

# Justice

## Public Defender Selection

By Suzanne Schnittman

*Integrity and Moral Courage \* Legal Ability and Experience \* Administrative Capacity \* Industry and Prompt Performance of Duties \* Leadership Ability \* Sensitivity \* Motivation*

Wouldn't you love to help use these categories to choose the next public defender?

Given the current state of affairs in Monroe County, the Judicial Process Commission and other community leaders might miss that opportunity. We assumed that as Ed Nowak leaves his position as public defender, we would have input in finding his successor, as when he was appointed 30 years ago. We have, however, been thrown a curve.

It's no wonder we weren't fretting about the next public defender's appointment. After all, 34 years ago the Legislature and Bar Association devised a plan to select the best candidate for that position. They implemented a design that helped appoint Peter Yellin in 1974. So effective was the process that the community repeated it, endorsing Ed Nowak for public defender in 1977. For the past 30 years, Nowak has served the area well in that capacity. In the debate over the future of that office, not a negative comment has been heard about his tenure. That's quite a record.

With Nowak's decision to retire at the end of this month, members of the community, trusting and perhaps naïve, assumed we would be involved in selecting his successor.

Not so fast, we've been told. Other plans are on the board. Much to the surprise of the legal and justice community, the current president of the County Legislature, Wayne Zyra, has another idea. He has, according to a December 3 *Democrat and Chronicle* editorial, "started assembling his own rendition of a community-based committee to recommend Nowak's replacement to the legislature."

Zyra's panel would consist of State Supreme Court Justice Stephen Lindley, Appellate Justice Nancy Smith, two Monroe County Bar Appointees, County Attorney Daniel DeLaus, one appointment each by majority and minority leaders in the County Legislature, another court appointee, and himself.

Although esteemed members of the legal community are included, this new panel composition makes disturbing additions and subtractions. It introduces politicians to the board and it excludes formal representatives of the Monroe County Bar Association and community leaders.

Most disturbing to us, the grass roots, is that the Judicial Process Commission is not even a distant partner to the decision process. Nor are members of the minority community, which is disproportionately dependent on the public defender's office for legal representation.

Central to so many defender issues in Monroe County, JPC was a formal part of the hearings 30 years ago. Lois Davis was one of nine community leaders who served on the panel that recommended the appointments. Two others

represented FIGHT and the Ibero-American Action League. The Monroe County Bar Association had representation with three attorneys. Three judges rounded out the panel, plus a few members of the Legislature.

A quick response is emerging to combat this unreasonable change to the appointment process. Already members of the excluded groups have met under the leadership of David Gantt to organize. The Bar Association has passed a resolution proposing that they lead the effort to appoint a public defender, as they did in the past. The public has attended at least one County Legislature meeting to express concern. Fred Schaeffer, newly elected chairperson of the JPC board, spoke on behalf of the group at the December 11 legislature meeting. Others have written letters and articles to the newspaper. The intent is to continue the pressure until Zyra alters his plan for the panel composition.

So, keep you eyes and ears open in the next weeks to watch how this unfolds. We may very likely draw on your support for action.

It might be December, time to toast friends instead of carry signs and write letters. But this issue won't be taking a vacation, so neither should we. As we're bringing in the New Year with resolutions to make the world a better place, let's begin at home and assure justice be served in the office of our public defender. Like everything else that is worth pursuing, it won't come easy.

As we go to press (12/14), news comes that the New Jersey legislature has repealed that state's death penalty; Gov. Jon Corzine has promised to sign the measure within days. This watershed event may inspire other states to repeal their own capital punishment laws or otherwise reform their practices. For more information on efforts against capital punishment, contact JPC or New Yorkers Against the Death Penalty, [www.nyadp.org](http://www.nyadp.org).

## Exonerating Deskovic

By Joel Freedman

In June, a special panel appointed by Westchester County District Attorney Janet DiFiore completed a report on the wrongful murder and rape conviction of Jeffrey Deskovic. The panel, consisting of two retired judges, a former district attorney, and a

supervising attorney in the Criminal Appeals Bureau of The Legal Aid Society of New York City, concluded that police and prosecutorial "tunnel vision" and other breakdowns in the system resulted in the wrongful conviction and imprisonment of a man who is undoubtedly innocent.

Jeffrey Deskovic was a 16-year-old sophomore at Peekskill High School in Peekskill, New York, on the morning of November 17, 1989, when Peekskill police found the raped, strangled, beaten and unclothed body of 15-year-old Angela Correa in a wooded area in Hillcrest Park. The police also found a part of a note written by Correa to "Freddy" under her body. Also found at the crime scene were Correa's torn bra and three different types of head hairs. An autopsy report by Dr. Louis Roh indicated cause of death was a fractured skull, internal hemorrhage and asphyxiation due to ligature strangulation. Recent force had been applied to the vaginal surface consistent with forcible sexual intercourse. Roh opined that Correa's death occurred between 3:30 p.m. and 4:30 p.m. on November 18, 1989.

Shortly after the discovery of Correa's body, Peekskill police sought an offender "profile" from Detective Pierce of the NYPD Criminal Assessment and Profiling Unit. After reviewing the crime scene evidence, Pierce predicted Correa's killer would be white or Hispanic, probably less than 19 years old, who was 5' 10" or shorter. The offender would have known Correa prior to the crime. The murderer and rapist would be a loner who was unsure around women, who had little involvement in school activities, who probably had a physical or mental handicap. Pierce believed the killer was a student at Peekskill High School, where Correa had attended. The profile offered by Pierce focused police attention on the students of Peekskill High School and "served prematurely to foreclose other potentially fruitful areas," according to the panel.

Deskovic had attended all three wakes for Correa and had been observed distraught and crying over her death. He appeared to fit Pierce's description of the perpetrator. Deskovic was under 19. He was a 5' 10" white man who knew Correa. Unnamed sources reportedly told police Deskovic was emotionally handicapped and had previously assaulted his mother. "We cannot now know, but it would take no great leap to infer that police actually used the profile in framing their questions to others about Deskovic. Because questions often suggest

answers, as the investigation continued along this route, Deskovic appeared to match the profile even more. If the police reports are any indication, before long, Deskovic became the exclusive focus of the investigation (Freddy Claxton, a classmate presumed to be 'Freddy,' had a credible alibi.) The profile marked the first step – actually, the first misstep – down that path. Throughout the early stages of the investigation, the profile reinforced the police perception that Deskovic was guilty,” the panel said.

Because they believed he was guilty, “detectives interrogated Deskovic in a manner that improperly exploited his youth, naivete and psychological vulnerability, thereby eliciting a false inculpatory statement,” the panel said. (Deskovic told me that he was subjected to extreme intimidating tactics and was “fed” information about the crime to include in his false confession.) After the confession, scientific facts appeared to exculpate Deskovic. Seminal fluid and live sperm found in the victim’s body following the rape/murder definitely excluded Deskovic as the source. The hairs removed from Correa during the autopsy were not from Deskovic. At trial, the prosecutor suggested the crime scene sperm came from a “boyfriend” shortly before the rape, and that Deskovic could have used a condom during the rape. However, police and prosecutors made no effort to identify the “boyfriend” who was the supposed source of semen or to document Correa’s movements in the 24 hours before the rape when, according to the prosecution theory, Correa had consensual sex. The prosecution made no effort to seek hair samples from the medical examiner and his assistant, even though the prosecution theorized they were the sources of hair found on Correa’s body.

The panel was also critical of the Legal Aid Society of Westchester County’s defense of Deskovic, due to the defense attorney’s failure to maximize the exculpatory value of the scientific evidence, and failure to use evidence of Deskovic’s psychological vulnerabilities to explain to the jury why someone might confess to a rape/murder he did not commit. Without the confession, there was insufficient evidence for conviction. (I recently asked Deskovic why he did not testify in order to maintain his innocence, and to explain to the jury how the confession was elicited. Deskovic’s lawyer had advised him that he won more cases without the defendant’s testimony than when the defendant

testified. Deskovic, a teenager with no prior criminal record, did not want to argue with his lawyer, so he acquiesced to the lawyer’s decision not to put him on the stand. Had Deskovic testified in his own defense, I believe this would have increased the possibility of an acquittal.)

On top of everything else, as the end of Deskovic’s trial neared, a courthouse cleaning crew inadvertently discarded many of the exhibits that had been presented at trial, including the clothing worn by Correa when she was raped and murdered. The panel determined that “the evidence had inexcusably been left unsecured in a black plastic garbage bag in the courtroom. There was conflict between the parties about the condition of some of these items and, because the evidence had been lost, the jury’s deliberation request to examine some of it could not be accommodated. Even in the absence of bad faith, given the stakes, this cavalier treatment of the evidence was unacceptable”.

Tunnel vision has been defined as a “natural human tendency that causes lead actors in the criminal justice system to focus on a suspect and then select and filter evidence that will build a case for conviction while ignoring or suppressing evidence that points away from guilt.” The panel’s report concluded that “time and again, academics, advocates and independent investigators alike have identified tunnel vision as a primary cause of wrongful convictions. Jeffrey Deskovic’s wrongful conviction is no exception.”

On January 18, 1991, Deskovic, then age 17, was sentenced to 15 years to life imprisonment. He told the judge, “I’ve already had a year of my life taken from me for something I didn’t do, and I’m about to lose more time and I didn’t do anything.” The judge acknowledged that “maybe” Deskovic was really innocent, but that it was not the court’s place to “quarrel” or to “disagree” with the verdict reached by the jury.

During the next 16 years of his imprisonment - 13 ½ of which were spent at Elmira Correctional Facility - the Appellate Division, Second Department opined there was no indication that police elicited a false confession, concluding that the evidence against Deskovic was “overwhelming.” A Court of Appeals judge denied his application to bring his case before New York’s highest court. Owing to an error by his attorney, Deskovic missed by four days the statute of limitations to obtain federal habeas corpus review.

That determination was affirmed by the U.S. Court of Appeals. The US Supreme Court denied Deskovic's petition for certiorari. And after he had completed his minimum sentence, the parole board indicated to Deskovic that the nature of his crime and his unwillingness to admit guilt could mean that he would die in prison.

Westchester County District Attorney Jeanine Pirro denied Deskovic's repeated requests to run the DNA samples from the case against the state and federal DNA databases. But after Deskovic's case was accepted by the Innocence Project, a new district attorney, Janet DiFiore, agreed to the necessary DNA testing and consented to Deskovic's release when the sample matched that of Steven Cunningham, who was serving a life sentence for another murder committed a few years after the rape and murder of Angela Correa. Confronted by the DNA evidence, Cunningham subsequently confessed and pled guilty to the rape and murder of Correa. Had there not been so much "tunnel vision" in the handling of Deskovic's case, could the other murder committed by Cunningham after the murder of Correa have been prevented?

Obviously, as the panel concluded, the police in Peekskill had over-relied on the profile provided by the NYPD Criminal Assessment and Profiling Unit. As it turned out, the man who actually raped and murdered Correa is black, not white or Hispanic. Cunningham was nearly 30 years old when he encountered Correa, not less than 19. Cunningham was a total stranger, not an acquaintance of Correa.

"It is obvious that an enormous and horrific injustice was imposed upon Jeffrey Deskovic by the State of New York," the panel concluded. When Deskovic was officially exonerated in November, 2006, the judge said, "Mr. Deskovic, despite my recognition of these laudable efforts undertaken on your behalf, I must also admit the undeniable fact that nothing can be done in this courtroom here today to erase the pain and suffering endured by you and your loved ones over the past 16 years."

To help prevent such future miscarriages of justice, the panel recommended that all defendants, either pre-trial or post-conviction, should have a right to have an unidentified DNA profile, whether extracted from crime scene evidence or otherwise, run through the DNA databases to see if the real perpetrator or an accomplice can be identified. The panel also concluded that "the Deskovic case

unmistakably demonstrates the desirability of videotaping the entire interrogation of all persons suspected of involvement in a violent felony." (The most inculpatory admissions attributed to Deskovic were not recorded, because the recorder was turned on and off during the interrogation process by the detectives involved in the investigation.) The panel called upon New York's legislature to create a commission to study the causes of wrongful convictions and take measures to prevent recurrences of such injustices. Finally, the panel noted that while, fortunately, some of the biological evidence in the Deskovic case was properly preserved by the Westchester County Crime Lab and was thus readily available for new STR – DNA testing, all too often such crucial evidence is lost, misplaced or discarded. In almost half the states – but not New York – the preservation of biological evidence is required. The panel concluded that legislation is needed in New York to formalize and make uniform the way DNA evidence is collected, stored and retrieved.

Peekskill Police Department detectives Thomas McIntyre and David Levine were the lead detectives in the Deskovic case. Lieutenant Eugene Tumolo also was involved in obtaining Deskovic's confession. Presently, Tumolo is Peekskill's police chief. The *Westchester Guardian*, which has published numerous articles written by Deskovic about his ordeal, has publicly called for Tumolo to be fired "in light of Mr. Tumolo's role in the wrongful prosecution and imprisonment of Jeffrey Deskovic."

Deskovic's articles describe his determination not to allow his wrongful conviction or the horrors associated with imprisonment make him give up on life. During his quest for exoneration, Deskovic obtained his G.E.D., an A.S. degree, and completed one year of study towards his Bachelor's degree in psychology, before educational funding for prisoners was largely eliminated. Deskovic tutored other prisoners and completed vocational trades in the fields of typing, general business, plumbing, and computer repair. He became qualified as a painter's helper. He also obtained a certificate in Food Service and became a food service manager responsible for generating paperwork from the computer for the civilians, maintaining written and computer records, and making sure that inmates received their pay raises on time. He was introduced to Islam and became a "white Muslim" entrusted to teach non-Muslims about Islam when they came to the prison

mosques.

Deskovic today is completing his academic work for a Bachelor's degree, on full scholarship at Mercy College. He hopes to enter law school in the near future, and to eventually establish a non-profit organization to provide legal services for the wrongly convicted. In the meantime, to help prevent miscarriages of justice, he gives presentations at universities, high schools and churches. He has lectured extensively and written articles on a variety of topics related to systemic problems with police, prosecutors and prison life. He has also campaigned against use of the death penalty in America. (To book Deskovic as a speaker, contact Darren Wilkins, 914-356-1999, or email [j.deskovic@hotmail.com](mailto:j.deskovic@hotmail.com).) "I feel, now more than ever, that I have a moral imperative to do what I can to bring about reforms. I am so pleased to be free so that I can add my voice and efforts to those who have been already working on these issues," Deskovic wrote.

Even prior to the exoneration of Deskovic, the victim's family apparently was uncertain about Deskovic's conviction. Angela Correa's stepfather disagreed with the prosecution theory that Deskovic was obsessed with Correa, because Correa had never talked with her family about problems with Deskovic. Correa's sister recently told Deskovic that she was never convinced of his guilt. When Deskovic was sentenced to prison, the family declined to urge the judge to impose the harshest possible sentence. Deskovic and Correa's family attended the sentencing of Cunningham. This time the family made a victim's family impact statement. Correa's mother devoted much of her statement to the impact of Cunningham's crime on Deskovic as well as on the immediate family. Recently, Deskovic accepted an invitation by Correa's family and spent a weekend as their houseguest.

(The June 2007 report on the conviction of Jeffrey Deskovic, that was prepared at the request of Westchester County DA Janet DiFiore, can be accessed at [westchesterda.net](http://westchesterda.net). Deskovic's articles in the *Westchester Guardian* were published on 12/28/2006, and 1/11, 1/18, 1/25, 3/1, 3/15, 4/12, 4/26, 5/10, 5/24, 6/14, 6/28, 7/12, 7/26, 8/16, 8/30, and 9/6/2007. These articles can be accessed at [jeffreyledskovicpeaks.org](http://jeffreyledskovicpeaks.org).)



## Villains and Heroes Clash After Prison Beating Case

By Joel Freedman

Over a span of nine years, Charles Gundlah, a Vermont prisoner incarcerated in Florida under the Interstate Corrections Compact, has filed hundreds of grievances alleging misconduct by prison guards.

On March 14, Sgts. Randy Hazen, William Thiessen, Phillip Barger and guard Gabriel Cotilla removed Gundlah from his cell at Hendry Correctional Institution (HCI). They took him to an office where they beat and choked him into unconsciousness, warned Gundlah not to file future grievances, and returned him to his cell.

Shortly thereafter, Sgt. Bruce Sooy noticed bruises on Gundlah's neck and inquired about them. Gundlah described what had happened in the office, out of view of surveillance cameras. Sooy initiated an investigation, which included the administration of a polygraph test to Gundlah which he passed, that resulted in the firing or forced resignations of the four correction officers and Warden Carol Starling and Assistant Warden James Tridico. HCI Col. William Avant also lost his job.

Since his appointment in February 2006 to head the Florida Department of Corrections (FDOC), James McDonough has been making a sincere effort to crack down on the brutality and corruption that has always plagued Florida's prison system. It was in this climate of change and reform that a beating of a prisoner led to a major housecleaning at HCI.

Colonel Avant, who lived on the prison grounds, decided to have a party in his quarters before his final departure from the prison. Individuals who had already been fired for abusing Gundlah were among those who were invited to the party. Regarded as a traitor for blowing the whistle on the physical abuse of Gundlah, Sooy was vilified at the gathering. Threatening phone calls were made to the prison, where Sooy was on duty. Some of the party-goers, armed with weapons, gathered

in HCI's parking lot during the midnight shift change, with the apparent intent of violently confronting Sooy.

When FDOC Secretary McDonough was apprised of these goings-on, he ordered the prison locked down, prohibited off-duty guards from entering the institution, and sent in reinforcements from other prisons. The local sheriff's department also provided assistance. The threats made against Sooy led to the firing of three more prison guards and two prison lieutenants. Another guard and a captain were given a punitive job transfer to another Florida prison.

Prison Chaplain Robert Wiedeman, entrusted with providing spiritual guidance to HCI prisoners, repeatedly e-mailed McDonough, urging leniency for the personnel who had threatened Sooy. Wiedeman said that these individuals were only "doing the wrong thing for the right reason." McDonough responded by placing the chaplain on suspension. McDonough questioned the competence of a clergyman who was more concerned about protecting out of control officers than about protecting the prisoners he counsels.

Gundlah, serving a life sentence for murder, has been transferred to another prison in Florida. "Sergeant Sooy's actions typify the type of leadership we expect from all department employees," McDonough said in support of his decision to promote Sooy to major.

On May 8, the guards who allegedly assaulted Gundlah, and several other guards, were arraigned on misdemeanor criminal charges of assault, failure to report the assault, or mistreating other prisoners. "These former employees were involved in a series of dehumanizing and degrading behaviors," McDonough said. They are accused of forcing inmates to provide sexual favors or eating their food off the floor. "We had cases where inmates were compelled under threat of force to clean a commode with their tongues. There were improper, illegal, heinous, and despicable acts and it was done apparently in an organized and conspiratorial fashion," McDonough told the news media, adding that the U.S. Justice Department was also investigating civil rights violations at the prison.

Florida Governor Charlie Crist has been supportive of McDonough's efforts to establish basic decencies in the state's penal institutions. "I'm very proud of what the secretary did in this instance. There's going to be problems. What's

important is how you respond to them," the governor said.

"The prison is a dark pocket of mystery and silence," wrote Tom Wicker in *A Time to Die*, a book about the 1971 Attica prison riot. "As men abhor the unknown, they shun the prison. It is, they tell themselves, none of their business, no concern of the ordinary citizen who needs never go there." Or, as one prisoner wrote me, "People on the outside will never believe what goes on here or at any prison. Sometimes I just sit in my cell, turn my radio up loud and cry."

Jeffrey Deskovic, who spent 16 years as a New York State prisoner prior to his exoneration by DNA in November 2006, described his ordeal in a series of articles published in the *Westchester Guardian*. Deskovic's description of his experiences with correction officers are similar to the descriptions I have received from many other inmates throughout America.

According to Deskovic: "There were some officers who were good people and who were friendly. Then there were some who were not friendly, but who did their job and who could be talked to. There were also those who were indifferent, who merely wanted to come in, do their 8 hours and go home. For the most part they were lazy, and didn't care what went on in the prison. The problem was that if a fight occurred or someone got cut, they would turn their backs, walk away, and pretend they didn't see anything, because they could avoid having to fill out the paperwork."

"Then there were the officers who were really bad. They brought their problems at home to work with them and took it out on the inmates. They used abusive language and had bad attitudes, and my main goal every time they were on duty was to avoid being noticed by them. Finally, there were those correction officers who were even worse, officers who even their fellow officers disliked because they realized they represented a threat to them insofar as they might start violence or a riot, which other officers could get sucked into. Nonetheless, neither fellow officers nor supervisors would reel them in. When any of this worse type was on duty, I had to walk on eggshells, the main focus of my day being to somehow make it through his shift without getting a report written on me. It was a waste of time to file complaints because nothing would happen to the officers and they would find out about it and take further retaliation.

So whatever verbal abuse happened the best course of action was to bear it and be quiet.”

The ratio of conscientious officers to abusive officers varies considerably from prison to prison, and even from dormitory to dormitory or cellblock to cellblock within any particular penal institution. And there are the ever-present problems posed by aggressive inmates who harm other inmates or corrections staff, sometimes including officers who are decent to inmates. Prisons should be safe for all inmates and employees. Deplorable conditions characterize far too many prisons and jails.

The assault on Charles Gundlah and its aftermath events shine a spotlight behind the walls of our penal institutions. Thankfully, in this particular situation, a few heroes have emerged who are chartering a path for basic decency and reform, and who are rising to the challenge made several years ago by U.S. Supreme Court Justice Anthony Kennedy – “A decent and free society, founded in respect for the individual, ought not to run a system with a sign at the entrance for inmates saying ‘Abandon Hope, All Ye Who Enter Here.’”

## Reentry Experts Address Sentencing Reform

[Early this year, Gov. Eliot Spitzer gave a charge to the State Commission on Sentencing Reform to look at ways to streamline the state’s sentencing structure. The testimony below was given at commission meetings between 10-19 November by local experts. – Ed.]

### Ann Graham:

Good morning, and thank you for allowing me to offer testimony to the Sentencing Reform Commission. My name is Ann Graham. I’m Co-President of the Reentry Association of New York and Coordinator of the Monroe County Reentry Task Force and its direct service program, Prodigal Sons and Daughters, and a member of the NYS Catholic Conference’s Criminal Justice Committee. Prior to my work in reentry, I spent 17 years in civil legal services, where serving clients who faced the collateral consequences of criminal convictions was a daily challenge.

I was excited to read the Commission’s report, because like most people who are in some way involved with the criminal justice system, I

believe many of the changes suggested in the report are long overdue and represent the only hope for long-term public safety in New York State. Are there people who belong in prison? Certainly. True sociopaths—men or women who have committed horrifying offenses and have little or no remorse—belong behind high walls and lots of razor wire, and we are fortunate to have dedicated professionals in the Department of Correctional Services who take on the responsibility of keeping these offenders contained. But they represent a small slice of the inmates who are incarcerated today.

Like many of you, every day I work with men who desperately want a chance to succeed after incarceration, and who must face the reality that the odds are stacked against them. They cannot undo whatever harm they have done; they can only try to get it right this time. Public sentiment often seems to say “well, so what? That’s the price they pay for what they did.” Unfortunately, it would be more correct to say that’s the price we will pay for what they did - because if we as a community are unwilling or unable to create and fund the tools and opportunities for former offenders to succeed, we must expect that they will return to what they know.

We must create a better toolbox; if the only tool we have is a hammer, every problem starts to look like a nail. State prison is indeed a very big, very expensive, and unfortunately, often ineffectual hammer, if the true purpose of our criminal justice system is *longterm* public safety, rather than accommodating a public lust for punishment that often backfires as evidenced by recidivism rates. We must acknowledge that about 98% of prisoners will eventually be released, regardless of their crime. The longer they are in prison, the greater the chances that they will never effectively integrate into the community. Loss of family ties, little or no skills or work experience, mental health and substance abuse issues, and a general inability to navigate life on the outside, makes their failure and subsequent return to criminal activity nearly inevitable. Because in spite of the many vocational programs, counseling and treatment that prison may try to provide, prison does primarily one thing: it teaches men how to be prisoners; incarceration robs them of many of the very skills they need to develop (good decision-making, responsibility, pro-social relationships) if they are ever going to be law-abiding, productive members of a community.

The Commission's report ranges over many critical topics; the few I am most concerned with are:

- Reentry must become an integral part of the criminal justice system and it must begin at conviction. Judges need to have the ability to consider what is ultimately in the best interest of public safety, and that may not be a prison sentence. When it is prison term, the sentence should consider the inevitable day the offender will be released and how he or she can best be prepared to live a law-abiding life, or we are doomed to maintain a perpetual revolving door that is to no one's advantage. Evidence-based reentry services, such as the Transition from Prison to Community model that DCJS has had the County Reentry Task Forces adopt, need to be available to every person who needs them, and they need to start as soon as possible after conviction and continue through release. We need to designate some prisons as reentry facilities, where human services professionals can come in to provide services that can continue and form a bridge for the offender as he moves back into the community. Within these facilities, we must incorporate better opportunities for family reunification. Work release or community furloughs for every single offender that is going to be released, *especially* high-risk offenders. Inmates should all have NYS Department of Motor Vehicle identification, a job or an *open* public assistance case and a secure housing situation, on the day they are released. These represent the bare minimum requirements to survive in the community.
- Persistently mentally ill men and women do not belong in prison. I have repeatedly worked with men and women who are released from prison only to be re-incarcerated in a few short weeks because we have no mechanism to stabilize them in the community. There is literally no where to put them. We must create and fund a range of solutions for this population, from supported living to secure residential mental health facilities.
- Expand community correction alternatives to deal with technical parole violations. Incarceration for technical parole violations often does little more than undo any progress that has already been made. Graduated sanctions for violations make far more sense than putting someone back in state prison because of curfew violations, and similar infractions. Not only do we incur the expense involved in incarceration, but it often means they are losing the job, the apartment, or the treatment slot and we must

start again from the beginning when they are inevitably released.

- Bring post-high-school education back into the correctional facilities. We could literally send an inmate to Harvard for what it costs to incarcerate him for a year. It's not a secret that it's cheaper to educate than incarcerate, and that the recidivism rate for people with a post-high school education drops to nearly non-existent numbers.
- Analysis after analysis tells us that most people eventually "age-out" of criminal activity. Continuing to incarcerate a steadily growing geriatric population is both expensive and unlikely to enhance public safety.

Of course, some people will commit new crimes, regardless of every attempt help them. But we know there can be more positive outcomes for most offenders. We must have the courage to act on what expert analyses tells us is true, propose new solutions, and find positive ways to re-educate the public about the reality of incarceration and the alternatives that can better ensure long-term public safety...

#### **Carl Hatch:**

Good Afternoon. I am Carl Hatch, the Co-President of the Reentry Association of New York, which includes representatives of the nine operating County Reentry Task Forces, as well as other interested individuals. I am also a Vice President of Catholic Family Center, which provides the staff support to the Monroe County Reentry Task Force. My background includes 33 years of work in the behavioral health field in community-based treatment settings, with extensive involvement with clients involved in the criminal justice experience. My remarks today grow out of that experience, and have not been endorsed by either Catholic Family Center or RANY.

First, let me begin by commending the Commission on the breadth and depth of your preliminary report. A report made all the more remarkable by the limited amount of time in which it was put together. Such a comprehensive review is long overdue given the ad hoc and often contradictory public policy which has evolved around sentencing and public safety.

My comments today will focus on Part Three of your preliminary report, "The Science of Crime Reduction: Using Evidence-Based Practices to Reduce Recidivism."

Using my own County's experience, I can

say with certainty that that the Transition from Prison to Community model that the State has begun implementing in the nine IMPACT Counties has opened the door to a new era in reentry. Prior to the implementation of the County Reentry Task Force, the organizations in the criminal justice community in our County all certainly knew each other and worked well together collaboratively. Similarly, the faith and community-based players also had a long history of close collaboration. But, the creation of the Reentry Task Force marked the first time that those two communities regularly began sitting down with each. The result has been a new level of synergy and optimism that we can make a meaningful difference in public safety.

The 11 mandated partners grew to 19 committed organizations even before our grant application was submitted and has subsequently grown to over 50 active entities over the past year. Our Task Force recently held its second annual recognition and thank-you event for participating individuals and invited 109 people who have made specific contributions to the effort. The turnout for our regularly scheduled Task Force meetings now averages close to 50.

We still have a ways to go. Parolees still don't all have photo identification, birth certificates, and social security cards, but the numbers are climbing. Despite an expedited process established by our Department of Social Services for benefit enrollment for Task Force clients, many more still struggle with the routine process of establishing eligibility and must endure the forty-five day wait. Names of upcoming releasees now flow much more smoothly, although the detailed information needed to ensure appropriate program placements still lags much of the time. Housing, especially for sex offenders, is in a state of crisis. (We are currently averaging 66 days post-release to find a suitable placement for Task Force clients.)

Your preliminary report appropriately identifies many of the major hurdles yet to be addressed. The limited availability of step down facilities like the Orleans Reentry Prison and work release really hampers the transitional planning related to job readiness, employment, family re-integration, treatment planning, and community preparedness. Education and vocational training, especially programs that provide diplomas or certificates that are nationally recognized. Housing is a huge problem and effectively undermines whatever other good work is being done on

treatment and employment.

The probability of being able to successfully address all of those problems, absent a consistent and validated risk assessment tool, is low. We need to focus our efforts on the individuals who pose the greatest risk to public safety. A consistent instrument needs to be applied from sentencing, through incarceration and back to community supervision. As you point out, utilization of resources on low risk offenders actually increases their chances of recidivism and it certainly dilutes what we are able to do for those about whom we should be most concerned.

Similarly, identification and targeting of criminogenic needs must also occur if we are to get the best outcomes.

DCJS has done some promising work in both of these areas, but we need to get a consistent instrument in place across pre-sentence investigation, sentencing, incarceration, and community supervision. We may need to refine the tool as we implement this approach and gather data, but we need to get this most basic mechanism in place now.

Service delivery, whether it is in pre-trial services, alternatives to incarceration, correctional facilities, or in faith and community-based agencies, needs to adopt the same kind of rigor. There is a large and growing evidence base about what works and what doesn't. Program evaluation has matured to the point that it should be included as a routine part of every aspect of service delivery and continuous quality improvement should be guiding the evolution of our public policy.

A word of caution, however. The literature is clear that evidence-based practice only works when the models are fully funded and implemented. The same goes for program evaluation methodologies. These are not processes that can be done cheaply, but when the potential savings from reduced use of incarceration, reduced recidivism and increased public safety are factored in, they do not need to result in overall increases in public spending.

I also applaud your recommendations about the use of graduated sanctions for Parole violators. I certainly believe that there will always be individuals who should be returned to prison, but the current all or nothing options for dealing with Parole violations is both ineffective and expensive. I have seen parolees who have made a terrific start in reentry, but who have committed a technical violation that has cost them housing, a promising

job, as well as all of the pro-social relationships they had begun to establish. The literature is clear that the swiftness and the certainty of penalties, not their severity, is the key to their effectiveness.

I have also seen parolees return to prison for technical violations, complete their sentence, and then get released without supervision. Surely public safety would have been better served, by a graduated sanction and community supervision rather than by warehousing them until they are finally released with no supervision whatsoever.

Finally, I want to end by returning to the Transition from Prison to Community model.

I have gotten to know most, if not all, of my peers working with other County Reentry Task Forces. I cannot help but be struck by how differently the nine original Task Forces have evolved.

They all began with the same foundational training. They have all worked closely with DCJS and Parole in implementing the model. They have all participated freely in sharing best practices, successes and failures. But, they all look and operate differently.

I truly believe that such diversity is a strength, not a weakness. Each has had to pull together the stakeholders in their individual communities. Each has inventoried the resources and the gaps in the area they serve. And, each has developed a unique strategic plan and approach.

I hope that as the Commission wrestles with the best way to formulate a coherent public policy in this area, that it leaves room for some variation in approach so that implementation can be tailored to the needs of each community...

**Robert Seidel:**

Thank you for your generosity in listening to us from the Monroe County area. It's an honor to be here. I am Bob Seidel, a retiree who lived for over three decades in the city of Rochester. Also, I am a volunteer member of the Judicial Process Commission's Public Policy Group, the Monroe County Reentry Task Force, the Safer Monroe Area Reentry Team (SMART, [www.smartny.org](http://www.smartny.org)), and a downtown church. As well, I mentor reentering men and women, and I write, research, advocate, and counsel on prison reentry issues. Professionally, after leaving farming and a period of intense higher education, I mentored adult students for 25 years at SUNY Empire State College. I am intimately familiar with dynamics of Rochester and the politics

of Monroe County.

This Commission deserves our sincere and profound gratitude. If adopted and carried out, your preliminary recommendations will produce a veritable revolution that will undoubtedly benefit untold numbers of individuals, families, and neighborhoods, not to mention every taxpayer in the state. This will be most surely true, of course, if they occur in conjunction with positive things happening elsewhere among the many New York State and local agencies dealing with crime, adjudication, incarceration, and reentry.

I want to say just this to the Commission about reentry: Move forward. Stay the course. Continue on the path along which the state has made a strong and correct commitment, to cooperate with coalitions of local organizations, public and private, large and small.

Around the Monroe County Reentry Task Force, whose able and articulate coordinator Ann Graham is with us today, we have built up a tremendous community-based head of steam in good will, good work, and good prospects. We are determined to move forward beyond these beginnings. I also want to highlight the work of another person present today. This is Sue Porter, coordinator of the Judicial Process Commission in Rochester. Sue and JPC have done important and excellent work in advising and mentoring incarcerated and reentering men and women for many years and will do even more in the future.

A couple of corollaries focusing on reentry:

The Commission is exactly correct to indicate the importance of multiple handicapping conditions that constrain many persons reentering society from incarceration. This is certainly borne out by the evidence-based conclusions that drive your recommendations. It is also the case with regard to a less tangible but still decisive matter: the expectations that prisoners have as they prepare for reentry. Most of us who have fared quite well in this regard still have encountered occasions upon which we have to forego or revise completely and even suddenly our expectations. The fact that we have coped is testimony to our resilience, fortitude, steadfastness, and relationships. How else could we have dealt with an entirely unforeseen personal tragedy, vocational debacle, or business crisis?

I hope that what occurs regarding the expectations of men and women nearing the conclusion of their terms of incarceration will enable

them to handle their circumstances as well as possible in the field of dreams, growth, and reality. My own short experience tells me just how important it is for all of us to be aware of, and respond to, this phenomenon in the lives of people who have had a hard time with reasonable and growth-directed expectations.

One story tells it all for me: One day a man for whom I was mentor experienced a severe crisis. This was the day for which he had expectations for some time. It was the precise end date of his parole. However, anticipation did not generate accommodation. In this case, the man's emergency was heightened and intensified, apparently, by the conjunction of depression, post traumatic stress disorder, normal anxieties, and a very serious chronic medical condition. He claimed that his over eight years of imprisonment had produced PTSD and accentuated his anxieties.

I don't know all of this for sure. In any event, the man felt comfortable in calling me. And I was willing to sit down with him help him sort out his thoughts and feelings. This averted what could have been a catastrophe. I came to know the man even better over time and learned that my judgment, a year and a half ago, was correct.

Mentors to formerly incarcerated men and women thus take on a grave responsibility. They are in a position to help folks who - due to habits, family circumstances, and prison - need a lot of help to overcome the deficits of not having learned how to live in the real world. This is especially true of youngsters who did not have good nurturing through their formative, adolescent years. A mentor has to be aware of the bad habits that accumulate in prison, particularly dissembling and conning. A mentor can help teach - and be a model for - scheduling, making good notes, handling money, budgeting, handing "paperwork," taking responsibility for oneself, self-advocacy, and so forth.

In the end, as we know from the practice of treatment and recovery, the individual has in the final analysis to decide and do for her- or himself. In turn, mentors must know their limits and keep reasonable boundaries. This stuff is subjective and difficult to objectify and quantify, I know. Yet I'm sure you know its value. Bad attitudes and habits, ill health, and related behaviors, in youth and in one's encounters with adjudication and incarceration, need to be changed or addressed competently and professionally. The systems in place are designed

in part at least to deal with them, or at least to keep all involved as safe as possible in the face of bad attitudes and related behavior. I'm encouraging attention to the positive side, not to overrule the safety issue at all, but because it is necessary.

Thus, perhaps it will be useful to keep these in mind: Do more to encourage, and try not to discourage. Do more to engender hope, and try not to produce despair. Contribute more, in reuniting families and loved ones, and in mentoring, to foster warm human relationships. Most important, go all out to build bridges and foster intra- and inter-agency and organization coordination, connectedness, and information-sharing. This is really necessary to make the "system" better able serve reentering men and women comprehensively and to keep them on the right road...

#### **JUDICIAL PROCESS COMMISSION**

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*We welcome your letters and *Justicia* article submissions by e-mail or postal mail.*

#### **VISION**

The Judicial Process Commission envisions a society with true justice and equality for all. We understand that in a just society, all institutions will be based on reconciliation and restoration, instead of retribution and violence.

#### **MISSION**

The JPC is a grassroots, nonprofit organization that challenges society to create a just, nonviolent community which supports the right of all people to reach their fullest potential. We do this by:

- Providing support services for those involved in the criminal justice system
- Educating the public
- Advocating for changes in public policy.

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## JPC APPRENTICESHIP MENTOR TRAINING

**January 21 and 22**

Monday and Tuesday, 5:00 to 9:00 PM,  
Hospitality thanks to the Rochester Friends Meeting.

84 Scio Street  
Rochester Friends Meeting  
(Near the Eastman Theatre)

Training Topics:

- Local, State and Federal representatives discuss their agencies role in the criminal justice system. Presenters include: Dave Varralli, US Probation, Dave Luellen, Monroe County Probation and others.
- Project guidelines and boundaries, Bob Miller, Cephas.
- Mentor reflections and requirements.
- Active listening skills and feedback, Nancy Donatucci.
- Health issues, Donna Del Santo, Sister of Saint Joseph.
- Employment discrimination and welfare issues, Jason Hoge, Monroe County Legal Assistance Center and Lori O'Brien.

Reservations required in advance by Friday, January 18, at noon. Call 325-7727, fax 325-2165 or email [info@rocjpc.org](mailto:info@rocjpc.org). Interested volunteers should have 2 hours a week to give, be willing to commit to 1 year of apprenticeship service, attend some Monday Night Training Workshops and provide written information about the outcomes.