Treating Substance Abusers *in* Correctional Contexts

New Understandings, New Modalities

Nathaniel J. Pallone
Editor

Treating Substance Abusers in Correctional Contexts: New Understandings, New Modalities

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Young Victims, Young Offenders: Current Issues in Policy and Treatment, edited by Nathaniel J. Pallone, PhD (Vol. 21, No. 1/2, 1994). *"Extremely practical. . . . Aims to increase knowledge about the patterns of youthful offenders and give help in designing programs of prevention and rehabilitation." (S. Margretta Dwyer, Director of Sex Offender Treatment Program, Department of Family Practice, University of Minnesota)*

Sex Offender Treatment: Psychological and Medical Approaches, edited by Eli Coleman, PhD, S. Margretta Dwyer, and Nathaniel J. Pallone, PhD (Vol. 18, No. 3/4, 1992). *"Summarizes research worldwide on the various approaches to treating sex offenders for both researchers and clinicians." (SciTech Book News)*

The Clinical Treatment of the Criminal Offender in Outpatient Mental Health Settings: New and Emerging Perspectives, edited by Sol Chaneles, PhD, and Nathaniel J. Pallone, PhD (Vol. 15, No. 1, 1990). *"The clinical professional concerned with the outpatient treatment of the criminal offender will find this book informative and useful." (Criminal Justice Review)*

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ABOUT THE EDITOR

Nathaniel J. Pallone, PhD, Editor of the *Journal of Offender Rehabilitation,* is University Distinguished Professor (Psychology), Center of Alcohol Studies, Rutgers University, where he previously served as dean and as academic vice president.

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Editor's Foreword: Watching History Unfold, Again–or: Back to the Future?

NATHANIEL J. PALLONE

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ABSTRACT This editor's foreword is a general introduction to a special issue of the *Journal of Offender Rehabilitation* on the theme *Treating Substance Abusers in Correctional Contexts: New Understandings, New Modalities.* Some personal reminiscences are recounted concerning earlier modalities in the rehabilitative treatment of heroin addicts before the introduction of methadone maintenance. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <http://www.HaworthPress.com> © 2003 by The Haworth Press, Inc. All rights reserved.]*

KEYWORDS Editor's foreword, substance abuse, treating substance abusers, correctional treatment, Mobilization for Youth, gang norms

One of the more memorable Friday afternoons of my (then-early) professional life was spent on a street corner in the Hell's Gate section of New York City, now largely absorbed by El Barrio, watching history unfold. It was a sultry April in the mid-1960s, with the early humidity that foreshadows the dog days of August. Dick Banks, my former "mentee" and sometime research assistant at the University of Notre Dame, had now, with PhD safely in hand, become a research psychologist at Notre Dame's Center for the Study of Man, with responsibility for operating a field research station located in a storefront off Second Avenue; his principal tasks involved administering a variety of psychological tests to heroin addicts and their non-addicted siblings in order to study conflicts and coping

mechanisms. In a reversal of roles that is not uncommon in academia, I–then newly lured to the faculty at NYU, my alma mater, for many reasons, not least of which was the presence there of Isidore Chein, whose *The Road to H* (1964) had only recently been published–had become a sometime assistant to Dick in that research; Dick later went on to a distinguished career at California's Loma Linda University, specializing in marriage and family therapy. I do not know whether the events of that Friday afternoon contributed materially to his decision not to continue to specialize in researching (and treating) drug addiction.

Save for the pioneering work at the U.S. Public Health Service Hospitals in Kentucky and Texas (Ausubel, 1958), albeit with limited patient capacities, and a relative handful of innovative community-based organizations like New York City's Greenwich House and Riverside Hospital (Osnos & Laskowitz, 1966), most members of the mental health and social service communities were, back then, likely to run the other way when confronted with a drug addict, whether on the street or in the waiting room. Although municipal hospitals sometimes provided "drunk tanks" in which the acutely inebriated could attempt to overcome *delirium tremens* during what was typically a maximum stay of three days in a locked ward, little treatment was available for alcoholism either. The brave, new world of the CAC and the CADC, the 28-day residential treatment program (aka "the month in the country"), even the concentration of Federal attention through new agencies like the National Institute on Alcohol Abuse and the National Institute on Drug Abuse, lay years ahead. Indeed, it is perhaps not too much to say that, in those days, the land itself was relatively blind and the one-eyed might readily become, or at least pose as, king.

The conventional wisdom in the mental health sciences held that drug addiction resulted from intrapersonal, psychodynamic forces themselves the product of such underlying psychiatric disorders as "sociopathy" (Robbins, 1966). To the contrary, Chein and his colleagues (1964) had proposed that behavioral contagion and the demographics of communities might have at least as much to do with drug misuse as pre-existing psychopathology–and, even more radically, that perhaps such psychopathology as could be assessed and "post-dicted" among self-identified addicts resulted from, rather than preceded, the addiction itself. As a result of the data gathered at the field research station, Dick and I were able to lend some modest empirical support to such propositions (Pallone & Banks, 1967).

In any case, on the particular afternoon in question, there arose a clatter at the Second Avenue end of the block, and, since we had no scheduled interviews for at least another 30 minutes, we decided to mosey down to have a gawk. What greeted us was an unmarked police car–those were the days of the unmistakable "Kojak-mobile" of television fame–the front seat of which was occupied by two Anglos who seemed to resemble Central Casting's notion of plainclothes police officers. In the back, there sat a single (apparently Hispanic) male, rather obviously in custody. Surrounding the vehicle, there were perhaps 150 residents of the neighborhood, generally expressing their dissatisfaction with the arrest and immobilizing the vehicle, gently rocking it to and fro and absolutely impeding its move-

ment; one of the Anglos was speaking rapidly into the microphone of a car radio. No weapons were in evidence on either side, but there were shouts, moans, and grumbles from the assembled throng.

Dick inquired, in his passable Spanish (acquired during his days as a religious missionary), as to the source of the conflict; after all, it might be the case that we were witnessing an attempted lynching, *a la* New York City, of a notorious serial murderer or rapist. Not so; the police, we were told, had shown the temerity to arrest a person who, in today's argot, would be called the Local Candy Man–and the citizenry didn't like it. His stock in trade was said to be limited marijuana and heroin, with the one representing (once again, in the conventional wisdom) the "gateway" to the other; cocaine and LSD were, back then, "upper middle class" drugs not likely to be found in El Barrio, and we were years away from the development of synthetics like PCP or Angel Dust, the importation of the more exotic forms of cactus or mushroom, the widespread illicit distribution of pharmaceutical preparations with psychoactive properties, the process of crystallizing cocaine into crack.

We had little time to process the scene–that is, both the arrest and the community's response–before there emerged from the next street, on which the local precinct house stood, a detachment of a dozen or so heavily armed police, arrayed in the helmets, goggles, and vests that would become the characteristic battle array of specialized units that were only beginning to be called SWAT teams. As the phalanx turned the corner into Second Avenue, the detachment's commander signaled a halt. Palpably, tension mounted; furiously, the commander and the plainclothes officers appeared to be in conversation, perhaps with each other; then, with a great show of divesting himself of his weapons, the commander approached the car, opened the door, and set the arrestee free. For their part, the assembled citizenry released the sort of satisfied noise Dick and I were accustomed to hear only when Notre Dame scored on its home gridiron against Michigan State or USC.

And then it was over. The crowd dispersed, the SWAT team retreated to the station house, the motor vehicle moved on, unimpeded. In what we even then understood to be a symbolic act, Dick and I turned the corner to go back to the storefront. But we knew that not only the two of us but a rather large and important segment of society had turned another kind of corner, too–that we had witnessed the unfolding of history.

Later on, we attempted as best we could to learn what had motivated the decision to cancel the arrest, to avoid the confrontation, to defuse the pending crisis. Was it perhaps (as today's conspiracy theorist might argue) a case of mistaken identity, in which an early-day Serpico or a police informant had been collared? Or was it merely the case, as we came to believe, that a judgment had been made that the only way to sustain the arrest of the presumed drug dealer would have involved injury (or perhaps death) to one or several of the citizenry who believed the community's interests were not best served by that arrest–that is to say, that keeping the peace took precedence over enforcing the law? If so, at what level was that judgment made–by the SWAT team leader, the watch commander, the precinct

captain, the police commissioner, the mayor? No formal answers were forthcoming; nor was the press as dogged in its pursuit of "the whole story" as it has since become.

But it was not the case that the community universally applauded the release of the Candy Man. One resident who derided that decision was a young man in his late 20s whom we knew as Chino. When he first came into contact with us, Chino evinced considerable suspicion toward a couple of Anglos, periodically joined by some Anglo grad students, hanging out in El Barrio and spending a whole lot of time with folk who were fairly obviously drug users, if not addicts. Were we there for a walk on the wild side? To size up a situation so that a drug distributorship could be launched? But the spirit of Notre Dame's "subway alumni" was very much alive and kicking in the New York of that era, so it is likely that the great seal of the University on the front window precluded outright hostility (or worse) on Chino's part and that of a small cadre of like-minded community residents.

Once we were able to convince him that our interests lay in understanding the dynamics of addiction, including the portals and pathways, Chino became a frequent visitor. Yet he was strongly of the opinion that soft-headed approaches such as might be expected of the behavioral and mental health sciences were unlikely to yield usable information. Indeed, he opined that it was precisely such soft-headed approaches that had led to the present infestation of drug use in the city.

A decade earlier, as depicted artistically by Leonard Bernstein in *West Side Story,* street wars between youth gangs were common, with brass knuckles and "Saturday night specials" (sometimes homemade and bearing but a single shot) the weapons of choice (or availability). Though such primitive devices pale in comparison to the firepower in the automatic and semiautomatic weapons wielded by drug-trafficking gangs today, they were nonetheless deadly. A remarkable organization called Mobilization for Youth emerged to address the carnage, in the process creating the "street worker" whose task it was to infiltrate youth gangs and, once accepted as a member, both to attempt to affect group cohesion and to alter group norms. Mobilization had succeeded to the extent that, by the early 1960s, the number of gangs and gang members and the frequency of carnage had indeed receded–albeit that, with some degree of frequency, the Mobilization program is cited as a classic example of the failure to anticipate the consequences of planned intervention in social systems (Helfgot, 1981).

And therein, Chino told us, lay the seeds of the current infestation. For one of the central beliefs common to all gangs, he said, was that every junkie is a s–head. Junkie-whacking had become a common sport among all gangs. Indeed, sometimes rival gangs made common cause by targeting the same junkie or group of junkies for a high old time that yielded more kicks than the prototypical inter-gang rumble. Inter-gang rumbles generally proceeded on the basis of no readily identifiable, tangible, proximate motive; they happened merely because, palpably, an "us" and a "them" could be discerned. But junkie-whacking, whether by one gang or by two or more in concert, arose from a clear norm and a readily discernible motive and, in the bargain, seemed to have all sorts of pro-social benefits. That

"we" keep the s–heads out anchored the argument about "our" value to the neighborhood and simultaneously justified "our" resentment against interference, whether by police or these new-fangled "street workers."

On the basis of what we knew about the research in aversive conditioning, Dick and I could scarcely deny that the prospect of being beaten senseless if observed "nodding out" likely served to dissuade at least some drug users from the pursuit of their habit. So, Chino said, if we were genuinely interested in ridding the streets of drugs and drug users, we ought to make it possible for him and a handful of trusted allies to arm themselves, reestablish a network of gangs, and reinstitute the ironclad norm that prized junkie-whacking for the social good. Fortunately (from our perspective), the terms of the research grant under which we were operating permitted no such intervention. Once he understood that, Chino visited us less frequently, instead devoting himself more assiduously to his full-time occupation–collecting debts for street-level loan sharks who calculated interest charges on a daily basis. His instrument of choice in his daily rounds, we had learned, was a lead-filled baseball bat.

Although Chino and like-minded former gang members might stand foursquare for sharply punitive responses to drug use, the dominant societal response adopted legislatively by the state of New York moved sharply away from punishment and in the direction of medicalization and treatment–mirroring, in at least a rough way, the symbolic corner-turning Dick and I had witnessed. In what must surely constitute the most comprehensive public program ever devised to address drug use, the Rockefeller administration shepherded the creation of the New York Narcotics Addiction Control Commission. The Commission had a mandate to seize an arrestee for any offense in which drug use was suspected or otherwise implicated and to commit that arrestee to nine months of residential treatment in a secure (locked) facility, followed by 27 months of "aftercare," initially at least weekly, as constituent elements in a massive pretrial diversion. Successful completion of the rehabilitation program resulted in the expunging of the initial criminal charges, while failure at any point in the 36-month process resulted in incarceration to await trial on those charges–but without credit for "time served," even while "locked in" during residential treatment. During the first seven years of its existence, the Commission treated, with relative success, tens of thousands of drug users (in those days, primarily those habituated to heroin) before its personnel-heavy, mental health-oriented rehabilitation programs gave way to methadone maintenance as an alternative, but substantially less costly, form of (nonetheless) medicalized treatment (Rettig & Yarmolinsky, 1995).

Roughly contemporaneously with the decision in New York to substitute methadone maintenance for the Narcotics Commission's program of psychosocial rehabilitation, "therapeutic nihilism" emerged in the form of the first "Martinson Report" (as the next paper in this volume details more fully). An oscillation away from rehabilitation and toward punitive incarceration in corrections generally had begun, inevitably dictating a return to criminalization as the dominant societal response to drug use and abuse, to be joined to be sure by the gather-

ing momentum of mandatory sentencing legislation for all manner of offenses (drug and otherwise), including those that had earlier been classed as misdemeanors, dictated by the triumph of the "just deserts" perspective not only in penology but in legislative chambers nationwide.

Especially after the establishment of a "drug czar" in the Executive Office of the President during the Reagan administration and the mounting of a "war on drugs" with that officer as its commanding general, criminalization became the centrifugal societal response, with medicalization-rehabilitation in obvious decline but not in total eclipse. Indeed, as the contents of this volume clearly demonstrate, treatment programs for substance users and misusers continued to make significant progress even when not at center stage and–because financial support for the "war on drugs" gave top priority to trammeling the "supply side" (indeed, to the extent of equipping and arming the military of Colombia while simultaneously providing for U.S. military involvement in the aerial surveillance of coca-growing fields)–even though chronically starved financially. Yet, despite the consumption of massive public funds during the past two decades and more (including funds for the construction of prison facilities to house drug users under mandatory sentencing laws), as has been widely documented both in the scholarly journals and in the popular press, neither have the efforts to interdict supply nor the criminalization-punishment axis yielded the anticipated benefits.

The case might be argued that the voters of California in 2000, the Governor of New York a year later, and the drug czar who became "the drug warrior who would rather treat than fight" (as detailed in the next paper) were, in a sense, responding to an idea whose time had come. If these events prove not merely aberrant blips in an otherwise stable criminalize-and-punish, damn-the-torpedoes and full-speed-ahead set of public policies, it is inevitable that we need to look to the past to shape the future. As both policy-makers, legislators, and the professional community begin to reinvent or to retool the medicalization-treatment perspective into a contemporary key, the programs and findings described in this work will provide valuable insights, understandings, signposts, anchors, and seedlings. The scholars and clinicians whose studies are included herein have kept the flame alive.

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AUTHOR'S NOTE

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To Punish or to Treat: Substance Abuse Within the Context of Oscillating Attitudes Toward Correctional Rehabilitation

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ABSTRACT Although its remote origins can be traced to the end of prohibition with the repeal of the Volstead Act in 1933, the nation's "war on drugs" gathered massive strength in the early days of the Reagan administration. During the 1980s and 1990s, the decision of the nation, expressed through its legislators, seemed to be to "criminalize" drug use or abuse through imposition of harsh penalties for what had earlier been statutorily defined as relatively minor offenses and by eliminating judicial discretion in sentencing, so that mandatory incarceration was required for many offenses. Yet by 2000, the voters of California, the Governor and criminal court judges of New York, and even the nation's "drug czar" had decided that they would rather, as described by the *New York Times*, "treat than fight." This paper situates that sea change in posture within a context of oscillation toward the goals of corrections generally during an era in which "therapeutic nihilism" and "just deserts" appeared to have carried the day.

KEYWORDS Drug abuse, criminal sanctions, therapeutic nihilism, "just deserts," voter rebellion, public policy

To criminalize, or to medicalize–that is, and has been, the question on which societal attitudes toward the use of mood-altering substances of one or another sort have pivoted throughout the 20th century. If substance use, misuse, or abuse be encoded as criminal activity, the appropriate societal response is punishment; but if it be encoded as a medical (or even behavioral) condition (or illness), the appropriate societal response is clearly treatment.

Prohibition of the manufacture and sale of beverage alcohol constituted, of course, the century's grand experiment in criminalization, both in the United States and in many European nations. If Hofmann and Hofmann (1975) are to be believed, wide-scale additions to the roster of "controlled dangerous substances" mandated by the Federal Congress during the 1930s came about at least in part as the consequence of the repeal of the Volstead Act in 1933, thereby rendering obsolete an entire industry that had been organized to police traffic in ethanol. Indeed, it was not until 1975, some 40 years after repeal of the Volstead Act, that alcoholism came to be definitively categorized, by act of Congress, no less, as a disease rather than as a "voluntary misbehavior" (Fingarette, 1988, 1990), albeit as an afterthought in an amendment to legislation concerning vocational rehabilitation–and a new industry was thereby born. But even as new professions (e.g., "certified alcoholism counselor") and new institutions (rehabilitation centers, typically offering a 28-day residential treatment program) were generated, however, public inebriation remained a crime in most jurisdictions.

If the Hofmanns' rendition seems too cynical a reading, yet it should be noted that, as this paper is written, the popular press has widely reported results of a RAND study that sharply counters the conventional wisdom that use of marijuana places one on the slippery slope that leads only to depravity, a finding that appears to support the *Wall Street Journal's* famous (or infamous, depending upon one's cherished beliefs) characterization of US drug laws as "the criminalization of the common pleasures of the underclasses." Indeed, the RAND Corporation's public affairs office (2002) itself asserted in a press release that results of the study "challenge an assumption that has guided US drug policies since the 1950s."

The nation's "war on drugs" dates, under that specific rubric, from the early days of the Reagan administration. It is a fair assessment to say that, during the 1980s and 1990s, criminalization of substance abuse constituted the dominant theme, so that laws governing the use, sale, importation, or manufacture of an ever-expanding litany of "controlled dangerous substances" (and their "work-alike" counterparts, whether obtained by prescription or even "over the counter") were strengthened, with formal sanctions either attached thereto or rendered more severe. Making sanctions more severe included in some instances

legislatively mandating incarceration for offenses that either had not been earlier classified as felonies or in the imposition of penalty in situations in which there had previously been wide judicial latitude.

But at the cusp of the millennium there were strong indications on both ocean coasts of the nation that a tectonic shift had begun, yielding a situation in which, according to the *New York Times* (Wren, 2001), playing on the phrasing of a once-popular television commercial urging brand loyalty in the consumption of tobacco, even the nation's "drug czar" had decided that he "would rather treat than fight." It is the purpose of this paper to situate that emergent shift within the context of oscillation in societal attitudes and perceptions about who should be "punished" and who should be "treated" within, or under the aegis of, a correctional "system" comprised both of penal institutions and community agencies and resources.

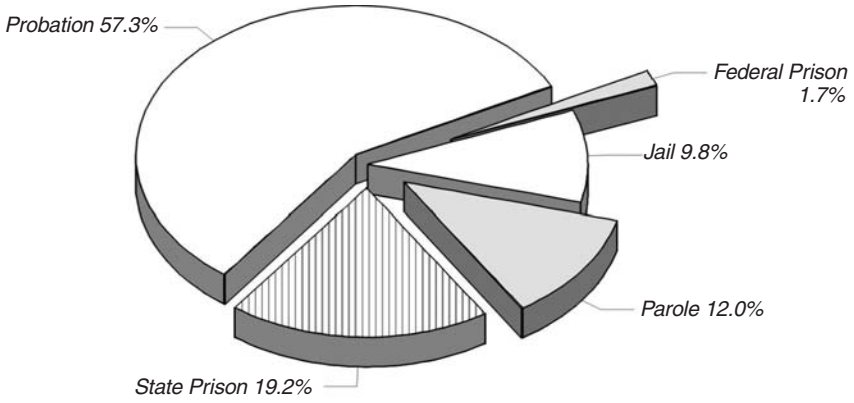
SCOPE OF THE CORRECTIONAL "SYSTEM"

Official records of the Bureau of Justice Statistics, the agency of the US Department of Justice with responsibility for collating data of all sorts concerning the criminal justice system, suggest that some 5.7 million people were (to use the term current in Federal parlance) "under correctional supervision" (Maguire & Pastore, 1999, 462), distributed among prisons, jails, and parole and probation agencies (as depicted in Figure 1) during a single year near the end of the twentieth century. Those given to this sort of thing might want to observe that, in the aggregate, slightly more than 2% of the nation's population of 280 million were thus "under correctional supervision" during the year in review.

Offenders under "community supervision" on probation or parole comprise nearly 70% of the total, outnumbering offenders incarcerated in state or Federal prisons as a result of felony convictions at a ratio greater than 3:1 and outnumbering the population of jails (composed of both accused offenders awaiting trial or the posting of bail and of convicted misdemeanants) at a ratio greater than 7:1. The matter of the type of facility in which offenders are held (prisons, with relatively stable populations serving sentences of specified lengths, vs. jails, with their revolving door clientele) and for how long represent important variables in the planning and delivery of medical, psychosocial, mental health, or other "treatment" services.

In general, psychosocial, treatment services are provided to incarcerated offenders by employees of the correctional authority (i.e., state, county, or Federal department of corrections), although a trend has emerged toward the "privatization" of many such services (Demone & Gibelman, 1990; Bowman, Hakim & Seidenstat, 1993; Kronick, 1993) in much the same way that correctional institutions have long contracted with private vendors to operate food preparation services. In either case, the character (and sometimes the fre-

Figure 1: Persons Under Correctional Supervision, USA–5.7 Million Offenders Annually in Custody or on Probation or Parole



Data from Maguire & Pastore, 1999, 462.

quency) of treatment and/or rehabilitation services is determined by policies of the correctional authority, in their turn responsive to legislative and judicial instruction. In contrast, offenders under community supervision are usually served by social service or mental health agencies in the community whose policies are not controlled by the correctional authority. Generally, direct referral to relevant community agencies (including outpatient clinics at hospitals) is made by the probation or parole officer; less frequently, referral is made to community agencies or institutions under contractual relationships to serve offender clients.

It is a matter of more than passing interest that whites, who constituted 80% of the nation's population in the 2000 census, comprise only 60% of the correctional population depicted in Figure 1. Similarly, according to the 2000 census, girls and women constituted 51% of the general population, but they represent only 16% of the correctional population. Demographic disparities between the population in general and the offender population clearly impinge upon the planning and delivery of correctional rehabilitation services.

OSCILLATING ATTITUDES TOWARD CORRECTIONS

At least since the time of the Marquis di Beccaria in the 18th century, the goals of corrections have been conceded to include *incapacitation, retribution,*

deterrence, and *rehabilitation* (Taylor & Brasswell, 1979; Welch, 1999), generally within the context of the principle of *proportionality* between offense and sanction traceable to the Code of Hammurabi in the 18th century BC and reinforced in the British Magna Carta three millennia later. In response to societal, political, and intellectual forces (Foucault, 1978), emphasis has of course shifted among and between these four goals over time, so that one or the other, or some permutation, may temporarily discernibly ascend and others recede.

Penance vs. Punishment: Rehabilitation as an American Tradition

Indeed, an oscillation of substantial proportions occurred not long after the founding of the American republic, when in 1787 the Quakers of Pennsylvania invented the *penitentiary* as an alternative to the *prison*, the purpose of which had historically been to punish and incapacitate. In contrast, the Quaker penitentiary was to be a place where offenders were confined to do penance through religious meditation and "spiritual exercises" and thus become "penitent" for their transgressions, in the process vowing irrevocably, with the aid of the Almighty, to forego wrongdoing forevermore.

However much the religious-spiritual dimension which shaped the Quaker invention may have eroded, there is little question that, half a century ago, if rehabilitation did not quite stand univocally as the primary goal of corrections (Lindner, 1949; American Friends Service Committee, 1971), it surely stood alongside incapacitation, deterrence, and retribution as *primus inter pares*. Legislators and the general public alike expected, and were willing to finance, the provision of rehabilitation services of various sorts for offenders incarcerated in the nation's prisons and, sometimes, jails.

Pugh v. Locke: *The Right of Prison Inmates to Mental Health "Care"*

A perception of rehabilitation as a primary purpose in corrections is readily inferrable in the landmark 1976 decision of Federal appellate court judge Frank M. Johnson in *Pugh v. Locke*, a case concerning the operation of the prisons of Alabama, later upheld by the US Supreme Court and, therefore, uniformly precedental throughout the nation. In his decision, Mr. Johnson imposed a wide-ranging set of "minimum Constitutional standards for inmates" that mandated "humane" and sanitary living conditions (with strict standards imposed to address prison overcrowding), "meaningful programs" staffed by qualified personnel, and at least first-line mental health care within correctional institutions (Fowler, 1976, 1987). Over the next two decades, no fewer than 37 states were ordered by the Federal courts to meet the standards specified in *Pugh*.

Federal courts in the southern tier had earlier issued the linchpin decisions in *Donaldson v. O'Connor*, *Wyatt v. Hardin,* and *Wyatt v. Stickney*, cases brought on behalf of patients confined in public mental hospitals. In upholding

those decisions, the US Supreme Court declared unequivocally that patients in mental hospitals have an absolute *right to treatment* and that to confine patients in the absence of treatment in effect constitutes involuntary imprisonment, in violation of the Constitutional guarantees against deprivation of liberty without due process contained in the 8th and 14th Amendments (Golann & Fremouw, 1976, 129-185).

But, although he affirmed the right of inmates to mental health *care,* Mr. Johnson stopped far short in *Pugh* of articulating a right to *treatment*. Instead, he ordered that prison administrators "shall identify those inmates who require mental health care within the institution and make arrangements for such care," while simultaneously ordering that there should be "routine" provision for identification of "those inmates who, by reason of psychological disturbance or mental retardation require care in facilities designed for such persons" and for the transfer of prisoners thus identified to such (presumably forensic) psychiatric installations. From the judicial perspective, "treatment" thus appears to be that form of professional intervention provided in psychiatric hospitals, while "care" is that form of intervention to be provided *in situ* for prisoners whose disorders are not severe enough to warrant hospitalization. Although it has been at pains in its *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* to label an enormous array of human behaviors–including, indeed, a singular devotion to soft drinks that contain caffeine–as psychopathological, the psychiatric community has rather anomalously not chosen to quarrel with those distinctions, implicitly ceding the *in situ* treatment of offenders to non-psychiatrists (Schnapp & Cannedy, 1998; Badger, Vaughn, Woodward & Williams, 1999).

Pugh specifically adopts the mental health staffing ratios proposed by the Center for Correctional Psychology at the University of Alabama (Gormally, Brodsky, Clements & Fowler, 1972), which reduce to an overall ratio of one mental health specialist for each 91 inmates–specifically: one bachelor's level mental health technician or correctional counselor for each 135 inmates; one psychologist for each 506 inmates; one social worker for each 578 inmates; one psychiatrist for each 4,048 inmates. Mr. Johnson's ruling in effect held that these personnel were required to provide "mental health care" as a sort of first-line intervention within the prisons themselves, since the most severe cases were to be transferred to appropriate mental hospital facilities. It might be noted that inventories of mental health staffing in state prisons shortly after *Pugh* provided evidence of enormous discrepancies between those standards, staff actually employed and deployed, and staffing standards promulgated by such organizations as the American Correctional Association (Pallone & LaRosa, 1979; Pallone, Hennessy & LaRosa, 1980). In a similar context, at least one legal scholar (Mayer, 1990) has labeled the failure of correctional administrators to meet court-imposed standards an exemplar of Constitutionally impermissible "deliberate indifference." And, in view of the definitive *Pugh* standards governing prison overcrowding, it is distressing to observe that,