

returned to his grandparents' home because of the group-home recommendation to the court. The grandparents started counseling in order to meet Joe's special needs. Therapy for Joe and his grandparents began during the weekend visits.

The group home's therapist and administration continued to insist that Joe needed the structure of its program. The therapist indicated that Joe's behavior would escalate immediately at home and that he would be removed again at great emotional cost to him. The court ordered that all professionals involved in the case meet to plan a program of return. This decision was conveyed to Joe. Again the group-home experts recommended against return.

The grandparents, with the help of a "modeler" (in this case, the child's attorney), requested an assessment from the school district for special education services.⁵⁶ They requested, at the same time, an assessment from county mental health for AB 3632 services. When the assessments were completed, the IEP team determined that Joe was eligible for services. The team placed him in a "non-public school"⁵⁷ and made a referral for therapeutic behavior services⁵⁸ to assist the family with Joe's behavior in the home.

Joe's counsel brought a motion pursuant to Welfare and Institutions Code section 388 to vacate the previous order of suitable placement and send Joe home to his grandparents. Joe's counsel had intervened on his behalf in the community, and a variety of services awaited him upon his placement with his grandparents. Joe's counsel and grandparents had used community resources to map out a continuum of care. The court granted Joe's section 388 motion because both criteria for approval, changed circumstances and best interest of the child, were met. Joe returned home. Although he continues to experience some problems as this article goes to press, he remains successfully in the care of his grandparents and jurisdiction has been terminated.

The return of at-risk children to their parents or guardians does not, of course, solve all of their problems. They may continue to act out or need continuing support services, but they do not necessarily need the dependency system to provide services. Services can be provided by local educational agencies, mental health agencies, or regional centers. Given this array of services, these children are no longer "at risk of detriment" as contemplated by Welfare and Institutions Code section 300.⁵⁹ Their families and communities can and should meet their needs.

Whether the child is in the process of returning home or has just returned, the court should maintain jurisdiction of the family and child while the "service blueprint" is being developed. If any one of the agencies obligated to

provide services to the child refuses or fails to provide them, a joinder motion can be filed in the dependency court.⁶⁰ The child's attorney usually brings the motion for joinder, but any interested party may do so. The dependency court is authorized to hold a hearing in any instance where a mandated provider has failed to meet its legal obligation to a child. Most commonly, this is in the area of special education, mental health, or regional-center services. The court can hear testimony and issue orders regarding the services to be provided. The only prerequisite for judicial intervention is that the child has been found eligible for the services through the mandated administrative process.

With the new statewide addition of the federally funded Title IV-E "wrap-around" services, or TBS, some inter-agency cooperation is finally available for families who need it. This service provision model seems to contemplate coordination of services, modeling for parents or caretakers, and direct advocacy. This scheme comprises exactly what needs to be provided to these families. The provision of these services may greatly assist a family in the return of a child, and a refusal or denial of these services would be a proper reason for joinder.

THE ROLE OF BENCH AND BAR

The object in dependency is not unlike that in tort law: lawyers and judges try to help families in crisis become whole. When the parties expect social services to co-opt parental authority in decision making, parents lose an important right—the right to advocate for their children. That they may need help to understand school, mental health, or regional-center processes for determining eligibility does not make less important the goal of maximum advocacy by parents in order to keep children in the home.

The use of individualized service blueprints is a recognition that we are in a time of expanded need and diminishing resources. Juvenile courts must avoid scattershot approaches to individual problems. They must be aware of the various alternatives available for families and how to access them. They can then tailor service programs to meet the particular needs of individual families. Some relatively stable parents are unable to advocate for their special-needs children only because of a lack of assertiveness, education, or information. However, most parents in dependency require more. For example, for drug-addicted parents, getting sober is clearly step one of a long and difficult process. Maintaining sobriety is a frustrating experience, made even more tenuous when the parent, who herself may have been a special-needs child, is trying to raise children who have lost their trust. Yet it is extraordinary

how many parents in dependency are actually able to make that journey if they are given the support they need.

What must the bench and bar do to assist these parents and their children? It is our job to know where the systems interact and help the parent navigate those systems by example and through hands-on assistance. Requesting assessment for special education services, mental health services, or regional-center assistance is exhausting and can be debilitating to a newly sober or timid parent. Lack of self-esteem, financial difficulties, and poor language skills add to the problem. The juvenile court and the lawyers involved in the case should work to ensure that the social worker, instead of simply continuing to request services through the child welfare agency, assists the parent by helping him or her make requests of service providers and follow up on them.

One important benefit of the community resource approach is financial. A placement made by the agency in a group home or residential treatment center normally is billed to the parent. However, a placement, even of a dependent child, through a legally held Individualized Education Program, is free to the parent under IDEA. Therefore, an IEP placement enables the court to terminate jurisdiction in a case where otherwise the financial obligation of the parent would be a continuing issue.

Until jurisdiction terminates, the court can and should assist parents with their concerns about the education and mental health of their children. Reasonable efforts do not end with “fixing” the parent or with the child’s return home. They also include helping a parent or relative advocate for the child even after the agency has helped the parent remedy the reasons for the child’s removal. Only when a child who can go home has actually gone home, either physically or through provision of services obtained through the parent’s advocacy, have reasonable services been provided.

IMPLEMENTING THE COMMUNITY RESOURCE APPROACH

With some modification in approach, the court, with the child welfare agency, can readily implement the process of accessing community resources. First, at the detention hearing, the court should order the child welfare agency to provide all psychological and educational information in the jurisdictional report, including copies of any existing special education programs (IEPs) or programs from regional centers (IPPs). This information will acquaint the court with any services currently being provided to the child, as well as the reasons for them.

While the court retains jurisdiction, it can issue orders to help parents seek services for their children. For exam-

ple, the court can order the child welfare agency to assist a parent in requesting an assessment of eligibility for special education services pursuant to Education Code section 56,320 et seq. This assessment starts the statutory timeline.⁶¹

If the child is placed in a group home and the parent retains the right to make educational decisions, the parent must be notified of and may participate in any assessment or educational meeting. Meanwhile, parent and child should be in family therapy, in the group home if necessary. The child should receive mental health services commensurate with his or her need for them. If the parent believes the child may need mental health services for educational purposes, he or she may request a concurrent assessment by the mental health agency. If the child is placed by child welfare in a group home and has a viable IEP, the department or parent may request the addition of a mental health overlay to determine the appropriate placement. This process takes approximately 60 days to complete. During that time, all parties should meet to determine the needs of the child, as if he or she were already placed in the parental home.

Parents must attend the IEP meeting to ensure that the needs of the child are identified and met and to make clear that the child is entitled to all “designated instruction and services” he or she needs in order to benefit from education. “Designated instruction and services” may include speech therapy, individual therapy, family therapy, or any other services, including assistive technology, that could aid the child in an educational setting.⁶²

If the child is 14 or older, a “transitional” IEP to prepare the child for employment and independent living must be developed. It is important to include all the relevant services on the IEP, as inclusion of a service on the IEP establishes the child’s legal entitlement to its provision. This is also the case with an IPP pursuant to a legal eligibility finding by the regional center.

The family and the child welfare agency plan for the child’s return at a case conference attended by the parent, child, social worker, and attorneys. Court, counsel, and social services should assist the parent in representing his or her child’s interest in the meetings. The purpose of the case conference is to generate the service blueprint that lists all the child’s needs and the agencies that will be providing services to meet those needs.

During this transition, the child spends more and more time at the parental home. The court orders the child returned home. If necessary, the child’s current school district (where the group home is located) and his or her home school district (where parent resides) develop a new IEP to help implement the permanent IEP.⁶³ The

new school must implement the current IEP for 30 days, after which they can ratify the IEP or hold another IEP meeting to modify its provisions.⁶⁴

For the next 90 or 180 days, the child welfare agency and all attorneys monitor the case. The modeler attends service provision meetings with the parent and shows him or her how to advocate forcefully for the child's rights. The court holds a hearing to determine whether the blueprint is in place and whether the parent is ready to take on the responsibilities of child advocacy. If the placement is safe and stable, the court terminates jurisdiction.

CONCLUSION

Maintaining at-risk children in the family home takes a new worldview and a commitment by all professionals involved. Interagency collaboration is not an easy task but is necessary to ensure that our children receive the services they need and deserve. Securing these services also requires a bench and bar committed to using new methods in meeting their responsibilities. Use of the community resource approach where applicable will get at-risk children out of the system faster and home to better-prepared parents. To use it effectively, all the professionals involved need to think holistically and anticipate at the beginning of a case where they hope to be at the end.

Reasonable efforts must include not just removing the negatives from a family relationship, but also fostering and building new positive results. Judicial orders, collaborative conferencing, and showing parents how to advocate successfully for their children can be used effectively to this end. When that happens, the juvenile court will be working to move the family beyond reunification, toward empowerment. And when a parent is empowered to advocate for a child, to realize his or her capability to meet the child's needs, then the family is fundamentally intact. In a real and meaningful way, the child has come home.

NOTES

1. *See, e.g.*, *Stanley v. Illinois*, 405 U.S. 645, 657–58 (1972) (requiring that parental unfitness be proved at a hearing); *Santosky v. Kramer*, 455 U.S. 745, 768–70 (1982) (requiring that determination of parental unfitness be supported by clear and convincing evidence).
2. CHILD WELFARE LEAGUE OF AMERICA, STANDARDS FOR SERVICES TO CHILDREN AND FAMILIES (1985).
3. Adoption Assistance & Child Welfare Act, Pub. L. No. 96-272, 94 Stat. 516 (codified as amended at 42 U.S.C. §§ 620–628, 670–676 (1994 & Supp. V 1999)).
4. Title IV-E, Social Security Act, 42 U.S.C. §§ 471(a)(5), 672(a)(2) (1994 & Supp. V 1999).
5. 45 C.F.R. § 1356.21(d)(4) (2001).
6. CAL. WELF. & INST. CODE §§ 300–395, 16,500–16,525.30 (1998 & Supp. 2001).
7. *Id.* § 300.
8. *Id.* § 300(a)–(e).
9. *Id.* § 300(j).
10. Education of the Handicapped Act, Pub. L. No. 91-230, 84 Stat. 175 (1970).
11. Individuals With Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1103 (1990) (codified as amended at 20 U.S.C. §§ 1400–1487 (2000)).
12. 20 U.S.C. § 1400(d)(1)(A)–(B) (2000).
13. 34 C.F.R. §§ 300.1–300.754 (2001).
14. CAL. EDUC. CODE §§ 56,000–56,885 (West 1989 & Supp. 2001); CAL. CODE REGS., tit. 5, §§ 3000–3100 (2001).
15. 34 C.F.R. § 300.300.
16. 34 C.F.R. § 300.7(b)1–(b)13.
17. *See* 34 C.F.R. §§ 300.340–300.350.
18. 20 U.S.C. § 1401(22) (2000).
19. 34 C.F.R. § 300.24(a).
20. 34 C.F.R. § 300.342(b)(1)(ii).
21. *Christopher P. by Norma P. v. Marcus*, 915 F.2d 794, 800 (2d Cir. 1990) (emphasis omitted).
22. *See* 20 U.S.C. § 1415(b).
23. Interagency Responsibilities for Providing Services to Handicapped Children, 1984 Cal. Stat. 1747, § 2 (codified as amended at CAL. GOV'T CODE §§ 7570–7588 (West 1995 & Supp. 2001)). In some counties outside of Los Angeles, the law is known as AB 2726, a bill that amended the statutory scheme. *See* 1996 Cal. Stat. 654, § 2.
24. CAL. GOV'T CODE §§ 7570, 7576.
25. CAL. CODE REGS., tit. 2, §§ 60,000–60,610 (2001).
26. *Id.* § 60,100.
27. 42 U.S.C. §§ 1396–1396v (1994 & Supp. V 1999).
28. *Id.* § 1396d(r)(5).
29. For a complete list, see CAL. CODE REGS., tit. 9, §§ 1810.201–1810.254 (2001).
30. *See Emily Q. v. Bonta*, No. CV-98-4181-AHM (AIJx), 2001 U.S. Dist. LEXIS 22305, at *41 (C.D. Cal. Mar. 30, 2001).

- NOTES
31. *Id.* at *27–28.
 32. 1977 Cal. Stat. 1252, § 550 (codified as amended at CAL. WELF. & INST. CODE §§ 4500–4846 (West 1998 & Supp. 2001)). Sections 4620–4669.75 set forth specific requirements for regional centers. These centers also provide early intervention services to infants and toddlers (from birth through age 2) with disabilities under Part C of IDEA.
 33. CAL. WELF. & INST. CODE § 4642.
 34. *Id.* § 4512(a); see CAL. CODE REGS., tit. 17, §§ 54,000–58,680 (2001).
 35. CAL. WELF. & INST. CODE § 4512(a).
 36. *Id.* § 4646.
 37. Regional centers use the term *consumer* to refer to a person eligible for their services.
 38. CAL. WELF. & INST. CODE § 4512(j).
 39. *Id.* §§ 4646–4646.5.
 40. For a complete list, see CAL. WELF. & INST. CODE § 4512(b).
 41. CAL. WELF. & INST. CODE § 4646(a).
 42. *Id.* § 4648(a).
 43. *Id.* § 4648(b).
 44. *Id.* § 4648(c).
 45. *Id.* § 4648(d).
 46. *Id.* § 4648(e).
 47. Ass’n for Retarded Citizens v. Dep’t of Devel. Servs., 211 Cal. Rptr. 758 (1985).
 48. CAL. WELF. & INST. CODE §§ 4700–4715.
 49. *Id.* § 362(a).
 50. *Id.* §§ 300.2, 309, 319, 361.5.
 51. *Id.* §§ 311, 325, 332.
 52. *Id.* § 319(d)(1)–(2).
 53. *Id.* §§ 319(e), 361.5.
 54. *Id.* §§ 361(d), 366.21(e).
 55. This placement may also be with a committed relative as well as a parent.
 56. *Modeler* is a term that describes the person who assists the family, by presence or advice, as an advocate at various meetings held for the child. A modeler can be a lawyer, social worker, or community advocate who shows the parent or guardian step by step how to negotiate with various agencies for needed services.
 57. See CAL. EDUC. CODE §§ 56,034, 56,365–66 (West 1989 & Supp. 2001).
 58. See *supra* notes 30–31 and accompanying text. This type of service is also known as “wrap-around services.” See, e.g., CAL. WELF. & INST. CODE §§ 18,250–52 (West 2001).
 59. CAL. WELF. & INST. CODE § 300 (West 1998 & Supp. 2001).
 60. See *supra* note 49 and accompanying text.
 61. See CAL. EDUC. CODE § 56,321.
 62. *Id.* § 56,363.
 63. *Id.* § 56,325.
 64. *Id.*

Gray Rage: A Researcher's Dilemma

The general public seems to prefer (and accept) simple explanations for complex social problems—or at least that's what the people who create the explanations assume. The attraction of simple explanations is clear—they lead directly to obvious, and apparently potent, interventions. Hard science has traditionally valued “parsimonious” explanations. Physicists strive to summarize a large set of observed relationships with the simplest theory or smallest set of laws. Newton, for example, explained all motion, from a falling apple to the orbit of the planets, with three simple laws. Too often in the social sciences, however, commentators use just a single relationship or fact (and not multiple interweaving relationships) to characterize a complex problem. With only a single relationship to explain, the set of possible parsimonious explanations is quite large, permitting the explainers to select the one that best satisfies other, often political, criteria.

We have seen many examples of this phenomenon in recent years. In the field of juvenile justice, the most notable was the emergence of the “superpredator” theory to explain the juvenile violent crime arrest trends of the late 1980s and early 1990s. The fact was clear enough: juvenile violent crime arrest rates surged between 1987 and 1994, after almost 15 years of relative stability. The parsimonious explanation that pundits selected to explain this fact—chosen from among many possible candidates—was that juveniles then and there had changed: that our society was dealing with a new breed of young offender, one with no social conscience, whose DNA had been altered by drug and alcohol abuse, who would kill for a new pair of sneakers, who was beyond the control of the juvenile justice system. All of this thinking was captured in a single phrase: the juvenile superpredator.

The influence of this explanation can be seen in the effects it had on state legislation. Nearly every state in the nation revised its juvenile justice laws in the mid-1990s to facilitate the transfer of more youth to the criminal justice system. If the cause of the increase in juvenile violent crime arrests was internal to this new breed of juvenile offender after all—if economic, social, and other external factors had nothing to do with it—then the only reasonable course of action was to remove these youth from America's streets. Transfers to the criminal justice system (followed by long sentences in adult prisons) appeared to be the most effective way to accomplish this goal.



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There is a lesson in the rise and fall of the juvenile superpredator controversy: Concerned researchers must acknowledge their complicity in this and other such political campaigns. In this article, a researcher ponders the dilemma that arises when he knows his findings may be put to political use. ■

HOW TO CREATE A SOCIAL MYTH

Of course, not every simple explanation catches on the way the superpredator concept did. To sway decision-makers and the general public as thoroughly as the superpredator construct did during the 1990s, it takes more than surface plausibility; it takes a campaign. I would suggest that anyone interested in initiating such a campaign take the following steps.

Step 1: Find a fact, make a graph. It is helpful if the fact is essentially true and based on information from a credible source. It gives more credence to the pursuing argument. It also is helpful if the fact can be displayed by a graph. Ross Perot (or maybe it was Madison Avenue) popularized this technique with the American people. Graphs lend an air of scientific rigor to the fact.

Step 2: Add high-profile examples. Information consumers like war stories—specific examples that give a fact a face and a story line. And in a country of over 280 million people, finding a story to support any fact is not hard. It helps if the characters in the story are well known for other reasons (e.g., movie stars, athletes, or politicians). It also helps if the story is violent, lurid, or bizarre. The best war stories are examples that everyone remembers on first hearing and easily recalls when an explanation of the fact is needed.

Step 3: Mix in natural pessimism. People are naturally pessimistic. If the fact predicts that bad times are ahead, they are more likely to believe it. A Chicken Little story is more readily believed than a story from a kindly grandmother telling us everything will be all right. So if the fact is not apocalyptic, try to present the fact in a negative context. For example: “The stock market will soar in the next two years, but unless it is carefully monitored, this new wealth will cause your children to become slothful and the country will be at risk from foreign enemies.” The benefits of a negative prediction are obvious. If things go bad, you are a prophet. If they don’t, it’s because you sounded the warning and disaster was averted. Either way, you win.

Step 4: Give it a catchy title. In our sound-bite society, developing an easily remembered label to communicate your explanation is critical. A catchy title is the equivalent of a media sound bite. It captures in a word or short phrase all the nuances of the parsimonious explanation, enabling users to recall or reconstruct the details of the explanation with little effort. Think of the Iron Curtain, the Military Industrial Complex, the Population Bomb, the Domino Theory.

Step 5: Repeat as often as possible. Have you ever wondered why McDonald’s advertises when everyone knows who they are, what they sell, and how to recognize their establishments when you are driving past them? For one thing, it’s to keep the option of buying McDonald’s sandwiches close to the surface of your short-term memory—so that when a dining decision is to be made, the golden arches will pop to

mind. But another reason for advertising is that repetition builds credibility. The more often an idea is presented, the more likely people are to accept it. If you are trying to sell your explanation, work to have it repeated (in print, on talk shows, or in song) as often as you can.

The superpredator campaign did not neglect any of these steps. We all saw the graph of FBI data showing the large increases in juvenile violent crime arrests. TV stations across the nation, following the broadcast tenet "If it bleeds, it leads," began their news programs with vivid, sensational juvenile-crime war stories. Pessimists took grim satisfaction in predictions of a coming "bloodbath" resulting from increasing numbers of young superpredators entering their teenage years. Pundits visiting talk shows and legislative hearings repeated the trademark "superpredator" catchphrase at every opportunity.

And it worked. Along with transfers to adult courts and the use of long sentences in adult prisons to keep juvenile offenders off the streets, laws were proposed to ban families of convicted juveniles from federally supported housing, to prohibit convicted juveniles from receiving state grants-in-aid to support postsecondary education, and to restrict future gun ownership by adjudicated juveniles. While most of these proposals were never implemented, the superpredator campaign did change how the adult world viewed the younger generation and how the younger generation thought of itself.

Not surprisingly, public support for the juvenile superpredator concept is waning as juvenile violent crime rates plummet to their lowest levels in a generation. Even the original proponents of the explanation have stepped away from it. But some lingering effects of their parsimonious explanation can be seen in altered juvenile justice legislation and the juvenile system's disproportionate focus on punishment rather than rehabilitation and prevention.

THE DILEMMA

Now here is my dilemma, the reason for this discussion: I am hesitant to release a fact that I encountered in my research in the fear that it will plant a seed in the minds of some and grow into a full-fledged media campaign. Here is the fact:

My analysis of FBI statistics documents that between 1980 and 1999, arrests for violence and drug abuse increased more in one segment of the U.S. population than among juveniles. For example, while juvenile arrests for forcible rape remained constant, forcible rape arrests in this group doubled. More dramatically, while juvenile arrests for drug abuse violations increased 75 percent, arrests in this segment of the U.S. population nearly quadrupled. Who is this growing threat to our society? It is our senior citizens, people age 65 and over. And if the problem is bad now, just think what the future holds. In the next 20 years, the number of persons in this crime-prone group will increase substantially as the baby boomers pass into their retirement years.

I can see the press report now:

Recent FBI Data Point to Emerging National Threat

—*Washington, D.C.* A new and pervasive criminal element threatens the safety of American society. Our senior citizens are out of control, committing violent crimes and abusing drugs at soaring rates. And each day more join their ranks. To what can we attribute this dramatic increase in senior, or “Gray,” crime?

We do not traditionally envision Grandma and Grandpa in mug shots or in the dock at criminal trials. But the Grays of today are not the seniors of a generation ago. We fear juveniles because their immaturity and irrational behavior lead them to commit senseless crimes. Grays pose a far more sinister threat to public safety. Guided by rational choice and lifetimes of experience, Gray criminals are clever and calculating to an extent unimagined by our young people.

It is often written that many violent juvenile offenders expect to die by age 21. This hopelessness both drives their antisocial behavior and justifies their apparent disregard for the potential penalties meted out by our criminal justice system. But if the hopelessness of violent juveniles reduces the deterrent effect of the juvenile justice

system, what hope do we have of stopping the Gray menace? Even with the benefits of medical advances, most Grays can look forward to only a few remaining years. “Long” prison sentences will not stop Grays from breaking the law and committing violent acts. A life sentence to a Gray is like a day in detention to a youth.

Far from deterring Gray crime, the prospect of a life in prison actually may motivate many of these vicious oldsters. Some Grays commit crimes simply to obtain the necessities of life. If these Grays succeed, they may gain some short-term benefits. Paradoxically, if they fail, crime is their ticket to a secure and carefree existence—in prison.

The attraction of prison life will only increase when the social security system goes bankrupt and Medicare must employ triage to treat the nation’s elderly. Prison will be a haven to Grays—three meals a day, shelter from the elements, and free health care in an institution with geriatric units (thanks to our nation’s commitment to truth-in-sentencing laws and the resulting longer sentences) far better equipped than many nursing

facilities. And, of course, no Gray will feel abandoned or alone in our overcrowded prison system.

Huge expansions in the social safety net may reduce the motivation for some Gray crime. Pumping tax dollars into Medicare and social security might even gain the political support of the younger generations if these social programs were characterized as crime prevention programs. But not all Gray violence stems from need, and social programs cannot address violence bred by idealism. While drugs, money, or a desire for respect may incite some juvenile violence, the motivation behind future Gray violence lies much deeper. In the next 10 years, the Gray population will be swelled by persons who matured in the 1950s and 1960s, the Beat and hippie generations. When young, they had high ideals. They had the Lone Ranger, James Dean, the Summer of Love, and the Summer of Rage. They lived in the Age of Aquarius. They tried to save the Earth and free the Chicago Seven. They tuned in and dropped out, protested the war in Vietnam, and joined the Peace Corps. They learned as Boy Scouts and Girl Scouts to leave a campsite cleaner than they found it. As most of these naïve idealists matured, they were co-opted by the system. They moved to suburbia

and drove SUVs. In many this has left a deep-seated feeling of guilt. Now in their Gray years, they know they could, and should, have done more. They could have left the campsite cleaner. In the waning years of their lives, they have little time to clean the campsite. They must take action *now*. For many the action will be violent.

Without fear of retribution, Grays will turn to violence when no other solution is possible within the time available to them. Child abusers, polluters, attorneys, weak political leaders, boom-box carrying juveniles, used-car salesmen, and inconsiderate government clerks—all will feel the wrath of Grays. And woe to the son-in-law who abuses the daughter of a Gray father! Wrongs, as Grays perceive them, will be made right without concern for the lawfulness of the means. The idealism instilled in Grays in their formative years will emerge. Violence will become a tool of justice. The idealism of youth will become Gray Rage. America must face the reality of this impending time bomb, fueled by the Grays' need to be free from care and by the protest songs that still ring in their heads. Gray violence will dominate the front pages in the United States in a few years—*unless we act now*.

(Accompanying this story would be a picture: a grandfather in a jail cell with a smirk on his face and his hands clenched into fists around the bars of the cell door. One letter would be tattooed on each of the knuckles of his right and left hands, spelling out the phrase "GRAY RAGE.")

Once the Gray Rage notion takes hold, proposals to address the problem will appear. Building on the recent movement toward specialized courts (e.g., drug courts, gun courts), someone will propose a Gray court—essentially transferring all Grays out of the traditional adult justice system, following the argument that it was never designed to handle such cases. Gray courts will have a new array of sanctions available to them. To deter other Grays from committing crime, the courts will have the authority to abridge the social safety net available to law-abiding senior citizens, limit medical services, or exclude lawbreakers from federally supported housing. Assuming that Grays care deeply about the happiness of family members, another deterrence technique might be to levy sanctions against a Gray offender's family, perhaps limiting the aid their grandchildren could receive to support their college costs. Finally, someone will bring up the idea of limiting Grays' right to bear firearms.

Now, with the juvenile superpredator fiasco still fresh in my mind, this is my dilemma: Should I release my findings about Gray crime or keep them to myself for fear of what parsimonious explanation might capture the public's attention—and what social policies might result? As a researcher, am I responsible for the harm that comes from my research? Should I keep these findings to myself because of the potential injury that could come from mistaken (or even malevolent) interpretations of them? If scientists had done this, think of the advances that we would have lost. Most social systems (e.g., government, health care, education) employ checks and balances to prevent any one component of the system from causing undue harm. The courts check the executive and legislative branches of government. Insurers establish guidelines to control health-care costs. Standardized tests identify poor educational systems. But where are the checks and balances that would stop Grays from suffering undue harm from my findings?

While I've been pondering my situation, a possible answer came in the U.S. mail. In correspondence addressed to me, the American Association of Retired Persons (AARP) informed me that I was old enough to become a member of the group. As I read on, I learned about all the services available to me as an AARP member, including federal and state lobbyists who work tirelessly to protect the rights and defend the benefits earned by senior citizens (i.e., the Grays). I also learned that large numbers of fellow senior citizens belong and that through our unity (and annual dues), we would ensure that our rights and the privileges we have earned will not be taken from us by media hype and misguided political expediency.

So maybe I will release the news about the increase in Gray crime, knowing that when an erroneous (but parsimonious) theory is promoted to explain this fact, there will be people with the organization, power, and public relations savvy ready to expose its absurdity. I just wish that such a force had been there when the juvenile superpredator notion was gaining steam.

Essay

My Life in Crime

As far back as I can remember, I have always been a ward of what we call “The System.” Even in my preteen years I was involved in illegal activities,

with the encouragement of my parents as well as other family members and immoral influences. I was never a stable child, moving from city to city as a result of my parents’ financial problems. However, to be honest, I never considered this to be a disadvantage. In fact, I credit this misfortune as being nothing more than a learning experience for me! I truly believe that this is why I can adapt in different environments and communicate with all different types of people. In the same vein, while I believe that my upbringing was outlandish and unjustifiable, I have come to see that you can always learn something positive through negativity. This has led me to reflect on “my life in crime.”

My first arrest for a serious crime (armed robbery) took place in Sacramento when I was 15. I robbed a pizza man and was detained for six months. At that age, I was too naïve to grasp the full concept of incarceration. Rather than using the time to come to peace with myself and change my self-destructive ways, I spent it doing push-ups and sit-ups. After all, I felt that my first time being locked up was just “earning stripes,” a term I had become familiar with while growing up in the ‘hood.

After I was released, my friends treated me with a lot more respect, and at the time, their attitude toward me just confirmed my way of thinking. As I look back and reflect on my childish ways, I realize that my main intentions were to improve physically, in order to be easily accepted by my peers. I also realize that this is a problem that plagues the world. So many people try to make themselves look better on the outside to be accepted, but who is really at fault here? The people who want acceptance, or the people who they want to impress? People are so caught up with appearance that they fail to deal with themselves internally—like myself, for instance!

As a result of not learning a constructive lesson from incarceration, I was destined to return to juvenile hall. Four months later is when fate caught up with me for the second time. I served my first lengthy bid in the San Francisco juvenile facility, and it was there that I began to recognize and

EVANS LOWRY

Evans Lowry, 17, recently moved from the San Francisco Youth Guidance Center to the Glen Mills Schools outside Philadelphia, Pennsylvania. He plans to get his high school diploma, then attend and graduate from college. Someday Evans hopes to start his own record label, to be called Omega Records. He plans to retire as CEO of the company. ■

deal with my inner self. I met a man by the name of Jack Jacqua, who helped me realize the reason I had returned to the hall. He would tell me, "Failure to plan is planning to fail!" I began to contemplate my life and my future for the first time. I noticed that when I took my first step out of juvenile hall after my previous stay, I had already planned to fail because I didn't have a constructive plan to ensure I would not return. After I came to this realization, I felt that I had solved my problem. I spent two months in San Francisco Juvenile Hall before I was released. I was a free man again and I was so happy! I thought that since I had learned what my problem was, I would never return. What I didn't realize, however, was that I was completely oblivious to the other problems that I had and I was not mentally prepared for freedom.

Eleven months later, I returned to the juvenile system for what was definitely my most serious crime to date—a carjacking with an unloaded weapon and a second charge of residential burglary. This time I was placed in a different Bay Area county facility, and this is when I began to see juvenile institutions for what they truly were. I began to notice the type of inmates I was surrounded by and soon realized that the majority were always black and brown. I also realized that the majority could not read or write past the junior high school level. I then focused on the employees of the system, who we refer to as "counselors." Many counselors were people who were deeply involved in their own lives, and, more often than not, their misfortunes and misgivings arrived at the job along with them. The counselors' bad attitudes often resulted in the cruel treatment of detainees. This kind of treatment was the norm and far outweighed the kindness of the few good counselors on staff. I began to feel that I was not being counseled. Instead, I felt like I was always being lectured for the things I had done in my past. I quickly came to the realization that the staff only showed up at work for a paycheck. I was convinced that no one cared and that the nice counselors were only nice because they wanted to work easier shifts! Experiences like these showed me that I can depend only on myself and that only I can create better situations for myself. After all, it's not mandatory for someone to guide me the right way throughout my life.

I have to admit that the thing that changed me the most was my observations of the juvenile institution itself. I began comparing the similarities and differences of all the institutions that I served time in. I noticed how one county's juvenile facility was clean and organized while another county's facility was dysfunctional and dirty. But the institution that really got under my skin most was the laid-back and

comfortable one! From the time I arrived at this particular institution with tears in my eyes, I was told, "Don't worry, this is the best unit you can be in!" A couple of days later, I realized this as being the truth. Between the big-screen TV, the popcorn and sodas, Ping-Pong, chess, Nintendo 64, basketball, bingo every Friday night, and meeting the author Terry McMillan, I was almost deceived into believing that I wasn't incarcerated at all! At first I registered this royal treatment as a coincidence, but as I grew older, I began to discover the truth. This is around the time I learned that "institutions" are the biggest moneymaking industry in California. Sometimes I wish that I could meet the man who started it all because he had to be pretty smart. Just think about it: What is the best way to legally turn minority youth into recidivists? Simple—by making institutions comfortable and easy to return to. This was all just a moneymaking scheme!

While I was sitting in that particular institution, I never thought about what I did, nor did I feel like I was being incarcerated. I was living carefree, without the need for money and also eating three meals a day, which was a major improvement! I have come to believe that, subconsciously, this is why people return. Most detainees eat three meals a day only on special occasions when they are "on the outs," and their families cannot afford to buy things like Nintendo 64 and big-screen televisions, etc. Also, since most people commit crimes for money, it relieves a lot of tension to come to a place where money is not needed. I feel that this was the overall plan when institutions were first built and that their goal has been accomplished. The obvious irony, in my opinion, is that these institutions should be places where you don't want to be, places that you never want to return to, places that are anything but comfortable. There should be less emphasis on entertaining you while you are incarcerated and more emphasis on preparing you to deal with stuff when you get out. Throughout my numerous placements, I realized that it got easier for my mind to deal with and accept incarceration. I recognize this as "institutionalization."

Which brings me back to present day. After being transferred to San Francisco, I feel that I am now a much wiser person. I have begun to read a lot of books about different things in order to expand my horizons. I regularly attend biweekly meetings of the Omega Boys Club. Omega is a program in which ex-convicts and motivational speakers come in and talk to us, sharing their experiences of life in the system. This is helpful because we can see a reflection of ourselves in the future if we don't decide to make a change in the present.

I am currently waiting to be sent to a reform school outside of Philadelphia by the name of Glen Mills. This program specializes in academics and provides opportunities to learn job skills while obtaining a GED or a high school diploma. I feel that this is the best place for me to be at this time. A lot of people put their careers on the line to see that I make it to Philadelphia. I really owe it to people like Jack and Judge Feinstein because they have given me the opportunity to really turn my life around. Now I realize that I have a lot to prove, and I know that I want to prove a lot. I have come to the final conclusion that there is no way possible to make a career in crime. After all, what's the point in trying to if you are not guaranteed a retirement plan? This is the last chance I will truly have to build my future as a young adult. If I don't take advantage, I can very well be throwing my life away! I refuse to make that fatal mistake.

What keeps me going is just imagining how proud my mom will be once I succeed. I remember my mother telling me a story about two men in the same jail cell after a rainy night. One man looked out and saw mud, the other man looked out and saw stars. I think it is my time to look out and see the stars.