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(1971), reprinted in 2 Legislative History of the Water Pollution Control Act Amendments of 1972 (Committee Print compiled for the Senate Committee on Public Works by the Library of Congress), Ser. No. 93-1, p. 1511 (1971) (hereinafter Leg. Hist.) (emphasis added). And "[n]o Congressmans' remarks on the legislation were complete without reference to [its] comprehensive' nature" *Milwaukee v. Illinois*, 451 U.S. 304, 318 (1981) (REHNQUIST, J.). A House sponsor described the bill as "the most comprehensive and far-reaching water pollution bill we have ever drafted," 1 Leg. Hist. 369 (Rep. Mizell), and Senator Randolph, Chairman of the Committee on Public Works, stated: "It is perhaps the most comprehensive legislation that the Congress of the United States has ever developed in this particular field of the environment." 2 *id.*, at 1269. This Court was therefore undoubtedly correct when it described the 1972 amendments as establishing "a comprehensive program for controlling and abating water pollution." *Train v. City of New York*, 420 U.S. 35, 37 (1975).

Section 404 of the CWA resembles §13 of the RHA, but, unlike the earlier statute, the primary purpose of which is the maintenance of navigability, §404 was principally intended as a pollution control measure. A comparison of the contents of the RHA and the 1972 Act vividly illustrates the fundamental difference between the purposes of the two provisions. The earlier statute contains pages of detailed appropriations for improvements in specific navigation facilities, 30 Stat. 1121-1149, for studies concerning the feasibility of a canal across the Isthmus of Panama, *id.*, at 1150, and for surveys of the advisability of harbor improvements at numerous other locations, *id.*, at 1155-1161. Tellingly, §13, which broadly prohibits the discharge of refuse into navigable waters, contains an exception for refuse "flowing from streets and sewers . . . in a liquid state." *Id.*, at 1152.

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The 1972 Act, in contrast, appropriated large sums of money for research and related programs for water pollution control, 86 Stat. 816–833, and for the construction of water treatment works, *id.*, at 833–844. Strikingly absent from its declaration of “goals and policy” is *any* reference to avoiding or removing obstructions to navigation. Instead, the principal objective of the Act, as stated by Congress in §101, was “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U. S. C. §1251. Congress therefore directed federal agencies in §102 to “develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters.” 33 U. S. C. §1252. The CWA commands federal agencies to give “due regard,” not to the interest of unobstructed navigation, but rather to “improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife [and] recreational purposes.” *Ibid.*

Because of the statute’s ambitious and comprehensive goals, it was, of course, necessary to expand its jurisdictional scope. Thus, although Congress opted to carry over the traditional jurisdictional term “navigable waters” from the RHA and prior versions of the FWPCA, it broadened the *definition* of that term to encompass all “waters of the United States.” §1362(7).⁶ Indeed, the 1972 conferees arrived at the final formulation by specifically deleting the word “navigable” from the definition that had originally appeared in the House version of the Act.⁷ The majority

⁶The definition of “navigable water” in earlier versions of the FWPCA had made express reference to navigability. §211, 80 Stat. 1253.

⁷The version adopted by the House of Representatives defined “navigable waters” as “the navigable waters of the United States, including the territorial seas.” H. R. 11896, 92d Cong., 2d Sess., §502(8) (1971),

today undoes that deletion.

The Conference Report explained that the definition in §502(7) was intended to "be given the broadest possible constitutional interpretation." S. Conf. Rep. No. 92-1236, p. 144 (1972), reprinted in 1 Leg. Hist. 327. The Court dismisses this clear assertion of legislative intent with the back of its hand. *Ante*, at 7, n. 3. The statement, it claims, "signifies that Congress intended to exert [nothing] more than its commerce power over navigation." *Ibid*.

The majority's reading drains all meaning from the conference amendment. By 1972, Congress' Commerce Clause power over "navigation" had long since been established. *The Daniel Ball*, 10 Wall. 557 (1871); *Gilman v. Philadelphia*, 3 Wall. 713 (1866); *Gibbons v. Ogden*, 9 Wheat. 1 (1824). Why should Congress intend that its assertion of federal jurisdiction be given the "broadest possible constitutional interpretation" if it did not intend to reach beyond the very heartland of its commerce power? The activities regulated by the CWA have nothing to do with Congress' "commerce power over navigation." Indeed, the goals of the 1972 statute have nothing to do with navigation at all.

As we recognized in *Riverside Bayview*, the interests served by the statute embrace the protection of "significant natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites" for various species of aquatic wildlife. 474 U. S., at 134-135. For wetlands and "isolated" inland lakes, that interest is equally powerful, regardless of the proximity of the swamp or the water to a navigable stream. Nothing in the text, the stated pur-

reprinted in 1 Leg. Hist. 1069. The CWA ultimately defined "navigable waters" simply as "the waters of the United States, including the territorial seas." 33 U. S. C. §1362(7).

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poses, or the legislative history of the CWA supports the conclusion that in 1972 Congress contemplated— much less commanded— the odd jurisdictional line that the Court has drawn today.

The majority accuses respondents of reading the term “navigable” out of the statute. *Ante*, at 11. But that was accomplished by Congress when it deleted the word from the §502(7) definition. After all, it is the *definition* that is the appropriate focus of our attention. *Babbitt v. Sweet Home Chapter, Communities for Great Ore.*, 515 U. S. 687, 697–698, n. 10 (1995) (refusing to be guided by the common-law definition of the term “take” when construing that term within the Endangered Species Act of 1973 and looking instead to the meaning of the terms contained in the definition of “take” supplied by the statute). Moreover, a proper understanding of the history of federal water pollution regulation makes clear that— even on respondents’ broad reading— the presence of the word “navigable” in the statute is not inexplicable. The term was initially used in the various Rivers and Harbors Acts because (1) at the time those statutes were first enacted, Congress’ power over the Nation’s waters was viewed as “extending only to ‘water bodies that were deemed navigable’ and therefore suitable for moving goods to or from markets,” Power 513; and (2) those statutes had the primary purpose of protecting navigation. Congress’ choice to employ the term “navigable waters” in the 1972 Clean Water Act simply continued nearly a century of usage. Viewed in light of the history of federal water regulation, the broad §502(7) definition, and Congress’ unambiguous instructions in the Conference Report, it is clear that the term “navigable waters” operates in the statute as a shorthand for “waters over which federal authority may properly be asserted.”

II

As the majority correctly notes, *ante*, at 7, when the

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Corps first promulgated regulations pursuant to §404 of the 1972 Act, it construed its authority as being essentially the same as it had been under the 1899 RHA.⁸ The reaction to those regulations in the federal courts,⁹ in the Environmental Protection Agency (EPA),¹⁰ and in Congress,¹¹ convinced the Corps that the statute required it

⁸The Corps later acknowledged that the 1974 regulations "limited the Section 404 permit program to the same waters that were being regulated under the River and Harbor Act of 1899." 42 Fed. Reg. 37123 (1977). Although refusing to defer to the Corps' *present* interpretation of the statute, *ante*, at 11-12, the majority strangely attributes some significance to the Corps' *initial* reluctance to read the 1972 Act as expanding its jurisdiction, *ante*, at 7 ("Respondents put forward no persuasive evidence that the Corps mistook Congress' intent in 1974"). But, stranger still, by construing the statute as extending to nonnavigable tributaries and adjacent wetlands, the majority reads the statute more broadly than the 1974 regulations that it seems willing to accept as a correct construction of the Corps' jurisdiction. As I make clear in the text, there is abundant evidence that the Corps was wrong in 1974 and that the Court is wrong today.

⁹See, e.g., *Natural Resources Defense Council v. Callaway*, 392 F. Supp. 685, 686 (DC 1975); *United States v. Holland*, 373 F. Supp. 665 (MD Fla. 1974).

¹⁰In a 1974 letter to the head of the Army Corps of Engineers, the EPA Administrator expressed his disagreement with the Corps' parsimonious view of its own jurisdiction under the CWA. Section 404 of the Federal Water Pollution Control Act Amendments of 1972: Hearings before the Senate Committee on Public Works, 94th Cong., 2d Sess., 349 (1976) (letter dated June 19, 1974, from Russell E. Train, Administrator of EPA, to Lt. Gen. W. C. Gribble, Jr., Chief of Corps of Engineers). The EPA is the agency that generally administers the CWA, except as otherwise provided. 33 U. S. C. §1251(d); see also 43 Op. Atty. Gen. 197 (1979) ("Congress intended to confer upon the administrator of the [EPA] the final administrative authority" to determine the reach of the term "navigable waters").

¹¹The House Committee on Government Operations noted the disagreement between the EPA and the Corps over the meaning of "navigable waters" and ultimately expressed its agreement with the EPA's broader reading of the statute. H. R. Rep. No. 93-1396, pp. 23-27 (1974).

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'to protect water quality to the full extent of the [C]ommerce [C]lause" and to extend federal regulation over discharges "to many areas that have never before been subject to Federal permits or to this form of water quality protection." 40 Fed. Reg. 31320 (1975).

In 1975, the Corps therefore adopted the interim regulations that we upheld in *Riverside Bayview*. As we noted in that case, the new regulations understood "the waters of the United States" to include, not only navigable waters and their tributaries, but also "nonnavigable intrastate waters whose use or misuse could affect interstate commerce." 474 U. S., at 123. The 1975 regulations provided that the new program would become effective in three phases: phase 1, which became effective immediately, encompassed the navigable waters covered by the 1974 regulation and the RHA; phase 2, effective after July 1, 1976, extended Corps jurisdiction to nonnavigable tributaries, freshwater wetlands adjacent to primary navigable waters, and lakes; and phase 3, effective after July 1, 1977, extended Corps jurisdiction to all other waters covered under the statute, including any waters not covered by phases 1 and 2 (such as "intermittent rivers, streams, tributaries, and perched wetlands that are not contiguous or adjacent to navigable waters") that "the District Engineer determines necessitate regulation for the protection of water quality." 40 Fed. Reg. 31325-31326 (1975). The final version of these regulations, adopted in 1977, made clear that the covered waters included "isolated lakes and wetlands, intermittent streams, prairie potholes, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect interstate commerce."¹²

¹²42 Fed. Reg. 37127 (1977), as amended. 33 CFR §328.3(a)(3) (1977).

The Corps' broadened reading of its jurisdiction provoked opposition among some Members of Congress. As a result, in 1977, Congress considered a proposal that would have limited the Corps' jurisdiction under §404 to waters that are used, or by reasonable improvement could be used, as a means to transport interstate or foreign commerce and their adjacent wetlands. H. R. 3199, 95th Cong., 1st Sess., §16(f) (1977). A bill embodying that proposal passed the House but was defeated in the Senate. The debates demonstrate that Congress was fully aware of the Corps' understanding of the scope of its jurisdiction under the 1972 Act. We summarized these debates in our opinion in *Riverside Bayview*:

'In both Chambers, debate on the proposals to narrow the definition of navigable waters centered largely on the issue of wetlands preservation. See [123 Cong. Rec.], at 10426-10432 (House debate); *id.*, at 26710-26729 (Senate debate). Proponents of a more limited §404 jurisdiction contended that the Corps' assertion of jurisdiction over wetlands and other nonnavigable waters had far exceeded what Congress had intended in enacting §404. Opponents of the proposed changes argued that a narrower definition of navigable waters for purposes of §404 would exclude vast stretches of crucial wetlands from the

The so-called "migratory bird" rule, upon which the Corps based its assertion of jurisdiction in this case, is merely a specific application of the more general jurisdictional definition first adopted in the 1975 and 1977 rules. The "rule," which operates as a rule of thumb for identifying the waters that fall within the Corps' jurisdiction over phase 3 waters, first appeared in the preamble to a 1986 repromulgation of the Corps' definition of "navigable waters." 51 Fed. Reg. 41217 (1986). As the Corps stated in the preamble, this repromulgation was not intended to alter its jurisdiction in any way. *Ibid.* Instead, the Corps indicated, the migratory bird rule was enacted simply to "clarif[y]" the scope of existing jurisdictional regulations. *Ibid.*

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Corps' jurisdiction, with detrimental effects on wetlands ecosystems, water quality, and the aquatic environment generally. The debate, particularly in the Senate, was lengthy. In the House, the debate ended with the adoption of a narrowed definition of 'waters' but in the Senate the limiting amendment was defeated and the old definition retained. The Conference Committee adopted the Senate's approach: efforts to narrow the definition of 'waters' were abandoned; the legislation as ultimately passed, in the words of Senator Baker, 'retain[ed] the comprehensive jurisdiction over the Nation's waters exercised in the 1972 Federal Water Pollution Control Act.'" 474 U. S., at 136-137.

The net result of that extensive debate was a congressional endorsement of the position that the Corps maintains today. We explained in *Riverside Bayview*:

'[T]he scope of the Corps' asserted jurisdiction over wetlands was specifically brought to Congress' attention, and Congress rejected measures designed to curb the Corps' jurisdiction in large part because of its concern that protection of wetlands would be unduly hampered by a narrowed definition of 'navigable waters.' Although we are chary of attributing significance to Congress' failure to act, a refusal by Congress to overrule an agency's construction of legislation is at least some evidence of the reasonableness of that construction, particularly where the administrative construction has been brought to Congress' attention through legislation specifically designed to supplant it." *Id.*, at 137.

Even if the majority were correct that Congress did not extend the Corps' jurisdiction in the 1972 CWA to reach beyond navigable waters and their nonnavigable tributaries, Congress' rejection of the House's efforts in 1977 to

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cut back on the Corps' 1975 assertion of jurisdiction clearly indicates congressional acquiescence in that assertion. Indeed, our broad determination in *Riverside Bayview* that the 1977 Congress acquiesced in the very regulations at issue in this case should foreclose petitioners' present urgings to the contrary. The majority's refusal in today's decision to acknowledge the scope of our prior decision is troubling. Compare *id.*, at 136 ('Congress acquiesced in the [1975] administrative construction [of the Corps' jurisdiction]'), with *ante*, at 9 ('We conclude that respondents have failed to make the necessary showing that the failure of the 1977 House bill demonstrates Congress' acquiescence to the Corps' regulations . . .').¹³ Having already concluded that Congress acquiesced in the Corps' regulatory definition of its jurisdiction,

¹³The majority appears to believe that its position is consistent with *Riverside Bayview* because of that case's reservation of the question whether the Corps' jurisdiction extends to "certain wetlands not necessarily adjacent to other waters," 474 U. S., at 124, n. 2. But it is clear from the context that the question reserved by *Riverside Bayview* did not concern "isolated" waters, such as those at issue in this case, but rather "isolated" wetlands. See *id.*, at 131-132, n. 8 ('We are not called upon to address the question of the authority of the Corps to regulate discharges of fill material into wetlands that are not adjacent to bodies of open water . . .'). Unlike the open waters present on petitioners' site, wetlands are lands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." 33 CFR §328.3(b) (2000). If, as I believe, actually navigable waters lie at the very heart of Congress' commerce power and "isolated," nonnavigable waters lie closer to (but well within) the margin, "isolated wetlands," which are themselves only marginally "waters," are the most marginal category of "waters of the United States" potentially covered by the statute. It was the question of the extension of federal jurisdiction to that category of "waters" that the *Riverside Bayview* Court reserved. That question is not presented in this case.

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the Court is wrong to reverse course today. See *Dickerson v. United States*, 530 U. S. 428, 443 (2000) (REHNQUIST, C. J.) (“[T]he doctrine [of *stare decisis*] carries such persuasive force that we have always required a departure from precedent to be supported by some ‘special justification’”).

More important than the 1977 bill that did not become law are the provisions that actually were included in the 1977 revisions. Instead of agreeing with those who sought to withdraw the Corps’ jurisdiction over “isolated” waters, Congress opted to exempt several classes of such waters from federal control. §67, 91 Stat. 1601, 33 U. S. C. §1344(f). For example, the 1977 amendments expressly exclude from the Corps’ regulatory power the discharge of fill material “for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches,” and “for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters.” *Ibid.* The specific exemption of these waters from the Corps’ jurisdiction indicates that the 1977 Congress recognized that similarly “isolated” waters not covered by the exceptions would fall within the statute’s outer limits.

In addition to the enumerated exceptions, the 1977 amendments included a new section, §404(g), which authorized the States to administer their own permit programs over certain non-navigable waters. Section 404(g)(1) provides, in relevant part:

“The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to

transport interstate or foreign commerce . . . , including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact." 33 U. S. C. §1344(g)(1).

Section 404(g)(1)'s reference to navigable waters "other than those waters which are presently used, or are susceptible to use" for transporting commerce and their adjacent wetlands appears to suggest that Congress viewed (and accepted) the Act's regulations as covering more than navigable waters in the traditional sense. The majority correctly points out that §404(g)(1) is itself ambiguous because it does not indicate precisely how far Congress considered federal jurisdiction to extend. *Ante*, at 10. But the Court ignores the provision's legislative history, which makes clear that Congress understood §404(g)(1)— and therefore federal jurisdiction— to extend, not only to navigable waters and nonnavigable tributaries, but also to "isolated" waters, such as those at issue in this case.

The Conference Report discussing the 1977 amendments, for example, states that §404(g) "establish[es] a process to allow the Governor of any State to administer an individual and general permit program for the discharge of dredged or fill material into *phase 2 and 3 waters* after the approval of a program by the Administrator." H. R. Conf. Rep. No. 95-830, p. 101 (1977), reprinted in 3 Legislative History of the Clean Water Act of 1977 (Committee Print Compiled for the Committee on Environment and Public Works by the Library of Congress), Ser. No. 95-14, p. 285 (emphasis added) (hereinafter Leg. Hist. of CWA). Similarly, a Senate Report discussing the 1977 amendments explains that, under §404(g), "the [C]orps will *continue* to administer the section 404 permit program in all navigable waters for a discharge of dredge or fill material until the approval of a State program for

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phase 2 and 3 waters." S. Rep. No. 95-370, p. 75 (1977), reprinted in 4 Leg. Hist. of CWA 708 (emphases added).

Of course, as I have already discussed, "phase 1" waters are navigable waters and their contiguous wetlands, "phase 2" waters are the "primary tributaries" of navigable waters and their adjacent wetlands, and "phase 3" waters are all other waters covered by the statute, and can include such "isolated" waters as "intermittent rivers, streams, tributaries, and perched wetlands that are not contiguous or adjacent to navigable waters." The legislative history of the 1977 amendments therefore plainly establishes that, when it enacted §404(g), Congress believed—and desired—the Corps' jurisdiction to extend beyond just navigable waters, their tributaries, and the wetlands adjacent to each.

In dismissing the significance of §404(g)(1), the majority quotes out of context language in the very same 1977 Senate Report that I have quoted above. *Ante*, at 10, n. 6. It is true that the Report states that "[t]he committee amendment does not *redefine* navigable waters." S. Rep. No. 95-370, at 75, reprinted in 4 Leg. Hist. of CWA 708 (emphasis added). But the majority fails to point out that the quoted language appears in the course of an explanation of the Senate's refusal to go along with House efforts to *narrow the scope* of the Corps' CWA jurisdiction to traditionally navigable waters. Thus, the immediately preceding sentence warns that "[t]o limit the jurisdiction of the [FWPCA] with reference to discharges of the pollutants of dredged or fill material would cripple efforts to achieve the act's objectives." ¹⁴ *Ibid.* The Court would do

¹⁴In any event, to attach significance to the Report's statement that the committee amendments do not "redefine navigable waters," one must first accept the majority's erroneous interpretation of the 1972 Act. But the very Report upon which the majority relies states that "[t]he 1972 [FWPCA] exercised *comprehensive jurisdiction* over the

well to heed that warning.

The majority also places great weight, *ante*, at 10, on our statement in *Riverside Bayview* that §404(g) "does not *conclusively* determine the construction to be placed on the use of the term waters elsewhere in the Act," 474 U. S., at 138, n. 11 (emphasis added). This is simply more selective reading. In that case, we also went on to say with respect to the significance of §404(g) that "the various provisions of the Act should be read *in pari materia*." *Ibid.* Moreover, our ultimate conclusion in *Riverside Bayview* was that §404(g) "suggest[s] strongly that the term waters as used in the Act" supports the Corps' reading. *Ibid.*

III

Although it might have appeared problematic on a "linguistic" level for the Corps to classify "lands" as "waters" in *Riverside Bayview*, 474 U. S., at 131-132, we squarely held that the agency's construction of the statute that it was charged with enforcing was entitled to deference under *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). Today, however, the majority refuses to extend such deference to the same agency's construction of the same statute, see *ante*, at 11-13. This refusal is unfaithful to both *Riverside*

Nations' waters to control pollution to the *fullest constitutional extent*." S. Rep. No. 95-370, at 75, reprinted in 4 Leg. Hist. of CWA 708 (emphases added). Even if the Court's flawed reading of the earlier statute were correct, however, the language to which the Court points does not counsel against finding congressional acquiescence in the Corps' 1975 regulations. Quite the contrary. From the perspective of the 1977 Congress, those regulations constituted the status quo that the proposed amendments sought to alter. Considering the Report's favorable references to the Corps' "continu[ing]" jurisdiction over phase 2 and 3 waters, the language concerning the failure of the amendments to "redefine navigable waters" cuts strongly against the majority's position, which instead completely excises phase 3 waters from the scope of the Act. *Ibid.*

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Bayview and *Chevron*. For it is the majority's reading, not the agency's, that does violence to the scheme Congress chose to put into place.

Contrary to the Court's suggestion, the Corps' interpretation of the statute does not "encroach" upon "traditional state power" over land use. *Ante*, at 12. "Land use planning in essence chooses particular uses for the land; environmental regulation, at its core, does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits." *California Coastal Comm. v. Granite Rock Co.*, 480 U. S. 572, 587 (1987). The CWA is not a land-use code; it is a paradigm of environmental regulation. Such regulation is an accepted exercise of federal power. *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264, 282 (1981).

It is particularly ironic for the Court to raise the specter of federalism while construing a statute that makes explicit efforts to foster local control over water regulation. Faced with calls to cut back on federal jurisdiction over water pollution, Congress rejected attempts to narrow the scope of that jurisdiction and, by incorporating §404(g), opted instead for a scheme that encouraged States to supplant federal control with their own regulatory programs. S. Rep. No. 95-370, at 75, reprinted in 4 Leg. Hist. of CWA 708 ("The committee amendment does not redefine navigable waters. Instead, the committee amendment intends to assure continued protection of *all the Nations' waters*, but allows States to assume the primary responsibility for protecting those lakes, rivers, streams, swamps, marshes, and other portions of the navigable waters outside the [C]orps program in the so-called phase I waters" (emphasis added)). Because Illinois could have taken advantage of the opportunities offered to it through §404(g), the federalism concerns to which the majority adverts are misplaced. The Corps' interpretation of the

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statute as extending beyond navigable waters, tributaries of navigable waters, and wetlands adjacent to each is manifestly reasonable and therefore entitled to deference.

IV

Because I am convinced that the Court's miserly construction of the statute is incorrect, I shall comment briefly on petitioner's argument that Congress is without power to prohibit it from filling any part of the 31 acres of ponds on its property in Cook County, Illinois. The Corps' exercise of its §404 permitting power over "isolated" waters that serve as habitat for migratory birds falls well within the boundaries set by this Court's Commerce Clause jurisprudence.

In *United States v. Lopez*, 514 U. S. 549, 558-559 (1995), this Court identified "three broad categories of activity that Congress may regulate under its commerce power": (1) channels of interstate commerce; (2) instrumentalities of interstate commerce, or persons and things in interstate commerce; and (3) activities that "substantially affect" interstate commerce. *Ibid.* The migratory bird rule at issue here is properly analyzed under the third category. In order to constitute a proper exercise of Congress's power over intrastate activities that "substantially affect" interstate commerce, it is not necessary that each individual instance of the activity substantially affect commerce; it is enough that, taken in the aggregate, the *class of activities* in question has such an effect. *Perez v. United States*, 402 U. S. 146 (1971) (noting that it is the "class" of regulated activities, not the individual instance, that is to be considered in the "affects" commerce analysis); see also *Hodel*, 452 U. S., at 277; *Wickard v. Filburn*, 317 U. S. 111, 127-128 (1942).

The activity being regulated in this case (and by the Corps' §404 regulations in general) is the discharge of fill material into water. The Corps did not assert jurisdiction

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over petitioner's land simply because the waters were "used as habitat by migratory birds." It asserted jurisdiction because petitioner planned to *discharge fill* into waters "used as habitat by migratory birds." Had petitioner intended to engage in some other activity besides discharging fill (*i.e.*, had there been no activity to regulate), or, conversely, had the waters not been habitat for migratory birds (*i.e.*, had there been no basis for federal jurisdiction), the Corps would never have become involved in petitioner's use of its land. There can be no doubt that, unlike the class of activities Congress was attempting to regulate in *United States v. Morrison*, 529 U. S. 598, 613 (2000) ("[g]ender-motivated crimes"), and *Lopez*, 514 U. S., at 561 (possession of guns near school property), the discharge of fill material into the Nation's waters is almost always undertaken for economic reasons. See V. Albrecht & B. Goode, *Wetland Regulation in the Real World*, Exh. 3 (Feb. 1994) (demonstrating that the overwhelming majority of acreage for which §404 permits are sought is intended for commercial, industrial, or other economic use).¹⁵

Moreover, no one disputes that the discharge of fill into "isolated" waters that serve as migratory bird habitat will, in the aggregate, adversely affect migratory bird populations. See, *e.g.*, 1 Secretary of the Interior, Report to Congress, *The Impact of Federal Programs on Wetlands: The Lower Mississippi Alluvial Plain and the Prairie Pothole Region 79-80* (Oct. 1988) (noting that "isolated,"

¹⁵The fact that petitioner can conceive of some people who may discharge fill for noneconomic reasons does not weaken the legitimacy of the Corps' jurisdictional claims. As we observed in *Perez v. United States*, 402 U. S. 146 (1971), "[w]here the *class of activities* is regulated and that *class* is within the reach of federal power, the courts have no power to excise, as trivial, individual instances of the class." *Id.*, at 154 (internal quotation marks omitted).

phase 3 waters "are among [the] most important and also the most threatened ecosystems in the United States" because "[t]hey are prime nesting grounds for many species of North American waterfowl . . ." and provide "[u]p to 50 percent of the [U. S.] production of migratory waterfowl"). Nor does petitioner dispute that the particular waters it seeks to fill are home to many important species of migratory birds, including the second-largest breeding colony of Great Blue Herons in northeastern Illinois, App. to Pet. for Cert. 3a, and several species of waterfowl protected by international treaty and Illinois endangered species laws, Brief for Federal Respondents 7.¹⁶

In addition to the intrinsic value of migratory birds, see *Missouri v. Holland*, 252 U. S. 416, 435 (1920) (noting the importance of migratory birds as "protectors of our forests and our crops" and as "a food supply"), it is undisputed that literally millions of people regularly participate in birdwatching and hunting and that those activities generate a host of commercial activities of great value.¹⁷ The causal connection between the filling of wetlands and the

¹⁶Other bird species using petitioner's site as habitat include the "Great Egret, Green-backed Heron, Black-crowned Night Heron, Canada Goose, Wood Duck, Mallard, Greater Yellowlegs, Belted Kingfisher, Northern Waterthrush, Louisiana Waterthrush, Swamp Sparrow, and Red-winged Blackbird." Brief for Petitioner 4, n. 3.

¹⁷In 1984, the U. S. Congress Office of Technology Assessment found that, in 1980, 5.3 million Americans hunted migratory birds, spending \$638 million. U. S. Congress, Office of Technology Assessment, *Wetlands: Their Use and Regulation* 54 (OTA-O-206, Mar. 1984). More than 100 million Americans spent almost \$14.8 billion in 1980 to watch and photograph fish and wildlife. *Ibid.* Of 17.7 million birdwatchers, 14.3 million took trips in order to observe, feed, or photograph waterfowl, and 9.5 million took trips specifically to view other water-associated birds, such as herons like those residing at petitioner's site. U. S. Dept. of Interior, U. S. Fish and Wildlife Service and U. S. Dept. of Commerce, Bureau of Census, *1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* 45, 90 (issued Nov. 1997).

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decline of commercial activities associated with migratory birds is not "attenuated," *Morrison*, 529 U. S., at 612; it is direct and concrete. Cf. *Gibbs v. Babbitt*, 214 F. 3d 483, 492–493 (CA4 2000) ("The relationship between red wolf takings and interstate commerce is quite direct— with no red wolves, there will be no red wolf related tourism . . .").

Finally, the migratory bird rule does not blur the "distinction between what is truly national and what is truly local." *Morrison*, 529 U. S., at 617–618. Justice Holmes cogently observed in *Missouri v. Holland* that the protection of migratory birds is a textbook example of a *national* problem. 252 U. S., at 435 ("It is not sufficient to rely upon the States [to protect migratory birds]. The reliance is vain . . ."). The destruction of aquatic migratory bird habitat, like so many other environmental problems, is an action in which the benefits (*e.g.*, a new landfill) are disproportionately local, while many of the costs (*e.g.*, fewer migratory birds) are widely dispersed and often borne by citizens living in other States. In such situations, described by economists as involving "externalities," federal regulation is both appropriate and necessary. Revesz, *Rehabilitating Interstate Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environmental Regulation*, 67 N. Y. U. L. Rev. 1210, 1222 (1992) ("The presence of interstate externalities is a powerful reason for intervention at the federal level"); cf. *Hodel*, 452 U. S., at 281–282 (deferring to Congress' finding that nationwide standards were "essential" in order to avoid "destructive interstate competition" that might undermine environmental standards). Identifying the Corps' jurisdiction by reference to waters that serve as habitat for birds that migrate over state lines also satisfies this Court's expressed desire for some "jurisdictional element" that limits federal activity to its proper scope. *Morrison*, 529 U. S., at 612.

The power to regulate commerce among the several

States necessarily and properly includes the power to preserve the natural resources that generate such commerce. Cf. *Sporhase v. Nebraska ex rel. Douglas*, 458 U. S. 941, 953 (1982) (holding water to be an 'article of commerce'). Migratory birds, and the waters on which they rely, are such resources. Moreover, the protection of migratory birds is a well-established federal responsibility. As Justice Holmes noted in *Missouri v. Holland*, the federal interest in protecting these birds is of 'the first magnitude.' 252 U. S., at 435. Because of their transitory nature, they 'can be protected only by national action.' *Ibid.*

Whether it is necessary or appropriate to refuse to allow petitioner to fill those ponds is a question on which we have no voice. Whether the Federal Government has the power to require such permission, however, is a question that is easily answered. If, as it does, the Commerce Clause empowers Congress to regulate particular 'activities causing air or water pollution, or other environmental hazards that may have effects in more than one State,' *Hodel*, 452 U. S., at 282, it also empowers Congress to control individual actions that, in the aggregate, would have the same effect. *Perez*, 402 U. S., at 154; *Wickard*, 317 U. S., at 127-128.¹⁸ There is no merit in petitioner's constitutional argument.

Because I would affirm the judgment of the Court of Appeals, I respectfully dissent.

¹⁸JUSTICE THOMAS is the only Member of the Court who has expressed disagreement with the 'aggregation principle.' *United States v. Lopez*, 514 U. S. 549, 600 (1995) (concurring opinion).



RECORDS CERTIFICATION



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William J. Carter

Signature of Camera Operator

10/14/2003

Date

OVERVIEW

WELL.

COURT

2/2/01

Wellness Court

Naltrexone

A. A.

Nalgroup

Abstinence

Work

Frequent Appearances Before the Judge

Defendant's Physical Placement

HAP/EM: Bail

House Arrest, Program
Electronic Monitoring as
Condition of Bail

With Sobrieter

CRC: Bail

Community Residential
Center as condition of Bail

With Monitoring

T.P.C.: Bail

Third Party Custodian as
condition of Bail

Informal Monitoring

Residential
Treatment Providers

With Monitoring

HAP/EM: Jail

Serving Jail time on house
arrest program/Electronic
Monitoring

With Sobrieter

CRC: Jail

Community Residential
Center

With Monitoring

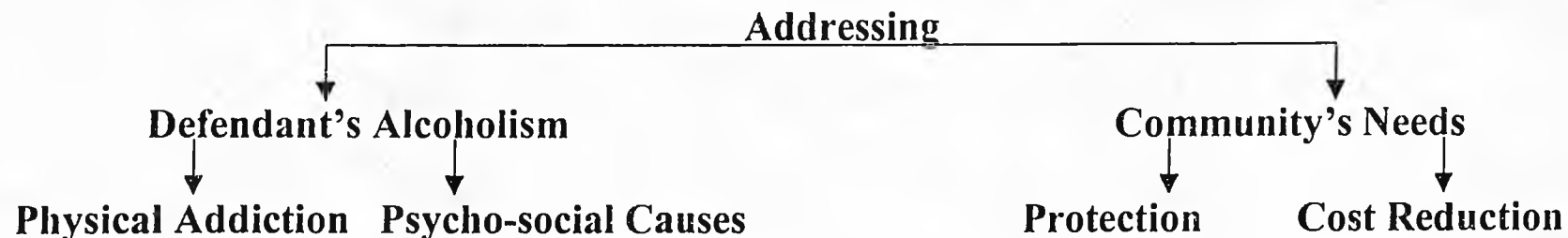
Additional Treatment

Outpatient Treatment
Providers

M. R. T.
Moral Reconciliation Therapy

Anchorage's Wellness Court for Alcoholic Offenders

A Comprehensive Approach towards Reducing Relapse and Rearrest



Components:

- 1. Frequent appearances before the same judge**
- 2. In-court recognition of progress/quick sanction for relapse**
- 3. Emphasis on personal responsibility: Moral Reconciliation Therapy**
- 4. Strong monitoring program to enforce long-term abstinence**
- 5. Appropriate physical placement or housing**
- 6. Treatment of physical addiction: medical care and Naltrexone**
- 7. Treatment of psycho-social causes: various treatment providers to fit individual needs**
- 8. Alcohol-free work**
- 9. Supportive friends and associates: NALGROUP and AA**
- 10. Case coordination to assist participant in developing a plan for all of the above, and in successfully implementing his or her plan**

Wellness Court Team

Judge Jim Wanamaker
Anchorage District Court

Janet McCabe
Chair, Partners for Downtown Progress
Program development and outreach

Barbara Bennett
Program Manager, Partners for Downtown Progress
Assisting participants to plan and implement their programs for lasting recovery from alcohol addiction

Municipal Case Coordinator
Represented by John Richard, Municipal Prosecutor
Identifying likely candidates, monitoring their progress and coordinating with the Judge

Dan Wilkerson
Assistant Municipal Prosecutor

Mike Logue
Hank Graper
Gorton and Logue – Municipal Defense Firm

Gail Floyd
Anchorage Alcohol Safety Action Program (AASAP)
Information, insights and coordination

Keith Thayer
House Arrest Program/Electronic Monitoring (HAP/EM)
Supervision and monitoring during treatment

Mike Krukar
NALGROUP
Leading weekly group for people on Naltrexone therapy

FREE NALTREXONE ORIENTATION PROGRAM PUBLIC INVITED

The Alaska Court System will provide a monthly orientation program concerning court programs involving the anti-alcohol drug Naltrexone. This program introduces and explains the use of Naltrexone as a part of alcohol treatment. The promise of Naltrexone is significant. When administered for 90 days, the drug can block an individual's opioid receptors resulting in a loss of craving for alcohol. A panel of medical experts (presented by video replay of a July 14, 1999 seminar) discusses case studies and ways to implement the use of Naltrexone. The Naltrexone Treatment Order will be explained. Printed materials will be provided.

- How the drug, Naltrexone, is used in alcohol treatment
- How Naltrexone works in conjunction with traditional alcohol treatment programs - case studies
- How the courts will use Naltrexone as a sentencing alternative. The Naltrexone Order will be explained.
- How much Naltrexone costs
- How Naltrexone can work in bail and probation programs

LOCATION OF ALL PROGRAMS:

**Courtroom 15 (first floor)
BONEY COURTHOUSE
303 K Street
Anchorage, Alaska 99501**

PROGRAM WILL BE PRESENTED ON THE FOLLOWING WEDNESDAYS. 7 P.M. TO 9 P.M.:

September 6, 2000
October 4, 2000
November 1, 2000
December 13, 2000

January 3, 2001
February 7, 2001
March 7, 2001
April 4, 2001

May 2, 2001
June 6, 2001
July 11, 2001
August 1, 2001

September 5, 2001
October 3, 2001
November 7, 2001
December 5, 2001

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COPIES

Making the Case for Hands-On Courts

Judges are learning that a problem-solving approach can stop the cycles of drug use and dysfunction

By JUDITH S. KAYE

WHEN I GRADUATED FROM law school back in 1962, becoming a judge was the farthest thing from my mind. Not that the idea wasn't appealing. I was intrigued by the intellectual challenges that the job posed as well as the opportunity to "do justice" and make a difference in people's lives. It's just that the obstacles were daunting, especially for a woman. Still, I could dream, couldn't I?

Fast-forward to 1999. For the past six years I have served as New York's chief judge. As head of a branch of government with more than 15,000 employees and 4 million new cases a year, I've seen firsthand what it takes to keep the wheels of justice turning. I have also seen that, overwhelmingly, the New York courts discharge their heavy responsibility with great care, working diligently to achieve the goal of equal justice under law.

But I'm not writing this essay to hand out congratulations. I'm writing because that dream of 1962 doesn't quite line up with the reality of 1999. "Doing justice," I find, is a lot tougher than my textbooks ever suggested.

Let's face facts: many of the cases in state courts today are not complicated legal matters. But they do involve people with complicated lives. If you take a trip to criminal court or family court, you'll be reminded more of "M*A*S*H" than of "Perry Mason." Judges grapple with dockets driven by drug abuse, domestic violence and family dysfunction. These are new issues for the courts, and yet judicial responses tend to be firmly rooted in the past.

Not surprisingly, in many of today's cases, the traditional approach yields unsatisfying results. The addict arrested for drug dealing is adjudicated, does time, then goes right back to dealing on the street. The battered wife obtains a protec-

tive order, goes home and is beaten again. Every legal right of the litigants is protected, all procedures followed, yet we aren't making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts.



'The flood of cases shows no sign of letting up. We can bail faster or look for new ways to stem the tide.'

The volume of our dockets demands efficient management. But processing more cases more quickly isn't the whole answer. We also need to take a step back and ask, "Is there a better way to do this?" In fact, across the country, some judges are starting to rethink business as usual.

Here in New York we now have 15 drug courts that direct nonviolent defendants to strictly supervised drug treatment instead of prison, halting the revolving door of drugs-crime-jail. We're also testing that

model in family court to stop the devastating cycle of drugs-child neglect-foster care. We're developing "community courts" that seek to restore distressed New York neighborhoods by making low-level, nonviolent offenders pay for their deeds by removing graffiti and cleaning streets. And half a dozen domestic-violence courts put immediate emphasis on victim safety and defendant accountability.

In these new courts, judges are active participants in a problem-solving process. In the drug courts, judges oversee defendants in drug treatment—cheering them when they achieve sobriety and sanctioning them (perhaps with a weekend jail stay) if they fall back a step.

What's so different about this approach? First is the court's belief that we can and should play a role in trying to solve the problems that are fueling our caseloads. Second is the belief that outcomes—not just process and precedents—matter. Protecting the rights of an addicted mother is important.

So is protecting her children and getting her off drugs.

Third is the recognition that courts' coercive powers can change people's behavior. We know, for example, that a defendant in court-ordered drug treatment is twice as likely to complete the program as someone who gets help voluntarily. Finally, we've learned that courts can't carry out this problem-solving role alone. Collaborations with government agencies and community groups are essential.

Do problem-solving courts raise new questions about the roles of judges and attorneys? You bet. But anyone who doubts the potential of this approach needs to attend a family-treatment-court graduation, as I did recently. There were a lot of happy tears—including mine—as eight formerly addicted mothers were reunited in record time with their kids who had been in foster care.

Some may argue that such hands-on involvement clashes with our branch's traditional dignity and reserve. But what's the alternative?

The flood of cases shows no sign of letting up. We can either bail faster or look for new ways to stem the tide.

With a problem-solving attitude, we can make a real difference in the lives of litigants and in the communities in which we all live. And in the end, that comes pretty close to the dream that drew so many of us to the law, and to judicial service, in the first place.

KAYE is chief judge of the state of New York.

CONCLUSIONS

This article has summarized findings from the existing evaluations of both older and newer treatment courts. Although the evaluations vary considerably in scope, methodology and quality, the results are consistent in finding that:

- (1) drug courts have been successful in engaging and retaining felony offenders in programmatic and treatment services who have substantial substance abuse and criminal histories but little prior treatment engagement;
- (2) drug courts provide more comprehensive and closer supervision of the drug-using offender than other forms of community supervision;
- (3) drug use and criminal behavior are substantially reduced while clients are participating in drug court;
- (4) criminal behavior is lower after program participation, especially for graduates, although few studies have tracked recidivism for more than one year post-program.
- (5) drug courts generate cost savings, at least in the short term, from reduced jail/prison use, reduced criminality and lower criminal justice system costs; and
- (6) drug courts have been quite successful in bridging the gap between the court and the treatment/public health systems and spurring greater cooperation among the various agencies and personnel within the criminal justice system, as well as between the criminal justice system and the community.

New Drugs for Treating Substance Abuse

Recent developments in drug research have awakened new hope for more effective substance abuse treatment. Naltrexone is among the first of the new wave of drugs that are supportive to treatment.

Research indicates that Naltrexone, when used with counseling emphasizing coping skills and relapse prevention, increases the client's chances for recovery. Naltrexone alone is not recommended. Naltrexone has been shown to be most effective in an outpatient setting.

Internet resources:

Naltrexone Course (2CEU)

<http://www.med.nyu.edu/substanceabuse/course/nall1.htm>

Naltrexone on the Web

<http://www.health.upenn.edu/~recovery/pros/nalnews.com>

<http://www.well.com/user/woa/revia/revhome.htm>

References:

Volpicelli, J.R.; Alterman, A.I.; and Hayashida M.; Naltrexone in the treatment of alcohol dependence. *Archives of General Psychiatry*, 1992, 49, 876-880.

O'Malley, S.S.; Jaffe, A.J.; and Chang, G.; Naltrexone and coping skills therapy for alcohol dependence. *Archives of General Psychiatry*, 1992, 49, 881-887.

Volpicelli, J.R.; Clay, K.L.; Watson, N.T.; and O'Brian, C.P.; Naltrexone in the treatment of alcoholism. *Journal of Clinical Psychiatry*, 1995, 56(7), 39-44.

Facts About Naltrexone. Toronto, Canada. Addiction Research Foundation, 1996, number 170, 195-96.

O'Malley, S., Ph.D., Panel Chair. *TIPS #28 Naltrexone and Alcoholism Treatment*. Rockville, Maryland. U.S. Dept. of Health & Human Services, SAMSHA, 1998.

MacIntosh, I.. *Guidelines for the Use of Naltrexone in the Treatment of Alcoholism*. Division of Alcoholism and Drug Abuse, 1999.

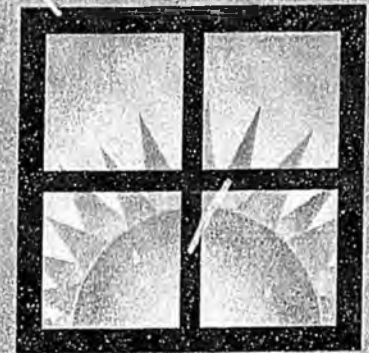


State of Alaska
Department of
Health and Social Services
Division of Alcoholism and Drug Abuse

3601 C Street, Suite 358
Anchorage, AK 99524-0249
(907) 269-3790
(907) 269-3786 fax
Statewide: 1-800-478-7677



naltrexone & the legal community



What the
Legal Community
Needs to Know
About Naltrexone

NALTREXONE

What the Legal Community Needs to Know— A Brief Guide to Using Naltrexone in the Treatment of Alcoholism

questions & answers

What is Naltrexone?

Naltrexone is a drug that dulls the craving for alcohol. Naltrexone used with professional counseling reduces relapse frequency and intensity.

Can a judge order an offender to take Naltrexone?

Yes. The Court may offer Naltrexone as an option in misdemeanor cases. In felony cases Alaska Statute AS28.35.030 (n) (4) says a judge may order a felony DWI to take "a drug or combination of drugs" as a condition of probation or parole.

What will Naltrexone do?

In a motivated person who wants to avoid relapse, Naltrexone has been shown to reduce the craving associated with alcohol. The result is lower and less frequent use.

How does Naltrexone work?

After passing medical screening, the person takes one 50mg tablet each day. While active, Naltrexone dampens the pleasurable effects of alcohol for up to 24 hours. A higher dose lasts longer. Naltrexone calms the pleasure centers of the brain and buffers against the effects of any alcohol taken. Desire for alcohol is reduced.

How effective is Naltrexone?

Naltrexone is clearly effective in about 50 to 75 percent of users when used in conjunction with a professional counseling regimen. It reduces the intensity and the frequency of relapse.

How do I write Naltrexone into the sentencing?

There is a standard sentencing form and format for misdemeanors and felonies available to judges and magistrates through the Anchorage Court. Contact Judge Wannamaker at (907) 264-0666 or the Division of Alcoholism & Drug Abuse in Anchorage at (907) 269-3790 or 1-800-478-7677 (state-wide).

What will be the cost?

Naltrexone costs about \$4.50 per day—far less than alcohol. Medicaid will cover up to four months of Naltrexone therapy for Medicaid eligible persons. The cost is estimated to run about \$550 to \$950 for four months.

Is Naltrexone available everywhere?

It is available through physicians and pharmacies. Not all pharmacies carry Naltrexone and it may have to be special ordered.

What works best with Naltrexone?

Studies have shown that Naltrexone works best in persons receiving professional counseling.

Are there side effects?

Naltrexone is a relatively safe drug. About three to ten percent of people using it report mild side effects lasting about two weeks. Symptoms include headache, nausea, dizziness, insomnia, anxiety, and/or sleepiness. Side effects must be regularly and routinely monitored. Side effects may be mitigated by dosage adjustment. Frequent monitoring is highly recommended throughout treatment.

Who can use Naltrexone?

Motivated persons who have completed a four to five day detox and are in an approved in- or out-patient treatment program can use Naltrexone.

Who shouldn't use Naltrexone?

- A person who is using opiates or other narcotics
 - A person who has serious liver or other serious health problems
 - A person who is pregnant
 - A person who is under age 18
- Anyone considering use of Naltrexone should first consult with his or her physician.

Where can I get more information about Naltrexone?

Contact your local substance abuse program or the Division of Alcoholism and Drug Abuse at (907) 269-3790 or 1-800-478-7677 (state-wide).

Naltrexone is most effective when used with counseling.

DUI/Drug Courts: Defining a National Strategy

Judge Jeff Tauber
Director

C. West Huddleston
Deputy Director

March 1999

A note from Judge Wanamaker

The Anchorage Wellness Court is modeled after the Butte County Court, adapted to Alaska legal requirements.

In reading this report it is important to know that Naltrexone is the generic name for the drug and that Re-Via is the Dupont Pharmaceutical brand name for Naltrexone. In other words, "Re-Via" and "Naltrexone" are synonymous. It is the same drug.

The conclusions of this study are found on pages 34 and 35 in the section marked "Outcomes".

The Anchorage Wellness Court has been in existence for just over one year. Twenty defendants were processed through the Wellness Court in this first and formative year. As soon as funding becomes available there will be studies of the program and effectiveness. In the interim, it is useful to look at this California study.



NATIONAL
DRUG COURT
INSTITUTE

Monograph Series 1

APPENDIX B: REVIA PROJECT

The Butte County ReVia Project

Hon. Darrell Stevens, Judge of the Butte County Superior Court
Helen Harberts, Chief Probation Officer
Jane E. Pfeifer, Drug Court Program Manager, Superior Court
Ian Redmond, Research Assistant

*Acknowledging the generous assistance of Percy Menzies & DuPont
Pharmaceuticals*

In 1996, Butte County Probation and the Butte County Superior Court teamed with members of the community to begin the ReVia Project. Initially planned as a 90-day trial project, ReVia quickly demonstrated value for a specific population of offender: the repeat drinking driver. Based upon that first series of cases, the ReVia Project was extended. It is now approximately two years out, and the results appear distinctly promising. In some cases, the results have been astounding. A preliminary review of the data reveals that ReVia is far and away the most successful method of dealing with high blood alcohol, repeat drunk drivers.

Butte County was one of three courts in the United States who directed the use of ReVia (generic name: naltrexone) as part of a court ordered treatment model. The model was designed as an expedited case processing system, where identified alcoholics would be moved quickly into the treatment process. Key to this treatment process was ingestion of ReVia (naltrexone).

Alcohol and Crime in Butte County

Butte County, California has just over 200,000 citizens. It is located in the north central valley of California, approximately 70 miles north of the state capitol, Sacramento. The area is predominately rural. The County has five major population areas, distributed in distinct areas of the county. The largest population is found in the Chico Urban Area (90,000). Chico is the home to California State University, Chico. This university has struggled for years with the reputation of being one of the top 10 party schools in the nation. Alcohol use plays a prominent role in the local culture.

In California, the presumptive level for driving under the influence (DUI) is .08. State law mandates jail sentences for DUI cases, with increased penalties for prior convictions, or a higher blood alcohol level upon arrest. A DUI with 3 prior convictions can be charged as a felony, and the defendant faces the California state prison system. Persons who have an extensive list of prior convictions and cannot perform safely in the community are sent to state prison.

Arrests in Butte County for driving under the influence, and alcohol related fatalities have been unacceptably high. During 1996 -1997, 25 people died in DUI cases. To address this issue, focused efforts of the California Highway Patrol, and the local police included increased patrol strategies, public education, DUI checkpoints and specialized training in early detection of drivers under the influence. The Chico Police Department developed the powerful nationally honored "Every 15 Minutes" intervention program. Utilizing members of the entire community, this program teaches high school students about the community wide impact which follows the choice to drive after drinking. It is noted that "Every 15 Minutes" someone is killed or injured by a person who chooses to drive after drinking. The Chico Police have also received special funding to address alcohol outlets. Using enforcement and educational strategies, they have reduced the level of excess consumption, and sales of package liquor to underage drinkers.

Many of these efforts have paid off. There is increased awareness regarding the issue of alcohol abuse and driving. However, there remains a core group of addicted drivers who continue to pose grave danger to the public, and occupy a significant portion of the community resources through health care, emergency services, police, court, jail and probation criminal justice costs. For these offenders, Butte County has created the ReVia Project.

ReVia in General

ReVia is a medication utilized for many years as a highly effective opiate treatment (referred to as an opioid receptor antagonist). Recently, it was determined that the brain pathways utilized by alcohol and opiates may be the same. Because of this, ReVia reduces or stops the cravings experienced by alcoholics during treatment. It is these cravings (physiological reactions which are triggered by behavioral cues) which interfere with an alcoholic's ability to complete a treatment program. While on ReVia, they can maintain sobriety long enough to successfully establish a pattern of behavior modification. At the end of 180 days, the client is examined for reduced use of ReVia.

Essentially, ReVia functions as a tool to aid recovery and treatment. It is not a "stand alone" treatment. While being utilized by these recovering alcoholics, ReVia functions in two manners: (1) it blocks cravings (2) there is no pleasure derived from drinking alcohol when the addict "tests" the medication. There is no "buzz" and no reward for drinking. Thus, if an alcoholic is sincerely working on behavior changes through treatment, true progress can be made.

In contrast to the results for traditional treatment and the utilization of Antabuse, the ingestion of ReVia suppresses the desire of alcohol (and the pleasure from consumption). Therefore, it allows traditional methods of substance abuse treatment to take hold. We have found that utilization of ReVia as part of the probationary terms and conditions blocks the cravings and allows the behavioral modification to take effect. The Court and Probation have adopted

a high intensity probation model to deal with repeat DUI cases. Based on the theory that the power of criminal justice system can be used as a therapeutic tool, the terms of probation are used as a "bottoming out" process to encourage sobriety. Strict accountability is required. The model is quite similar to that of Drug Court.

ReVia *can* be given with Antabuse, but we have not found that to be necessary. No physical or psychological dependency is attributed to the use of ReVia during the treatment period. DuPont Merck conducted a 12-week, double blind, placebo based trial of ReVia. When combined with traditional therapy, ReVia was significantly more successful (61%) than the placebo with the same therapy (22%) in preventing relapse. (*Archives of General Psychiatry*, 1992; 49:881-887) Further, those who did drink, did so on fewer days than the placebo group (2 and 6 days respectively) over the same 12 week period.

Persons who drink alcohol while taking ReVia *can* become intoxicated. ReVia does not interfere with the absorption of alcohol-it only interferes with the pleasure and cravings. Persons who are given ReVia must be screened through a liver panel prior to issuance of a prescription and administration of the medication. There are specific physical conditions that are not compatible with the administration of ReVia.

Additionally, it cannot be given to active opiate addicts. ReVia can be *extremely dangerous* if administered unknowingly to an active heroin or opiate addict. It is absolutely critical to make certain that the client is not using opiates, or has had a specified period of abstinence prior to the administration of opiates.

ReVia can *seem* expensive: up to \$535.00 per month. However, compared to the cost of alcohol, or a jail bed, it is quite inexpensive. Some defendants have had assistance with the costs from their families. Also, purchasing a supply one-week at a time assists with "sticker shock". The cost of a one-month supply *will* frighten many clients. It is easier to have them obtain a smaller amount.

We have learned that close physical monitoring by a physician will allow us to address any side effects which may occur without having to drop the person from the project. The "standard" dosage needs to vary slightly with the unique physiology of the probationer.

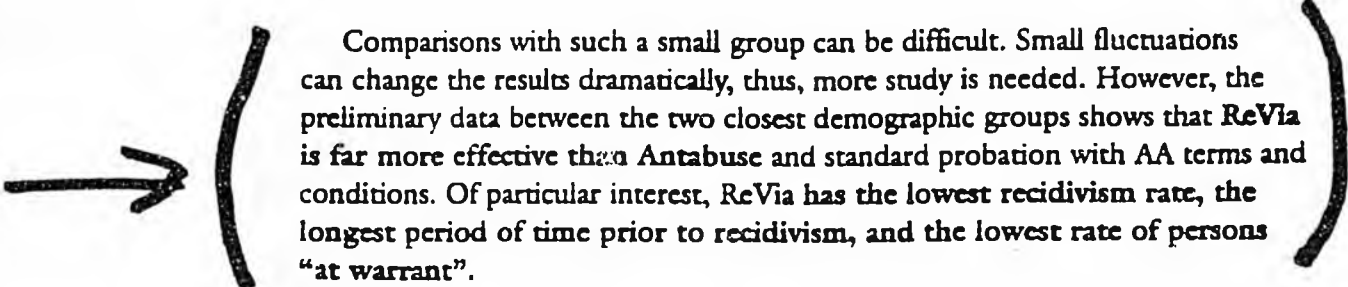
As always, public safety remains the #1 priority. Field visits to the homes of ReVia clients have been helpful. There have been occasions when arrests have been necessary. Terminations have resulted from new criminal charges (such as a child endangerment case) during the project, and for medical reasons.

ReVia: A Natural Outgrowth of Butte County Drug Court

Butte County has utilized a Drug Court for the past three years. The Drug Court has been quite successful and has wide spread community support. It was recently recognized as one of eight COPS mentor Drug Courts by the National Association of Drug Court Professionals (NADCP). The judge who partnered with Probation to create the ReVia Project is the presiding Judge of the Butte County Drug Court.

The next step for the ReVia Project is stabilized funding, and creation of a specialized ReVia track within the Butte County Drug Court. Upon review, it is believed that improved outcomes could be achieved by moving ReVia directly into a Drug Court format. Within the next few months, ReVia will be fully incorporated into the Butte County Drug Court program. Under the Drug Court design, weekly contacts and expectations on ReVia clients will increase, and the intensity of treatment will increase client accountability even further. More frequent testing will occur, but perhaps more importantly, ReVia clients will experience the immediate sanctions, excellent camaraderie, support and frequent praise which distinguishes Drug Court. This will reduce isolation, and assist in long term reinforcement for recovery.

Outcomes



Comparisons with such a small group can be difficult. Small fluctuations can change the results dramatically, thus, more study is needed. However, the preliminary data between the two closest demographic groups shows that ReVia is far more effective than Antabuse and standard probation with AA terms and conditions. Of particular interest, ReVia has the lowest recidivism rate, the longest period of time prior to recidivism, and the lowest rate of persons "at warrant".

Probation and Court records were reviewed to provide data on ReVia clients. Every participant studied was tracked through the records of the Department of Motor Vehicles, city police, and court records to verify if any persons re-offended. Re-offense was defined as any new criminal offense other than an infraction. The Butte County study has one advantage over previous studies on ReVia. Other studies covered a 4 to 12 week cycle, with monitoring for 6 months after ingestion. Butte County studied participants for an average of 29 weeks of ingestion and an average of 10 months since completion. Some offenders have now been tracked for almost 2 years.

No initial interviews were done on offenders to document their drinking patterns prior to acceptance. Random anecdotal information from clients includes admissions of drinking $\frac{3}{4}$ of a quart of whiskey per day, being drunk every day for 15 years, etc.

ReVia to clients, and to observe ingestion on a walk-in basis. DuPont generously assisted with informational support, and temporarily made a limited amount of the medication available to the truly indigent. They also provided assistance with gathering the statistics on the outcomes of this project.

Evaluation and Future Adjustments

The visual presentation of a ReVia case is profound. The project has had 15-year alcoholics successfully returned to stable sobriety. The changes in the physical appearance and attitude of these offenders is stunning in the level of contrast between before and after. While ReVia is not the "silver bullet" which will cure alcoholism, it is far and away the most effective tool used in Butte County to assist with treatment and reduce the extraordinary level of danger presented by the drinking driver.

It is believed that the utilization of ReVia (naltrexone) will be useful in a number of other contexts. The Court also orders ReVia treatment in domestic violence cases. It has obvious applications in the public inebriate, self-medicating mentally ill and homeless populations which plague most American cities. Most importantly, it offers *real hope* of control to an extremely dangerous population: the repeat drinking driver.

ReVia Project Protocol

1. Each defendant assigned to ingest ReVia through the Court's DuPont ReVia project will be placed on *formal* supervised probation.
2. At the time the defendant is sentenced by the Court, s/he will be provided with a form of ReVia Log and ordered to:
 - (a.) Immediately report to a physician for an examination and issuance of a prescription for ReVia (sometimes referred to as Naltrexone).
 - (b.) Show the physician the probation order so the physician is aware the defendant is a part of the Court's ReVia project, and further provide the Log form to the physician for his/her signature and insertion of the date of the issuance of the prescription.
 - (c.) Upon issuance of the prescription for ReVia, the defendant will report, with the prescription form to a Probation Officer, or their designee, at the Butte County Probation Department, on the first Wednesday at 2 p.m. following the Court appearance. The defendant will be indoctrinated and then directed by the probation officer to report to the pharmacy at Enloe Hospital Outpatient Center, to have the prescription filled, and to begin the ReVia regimen. The Probation Department will provide the name of the referred defendant to Enloe Hospital Outpatient Pharmacy.

- (d.) The defendant is to provide the Enloe Pharmacist, or his designee, the original of the prescription. The Pharmacist, or his designee, will then date and sign the log each time the defendant appears for ingestion of ReVia. The original of log will be kept at Enloe Hospital.
 - (e.) The pharmacy will be available for dispensing of ReVia and for logging in the ingestion by the defendant on Mondays, Wednesdays, Fridays, and Saturdays from 12:30 p.m. to 6:30 p.m.
 - (f.) Ingest ReVia three times per week, at Enloe Hospital Outpatient Center Monday, Wednesday, and Friday, and/or as directed by the Probation Officer.
 - (g.) The ReVia must be ingested at the Enloe Pharmacy unless the probation officer or their designee has approved another site for the ingestion upon prior request of the defendant.
3. Each probation order shall provide that the defendant is to:
 - (a.) Follow all orders and directions of the probation officer (paragraph C.1. (a) of the Court's standard conditions of probation.
 - (b.) Commence and continue a drug, alcohol, or other program (including attendance at NA/AA meetings), as directed by the probation officer (paragraph C.2 (a) of the Court's standard conditions of probation.
 - (c.) Totally refrain from the use, possession, etc. of alcohol and controlled substances, and submit to a search and test for the same, all as provided in paragraphs D.1, 4. And 5. Of the Court's standard conditions of probation.
 - (d.) Appear in court for his/her first review on a date 7 weeks from the date of sentencing, or as directed by the probation officer.
 4. At the 7 week review, the Court will be provided with a progress report from the Probation Officer and a recommendation as to whether or not the defendant should be continued on the ReVia program for the balance of the recommended three month regimen. If the defendant is continued on the program, at the 7-week review, a further review will be scheduled for a date which is 3 months from the date of the original sentencing.
 5. The defendant will report to the probation officer, or her designee, every two weeks at the beginning of the program. Such reporting requirement will be at the discretion of the Probation Officer.
 6. Each defendant is responsible for, and shall pay for, all medical expenses incurred for the cost of obtaining the prescription for ReVia. The drug itself is available through Medi-Cal, private insurance, or at your own expense. All laboratory tests and physician or clinic expenses will be paid by the defendant at the time s/he obtains the prescription for ReVia.

7. The Court is informed that most physicians (and certainly Chico Immediate Care) will require each defendant to be examined every 30 days for a new prescription.
8. Each defendant, of course, is free to consult any physician of his or her own choice. Defendants are to be informed that if they do not have another physician or clinic they wish to visit, the Court has discussed the ReVia project with Chico Immediate Care Medical Center, and that such clinic is familiar with the Court's requirements. Any physician with any questions should contact Officer Lopez, at the Probation Department.
9. A review will be scheduled for a date three months from the date of sentencing. At the time of this review, the Probation Officer will report to the Court on the defendant's performance of the terms of probation, and will provide the Court with a recommendation as to what further programs the officer believes are appropriate.
10. At the subsequent three-month review, the Probation Officer will provide the Court with a progress report and recommendation for future treatment. Specifically, the Probation Officer will make his/her recommendation for possible requirement of inpatient/outpatient treatment, counseling, continuation of the ReVia project, Antzabuse, AA, NA, etc: and whether the defendant should, then, be terminated from Formal Probation and placed on informal court probation.
11. The Court will expect COMPLETE AND FULL compliance with all terms of probation and directions of the probation officer by each defendant. The Probation Officer will be expected to institute a violation of probation proceeding pursuant to PC Section 1203.2 and to take any non-complying defendant into custody as the Probation Officer in his/her discretion (and as authorized by law) deems appropriate. Any defendant placed in custody for a violation will be produced in court at 12:30 p.m. on the next Wednesday following the date the defendant is placed into custody. If the defendant has not been taken into custody, she/he will be ordered to appear on the next Wednesday at 8:30 a.m. for further proceedings and action as deemed appropriate. If the defendant is on probation pursuant to an order made by the Oroville Court, the defendant will be produced in court at the next available date and time.
12. A copy of this protocol will be provided to each defendant placed in the ReVia Project.

Suggested legislation received from Janet McCabe.

(DRAFT - 1/23/01)

A BILL

FOR AN ACT ENTITLED

An Act concerning the establishment of Wellness Courts for persons addicted to alcohol; and providing for judicial discretion to reduce otherwise applicable mandatory minimum or presumptive terms of imprisonment for offenders who successfully complete long-term sobriety treatment programs as ordered by the Wellness Court.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

***Section 1. Legislative intent: Wellness Courts for alcohol addicted offenders.** It is the intent of the Legislature that there shall be established in the Alaska Court System a therapeutic court for alcohol addicted offenders. This court shall establish and expand the existing Wellness Court pilot project located in the Anchorage District Court, Third Judicial District. The Anchorage District Court pioneered the Wellness Court, and it is the most effective use of resources to build on that history and

authorize, within the Anchorage District Court, the added judicial position needed to establish and expand the Wellness Court.

It is the further intent of the Legislature that the Anchorage Wellness Court, with adaptations to fit differing local resources and cultural traditions, shall serve as a model for the subsequent establishment of Wellness Courts in other communities of Alaska.

It is further the intent of the Legislature that the Wellness Court generally be made available to defendants charged with misdemeanor crimes arising from addiction to or abuse of alcohol, including misdemeanor charges for driving under the influence of alcohol (DUI).

Finally, it is the intent of the legislature that the district court judges presiding over the Wellness Court be assigned pro tempore to the superior court for the purpose of hearing felony DUI cases in the Wellness Court when the presiding judge considers such assignments appropriate.

***Sec. 2. Purposes.** The purposes of the Wellness Court are lasting sobriety of offenders, protection of society from harms caused by alcohol-related crime, and long-term reduction of public costs relating to arrest, trial and incarceration.

***Sec. 3. Components.** Components of the Wellness Court program shall, to the extent feasible, include:

1. Early intervention to plan and initiate treatment for recovery from alcohol addiction.

2. Frequent appearances before the same judge, together with other Wellness Court participants.
3. In-court recognition of progress and quick sanction for relapses, creating a therapeutic dynamic within the courtroom.
4. Emphasis on personal responsibility.
5. Pharmaceutical treatment of the physical addiction to alcohol as prescribed and monitored by a physician.
6. A strong monitoring program to enforce long-term abstinence.
7. Appropriate physical placement or housing.
8. Treatment of underlying psycho-social causes of addiction.
9. Assistance in obtaining a constructive alcohol-free occupation.
10. Assistance in connecting with supportive friends and associates.
11. Case coordination to assist participants in planning for and accomplishing all of the above.
12. Collection of data about, and evaluation of, the effectiveness of the program.

***Sec. 4. Existing Community Resources.** To the extent feasible, the Wellness Court shall utilize existing public agencies, medical and treatment services, housing and other public, private and non-profit community services to provide the components listed in Section 3 above.

*Sec. 5. AS 22.15.190 is amended to read:

Sec. 22.15.190. Assignment of district judges and magistrates. Each district judge and each magistrate shall hold court at times and places that are assigned by the presiding judge of the superior court of the district. The presiding judge in any judicial district may assign any district judge who has training and experience in practices of therapeutic courts for persons addicted to alcohol or drugs to preside over therapeutic or Wellness Courts. Therapeutic or Wellness Courts are courts that emphasize early intervention to provide appropriate treatment for defendants who have addictions to alcohol or drugs. The presiding judge in any judicial district may assign any district judge or magistrate within the district to serve temporarily in any other judicial districts. Rules and procedures for temporary assignment including the emergency situation where a superior court judge is not readily available to assign a district judge or magistrate shall be as prescribed by the supreme court. (§ 14 ch 184 SLA 1959)

*Sec. 6. AS 22.15.020(a) is amended to read:

Sec. 22.15.020. Number of district judges and magistrates. (a) Except as hereinafter provided, each district court of the state shall have the number of district judges set out below opposite the name of the judicial district over which the court has jurisdiction:

First Judicial District3
Second Judicial District1
Third Judicial District[12] 13

***Sec.7.** AS 12.55 is amended by adding a new section, AS 12.55.176 to read:

Sec 12.55.176. Reduction of Minimum or Presumptive Terms of

Imprisonment. Wellness Court judges may defer sentencing while defendants are under court ordered treatment programs, and are not bound by otherwise applicable mandatory minimum or presumptive terms of imprisonment in sentencing defendants who successfully fulfill their Wellness Court treatment orders.

BERNALILLO COUNTY



**METROPOLITAN
DWI/DRUG COURT**

**BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
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Probation Division

State of New Mexico
Bernalillo County
Metropolitan Court

401 Roma NW
P. O. Box 133
Albuquerque, NM 87103
Phone: (505) 841-8170
Fax: (505) 841-8249

DWI/DRUG COURT OVERVIEW

In response to the serious drug and alcohol problem our community faces, the Bernalillo County Metropolitan DWI/Drug Court Program was implemented by Judge J. Michael Kavanaugh in July 1997.

The Bernalillo County Metropolitan DWI/Drug Court Program is a post conviction, pre-sentence, voluntary program that utilizes a multi-faceted approach. The three phase program consists of intensive supervision of clients by probation officers, frequent appearances before the DWI/Drug Court Judge, mandatory drug and alcohol counseling, regular attendance at a self help group (AA, NA or CA) and random drug testing. The first three phases operate on a point system of progression. For each completed activity, whether the activity is a meeting with the Probation Officer, or going to counseling, the defendant will receive one point. When the allotted points are reached for that particular phase, the defendant will advance to the next phase. Upon completion of the three phases, defendants will advance into a minimum three-month aftercare component, which is monitored by the Volunteers in Probation (VIP) Program. There is no point system in this phase. The Aftercare Component places an emphasis on 12-step participation and continued sobriety maintenance.

Taking into consideration the number of alcohol related offenses and the significant costs these violations cause our community, the Bernalillo County Metropolitan DWI/Drug Court Program has become primarily an alcohol based program. Individuals with alcohol problems are required to meet the same strict requirements of the "drug court model" that other substance abusers in the program are mandated to complete. In short, the Bernalillo County Metropolitan DWI/Drug Court Program treats a drug as a drug and an addict as an addict, regardless of the drug of choice.



CHAMBERS OF
J. MICHAEL KAVANAUGH
CHIEF JUDGE
DIVISION THIRTEEN

STATE OF NEW MEXICO
BERNALILLO COUNTY
METROPOLITAN COURT

401 ROMA AVE. NW
P.O. BOX 133
ALBUQUERQUE, N.M. 87103
PHONE: (505) 841-5193

July 3, 1997

MEMORANDUM

TO: All Criminal Division Judges &
All Probation Officers

FR: Chief Judge J. Michael Kavanaugh

RE: Referrals to Drug Court Pilot Program

We are ready to get started with the Drug Court Pilot Program I spoke of at a Judges meeting several months ago. I will be the Drug Court Judge and Mark Pickle is the Drug Court Probation Officer. Judge Brown has agreed to help with this project and will be my backup whenever that becomes necessary.

Mark Pickle will be distributing a program description sometime next week (7-7 thru 7-11). I would like for each Criminal Division Judge to refer one case to this program if you are willing to do so. The referral can come after a Plea & Disposition is entered into and prior to any Judgement & Sentence being entered. Probation officers can notify the sentencing judges of likely candidates. The defendant and defense counsel will have to agree to transfer the case to my division and to continue the sentencing pending either successful completion of the program or expulsion from the program. I would then become the sentencing judge. Additional referrals will be requested in the future as we acquire more funding for treatment. Also, we will report the participant's progress to the judge who made the referral.

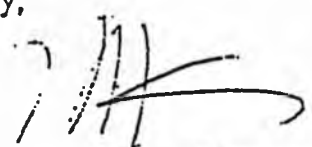
Although our focus will be on subsequent DWI offenders, we recognize that many of our shoplifters are addicted to hard drugs and steal to support their addiction. We will also consider those defendants as long as they don't have a record a mile long.

I look forward to working with you on this new project and I know you join me in hoping that this new modality will work to reduce recidivism in our community.

Page 2

If you have any questions, please see me or Mark Pickle. Thank you.

Sincerely,



Chief Judge J. Michael Kavanaugh

xc: Toby Martinez, Court Administrator
Bennina Armijo-Sisneros, Deputy Court Administrator

CITY OF ALBUQUERQUE



POLICE DEPARTMENT

400 ROMA N.W., ALBUQUERQUE, NEW MEXICO 87102

CHIEF OF POLICE JOSEPH M. POLISAR

May 28, 1997

Ms. Marilyn Roberts
Office of Justice Programs
c/o Robert Klein
Administrative Office of the Courts
237 Don Gaspar
Santa Fe, NM 87501

RE: Letter of Support - Bernalillo County Metropolitan Court - Drug Court Pilot Program

Dear Ms. Roberts:

This letter comes to you in support of the efforts of the Bernalillo County Metropolitan Court to implement a Drug Court for DWI Offenders. It is my understanding that Chief Judge J. Michael Kavanaugh is committed to initiating this pilot program in his division and will become the Drug Court Judge for the Court.

The Albuquerque Police Department is continually faced with defendants that come through the system more than once with this type of offense. As you are probably aware, New Mexico has a very high fatality rate due to drunk/drugged drivers. It is hoped that this initiative, which includes mandatory treatment, intensive supervision by probation officers, frequent face-to-face meetings with the Drug Court Judge and random drug testing, will become a means to reduce re-arrests for DWI offenses as well as to help participants gain control of their lives and become productive members of our community.

Should you have any questions, please do not hesitate to contact me at (505) 768-2200.

Sincerely,

JOSEPH M. POLISAR
Chief of Police

"In Step With Our Community"

METROPOLITAN DWI/DRUG COURT ELIGIBILITY CRITERIA

DWI Cases

- ◆ Defendants convicted of three but not more than five DWI's as an adult.
- ◆ No DWI cases involving crashes resulting in serious injury.

Other Criminal Cases

- ◆ Defendants convicted of a crime, which is the direct result of the defendant's substance abuse or addiction.
- ◆ Offense must be non-violent.
- ◆ No defendants with prior violent felony convictions.

**All potential DWI/Drug Court cases will be screened by a Metro DWI/Drug Court Probation Officer.

BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT

PHASE I: Focus on Substance Abuse Education/Prevention

- A. Requirements:
1. Report to Probation Officer in person at least twice per week and/or as directed by Probation officer.
 2. Attend substance abuse counseling and/or group sessions as directed by the treatment provider.
 3. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least twice weekly as directed by the Probation Officer or treatment provider.
 4. Attend DWI/Drug Court at least twice a month.
 5. Attend at least one 12-step meeting per week and provide written verification as directed by Probation Officer.
 6. Obtain a sponsor. Contact sponsor at least once per week and provide written verification as directed by Probation Officer.
 7. Complete acupuncture as directed by treatment provider.
 8. Take antabuse if ordered and prescribed.
- B. Sanctions for non-compliance:
1. **First** positive drug or alcohol test will result in a mandatory appearance before the DWI/Drug Court Judge and possibly one to three day (s) in jail, as well as a reduction in points.
 2. **Second** positive drug or alcohol test will result in between one and seven days in jail, as well as a reduction in points.
 3. **Third** positive drug or alcohol test will result in between three and seven days in jail, as well as a reduction in points.
 4. The next positive drug or alcohol test will result in expulsion from the program and immediate imposition of sentence by the DWI/Drug Court Judge.
 5. Any defendant who tests positive for drugs or alcohol is required to repeat this phase.

Points required to complete PHASE I: 70

*****EACH COMPLETED ACTIVITY EQUATES TO ONE POINT.*****

PHASE II: Focus on Relapse Prevention

- A. Requirements:
1. Report to Probation Officer in person at least once each week and/or as directed by Probation Officer.
 2. Attend substance abuse counseling and/or group sessions as directed by the treatment provider.
 3. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least twice weekly as directed by Probation Officer or treatment provider.
 4. Attend DWI/Drug Court at least once a month.
 5. Attend at least one 12-step meeting per week and provide written verification as directed by Probation Officer.
 6. Continue to contact sponsor at least once per week and provide written verification as directed by Probation Officer.
 7. Complete 10 hours community service.
 8. Attend the Victim Impact Panel.
 9. Take Antabuse if ordered and prescribed.

- B. Additional requirements MAY include:
 - 1. Additional Group meetings.
 - 2. Acupuncture treatment as needed or recommended.
- C. Sanctions for non-compliance
 - 1. Any defendant who tests positive for drugs or alcohol during Phase II of the program will be returned to Phase I and required to complete all of the requirements of Phase I.
 - 2. The DWI/Drug Court Judge may impose additional consequences including, but not limited to, jail (based upon defendants history of non-compliance).
 - 3. Defendants will only be allowed to return to Phase I one time. A second positive test for drugs or alcohol will result in the defendant being returned to court for sentencing.

Points required to complete PHASE II: 62
 *****EACH COMPLETED ACTIVITY EQUATES TO ONE POINT*****

PHASE III: FOCUS ON SOBRIETY MAINTENANCE

- A. Requirements:
 - 1. Report to Probation Officer in person at least twice monthly and/or as directed by Probation Officer.
 - 2. Attend substance abuse counseling and/or group sessions as directed by treatment provider.
 - 3. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least twice weekly as directed by the Probation Officer or treatment provider.
 - 4. Attend DWI/Drug Court at least once per month.
 - 5. Attend at least one 12-step meeting per week and provide written verification as directed by Probation Officer.
 - 6. Continue to contact sponsor at least once per week and provide written verification as directed by Probation Officer.
 - 7. Complete 20 hours community service.
 - 8. Take antabuse if ordered and prescribed.
- B. Additional requirements MAY include:
 - 1. Additional group meetings.
 - 2. Acupuncture as needed or recommended.
- C. Sanctions for non-compliance.
 - 1. Any defendant who tests positive for drugs or alcohol during Phase III of the program will be returned to Phase II and required to complete all the requirements of Phase II.
 - 2. The DWI/Drug Court Judge may impose additional consequences including, but not limited to, jail (based upon defendant's history of non-compliance).

Points required to complete PHASE III: 57

*****EACH COMPLETED ACTIVITY EQUATES TO ONE POINT.*****
Total points required to advance to the Aftercare Program: 189

AFTERCARE: TRANSITION AND SOBRIETY MAINTENANCE

A. Requirements:

1. Contact the Volunteers in Probation (VIP) program as directed by Probation Officer.
2. Report to Volunteers in Probation (VIP) at least twice per month in person and at least twice per month by phone.
3. Attend an Aftercare group session every week until 12 aftercare group sessions are completed.
4. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least three times per month as directed by treatment provider, VIP, or Probation Officer.
5. Attend at least one 12-step meeting per week and provide written verification as directed by VIP.
6. Continue to contact sponsor at least once per week and provide written verification as directed by VIP.
7. The aftercare phase of the DWI/Drug Court Program is client funded at a rate of \$50.00 per month.

B. Sanctions:

1. Sanctions during the aftercare phase will be the same as the first three phases of the program.
2. Any defendant who tests positive for drugs or alcohol during the aftercare phase of the program will be returned to Phase III and required to complete all requirements of Phase III. The defendant will also be transferred back to a DWI/Drug Court Probation Officer for supervision.

*****Formal completion of the DWI/Drug Court Program includes sentencing and fulfillment of all sentencing requirements.****

**BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
PHASE I CONTRACT**

NAME: _____

CASE # (s): _____

In addition to the "General Conditions of Release," you will also be required to:

1. Report to Probation Officer in person at least twice per week and/or as directed by Probation Officer.
2. Attend substance counseling and/or group sessions as directed by treatment provider.
3. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least twice weekly as directed by Probation Officer or treatment provider.
4. Attend DWI/Drug Court at least twice a month.
5. Attend at least one 12-step meeting per week and provide written verification as directed by Probation Officer.
6. Obtain a sponsor. Contact sponsor at least once per week and provide written verification to the treatment provider.
7. Complete acupuncture as directed by treatment provider.
8. Take antabuse if ordered and prescribed.
9. Other: _____

Total number of points required to complete Phase I: 70

I understand and agree to abide by all the conditions of Phase I. Any violation of these conditions may result in possible incarceration, reduction of points or expulsion from DWI/Drug Court.

Defendant

Probation Officer

Date

**BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
PHASE II CONTRACT**

NAME: _____

CASE# (S): _____

In addition to the "General Conditions of Release," you will also be required to:

1. Report to Probation Officer in person at least once each week and/or as directed by Probation Officer.
2. Attend substance abuse counseling and/or group sessions as directed by the treatment provider.
3. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least twice weekly as directed by Probation Officer or treatment provider.
4. Attend DWI/Drug Court at least once a month.
5. Attend at least one 12-step meeting per week and provide written verification as directed by Probation Officer.
6. Continue to contact sponsor at least once per week and provide written verification as directed by Probation Officer.
7. Complete 10 hours community service.
8. Attend the VICTIM IMPACT PANEL (VIP).
9. Take antabuse if ordered and prescribed.
10. Other: _____

Total number of points required to complete Phase II: 62

I understand and agree to abide by all the conditions of Phase II. Any violation of the above may result in possible incarceration, reduction of points, being returned to Phase I of the program or expulsion from DWI/Drug Court.

Defendant

Probation Officer

Date

**BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
PHASE III CONTRACT**

NAME: _____ CASE # (S): _____

In addition to the "General Conditions of Release," you will also be required to:

1. Report to Probation Officer in person at least twice monthly and/or as directed by Probation Officer.
2. Attend substance abuse counseling and/or group sessions as directed by the treatment provider.
3. Submit to random urinalysis and blood alcohol content (BAC) tests at least twice weekly as directed by Probation Officer or treatment provider.
4. Attend DWI/Drug Court at least once per month.
5. Attend at least one 12-step meeting per week and provide written verification as directed by Probation Officer.
6. Continue to contact sponsor at least once per week and provide written verification as directed by Probation Officer.
7. Complete 20 hours community service.
8. Take antabuse if ordered and prescribed.
9. Other: _____

Total number of points required to complete Phase III: 57

Total points required to advance to the Aftercare Program: 189

I understand and agree to abide by all the conditions of Phase III. Any violation of the above may result in possible incarceration, reduction in points, being returned to Phase II of the program or expulsion from DWI/Drug Court.

Defendant

Probation Officer

Date

**BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
AFTERCARE CONTRACT**

NAME: _____ CASE # (S): _____

In addition to the "General Conditions of Release," you will also be required to:

1. Contact the Volunteers in Probation (VIP) program as directed by Probation Officer.
2. Report to Volunteers in Probation (VIP) at least twice per month in person and at least twice per month by phone.
3. Attend an aftercare group session every week until 12 aftercare group sessions are completed.
4. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least three times per month or as directed by treatment provider, VIP, or Probation Officer.
5. Attend at least one 12-step meeting per week and provide written verification as directed by VIP.
6. Continue to contact sponsor at least once per week and provide written verification as directed by VIP.
7. Other: _____

I understand and agree to abide by all the conditions of the Aftercare contract. Any violation of these conditions may result in possible incarceration, being returned to Phase III, or expulsion from the program.

****Formal completion of the DWI/Drug Court Program includes sentencing and fulfillment of all sentencing requirements.****

Defendant

Probation Officer

Date

**BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
GENERAL CONDITIONS OF RELEASE**

1. Obey all laws. You must notify your Probation Officer of any citations or arrests immediately.
2. Notify Probation Officer of any changes in address or employment immediately. Do not leave the city of Albuquerque without permission from Probation Officer.
3. Do not associate with anyone who is breaking the law, on probation/parole, or convicted of a felony unless permission is granted by Probation Officer.
4. Do not use or possess any illegal drugs. Do not use any prescription drug without a valid prescription.
5. Do not drink or possess any alcoholic beverage(s).
6. You must obtain and maintain employment, attend school, or a combination of both.
7. Do not drive a motor vehicle without a valid driver's license.
8. You must comply with all DWI/Drug Court Contracts.

I understand and agree to abide by these General Conditions of Release and the specific conditions of the DWI/Drug Court Program.

Defendant

Probation Officer

Date

Case Number

**BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
SANCTIONS FOR NON-COMPLIANCE**

Any positive test, failure to submit to a urine drug screen or admittance to the use of drugs or alcohol will result in:

1. Mandatory appearance before the DWI/Drug Court Judge.
2. Incarceration
3. A reduction in points.
4. Additional sanctions may be imposed as deemed appropriate by the DWI/Drug Court Judge.

I understand the consequences to the above.

Defendant

Probation Officer

Date

Case Number

**Bernalillo County Metropolitan Court
DWI/Drug Court Pilot Program**

GOAL STATEMENT:

The goal is to promote public safety and reduce recidivism/re-arrest rates for persons, who upon conviction of a subsequent DWI or other low-level non-violent misdemeanor offenses, are found eligible and accepted for participation in an intensive supervision DWI/Drug Court Program.

PROBLEM STATEMENT:

New Mexico has suffered a negative reputation due to the high fatality rates attributed to drunk/drugged persons driving on our highways and streets. In FY 96, 5,194 new DWI cases were filed. Approximately 2,500 cases can be attributed to subsequent offenses. Data from the local detention center indicates that 100-125 detainees serving time in their facility are misdemeanor DWI offenders.

Key Component #1: Integration of alcohol and other drug treatment services with Justice system case processing.

Currently, DWI and other criminal misdemeanor cases are randomly assigned to Metropolitan Court Judges after the arraignment is held. DWI cases are conducted on the record (recorded via audio cassettes), and require a large amount of court resources to adjudicate because of due process requirements. As a result, the processing time is lengthier and impacts the pace of the criminal case docket. Upon random assignment, the case remains with the assigned Judge throughout the life of the case. Normally, subsequent offenders are sentenced to supervised probation, which includes jail, mandatory treatment, payment of fines and costs, and community service. Many of those cases are pled down to a first offense DWI and the jurisdiction of the Court is also reduced from 364 days to 90 days. Traditional probation does not allow for intensive supervision due to the heavy caseloads (80-100) each probation officer monitors. By implementing an intensive supervision DWI/Drug Court Pilot Program, the Court will, upon conviction or plea of guilty/no contest, continue the sentence while the defendant is participating successfully in the program; therefore, jurisdiction does not become an issue.

Key Component #2: Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants due process rights.

By working collaboratively, the DWI/Drug Court Team consisting of the DWI/Drug Court Judge, Probation Officer(s), District Attorney and Public Defender/Private Counsel can identify those defendants who would be appropriate referrals for this type of intensive, long term supervision program. At the same time, the defendant has been afforded right to counsel, jury trial (if requested), and the appeal process. Defendants, upon being found eligible, have the right to turn down the program.

The DWI/Drug Court Program will consist of mandatory treatment for alcohol/drugs, using the same community treatment provider utilized by Albuquerque's 2nd Judicial District Court. Mandatory drug testing and frequent face-to-face meetings with the DWI/Drug Court Team, i.e.,

the District Attorney, Public Defender/Private Counsel, and Probation Officers are components of the Court's nonadversarial approach to managing participants in the DWI/Drug Court Program.

Key Component #3: Eligible participants are identified early and promptly placed in the DWI/Drug Court program.

Upon conviction, the DWI/Drug Court Team will screen defendants and will collaborate as to the suitability of the defendant for the program by applying eligibility criteria in the screening process. Upon acceptance, the defendant will be oriented as to the program requirements. A program contract will be prepared and signed by the defendant and the assigned probation officer. The defendant will then be scheduled for an appointment with the community treatment provider to commence the treatment program. The DWI/Drug Court probation staff will be responsible for intensively supervising the participants. (See attached Treatment Program Outline description).

Key Component #4: Drug Courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

As part of Metro Court's DWI/Drug Court funding request, the Court is requesting funds to pay for subsidized treatment of participants who are unable to pay for treatment in order to not exclude eligible individuals from entering the program. The same treatment provider that is being used by the 2nd Judicial District Court's Drug Court Program will be providing treatment services to Metro Court's DWI/Drug Court Program participants. Metro Court's Pilot DWI/Drug Court Program is modeled after the successful program that has been in place at the 2nd Judicial District Court for approximately four years.

Metro Court's DWI/Drug Court probation staff and coordinator will be collaborating with local businesses and organizations involved with employment opportunities, literacy programs, and academic/vocational institutions to develop a bridge for assisting DWI/Drug Court participants with job and life skills development, reading programs, employment and other related issues pertaining to health, parenting, etc.

Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing.

Mandatory, random drug testing will be a routine component of Metro Court's DWI/Drug Court Program. DWI/Drug Court probation officers will be responsible for ensuring that drug testing is conducted by the treatment provider and the results made available to the DWI/Drug Court Judge/Team. Progressive sanctions will be imposed by the Court for continued violations. Clients who violate DWI/Drug Court policies will be ordered to serve time in jail. First-time offenders will be ordered to spend one to three days in jail, while second and subsequent offenses will require two to five days in jail. DWI/Drug Court participants who continue to violate policies may be terminated from the program.

Key Component #6: A coordinated strategy governs Drug Court responses to participants' compliance.

The DWI/Drug Court Team meets regularly to review cases in order to assess the progress of individual participants and to discuss imposition of sanctions. DWI/Drug court sessions are held in the evening at the Courthouse.

The program consists of long term intensive supervision, mandatory treatment, random drug testing and frequent face-to-face meetings with the DWI/Drug Court Judge, Probation Officers, District Attorney and Public Defender. The meetings with the assigned DWI/Drug court Probation Officer will be as often as daily and as seldom as twice a week. The meetings with the DWI/Drug Court Judge are held twice a month and the Court holds evening sessions so that the DWI/Drug Court Team can review progress more frequently. The program will incorporate progressive sanctions for non-compliance and positive reinforcement for full compliance with all program requirements.

Participants move through phases as they go through the treatment process. These phases include acupuncture, group and individual sessions, assessment for other areas of need, i.e., anger management, marital counseling, attendance at AA/NA meetings, frequent face-to-face meetings with the DWI/Drug Court Team, community service, and payment of a minimal fee for participating in the program.

Key Component #7: Ongoing judicial interaction with drug court participants is essential.

Chief Judge Kavanaugh has committed himself to be the DWI/Drug Court Judge and as such, he has actively participated in the Statewide Drug Court Task Force from its inception. He has visited other drug court sites, attended seminars, training conferences and was invited to Washington, DC in November 1998 to participate in the development of national strategy for DUI based drug court programs. He is keenly aware of the necessity of the invaluable involvement of the Judge in effectuating positive behavior changes in Drug Court participants. He is committed to meeting frequently with the participants and the DWI/Drug Court Team as well as scheduling evening sessions for participants to allow for those who have concerns with their employment obligations.

Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

The Administrative Office of the Courts (AOC) provides Metro Court's DWI/Drug Court Program with technical assistance and oversees quarterly programmatic and fiscal reporting requirements as determined by the Office of Justice Programs. Included in the Implementation Grant Application, the AOC has selected the University of New Mexico's Institute for Social Research to conduct a process and outcome evaluation of the Metro Court DWI/Drug Court Program. The Institute for Social Research is currently conducting an evaluation and applying federal evaluation standards to Metro Court's program. Staff from the Institute for Social Research meets regularly with the DWI/Drug Court Team to insure that the appropriate data is collected from DWI/Drug court participants and the various program components.

Key Component #9: Continuing interdisciplinary education promotes effective Drug Court planning, implementation, and operations.

Members of the Metro Court's DWI/Drug Court Team recently attended the 4th Annual NADCP Conference held in Washington, DC. In addition to attending training seminars, members of the team were invited to Washington, DC in November of 1998 to participate in a panel to develop national strategy for implementation of DUI based Drug Court programs.

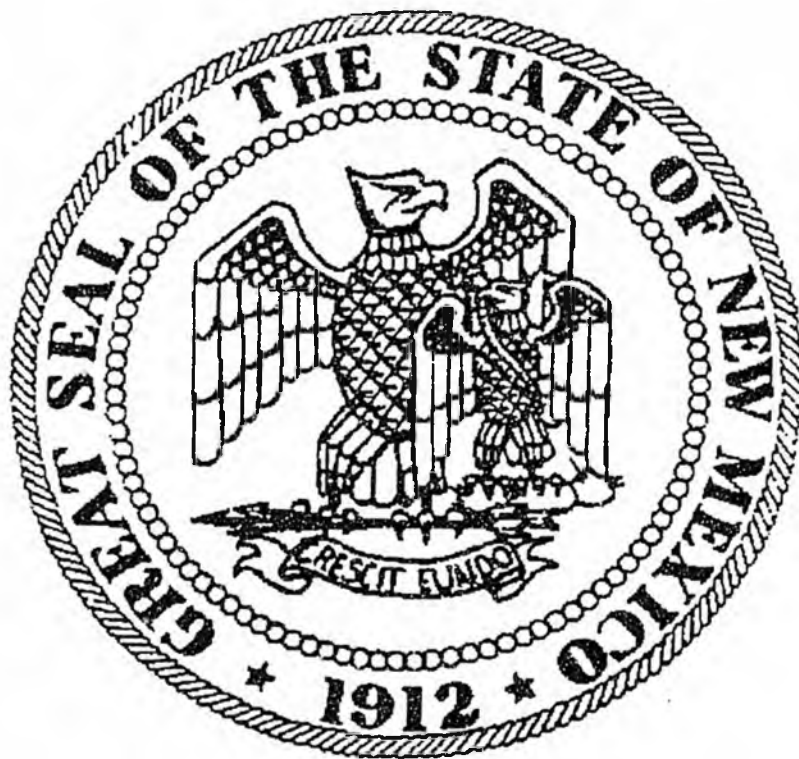
In conjunction with other Drug Courts around the state, Metro Courts DWI/Drug Court team has created the New Mexico Association of Drug Court Professionals which allows for further

development of educational opportunities within the state to promote the effectiveness of drug court programs and to educate New Mexico legislators of the benefits of funding these initiatives to more effectively address the issue of alcohol and drugs in our community and the devastation that they cause in terms of human suffering, broken families, lost jobs, deteriorating health, diminishing tax revenue, and loss of freedom due to becoming involved in the criminal justice system.

Key Component #10: Forging partnerships among Drug Courts, public agencies, and community based organizations generates local support and enhances Drug Court effectiveness.

It is envisioned that the Statewide Drug Court Task Force will continue to meet, thus, allowing members to share information, concerns, progress, and successes with other Drug Court counterparts throughout the State of New Mexico. Metro Courts program will include a DWI community activist and a member from law enforcement to participate in an advisory capacity and assist with understanding the concerns of the community relevant to the serious problem of drunk/drugged drivers on our streets. Metro Court staff have worked collaboratively with the Department of Health of the State of New Mexico to address issues of program effectiveness and evaluation, treatment criteria, sanctions, etc.

BERNALILLO COUNTY METROPOLITAN



DWI/DRUG COURT POLICY & PROCEDURE MANUAL

Mission Statement

The Bernalillo County Metropolitan DWI/Drug Court is a voluntary program which seeks to reduce substance abuse, crime, and recidivism by providing intensive supervision, treatment, and judicial oversight for alcohol and other drug dependant defendants. The Program focuses on the defendants living drug free in an environment filled with life's obstacles and pressures.

With the continuing problem of alcohol and substance abuse in Albuquerque, New Mexico, the DWI/Drug Court possesses the necessary components to impact positively on the community, the offender, and the victim through the reduction in the rate of recidivism.

Program Goals & Objectives:

In collaboration with local, state, and federal agencies, the Bernalillo County Metropolitan DWI/Drug Court Program's primary focus is to promote the public safety and reduce the recidivism rates for individuals convicted of subsequent DWI offenses as well as other non-violent misdemeanants with substance abuse problems. The results of addressing these problems include a reduction in drug and alcohol related crimes as well as expensive incarceration costs while returning a productive individual to the community.

DWI/DRUG COURT ELIGIBILITY CRITERIA

DWI Cases:

- ◆ Defendants convicted of three but not more than five DWI's as an adult.
- ◆ No DWI cases involving accidents resulting in serious injury.

Other Criminal Cases:

- ◆ Defendants convicted of a crime, which is the direct result of the defendant's substance abuse or addiction.
- ◆ Offense must be non-violent.
- ◆ No defendants with prior violent felony convictions.

**All potential DWI/Drug Court cases will be screened by a Metro DWI/Drug Court Probation Officer.

*Bernalillo County Metropolitan Court
DWI/Drug Court Program*

PROBLEM STATEMENT:

New Mexico has suffered a negative reputation due to the high fatality rates attributed to drunk/drugged persons driving on our highways and streets. In FY 96, 5,194 new DWI cases were filed. Approximately 2,500 cases can be attributed to subsequent offenses. Data from the local detention center indicates that 100-125 detainees serving time in their facility are misdemeanor DWI offenders.

Key Component #1: Integration of alcohol and other drug treatment services with Justice system case processing.

Currently, DWI and other criminal misdemeanor cases are randomly assigned to Metropolitan Court Judges after the arraignment is held. DWI cases are conducted on the record (recorded via audiocassettes), and require a large amount of court resources to adjudicate because of due process requirements. As a result, the processing time is lengthier and impacts the pace of the criminal case docket. Upon random assignment, the case remains with the assigned Judge throughout the life of the case. Normally, subsequent offenders are sentenced to supervised probation, which includes jail, mandatory treatment, payment of fines and costs, and community service. Many of those cases are pled down to a first offense DWI and the jurisdiction of the Court is also reduced from 364 days to 90 days. Traditional probation does not allow for intensive supervision due to the heavy caseloads (80-100) each probation officer monitors. By implementing an intensive supervision DWI/Drug Court Pilot Program, the Court will, upon conviction or plea of guilty/no contest, continue the sentence while the defendant is participating successfully in the program; therefore, jurisdiction does not become an issue.

Key Component #2: Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting defendants due process rights.

By working collaboratively, the DWI/Drug Court Team consisting of the DWI/Drug Court Judge, Probation Officer(s), District Attorney and Public Defender/Private Counsel can identify those defendants who would be appropriate referrals for this type of intensive, long term supervision program. At the same time, the defendant has been afforded right to counsel, jury trial (if requested), and the appeal process. Defendants, upon being found eligible, have the right to turn down the program.

The DWI/Drug Court Program will consist of mandatory treatment for alcohol/drugs, using the same community treatment provider utilized by Albuquerque's 2nd Judicial District Court. Mandatory drug testing and frequent face-to-face meetings with the DWI/Drug Court Team, i.e., the District Attorney, Public Defender/Private Counsel, and Probation Officers are components of the Court's nonadversarial approach to managing defendants in the DWI/Drug Court Program.

Key Component #3: Eligible participants are identified early and promptly placed in the DWI/Drug Court program.

Upon conviction, the DWI/Drug Court Team will screen defendants and will collaborate as to the suitability of the defendant for the program by applying eligibility criteria in the screening process. Upon acceptance, the defendant will be oriented as to the program requirements. A program contract will be prepared and signed by the defendant and the assigned probation officer. The defendant will then be scheduled for an appointment with the community treatment provider to commence the treatment program. The DWI/Drug Court probation staff will be responsible for intensively supervising the defendants. (See attached Treatment Program Outline description).

Key Component #4: Drug Courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

As part of Metro Court's DWI/Drug Court funding request, the Court is requesting funds to pay for subsidized treatment of defendants who are unable to pay for treatment in order to not exclude eligible individuals from entering the program. The same treatment provider that is being used by the 2nd Judicial District Court's Drug Court Program will be providing treatment services to Metro Court's DWI/Drug Court Program defendants. Metro Court's DWI/Drug Court Program is modeled after the successful program that has been in place at the 2nd Judicial District Court for approximately four years. Metro Court's DWI/Drug Court probation staff and coordinator will be collaborating with local businesses and organizations involved with employment opportunities, literacy programs, and academic/vocational institutions to develop a bridge for assisting DWI/Drug Court defendants with job and life skills development, reading programs, employment and other related issues pertaining to health, parenting, etc.

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Mandatory, random drug testing is a routine component of Metro Court's DWI/Drug Court Program. DWI/Drug Court probation officers will be responsible for ensuring that drug testing is conducted by the treatment provider and the results made available to the DWI/Drug Court Judge/Team. Progressive sanctions will be imposed by the Court for continued violations. Defendants who violate DWI/Drug Court policies will be ordered to serve time in jail. First-time offenders will be ordered to spend one to three days in jail, while second and subsequent offenses will require two to five days in jail. DWI/Drug Court defendants who continue to violate policies may be terminated from the program.

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The DWI/Drug Court Team meets regularly to review cases in order to assess the progress of individual defendants and to discuss imposition of sanctions. DWI/Drug court sessions are held in the evening at the Courthouse.

The program consists of long term intensive supervision, mandatory treatment, random drug testing and frequent face-to-face meetings with the DWI/Drug Court Judge, Probation Officers, District Attorney and Public Defender. The meetings with the assigned DWI/Drug court Probation Officer will be as often as daily and as seldom as twice a week. The meetings with the DWI/Drug Court Judge are held twice a month and the Court holds evening sessions so that the DWI/Drug Court Team can review progress more frequently. The program will incorporate progressive sanctions for non-compliance and positive reinforcement for full compliance with all program requirements.

Defendants move through phases as they go through the treatment process. These phases include acupuncture, group and individual sessions, assessment for other areas of need, i.e., anger management, marital counseling, attendance at AA/NA meetings, frequent face-to-face meetings with the DWI/Drug Court Team, community service, and payment of a minimal fee for participating in the program.

Key Component #7: Ongoing judicial interaction with drug court defendants is essential.

Judge Kavanaugh has committed himself to be the DWI/Drug Court Judge and as such, he has actively participated in the Statewide Drug Court Task Force from its inception. He has visited other drug court sites, attended seminars, training conferences and was invited to Washington, DC in November 1998 to participate in the development of national strategy for DUI based drug court programs. He is keenly aware of the necessity of the invaluable involvement of the Judge in effectuating positive behavior changes in Drug Court defendants. He is committed to meeting frequently with the defendants and the DWI/Drug Court Team as well as scheduling evening sessions for defendants to allow for those who have concerns with their employment obligations.

Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

The Administrative Office of the Courts (AOC) provides Metro Court's DWI/Drug Court Program with technical assistance and oversees quarterly programmatic and fiscal reporting requirements as determined by the Office of Justice Programs. Included in the Implementation Grant Application, the AOC has selected the University of New Mexico's Institute for Social Research to conduct a process and outcome evaluation of the Metro Court DWI/Drug Court Program. The Institute for Social Research is currently conducting an evaluation and applying federal evaluation standards to Metro Court's program. Staff from the Institute for Social Research meets regularly with the DWI/Drug Court Team to insure that the appropriate data is collected from DWI/Drug court defendants and the various program components.

Key Component #9: Continuing interdisciplinary education promotes effective Drug Court planning, implementation, and operations.

Members of the Metro Court's DWI/Drug Court Team recently attended the 4th Annual NADCP Conference held in Washington, DC. In addition to attending training seminars, members of the team were invited to Washington, DC in November of 1998 to participate in a panel to develop national strategy for implementation of DUI based Drug Court programs.

In conjunction with other Drug Courts around the state, Metro Courts DWI/Drug Court team has created the New Mexico Association of Drug Court Professionals which allows for further development of educational opportunities within the state to promote the effectiveness of drug court programs and to educate New Mexico legislators of the benefits of funding these initiatives to more effectively address the issue of alcohol and drugs in our community and the devastation that they cause in terms of human suffering, broken families, lost jobs, deteriorating health, diminishing tax revenue, and loss of freedom due to becoming involved in the criminal justice system.

Key Component #10: Forging partnerships among Drug Courts, public agencies, and community based organizations generates local support and enhances Drug Court effectiveness.

It is envisioned that the Statewide Drug Court Task Force will continue to meet, thus, allowing members to share information, concerns, progress, and successes with other Drug Court counterparts throughout the State of New Mexico. Metro Court's program will include a DWI community activist and a member from law enforcement to participate in an advisory capacity and assist with understanding the concerns of the community relevant to the serious problem of drunk/drugged drivers on our streets. Metro Court staff have worked collaboratively with the Department of Health of the State of New Mexico to address issues of program effectiveness and evaluation, treatment criteria, sanctions, etc.

Program Structure:

In response to the serious drug and alcohol problem our community faces, the Bernalillo County Metropolitan DWI/Drug Court Program was implemented by Judge J. Michael Kavanaugh in July of 1997.

The Bernalillo County Metropolitan DWI/Drug Court Program is a post conviction, pre-sentence, voluntary program that utilizes a multi-faceted approach. The three phase program consists of intensive supervision of defendants by probation officers, frequent appearances before the DWI/Drug Court Judge, mandatory drug and alcohol counseling, regular attendance at a self help group (AA, NA or CA) and random drug testing. In addition to an enhanced aftercare component the program also offers a mentorship program.

Taking into consideration the number of alcohol related offenses and the significant costs these violations cause our community, the Bernalillo County Metropolitan DWI/Drug Court Program has become primarily an alcohol based program. Individuals with alcohol problems are required to meet the same strict requirements of the "drug court model" that other substance abusers in the program are mandated to complete. In short, the Bernalillo County Metropolitan DWI/Drug Court Program treats a drug as a drug and an addict as an addict, regardless of the drug of choice.

The Bernalillo County Metropolitan DWI/Drug Court Program consists of three phases with the first phase being the most intensive and focusing on substance abuse education and prevention. Defendants are required to report in person to their probation officer twice per week, provide at least two random drug tests per week, attend treatment at least twice per week, and appear before the DWI/Drug Court Judge twice per month. Defendants are also required to attend at least one 12-step meeting per week for the duration of the program. Upon entering the program, defendants are required to complete sixteen acupuncture sessions as well.

The requirements of Phase II are much the same as Phase I with the exceptions of one less contact per week with the Probation Officer and the defendant is required to appear before the DWI/Drug Court Judge once per month. Additional requirements involved in this phase of the program include attending the victim impact panel and completing ten hours of community service.

In Phase III of the program, the defendant is required to appear monthly before the DWI/Drug Court Judge and meet with the Probation Officer every other week. The defendant is also required to complete 20 hours of community service. Community service hours are performed at a non-profit agency selected by both the defendant and the Probation Officer in an attempt to appropriately place the defendant in a position of service which is not only going to help repay the community but to also make the defendant aware of individuals who could have possibly suffered as a direct result of the defendant's crime.

Upon successful completion of the first three phases of the program, defendants will immediately begin participating in a mandatory aftercare phase. Unlike the three previous phases, the aftercare phase will not be based upon a point system but the defendant will

attend counseling sessions on a weekly basis until they have completed 12 sessions. In addition to the counseling, defendants will be required to provide at least three random urine drug screens and/or breathalyzer tests per month and attend one 12 step meeting per week.

All defendants involved in the aftercare phase of the program will be supervised by a volunteer probation officer (VIP) as opposed to their former DWI/Drug Court Probation Officer. The VIP will be required to report defendant's compliance and non-compliance to the VIP Program Director who, in turn, will immediately notify the DWI/Drug Court Probation Officer for any necessary sanction(s). Once the defendant has successfully fulfilled all program requirements the VIP Program Director will notify the original DWI/Drug Court Probation Officer for scheduling of sentencing.

Defendants found to have violated conditions of the program will be sanctioned by the DWI/Drug Court Judge as soon as possible. Sanctions include a mandatory appearance before the DWI/Drug Court Judge, a reduction in points and/or incarceration. Defendants may also be required to repeat the previous program phase under the supervision of the DWI/Drug Court Probation Officer.

Services Provided:

- Intensive supervision
- Substance abuse counseling
- Random drug testing at least twice per week
- Acupuncture
- Regular attendance before the DWI/Drug Court Judge
- Educational Programs
- Family and Parenting Skills
- Employment/Job development training
- Community Service
- Aftercare Program
- Mentorship Program

Operational Standards

Potential DWI/Drug Court cases are referred either by a judge or probation officer to the Drug Court Probation Officer. The Drug Court Probation Officer utilizes a screening assessment, which includes questions regarding criminal history, substance use and abuse history, and primary drug of choice as well as additional relevant information. If the individual is determined an appropriate candidate for the program, the case is set before the court and it is recommended sentencing be continued and the case transferred to the DWI/Drug Court Program.

Following an order of transfer, the defendant then signs a general condition of release, a Phase I contract and the release of information for treatment referral.

The Drug Court Probation Officer is then responsible for the documentation regarding the defendant's progress and general case management necessary to ensure full compliance with program requirements. Documentation includes contacts with defendants, treatment attendance and status, urine drug screens and breathalyzer results as well as any changes regarding the defendant's demographics and employment status. Because of the intensive supervision provided, the Probation Officer is able to provide the defendant with the necessary support and/ or intervention.

BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
GENERAL CONDITIONS OF RELEASE

1. Obey all laws. You must notify your Probation Officer of any citations or arrests immediately.
2. Notify Probation Officer of any changes in address or employment immediately. Do not leave the city of Albuquerque without permission from Probation Officer.
3. Do not associate with anyone who is breaking the law, on probation/parole, or convicted of a felony unless permission is granted by Probation Officer.
4. Do not use or possess any illegal drugs. Do not use any prescription drug without a valid prescription.
5. Do not drink or possess any alcoholic beverage(s).
6. You must obtain and maintain employment, attend school, or a combination of both.
7. Do not drive a motor vehicle without a valid driver's license.
8. You must comply with all DWI/Drug Court Contracts.

I understand and agree to abide by these General Conditions of Release and the specific conditions of the DWI/Drug Court Program. I understand any violation of these conditions may result in being returned to court for sentencing.

Defendant

Probation Officer

Date

Case Number

BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
PHASE I CONTRACT

NAME: _____

CASE # (s): _____

In addition to the "General Conditions of Release," you will also be required to:

1. Report to probation officer in person at least twice per week and/or as directed by Probation Officer.
2. Attend substance abuse counseling and/or group sessions as directed by treatment provider.
3. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least twice weekly as directed by Probation Officer or treatment provider.
4. Attend DWI/Drug Court at least twice a month.
5. Attend at least one 12-step meeting per week and provide written verification as directed by Probation Officer.
6. Obtain a sponsor. Contact sponsor at least once per week and provide written verification as directed by Probation Officer.
7. Complete acupuncture as directed by treatment provider.
8. Take antabuse if ordered and prescribed.
9. Other: _____

Total number of points required to complete Phase I: 70

I understand and agree to abide by all the conditions of the Phase I contract. Any violation of these conditions may result in possible incarceration, reduction of points or expulsion from the program.

Defendant

Probation Officer

Date

BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
PHASE II CONTRACT

NAME: _____ CASE# (S): _____

In addition to the "General Conditions of Release," you will also be required to:

1. Report to probation officer in person at least once each week and/or as directed by Probation Officer.
2. Attend substance abuse counseling and/or group sessions as directed by the treatment provider.
3. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least twice weekly as directed by Probation Officer or treatment provider.
4. Attend DWI/Drug Court at least once a month.
5. Attend at least one 12-step meeting per week and provide written verification as directed by Probation Officer.
6. Continue to contact sponsor at least once per week and provide written verification as directed by Probation Officer.
7. Complete 10 hours community service.
8. Attend the VICTIM IMPACT PANEL (VIP).
9. Take antabuse if ordered and prescribed.
10. Other: _____

Total number of points required to complete Phase II: 62

I understand and agree to abide by all the conditions of the Phase II contract. Any violation of these conditions may result in possible incarceration, reduction of points, being returned to Phase I, or expulsion from the program.

Defendant

Probation Officer

Date

BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
PHASE III CONTRACT

NAME: _____ CASE # (S): _____

In addition to the "General Conditions of Release," you will also be required to:

1. Report to probation officer in person at least twice monthly and/or as directed by Probation Officer.
2. Attend substance abuse counseling and/or group sessions as directed by the treatment provider.
3. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least twice weekly as directed by Probation Officer or treatment provider.
4. Attend DWI/Drug Court at least once per month.
5. Attend at least one 12-step meeting per week and provide written verification as directed by Probation Officer.
6. Continue to contact sponsor at least once per week and provide written verification as directed by Probation Officer.
7. Complete 20 hours community service.
8. Take antabuse if ordered and prescribed.
9. Other: _____

Total number of points required to complete Phase III: 57

Total points required to advance to the Aftercare Program: 189

I understand and agree to abide by all the conditions of the Phase III contract. Any violation of these conditions may result in possible incarceration, reduction of points, being returned to Phase II, or expulsion from the program.

Defendant

Probation Officer

Date

**BERNALILLO COUNTY METROPOLITAN DWI/DRUG COURT
AFTERCARE CONTRACT**

NAME: _____

CASE # (s): _____

In addition to the "General Conditions of Release," you will also be required to:

1. Contact Volunteers in Probation (VIP) program as directed by Probation Officer.
2. Report to Volunteers in Probation at least once per week as directed by VIP.
3. Attend an aftercare group session every week until 12 aftercare group sessions are completed.
4. Submit to random urinalysis and/or blood alcohol content (BAC) tests at least three times per month or as directed by treatment provider, VIP, or Probation Officer.
5. Attend at least one 12-step meeting per week and provide written verification as directed by VIP.
6. Continue to contact sponsor at least once per week and provide written verification as directed by VIP.
7. Other: _____

I understand and agree to abide by all the conditions of the Aftercare contract. Any violation of these conditions may result in possible incarceration, being returned to Phase III, or expulsion from the program.

****Formal completion of the DWI/Drug Court Program includes sentencing and fulfillment of all sentencing requirements. ****

Defendant

Probation Officer

Date

Program Standards

The DWI/Drug Court Program operates on a point system of progression. The program is a minimum of nine months long and consists of three phases, followed by a 12 week aftercare component. A defendant must accumulate a certain amount of points in a specific phase to advance. One point is given for each completed activity. Once a defendant is deemed appropriate for the program, he/she is placed into Phase I of the program. The defendant will advance in the phase based on the accumulation of points.

Phase I requires 70 points to advance to Phase II. A participant in Phase I will report to a Probation Officer, attend counseling, and submit to random drug urine screens and breathalyzers at least twice a week. A defendant must also attend 12-step meetings, obtain a sponsor and have contact with the sponsor at least once a week. A defendant must also attend DWI/Drug Court every other week. Once a defendant advances to Phase II, he/she must obtain 62 points to advance to Phase III. Phase II requires reporting to Probation Officer once a week, attend counseling and submit to random urine drug screens and breathalyzers at least twice a week. A defendant will also attend DWI/Drug Court once a month and attend 12-step meetings and have sponsor contact at least once a week. A defendant will also be required to perform ten hours of community service at a non-profit agency or attend an educational class, such as, parenting classes, GED, etc. After advancing to Phase III, a defendant must accumulate 57 points for a total of 189 points to advance to the aftercare component of the program. Phase III requires a defendant to report to the Probation Officer every other week, attend counseling and submit to urine drug screens and breathalyzers at least twice a week. A defendant will continue with 12-step meetings and sponsor contact at least once per week, and attend DWI/Drug Court every month. Community service is increased to 20 hours. The aftercare component is a 12-week phase with the defendant being required to attend one counseling session, continued urine drug screens and breathalyzers (reduced) as well as continued A.A. attendance. This portion was incorporated into the program in July of 1999 to provide the defendant with a strong, solid foundation for sobriety maintenance.

Incentives and sanctions are also an integral part of the program. Point accumulation is the biggest incentive for defendants as well as high praise from the Judge, Probation Officer, and Treatment Provider. Sanctions range from incarceration, rebuke, to loss of points. A defendant will be sanctioned for positive urine drug screens, and breath tests, admittance to using drugs or alcohol, missed drug/breath screens. Sanctions are also used for unexcused absences from counseling sessions and meeting with probation officer.