UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES WARE
CHIEF JUDGE

July 7, 2011

Re: Release of Report from the Administrative Office of the United States Courts Parole Supervision of Phillip Garrido

On February 15, 2011, is my capacity as Chief Judge, I received a confidential report from the Administrative Office of the United States Courts ("AOUSC") regarding the parole supervision of Phillip Garrido by the Probation Office in the Northern District of California between December 1988 and June 1999.

The federal Probation Office in the Northern District of California was responsible for the supervision of Mr. Garrido from December 1988 to June 1999, when his supervision was assumed by the Parole Division of the California Department of Corrections and Rehabilitation. This time period included June 10, 1991, which, based on information that subsequently has come to light was allegedly when 11-year old Jaycee Dugard was kidnapped by Mr. Garrido.

Mr. Garrido's federal parole supervision stemmed from a conviction in United States District Court for the District of Nevada in 1977, when he was convicted of kidnapping a 25-year-old woman and confining her in a storage shed, where he repeatedly raped her. For the kidnapping, Mr. Garrido received a federal sentence of 50-years imprisonment. For the forcible rape, Mr. Garrido received a Nevada state sentence of five years to life.

In January 1988, after Mr. Garrido had served eleven years in federal prison, the United States Parole Commission granted him parole and Mr. Garrido was turned over to Nevada prison authorities to serve his state sentence. In August 1988, Nevada parole authorities released Mr. Garrido on lifetime parole supervision and transferred him back to federal jurisdiction for his return to the community.

Mr. Garrido was released to the supervision of the United States Probation Office in the Northern District of California and lived with his mother at her home in Antioch, California. At the time of Mr. Garrido's release from prison in 1988, sex offenders represented a very small percentage of the supervision population in the federal system, and Judicial Conference policy at the time did not provide specific guidelines for sex offender supervision. Nonetheless, policy guidance in place during Mr. Garrido's federal supervision required the probation officer to supervise him as a "high risk" offender.

Although records indicate that Mr. Garrido was correctly categorized as a "high risk" offender, the AOUSC report finds that the Probation Office failed to supervise him accordingly. Home contacts were rare. Collateral contacts with neighbors and local law enforcement were never completed. Records indicate that the probation officer never verified that Mr. Garrido had registered as a sex offender as required by the state of California.

In September 1989, Mr. Garrido's employer at a nursing home informed the parole officer that three female coworkers were nervous around Mr. Garrido, however the parole officer did not meet with Mr. Garrido until more than two months had elapsed. In February 1990, Mr. Garrido informed his probation officer that he was training as a salesman and would be selling products in people's homes, however the probation officer did not note any concerns about potential risks to third parties.

In addition, the report Mr. Garrido tested positive for drugs and was found to have submitted diluted urine samples on several occasions. However, there is no record that the Probation Office informed Nevada State Probation and Parole of Mr. Garrido's drug use. Moreover, with one exception, the Probation Office also failed to inform the United States Parole Commission about Mr. Garrido's illicit drug use. The single exception resulted in a brief revocation of parole, a short period of time in custody and a period of home confinement.

The AOUSC report concludes that the supervision of Mr. Garrido was substandard. The report notes that a California sex offender task force searched the house and grounds in July 2008 and did not find Jaycee Dugard and her children and the report questions whether greater diligence by the supervising officer would have uncovered their presence. We do not find comfort in such speculation. Because, as pointed out in the report, had Mr. Garrido's federal supervision been conducted properly from the onset, it is possible that he may have been deterred from some of the acts now attributed to him.

Mr. Garrido's federal parole was terminated in 1999 and his supervision was assumed by the California Department of Corrections and Rehabilitation.

In 2000, after Mr. Garrido's federal supervision had ended, the AOUSC conducted a routine review of the Probation Office in the Northern District of California and found the state of offender supervision to be poor. The AOUSC made a series of recommendations for improvement.

In May 2007, after a follow-up review found that none of the recommendations had been implemented, our Court replaced the chief probation officer with an experienced manager from another district. If there is anything positive that can be derived from the awful circumstances revealed by this report, it is the report's assessment of the District's current Chief Probation Officer. The report states that the new chief brought in well-qualified managers from other districts to fill the chief deputy and two assistant deputy positions. The new management team retrained all officers and supervisors in Judicial Conference policies and procedures for supervising offenders in the community. The Chief mandated that officers spend more time in the community. Standards were provided for supervision of high, medium and low activity cases, and internal audits were shared with the supervisors and officers.

As Chief Judge, I believe that the strength of our public institutions is tied directly to their openness to public scrutiny. I have decided to release the full AOUSC report. We are using its candid criticism and the public scrutiny that comes from it as tools to improve the administration of justice in our District.

Attachment: AOUSC Report on the Supervision of Parolee Phillip Gurrido

- CONFIDENTIAL -

Office of Probation and Pretrial Services
Administrative Office of the United States Courts

Report on the Supervision of Parolee Phillip Garrido
to the United States District Court, Northern District of California

December 2010

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ABOUT THE REPORT

Purpose

The purpose of this report is to provide a summary of a review conducted by the AOUSC pursuant to the authority granted to the AOUSC Director under 18 U.S.C. § 3672. The review focused on the supervision provided by the United States probation office in the Northern District of California from the time of Phillip Garrido's release from federal prison in 1988 to the time his federal parole ended in 1999.

Scope

AOUSC staff reviewed all available case documents, including chronological records made by the probation officers who supervised Garrido. In many places there were gaps in the record, making it difficult to determine whether there had been activity during the time of the gaps or if information had once been in the record and is now missing. The reviewers considered the information concerning the case in the context of the policies and practices approved by the Judicial Conference of the United States at the time Garrido was supervised.

Authority

Under 18 U.S.C. § 3672, "The Director of the Administrative Office of the United States Courts, or his authorized agent, shall investigate the work of probation officers and make recommendations concerning the same to the respective judges and shall have access to the records of all probation officers."

The statutory duties of probation officers are set forth at 18 U.S.C. § 3603. Policies governing the work of probation officers, including the supervision of offenders in the community, are established by the Judicial Conference of the United States.

EXECUTIVE SUMMARY

The Federal probation office in the Northern District of California was responsible for the supervision of Phillip Garrido from December 1988 to June 1999, when Garrido's supervision was assumed by the Parole Division of the California Department of Corrections and Rehabilitation. The focus of this report is on the time Garrido spent on federal supervision, which includes June 10, 1991, when 11-year old Jaycee Dugard was allegedly kidnaped by Garrido.

Phillip Garrido's federal parole supervision stemmed from a conviction in United States District Court for the District of Nevada in 1977, when he was convicted of kidnaping a 25-year-old woman in South Lake Tahoe, Nevada, and confining her in a storage shed in Reno, Nevada, where he repeatedly raped her. For the kidnaping, Garrido received a federal sentence of 50 years imprisonment. For forcible rape, he received a Nevada state sentence of 5 years to life.

In January 1988, after Garrido had served 11 years in federal prison, the United States Parole Commission granted him parole, and he was turned over to Nevada prison authorities to begin his state sentence. In August 1988, Nevada parole authorities released him on lifetime parole supervision and transferred him back to federal jurisdiction for his return to the community.

After time in a halfway house, Garrido was released to the supervision of the United States probation office in the Northern District of California, and lived with his mother at her home in Antioch, California. He continued to reside at this address and remained under parole supervision by federal probation officers until the United States Parole Commission terminated his federal parole in 1999.

The Parole Division of the California Department of Corrections and Rehabilitation subsequently assumed lifetime parole supervision of Garrido under terms of an interstate parole compact with the state of Nevada. Garrido remained under its supervision until the time of his arrest on August 26, 2009.

Supervision policies specifically aimed at sex offenders were adopted in the federal probation system in 2003, four years after Garrido's federal supervision ended. At the time of Garrido's release from prison in 1988, sex offenders represented a very small percentage of the supervision population in the federal system, and Judicial Conference policy at the time did not explicitly address their supervision. Nonetheless, policy guidance in place during Garrido's period of supervision required the probation officer to supervise him as a "high risk" offender.

After significant study and review of the relevant available records, this report concludes that the Federal probation office in the Northern District of California did not follow commonly accepted supervision practices and failed to adequately supervise Phillip Garrido.

While records indicate that Garrido was correctly categorized as a "high risk" offender, the probation office failed to supervise him accordingly. Home contacts were rare. Collateral

contacts with neighbors and local law enforcement were never done. Frequent positive drug tests and submission of diluted urine samples were largely ignored. The probation officer appears to have relied on the offender's therapist for information rather than direct contact with the offender.

According to records, the probation officer never verified that Garrido had registered as a sex offender as required by the state of California. The probation officer appeared unconcerned when Garrido's female coworkers at a nursing home expressed fears about his demeanor. When the victim of the 1977 kidnaping and rape reported that she may have seen Garrido near her place of employment, the officer's only action was to verify with Garrido's employer that he was at work that day. Further, the officer allowed Garrido to take a job as a salesman going door to door in the community.

There is no record of the probation office informing Nevada State Probation and Parole of Garrido's illicit drug use. In fact, the reports that were sent to Nevada typically noted "there have been no problems up to this point," even following a positive drug test or diluted urine sample. With one exception, the probation office also failed to inform the United States Parole Commission about illicit drug use. That one exception resulted in a brief revocation of parole, a short period of time in custody, and a period of home confinement.

While the level of federal supervision was clearly substandard, there is no evidence that the federal probation office would have uncovered the presence of Jaycee Dugard and her children even if the probation officer had conducted a search of the premises. In fact, a California sex offender task force searched the house and grounds in July 2008 and failed to find them. Nevertheless, one may fairly question whether Garrido could have been deterred from the horrendous acts attributed to him had his federal supervision been conducted properly from the onset.

The Garrido case is a significant reflection of the deficient practices in the probation office in the Northern District of California. However, it is not the only one. The office had a track record of inadequate supervision, and previous reviews of the office have reported serious deficiencies in operations.

In 2000, the Administrative Office of the United States Courts (AOUSC) conducted a routine review of the probation office in the Northern District of California and found the state of offender supervision to be poor. The AOUSC made a series of recommendations for improvement. In 2006, another AOUSC review team found that none of the recommendations made in 2000 had been implemented.

In May 2007, the court replaced the chief probation officer with an experienced manager from another district. The new chief brought in well-qualified managers from other districts to fill the chief deputy and two assistant deputy positions. The AOUSC provided the new management team with a summary of areas requiring improvements, including 1) home inspections need to be

conducted in a timely fashion and upon changes in residence, 2) joint planning between officers and supervisors should be documented in the chronological entries indicating that case plans have been submitted and approved, and 3) increased home visits and field contacts should be required for higher risk offenders.

The new management team retrained all officers and supervisors in Judicial Conference policies and procedures for supervising offenders in the community. The chief mandated that officers spend more time in the community. Standards were provided for supervision of high, medium, and low activity cases. Internal audits were shared with the supervisors and officers. Progress on implementing the AOUSC recommendations was a standard agenda item at monthly meetings with supervising probation officers.

With strong support from the court, the new managers appear to have made significant progress in improving the quality of supervision in the district. A follow-up review in December 2010 revealed that home inspections are conducted within the required time frame in nearly 90 percent of cases. Joint planning meetings between officers and supervisors are now documented in 97 percent of case files. Contacts with higher risk offenders in the community have more than doubled, and are now consistent with practices in the Ninth Circuit as a whole.

While all indications are that the probation office in the Northern District of California has remedied its shortcomings and is under strong and effective management, the AOUSC will remain in frequent contact with the office.

On a national level, the AOUSC takes seriously its statutory responsibilities to investigate and report any deficiencies in federal probation offices. It is an important element in assuring probation officers adequately safeguard their communities and those who live in them. When matters require national attention, the AOUSC refers them to the Criminal Law Committee of the Judicial Conference for its consideration. Currently the Committee is reviewing the recommendations of the ad hoc Sex Offender Management Working Group, which was appointed by the AOUSC Director. National and regional training of officers will be updated and expanded and other opportunities to assist probation offices in this crucial area will continue to be explored, and if beneficial, implemented.

BACKGROUND

Phillip Garrido's federal parole supervision stemmed from a conviction in United States District Court for the District of Nevada. In 1976, at the age of 25, Garrido was arrested for kidnapping and rape. On March 11, 1977, he was sentenced in the District of Nevada to 50 years imprisonment for kidnapping (18 U.S.C. § 1201 (a)(1)). On April 11, 1977, he was sentenced in the State of Nevada--to a term of 5 years to life, with the possibility for parole--for forcible rape, to be served concurrently with the federal term.

According to court documents, Garrido approached the victim outside a store on November 22, 1976, told her his car was disabled, and asked her for a ride. The victim agreed to help him. Garrido later instructed the victim to turn the vehicle into an empty lot, where he handcuffed her hands behind her back, and placed a leather strap around her neck and under her knees to keep her in a bent-over position and out of sight. Driving for about an hour, Garrido took the victim to a modified storage shed that he maintained in Reno, Nevada. There, over a 6-hour period, he repeatedly sexually assaulted her. A police officer on routine patrol noticed the car and a broken lock on the door to the shed and investigated. The police officer arrested Garrido and charged him with kidnapping and rape.

Garrido admitted at the time of the offense to being under the influence of LSD and stated in the presentence interview that he was a heavy user of LSD.

At the time of Garrido's federal sentencing, his criminal history, as outlined in his presentence investigation report, consisted of drug charges, two rape charges, and a kidnapping charge. On May 28, 1970, Garrido was charged with Possession of Marijuana and Possession of Dangerous Restricted Drugs (LSD). Garrido pled guilty to the marijuana charge and served 1 year probation; the LSD charge was dismissed. On March 3, 1972, Garrido was charged with Possession of Marijuana; Visiting a Place Where Drugs are Used. He was subsequently convicted and served 90 days in the county jail and 3 years probation. Garrido's first rape charge was on April 14, 1972, in Antioch, California, where he was charged with Contributing to Overdose; Runaway Juvenile; and Possible Rape. The case was dismissed due to insufficient evidence.

In a separate and unrelated case, Garrido was charged with rape and kidnapping on December 27, 1976, for a crime that allegedly occurred in El Dorado County, California, in June 1976. **See:** Appendix A, Time Line of Legal Events Surrounding Phillip Garrido.

COMPLIANCE WITH POLICY

Policy in Effect During Garrido's Supervision

At the time of Garrido's release from prison in 1988, policy for the supervision of offenders was contained in *The Supervision Process*, Publication 106, which was issued in 1983. Although Publication 106 did not specifically address the supervision of someone classified as a sex offender, it gave direction and guidance regarding the level of supervision required for low-activity and high-activity cases. The level determined the required number of personal contacts with the offender. The higher the risk, the higher the number of contacts required.. Publication 106 was in effect during Garrido's first 3 years of supervision.

In July 1988, at the recommendation of the Criminal Law Committee of the Judicial Conference, the Director of the AOUSC appointed a supervision task force to examine supervision practices and make recommendations for improvement. The product of the task force's efforts became known as "enhanced supervision" and was published in 1991 as *The Supervision of Federal Offenders*, Monograph 109. The 1991 version of Monograph 109 contained the policies in effect for the remainder of Garrido's federal parole term. An updated Monograph 109 was approved in 2003, long after Garrido's term of federal supervision ended.

The goal of the 1991 version of Monograph 109 was to move away from merely "counting contacts" and to promote more purposeful supervision based on the assessment of each individual case. The probation officer was to tailor the case plan for each offender according to individual circumstances. The monograph described supervision activities aimed at controlling risk by detecting misbehavior. Such "risk control activities" focused on the offender's compliance with mandatory conditions that prohibit new criminal violations and possession of controlled substances and firearms. Conducting plain-view searches and seizures, maintaining law enforcement liaisons in the community, and detecting substance abuse through testing were included as risk control activities.

The following sections highlight some of the supervision policies contained in Publication 106 and Monograph 109 and provide an assessment of the Northern District of California's supervision of Garrido. A more detailed description of Garrido's supervision is presented in the section titled "Supervision History."

Policy in Publication 106

The following information addresses aspects of the supervision process and how policy set forth in *The Supervision Process*, Publication 106, applied to each aspect. The italicized language beneath each section describes whether the probation office applied the policy in the case of Phillip Garrido (the parolee) during the period after his release from prison in 1988 through 1991, when Publication 106 was superceded Monograph 109.

Initial Classification

Publication 106 outlined the steps the probation officer was to take to classify an offender as low activity or high activity and to determine the offender's classification using the appropriate predictive device. The policy explained that "[t]wo actuarial devices are used in the system–the Risk Prediction Scale (RPS-80), for persons on probation, and the Salient Factor Score (SFS-81), for persons on parole" (Ch. II, p. 4).

> *The parolee's SFS-81 score was 6, which would have placed him in the high-activity supervision level.*

Publication 106 set the high-activity level of supervision as "[f]rom one personal contact per month to any greater number necessary to meet supervision objectives" and also required collateral contacts (Ch. II, p. 4). As the policy stated, "During the initial 6 months of supervision, the supervision level is not to be less than the predictive device indicates" (Ch. II, p. 10). It told officers to "direct the greater proportion of their efforts toward persons in the high activity supervision level" (Ch. II, pp. 10-11).

> *The parolee's supervision during the first 6 months was not in accordance with Publication 106. The minimum contact standards called for six personal contacts during that time. The parolee was seen in the office once and at the job site once. Moreover, the initial home visit was not conducted until June 20, 1989, 6 months after supervision began.*

Publication 106 required officers to complete Form PROB 42, "Classification and Initial Supervision Plan," "immediately upon receipt of a person for supervision and, in any event, no later than 30 days thereafter" (Ch. II, p. 4).

> *The parolee's initial supervision plan was not completed within established time frames, but 8 months after supervision began. The Form PROB 42 was dated August 10, 1989.*

Publication 106 instructed officers to conduct the "Case Review" every 6 months (Ch. II, p. 4).

> *Although the "Classification and Initial Supervision Plan" for the parolee was completed late, case reviews were scheduled at 6-month intervals and completed within acceptable time frames.*

The Supervision Plan

Publication 106 gave officers guidance for supervision planning through identifying supervision problems and setting objectives to address them. The policy explained that "[s]ound practice calls for a mixture of office, community, and home visits with offenders, supported by collateral contact with family, employer, police, and social agencies" (Ch. II, p. 12). It cautioned that "[a]lthough community resources may be used to address many problems, the probation officer may not delegate total responsibility for supervision of the offender to any other agency" (Ch. II, p. 13).

During the course of the parolee's supervision, the probation officer had more contact with the treatment provider than with the parolee directly, despite concerns about his conduct at work, drug use, and dilution of urine specimens. (See the "Supervision History" section of this report for more information.)

Treatment

According to Publication 106, to ensure a successful treatment referral, "the probation officer must stay involved in the process and maintain frequent (daily if necessary) contact with both the agency and the offender" (Ch. III, pp. 23-24). The policy further stated that "the importance of face-to-face contact with agency personnel cannot be overemphasized" (Ch. III, p. 24).

The probation officer maintained regular contact with the therapist throughout the parolee's supervision.

Publication 106 explained that "[a] phased urine collection program has been established for all drug dependant persons under supervision" (Ch. V, p. 33) and explained the collection and testing process. The policy set the following minimum guidelines for the three phases: Phase I–six collections monthly; Phase II–four collections monthly; and Phase III–two collections monthly.

The parolee submitted to urine testing throughout the period of supervision, testing positive for illicit substances four times (9-22-89, 10-10-89, 8-6-90 and 7-26-93.)

Special Conditions

Publication 106 described special conditions of supervision as "imposed for a prescribed purpose, tailored to the specific circumstances or problems of the offender" (Ch. III, p. 16).

The parolee was released under the following special conditions of parole:

1) You shall participate as instructed by your probation officer in a program approved by the Parole Commission for treatment of narcotic addiction or drug dependency, which may include testing and examination to determine if you have reverted to the use of drugs; 2) You shall participate in an inpatient or outpatient mental health program as directed by your probation officer; and 3) You shall reside in and participate in a program of the Community Treatment Center as instructed until discharge by the Center director, but no later than 120 days from admission.

Although Publication 106 addressed search and seizure, it allowed officers to use such tools only under limited circumstances, deeming searches "primarily the responsibility of law enforcement officers acting procedurally as they would in any criminal investigation" (Ch. III, p. 17).

The policy stated, "Probation officers should only search in the rare circumstance when there is no alternative" (Ch. III, p. 17). (Note: In addition to guidance provided by Publication 106, policy approved by the Judicial Conference of the United States discouraged officers from conducting any type of search of an offender.)

> *The Parole Commission did not impose a search condition when the parolee was released on parole, nor did the probation officer request modification of the conditions to add a search condition.*

Publication 106 stated that officers "may find it necessary to request a special condition of probation or parole restricting an offender's employment . . . in the interest of protecting the public from a 'reasonably foreseeable' risk of physical or financial harm to a specific third party or parties" (Ch. III. p. 17). The policy specifically gave as an example of employment that should be precluded "an offender with a violent sexual background working in an apartment complex as a maintenance person" (Ch. III, p. 18).

> *The probation officer failed to adequately restrict or monitor the parolee's employment, even when the parolee's job required him to go door to door in the community unsupervised. Although the officer directed the parolee to disclose his sexual assaultive background to his employer, the officer did not verify with the employer that the parolee made such disclosure.*

Supervisory Involvement in the Supervision Process

Publication 106 stressed the importance of supervisor involvement in the supervision process, stating that "[r]esponsibility and accountability for the work are shared jointly by the probation officer and the supervisor" (Ch. VI, p. 37). The policy stated, "The supervisor must be thoroughly familiar with the record keeping requirements as defined in the Probation Manual and must review all case files periodically to insure compliance with these requirements" (Ch. IV, p. 38).

> *Although the case file indicated that the supervisor reviewed the parolee's case file, the file did not document whether the supervisor offered any support or guidance as to corrective action.*

According to Publication 106, "[t]he probation officer has a great deal of discretionary authority in making decisions which significantly affect offenders and the community. By practice, these difficult decisions are made with the input of others through methods such as case staffing or through individual consultation with the supervisor" (Ch. VI, p. 39). The policy stated, "Any actions decided upon are to be recorded in the case file and both the supervisor and officer are responsible to see that decisions are implemented" (Ch. IV, p. 39).

Aside from the case plans, the chronological record in the parolee's case lacked documentation of ongoing staffing or consultation between the probation officer and the supervisor.

Supervision Activity Records

Publication 106 stated, "Complete and accurate records of supervision activity are essential to the effective operation of the probation system" (Ch. II, p. 14). According to the policy, "[t]he instrument used to document supervision activities is the chronological record" (Ch. II, p. 14).

The chronological records were not complete. It is impossible to ascertain whether entries were made and now are missing or whether they were never entered into the record at all.

Policy in Monograph 109

In 1991, *The Supervision of Federal Offenders*, Monograph 109, replaced Publication 106 as the primary policy document for supervising offenders. The following information addresses aspects of the supervision process, how policy set forth in Monograph 109 applied to each aspect, and whether the probation office applied the policy in the case of Phillip Garrido (the parolee).

Initial Assessment Period and Review Process

Monograph 109 stated, "The assessment period shall not exceed 60 days and will vary in duration depending on the circumstances of a particular case" (Ch. III, p. 14).

The parolee's initial supervision plan was developed under Publication 106, but his parole supervision was interrupted when the probation office requested a warrant, which was issued by the U.S. Parole Commission in March 1993. When the parolee's supervision recommenced on September 6, 1993, the probation officer developed a new supervision plan under Monograph 109, but did not follow policy in doing so. The officer completed the plan on March 26, 1994, 6 months after parole had recommenced.

According to Monograph 109, "[t]he 6-month case review affords the officer and the supervisor an opportunity to examine the offender's progress and response to the supervision program and to evaluate the adequacy of the existing plan" (Ch. III, p. 20). The policy explained that "[t]he purpose of this process is to establish a supervision plan for the next 6 months which is based on a comprehensive analysis of the previous 6 months' experience" (Ch. III, pp. 20-21).

Although the probation officer completed and submitted the parolee's 6-month reviews within acceptable time frames, the plans rarely indicated any need to modify supervision or risk control strategies despite the parolee's changes in behavior.

Supervision Strategies

Monograph 109 advised that "[s]upervision strategies related to risk control will require a great deal of direct contact with the offender and others who have information about the offender's conduct" (Ch. III, p. 19). The policy stated, "Although the case plan does not provide 'Contact with the Offender' as a supervision activity, such contacts are implicit in such goal-directed strategies as 'On-Site Examination of Living Situation . . . '" (Ch. III, pp. 19-20).

> *Although the monograph presented contact with the offender as an inherent supervision strategy and the record identified the parolee as high risk and a danger to the community, the supervision strategies selected in this case were inconsistent with monograph guidance and with the parolee's risk level.*

Supervision Process Implementation

Monograph 109 stated, "The probation officer's responsibility to enforce conditions of supervision is derived from his or her legal duty to supervise and execute the sentence imposed by the court" (Ch. IV, p. 25). The policy explained that Title 18 U.S.C. § 3603, the legal authority for the supervision of federal offenders, sets forth the framework for meeting the three objectives of effective supervision--" . . . execution of the sentence, . . . reduction of risk to the community, and . . . correctional treatment"--providing in part that the probation officer shall "keep informed concerning the compliance with any condition of supervision and report thereon to the court or Parole Commission; . . . keep informed as to the conduct and condition of a person under supervision and report his or her conduct and condition to the sentencing court or Parole Commission; . . . and keep a record of the officer's work" (Ch. IV, p. 25).

> *The probation officer failed to implement risk control activities despite the parolee's deteriorating conduct, which included illicit drug use. The officer relied on the therapist to keep apprised of the parolee's adjustment and response to supervision. The record noted that the parolee used drugs, but the officer did not see him in person until several months after becoming aware of the drug use.*

Risk Control Activities

<u>Conducting Search and Seizure</u>. In addressing search and seizure, Monograph 109 stated, "Any search by the officer must be restricted to areas of access to the offender and conducted during daylight hours unless good cause is given" (Ch. IV, p. 27).

> *The Parole Commission did not impose a search condition when the parolee was released, nor did the probation officer ever request a modification of the parolee's conditions to add a search condition.*

Maintaining Law Enforcement Liaison. According to Monograph 109, "[t]he nature and frequency of contacts with law enforcement will vary depending upon the risk posed by the offender and the supervision issues identified" (Ch. IV, p. 27). The policy explained that "[w]hen the actuarial score and/or the offender's criminal history (including a history of violence, similar criminal activity, or criminal associations) has identified risk as an issue of concern, the officer should make frequent contact with those law enforcement agencies that may have information about the activities of the offender" (Ch. IV, p. 27).

> *Despite the risk the parolee posed, the probation officer failed to make law enforcement contacts in the community. The only officer-initiated law enforcement contacts documented in the record were in November 1998 (11-16 and 11-18).*

Detecting Drug Abuse. Monograph 109 described urinalysis and collateral contacts as useful means to detect drug use. It stated, "Since there is a high correlation between drug abuse and criminal activity, the officer should make ongoing efforts to detect drug use through urinalysis." (Ch. IV, p. 28).

> *The parolee submitted to urine testing throughout the period of supervision, testing positive for illicit substances four times and providing three diluted urine specimens.*

Assessing Third-Party Risk. Monograph 109 stated, "When the probation officer determines that the offender poses a 'reasonably foreseeable' risk of physical or financial harm to a specific third party or parties, he or she should increase risk control supervision . . ." (Ch. IV, p. 29).

> *Despite the parolee's increased risk and danger to the community, as documented in the chronological record, the probation officer failed to increase the level of supervision or implement any additional risk-control strategies.*

Referring for Treatment. Monograph 109 gave guidance for assessing which treatment agency is appropriate, stating that "[t]he officer should ascertain if the agency specializes in the behavior to be treated (e.g. sexual deviancy) and whether the agency has expertise in working with offenders who are required to submit to treatment" (Ch. IV, p. 32). To ensure a successful referral, Monograph 109 noted,"Collateral contacts with the treatment agency are necessary to monitor the offender's compliance with the program . . ." (Ch. IV, p. 32).

> *The probation officer maintained contact with the therapist, but appears to have abdicated control of the parolee's supervision to the therapist and therefore did not comply with policy.*

Supervision Contacts

Monograph 109 described the purpose of supervision contacts as "enforcing conditions, controlling risk, and/or providing correctional treatment" (Ch. IV, p. 34). The policy explained

that "[t]he frequency, place, and nature of the contacts, as well as which persons are to be contacted, will be determined by the plan and directly related to identified supervision issues" (Ch. IV, p. 34). Monograph 109 presented the officer's role in community supervision not as passive and relying upon only what the offender reports, but as dynamic and relying upon the officer proactively making contact in the community. The policy stated, "Field supervision contacts with the offender and others are essential for the officer to fulfill his or her statutory requirement to maintain awareness of the offender's conduct and condition" (Ch. IV, p. 34).

> *Collateral contacts (such as those with law enforcement and employers) were not regularly or consistently reported in the chronological record. The probation officer's contacts consisted of office visits with the parolee, the parolee's self reports, contact with the parolee's wife with the parolee present, and contacts with the therapist. These contacts failed to address the parolee's increased risk.*

Case Management

Monograph 109 stressed the importance of supervision case records, stating that "[c]omplete and accurate records of supervision activity are essential to ensure that the activities undertaken are consistent with those outlined in the supervision plan" (Ch. IV, p. 34). The policy explained that "[e]ach entry should be a brief, concise statement reflecting the supervision issue(s) addressed, action taken by the officer, and whether the offender's progress in resolving the issue(s) is satisfactory or unsatisfactory" (Ch. IV, p. 34). It further noted that "the chronological records should contain the date, place, and nature of contacts made with the offender and others" (Ch. IV, p. 34).

> *The chronological record of the parolee's supervision did not consistently show that the requirements set forth in Monograph 109 were followed.*

Policy as Determined by Program Reviews

In recent years – after the time of Garrido's federal supervision – the AOUSC conducted reviews of the probation office in the Northern District of California. Three reviews, conducted by review teams in October 2000, January 2006, and October 2007, found the quality of offender supervision to be poor. (**See:** Program Review Report for the Northern District of California - United States Probation Office, Administrative Office of the U.S. Courts, January 2001; Program Review Report for the Northern District of California - United States Probation Office, Administrative Office of the U.S. Courts, February 2006; and Program Review Report for the Northern District of California - United States Probation Office, Administrative Office of the U.S. Courts, December 2007.)

The review conducted in October 2000 revealed that the probation office needed to make significant improvements in post-conviction supervision, citing deficiencies in areas including initial case planning, court-ordered sanctions, risk control, correctional treatment, and quality control. Recommendations for corrective actions were sent to the chief probation officer.

The January 2006 review revealed that there had been no attempts to implement the earlier recommendations, and that the quality of supervision remained poor. The AOUSC review team reported its finding to the court, which made a decision to remove the chief probation officer.

In May 2007, the court replaced the chief probation officer with an experienced manager from another district. The new chief brought in well-qualified managers from other districts to fill the chief deputy and two assistant deputy positions. The AOUSC provided the new management team with a summary of areas requiring improvements, including 1) home inspections need to be conducted in a timely fashion and upon changes in residence, 2) joint staffings between officers and supervisors should be documented in the chronological entries indicating that case plans have been submitted and approved, and 3) increased home visits and field contacts should be required for higher risk offenders.

The new management team retrained all officers and supervisors in Judicial Conference policies and procedures for supervising offenders in the community. The chief mandated that officers spend more time in the community. Progress on implementing the AOUSC recommendations was a standard agenda item at monthly meetings with supervising probation officers. Standards were provided for supervision of high, medium, and low activity cases. For high risk cases, such as sex offenders, active gang members, and offenders with severe mental health or substance abuse problems, 6 personal or collateral contacts are required in the first 6 months, at least four in the field.

With strong support from the court, the new managers appear to have made significant progress in improving the quality of supervision in the district. A follow-up review in December 2010 revealed that home inspections are conducted within the required time frame in nearly 90 percent of cases. Joint staffings between officers and supervisors are now documented in 97 percent of case files. Contacts with higher risk offenders in the community have more than doubled, and are now consistent with practices in the Ninth Circuit as a whole.

SUPERVISION HISTORY

Review of Chronological Records

The following information presents Garrido's supervision history by year. It is based on a review of the chronological entries made by the officers who supervised Garrido. Unless noted in the body of the paragraph, the date of the chronological entry appears in parentheses at the end of the summary. Particularly significant events are noted in bold.

1988

The parolee was transferred from the State of Nevada to a community treatment center (CTC) in Oakland, California, to transition him into the community where he would reside with his mother and wife. The probation officer conducted pre-release planning with the parolee and the CTC staff. The pre-release planning commenced in August and concluded upon the parolee's release in December.

While residing at the CTC the parolee gained employment at a nursing home and visited his proposed residence. Conversations between the CTC counselor and the probation officer described the parolee as a "time bomb" and indicated that close monitoring of the parolee was needed (10-14 & 10-24).

> *The chronological record did not indicate that the officer took any action regarding these concerns.*

Local law enforcement contacted the probation office, questioning the parolee's employment at a nursing home. The officer advised that the nursing home was aware of the parolee's history as the officer had spoken with the nursing home directly on 9-12 (10-5).

Nevada State Parole and Probation contacted the probation office requesting periodic reports on the parolee's progress and supervision status (10-18). The probation officer responded in a report sent on 11-26, advising that the CTC staff had recommended close monitoring of the case and that the probation office would follow the recommendation.

The probation office went to the parolee's mother's home on 11-8, but no one was home. The probation officer planned a home visit with the parolee's mother for 11-14.

> *The chronological record contained no documentation that the home visit was completed.*

The victim of the 1976 kidnapping and rape contacted the probation office to inquire about the parolee's status. She reported that she had seen someone hanging around her office building and thought it might have been the parolee. The probation officer contacted the parolee's employer and verified that the parolee had been at work at the time the victim had seen someone (11-18). The officer and treatment center counselor discussed the possibility of increasing monitoring.

The counselor suggested placing the parolee on electronic monitoring after he left the treatment center, but--as indicated in a chronological record--the probation officer thought it would be "too much of a hassle based on the hysteria or concerns of the victim when all indications point to the fact that subject was nowhere near the victim's workplace..." (11-19).

The probation office contacted the parolee's psychiatrist to discuss the parolee's treatment. According to the record, the psychiatrist described the parolee as "like a pot boiling with no outlet valve." The psychiatrist recommended ongoing counseling after the parolee's discharge from the treatment facility. The probation office concurred with the recommendation (12-13).

The parolee completed his transition from the CTC and was paroled on 12-16 with the following special conditions:

1) You shall participate as instructed by your probation officer in a program approved by the Parole Commission for treatment of narcotic addiction or drug dependency, which may include testing and examination to determine if you have reverted to the use of drugs;
2) You shall participate in an inpatient or outpatient mental health program as directed by your probation officer; and
3) You shall reside in and participate in a program of the Community Treatment Center as instructed until discharge by the Center Director, but no later than 120 days from admission. The parolee was released to reside with his wife and mother in Antioch, California.

There was no record of officer-initiated contacts with law enforcement in 1988 and no verification of sex offender registration.

1989

The parolee reported to the probation office on 2-24. It is noted that the parolee is very happy with adjustment at home and on the job (2-24).

Counseling was set up with a new therapist upon the parolee's release from the facility. The parolee commenced counseling in February 1989 (2-24).

Over the first 6 months of supervision, the probation officer saw the parolee once in the office, once at the job site, and conducted the initial home visit on 6-20. During the home visit, the officer met with the parolee's mother and the parolee.

The parolee's risk level as shown in the SFS-81 was a 6, which would have placed him in the high-activity supervision level. The minimum contact standards called for six personal contacts during that time.

The parolee was actively participating in mental health treatment. The officer staffed the parolee's case with the therapist twice in the initial 6 months of supervision (4-24 & 6-7).

Over the second 6 months of supervision, the officer had ongoing contact with the treatment provider and, during staffings on 7-18 and 8-18, documented concern that the parolee possibly was taking medication that was not prescribed for him. The officer reported on 7-18 that the parolee had reported that he was taking Mellaril for his migraines and Tylenol with codeine for a foot injury. The parolee informed the therapist that he was seeing a private doctor while also seeing another doctor at Kaiser for his migraines. The officer noted concerns that the parolee may have been obtaining non-prescribed medications at the nursing home where he was employed. The therapist agreed to set up a reevaluation with a psychiatrist (7-18).

There was no documentation that the probation officer followed up on the concerns that the parolee was taking medications that were not prescribed for him.

The officer completed and submitted the initial case plan on 8-10. The case plan indicated that the parolee had a Salient Factor Score of 6. The case plan stated that the officer would have monthly contact with the parolee and the service provider. It also indicated that the parolee would always be a risk to third parties.

The parolee was seen by a psychiatrist. The officer noted that the parolee may need medication and that the therapist's treatment approach was correct (8-10). The officer received information regarding the appointment through the therapist, not from the psychiatrist directly.

During an office visit on 8-14, the officer told the parolee about the State of California's requirement for sex offender registration. **See**: Appendix B, Federal Statutory Changes Related to Sex Offender Registration.

The chronological record contained no further information as to whether or not the parolee complied with this requirement. There was no documentation to indicate that the officer verified the parolee's sex offender registration.

The officer conducted a home visit on 8-16-89 and saw the parolee and his mother. The parolee gave the probation officer the name of his private doctor.

The parolee submitted two diluted specimens in August 1989. Staffing with the therapist indicated that she believed the parolee "is close to going off" (8-23).

The probation officer did not have personal contact with the parolee until Dec. 1.

The officer sent a request for psychiatric and medical records to the Federal Bureau of Prisons for further information regarding the parolee's medications for migraine headaches and psychiatric care (8-23).

The officer followed up with the parolee's employer regarding the accusation of sexual harassment. The employer advised the officer that three females had reported that they were nervous around the parolee and that the parolee three times had approached females about going out with him. No physical contact had been reported. The employer advised that she wanted to keep the parolee employed (9-28).

The officer maintained ongoing contact with the parolee's therapist during September and October 1989. The therapist reported to the officer that the parolee had tested positive for speed [methamphetamine] on 9-22 and had admitted to using it for about a month. He also had told the therapist that he had used marijuana since his release and admitted to flushing his system (10-5). The therapist reported an additional positive test for speed on 10-10, but advised that she believed that since everything was coming out in the open, a positive outcome of continued treatment could be expected (10-10).

> *Despite the issues and concerns at the parolee's place of employment, the diluted urine specimens, and the two positive test results, there was no information in the records that the probation officer saw the parolee from 8-16-89 to 12-1-89. Furthermore, the file contained no documentation to indicate that the officer reported the violations to the Parole Commission.*

The officer conducted a home visit on 12-1-89, but no specific information about the visit was noted in the chronological entry.

> *There was no documentation of contacts with law enforcement in 1989 and no verification of sex offender registration.*

1990

The probation officer continued ongoing contact with the therapist. The officer and the therapist again discussed a problem with a female at the parolee's place of employment. The therapist relayed to the officer that the parolee had been giving unwanted attention to another female and that the female subsequently quit (1-12). The officer attempted to contact the parolee on 1-24 at work and at home but made no direct contact.

The parolee reported to the probation office on 2-5. The parolee advised that he was going to look for other employment as he was tired of working with all women. He advised that everything else was going well (2-5).

The probation officer submitted an updated case plan on 2-7, documenting that the parolee remained on high-activity supervision. The case plan highlighted three drug positives, none of which were reported to the Parole Commission. The case plan also documented that the probation officer had told the parolee to register as a sex offender.

The parolee was seen in the office in February and told the probation officer that he was training to sell water purifiers and would be selling this product in people's homes (2-22).

The chronological record made no mention of any concerns regarding foreseeable third-party risk.

During the March office visit the officer asked if the parolee had registered with the state. The parolee told the officer that he had registered (3-2).

Although the officer directed the parolee to register as a sex offender, there was no documentation that the officer verified that the parolee complied.

The officer directed the parolee to notify his new employer about his rape and kidnaping conviction by 3-9 (3-2).

There was no follow-up chronological entry indicating that the officer verified that the parolee complied.

There was no documentation of contact from April-June 1990.

In July 1990, the officer held a meeting with the therapist and the parolee, and decreased the parolee's urine specimens to weekly (Phase II) (7-10).

In a telephone contact, the parolee told the officer that he had taken a job selling products door-to-door. The parolee reported that he had told his employer about his conviction (8-13).

The record contained no documentation regarding the potential risk related to this kind of employment and no verification that the employer knew about the parolee's offense.

The therapist reported to the probation officer that the parolee tested positive for speed [methamphetamine] on 8-6. The officer increased the parolee's drug-testing requirements to six specimens per month (Phase I) (8-15). The officer discussed the case in detail with the therapist in August, highlighting the issue of drug use and the danger the parolee presented to the community (8-22).

There was no documented change in supervision activities related to the parolee's drug use or the concern about the danger he presented to the community.

The parolee's previous supervisor from the nursing home reported that the parolee had been contacting nursing home employees looking for drugs (11-2).

There was no documented follow-up by the officer with the parolee.

According to the case plans contained in the file, the probation officer submitted a case plan on 12-5-90, indicating that the last personal contact was 8-13-90, that the last home visit was 12-1-89, and that the parolee posed no third-party risk if he was in counseling and taking his medication. The supervisor responded that the parolee needed to be seen more frequently (12-5).

The chronological record showed no additional case staffings or follow-up by the officer or the supervisor to address the supervisor's comment in the case plan that the parolee needed to be seen more frequently. There was no change in supervision activity.

The probation officer had no face-to-face contact with the parolee from July to December 1990. Information about the parolee's status, drug use, and adjustment was from the therapist and not through the officer's direct contact with the parolee.

There was no documentation of contacts with law enforcement in 1990 and no verification of sex offender registration.

1991

In January 1991, the supervision of the parolee was transferred to a different probation officer. The case transfer summary highlighted that the case required high-activity supervision, that the parolee was to be seen monthly, and that drug use was a danger for the parolee.

Commencing with an office visit on 1-30, the probation officer directed the parolee to report weekly in person. The parolee began reporting more frequently and was seen in the office twice in February (2-6 and 2-15) and once in March (3-5) and had telephone contact with the officer in April (4-23).

During the April telephone contact, the parolee remarked that he was anxious for the officer to conduct a home visit so that he could show the officer his new recording studio (4-23).

The officer conducted a home visit on 5-15. The parolee and his wife were both present and took the officer on a tour of the home, including the recording studio. The officer documented that "everything looks ok for the present."

The officer's contact with the therapist remained consistent, with no issues reported during contacts in February, April, June, and August. The parolee was seeing the therapist weekly.

June 10, 1991 - Jaycee Dugard was kidnapped.

The officer met with the parolee in the office in June (6-19), July (7-24), August (8-7), October (10-3), and November (11-5). During the office visit in August, the parolee reported that his wife had been pregnant and had opted to have an abortion (8-7).

There was no indication in the record that the officer discussed this situation with the therapist on 8-14, and there was no further mention of an abortion.

Nevada State Parole and Probation sent a letter requesting a current progress report on the parolee (11-21). The probation officer responded with a report advising that the parolee remained under the supervision of the office and "there have been no problems up to this point" (12-3).

The report failed to provide information about the parolee's noncompliance and drug use.

The officer conducted a home visit on 12-13. The home visit was documented as "short" since the parolee was taking his wife to work. The officer noted that the wife was "as cheerful as ever."

There was no documentation of contacts with law enforcement in 1991 and no verification of sex offender registration.

1992

The parolee reported for an office visit on 2-7 with no issues, but a staffing with the therapist on the same day revealed real concerns regarding the parolee's demeanor. The therapist scheduled a reevaluation with the psychiatrist for a review of the parolee's medications.

There was no documentation regarding the psychiatric evaluation. Further, there was no report of any activity for more than 10 months (3-4-92 to 1-15-93).

Nevada State Parole and Probation sent a letter requesting a current progress report on the parolee (10-20). The probation officer responded with a report advising that the parolee remained under the supervision of the office and stating, "He has been cooperating with our office with no major problems. He is employed with his mother, who runs a real estate office in Antioch, California. He is seen regularly by a mental health therapist and is on medication" (11-6).

There was no documentation of contacts with law enforcement in 1992 and no verification of sex offender registration.

1993

The parolee reported for office visits on 1-15 and 1-27, indicating that everything was the same.

The parolee began missing appointments with the officer and the therapist. The officer attempted home visits on 2-11 and 2-23, neither of which resulted in contact with the parolee.
The officer held a meeting with the parolee and the therapist on 3-1 regarding the parolee's compliance. The officer directed the parolee to report every other week commencing 3-10 (3-1).

March 18, 1993 - The U.S. Parole Commission issued a warrant. The petition alleged that the parolee had failed to report to the probation officer as directed and had failed to report to the drug counselor for aftercare and submission to urine testing.

April 1, 1993 - The parolee was arrested

The Parole Commission placed the parolee on electronic monitoring. The parolee's electronic monitoring was from 5-10 to 9-6, with a third-party independent contractor, through the Federal Bureau of Prisons. All noncompliance regarding the electronic monitoring was responded to by the third-party contractor. The contractor provided a progress report from 5-10 to 7-10, outlining

the parolee's overall progress during the reporting period. The report advised that the parolee had no problems except a missed office appointment on 6-3.

The file contained no further reports for the remainder of the parolee's electronic monitoring period.

On 7-28, the probation officer noted concern that "we are losing this guy" and that the parolee again was having trouble with diluted drug tests, possible use of illegal substances, and not taking his prescribed medications. The officer noted that a violation was in order and that the potential danger to the community was high.

No follow-up with the Parole Commission regarding these concerns was indicated in the file.

The record indicated that the supervising officer was changed at some point in July or August 1993.

The new supervising officer confronted the parolee in the office about the parolee's drug use and positive test for methamphetamine on 7-26. The officer noted a problem locating the complete file on the parolee and stated that he was not sure if the parolee had tested positive previously and that he would make a determination regarding a violation after he received the past file information. The officer admonished the parolee for his drug use (8-11).

September 6, 1993 - The Notice of Release and Arrival was issued by the Federal Bureau of Prisons.

On 9-6, the parolee was released from the Federal Bureau of Prisons supervision and placed on parole supervision with the federal probation office in the Northern District of California.

The officer had direct office contact with the parolee once in August (8-25) and once in September (9-10).

There was no indication that the officer had contact with the parolee from October-December 1993, despite the concerns previously noted in the file.

There was no documentation of contacts with law enforcement in 1993, no home inspection, and no verification of sex offender registration.

1994

The record did not indicate that the officer had any contact with the parolee in January or February. The probation office had no direct contact with the parolee for 5 months (October 1993-February 1994).

The parolee reported to the probation office on 3-16, stating that he had been experiencing side effects with lithium and was now taking Zoloft. He was actively under the care of a psychiatrist.

The officer stated in the file that he would be seeing the parolee biweekly (3-16).

The record made no earlier mention of the parolee's medication changes or the reasons for the medications.

Over the next 8 months the officer saw the parolee six times in the probation office (3-28, 5-16, 6-6, 7-6, 9-7, and 10-26).

There were two contacts with the therapist in 1994 (4-19 and 12-13). All progress reports were positive. The therapist related the information about medications to the probation officer. The therapist reported that the parolee was taken off lithium but was still on other medications (4-19).

There was no documentation of contacts with law enforcement in 1994, no home inspection, and no verification of sex offender registration.

1995

The parolee visited the probation office twice in January (1-4 and 1-25) and reported that things were going well.

There was no contact documented in February-April.

The officer attempted a home visit and an employment contact on 5-2; however, no contact was made with the parolee. Following the attempted home visit, the probation officer called and scheduled a visit for 5-4. During the home visit on 5-4, the officer documented that he "inspected the residence and found nothing out of the ordinary." The officer also noted that the parolee was taking Cynex for attention deficit disorder and had continued to see his therapist.

Nevada State Parole and Probation sent a letter requesting a current progress report on the parolee (5-26). The probation officer responded with a report advising that the parolee remained under the supervision of the office and "has been compliant thus far." The report stated, "The subject is seen on a bimonthly basis by this officer and has posed no problems thus far" (6-6).

There was no mention of the parolee's noncompliance or drug use in the report provided to Nevada State Parole and Probation.

Over the next 7 months the officer saw the parolee three times in the office (7-26, 9-20, and 12-19) and once at home (9-29) with nothing unusual documented. The probation officer attempted to see the parolee at home on 11-29; however, no one was home (11-29).

The parolee's counseling was terminated on 9-25. The documentation stated that the therapist believed the parolee was stable and not a danger to the community.

There was no documentation of contacts with law enforcement in 1995, no home inspection, and no verification of sex offender registration.

1996
Over the next year of supervision, the officer saw the parolee at the office three times (4-4, 7-12, and 11-12) and at his home on 2-6. During the home visit, the officer noted that he inspected the residence with "no contraband observed."

Nevada State Parole and Probation sent a letter requesting a current progress report on the parolee (2-27). The probation officer responded to the report advising that the parolee remained under the supervision of the office and "has posed no problems thus far . . . " The letter further advised that the parolee had been seeing a therapist and that on 9-25 the therapist had stated, "I do not feel he is a danger to the community." The letter advised that the parolee was taking Zoloft and Cylert to stabilize his mood swings and was seeing a psychiatrist monthly. The letter further stated the officer was seeing the parolee approximately every 2 to 3 months (3-5).

On 7-12 the officer noted that the parolee was doing well and that the officer had moved the parolee to quarterly reporting. The parolee signed an authorization for release of information to allow the officer to talk to the psychiatrist. The parolee provided copies of prescriptions for Zoloft and Dexedrine (11-11).

There was no documentation of contacts with law enforcement in 1996, no home inspection, and no verification of sex offender registration.

1997
The officer conducted a home visit on 5-3 and reported nothing unusual. The officer noted that the parolee had five pit bull dogs. Another home visit was conducted more than 6 months later on 11-16. The officer then noted that the parolee would only be seen as needed.
Nevada State Parole and Probation sent a letter requesting a current progress report on the parolee (3-4).

There was no documentation that the probation officer responded to the request from Nevada.

In November 1997, the probation officer requested an evaluation by the parolee's treating psychiatrist. The psychiatrist provided a hand-written note stating, "His prognosis is excellent . .. I do not suspect he will ever be at risk for violence."

There was no documentation in the file to indicate any activity by the probation officer from November 1997 to August 1998. There was no documentation of contacts with law enforcement in 1997, no home inspection, and no verification of sex offender registration.

1998
The officer attempted home visits on 6-24 and 8-18, but the parolee was not home, and contact was made with the parolee's mother instead. The parolee reported to the office as directed on 8-26. A note in the file indicated that the parolee continued to do well and required minimal supervision.

In November 1998, there was a kidnaping and murder in Antioch. The probation office responded by contacting local law enforcement and immediately contacting the parolee (11-17 and 11-18). The probation officer attempted a home visit on 11-17, but no one answered the door. The probation officer left a note directing the parolee to the office on 11-18. The parolee reported to the office as directed (11-18). The officer followed up with law enforcement and with the parolee's psychiatrist (11-16, 11-18, 11-19, and 11-23). Law enforcement later advised in that the parolee was not a suspect (2-5-99).

There was no documentation of a successful home inspection, and no verification of sex offender registration in 1998.

1999

March 9, 1999 - The parolee received an early discharge from federal parole.

The parolee was released from parole on 3-9 at the recommendation of the U.S. Probation Office in the Northern District of California, in accordance with Parole Commission policy. The Certificate of Early Termination stated "After a thorough review of your case, the Commission has decided that you are deserving of an early discharge. You are commended for having responded positively to supervision and for the personal accomplishment(s) you have made. The Commission trusts that you will continue to be a productive citizen and obey the laws of society."

Nevada State Parole and Probation sent a letter requesting a current progress report on the parolee (5-10). The probation officer responded with a report advising that the parolee had been discharged from supervision (5-20).

It appears that the probation officer never verified that Garrido registered with the State of California as a sex offender.

ASSESSMENT OF SUPERVISION

There are many troubling issues with respect to how the probation officers supervised Phillip Garrido, including significant gaps in the chronological record that suggest little or no activity. Particularly significant is the lack of visits to Garrido's residence. For the most part, the probation officers who supervised the offender either saw him in the office or relied upon the treatment provider for information about his status.

While correctly categorizing Garrido as "high activity," the probation officers who handled this case over more than 10 years visited him at his residence perhaps 10 or 11 times. In three of the years (1990, 1992, and 1994) it does not appear that an officer went to the residence even once.

There was an attempted home visit on 12-13-1991, 6 months after Jaycee Dugard was kidnapped, but it appears that Garrido cut the visit short, saying that he was just leaving to take his wife to work. There was no follow-up attempt to visit Garrido at home. Instead, all contact with the offender took place in the probation office for the next 3 years. This includes the time that Garrido's parole was violated for failure to report to this treatment provider and he was placed on home confinement for 120 days (apparently, a Bureau of Prisons contractor installed the electronic monitoring equipment and monitored Garrido's compliance). Based on an examination of the case records, it appears that 40 months elapsed from the attempted home visit on 12-13-1991 to the next home visit on 5-2-1995.

It does not appear that the probation officer ever verified that Garrido had registered as a sex offender, instead relying on the offender's representation that he had done so. It also does not appear that the probation officer made collateral contacts with neighbors and local law enforcement officers. A report from the victim of the 1977 kidnapping and rape that she had seen Garrido on the street in November 1988 was dismissed by the probation officer as "hysteria." There was inadequate follow up to instances of women at Garrido's place of employment feeling "nervous" around him. The offender was even allowed to work for a time as a door-to-door salesman, despite the obvious risk to third parties.

Communications with Nevada State Parole and Probation officials were perfunctory and actually misleading, with confirmed illegal drug use being glossed over with summaries such as "He has been cooperating with our office with no major problems," or "The subject is seen on a bimonthly basis by this officer and has posed no problems thus far."

POLICY IN EFFECT AFTER GARRIDO'S PAROLE TERMINATION

In January 2000, 7 months *after* Garrido's parole was terminated, the Director of the AOUSC appointed an ad hoc supervision working group to update the 1991 version of Monograph 109 to reflect statutory changes over the 9 years since the last update. The group also was asked to incorporate research in the field of community corrections that demonstrated effectiveness in reducing recidivism and promoting the successful reentry of offenders in the community.

After 3 years of work that involved the collaboration of chiefs, deputy chiefs, supervisors, senior officers, and line officers from 40 districts, the revised Monograph 109 retained the emphasis on purposeful supervision based on individual assessments, but placed added emphasis on:

- Desired outcomes and goals of supervision;
- Ongoing collaboration between officers, supervisors, and officer specialists to improve assessment or risk and risk-related needs;
- Reentry planning before the offender's release from Bureau of Prisons custody;
- Home inspection during the initial assessment and more field work generally;
- Collaboration with others in the community (including law enforcement);
- A two-pronged approach to both control and reduce risk; and
- A focus on continued success beyond the period of supervision.

To support this policy change, the AOUSC released a national automated case plan and chronological records system. These features allowed for improved record keeping and case management across the country.

After the major update to Monograph 109 in 2003, there were several updates that retained the emphasis on individualized, tailored approaches to supervision. These updates are described in the following section.

POLICY IN EFFECT CURRENTLY

Supervision of Federal Offenders (Monograph 109)

Supervision of Federal Offenders, Monograph 109, adopted by the Judicial Conference of the United States in March 2008, contains the most current policies guiding the supervision of federal offenders by probation officers. The most significant change in this version of the monograph was the addition of a new chapter titled "Supervision of Offenders with Treatment Services Needs."

The current monograph gives specific direction to officers regarding their role in verifying sex offenders' compliance with state and local sex offender registry requirements. It also indicates that officers must comply with 18 U.S.C. § 4042(c), which requires the probation office to provide information to the chief law enforcement officer of the state and local jurisdiction in which the sex offender resides and to a state or local agency responsible for receiving or maintaining sex offender registration information.

The monograph provides specific guidance regarding supervision of sex offenders in the areas of evaluation, monitoring and intervention (including how to address perceived risk), and sex-offense specific treatment. In addition to addressing issues specific to supervising sex offenders, the monograph addresses supervision practices for high-risk offenders.

Treatment Services Statement of Work

Since fiscal year 1996, the national statement of work officers use to contract for treatment services has included detailed descriptions of services related to the treatment and management of sex offenders. In addition to individual and group counseling, authorized services include polygraphs and plethysmographs. Since the federal probation and pretrial services system began using specialized sex offender treatment, the AOUSC has continued to modify and enhance the statement of work for sex offense- related services as research has continued to focus on managing the sex offender as the means to reduce recidivism.

Initial Probation and Pretrial Services Officer Training

Since 2007, newly appointed probation and pretrial services officers have completed a 6-week new officer training program at the AOUSC's National Training Academy in South Carolina. During this program, officers receive training in various investigation and supervision policies and procedures, including a 4-hour block of instruction dedicated to sex offenders. For experienced officers, the Federal Judicial Center offers training on sex offenders through its *Special Needs Offenders Series* bulletins and broadcasts. These include: Special Needs Offenders: An Overview of Sex Offenders in the Federal System (October 1998); Special Needs Offenders: FCI Butner Sex Offender Treatment Program, Parts One and Two (December 2000 and March 2001); and Special Needs Offenders: Sex Offenders Update (December 2002).

CURRENT PRACTICES IN THE NORTHERN DISTRICT OF CALIFORNIA PROBATION OFFICE

The new management of the probation office has undertaken a major overhaul of supervision practices in the district, and has established district standards to supplement national standards and hold probation officers more accountable. As a first step, all probation officers reviewed each of their cases and classified them based on their scores on the Risk Prediction Index (RPI). Each case was then designated high, medium, low, or administrative activity based on the RPI score. The second step involved training both supervisors and officers on how to properly enforce the standards. As a third step, probation management will evaluate the new standards at the end of fiscal year 2010.

Other steps have been implemented, including a requirement that probation officers with caseloads perform a minimum of 32 hours of field work each month. Officers have been directed to investigate and report noncompliance to the court immediately. The office has also performed several high-intensity field projects focused on addressing noncompliance issues with the highest risk offenders.

The probation office also created a Computer Internet Monitoring Program(CIMP) and promoted three officers to the position of Special Offender Coordinators. Two of these officers have been trained to operate a forensic lab and perform forensic inspections of computers where there is a special search condition. The third officer will serve as a treatment program specialist for sex-offenders.

The probation office has a sex offender working group that includes all officers who supervise sex offenders. They meet quarterly to discuss patterns, strategies, and other supervision issues. Additionally, officers have been trained on how to perform community observation (surveillance) and use all available databases provided by the AOUSC.

Four classes of active supervision cases have been established in the probation office: High, Medium, Low, and Administrative. A fifth category exists of inactive Immigration and Customs Enforcement cases where deportation has been verified and warrant cases. Ideally, a generalist probation officer will not have more than 5 to 10 percent of his or her caseload categorized as a high-activity case. Specialists, who have smaller caseloads, will obviously have a higher percentage. The majority of a generalists caseload will be made up of medium-activity cases with probation officer assistants having the majority of low-activity and administrative cases. **See:** Appendix C, Post-Conviction Supervision Standards, Northern District of California.

POTENTIAL NATIONAL POLICY CHANGES

Policy development and improvement is a continual process. The AOUSC's Office of Probation and Pretrial Services (OPPS) has been looking at policies related to general supervision practices and the management of sex offenders in reference to research-driven decision-making. As a result of this continual evaluation and improvement, the following changes are under consideration and will be submitted to the Criminal Law Committee in 2011.

Supervision Practices

In July 2008, the AOUSC Director appointed the ad hoc Sex Offender Management Working Group--made up of 16 probation and pretrial services officers and specialists and staff from the Federal Judicial Center and the OPPS--to update policies related to the supervision of sex offenders.

The working group has set a goal to develop enhanced sex offender management policies in the areas of pretrial services, presentence investigations, and post-conviction supervision. It also has collaborated with the Location Monitoring Working Group to address specific risk control activities for high-risk and violent offenders.

The working group has focused on sex offender supervision practices using the widely accepted "Containment Model." The model requires the officer, in supervising someone classified as a sex offender, to be involved with local and community law enforcement, specialized sex offense treatment personnel, polygraph examiners, and community support networks. The proposed policy gives the officer guidance in such areas as:

- Disclosing information to third parties;
- Initiating risk management strategies;
- Identifying dynamic and static risk factors;
- Supervising high-risk offenders;
- Supervising offenders of undetermined risk;
- Using computer monitoring and forensics;
- Assessing reasonable risk versus specific third-party risk;
- Collaborating with community support networks;
- Using search and seizure appropriately;
- Using specialized sex offense treatment; and
- Using the polygraph as a supervision tool.

Assuming that the proposed policy is approved by the Criminal Law Committee and the Judicial Conference, a comprehensive training program will accompany the implementation of the new policy guidance in 2011. The AOUSC plans to offer regional training seminars, a national conference, and an updated curriculum at the National Training Academy to help officers understand and implement the new policy.

Search and Seizure

The Judicial Conference of the United States issued Model Search and Seizure Guidelines in 1993. Those guidelines, which were in effect during the federal supervision of Philip Garrido, disfavored searches and were silent on when a search may be appropriate.

New guidelines were approved by the Judicial Conference in September 2010. The new guidelines recognize searches as an appropriate supervision tool when less intrusive methods would not adequately protect the public. The guidelines provide for new reporting procedures, training and set out specific factors for probation officers to consider when recommending, initiating, or conducting a search. Training on the new search guidelines will begin during 2011.

APPENDICES

Appendix A: Time Line of Legal Events Surrounding Phillip Garrido

Appendix B: Federal Statutory Changes Related to Sex Offender Registration

Appendix C: Post-Conviction Supervision Standards, Northern District of California

Appendix A

TIME LINE OF LEGAL EVENTS SURROUNDING PHILLIP GARRIDO

(Underlined dates indicate that the events transpired while Garrido was under federal supervision.)

May 1970	Phillip Garrido is convicted of possession of marijuana and LSD. He receives probation.
March 1972	Garrido is convicted of possession of marijuana and visiting a place where drugs are used. He receives 90 days jail and probation.
April 1972	Garrido is arrested for Contributing to the Delinquency of a Minor, Possible Rape, and Adult Providing Dangerous Drugs to a Minor. Case is dismissed for "furtherance of justice."
November 1976	Garrido is arrested for kidnapping (the federal offense) and rape in Reno, Nevada.
December 1976	Garrido is charged with Rape and Kidnapping for a crime that allegedly occurred in El Dorado County, California, in June 1976.
March 1977	Garrido is convicted on federal kidnapping charges stemming from the November 1976 arrest. He is sentenced to 50 years imprisonment.
April 1977	Garrido is convicted of forcible rape by State of Nevada. He is sentenced to 5 years to life.
April 1977-January 1988	Garrido is incarcerated in federal prison.
January 1988	Garrido is paroled from federal prison and transferred to the Nevada Department of Prisons.
January-August 1988	Garrido is incarcerated in Nevada State Prison.
August 1988	Garrido is paroled from Nevada State Prison and placed in a community treatment center under the jurisdiction of the Federal Bureau of Prisons.
December 16, 1988-	Garrido is supervised by the U.S. Probation Office - CA/N
June 10, 1991	Garrido allegedly kidnaps Jaycee Dugard from South Lake Tahoe, California.

March 18, 1993	Garrido fails to comply with drug testing, treatment, and appointments with the probation officer. U.S. Parole Commission issues a warrant at the request of the probation office.
April 1, 1993	Garrido is arrested on the U.S. Parole Commission warrant.
May 10, 1993	Garrido is placed on 120 days of electronic monitoring (Radio Frequency; administered by third-party contractor through the Federal Bureau of Prisons)
September 6, 1993	Garrido is released back to the supervision of the Northern District of California probation office.
March 9, 1999	U.S. Parole Commission terminates Garrido's federal parole supervision early.
June 8, 1999	State of California begins parole supervision of Garrido per interstate compact with State of Nevada.
June 9, 1999	Garrido registers with the State of California as a sex offender.
April 14, 2008	State of California begins GPS monitoring of Garrido.
August 26, 2009	Garrido and his wife are arrested for kidnaping and sexually assaulting Jaycee Dugard.

Appendix B

FEDERAL STATUTORY CHANGES RELATED TO SEX OFFENDER REGISTRATION

1994 - Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act - Enacted as a part of the Omnibus Crime Bill of 1994, this Act:

- Established guidelines for states to track sex offenders.
- Required states to track sex offenders by confirming their place of residence annually for 10 years after their release into the community or quarterly for the rest of their lives if the sex offender was convicted of a violent sex crime.

1996 - Megan's Law - During the mid-1990's, every state, along with the District of Columbia, passed a Megan's Law. In January 1996, Congress enacted the federal Megan's Law that:

- Provided for public dissemination of information from states' sex offender registries. Information collected under state registration programs could be disclosed for any purpose permitted under a state law.
- Required state and local law enforcement agencies to release relevant information necessary to protect the public about persons registered under a state registration program established under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

1996 - Pam Lychner Sex Offender Tracking and Identification Act of 1996 - This Act:

- Required the Attorney General to establish a national database (the National Sex Offender Registry, or NSOR) by which the FBI could track certain sex offenders.
- Mandated certain sex offenders living in a state without a minimally sufficient sex offender registry program to register with the FBI.
- Required the FBI to periodically verify the addresses of the sex offenders to whom the Act pertains.
- Allowed for the dissemination of information collected by the FBI necessary to protect the public to federal, state, and local officials responsible for law enforcement activities or for running background checks pursuant to the National Child Protection Act (42 U.S.C. §5119, et. seq.).
- Set forth provisions relating to notification of the FBI and state agencies when a certain sex offender moved to another state.

1997 - Jacob Wetterling Improvements Act - Passed as part of the Appropriations Act of 1998, this Act took several steps to amend provisions of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, the Pam Lychner Sex Offender Tracking and Identification Act, and other federal statutes. This Act:

- Changed the way in which state courts make a determination about whether a convicted sex offender should be considered a sexually violent offender to include the opinions not just of sex offender behavior and treatment experts, but also of victims rights advocates and law enforcement representatives.

- Allowed a state to impart the responsibilities of notification, registration, and FBI notification to a state agency beyond each state's law enforcement agency, if the state so chose.

- Required registered offenders who change their state of residence to register under the new state's laws.

- Required registered offenders to register in the states where they worked or went to school if those states were different from their state of residence.

- Directed states to participate in the National Sex Offender Registry.

- Required each state to set up procedures for registering out-of-state offenders, federal offenders, offenders sentenced by court martial, and non-resident offenders crossing the border to work or attend school.

- Allowed states the discretion to register individuals who committed offenses that did not include the Act's definition of registerable offenses.

- Required the Bureau of Prisons to notify state agencies of released or paroled federal offenders.

- Required the Secretary of Defense to track and ensure registration compliance of offenders with certain UCMJ convictions.

1998 - Protection of Children from Sexual Predators Act - This Act:

- Directed the Bureau of Justice Assistance to carry out the Sex Offender Management Assistance (SOMA) program to help eligible states comply with registration requirements.

- Prohibited federal funding to programs that gave federal prisoners access to the Internet without supervision.

2000 - Campus Sex Crimes Prevention Act - Passed as part of the Victims of Trafficking and Violence Protection Act, this Act:

- Required any person who was obligated to register in a state's sex offender registry to notify the institution of higher education at which the sex offender worked or was a student of his or her status as a sex offender; and to notify the same institution if there was any change in his or her enrollment or employment status.

- Required that the information collected as a result of this Act be reported promptly to local law enforcement and entered promptly into the appropriate state record systems.

- Amended the Higher Education Act of 1965 to require institutions obligated to disclose campus security policy and campus crime statistics to also provide notice of how information concerning registered sex offenders could be obtained.

2003 - Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act - This Act:

- Required states to maintain a web site containing registry information, and required the Department of Justice to maintain a web site with links to each state web site.

- Authorized appropriations to help defray state costs for compliance with new sex offender registration provisions.

2006 - Adam Walsh Child Protection and Safety Act - This Act:

- Created a new baseline standard for jurisdictions to implement regarding sex offender registration and notification.

- Expanded the definition of "jurisdiction" to include 212 federally-recognized Indian Tribes, of whom 197 have elected to start up their own sex offender registration and notification systems.

- Expanded the number of sex offenses that must be captured by registration jurisdictions to include all state, territory, tribal, federal, and UCMJ sex offense convictions, as well as certain foreign convictions.

- Created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) within the Department of Justice, Office of Justice Programs, to administer the standards for sex offender notification and registration, administer the grant programs authorized by the Adam Walsh Act, and coordinate related training and technical assistance.

- Established a Sex Offender Management Assistance (SOMA) program within the Justice Department.

2007 - Department of Justice, Office of the Attorney General, Applicability of the Sex Offender Registration and Notification Act (SORNA) (28 CFR, Part 72), February 28, 2007 - Federal regulation passed to specify that SORNA's registration requirements are retroactive.

2008 - Keeping the Internet Devoid of Predators Act (KIDS Act) October 13, 2008 - This Act:

- Amended SORNA to require registration jurisdictions to register Internet Identifiers.

- Exempted Internet Identifiers from disclosure on any registration jurisdiction's public sex offender registry website.

Appendix C

POST-CONVICTION SUPERVISION STANDARDS, NORTHERN DISTRICT OF CALIFORNIA (as provided by the Northern District of California)

Overview

There are four classes of active supervision cases in the NDCA- High, Medium, Low and Admin. A fifth category exists of inactive cases. These are ICE cases where deportation has been verified as well as warrant cases. Ideally a generalist officer will not have more than 5-10% of his or her caseload categorized as a high activity case. Specialists, with their lower caseload numbers, etc, will obviously have a higher percentage. The majority of a generalist's caseload will be made up of medium activity cases with POAs having the vast majority of low activity and Admin cases.

High Activity Cases

Definition: All sex offenders, active gang members, offenders with severe mental health or substance abuse problems, active home confinement cases, and other cases as needed. After one year on supervision, case can be reclassified by the SUSPO and USPO depending on performance.

Activities: Personal or collateral contact 6 times in 6 months, at least four in the field. Attempts do not count. Standard supervision activities, i.e., case plans per 109, rap sheet review, treatment referrals, testing, etc.).

Medium Activity

Definition: Medium Risk offenders- all felony title 21 offenses not categorized as high activity, those with RPIs 5 and higher not categorized as high activity. All offenders actively in treatment that are not high activity. Would be the majority of a generalist's caseload.

Activities: Personal or collateral contact 4 times in 6 months, at least 2 of which are in the field. Attempts do not count. (standard supervision activities, ie., case plans per 109, rap sheet review, treatment referrals, testing, etc.)

Low Activity

Definition: Low risk offenders, i.e, those with RPIs of 2 and below, Offender who has demonstrated compliance during supervision, satisfied treatment conditions, making regular payments on fine/restitution, working on CSW, offense did not involve crime of violence or firearm. Cases with high RPIs, history of violence, etc. are generally not eligible. Exceptions can be approved by SUSPO and USPO. Would generally be supervised by a POA.

Activities: Personal or collateral contact two times every 6 months. Preferably in the field. Offenders should not actively be in treatment, other standard supervision activities would apply.

Administrative Activity

Definition: Low Intensity Cases as defined in Monograph 109

Activities: Minimal activities- no case plan after designated as Administrative Case. Periodic record checks, review of MSRs, etc. Supervised by a POA.

Re-Entry Duties and expectations

- USPO meets with Inmate prior to release to activate the case, generally 120 days prior to release. If not releasing from RRC, documents reviewed 30 days prior to release.

- At least one subsequent face to face 10-60 days prior to release to verify release plan and address issues

- Upon release, USPO meets with offender within 5 working days of release and conditions are reviewed. If treatment is needed, it is set up at this time. ICSP interview done

- ICSP is completed within 30 days of release (60 days allowed if the offender arrives at RRC less than 30 days prior to release).

Classification and Reclassification

A case will be classified as high, medium, low, or admin activity level at the time the Inital Case Plan is finalized. The USPO will recommend the activity level with SUSPO approval. The activity level will be documented with a canned chrono so that reports can be generated from PACTS using the chrono code.

A case can have its activity level re-classified during the case planning process or when appropriate and agreed upon by the POA/USPO and SUSPO.

Violation behavior involving new criminal activity will automatically move a case from Admin Activity level to either low, medium or high activity level depending on the circumstances.

Standard supervision duties and expectations- Initial and revised case plans completed and submitted on time by USPO/POA

- Initial case plans reviewed and finalized by SUSPO within 2 weeks of submission

- Home inspection of residence for new releases completed within 30 days of commencing supervision.

- Violation behavior reported to the court in a timely manner per chapter V of Monograph 109

- Offenders referred into treatment/testing per treatment policy/guidelines. Deviations from guidelines will be supported in chronos and other supporting documentation, i.e., TCUDS. Waivers of requirement to test/participate in treatment staffed with SUSPO and chronoed.

- Chronos updated as needed. Generally within 72 hours of action.

- Home inspection of new residence (move) completed within 30 days.

- All offenders orientated to conditions of release/probation/parole within 5 days of release unless holidays/weekends/offender travel from BOP make this impossible. Orientation then completed ASAP.

- Rap sheets reviewed via ATLAS after first 6 months on supervision, and annually thereafter. Final review 60 days prior to expiration.

- Third party risk re-evaluated when there is a change in residency, employment, or significant changes in personal relationships.

- MSRs reviewed, changes noted, and receipt is chronoed in PACTS by 20th of the month.

- HC/Location monitoring conditions implemented within 15 working days of condition being added/supervision started.