

S.H. v. Stickrath
Stipulation For Injunctive Relief
FIRST ANNUAL REPORT

TABLE OF CONTENTS

A. Introduction.....3

B. Stipulation: Writ Large14

C. Highlights.....18

D. Concerns for the Future33

E. Release Authority.....37

F. Use of Force, Restraints, & Isolation.....66

G. P & P Review and Revision.....76

H. Community Based Treatment: Continuum of Care78

I. Education87

J. Discipline, Grievances, & Youth Advocate.....103

K. Medical Mental Health, & Dental Care107

L. Operations, Housing, Supervision, Staffing, & Training.....125

M. Racial Issues.....149

N. Conclusion154

- Appendix A
- Appendix B
- Appendix C
- Appendix D
- Appendix E

**FIRST ANNUAL REPORT
FRED COHEN, MONITOR**

May 20, 2009

A. INTRODUCTION

I am pleased; indeed, honored to present to the Court and the parties the Monitor's First Annual Report. On November 25, 2008, I presented a Six-Month Report at the request of Judge Marbley. That Report, at best, was mixed with negative factors attributed primarily to the hurdles I was required to surmount in the assembly of a monitoring team.

I thank DYS officials and their counsel along with S.H. class counsel for their helpful comments to an earlier draft I circulated. The Department of Justice provided a critique on May 19, 2009. I attach that letter as Appendix E in fairness so the Court has the opportunity to review the multiple criticisms of my Report and my approach to monitoring.¹

The Monitoring Team presently consists of:

¹ DOJ Counsel, Benjamin O. Tayloe, Jr., inter alia, linked what he views as our failure to commence monitoring with the tragic death of Officer Hesson at the Cuyahoga Hills facility. At this writing there is no autopsy report, no law enforcement investigation, and yet a Department of Justice attorney finds a causal link between missing reports and an officer's death.

- Fred Cohen, LL.B, LL.M., Monitor

- Shay Bilchik, J.D.

- Ava Crow, J.D.

- Nicholas Makrides, D.M.D., M.A., M.P.H.

- Steve Martin, Esq.

- Orlando Martinez

- Barbara Peterson, R.N.

- David Roush, Ph.D.

- Donald Sauter, D.D.S., M.P.A.

- Ronald Shansky, M.D.

- Cheryl Wills, M.D.

This is an outstanding group of individuals and while the members all have national reputations for excellence some — e.g., Steve Martin, Esq. — would generally be regarded as the reigning national expert in his particular field. It is not easy to bring together as a functioning team 11 individuals who are geographically dispersed and who have achieved their professional standing by dint of their individual scholarship, heading

an enormously successful federal agency, serving as Director of State juvenile systems, heading monitoring teams, and the like.

I have observed my own role of Monitor evolve into one resembling that of a CEO. While I retain substantive areas to head or contribute to — discipline, grievance, advocacy, and mental health — I also “direct traffic,” coordinate and, well, just nag.

We are now a team. A meeting on March 26 and 27, 2009 in Columbus, Ohio actually was the first time all Team members were in the same room. We discussed progress or lack of it in the various substantive areas and how we would move forward with what is actually the beginning of our oversight monitoring. Without Policy & Procedures (P & P) in place, conducting regular oversight visits would have been a rather hollow exercise.

The first year visits to various DYS facilities were, for the most part, in fulfillment of Paragraph 247 of the *S.H.* Stipulation describing the Monitor (and Team) as a coach and partner in achieving success. As a Team we have worked diligently with DYS staff achieving enormous progress in such areas as use of force, thanks to Steve Martin, and education, thank to Ava Crow and her collaborator Anne Flynn.

Table 1 records the Monitoring Teams' visits to facilities, Central Office, various meetings, and an organizational meeting.

**Table 1: RECORD OF TEAM MEMBER MEETINGS/VISITS
May 21, 2008 through May 20, 2009**

	SHAY BILCHIK		FRED COHEN		AVA CROW	
	Date	Purpose	Date	Purpose	Date	Purpose
Circleville					1/29-30/09	Baseline Monitoring Visit
Cuyahoga Hills			10/7/08	Initial Visit - Overview	2/19-20/09	Baseline Monitoring Visit
Freedom Center					11/5-6/08	Initial visit - Overview
Indian River			10/8/08	Initial Visit - Overview	2/23-25/09	Baseline Monitoring Visit
Marion			8/20/08	Initial Visit - Overview		
Mohican					2/26-27/09	Baseline Monitoring Visit
ORV					1/14-16/09 2/9-11/09	SMU Dispute Resolution Visit SMU Team Visit
Scioto	12/17/08	CBT Revocation Unit visit and attendance at graduation of first graduating class. Met with staff concerning programming for girls.	8/19/08 2/26-27/09	Initial Visit – Overview Visit/Interview Staff and Youth		
Central Office	3/4/09	Debriefing from 3/3 meeting and development of an action plan.	8/18/08 9/17/08 10/9/08 12/11/08 1/21-22/09 2/24/09 4/16-17/09	Meetings with Officials and Staff Meetings with Officials and Staff Meetings with Officials and Staff Meetings with Officials and Staff Meetings/P & P Meetings/P & P Meetings/P & P	11/26/08 1/28/09 3/19-20/09	Discuss SMU issues Discuss Special Education Issues Discuss Impression from Visits
Training Acad.			2/26/09	Speak to Trainees/Observe training		
Wood County	12/16/08	Visit to better understand the operation of the program and continuum of residential services.				
Columbus	3/3/09	Stakeholder and DYS meeting to discuss the continuum of juvenile justice services needed to help realign the array of services and reduce the institutional placement of juvenile offenders.				
CCF						
Team Meeting	6/26/08 3/26/09 & 3/27/09	Organizational Team Meeting Monitoring Team Meeting	6/26/08 3/26/09 & 3/27/09	Organizational Team Meeting Monitoring Team Meeting	6/26/08 3/26/09 & 3/27/09	Organizational Team Meeting Monitoring Team Meeting

**Table 1: RECORD OF TEAM MEMBER MEETINGS/VISITS
May 21, 2008 through May 20, 2009**

	STEVE MARTIN		ORLANDO MARTINEZ		BARBARA PETERSON	
	Date	Purpose	Date	Purpose	Date	Purpose
Circleville						
Cuyahoga Hills						
Freedom Center					4/08	Initial Visit - Overview
Indian River						
Marion					4/08	Initial Visit - Overview
Mohican						
ORV	2/8-11/09	SMU Dispute Resolution Visit	2/8-11/09	SMU Dispute Resolution Visit		
Scioto			11/13/08	Discuss Parole Revocation Center, CBT, and the Girls' Program	4/08	Initial Visit - Overview
Central Office			8-27-08 10-22-08 10/30/08 11/11/08	CBTC, Reclaim Ohio and Aftercare Release Authority, Policy, and Admin. Meeting with CBT Training Committee CBT Meeting		
Training Acad.			12/15/08	Training curriculum audit/ monitoring		
Wood County						
Columbus	10/16/08 8/8/08 10/14/08	Met with training staff on use of force Training Session Training Session			4/24/08 10/6/08	Judges community disc. of release Disproportionate Minority Contact Initiative
CCF			11/12/08	Met with Parole Officer		
Team Meeting	6/26/08 3/26/09 & 3/27/09	Organizational Team Meeting Monitoring Team Meeting	6/26/08 3/26/09 & 3/27/09	Organizational Team Meeting Monitoring Team Meeting	6/26/08 3/26/09 & 3/27/09	Organizational Team Meeting Monitoring Team Meeting

**Table 1: RECORD OF TEAM MEMBER MEETINGS/VISITS
May 21, 2008 through May 20, 2009**

	DAVID ROUSH		RON SHANSKY		CHERYL WILLS	
	Date	Purpose	Date	Purpose	Date	Purpose
Circleville						
Cuyahoga Hills						
Freedom Center						
Indian River						
Marion						
Mohican						
ORV	12/17/08 2/25-26/09	Initial Visit – Overview SMU Dispute Resolution Visit			2/11-12/09	SMU Dispute Resolution Visit
Scioto						
Central Office			12/8/08 1/5/09 2/9/09	P & P Review P & P Review P & P Review		
Training Acad.	12/16/08 2/25-26/09	Review of Training Curricula Review of pre-service curricula and cognitive behavioral curriculum				
Wood County						
Columbus						
CCF						
Team Meeting	6/26/08 3/26/09 & 3/27/09	Organizational Team Meeting Monitoring Team Meeting	6/26/08 3/26/09 & 3/27/09	Organizational Team Meeting Monitoring Team Meeting	6/26/08 3/26/09 & 3/27/09	Organizational Team Meeting Monitoring Team Meeting

I refer the reader to the entire *S.H.* Stipulation, Paragraph 247, which describes a monitoring philosophy and approach to which I wholeheartedly subscribe. It is the framework for a collaborative approach with DYS and an emphasis on what might be termed the “structured autonomy” of the experts on the Team.

There is a clear difference in the monitoring style, or mechanics, set out in *U.S.A. v. Ohio*, which initially encompassed Marion Juvenile Correctional Facility (JCF) and Scioto JCF. With the imminent closure of Marion and Freedom Center (June 6, 2009), this leaves a single, albeit important, facility viable under the DOJ Stipulation. I have directed the overall monitoring thus far in ways that are more philosophically consistent with the *S.H.*, Stipulation primarily because *S.H.* is far more encompassing (83% of the facilities), it generally includes additional and more expansive remedial measures than the DOJ Stipulation², and, as noted earlier, it is more consistent with my monitoring philosophy.

There have been occasions where the DOJ did not receive documents or notices from this office, or not in a timely manner, that they should have. I apologize for that and

² See *U.S.A. v. Ohio*, Stipulation, Sec. I (I) stating, “[T]he State has elected to implement additional remedial measures beyond those required to resolve issues raised by the DOJ findings.

we are working to remedy that situation. I ask the parties and the Court to understand how difficult it is to attempt to utilize two distinct styles and comply with competing reporting demands. I function with a staff of one, half-time assistant and in these days of fiscal austerity I am reluctant to ask for additional funds to develop different material and reports.

The closing of Marion JCF by June 6, 2009 and the concerted effort to convert Ohio River Valley (ORV) JCF into a safe and more rehabilitative facility must be regarded among the highlights of the past year. The Marion³ closing was not expressly required by the Stipulations although, *S.H.* Stipulation, Paragraph 13 refers to downsizing or *closing* existing facilities. Once the decision to close Marion was made, however, we have guided and closely monitored the transfer of Marion youth. In particular, we are working closely on the placement of the older youth — 17 to 21 years — at ORV and working to assure the availability of appropriate education, programs, treatment, safety, recreation, and the like.

³ References to Marion closing are intended to encompass the simultaneous closing of Freedom Center, a very small facility that is physically proximate to Scioto JCF.

I wish to acknowledge the enhanced, and most welcome, cooperation of DYS officials, particularly Director Stickrath, Deputy Director Brenda Cronin, and Deputy Director Chris Money. In addition, class counsel Al Gerhardstein and Kim Brooks Tandy have played major roles in the progress achieved thus far. They have monitored and offered valuable insight into the complex problems posed by the Marion closing and the transfer of youth to ORV. Indeed, class counsel invoked the dispute resolution mechanism set out in the *S.H.* Stipulation, Paragraph 256, regarding allegations of educational deficits for youth confined in ORV's, special management unit (SMU). This, in turn, led to fact-finding by team member Ava Crow and a subsequent, intensive visit to ORV by a monitoring sub-team led by David Roush.

Suffice it to say that educational deficits were noted, some 21 - 29 youth were identified as eligible for enhanced education, and basic changes were made in the education offerings at ORV. The "Roush visit" went beyond education issues and, in a word, we detect the very early beginning of positive change at ORV, a facility roundly criticized in my pre-Stipulation report. New Superintendent Marci Sutherland brings her

expertise and commitment to treatment and rehabilitation to ORV and I am encouraged at the possibility of a continuing turn around.

I did request input for this Report from the DOJ on the Marion closing and transfer. I appreciate the candor of DOJ counsel Bo Tayloe in his note to me of April 27, 2009, indicating that because DOJ had not been on site in the past year they would have no comments.

B. THE STIPULATION: WRIT LARGE

The *S.H.* Stipulation is 90 pages long; the *U.S.A.* Stipulation is a more modest 23 pages. *S.H.* is a general conditions, class action calling for wholesale, internal reform while also requiring a gradual change in the very identity of DYS: A transition from a custodial-institutional model to a community-based treatment/rehabilitation model.

S.H. Stipulation, Paragraphs 14 and 15 are at the heart of the planned transition and transformation of DYS. A task force is relied upon to plan the strategy and team member Shay Bilchik, former Administrator for the Office of Juvenile Justice and Delinquency Prevention, is the lead monitoring team member. The progress in this area has been palpable considering the relatively brief time that has elapsed. See Section H of this Report for details and discussions of this progress.

As for the internal reform, the *S.H.* Stipulation is studded with seemingly innocent provisions that on reflection place enormous responsibilities on DYS and, in turn, on the monitoring function. For example, Stipulation, Paragraphs 52 through 56 extend to all youth the right to rehabilitation free of a need for a clinical diagnosis; every youth must have a unified case plan and the resources must be available for implementation; all staff

with youth-contact positions shall have a defined role in rehabilitation; the environment in each facility shall be one that fosters pro-social, rehabilitative goals; and there must be structured programming in place in each facility.

These provisions create a remarkable set of rights for Ohio's institutionalized youth. It is a daunting obligation for the Monitor to ensure that these conditions exist and adequate resources are available. With the first year of this undertaking devoted to such compelling start-up operations as creation of the Master Plan, revision of P & P, hiring staff, and the like, it is the second year of monitoring and visiting each facility twice that will begin to tell the story on the existence of conditions for individual change as facilitated by the anticipated environmental and personnel changes.

Returning briefly to the right to rehabilitation created by the *S.H.* Stipulation, I note that rehabilitation is, of course, a more encompassing term than treatment.

Treatment in our context flows from a medical model that, in turn, rests on a disease concept. Treatment rights flow from diagnosis.

S.H. Stipulation, Paragraph 52 states: "**All Youth Entitled to Rehabilitation.**"

Rehabilitation refers to the process of creating or restoring to the individual socially

acceptable behaviors and values, and is not dependent on a clinical diagnosis.” In turn, this Stipulation provision is consistent with Ohio law:

Revised Code Annotated (ORCA) § 2152-01(A) provides in part:

(A) The overriding purposes for dispositions under this chapter are to provide for the care, protections, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender’s actions, restore the victim, and *rehabilitate the offender*. These purposes shall be achieved by a system of graduated sanctions and services. (emphasis added)

The *U.S.A.* Stipulation, Section II, Paragraph N, provides a definition of rehabilitative services, as follows: “Rehabilitative Services means programming and treatment provided to all youth in the Facilities. For each youth, programming and treatment shall be suitable to the youth’s particular needs, shall address the underlying causes for the youth’s confinement, and shall be designed to restore the youth’s socially acceptable behaviors and values.”

The *S.H.* and *U.S.A.* definitions of rehabilitation are quite similar. However, *S.H.* creates enforceable rights while the DOJ Stipulation provides only a definition. I am unable to locate any substantive right to rehabilitation in the *U.S.A.* Stipulation. The *S.H.* approach to rehabilitation is not only consistent with Ohio law but it is also based on the

parties' belief that rehabilitation of juveniles promotes public safety by reducing recidivism and enhances facility security.

Thus, we have a broad *S.H.*-based right to rehabilitation linked with the right to a safe environment, appropriate education, structured and age-responsive recreation activities, a right to medical, mental health, and dental care with an emphasis on teaching prophylactic measures and more. Our monitoring for the upcoming year will evaluate the resources brought to bear on all these rights, an evaluation that was not even remotely possible until now.

C. HIGHLIGHTS

I will simply list or briefly describe the various advances that have occurred in our first year. Much fuller descriptions and analysis of major areas will follow in succeeding sections.

We have reached near final agreement on a basically revised disciplinary process that will be renamed a Behavioral Intervention Process. There will be no findings of guilty or not guilty. Rather, it will be proved or not proved and instead of a sanction (or penalty), there will be an intervention consistent with the youth's treatment and case management plan.

A Youth Advocate (YA) position has been created with a full-time YA to be hired for each facility (with trained adjuncts) whose job will be to represent youth in the Behavioral Intervention Process; to investigate, enter a "plea" if desirable, work on the intervention (disposition), and assist on appeals. The position will be posted in May 2009.

I believe this YA position and its commitment to fairness for DYS youth is unique in juvenile justice in this country⁴. We will, of course, monitor who is selected and just how they perform. I applaud DYS for taking this progressive and protective step for youth, and especially so in a time of fiscal austerity.

Other highlights include:

Intake and Classification

- The DYS population has reduced from an average of 1631 in March 2008 to an average of 1351 in March 2009
- The new Security Classification tool, approved by national expert Jim Austin, was rolled out and each facility and all DYS youth were reclassified in February 2009
- All youth are expected to be housed in accordance with their appropriate security level by June 2009
- A team is currently working to develop an Orientation Manual for all sites to enhance the delivery of information to youth who read at a very low level or not at all

⁴ See Terry Schuster, Models for a Youth Advocate in Disciplinary Proceedings: A Survey of State Juvenile Corrections Agencies (Mar. 19, 2009); research paper commissioned by Fred Cohen, on file. Mr. Schuster is a third-year law student; University of Texas Law School.

- The length of stay at reception has been reduced from over 40 days to an average of 25 days

Housing Units

- Additional Social Workers and Unit Managers have been hired
- The Unit Management module at Pre-Service training has been revamped to include an interactive exercise entitled, “Unit Management Pursuit: There’s Nothing *Trivial* About It” to emphasize that from the beginning of an employee’s DYS career, the Unit Management concepts direct how DYS facilities operate
- DYS has established a partnership with the Columbus College of Art & Design to enhance and soften the interior design of facility dayrooms along with the SMU’s at ORV
- Two units opened at Cuyahoga Hills Juvenile Correctional Facility
- The agency is on track to reduce the cost of youth phone calls to families per the recommendations of the Youth Call Out Phone System task force
- A minority recruitment committee was developed to address the recruitment and retention of minority staff at Ohio River Valley JCF, and the first informational

fair was held in the community with 29 participants. Orlando Martinez reports

further on this at Section M of this Report.

- The Family Engagement Team was launched in February and is partnering with regional parole offices to enhance family participation in the youth's treatment
- The Olweus Bullying Prevention Program is led by JCOs at Cuyahoga Hills JCF and is designed to reduce and prevent bullying problems, prevent development of new cases of bullying, improve peer relations and the social climate and reduce related antisocial behaviors
- The Volunteer Team has developed new strategies to engage new volunteers

Safe Environment

- Following the completion of a staffing post analysis to determine appropriate staffing levels based on population, rated capacity and security level, 107 additional Juvenile Correctional Officers (JCO) were hired. We are closely monitoring training and performance of that staff, particularly in light of the educational issues described later in this Report.
- A recent PbS survey indicates that the youth felt safer in DYS institutions in

October 2008 than they did six months prior in April 2008. Interviews that I conducted at Scioto are to the same effect.

- Steve Martin conducted workshops for DYS Administrators OCSEA/AFSCME Union Presidents from each facility, Labor Relations officers, DYS Central Office personnel and Union Headquarters officials to provide a review of the law and how it applies to Management of Youth Resistance
- A joint Labor / Management committee was formed with the purpose of redefining JCO roles as part of providing continuous treatment to youth, all facility staff will be trained on the new JCO role during the 4th quarter of 2009. JCO's will now (or very soon) be called Youth Specialists, a term used in the Missouri Juvenile system.
- Scioto JCF is the pilot site for the revised 'Management of Youth Resistance' policy and procedures, the remaining facilities will be trained and the policy implemented in the 4th quarter of 2009
- The backlog of internal investigations that existed when the Stipulation Agreement was signed has been cleared

- Additional investigators have been hired to enable the Chief Inspector's Office to investigate critical incidents in a timely manner
- A weekly case management review was developed to ensure investigations remain timely
- A "Conflict Management for Youth" curriculum was developed for DYS by the Ohio Commission on Conflict Management and Dispute Resolution and all youth have been trained
- The JCO Assessment process is being reviewed and re-tooled
- The investigations and incident reporting policies were revised with the assistance of monitoring team member Steve Martin and will become effective in the 4th quarter of 2009
- All 12 Community Corrections Facilities have achieved accreditation through the American Correctional Association (ACA)

Mental Health Care

- This is one of the lagging areas, discussed in detail infra, although the progress noted in the sections that follow is not to be denigrated.

- The number of clinical positions has been increased to include additional psychologists, social workers and psychology supervisors
- J-SOAP II has been moved from Reception to the receiving facilities (Circleville JCF and Cuyahoga Hills JCF) in order to support the incorporation of the results into treatment rather than classification
- The three tier Sex Offender Treatment program has been integrated into a Standard Curriculum and a Low Need Curriculum with more emphasis on individualized needs is available
- Mental Health Units (MHU) are to follow a system of care model related to intensity of behavior manifested by the mental health disorder of the youth
- The Trauma Affect Regulation: Guide for Education and Therapy (TARGET) curriculum has been incorporated into available treatment and is being expanded for all of the female general population units; outcome data is being collected on the impact of this program
- Comfort Rooms are available on the Mental Health Units and on the female general population units

- The MR/DD/Special Needs workgroup is currently identifying programming needs of youth who require modified programming, housing and education
- DYS is working with Ohio State University to modify psychiatry contracts to allow for the Director of Psychiatry Services to work directly with the DYS

Division of Facility Programs and Operations

Medical Care

- All medical policies have been submitted and are being updated by DYS medical staff
- Benchmarking for a peer review process has begun for nurses and physicians
- The contract physician hours at SJCF have increased allowing the Medical Director to perform additional oversight and medical leadership for the Department
- DYS Medical and OSU Psychiatry Services are currently working on an 'Agreement for Medication' form that can be easily understood and used by youth
- Chronic care clinics are being provided at all facilities and monitoring team

member Dr. Shansky's recommendations for policy revisions have been completed

- Health education classes will soon be included in the school curriculum
- A process for standardizing medical evaluation entries has begun
- Physician hours at SJCF have increased

Education

- The overall GED passage rate for the Buckeye United School District was 83%;
the state average is 79%
- During 2008, 53 diplomas were distributed and 315 GEDs were awarded
- The Customized Student Learning System's roll-out was completed at every DYS
school
- A middle school curriculum was developed and is housed at Indian River High
School and Ralph C. Starkey High School (Circleville)
- The Ohio Department of Education conducted a full audit of special education
services in four DYS schools, and will continue evaluating the remaining four
schools in 2009

- The new School Discipline Policy is nearing completion and will include a removal, suspension, and expulsion procedure as well as procedures for the new Academic Behavior Classroom (ABC) and expectations for unit staff while stationed in the school building
- Two bureau administrators have been assigned to recruitment and retention of teachers including conducting various career fairs at colleges around Ohio
- All schools have scheduled students for a 5.5 hour day with the exception of Tecumseh High School (ORV), which is only able to schedule students for a 5 hour day due to staffing vacancies. We are collaborating on changing this.
- Professional development opportunities for teachers has increased
- Cameras have been installed in every classroom
- Steps have been taken to implement several additional certifications and endorsements for Career Technology programs
- Three Intervention Specialists will be hired using Title One funds to assist students with literacy issues as well as support student transitional planning

Youth Grievance System

- Youth forums were held at each site to obtain feedback regarding improvements to the grievance process
- DYS has worked in consultation with Fred Cohen to revise the grievance policy and the final draft is in process. *J.P. Monitor*, Vince Nathan, is consulting on this.
- DYS is working with local courts and law enforcement to expedite prosecution of youth who commit crimes within DYS facilities

Information Technology & Records Management

- Development of the new case management system is proceeding consistently with the Juvenile Justice Case Management System (JJCMS) project plan completed last fall
- A standardized system for electronic youth records is now available for all treatment staff
- A new application and workflow system, MasterTrak, was written and implemented to manage and track necessary changes dealing with the reform of DYS

Reforming Release

- A plan to reform the Release Authority is developed and filed with the Court and it should establish clearly defined parameters for release, ensuring a higher degree of consistency and certainty for all parties involved
- DYS has received a grant from the Ohio Department of Job and Family Services, in collaboration with the Governor's Office of Faith-Based and Community Initiatives, to create an advocacy program to address parental concerns of youth in DYS institutions and on aftercare
- "Parole days" were held at the facilities to allow the youth, the parole staff, release authority and social workers the opportunity to work together to plan the youth's reentry

Regionalized Services Delivery System

- The University of Cincinnati (UC) has developed a 120-day cognitive behavioral treatment model to be used at the treatment centers
- Community-based treatment providers will be selected through a request for proposal process, with the first facility to be opened later this year

- To ensure fidelity to the treatment model, UC will provide ongoing quality assurance and has developed, and will provide, training and coaching for community-based treatment providers selected to operate the programs

Training

- An extra week, called KIDS week, was added to pre-service that consists of the 3-day Advanced Verbal Strategies session, followed by planned intervention, positive reinforcement, and scenario-based training
- DYS re-instituted the national On The Job (OJT) training model from the National Institute of Corrections

Monitoring and Reporting: Master Plan

- The DYS-created Master Plan is a comprehensive plan, with structured goals and objectives, to guide DYS in achieving meaningful and lasting change. It is continuously updated.

Documentary Film

- Filmmaker Roger E. Cohen⁵ is at the mid-point range of producing a documentary film about the S.H. Stipulation. The initial, archival-type production will focus on the concept of litigation-driven reform and include interviews with executives of DYS, staff, youth, and prominent experts in the field. It is intended as a teaching tool for advocate groups, representatives of other jurisdictions, foundations, government agencies, and the like.

Resource Library

- At the suggestion of the Monitor, a resource library including leading works on adolescent psychology and juvenile justice reform is being established in Central Office. Central Office staff, to begin with, will be encouraged to read and discuss this material.

Longitudinal Study

- The original plan to work with OSU on a sophisticated test group/control group model failed to materialize. However, new plans for a more modest study are

⁵ Disclosure: Roger Cohen is the son of Monitor Fred Cohen

close to fruition. We will, essentially, be able to select a number of youth differentiated by age, offense, facility, treatment needs, and the like and follow such youth closely through the system and into the community. We will be better able to assess success or failure than locate with precision causal factors.

However, even as a descriptive, even anecdotal study, we believe there is value in this approach. Parenthetically, in monitoring mental health care in the Ohio Department of Rehabilitation and Correction under *Dunn v. Voinovich*, we did about the same thing and with interesting results.

D. CONCERNS FOR THE FUTURE

The fiscal crisis in Ohio is an overriding concern. The proposed FY 2010 budget for DYS is \$310,382,788, an increase of 1.3% from FY 2009. Thus far, implementation of the *S.H.* and *U.S.A.* Stipulations has not been directly impacted by the deep cuts other Ohio agencies have experienced. Members of the Monitoring Team and the Monitor have voluntarily cut billing rates and hours charged. Again, I thank Team members for this spirit of cooperation.

The Bureau of Parole announced plans for reducing the table of organization by 15% as required by recent budget cuts. Plans included the elimination of 6 positions:

- Security Guards (6 positions)
- Human Service Program Consultants (6 positions)
- Juvenile Parole Officers (11 positions)
- Juvenile Parole Services Supervisors (2 positions)
- Psychologists (3 Positions)
- Office Assistants (5 Positions)

These reductions will be implemented in FY 2010 and sustained in FY2011.

The original intent was to achieve the 15% reduction using only staff salaries. It was later decided to eliminate approximately \$200,000.00 in contract services in order to assist in preserving staff positions. The contracts affected include outpatient services for substance abuse, mental health counseling, sex offender services and family based counseling. The Bureau of Parole believes that the remaining psychologists can serve the bulk of, if not all, mental health, sex offender and substance abuse services previously performed by non-residential community service contracts. Family based counseling can be provided by a variety of staff including Juvenile Parole Officers, Senior Juvenile Parole Officers, Juvenile Parole Services Supervisors or Psychologists.

It is a well-accepted principle of law that constitutional obligations may not be avoided or diluted because of a government entity's fiscal problems. See *Wyatt v. Stickney*, 344 F..Supp. 387, 394 (M.D. Ala. 1972), perhaps the paradigm case in the struggle for the constitutional rights of persons in state custody (mentally ill and mentally retarded in this case) with "rights" trumping budgetary restraints. I do wish to make clear that never once have I been pressured to reduce monitoring expenses. I have had open

discussions with state officials and voluntarily agreed to the monitoring team reductions noted above.

My concern for the future, however, is that there may be minimal compliance in such areas as hiring staff, training, retaining a desperately needed substantive expert to head the Training Academy, enrichment for executive staff, and the like.

Enhancement of the pre-service and in-service training is critical. DYS must replace the well-regarded, training specialist M.T. Schwartz, now managing the Master Plan, with an education/training specialist and continue to enhance the training curriculum. The Stipulations call for a cultural shift in DYS; which is a shift from “use force first, ask questions later” to one committed to violence de-escalation strategies; one where verbal abuse and denigration of youth by staff is not permitted, an environment where these damaged youth feel safe and have an opportunity for growth and a decent, crime-free, productive life. Training and quality assurance processes are necessary although, not sufficient factors to help achieve this.

The next two years, I estimate, will serve as important transitional years in this culture change. Changing deeply imbedded beliefs and practices on use of force, for

example, will not occur with the mere changing of policy and issuing of edicts. It will change over time and when there is a feeling of *mutual* safety.

A mere glance at the rules on use of force demonstrates the goal of reducing the use of force while employing non-violent measures, when possible, to achieve control. Use of force as a first response is, indeed, out but force may always be countered with commensurate force; force can be used to help others in imminent danger and even to preserve property.

Youth who were nurtured in violence will not become less violent by replicating their early experiences. DYS must work at this change and yet be prepared for backlash from critics. In the wider world there is problem-solving either by invasion and warfare or conferencing and diplomacy. *S.H.* and *U.S.A.* opt for the latter.

E. RELEASE AUTHORITY (RA)

The RA is, in effect, a parole board for juveniles in the custody of DYS. Concern about the operation of the RA matured in the Spring of 2006 when DYS leadership approached the University of Cincinnati (UC) to possibly assess the operations of the RA. In August 2006, a contract was signed for a UC study. See Ed LaTessa, et al, An Analysis of the ODYS Release Authority's Decision Making Process (Nov. 2007)(hereafter, "Analysis"), for a summary of the study and results.

The then 10 year old RA was determined to be operating in a much more complex mode than originally contemplated. Some of the most pressing problems were perceived to be inadequate information provided for decisions, failure of institutions to provide timely treatment and insure, or make available, youth compliance with treatment requirements, the influence of court journal entries, failure of institutional staff to file incident reports, the influence of detention credit – and more. Youth could barely understand the much maligned matrix system and, if truth be know, neither could this writer.

The UC "Analysis" found that the RA was expected to act on "lower risk, lower harm done" youth to minimize their time in the institution. These youth neither required (lower risk/needs) nor deserved (lower harm done) lengthy terms of confinement. Higher risk/need youth, and those who had committed more serious offenses were to be the focus of institutional resources.

In essence, low risk, low harm youth were to receive a rather cursory review by the Authority, be given an early presumptive release date (at the bottom or below the middle of the matrix range), and be moved into aftercare as quickly as possible. Higher risk/harm youth were also to be given presumptive release dates based on the matrix but conditioned on an assessment of the most serious criminogenic needs and the length of time required to provide treatment. It was expected that these youth would show improvement in their risk potential by the time of release from the institution.

The RA would recommend early release to committing judges in cases where the minimum judicial term exceeded the normal term established for similar youth. It was hoped that this information would convince the judge to allow the youth to be released early, in the interests of justice. The RA developed the matrix guidelines for setting

presumptive release dates. The goal was to set a presumptive date of release for all youth within 90 days of reception. The presumptive release date was expected to be the actual release date for most youth. Resets of release dates were allowed for various reasons, but those reasons would be linked to aggravating factors. It was expected that most (70% or more) youth would be released “on time.” Resets were expected to be uncommon.

As a quality control mechanism, the RA was expected to review case plans in setting presumptive release dates to insure that the case plan was responsive to the criminogenic needs indicated in the YLS/CMI. It was also expected that the RA would have the opportunity to review the continuum of care. In this regard, a youth with educational and mental health needs might receive mental health services in the institution, with field services being directed to concentrate on educational programming. Of course, the release plan would be expected to contain follow-up mental health services as needed. Youth whose service needs were not strongly related to criminality might receive programming in those areas, if available, but would not be held for treatment. Youth whose needs were criminogenic would have first priority for treatment in preparation for release back to the community. The certainty of presumptive release

dates set early in a youth's term would support better planning and management of Department resources.

In the wake of the critiques found in the "Cohen" Report of December 2007, the UC "Analysis" and ongoing discussion between class counsel, DYS, and the Monitor's office, the parties filed with the Court a Joint Plan for Reforming Release Authority Pursuant to Stipulation for Injunctive Relief (Para. 32).

The crucial aspect of the RA reform relates to the early planning for ultimate release. DYS must develop a Reentry Plan for each youth while at reception. The programming recommendations, in turn, will be used by the institutional Interdisciplinary Team to develop the youth's initial Unified Case Plan. The RA, in turn, also is given a role in the development of this Unified Plan.

A Youth's positive steps are to be part of the release decision. Thus, there are incentives to "do the right things" to attain release, greater certainty as to expectations and release dates, and an emphasis on early preparation and not just hope that release will be granted.

In the most summary fashion, the highlights of the new plan are:

- Once a youth completes their minimum sentence, they will not be continued

except in cases where:
 - The youth is considered a risk to public safety
 - There is time added for serious misconduct while in custody
 - The need for additional treatment is documented by the treatment team
 - Other special circumstances as determined by the full RA Board
- An RA member will meet with every youth at reception to establish expectations

for behavior and treatment
- A Unified Case Plan (UCP) will be developed within 21 days of arrival to the

youth's home institution to guide the youth's treatment from intake through time

on parole
- Special reviews will be conducted to promote opportunities to be released earlier

based on positive behavior and security classification
- Face-to-face release reviews will be done by at least two members of the RA (one

of which could be a Hearing Officer)

- If a youth's release date is extended past the original Minimum Sentence

Expiration Date (MSED), the youth can appeal the decision to the Division of

Legal Services

The Joint Plan in Detail

What follows is the full text of the "Joint Plan" as contained in the Stipulation,
approved by the Court on February 17, 2009:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

S.H., et al.,	:	Case No. 2:04 CV 1206
	:	
Plaintiffs,	:	JUDGE ALGENON L. MARBLEY
	:	
vs.	:	
	:	
TOM STICKRATH,	:	JOINT PLAN FOR REFORMING
	:	RELEASE AUTHORITY PURSUANT TO
	:	STIPULATION FOR INJUNCTIVE
Defendant.	:	RELIEF (DOC. 118, PARA. 32)

Pursuant to Para. 32 of the Stipulation for Injunctive Relief (Doc. 118), the parties hereby agree to the following Joint Plan for Reforming Release Authority:

I. Generally.

- A. Release decisions will be made consistent with the Guiding Principles as detailed in the Stipulation for Injunctive Relief. The Release Authority procedures must be based upon accurate and current information regarding a youth's risk and needs, provide adequate due process regarding decision making, allow timely and ongoing communication with treatment staff, parent, guardian and other responsible adults, comply with notifications as required by law, ensure that release decisions are fair, consistent and result in youth not being held longer than necessary for successful reentry, and provide for accountability and oversight of decision making regarding release.
- B. The Mission of the Ohio Department of Youth Services (DYS) is to encourage positive change in the lives of youthful offenders through collaborative partnerships and culturally relevant therapeutic and academic interventions

that support public safety and prepare youth to lead productive lives. As such, decision making regarding release should evaluate positive steps taken by the youth toward successful re-entry as well as factor in public safety. No term or portion of the changes to the Release Authority's procedures shall be interpreted as creating a right or protected liberty interest to release after a youth has served his or her minimum sentence.

- C. **Reentry Planning.** DYS will embrace the philosophy of Reentry acknowledging that a youth's plan for a smooth transition to his or her community begins at the time of commitment. DYS will develop a Reentry Plan for each youth while at reception that incorporates programming recommendations from both the committing court and the Release Authority. These recommendations will be used by the institutional Interdisciplinary Team in the development of a youth's initial Unified Case Plan.

II. Changes to Policies and Procedures. DYS shall revise its policies and procedures within sixty (60) days in consultation with the Monitor and class counsel in accordance with the provisions of this Proposal. It shall incorporate the following provisions:

- A. **Assessment and Unified Case Plans.** DYS will review and streamline the assessment process to determine the necessity of each instrument used, the validity of the instrument or its use as a best practice, the availability of similar current and accurate court assessments, and whether some assessment instruments may be completed at the youth's assigned institution. The Release Authority will work together with the Interdisciplinary Teams and

youth to develop appropriate Unified Case Plan Goals and Objectives for each youth.

1. At the conclusion of the reception assessment process and prior to the youth's transfer to his or her home institution, the Release Authority will conduct a review with the youth and establish Release Authority expectations as well as review court recommendations. These recommendations and scheduled initial review date would be forwarded to the Interdisciplinary Team at the youth's home institution and incorporated into the youth's Unified Case Plan.
2. An Interdisciplinary Team within the facility in conjunction with the youth will develop the Unified Case Plan Goals and Objectives within twenty-one (21) days of arrival at the home institution, and will ensure that each youth receives oral and written notice and that each youth's parent/guardian and the committing court shall be notified in writing or electronically of the Unified Case Plan Goals and Objectives by the Division of Parole and Community Services. The Unified Case Plan Goals and Objectives will describe the youth's responsibilities for completion of treatment, programming, or other rehabilitation requirements and address possible consequences if the youth fails to uphold his or her responsibilities. The Unified Case Plan Goals and Objectives also will give notice of DYS' responsibilities to provide such treatment, programming, education, or other rehabilitation requirements, including a safe environment in which the youth may fulfill his or her

responsibilities without disruption. A copy of the Unified Case Plan Goals and Objectives and the youth's file shall be sent to the Release Authority as soon as completed and shall be made available electronically to parole staff.

3. All attempts shall be made to develop Unified Case Plan Goals and Objectives that can be successfully completed by the youth within the Minimum Sentence Expiration Date, in combination with re-entry services to be provided once the youth is released. In the case of high-risk offenders, the Unified Case Plan Goals and Objectives shall include information about the length of existing treatment modalities and the likelihood that the youth can complete such program within the Minimum Sentence Expiration Date.
4. DYS will increase its efforts with local courts to improve the consistency of journal entries and to revise the Dispositional Investigative Report to improve the quality and consistency of information provided.

B. Notice of Approaching Minimum Sentence Expiration. Prior to the expiration of a youth's Minimum Sentence, DYS shall ensure that a Notice of Approaching Minimum Sentence Expiration is sent to the committing court, within 30 days if possible, to provide an opportunity for the court to review the youth's progress prior to the Minimum Sentence Expiration.

C. Types of Reviews

1. **Expedited Release Reviews.** During the initial meeting with the youth, each youth will be considered for an expedited release review and approval based on the circumstances of the offense, court requests, MSED, assessments, and expected services available on parole. Those youth determined to be appropriate for an immediate panel review will be so advised. Within one week, the youth will receive the written decision of the release review completed by a panel.
2. **Special Release Reviews.** (Prior to regularly scheduled release review) Throughout a youth's stay in DYS, the Release Authority shall promote opportunities to be released earlier than their set release date for appropriate youth, and shall consider positive behavior and documented security classification as the basis for recommending youth to be released earlier than their set release date. Institution Superintendents, Regional Administrators, and/or the court of original jurisdiction may request a special review. Institutions and regional staff will be encouraged to use this process to recognize youth meeting release expectations prior to the next scheduled release review. The Release Authority will provide training to the institutions and regional staff on the Special Release Review Process and the need for requests to be timely. If the Release Authority denies (or rescinds approval of) release under this category, a panel will be held with the youth present.
3. **Release Reviews.** No fewer than thirty (30) days, or when possible, prior to the expiration of a youth's Minimum Sentence Expiration, the

Release Authority shall conduct a release review. Youth shall receive credit for time served in local detention facilities and in DYS reception. When possible, notice is to be provided no fewer than thirty (30) days prior to the release review to the youth, the youth's parent/guardian, the court, and the prosecutor. Notification to any registered victim will be made as required by ORC §5139.56. A panel that is comprised of at least two members of the Release Authority, one of which may be a hearing officer and one of which must be a member, with decision making authority shall review the case with the youth being present—in person, by teleconference, or by videoconference. In the event members of the panel cannot agree, a decision by the Chair of the Release Authority or designee will be made in order to determine the matter.

- a. **Review at Minimum Sentence Expiration Date.** A youth shall be reviewed no fewer than 30 days, whenever possible, prior to the expiration of his or her Minimum Sentence Expiration Date unless the registered victim cannot be notified within thirty (30) days, as required by section 5139.56 of the Ohio Revised Code (ORC). The youth shall be released unless the panel makes written findings concluding that one of the following conditions exists:
 - i. A youth has engaged in a serious incident involving physical harm to another, conduct that creates substantial risk to the safety and security of the institution, or significant property damage while in DYS custody;

- ii. The Interdisciplinary Team administering the youth's Unified Case Plan reports in writing either of the following:
 - ii.a. The youth is in need of continued treatment or rehabilitative services, as determined by a research-based assessment tool, administered and interpreted by trained personnel, or other instrument accepted as best practice, and that DYS has acted expeditiously to make treatment or service available. The team must find that effective treatment cannot be safely provided in the community and that effective treatment is available within DYS; or
 - ii.b. The youth poses a significant public safety concern, as measured by the likelihood of re-offending and as determined by a research-based risk assessment tool combined with independent clinical judgment.
- iii. In the rare circumstance in which a recommendation to extend a youth's stay is made where the youth has not been found to have engaged in a serious incident nor has the youth been determined to have additional treatment needs nor pose a risk to public safety, the Release Authority may exercise an override by convening the full board. This extension shall be for no more than ninety (90) days, upon which time the Release Authority may renew the extension. Upon extension

for this reason, written justification will be forwarded to the Deputy Director of Parole, Courts and Community Services with notification made to the Director.

- iv. Any such extension may be reviewed by the Monitor or his designee.
- b. **Determination of Serious Incident.** The panel conducting the release review shall not determine that a youth has engaged in a serious incident under subsection (C)(3)(a)(1) unless:
 - i. There is a formal finding that the youth has engaged in a serious incident following a hearing affording the youth due process; and
 - ii. Notice has been provided to the youth and youth's parent or guardian of any recommendation by an institution disciplinary committee for added time as a sanction for the serious incident which must have occurred within a prescribed timeline set out in the discipline policy; and
 - iii. There is an accounting for any institutional factors regarding conditions beyond a youth's control.
- c. **Documentation of Ongoing Treatment Needs.** In the event the Interdisciplinary Team reports in writing that one of the conditions set forth in subsection (C)(3)(a)(2) exists, that report shall be incorporated into the youth's updated Unified Case Plan and shall contain the following:

- i. A detailed description of the additional treatment or rehabilitative services the team proposes, assurance that such treatment is available at DYS, and the likelihood of its effectiveness;
 - ii. An estimate of the length of time the team believes is reasonably required for the youth to complete the additional treatment or rehabilitative services, and measurable goals for the youth;
 - iii. Any oral or written statement the youth wishes to make to the team regarding the team's recommendation that he or she be extended beyond the expiration of his or her Minimum Sentence Expiration Date. Pursuant to this provision, a youth and the youth's parent/guardian must be given the opportunity to address the team's recommendation through oral, written or electronic communication with members of the team.
4. **Release Reviews for Revoked Youth:** For youth admitted to DYS as a result of a parole revocation, the Release Authority shall conduct its Release Review within the first 90 (ninety) days of the youth's re-admission. All other provisions herein apply to the youth's release reviews.

D. Extending the Review Date.

1. In the event two members of the panel conducting the review make written findings and determine one or more of the conditions set forth in subsection (C)(3)(a)(i), (ii), or (iii) exists, the panel may take the following actions:

a. Release the youth at the expiration of his or her Minimum Sentence Expiration Date;

b. Extend the youth's release date for a specified period of days not to exceed sixty (60) days, or 90 days in limited circumstances where statutory notice as required by the Ohio Revised Code has not been achieved and where DYS has made a good faith effort to achieve such notice:

1) If the youth's release date is extended by fewer than sixty (60) days, no further review is necessary.

2) However, if the youth's release date is extended by more than thirty (30) days, the youth retains the right to appeal the panel's decision; or

c. Reset the youth's review date for a specified period of days not less than sixty-one (61) nor more than one hundred and eighty (180) days. In the event the panel elects to extend the review date for a period of sixty-one (61) to one hundred and eighty (180) days, the following provisions apply:

1) The Release Authority shall conduct a subsequent review in accordance with subsection (C); and

- 2) The panel member(s) shall explain to the youth the reason for the extension and their expectations for him or her during the extension period. These expectations shall be incorporated into the youth's Unified Case Plan by the Interdisciplinary Team.
 - 3) The youth shall have the right to appeal the panel's decision to the DYS Division of Legal Services for review by an attorney in accordance with the appeal procedures set forth in Section E.
 - 4) In cases where the youth's review date is extended for more than sixty (60) days, the Interdisciplinary Team will be directed to review the Unified Case Plan to determine its appropriateness in moving the youth toward steps necessary for successful re-entry and to make changes as appropriate. The Interdisciplinary Team may request a Special Release Review prior to the youth's new review date if the youth's behavior warrants such consideration.
2. Within ten (10) business days of the review, the Release Authority shall issue written notice of its decision and written findings to the youth, the Interdisciplinary Team, the court, the prosecutor, and law enforcement when required. The youth's parent/guardian shall be notified by the Division of Community Services, and any registered victim shall receive notification. In the event the panel elects to extend the youth's release

date in accordance with subsection (D)(1)(b) or (c), the written notice shall also contain:

- a. The youth's new review date as extended by the specified number of days;
- b. Detailed findings specifying upon which criterion the panel based its decision;
- c. A detailed description of any additional treatment or rehabilitative services the youth is required to complete; and
- d. Expectations of the youth regarding behavior and compliance with programming requirements.

3. Only under exceptional circumstances shall a youth's release date be extended for more than thirty (30) days for treatment or rehabilitative services that DYS has failed to make available by the release date. Any such extension shall be approved in advance by the Chair of the Release Authority who shall be responsible for ongoing review of any such cases. The external Monitor shall receive a report on any decision made pursuant to this section.

E. Appeals.

1. In the event the panel extends a youth's release review date for a period of thirty-one (31) to one hundred and eighty (180) days from the expiration of his or her original Minimum Sentence Expiration Date, the youth has a right to appeal the panel's decision to the Division of Legal

Services. To assist the youth in the appeals process, the youth may choose a neutral, trained DYS advocate who is willing and available to assist the youth. DYS' system for the use of advocates must be incorporated into the policies and procedures after consultation with the Monitor and class counsel.

2. A youth may initiate an appeal by providing written notice to the Division of Legal Services within seven (7) business days of his or her receipt of the written notice required by subsection (D)(2). Grounds for appeal are limited to the following, and youth will be required to explain reasons for his or her appeal request.
 - a. The availability of relevant additional or missing information that was not previously considered;
 - b. Challenges to the required treatment or rehabilitative services forming the basis of the extension;
 - c. Failure to follow applicable administrative procedures; or
 - d. Other significant factor which would render the result manifestly unjust.
 - e. Youth shall not be permitted to appeal disciplinary time imposed by the Institutional Disciplinary Hearing procedure under this proposal.
3. Within ten (10) business days (if possible) of the receipt of a youth's written notice of appeal, the Division of Legal Services shall conduct an appellate review in accordance with subsection (C). Written notice of

the decision regarding the appeal shall be provided to the youth and the youth's parent/guardian and the Release Authority.

4. If the Division of Legal Services grants the youth's appeal, the youth shall be entitled to a Special Review for Reconsideration. This Special Review decision will be binding and cannot be appealed except for a claim that administrative procedures were not followed within the Special Review itself. Unless the Release Authority will be releasing the youth, the review must be conducted in person or via video or teleconference.

F. Youth with Extended Minimum Sentence Expiration Dates. For those youth whose Minimum Sentence Expiration Date is more than twelve (12) months, the Release Authority shall schedule reviews after twelve (12) months and every six (6) months thereafter to review the youth's progress with the goals and objectives of the Unified Case Plan as well as to ensure the Unified Case Plan is being implemented, that steps are being taken to ensure successful reentry, and to consider other positive incentives for the youth. Such reviews are not for the purpose of considering release and should not be used to extend any release dates. As such, any decisions made are non-appealable.

G. Quality Control and Monitoring. DYS shall develop a process and timeline, in consultation with the Monitor, for implementation of quality control procedures, which shall include a mechanism for external monitoring to be followed by the Monitor and class counsel, to evaluate compliance with

these procedures and criteria for release. DYS shall develop a process and timeline for review of current information systems related to release decision-making in order to create a unified information system to store accurate data that is entered in a timely fashion and is amenable to interrogation for analysis of aggregate decision-making patterns.

H. Statistical Information. DYS shall maintain statistical information on the number of youth whose release dates are extended, whose discharge dates are extended, and the average length of the extensions. These statistics shall be maintained and categorized by institution and/or region, by the youth's age, gender, race, and security classification, number of reviews, and by the criteria upon which the release is granted or extended. Appropriate computerized databases may be developed based upon information from the Unified Case Plans, with information available at various decision-making points, which can be accessed by central office, facility, and parole staff.

I. Notice of Release Authority Standards and Procedures. DYS shall ensure that Release Authority standards and procedures are clearly explained to youth at reception, and explained to the youth's parent or guardian as soon thereafter as practicable. To promote greater understanding of Release Authority practices and procedures, DYS will endeavor to:

1. Conduct periodic parent/guardian orientation via video conference on the Release Authority process, including creation of a DVD for court use, as well as family viewing;

2. Expand information about the Release Authority process on the DYS website;
3. Incorporate information about the Release Authority process into each institution's Youth Handbook;
4. Provide training for judges on the Release Authority process, in particular judges new to juvenile court; and
5. Make training by the Release Authority available to prosecutors, defense attorneys, and officers of the court.

J. Modifications to this Agreement

The parties recognize that this Agreement may need modification once the DYS regionalization plan is completed and other areas of the Stipulation are implemented. As such, the Monitor or his designee shall conduct an evaluation within one year after this plan is implemented, with input from the parties, and shall make any recommendations to the parties regarding necessary or otherwise appropriate changes. Modifications may be made by agreement of the parties, in consultation with the Monitor, after this evaluation is completed. DYS will therefore not proceed to change the Ohio Administrative Regulations until after this evaluation period has passed and the parties have reviewed the Monitor's recommendations (if any) and agreed upon appropriate changes. DYS shall, however, suspend any administrative regulations that conflict with these provisions immediately upon the filing of this agreement.

Approved:

Tom Stickrath, Director Ohio Department of Youth Services
Date:

Alphonse A. Gerhardstein, Lead Counsel, Plaintiff Class
Date:

Fred Cohen, Monitor
Date:

Monitoring

Monitoring activities have centered on the above Joint Plan. This comprehensive agreement is consistent with the Guiding Principles detailed in the Stipulation for Injunctive Relief. However, there must be changes to Policies and Procedures regarding:

- Assessment and Unified Case Plans
- Notice of Approaching Minimum Sentence Expiration
- Types of Reviews
- Determinations of Serious Incident
- Documentation of Ongoing Treatment Needs
- Release Reviews for Revoked Youth
- Extending of Review Date
- Appeals
- Youth with Extended Minimum Sentence Expiration Dates
- Quality Control and Monitoring
- Statistical Information
- Notice of Release Authority Standards and Procedures

In response to the agreement ODYS has developed an Implementation Plan with the following timelines:

- February 26, 2009 – April 24, 2009 – Draft Policy/Plan – Completed
- April 25, 2009 – May 31, 2009 – Consultant Review & Updates – In progress

Orlando Martinez, representing the Monitor, has reviewed draft policies and plans and recently held meetings over 2 ½ days with the Release Authority Board, Regional Administrators, Data Administrators (MIS) and the Deputy Director, ODYS Division of Parole and Community Services. It should be noted that the implementation plan timelines results in the full implementation of the release plan by January 1, 2010. This will require strict compliance with the time lines set forth in the plan. The department must devote sufficient time for to the development of new decision-making standards/criteria and tools in creating this new improved release process. Mr. Martinez and I believe doing it right should supersede expediency.

ODYS has developed a policy, Release Authority (4/9 DRAFT), which establishes the direction for the release of committed youth. It states that the Director shall appoint the five- (5) member Board; the Board shall have the final and sole

authority for making decisions regarding the release and discharge of youth within ODYS custody; and that as part of the Release Authority, an Office of Victim Services shall be maintained. This draft policy also specifies procedures that require all DYS employees and/or sites to follow, i.e. reentry planning, release reviews, appeal process, revocation reviews, discharge reviews, education, information and training and quality control, monitoring and statistical data.

The granting of “detention credits” and victim notifications affect case proceeding in ODYS and should be addressed either administratively or legislatively over the course of implementing the agreement.

The Release Authority Board has drafted thirteen (13) Standard Operating Procedures.

- Release Authority Organization
- Reentry Plans
- Expedited Release Reviews
- Release Reviews
- Special Release Reviews

- Appeal of Release Reviews
- Long Term Youth Progress Reviews
- Revocations
- Discharge Reviews
- Release Authority Education and Information Program
- Release Authority Quality Assurance Programs
- Constructive Journalism
- Data Collection & Annual Reporting Requirements

The Board has drafted SOP's because, while they have the final and sole authority for release and discharge, the authority to set policy rests with the Director of ODYS.

These procedures mirror the draft policy and the February 26th agreement but need further development to carefully organize factors for reaching decisions that are focused clearly on achieving the fundamental objectives of release and discharge. This means clearly defined and consistently applied criteria, measurable practice standards with expectations of staff clearly identified and reinforced and assuring that youth assessment results directly affect case and departmental decision making.

Team member Orlando Martinez opines that the reentry plan is an effective tool only to the degree that it is a document reflecting the emerging needs and changing circumstances of the youth while recognizing commitment expectations from the committing court. Review of the reentry plan is a structured process for reviewing services and other interventions and determining how well the youth appears to be responding to these services. In short, the review focuses on whether the interventions support the youth's progress in attaining the objectives in the reentry plan and provides the basis for Board's decisions. For example, objective tools measuring factors such as 1) assaultive behavior, 2) Compliance with facility regulations, 3) problem solving skills, 4) hostile response to frustration, 5) peer victimization, and 6) progress in program or treatment will help structure release and discharge decisions.

According to the timelines established, the Director will approve policies and procedures by July 31, 2009.

With regard to quality assurance, it is helpful that the Standard Operating Procedures appear in a separate document because it will allow quality assurance activities to distinguish policy requirements from existing standard practice.

- June 1 – 16, 2009 – Internal Review & Update
- June 17 – July 16, 2009 – Monitor/AG Review & Update
- July 17 – 31, 2009 – Director Review & Approval
- August 1 – September 30, 2009 – Training Developed
- October 1 – December 31, 2009 – Staff Training
- January 1, 2010 – Release Plan Fully Implemented

F. USE OF FORCE, RESTRAINTS, & ISOLATION

Use of Force (see Stipulation, Paragraphs 70-71, 79-84)

The “review and revisions” process for the DYS use of force policies and procedures began in earnest in August 2008. Steve Martin, monitoring team expert, engaged in a very collaborative process with DYS staff that included key central administration staff, training staff, and facility personnel (both supervisors and JCOs). Without exception, these officials have worked diligently and responsibly during this process so that the end product is theirs not ours. This buy-in is crucial for initial acceptance and subsequent self-monitoring. The first substantive drafts of the use of force P & P were completed in early October 2008 with the final drafts submitted to the parties for comment on December 31, 2008. They were approved by the Director on March 2, 2009 for implementation at Scioto JCF for a 60-day pilot project. Thereafter a training manual was developed and used to train staff at Scioto for the pilot project that began in early April. In early June 2009, Amy Ast and Steve Martin will confer to assess the pilot project to determine issues that may need to be addressed prior to implementing the use of force P & P package (P & P and training program) systemwide.

The “review and revision” process for the policies and procedures for Investigations of Serious Incidents pursuant to Stipulation Paragraphs 79 & 80 began simultaneously with the use of force P & P. As with the use of force P & P, we have worked collaboratively through a number of drafts with a final draft having been completed in mid-January. The investigations P & P were approved in April to take effect on November 2, 2009, which is the date by which training will have been completed for investigators. Mr. Martin met with Jennifer Fears, Chief Inspector, on April 17 to discuss both implementation and monitoring of the P & P. From January 1 to April 17, 2009 her office has completed 34 use of force investigations. It was agreed that Steve would review those investigations over a six weeks period and then set a one day work session with Ms. Fears and her investigators in early June (this will coincide with a review of the pilot project at Scioto). Also, during this meeting Ms. Fears provided us with a draft copy of an investigations “audit tool” she has developed for inclusion into the Activity Management System (AMS). Beginning May 1, 2009 her office will on a monthly basis provide us with a list of completed and pending use of force investigations.

Areas of Concern

We believe DYS is well positioned to now begin the implementation phase of the use of force P & P, we are not as confident with respect to implementation of the investigation P & P. After a review of the completed investigations for January-April 2009 Steve Martin will start routinely reviewing select investigations and use these reviews as a means to provide timely and systematic feed back to the Deputy Director.

The frequency of use of force incidents remains too high in DYS as we begin the implementation phase. The following provides figures for comparison of the 1st quarters of 2008 & 2009:

- Jan-March 2008: 1127 Physical Response Incidents with a March 31, 2008

Population of 1563

- Jan-March 2009: 1332 Physical Response Incidents with a March 31, 2009

Population of 1303

Virtually all of the increase from 2008 to 2009 occurred at two facilities:

Cuyahoga and Ohio River Valley. This illustrates the importance of the need for Central

Office staff to constantly monitor their own performance data and then devise corrective

measures. We are not entirely confident that such staff, with the requisite levels of competence, are yet in place to effectively self-monitor. This issue was discussed with Amy Ast during an April 17 meeting, which established that there is definite and pressing need to identify levels of support staff available to she and Chris Money, both of whom are managing a rather large and diverse menu of management issues. Ms. Ast is without dedicated staff to systematically monitor implementation of the use of force policies. As a consequence, facility managers are not systematically receiving feedback on their performance in this important area of operation. We discussed some models and mechanisms for their internal monitoring but those will necessarily require staff resources currently not available.

An additional concern relates to the number of use of force incidents resulting in youth fractures. From October 1, 2008 thru March 31, 2009 there have been seven incidents resulting in youth fractures. Steve Martin recently requested packets for each of these incidents and will be working with Amy Ast to carefully analyze these incidents. Again, this illustrates the need to develop quality oversight mechanisms throughout the

system (facility supervisory personnel, central operations and internal affairs) and we will continue to press for this.

We should note that some, we trust, temporary increase in use of force is not entirely unexpected. The imminent Marion closing and the reshaping of ORV have sent tremors throughout the system. Even without those events, we are reordering some of the core values of DYS staff and, as I noted earlier, this is nothing short of culture change.

We can change a grievance process or mental health service with fewer problems than something as ingrained as use of force. We are, however, dedicated to achieving the lowest possible level of force and the highest level of safety for youth and staff.

Custodial Restraints (see Stipulation Paragraphs 77-78)

One of the new provisions of the use of force P & P addresses “Safeguards to Avoid Positional Asphyxia” (see SOP Use of Force 301.05.02 IV.D.). Now that the SOP Use of Force has been approved, some form of this provision needs to be incorporated into the DYS restraint P & P. Once this is done, the restraint P & P will conform to the requirements of Paragraph 77 of the Stipulation. This matter was discussed with Amy Ast during the April meeting and we should have a final draft in the near future.

It should be noted that in 2008 DYS conducted training on “Assessing and Managing Medical Risk Factors in Restraint Use.”

Seclusion/Isolation (see Stipulation Paragraph 76)

DYS has not yet completed final revisions to their seclusion P & P. I have been reluctant to advance this issue due to ongoing changes related to the operation of the DYS, SMU’s. Steve Martin met with Chris Money and Amy Ast during the April meeting to determine how those youths confined in SMU’s are to be viewed relative to the basic seclusion policy. They discussed the need to develop provisions for their current policy on those youths held in seclusion for more than 24 hours. I also met personally with Chris Money on this issue. Steve Martin will be working with Chris and Amy to get these provisions incorporated into a new draft of the policy.

Currently, the very large majority of youths placed in seclusion spend less than four hours there. I have advised DYS to alter its seclusion reporting to reflect time spent in a special seclusion room and time spent in the youth’s own room or dorm room.

In terms of current usage, the following comparisons are provided:

- Total Seclusion Hours August 2007 through March 2008: 109,963

- Total Seclusion Hours August 2008 through March 2009: 76,529

However, note the comparison for the first three months of 2008 and 2009.

- Total Seclusion Hours January-March 2008: 23,349
- Total Seclusion Hours January-March 2009: 30,315

Comments

In the spirit of our overall monitoring philosophy, Steve Martin has maintained a very strong collaborative relationship with DYS officials, who evidence a strong will and commitment to advance the Stipulation requirements. Obviously, collaboration is not an end in itself. We continue to have concerns regarding competency and manpower levels throughout all levels of DYS and I want to be candid about my comments on competency and manpower.

If DYS was not engaged in such massive reform, there would be much less focus on competency and manpower throughout the agency. However, given the very dynamic environment, which necessarily creates varying degrees of institutional instability, managers are necessarily required to perform at extraordinary levels. While I am convinced Chris Money and Amy Ast are doing so with regard to these subject matter

issues, I am less certain about that as you move down the chain of command at DYS. As noted earlier, we are also concerned by their ability to systematically and in a timely fashion provide performance feedback to facility managers.

As I have, perhaps too often, repeatedly noted, use of force is the most visible, troublesome issued faced by DYS and, thus, the monitoring process. There are some lines of resistance as to changes in education, Release Authority functioning, discipline, and the like, but nothing goes so deep into the cultural heart of DYS as changing the occasions when force may be used and then the proper limits and techniques to be employed when force is authorized. Minimizing harm and the avoidance of force as punishment are crucial factors.

In August 1998, acting as consultants to the then Director of DYS, Dr. Jane Haddad and I wrote:

[L]ine staff follow a “control model” rather than a “treatment model” and especially during hours when administrative and clinical staff are not present. Indeed, we may go further and suggest that staff reliance on force exceeds many adult prison systems. It seems so pervasive that the overall normative culture⁶ regimen becomes a rather hollow shell; a contradiction

⁶ Normative culture was the then in vogue treatment philosophy. I found it difficult to locate a staff member who even knew what it meant. It did not, however, mean chronic, verbal and physical abuse.

quickly absorbed by the youth. Fred Cohen & Jane Haddad, Ohio Department of Youth Services Consultative Report, (Aug. 3, 1998)

Some six years later in the Interim Report, I wrote, “We found the unwarranted use of physical force and seclusion to be endemic to Scioto We [including Steve Martin] found countless examples of situations where no force at all should have been used and others where the force used was excessive.”

In the Report⁷ upon which these Stipulations are based, we found some improvement at Scioto from 1998 but not an acceptable, constitutionally grounded level of safety. ORV was identified as an all-consuming fire of fear: youth-on-youth, youth-on-staff, and staff-on-youth violence. Thus, we should not expect that change will instantly occur even with new P & P, training, enhanced investigations, and Director Stickrath’s policy of zero tolerance for staff abuse of youth.

Change cannot occur without those commitments but pervasive change will take time. There will be staff turnover and the use of de-escalation techniques will take hold along with the other training on use of force. Indeed, it should not surprise us if there is a

⁷ Fred Cohen, Final Fact-Finding Report: *S.H. v. Stickrath*, Sec. II (Jan. 1, 2008)

short-term spike in staff violence; the dying gasp of an unconstitutional culture. DYS must devote staff and managerial efforts to contain and limit even a predictable, short-term phenomenon.

Finally, our monitoring will look closely at management and oversight in this area. DYS will have to demonstrate a systemic and timely performed feedback to facility managers, something we will readily assist with.

G. POLICY & PROCEDURE REVIEW AND REVISION

DYS has devoted considerable energy and staff time to this undertaking. It is true that numerous Stipulation deadlines for revision and implementation were not met. I followed a course where I viewed meeting *S.H.* Stipulation deadlines, some very unrealistic, as less important than a quality product providing there was evidence of good faith efforts to comply. *S.H.* Stipulation, Paragraph 32, for example, calls for reforming the Release Authority 60 days after the effective date of the Stipulation. There is simply no way that could have been done in that timeframe, but it is now done and done well. I thank class counsel and counsel for the DOJ for their indulgence here.

On May 8, 2009, counsel and the Monitor received a 5-page letter from DOJ Special Counsel, Benjamin O. Tayloe, along with a 59-page document prepared by DOJ expert, John Platt. The letter and expert document deal essentially with the process and format for policy review and revision.

Regrettably, since the material was not provided until about one year after the effective date of the Stipulations, and well after the undertaking and completion of many

of the P & P, it has not been possible to reflect the various proposals in the completed work or to basically retool for the completion of this work.

I did inform the parties that I disagreed with Mr. Tayloe's findings (see letter to Kelly Castle from Benjamin Tayloe, p. 2, May 8, 2009) that the P & P adopted by ODYS were somehow out of compliance with the DOJ Stipulation.

Once the DYS review/revision committees were in place they worked furiously and in an integrated fashion. An interesting by-product of the activity itself is that staff looked beyond their narrow range of assignment. They began to see connections and a more integrated view of DYS and its mission is beginning to emerge.

I attach as Appendix A, the Policy And Procedure Checklist, ODYS P & P (Revised April 15, 2009) showing the status of the P & P at issue. As described, members of the Monitoring Team worked closely with ODYS staff in many of these areas with use of force, education, grievance, discipline, medical care, and dental care receiving considerable attention. We will continue to engage in such collaborative work.

H. COMMUNITY BASED TREATMENT: CONTINUUM OF CARE

Shay Bilchik, our expert on community based treatment, and I are very encouraged by the work done to date. The continuation of this work, at least at the accelerated pace we have experienced, is contingent, at least in part, on the approval of the Governor's budget. That said, there is a great deal of work underway in each area described below:

Comprehensive Continuum of Care in a Regionalized Services Delivery System (see Stipulation Paragraph 13)

The primary activity that we are consulting on and monitoring is the creation and projected use of small (12-48 youth) community-based facilities (also contemplated in the activities delineated in Stipulation 14 – Task Force). The development of these facilities, Community Based Treatment Centers (CBTCs), has been launched through the release of an RFP for the first three CBTCs. This RFP is pending, with a “bidder’s call” recently held on April 24th. The RFP is focused on Cuyahoga, Hamilton and Franklin counties, with no decision made going in to the competition as to the order in which they would open. Professor Ed Latessa, the University of Cincinnati liaison here, does,

however, prefer that Hamilton County open first. It is expected that the decision on the applications will be made by June 1, 2009 and the first CBTC will open in August 2009.

The next will be scheduled to open in late fall/early winter of 2009/2010 and the third one in the spring/early summer of 2010.

This RFP has been informed by the creation and operation of a test site, the New Directions Center at Scioto. The Center utilizes Cognitive Behavioral Therapy (CBT) as its core operating principle, focusing the methodology on offenders who were returned to Scioto as a consequence of a parole revocation. These offenders are being tracked by DYS, with the early results being reported as favorable. Several of the youth have demonstrated inappropriate behavior, including re-arrests, but the limited data to date is not sufficient to evaluate the program as a whole.

I toured this unit on February 25, 2009 and spent several informal hours there talking with staff and youth. The staff were dedicated and enthusiastic, while the youth I spoke with and observed were calm, felt safe, and expressed the view that the time spent on this unit may just be the second chance they hoped for.

The most significant weakness of the testing being done through the New Directions Center is the lack of CBT training for the parole officers assigned to the youth leaving the residential phase of the CBT program. This is being remedied, with the training now being scheduled for the parole officers. This omission, however, will impact the level of success of the test site.

See the following description, prepared by Shelly Fitzhugh, the DYS point person to the Monitor, to more fully understand this program:

New Directions Cognitive Behavior Treatment Program is a program designed for youth returned to the ODYS on a technical parole violation. Youth in this program must participate in 300 hours of intensive treatment designed to help them develop the attitudes and skills that will help them be successful.

It is a voluntary program, meaning that a youth has the option of participating or not. A youth who does not participate will be placed at another ODYS facility. The program only has room for 24 youth at any given time. The New Directions Cognitive Behavior Treatment program is, *on average*, 90 days long. A youth's stay might be longer or shorter depending on how he does in the program. Once he successfully completes the program, he will be released back to the community on parole, pending approval from the Release Authority.

Youth attend 7 groups each week and are to demonstrate the ability to practice pro-social ways to handle situations in and out of group. The social skills are practiced using role playing. Youth will also have to complete homework for most groups. All staff at New Directions

Cognitive Behavior Program are jointly responsible with the youth for their treatment. Youth attend 5.5 hours of school per day while those who have already graduated or have GEDs work in areas of the facility during the school hours.

While in the program, there are many incentives for following the rules and participating in the program. Rewards include extra privileges like phone calls, later bedtime, and access to an incentive room with video games. Youth can also earn food, hygiene items, clothes, special visitations and much more. Rewards are given to youth based on their phase, and their behavior in the program.

It is very important that youth at New Directions Cognitive Behavior Treatment Program feel safe so that they can focus on their treatment goals. To achieve this goal, the program has a zero-tolerance policy for fighting and assaultive behavior. Youth who engage in fights or in any assaultive behavior towards other youth or staff are terminated from the program and sent to another ODYS facility.

Before graduating from the program, youth have to complete a relapse prevention plan that will help them stay out of trouble in the future. Their parole officers are involved in their treatment while they are at New Directions. Most importantly, youth will be leaving the program equipped with tools to help keep them out of trouble in the future.

New Directions Program Statistics (as of April 30, 2009):

- Number of youth currently enrolled: 16
- Number of youth accepted into program since October 1, 2008 – 53
- Number of youth who have been expelled from program - 8
- Number of youth left on own terms – 1
- Number of youth graduated – 26
- Number of graduation ceremonies held to date – 5
- Number of youth returned – 2 (1 youth who graduated, 1 youth who was expelled from program)

- Staff working with the youth – 2 Social Workers, 1 Psychology Assistant, 1 Unit Manager, and 10 JCOs have been trained on CBT techniques.

Task Force (see Stipulation Paragraph 14) and Least Restrictive Alternatives (see Stipulation Paragraph 15)

Both Stipulation provisions support the development of the continuum of care referenced above. This continuum shall include consideration of the use of Community Correctional Facilities (CCFs) and community based alternatives established through RECLAIM and other locally or state supported programs.

This is the area I earlier described as devoted to changing the footprint of DYS and indicated that much has been done in support of that effort. Discretionary funding has been targeted to implement several different programs and activities that will serve to strengthen this continuum and staff have been working with other stakeholders to realign the array of services available in the community and through the CCFs.

In this regard, an RFP is being developed that will supplement RECLAIM. This “RECLAIM RFP” was to be ready for release in May 2009. It will fund evidence

based/informed community programs and is being designed in a manner that will reduce commitments and more broadly increase the use of evidence based/informed programs funded by RECLAIM. This funding is scheduled to be released July 1, 2009.

Also in support of these stipulations, an RFP to expand the 10-site pilot Behavior Health/Juvenile Justice (BH/JJ) program is being released by the Ohio Department of Mental Health (ODMH). The RFP is being funded by ODMH and DYS funds and will move the program to more of a statewide operating basis. It will also include an enhanced evaluation component so that we can continue to learn what works best with delinquent youth who present behavioral health issues. The funding is scheduled to be released July 1, 2009.

The success of the BH/JJ program in keeping youth out of DYS custody and care has been significant and the decision to go statewide reflects a very basic and fundamental change in the way DYS and other key stakeholders view the approach toward juvenile justice in Ohio; moving away from a strict accountability and punitive approach to one more respectful of adolescent development.

The work on alignment of services and the movement/placement of youth is

underway through a number of work groups being formed this spring consisting of DYS staff and CCF Directors. There is also an ongoing discussion of the impact of restoring the 3% budget reduction to all CCFs by July 1, 2009.

A protocol is being developed to govern moving DYS youth to CCFs (at the time of assessment/reception or within 30 days of arrival at the DYS institution), identifying currently placed CCF youth to be released to the community (requires development of plan that respects judicial statutory authority), and the development of a strong family strengthening program as a core service and a strengthened aftercare component to the DYS programming. The overall goals here are to increase CCF capacity up to 37 beds; reduce the length of stay in DYS and CCFs; and reduce dependence on DYS institutions.

Another positive development in this area is the convening by DYS of a meeting in May 2009 with six juvenile court administrators and Bart Lubow of the Annie E. Casey Foundation to discuss launching the Juvenile Detention Alternative Initiative in those six counties. This would be a powerful complementary piece to the institutional realignment, BH/JJ and RECLAIM work described above. Shay Bilchik attended this meeting on behalf of the Monitor.

DYS leadership hopes that these developments will lead to the further reconfiguration of the DYS population.

Mr. Bilchik and I believe that all of the activities described above will make significant contributions to a regionalization plan that expands regional beds and placements while closing or downsizing existing custodial facilities. While there is another stage of work yet to take place regarding possible legislative changes to the state's sentencing laws (minimum mandatory sentences and gun spec laws), these amendments appear better positioned for legislative consideration if they follow this initial set of activities.

In the spirit of looking forward, however, what follows are a number of key areas that the stakeholders with whom we have been meeting believe should be included in a plan for action:

- Developing prevention programming utilizing cross systems approaches, including efforts to reduce the number of youth being suspended and expelled from schools and arrested, and stem the flow of youth from the child welfare into the juvenile justice system

- Enhancing the use of prosecutorial and court diversion programs
- Increasing the use of IV-E, Medicaid and TANF
- Strengthening research and data capacity
- Partnering with private providers to help expand the continuum of services and alternatives
- Deepening the engagement of families
- Focusing on gender specific programming
- Creating greater public awareness in order to build public and political will
- Developing the capacity for DYS to serve as a purchasing agent for local services
- Supporting ongoing and enhanced efforts to reduce Disproportionate Minority Contact and disproportionality in the child welfare system
- Developing the capacity to perform cost-benefit analyses on an on-going basis
- Improving the legal representation of youth in the system

I trust the Court and other recipients of this Report share our enthusiasm for the progress being made in this area. Ultimately, of course, we would hope to save lives and money and that must be viewed as a terrific parlay.

I. EDUCATION

Monitoring Team member, Ava Crow, assisted by her colleague Anne Flynn, M.Ed., have represented the Monitor's Office in this area in exemplary fashion. This is the primary area of the Stipulations where there have been site visits that closely resemble oversight visits. Even with education, however, we were acting collaboratively and essentially in our consultative role. This collaboration with DYS, the Bureau of Education, the facilities and the schools has stimulated major strides in the direction of the ultimate implementation of the *S.H.* and *U.S.A.* Stipulations.

The DYS youth population is not only impaired by the physical and sexual abuse they have experienced in the free world, they arrive educationally compromised with over half the population requiring Special Education. Many of the youth are ADHD. Nearly all are in those stages of adolescence where under the most accommodating situations, young people are trying on new identities, are compulsive, easily influenced by peers, and often reckless. See Elizabeth S. Scott & Lawrence Steinberg, *Rethinking Juvenile Justice*, ch. 2 (Harvard U. Press, 2008).

This is a volatile brew and we applaud the dedicated staff of the Bureau who spend their time in the classrooms, the hallways, and the offices devoted to providing the education and vocational training that can assure a better future for these youth.

What follows is an Executive Summary of the 34-page Report, Education Programs in ODYS Schools,” (May 2, 2009) by Crow & Flynn, which is attached here as Appendix B.

Executive Summary: Education⁸

This is a summary of the highlights of progress and ongoing challenges with the education *S.H.* Stipulations Paragraphs 180-231. The progress made to date on these multiple provisions is very impressive. As required by Stipulation Paragraph 29, DYS has treated education as a priority area, and results can already be seen. Major strides have been made in providing a full school day, improving special education, and in many other areas. Much diligence will be required to not only maintain the current improvements but to continue to achieve full compliance with the Stipulations of *S. H. v. Stickrath*.

⁸ Limited editing by Fred Cohen

Indeed, it is fair to say that education left the gate early and continued at a pace outstripping other areas. Part of the reason is the energy and expertise of team expert Ava Crow, assisted by Anne Flynn. Ms. Crow has met, drafted, redrafted, consulted, and visited all of the facilities.

Policies and Procedures

All existing policies and procedures have been reviewed and revised, with the exceptions of discipline, records, and granting academic credit. DYS is developing a facility-wide Standard Operating Procedure (SOP) on discipline that will encompass the schools. DYS has referred the schools' SOP on access to student records to retained counsel for revision, and this has not yet been completed. Finally, the policy on granting credit has not been finalized. The Buckeye United School District (the DYS component that oversees education in the facilities' schools) is attempting to seek an appropriate balance in grading between the new computerized learning system and other, more traditional instruction. This is a process that should not be rushed and consequently this SOP has not been finalized.

Leadership and Communication

Bureau of Education officials indicate that they are now being included in discussions at Central Office from which they have been historically excluded. During the visits in the fall 2008, all school principals favorably reported on communication between the school superintendent and the schools. Relationships between the school superintendent and facility administrators have improved (the current superintendent was not in office when the prior report was prepared). Consistent with Stipulation 184, DYS management has freed school principals of the vast majority of their institutional responsibilities so that they can focus on school improvement and development of their instructional leadership skills. The school Superintendent is now working with facility and school administrators to sharply focus the attention of school administrators on improving the schools—reducing violence, assisting challenged teachers, and improving student performance.

Full School Day

DYS has made substantial progress with Stipulation mandates in this area. When school began in January 2009, almost every student in Scioto, including the Reception

students, was receiving 5.5 hours of school. Most schools report that students are no longer being kept out of school because of Special Management Plans that limit educational services.

Of continuing concern are students placed on “unit instruction” either by the school or by the facility. Although very few facilities continue to do this, there are exceptions. Further, Tecumseh High School, the Ohio River Valley School, was placing numerous students on extended unit instruction during the January 2009 visit. Because unit instruction results in students receiving, at best, an hour a day of instruction, this matter was called to the attention of DYS General Counsel and other DYS and Bureau of Education officials. Similarly, facility placement of students on unit instruction at Indian River has been discussed with central office staff, and this unit instruction issue will be carefully reviewed in the upcoming years.

Also of concern are students who do not receive a full school day because of an inability to fully staff classrooms. Although there is a significant decrease district-wide in the incidence of students receiving a shortened school day for this reason, this

continues to be a noteworthy problem at ORV-Tecumseh High School which is plagued by teacher vacancies.

In general, the Department has assiduously worked to address the full school day requirement, and although there are still some issues, huge steps have been taken. We will, of course, monitor this closely.

Staffing, Hiring, and Retention

DYS has made efforts to address staffing shortages by significantly adding education employees and by committing dedicated staff effort to recruitment and retention. Despite these efforts, there continue to be staff shortages at ORV-Tecumseh with 12 vacancies, Cuyahoga Hills-Luther Ball with six vacancies, and less significant numbers of vacancies at all but one of the other schools. The length of time required to actually get new teachers in the classroom continues to be a substantial problem. Management is not insensitive to this problem, and this, along with staffing and recruitment, are areas that need creative thinking and continued review.

Curriculum, Classroom Instruction, and Reading

During the 2008-09 school year, DYS instituted a massive change by computerizing every school classroom and initiating the process of delivering grade-appropriate curriculum to every DYS student. Observations were conducted in every school. Classroom success on the computerized learning system was observed to be on a continuum, and successful classrooms shared many of the same traits. Teachers controlled the classrooms, successfully directing the students to work on lessons appropriate to their individual level. In addition and perhaps most critical, teachers were on their feet, constantly working with individual students at the computer, and using student questions as instructional moments.

Stipulation 219 requires DYS to provide access to a computerized software package designed to teach reading to students with pre-literacy skills and to provide training to staff. *My Reading Coach* is a highly recommended reading program recently purchased by DYS, and identified staff members have been trained. Substantial gains in reading levels are already being reported.

Middle School

The Department has developed two middle school programs for 12- and 13-year-old students — one in Circleville-Ralph Starkey High School for sex offenders and one at Indian River High School for all other middle school students. During visits, the middle school students were being taught by appropriately certified teachers and with a couple of isolated exceptions at Circleville-Ralph Starkey High School, the students were all being grouped only with other middle school students for classes. The exceptions were discussed with the guidance counselor and school Superintendent, and reportedly, all middle school students are now being served together. This area will continue to receive close monitoring.

Special Education

Stipulation 222 requires Bureau oversight of special education programs at the facilities, a quality assurance program, and Bureau monitoring to determine whether there are sufficient resources and staffing to ensure adequate services and compliance with the Stipulations. A new director of special education was named after the new school Superintendent took office, and this director is doing an impressive job.

The Stipulations require that “at all times” special education be provided to all DYS students, consistent with IDEA, the regulations and the Stipulations. DYS continues to improve on this. All identified students in the district’s school buildings are receiving special education services. However, still of concern, as previously noted, are those students who are on “unit instruction” and not in the school building. Compliance with Individualized Education Plans (IEPs) and the process by which special education students are placed on unit instruction are of substantial concern, in addition to the fact that during monitoring visits, these students were receiving very limited instruction.

There are still schools where the IEPs are not collaboratively drafted. A small increase in the number of different modifications and accommodations written on IEPs is being seen, but there is still room for significant improvement in this area. With very limited exceptions, most of which are justifiable,⁹ students are receiving their triennial evaluations in a timely manner. Again, with few exceptions, virtually all of which are justifiable, annual IEP team meetings are held in a timely fashion. However, Stipulation

⁹Late evaluations and IEP team meetings are considered justifiable, for purposes of this report, when they result from a student arriving at a DYS school from another school district with an outdated evaluation or IEP or for other such reasons that are completely out of the control of DYS. It is to be noted that even with these IEPs and evaluations, DYS has been diligent in quickly starting the evaluation or IEP-drafting process.

225 requires that IEP meetings be held “as necessary to develop, review or revise IEPs.”

Many students, particularly those with behavior problems, often require more than one meeting a year, and these additional meetings are not occurring. However, a foundation must be laid before this requirement can be effectively implemented. Monitoring for these additional meetings will occur in the 2009-10 year and intensify in the 2010-2011 year.

Professional Development

The special education director has scheduled substantial professional development (P. D.) and is well on the way to providing the “continuous” P. D. required by Stipulation 227. The Stipulations also require sufficient continuing education on the computerized student learning program to avoid the system becoming degraded. All schools have received training, and the Bureau plans additional activities to ensure effective implementation.

Career Technical

A DYS career-technical (career-tech) teacher was named the new career-tech central office administrator, and she walked into her new office on August 4, 2008, faced

with multiple mandates from the Stipulations. Despite her relatively recent arrival, some progress has been made.

Teachers in the schools are issuing certificates of competencies mastered upon leaving career-tech classes, and several schools report that a protocol has been developed to ensure that even those students who depart abruptly will receive their certificates.

Unfortunately, Stipulation 215 has not been implemented as it relates to certification for Microsoft Office through the Administrative Office Technology class, and students who are ready to take the test continue to graduate without this certificate that enhances employability. This requirement will be the focus of early and continuous monitoring in the upcoming year.

Commendably, and with substantial credit to the acting facility superintendent, career-tech students at ORV-Tecumseh have gone off-grounds to wire a church, and other off-grounds activities have occurred. The value of this real-world training cannot be overestimated, both in terms of credentials and student behavior and self-esteem.

School Space, Physical Plant, & Safety

DYS management has taken the unprecedented step of ensuring that the Bureau of Education is represented in discussions related to the closings of facilities, to ensure that students are not placed in facilities that will result in over-capacity schools. With isolated exceptions that are being addressed, all school staff report that there are adequate cameras now installed in classrooms and common areas where needed and that all school staff, including contract service providers, have individual alert systems. Specific repairs required at Cuyahoga Hills-Luther E. Ball have been made. Crowding remains a problem at ORV-Tecumseh. At the January 2009 visit, the school had more students than the building was designed to serve, but DYS had decreased the population from an even higher number. A construction plan is in place, and DYS continues to evaluate other options.

Transition and Re-entry

The Department has prepared a draft of a Position Description for the Transition Specialists that will be split among the schools. In addition to the new Transition Specialist positions, it is planned that existing Career Based Intervention (CBI) teachers

will be used to teach a 10-week Transition Skills curriculum to students who will soon be released.

Recommendations

It is recommended that DYS and the Bureau continue each of the efforts and initiatives already begun. In addition, a number of other recommendations are made in the main report, and some highlights follow. It is recommended that DYS begin:

- Restricting schools' ability to place students on "unit instruction" without following appropriate IDEA and other mandated procedures;
- Placing suitably staffed classrooms on units for students who are temporarily not appropriate for school building placement;
- Considering non-traditional methods to ensure that chronic staff vacancies are filled;
- Employing and utilizing behavior specialists and/or school psychologists to work with teachers and students in classrooms, to assist in developing functional behavioral assessments and behavior intervention plans, to assist in devising data

- collection strategies and evaluating monitoring data, and to assist in revising IEPs and Behavioral Intervention Plan (BIPs), as appropriate;
- Providing training to JCOs and education staff in classroom management;
 - Contracting with an expert in classroom management and instructional practices to work with teachers in the classroom setting;
 - Revamping the Reception assessment procedures at Scioto;
 - Ensuring in these challenging economic times that all funds allocated to the school district be expended on services designed to meet these Stipulations;
 - Providing student orientation to CSLS that may include a grading rubric on course requirements at the beginning of each term and for each student that enters during the term;
 - Revising IEPs as needed, rather than on a routine, annual basis, for students who are making limited or no progress, including progress on behavioral goals or BIPs;
 - Utilizing school psychologists or behavior specialists to assist in developing Functional Behavioral Assessment (FBAs) and BIPs, in devising data collection

- strategies, in evaluating monitoring data, and in revising IEPs and BIPs, as appropriate;
- Implementing collaborative drafting of IEPs in schools where this is not occurring;
 - Providing appropriate, systematic behavior and academic monitoring of IEP goals in all classrooms;
 - Utilizing IDEA procedures by appropriately trained and appropriately constituted IEP teams if more restrictive educational changes of placement are being made;
 - Obtaining FBAs and preparing BIPs on all students that need them, but especially on students for whom educational changes of placement are being contemplated because of behavior;
 - Implementing and revising BIPs as necessary for students, using accurate and systematic data to evaluate the effectiveness of the BIPs;
 - Providing all professional development not yet initiated and called for by the Stipulations;

- Teaching the ten-week transition classes in each school to each student before exit; and
- Creating an individual transition plan for each student at intake.

Conclusion

The Department, Bureau, facilities and schools have made major strides towards compliance of the *S. H. v. Stickrath* education Stipulations. This progress has been made in trying economic times, and the facility closings have added additional complications.

The Department and Bureau and their employees have much of which to be proud. There remains much work to be done, and the education team members look forward to reviewing the already accomplished progress and to seeing even greater gains in the upcoming year.

J. DISCIPLINE, GRIEVANCES, AND YOUTH ADVOCATE

I have performed the role of Monitor as well as our subject matter consultant in the above three areas. That dual role may help explain why we may not be as far along in those areas as, e.g., education and use of force.

Grievance Procedure

The grievance procedure within DYS, and any juvenile or adult correctional facility of which I am aware, is roundly criticized and not trusted by its users. I have met with DYS officials, including Jennifer Fears, the Chief Inspector, and we have worked through an early, revised draft of Policy No. 304.03.

I asked *J.P.* Monitor Vince Nathan for his comments to the draft and he kindly responded with insightful questions and suggestions. There has not yet been sufficient time, however, to absorb his input and begin a second round of discussion and refinement. Reform of the Grievance procedure is intimately related to the future viability, at least in its present form, of *J.P.*, which provides a Legal Assistance Program (LAP) for youth seeking access to the courts. To the extent that most of the issues presented to the LAP attorneys are better suited for the grievance process, an invigorated

grievance machinery, with clarity as to the “exhaustion of administrative remedies” requirement as a precondition to litigation, would dramatically reduce the number of “access” attorneys required. Clarity as to “exhaustion” has not yet been achieved.

The existing grievance draft encourages the earliest, informal resolution at the local level of youth grievances. No formal, written grievance may be filed unless there is a recorded effort at informal resolution.

A “grievance advocate” position is being recommended as an exempt employee who, in a word, works with the youth at problem solving and connects youth with those who can, e.g., get the right shoes, arrange a phone call, arrange a housing change, and the like.

Where the informal process is not satisfactory to the youth, there is a written grievance process with decisions made at the facility level and the right to appeal to the Chief Inspector, described now as the “exhaustion” requirement for access to the courts.

There clearly is more work to be done in this area and I am hoping we receive input and reach finality here at least by sometime in July 2009.

Youth Rules, Intervention & Rewards

I reviewed and offered revisions to Policy No. 303.01, Youth Rules, Intervention & Rewards; SOP 303.01.03, Youth Intervention Hearings; and SOP 303.01.01, Rules of Youth Conduct. In sum, these three documents represent the DYS “Non Penal Code” and “Non Criminal Procedure Code.”

By “non” I am suggesting that DYS, working with the Monitor, has decided to follow a very progressive path in these areas and de-emphasize the current punishment model. SOP 303.01.01, as it appears in a May 4, 2009 draft, substitutes the word misconduct for violation or infraction and also tightens and modernizes the description of primary and secondary instances of misconduct.

The central concept, of course, is to provide youth with a rather clearly stated code of conduct ranging from sexual misconduct and assault to being “out of area.” The State’s Penal Code, of course, applies to DYS as well and penal code violations may be prosecuted as well as dealt with internally.

SOP 303.01.03 is the most innovative of the three revisions. This encompasses the format for what will now be termed as intervention hearings (versus disciplinary

hearings). It is proposed that a single, specially trained hearing officer conduct hearings rather than the three staff now used.

A new position of Youth Advocate (YA) has been created and six such positions have been funded, one for each post-June 2009 DYS facility. The YA will assist youth with investigations, provide advice as to a plea (proven or not proven versus guilty or not guilty), assist at any hearing, and represent the youth's best interests in the formulation of any disposition.

Interventions are to be guided, and limited, by the seriousness of the misconduct and the treatment/case management needs of the youth. Input from treatment/program staff should be sought so that the intervention focuses on prevention and positive means to reduce or eliminate future misconduct.

Provisions for enhanced custodial time on recommendation to the Release Authority, in the draft under discussion, remain in place. This is a controversial provision that likely will receive further debate.

K. MEDICAL, MENTAL HEALTH AND DENTAL

In future Reports, I plan to more cleanly separate the areas of medical, mental health, and dental care, particularly mental health care, which is one of our more compelling concerns. Youth tend to arrive at DYS relatively physically healthy; certainly not experiencing chronic illness to the degree one encounters in an adult prison. A healthcare program for youth with chronic medical diseases has been described in policy and program documents, which are awaiting final approval. The method and frequency of youth assessments are also included in these documents. Youth with chronic diseases as well as healthy youth will receive education about aspects of disease identification and treatment to encourage a healthier lifestyle.

Our earlier recommendations included increasing medical staff contract hours so that the DYS Medical Director may reduce the amount of direct care service he currently provides and allow him to give greater attention to clinical oversight, peer review, program assessment and policy development. ODYS currently contracts with local physicians to provide care at each of the facilities and local hospitals are used for emergencies, surgery and labor and delivery. Effective July 2009 there will be fewer

sites requiring coverage so the potential for using those residual contract hours to provide additional medical services at Scioto, which houses the centralized infirmary, should be considered.

Dental problems exist, poor diets and lack of preventive care produce cavities that must be identified and treated.

On the other hand, 38% of DYS youth are on the mental health caseload, predominantly diagnosed with mood disorders, anxiety disorders, developmental disorders (often linked with substance abuse issues), and volatile conduct.

In the recent past, there were a higher percentage of youth identified as in some fashion mentally ill with the earlier diagnosis de jour being Bi Polar. Either there was a dramatic change in the mental health of these youth or in the clinicians making these diagnoses. In my view, the ebb and flow of diagnostic labels tells us more about the clinician than the youth. There is, however, no authentic debate regarding the assertion that DYS houses a significant number of youth requiring some level of mental health care. In our monitoring we will use techniques of population sampling and independent psychiatric diagnoses review to determine the degree of accord with DYS as to the

aggregate number of youth undergoing treatment, the diagnosis, and the treatment modalities employed. I will subsequently return to the mental illness/mental health area and provide more detail.

Dental Care

With regard to dental care, Doctors Don Sauter and Nick Makrides, our dental experts, continue to work on getting the dental P & P and SOP finalized. The P & P and SOPs have been drafted and passed through two reviews by ODYS. Dr. Sauter met with Dr. Bradley on April 27, 2009 and reviewed the draft documents line-by-line. The meeting was congenial and there was much consensus on content. Dr. Bradley and Dr. Sauter agreed to update the documents based on their notes and exchange these drafts to create a document that should be close to signature ready.

Dr. Bradley reported that there were drawings generated for the dental clinic remodeling/ relocation at Cuyahoga Hills Juvenile Correctional Facility (CHJCF). He said he would provide these to the dental experts in a timely fashion.¹⁰ Dr. Bradley believes that some interim physical changes were made at the CHJCF dental clinic. This

¹⁰ No drawings have been received as of May 4, 2009.

clinic was completely inadequate to provide adequate dental care when Dr. Sauter evaluated the CHJCF program in 2007.

The dental RFP for dental services has been sent out to several bidders. We do not know when the contract will be awarded.

Dr. Bradley said ODYS plans to place dental hygienist services at the reception center and the parent institutions. The dental experts are very pleased with this decision since it enhances care and maximizes the time of the dentist.

The development of the P & P was delayed as the dental consultants, following the guidance of the Stipulation, waited for ODYS to develop draft dental P & P.

Stipulation Paragraph 157 provides “Unless otherwise specifically provided, in every Section and sub-section that follows where there is to be developed a policy, procedure, protocol, or other Procedure, DYS shall take the initiative in the drafting, consulting with the Monitor as DYS deems it desirable, and shall then submit the draft for review by class counsel and the Monitor.”

DYS did not “take the initiative” and ultimately I instructed the dental experts to draft the dental policies (late September 2008). It took some time for the consultants to

draft all the SOPs and expanded policy since ODYS dental policy previously consisted of a mere 2 to 3 pages. The draft policy was sent to DYS on December 16, 2009. We did not receive a return draft from DYS until February 11, 2009.

The policy revision process was also delayed by the lack of timely approved and signed contracts to the dental consultants and other housekeeping-type issues.

Conversations have repeatedly taken place between Dr. Bradley and Dr. Sauter about the urgent need for a remodeled or new dental clinic at CHJCF. Thus far we have yet to see the drawings. We believe that interim physical plant changes must be made at CHJCF to allow for space to provide adequate dental care. Dr. Sauter will evaluate the adequacy of the changes (if any) and the drawings for a new facility when he visits CHJCF in early June 2009.

There seems to be some resistance by ODYS in locating a recommended panoramic x-ray machine at the reception center based on conversations with Dr. Bradley. This must be addressed.

Dr. Sauter was impressed with how prepared Dr. Bradley was to discuss the dental policy and SOPs at their meeting on April 27, 2009. Dr. Bradley had a line-by-

line knowledge of the documents. The exchange of ideas was a cordial give and take producing meaningful changes to the draft documents. Continued close communication with Dr. Bradley and the dental consultants should facilitate accelerated progress toward meeting the stipulation requirements.

We, of course, plan to closely monitor the Cuyahoga situation; the measures put in place to enhance preventive self care by youth, and then, of course, the traditional review of any delays in providing access to care, quality of care, the facilities available for adequate dental care, and similar issues.

Medical and Mental Health Care Overview

There has been more significant progress in the development of medical policy and procedure than in the mental health area. The Medical Director and the Director of Nursing worked with team members to conduct policy review, consolidation and the creation of new policies to define the chronic care program. Monitoring Team Member, Ron Shansky has been a regular visitor to Central Office to provide consultation. Mental health team members were delayed in beginning work and ODYS also suffered from clinical staff absences in this area.

I had hoped to have Dr. Leta Smith on our mental health care team and when she was unavailable I reached agreement with Dr. Kathy Quinn and Dr. Cheryl Wills, prominent Ohio adolescent psychiatrists. Contract delays with the doctors' hospital employers caused more delay and then Dr. Quinn became unavailable due to illness in her family. We have finally settled in, albeit belatedly, with Dr. Wills working with Barbara Peterson, R.N. as our Team mental health experts, with the Monitor playing a secondary (or backup) role.

Intense work in the mental health area has now started, some progress is evident and will likely continue throughout the summer. ODYS is recruiting for a child and adolescent psychiatrist to participate in policy and program development, as well as management, at the Central Office level. The addition of a psychiatrist at this level, certified in child and adolescent psychiatry, will be a welcome and necessary step.

Mental health programming has had general themes identified (cognitive behavior therapy, for example) but specific program details are still being developed. ODYS has recently completed an agreement with OSU Hospital to provide hospital level care for youth who suffer from mental illness and require a hospital level of care. This contract

took more than a year to complete, requiring consistent follow up from DYS staff members, and will now fill a void in the level of care available.

There was a plan to enhance psychiatric staff with the addition of a psychiatric nurse practitioner with prescription privileges, which appears to have been abandoned. Having an advance level practitioner available to enhance psychiatric coverage should be reconsidered.

On the other hand, staffing issues have been complicated by the need for ODYS to go through lay-off and bumping procedures associated with the closure of the two facilities in June 2009. Hiring and retention of qualified healthcare professionals will be closely monitored for both medical and mental health staff.

Education and training of staff regarding new policy/procedure and medical and mental health program requirements is currently in development and is anticipated to occur for both initial and ongoing development of these areas. A program on effective interventions for the aggressive resident was halted to make improvements after a trial run. To the degree possible, facility staff should be utilized to design and implement educational and training programs and this is currently beginning to take hold.

Documentation was identified as an area requiring significant improvement and an initial training session on use of S (subjective) O (objective) A (assessment) P (plan), SOAP, method of documentation was completed for medical staff on April 30, 2009.

Program documentation, education and training, all youth assessments and response to care must be carefully monitored and assessed to insure that levels of care consistent with identified needs are being provided. Case reviews and routine clinical review of the integrated medical file will be required as part of the program assessment process.

Medications consistent with the needs of youth with chronic and/or serious mental illness continue to be an issue requiring consultation and refinement. We will soon do a formulary review with DYS professionals to resolve such issues as the one that arose at ORV with regard to doxepin, an older generation medication not often used or recommended by clinicians. The importance of administering medications as ordered and to then regularly assess the benefits and/or risks from their use are two other areas that remain to be developed.

The development of the quality improvement program is lagging pending the final approval of policy and procedure so that effective measurement criteria can be developed.

Mental Health in Detail

Stipulation Paragraph 92 sets out required mental health, clinical staffing ratios and also specifically requires that DYS hire eight additional clinical staff “in July 2008.”

I have read “in” to mean “by.” Those positions have been filled and distributed as follows:

Indian River

Dale Ruppel – Psychologist

Karis Fitch – Psych. Assistant

Eugene Bauer – SW3

James Hill – SW2

Cuyahoga

Rita Politzer – Psych. Supervisor

Circleville

Jeffrey Parsons – SW3

ORV

Stacey Saunders – Psych. Assistant

Kaye Payne – SW3¹¹

Systemwide there are multiple unfilled clinical positions: Psych. Supervisors, Psychologists (3), and Psych. Assistants. As noted, until the budget-driven layoffs and bumping from the closure of Marion and Freedom Center have settled in, it is unlikely that these positions will be timely filled. We continue to work on the requisite full-staffing plan. DYS has used Central Office clinicians on a temporary basis to meet pressing mental health treatment needs.

The Youth Placement Table that follows was prepared by DYS at my request. It is useful in its graphic presentation of facility population and programs that are, or soon will be, available. In addition, the mental health units may be identified along with very brief comments on what is new or different. The narrative speaks for itself.

¹¹ For the Court's and the parties' further edification, I have attached the resumes of these new hires as Appendix C.

Facility	Population/ Programs	Current Mental Health and Social Services Staffing	Positions to be filled after July 1, 2009	Units	What's New and/or Different?
CHJCF	Sex Offenders HS/GED Graduates (GRADS) Middle School (all 6 th graders) Chemical Dependency Intensive Unit (CDIU) No Mental Health Unit	Psych Supervisor 1 Psychologist 2 Psychology Assistant 1 Social Work Supervisor 2 Social Workers 13	Psychologist 1 Psychology Assistant 1 Office Ass't 1	3 Identified Sex Offender units /36 ea. 5 General Population units /42 ea.	Total 3 Sex Offender Units Add Min/Med GRADS Add Middle School (all 6 th graders)
IRJCF	Middle School Education (7 th -8 th graders) Mental Health Unit CDIU NO GRADS One unit will be staffed to serve youth with cognitive limitation and/or other identified disabilities	Psych Supervisor 1 Psychologist 2 Psychology Assistant 2 Social Work Supervisor 2 Social Workers 16	Psychiatric RN Office Ass't 1	1 Mental Health Unit w/20 youth 3 Minimum Units/42 ea 4 Medium Units/40 ea	Mental Health Unit will provide a broader range of treatment Population increase Add Ed/Voc Staff & Programs Special Ed numbers may increase General Population Unit designed to support educational and other identified special needs
MoJCF	Therapeutic Community serving youth with alcohol and other drug issues (AOD) Youth with AOD issues adjudicated for a sexual oriented offense Some GRADS No Mental Health Unit	Psych Supervisor 1 Psychologist 1 Social Work Supervisor 2 Social Workers 8	Psychology Assistant 1	3 Minimum-Medium Units/50 ea <i>(1 unit closed for renovations)</i>	Youth with AOD issues and in need of sex offender programming will be added to the population. Previously, youth would complete the sex offender programming before moving to Mohican to complete the intensive AOD program. Programming will run concurrently.
CJCF	Mental Health Unit Sex Offenders CDIU NO GRADS	Psych Supervisor 1 Psychologist 1 Psychology Assistant 3 Social Work Supervisor 1 Social Workers 11	Psychiatric RN Social Worker 1	1 MH Unit/20 5 Close Units/30 ea	Mental Health Unit will provide a broader range of treatment services Population change to GP Close
SJCF	Male Reception Male Revocator Female GP Mental Health Unit for females CMF	Psych Supervisor 1 Psychologist 1 Contract Psychologist 1 Psychology Assistant 7 Social Work Supervisor 2	Psychiatric RN Office Ass't 1	1MH Unit/10 Females 2 Units Female General Population <i>3 closed units</i> 4 male reception units	

		Social Workers 21		1 Male Revocator unit	
ORV	Sex Offenders low needs (GP) Close Grads- Special Management Units CDIU No Mental Health Unit	Psych Supervisor 1 Psychologists 1 Psychology Assistants 4 Social Worker Supervisor 2 Social Workers 18	Psychiatric RN Psychologists 1 Social Workers 3	2 SMUs/25 ea 1 Medium Unit (40 grads) 7 Close Units/32 ea	Add medium, close GRADS Close Mental Health Unit Add 2 nd SMU (McKinley)

Mental Health Units

To date delivery of mental health services has changed significantly. Treatment is less fragmented, more focused on identified need and more supportive of the rehabilitation model of the agency. This is evident in the reorganization of the mental health units to reflect a continuum of services within the identified unit rather than two separate units to serve youth identified as needing either intensive or residential services. Admission and discharge criteria are being developed with an emphasis on assessment of need and expected treatment outcomes and will be put into policy. The draft policies have been reviewed by the monitoring team members and feedback is currently being considered as the policies are finalized. The goal is for greater integration of MH services within all programming within the facilities. It is also anticipated that the more integrated level of care approach will enhance the opportunity for youth on the MH units to be more responsive to treatment. Overall decision making regarding youth includes all stakeholders in the youth's care through more frequent and comprehensive staffing of youth that review treatment and placement decisions. Movement into and out of the unit is driven by the clinical review of youth by clinical staff on the MH units with Central Office staff supporting the administrative transfer process. There is a better line of communication with the regions and release authority in order to jointly determine the best care for youth with mental health issues as they re-enter the community. We have tested the waters with regard to moving youth into community treatment while still under our jurisdiction to determine if a least restrictive setting is more appropriate. We have had set backs, but we have not been discouraged as to the direction that MH treatment program is headed. The next step will be to provide enhanced training for all staff as to the needs of mentally ill youth as well as provide more in depth training for staff providing direct care services for mentally ill youth on the identified units and to continue to assess the mental health needs of the general population.

Turning to specific provisions of the *S.H.* Stipulation that appear to be central.

Stipulation Paragraph 86: I have been provided with what I term a plan-to-plan and I will not burden the Court and the parties with what I consider, at best, an internal planning document.

I do not have in my possession, nor do I believe there exists, what I would call the requisite comprehensive plan for a “continuum-of-care mental health system.”

I informed Deputy Director Chris Money of this and that I proposed asking the Court here for permission to file a Supplement to this Report within 120 days of this submission. The Supplement would, inter alia, present the required plan by which I mean a detailed formulation of a program for providing mental health care to DYS youth. Class Counsel, Al Gerhardstein has authorized me to relate that I explained the reasons for the delay here and that he endorsed the subsequent filing of a Supplement.

The three essential parts of a correctional mental health care program are:

- Staff: sufficient numbers, with appropriate training and education, and appropriately distributed

- Space: treatment units that are responsive to the varying levels of intensity of treatment needs of youth
- Access: the dynamic component of gaining access to such care and the discharge/release from care

See Fred Cohen, I, *The Mentally Disordered Inmate And The Law*, pp. 2-9-12 (2d ed 2008), for a review of various judicial requirements for a minimally acceptable, correctional mental health program and the author's 16 components that represent a combination of legal minima and desirable factors. I offer this as a guide only and recognize it is not specialized toward youth. That said, as a guide I believe it is useful.

Stipulation Paragraph 92: This is a vital provision requiring the rich staffing of 1 clinician for each 20 boys and 1 clinician for each 15 girls diagnosed as mentally ill; 1 clinician for each 20 youth diagnosed mentally ill in general population.

Mental health unit staffing is also specified as requiring at least three full-time clinicians and a treatment team leader. I note that the *S.H.* definition of clinician inexplicably fails to

include psychiatrists. Unless there is some objection I would ask the parties to simply allow me to include psychiatrists when we come to calculate clinical staffing requirements.

I note also that the parties in agreeing to the *S.H.* Stipulation did not limit mandated mental health care to *serious* mental illness. The *U.S.A.* Stipulation, See III (B)(1) refers to screening for mental disorders, including serious mental illness, and in (B)(5), the DOJ reference is to adequate mental health care and treatment encompassing substance abuse care.

My point here is only this: While employing different semantics, both Stipulations provide for a very expansive model of mental health treatment, certainly not limited by the language of “seriousness” found in *Estelle v. Gamble*, 429 U.S. 97 (1976), or implicating the constitutional standard of “deliberate indifference.” As Monitor I am looking for a plan that is as expansive in scope, and as detailed as required, by the Stipulations. I do not yet have such a plan.

I do have various fragments and charts illustrating efforts to include PbS, screening and assessment material, and the like. Again, given my belated assignment of Team Member Barb

Peterson to the mental health care area and given the delays associated with finally bringing on board Dr. Cheryl Wills, I certainly accept some responsibility for the delayed start.

To repeat, I ask the parties and the Court to allow me to file a Supplement in this area within 120 days of the date of this Report. I assure the Court and the parties that oversight monitoring in this area will be done through the summer and it will be our primary oversight mission to determine that DYS youth are being screened and assessed and then provided treatment by the right clinicians in the right setting, for their individual diagnoses. At the same time, we will collaborate with DYS and counsel to make certain the unmet Stipulation provisions are complied with.

Programs: Female and Male

There is a shared view that structured programs are a significant adjunct to more traditional mental health care whether that care be “group therapy,” individual therapy, medication, or cognitive behavior or treatment. There are a surprising number of structured programs now being provided by DYS, although I am not yet ready to state that there has been

integration of these programs with treatment or with treatment teams. We intend to press for such integration as part of the commitment to a viable Unified Case Management Plan.

I append as Appendix D, a listing and location of such programs along with a brief annotation that will give the reader some concept of the program.

I call your attention to the Bob Evans Restaurant program at Scioto. I happened to be at Scioto for a brief visit just as the training kitchen for the program had been completed. There were two girls present, housed at Scioto, and the former Bob Evans Manager was working with the girls.

There was such pride in this program; this gleaming replica restaurant kitchen with its grill, fry stands, condiments, and the like. I quizzed the girls about the program, which is an honors program, and they viewed it as the kind of training that would get them a job right away and maybe a chance to advance. And maybe, just maybe, that might be “realistic therapy” for girls who have never had a job and whose prospects for higher education are bleak.

L. OPERATIONS, HOUSING, SUPERVISION, STAFFING AND TRAINING

This section contains an interesting potpourri of subject areas. Dave Roush is the lead Monitoring Team Member in those areas. Dave and I have had some difficulty getting our respective arms around this composite and much of what we have to say here will be of the “to be continued variety.” I have already addressed the challenging need for culture change and the JCO’s role in achieving that change. However, I will offer some further commentary as this section proceeds.

Expert Dave Roush does come at this area with a somewhat unique perspective. In many ways, the Stipulations call for the creation of a new reality for youth and staff regarding juvenile corrections. Hence, new language and new ways of describing DYS become at least symbolically important. There has been progress in changing some of the DYS rhetoric, but this has been mostly informal. Additional evidence of a new reality is the changed organizational structure, specifically the promotion of Chris Money to deputy director and the appointment of Marci Sutherland as the interim Superintendent at ORV. These actions signal changes consistent with the Stipulations.

Two significant actions, or more appropriately inactions, continue to complicate the Monitor's oversight progress regarding staffing and training. These are the development of a new Policy and Procedure Manual and the creation of the new Position Description (PD) for the Juvenile Corrections Officer (JCO). The language in these two documents will serve as the foundation for restructuring JCO recruitment, selection, development, and retention. The specific language in the new JCO PD will guide future modifications, adaptations, and supplements to the JCO Basic Training Pre-Service Academy and to the ongoing, site-specific training at each juvenile facility. The delay in the production of these two documents is symbolic of the inherent complexity in achieving organizational and operational culture change in a large bureaucracy.

Dave Roush also notes that while there is no mandate to change the DYS mission statement, it should be considered as a factor in any explanation about the role that language plays in the changes to DYS. With the few notable Central Office exceptions, too much enthusiasm remains within DYS for holding youth accountable, i.e., for punishing youth, a position that exists comfortably but safely hidden within the mission statement. The statement

“to encourage positive change” contains the soft verb (encourage) that calls to mind many outcomes measures, none of which look anything like an evidence-based, best practices, or empirical evaluation. Soft verbs in mission and goal statements are problematic, but not new. It is somewhat ironic, though. In the early 1980s, the American Correctional Association (ACA) was a leader in management training for institutional superintendents. A central focus was goal setting as a management and quality assurance tool. Soft verbs were identified and rejected as part of an effective, outcome-driven system. The DYS affinity to ACA would suggest a closer adherence to this hard, active verb goal-setting concept.

A more concrete language would be “to change youth in positive directions.” There is a discernable difference between “encouraging” something to happen and “making” it happen. Conversely, a commitment to make something happen requires that the system address those mechanisms for change. That being said, and without retreating from the significance of language, I would opt for rich staffing over compelling language every time. We can, however, have both thereby short-circuiting the ancient cake-eating dilemma.

Staffing

We have not yet seen the influence of PbS data on staffing. PbS may well be more relevant in our monitoring than, e.g., ACA Standards. PbS presumably helps facility staff identify, monitor, and improve conditions and services. We will work with DYS in this and other areas.

Staffing: Facility Operations

Progress. The progress made on JCO facility staffing is an outgrowth of DYS acknowledgement that its juvenile correction facilities were understaffed. As a result, DYS made a commitment to hiring JCOs. The issues related to hiring will be discussed, supra.

Progress comes through the DYS agreement that staffing adequacy or staffing sufficiency is the threshold where the institution provides safety, security, programs, and appropriate outcomes, even though the program and the people differences within and between facilities mean that this threshold varies from one juvenile correctional facility to another. Progress further exists in the agreement that its staffing strategy should be fiscally responsible and that the goal should be a DYS operation that is both *lean* and *mean*.

This is a concept borrowed from Steve Martin that resonates with line staff and Central Office staff. *Lean* means that the number of youth under one JCO staff member's direct and continuous supervision should be at the threshold where safety, security, order, and programs operate effectively. *Mean*¹² stands for a staff that acquires and maintains the necessary skills to perform their duties effectively. Lean staffing differs between the adult and juvenile correctional viewpoints. At the core are the differences associated with adolescent development. From the staffing threshold perspectives of safety, security, order, and programs, the adult correctional view of staffing does not express the same degree of urgency as does the juvenile corrections perspective. The staffing issues and the determination of a facility-appropriate threshold will likely become points for greater discussion in light of (a) the reduced population in JCFs, (b) the redistribution of youth and staff resulting from the closing of Marion JCF and the Freedom Center, (c) reality that fewer youth in JCFs for shorter lengths of stay will aid in the DYS response to the statewide budget crisis, and (d) the aftermath of a tragic JCO death at Cuyahoga

¹² There may be better ways to phrase this given the competing uses of the word as "inferior," "halfway," and "just nasty."

Hills JCF. The results of the investigation are pending as this is written, although there are many rumors and wholly unsubstantiated accounts of what occurred and why.

Additional progress exists in the agreement that an appropriate staffing threshold need not be solely a function of increased staffing. Central Office understands that one way to enrich the staffing ratio without adding staff is to reduce the facility's daily population or capacity.

Whether because of the compelling arguments and powerful insights contained in the Cohen, Fact-Finding Report or as a function of the budget shortfall, there has been a sizeable reduction in number of youth in the DYS facilities. While Central Office has provided information regarding facility-specific JCO staffing data and budgeted FTE allocations, the verification of staff sufficiency requires on-site observations.

For example, staffing sufficiency between Mohican JCF and ORV is likely different, with Mohican requiring fewer staff to achieve adequate levels of safety, security, order, and programs.

Therefore, the next important step is the site monitoring and verification of staffing sufficiency.

There have been no traditional site evaluations, except perhaps in education, since the fact-

finding visits in 2007. This now becomes a crucial part of the monitoring process related to facility operations.

There is progress on the design and implementation of short term and systematic segregations of youth to improve behaviors and enhance a youth's likelihood of success in general population living units. The establishment of a Special Management Unit Task Force for ORV has the potential for generating a model behavior management program for replication in other JCFs and for application to the general population living units. Next steps include the monitoring and support of the Task Force headed by David Roush. We view this as of the utmost importance and highest priority.

Lack of Progress. During the fact-finding inspections, youth at every JCF identified the removal of "troublemakers" as a priority strategy to "make things better here." The Fact-Finding recommendations included the reducing or halting of the transfer of troublemakers. There is no concrete information to determine the progress on this recommendation.

An abiding concern is the level of disruptive and dangerous behaviors at some JCFs, particularly ORV. Data from pages 9-11 of the February 17, 2009 *Correctional Institution*

Inspection Committee Biennial Report to the 128th Ohio General Assembly: Juvenile

Correctional Facilities (the CIIC Report) indicate that ORV is the most problematic facility in the DYS system. As noted earlier, levels of violence persist in the JCFs calling into question issues of staffing, training, and programming, with special implications for resident and staff safety. PbS data reveal mixed results with various outcome measures in different facilities.

JCO staffing issues likely co-vary with other indicators, especially those that measure safety and bureaucratic dysfunction. This is a relationship supported by the union. That is, the more that JCOs incur mandatory double shifts and overtime, the greater becomes the threat to safety and program outcomes. However, if the combination of reduced facility populations and increased numbers of JCOs has the expected effect on reducing staff overtime and understaffing, and it does appear to have, then the continuance of violence and disruption at previous levels warrants exploration of other causal factors, not the least of which are the role and competency of JCO staff.

In a system that requires zero pre-employment education and no relevant experience for new JCOs and where DYS training experts refer to staff development as creating only a “temporary proficiency,” the probability of staffing problems seems to be high.

Staffing: Human Resources Issues

Progress. There have been three meetings at the Training Academy that included conversations with the Deputy Director for Human Resources and various members of his staff.

Progress in this area can be described as:

- The establishment of a good working relationship with staff and a gradual, though far from complete, understanding of the complicated process for hiring new JCOs.
- Through these interactions, a review of the DYS video-screening instrument occurred.
- The Deputy Director’s staff investigated the IMPACT video-based screening instrument, and the staff reviewed the incorporation of questions to screen a potential JCO attitude toward juvenile offenders. This came as the result of a

question about the way the screening process accesses multiple factors but does not find out whether a recruit likes youth.

- The final area of progress has been a greater understanding of the relationship between DYS and the Department of Administrative Services (DAS).
- The Monitor addressed a group of trainees during a use of force training session and one trainee enthusiastically spoke of how offending youth in his country had their hands cut off; how three youth shared two beds, and how “soft” we were in this country on “kids crime.” One might assume that his screening was somewhat deficient. He was terminated, however, from the position.

Of these factors, two have shown notable progress. The evaluation of IMPACT resulted in a rejection of the instrument, largely due to cost. Next, staff have begun to use a version of the Attitude Toward Prisoners (ATP) scale for use with juvenile offenders. This will be another measure to help screen into employment those individuals who want to work with youth.

Lack of Progress. Regarding the DYS video-screening instrument and the relationship with DAS, there has been too little progress. While some of the lack of progress can be

attributed to the lack of time during the visits to the Training Academy where training was the more pressing issue, a better explanation would likely be that the anticipated JCO Position Description has not yet evolved.

For example, the DYS rejection of IMPACT was, in part, a function of the existence of the DYS video-screening tool. Human Resources decided to “revalidate” its video-screening instrument around the new job-related factors to be revealed in the new JCO Position Description. While the revision of the video screening instrument promises to be complicated and time consuming, it remains unchanged in anticipation of the new PD. There is also a lack of progress from a monitoring perspective on improving or streamlining the relationship with DAS, which controls the job announcements and definitions of positions. The lack of progress is again evident on the issue of pre-employment education requirements.

Nowhere was the lack of progress more evident than the recent comparison of JCO cohorts (January 2007 thru May 2008 or pre-Stipulation hires versus May 2008 through October 2008 or post-Stipulation hires), as reported in the Six-Month Report to the Court. Using DYS education identifiers, the comparison of the two cohorts revealed an increase in the proportion of

new JCO staff with only a high school diploma, a decrease in the proportion of new staff with technical certificates and college degrees (associates degrees and bachelor degrees), and an overall 5.3% decrease in bachelor's degrees.

The data imply that the DYS practices under the Stipulations are actually adding individuals to the JCO staff who are less qualified from an educational perspective than the JCO staff that contributed, in part, to the situations and circumstances that precipitated the SH lawsuit. It is unacceptable to show no improvement in recruitment, screening, and hiring practices under the Stipulation when the Stipulations call for increased JCO skills and abilities, when a window of opportunity exists to enhance personnel policies and procedures, and when the nature of the present economy forecasts greater access to more highly qualified applicants without an increase in personnel costs.

If DYS continues to recruit and hire individuals with similar pre-employment profiles as the current JCOs, it could be argued that these new staff members will strengthen the ranks and the current perspectives of current "hardliners." There is a need for greater sensitivity to

collective bargaining issues, especially those that may be opposed to the changes required of
DYS to come into compliance with the Stipulations.

The monitoring to begin in June provides the opportunity to begin resolving the delayed
progress and the aforementioned facility operations issues. The next six months predict
substantial changes, including:

- A greater understanding of the nature and extent of the state's financial crisis;
- The ramifications of the closing of Marion and the Freedom Center on the other
JCFs, particularly the successful assimilation of youth and staff, and the impact of
employee bumping and, in effect, restaffing of the facilities (with Scioto,
however, relatively immune);
- The progress of the Special Management Unit Task Force at ORV and its
potential to create a replicable behavior management model for general
population living units throughout the system.

Combined with the new JCO Program Description, change in title, and new Policies and Procedures, the core of staffing issues and adherence to the Stipulations are a function of the on-site monitoring.

A common concern among youth is the practice of adding time to the DYS commitment. As youth near the end of their commitment, many appear to adopt an attitude of cooperation and display appropriate behaviors. Staff claim that this comes from “seeing the light at the end of the tunnel.” By any explanation, this makes very little sense, concludes Dave Roush. If one sure way to get youth to cooperate and to display appropriate behaviors is some type of motivation or incentive to reduce the length of commitment, then an incentive system or good time system demands exploration. An expanded “good time” system has been recommended, but there is no indication to date that mechanisms are in place to shorten a DYS commitment based on sustained appropriate behaviors or the accomplishment of key release criteria.

Training

The assessment of training included three visits by Dave Roush to the Training Academy, reviews of the academy based training materials (the pre-service curriculum, the new use of

force curriculum, and the on the job training manual), observations of all but one trainer, interviews with all but one the Training Academy staff, and participation in one meeting of the JCO Position Description Task Force. As Monitor, I also have made multiple visits to the Training Academy.

S.H. Stipulation Paragraph 61 provides: “Rehabilitation Program Development and Staffing. Within 180 days of the effective date of this Stipulation, DYS shall prepare a detailed rehabilitation program describing the behavior management plan, Structured Programming and all components thereof (e.g., structured recreation, weight loss, arts and crafts, etc.) and the proposed staffing both in terms of *quantity, training and education, and allocation*. The Monitor and class counsel shall review the rehabilitation program. Staffing for rehabilitation programming and the allocation of such staff shall be the subject of a detailed annual review and report by the Monitor, who shall include any specific recommendations for change.”

We have not seen the detailed rehabilitation program described in the behavior management plan, structured programming, and all other components. Therefore, we are not

able to evaluate the inclusion of these concepts in the training and education components for staff. This will be part of the monitoring process.

S.H. Stipulation Paragraph 69 provides: “Staff Training. DYS shall train all institutional staff in behavior management, de-escalation techniques, appropriate communication with youth, and crisis intervention before staff may work in direct contact with youth. Training for all staff shall have lesson plans that exist separate from PowerPoint and contain training objectives, useful participant handouts, and an evaluation experience that identifies participants who have not acquired the basic skill levels through the training. DYS shall upgrade and expand its training materials, particularly audiovisual resources that are juvenile specific. The Training Department should review the juvenile justice training resources at the University of Illinois at Springfield and at the Kentucky Department of Juvenile Justice as models for use at DYS. DYS shall collect feedback and information from each JCF regarding local training needs for staff. DYS shall conduct focus groups to evaluate and improve On the Job Training.”

As discussed at our March 2009 meeting in Columbus, there has been substantial progress in training, even though much remains to be accomplished:

- There is a new physical restraint (R2R) policy and training curriculum based on Steve Martin's work.
- The Training Academy has updated its pre-service training materials, including a revision of the on-the-job training manual to reflect issues regarding positive feedback to youth.
- The Training Academy is reviewing national curriculum materials for adaptation to its academy programs.
- There was evidence of a change in the training delivery of the KIDS Week sessions. The trainer divided participants into groups of 6-8, which promotes participant interactions, instead of using a classroom or theatre-seating format.
- There is evidence of change in the curriculum materials, placing a greater emphasis on positive interactions. The Academy staff developed a symbol for youth-focused interventions that can become a unifying theme throughout training. Concerns remain about punishment, and they will be topics for future monitoring visits.
- There is some use of PbS data in the Pre-Service training. Academy staff indicate that Mohican trainers use PbS data with staff, and they claim that this information has been

instrumental in the reduction of incidents, an assertions supported by the PbS data from the October 2008 collection for all standards within the Order category with the exception of the length of room confinement. That is, 11 of the 12 indicators showed a decrease.

It was ironic that there were no Training Academy representatives at the JCO Continuous Treatment Committee meeting on December 15-16 in the Training Academy building. If training is to be an important component of the implementation of the SH stipulations, training needs to be involved in the important committees, especially those charged with the task of reinventing the PD for JCOs.

The requirement for lesson plans has not been fulfilled. This is a difficult assignment given the substantial reduction in the training staff through the added Central Office responsibilities for MT Schwartz.

The New Directions unit at Scioto JCF program design calls for three sets of trainings for JCOs on Cognitive Behavioral Interventions (CBI), or a total of approximately 15 training days. We recently received from the Training Academy some curriculum materials from the University

of Cincinnati trainers. The new concepts from the cognitive behavioral model are consistent with pre-service training efforts and can be incorporated into the program and training intervention recommended for ORV's Grant (SMU) Unit.

Training monitoring will continue on a regular basis. The focus for future changes in the staff training program will be tied to changes in the new Position Description. Much of what remains for this Stipulation is contingent upon the direction provided by the new Position Description.

Lack of Training Progress

The absence of the new JCO Position Description is the well-worn theme in explaining why there has been limited progress in the staffing and training Stipulations. The training progress to date is more a function of "process" improvement issues than in "content" issues.

Enhancing the content component is vital and will bring the Training Academy into compliance with the Stipulations.

Curriculum Development. While the new Use of Force curriculum is a positive indicator of progress, the capacity of the Training Academy for curriculum development is limited. By

transferring much of MT Schwartz's responsibilities to Central Office — basically giving her a new job with the Master Plan — the capacity of the Training Academy in curriculum development is seriously diminished. This is important from the perspective of the realignment of training materials with the new Position Description. Even though there have been steps to reduce the current adult corrections orientation in much of the existing curriculum materials, the capacity for curriculum realignment and adaptation is still very much a question. As a result, alignment between the new Position Description and the JCO Basic Training Academy program will be difficult.

I have repeatedly suggested a national search for a “substantive leader” for the Training Academy. The initial response from DYS officials is supportive of the suggestion.

There has been little progress in the conversion of training materials to a recognized Instructional Theory Into Practice (ITIP) format. The requirement for written lesson plans to be in the ITIP format is not meant to frustrate Training Academy staff, but it is to ensure continuity in training. Without written lesson plans, various instructors may interpret the PowerPoint materials (which serve as a general training outline) in ways that are consistent only with their

personal philosophy of the role of the JCO. A written lesson plan expresses a unified position and supplies each trainer with important comments, phrases, examples, and activities to reinforce new, Stipulation-compliant concepts. The change in the Position Description will require new approaches, new instruction, and new activities. It will be important that all new JCOs receive a uniform message regarding the nature and extent of their job responsibilities, but the capacity for lesson plan development remains a question mark without new leadership.

Where an instructor is a nationally recognized expert in a field, or has taught and published in the area of instruction, I have not been a fan of, e.g., NIC's insistence on a paint-by-numbers type lesson plan. The weaker an instructor's claim to demonstrated excellence or experience, or both, the more significant the need for lesson plans.

Facility-Based Training. There has been little progress in bridging the gap between Training Academy trainers and facility-based trainers. The training staff in each of the juvenile correctional facilities does not answer to the Training Academy but is instead supervised by the facility superintendent. This arrangement is inherently problematic.

With training identified as an important vehicle in the creation of a new JCO competency aligned with the Stipulations, the absence of continuity in the supervision of trainers will likely create problems. As a result, the Training Academy assigns a large portion of the annual, ongoing training provided by the facility-based trainers to veteran JCOs. The Training Academy also provides refresher courses for trainers but does not provide on-site coaching or mentoring.

The designation of mandatory training requirements as a part of the annual on going training also has the effect of diverting site-specific training needs to a particular facility or staff. The changes anticipated by the new Position Description also run the risk of falling into this gap.

Each JCF needs access to more facility-based trainers. To use training as a method of changing the institutional climate in accord with the Stipulations, ideally there should be a full-time trainer for every 50 FTE JCO staff members; yet this places another excessive financial burden on DYS. The budget constraints suggest that a more cost-efficient approach would be the strengthening of the cadre of in-house staff trainers at each JCF. It also may be useful to do some training on a regional basis using a group of migrating training experts.

There has been little progress in the adoption of training materials prepared by the Juvenile Justice Trainers Association. These curriculum materials are more closely aligned with the intent or the Stipulations, and they are easily adaptable to the basic JCO training.

Training still appears to strengthen the JCOs' ability to spot misbehaviors (those things that youth do poorly) and to determine the appropriate amount of sanction, consequence or force required to induce compliance. A competent youth behavior management training program teaches staff members how to weaken or eliminate misbehaviors and how to expand and strengthen appropriate behaviors, but the DYS adult corrections bias favors only one-half of the process. The adult training philosophy remains a problem despite some noteworthy improvements. Changes in the Week 3 KYDS Curriculum are positive and encouraging, and this approach needs wider application and inclusion.

DYS could further improve the content and quality of staff training by embracing a balanced approach to juvenile corrections, specifically a strengthening of the JCOs skill development from a strength-based or positive perspective. The current training program is out-

of-balance and over-emphasizes discipline and control. Safety and security are strengthened, not compromised, by a strengths-based component.

Next steps include a review of individual trainer capabilities, a re-evaluation of existing curriculum in response to the new Position Description, adding new courses (e.g., the Legal Identity of Youth), and increased continuity between Training Academy programs and the facility-based training. This is all on the agenda for 2009-2010 monitoring.

M. MINORITY ISSUES

Stipulation Paragraph 17: This Stipulation requires equitable treatment for all youth.

The continuum of care, see Stipulations 13,14,15, as extended to the community, will also address programming that is culturally sensitive, gender sensitive, and disability-responsive.

Stipulations 27 and 32 will operate in concert with the continuum of care by providing objective decision making in the release and discharge of youth that result in equitable treatment for all youth regardless of color.

Ohio has been awarded the Title II Formula Grant from the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) as a way to assist the department in addressing juvenile crime and delinquency. Disproportionate Minority Contact (DMC) is one of four conditions of OJJDP that requires DYS to determine the disproportionate number of minority juveniles who come into contact with juvenile justice system and to address those decision points that contribute to DMC.

DYS employs one full-time Compliance Specialist to ensure that the State of Ohio maintains compliance with DMC along with other provisions of OJJDP. Using the Relative Rate

Index (RRI) to identify disparity at nine decision points in the juvenile justice system, DYS has 14 of the 88 Ohio Counties participating in DMC efforts. A review of the ODYS, Governor's Council on Juvenile Justice, DMC, Summary of County Assessments, April 2009, prepared by OSU, reveals that youth of color are found in disproportionate numbers at all or several points in the juvenile justice system depending on the reporting county. Decision points studied in the juvenile justice system are:

- Arrest
- Referral for Prosecution
- Diversion
- Detention
- Petition/charges filed
- Delinquency Finding
- Probation
- Confinement in Secure Facilities
- Transfer to Adult Court

The at-risk population for the 12 of the 14 counties reporting is 770,769 White and 170,076 Black (22%).

According to 2000 census information, African American's comprised 11.5% of the total population in Ohio. The disproportionate representation of Black youth in DYSF obviously is significant. For F.Y. 2008:

	<u>Number</u>	<u>Percentage</u>
Black	947	58.2%
White	550	33.8%
Hispanic	44	2.7%
Other	85	5.2%

Like many states addressing DMC in order to receive OJJDP grant funds, Ohio has developed statistical information regarding disproportionality and disparity in the juvenile justice system. Using these data in order to monitor compliance with Stipulation Paragraph 17, the following will be considered in addition to these data:

I. DMC and/or Racial and/or Racial & Ethnic Disparities (RED's) in DYS?

a.) DMC = statistical over-representation of youth of color based on the general population of eligible youth. (E.g. Blacks represent ___% in the state but account for ___% of all youth committed for assault are Black.

b.) RED's = disparate treatment of similarly situated youth in key decision points (e.g. longer lengths of stay for Black parole violators than their white counterparts).

II. What policies and practices (if any) have been identified as contributing factors to DMC/RED's in DYS; and how has data been used to identify and understand these factors?

III. How is DYS responding to DMC/RED's?

Examples:

- Development & implementation of risk assessment instruments
- Manager/Supervisor review of parole violations
- Use of graduated sanctions for parolees
- Improved notification processes

With regard to gender sensitivity, Males represented 92.3% of the committed population and Females 7.7%. Gender specific programming discussions were held with Martha Spoon,

Chris Money, Gwen Randle and Laura Dolan at Scioto JCF during a site visit on November 12-13, 2008. A follow up discussion with Scioto regarding gender treatment will be conducted.

As to disability responsive programming, the requirements of this Stipulation must be coordinated with Ava Crow, our education expert, and Shay Bilchik, Stipulations 13, 14 and 15, in order to identify the programming needs of those youth with disabilities.

N. CONCLUSION

I strongly believe that the progress made in the first year is considerable. It excels in the area of education and plainly lags in the mental health care area. We are concerned with enhancing the leadership and offerings at the Training Academy and Director Stickrath appears to agree with that assessment.

The Master Plan does exist and represents some very hard work by Harry Kamdar and now M.T. Schwartz. It may be subject to some criticisms, e.g., lack of clarity on due dates, but we should not forget that it is only a tool and not some end product. As a tool, it provides useful guidance by rearranging the Stipulation paragraphs into a roadmap. In pulling together many teams to work on the Master Plan, DYS also helped pull the agency together.

A video has been made where I explain the Stipulations, the role of the Court and Monitor, and speak to the differences in the law between parental authority and the *patria*-legal custody authority vested in DYS and its staff. It will be shown for the first time on May 18, 2009 at the Training Academy to a group of pre-service employees.

As Monitor, I have, in a sense, freelanced through the various DYS facilities and the Training Academy, even addressing several groups while there. I spent hours on the “revocators unit” at Scioto and was duly impressed with staff and the attitude of the youth housed there.

The second year of this enterprise will be very different from the first as we shift into the primary oversight monitoring with plans for team members to visit each DYS facility twice. Reports, including recommendations, will flow from those visits and become the backbone for assessing progress and the lack thereof.

My approach to site visits is to have a general protocol while allowing our experts a certain free flow in their work. This might be compared to a basketball zone versus man-to-man defense with an emphasis on switching. I prefer the creativity of the latter approach to the rigidity of the first.

Again, as Monitor and speaking for the Team, we greatly appreciate the support we have received from DYS Central Office and staff working at the facilities. Class Counsel have been supportive and very helpful on substantive matters.