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This Issue in Brief

A Proposal for Considering Intoxication at Sentencing Hearings: Part I.—What sentence should a judge impose on a convicted offender who was intoxicated at the time he committed the crime? The U.S. Sentencing Commission decided that an offender's intoxication is "not ordinarily relevant" to his sentence. Author Charles Felker proposes, instead, that intoxication is a relevant and important factor in determining an appropriate sentence. In Part I of this article, the author surveys current theories about the connection between alcohol and crime, the responsibility of alcohol abusers for their acts, and the way offender intoxication affects the purposes of sentencing. In Part II, the author will develop a specific proposal based on a survey of state laws and cases.

Alcohol and Crime on the Reservation: A 10-Year Perspective.— Author Darrell K. Mills examines the relationship between alcohol abuse and crime on the part of Indian felony defendants in the Federal District Court in Wyoming from 1978-88. The author characterizes the types of crime and typical defendant from the reservation and focuses on the history of alcoholism, treatment, and prior arrest of these defendants. The article also discusses the issue of alcoholic denial.

Practitioners' Views on AIDS in Probation and Detention.—The question of how to provide humane and effective supervision for HIV-positive offenders or offenders with AIDS is an important issue facing policy-makers in corrections. Author Arthur J. Lurigio reports on a survey of probation and detention personnel in Illinois conducted to examine views regarding AIDS and its impact on policies, procedures, and work behavior. Comparisons were made between probation and detention personnel. Survey results indicated that probation and detention respondents anticipate that the AIDS

health crisis invariably will affect their management of cases. Detention participants were more concerned about occupational risk and precautionary measures. Both groups recommended policy and procedural guidelines governing legal liability, confidentiality, mandatory testing, case contacts, and the education of offenders and staff.

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Alcohol and Crime on the Reservation: A 10-Year Perspective

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SUPERVISION ON Indian reservations presents unique challenges to probation of ficers. Reservation work is fraught with a multitude of interrelated problems that make success an elusive goal. It is no secret to those who work with Native American case loads that alcohol abuse spawns or exacerbates many of the social ills common to the reservations. Research validates the experiences of such officers and leaves no doubt that alcoholism is epidemic among Native American people. There are many theories advanced to account for this phenomenon, ranging from biological/genetic interpretations, to explanations rooted in psychological and social concepts, to theories concerning cultural disorganization. Whatever the cause, one cannot understand the reservation without an appreciation of the effect alcohol abuse has on reservation life in general and crime in particular.

It has long been held that virtually all reservation crime is alcohol-related. It is the purpose of this article to explore this contention by examining the extent to which alcohol was a factor in reservation felony convictions in the District of Wyoming for a 10-year period. The purpose is also to identify the nature of crimes committed on the reservation, to characterize the typical reservation felony defendant, and to develop some insight regarding the background of these defendants as they relate to alcohol abuse.

In the District of Wyoming there is only one Indian reservation, the Wind River Indian Reservation located in central Wyoming. It is geographically large, 3,500 square miles, larger than the combined area of Rhode Island and Delaware. There are 7,764 enrolled and nonenrolled Arapaho and Shoshone Indians living on the reservation. The Wind River Reservation is favored by large oil deposits, and such situation has infused significant income into the reservation over the years. While these monies have raised the standard of living somewhat as compared to that of other Plains Indian reservations, the Wind River Reservation is not atypical in that there is still considerable poverty, high unemployment, and very high crime and alcoholism rates. Although there is a tribal court system that processes petty offenses, the Federal government has exclusive jurisdiction for

serious crime. To understand serious reservation crime then, all one needs to do is to look to the Federal court, as there is not a state jurisdiction which also processes such violations.

Methodology

To examine the nature of crime and the role alcohol plays in violations, felons convicted from the reservation in the Federal court in the District of Wyoming from the period January 1, 1978, to December 31, 1988, were identified. Presentence investigations for these cases were reviewed, and the offenses of conviction were identified. Each offense was then evaluated by reviewing the "prosecution version" and "defendant's version" of the report to ascertain if alcohol was a factor in the crime. The alcohol histories of the defendants were also examined to determine if defendants acknowledged a problem with alcohol and/or had participated in alcohol treatment. Finally, data were collected concerning prior convictions for alcohol-related offenses and violence. Only arrests were counted when the charge was clearly alcohol-related, as driving while under influence, or drunk. Arrests which may have involved alcohol, as disturbance or careless driving, were not counted since the presentence investigations did not routinely provide descriptive information to say beyond a doubt that these were alcohol-inspired crimes. Similarly, convictions for violent behavior such as assault or rape were counted, but convictions that might have been assaultive, as resisting arrest, were excluded, again because it was not entirely clear on the face of the information that the offense was violent.

Offense of Conviction

Over the decade in question, 62 Indians from the Wind River Indian Reservation were convicted of felonies. The nature of those offenses did not offer any real surprises and were of a far more violent nature than one would expect to find in a non-reservation population. The specific breakdown of those crimes is set forth in Table 1.

In characterizing these cases as either violent or property crime, there were 44 (71 percent) crimes of violence, 16 (25.8 percent) property crimes, and 2 that could not be clearly labeled. Both of these

were firearm violations in which the weapon was neither possessed as a part of a violent act nor for pecuniary gain.

TABLE 1. NATURE OF RESERVATION CONVICTIONS

Murder	3
Manslaughter	9
Assault (including sexual assault, rape, and incest)	31
Robbery	1
Burglary	5
Forgery	3
Firearms violations	6
Receiving stolen property	1
Embezzlement	1
Theft and destruction of property	1
Migratory game violation	1

The Defendants--An Overview

As to the offenders themselves, the population was predominantly male, 51 (82.3 percent) of the 62 cases, with an average age at conviction of almost 28, with the youngest being 18 and the oldest 54. Almost one-third of the population, 20 of 62, had past felony convictions. Using the very narrow definition of what constitutes an alcohol-related arrest or conviction for violence, as discussed above, it was found that of the 62 defendants 48 (77.4 percent) had three or more past alcohol-related arrests and 12 (19.4 percent) had three or more convictions for driving while under the influence. Additionally, 17 (27.4 percent) of the 62 defendants had three or more prior convictions for assaultive behavior.

Alcohol and the Offense

In examining the role intoxication played in the offense conduct, 43 of the 62 defendants, or almost 70 percent, were under the influence of alcohol at the time the violation was committed, as indicated by the "prosecution's version" and/or "defendant's version" of the presentence report. As to the 44 violent crimes, there were only 8 (18 percent) in which the defendant was apparently sober. These eight included three incest cases, one robbery conviction, three assaults, and a manslaughter. In one of the assaults and the manslaughter violation, alcohol was a factor to the extent that the sober defendants committed these offenses against a victim or several victims who were intoxicated. Even this relatively low figure of 18 percent shrinks in significance if we closely look at the violent crimes where the defendants were sober. That is to say, robbery, while having threatening overtones, could be as easily considered a property crime as a violent crime, and incest, which is categorized as violent, is a violence of a somewhat different nature

than the aggressiveness that is a part of assault, manslaughter, and murder cases. In fact, during the period of this study, there were only three incest cases successfully prosecuted, and in no case was there indication that the defendant was under the influence of alcohol at the time the offense took place. However, it is interesting to note that in all these cases the perpetrators had histories of alcoholism. The relationship between excessive drinking and violence is apparent and has a great deal to do with the inordinately high rate of violent crime on the reservation. Alcohol even was found to be a major factor in reservation property crime in that in 6 of the 16 property crimes, or 37.5 percent, the defendant was under the influence of alcohol when the offense was committed.

TABLE 2. RESERVATION CRIME (VIOLENT AND NONVIOLENT) AND ALCOHOL

Percentage of Reservation Crime When Defendant was Intoxicated	
Felony Conviction N-62	69.3% N-43
Violent Felonies N-44	81.8% N-36
Nonviolent Felonies N-16	37.5% N-6

Alcoholism--The Offender's Self-Perception

It has been said that alcoholism is the only disease that, as one of its symptoms, convinces the afflicted that they do not suffer from the disease. Denial is basic to the disease and makes it somewhat more difficult during the presentence process to immediately identify alcoholism as a supervision problem. Because of denial, it is necessary for the presentence investigator to be particularly sensitive to more subtle indices such as erratic employment, failed relationships, health problems, and alcohol-related arrests. If the indicators are there, at some point the defendant must be questioned as to his own perception as to whether he is an alcoholic or—a more palliative term—a "problem drinker." It is not uncommon to have such a direct question answered in the negative even in light of overwhelming biographical data to the contrary. Even answers in the affirmative sometimes must be evaluated skeptically, realizing that a defendant might characterize himself as alcoholic not because he truly believes it, but to give himself some excuse for the commission of the crime or because he feels this is what the probation officer wants to hear. Even with this in mind, it is most important to eventually ask the question, because when consid-

ered with other background data, it can give the officer a better insight into the character and motivation of the client. Also, an acceptance by the defendant that he is indeed alcoholic is critical to the successful treatment of this disease.

Anticipating that many defendants would be inclined to deny a history of abusive drinking because of denial, it is surprising to note that in the 62 cases studied, 39 (63 percent) of the defendants admitted they were problem drinkers or alcoholic, and 23 (59 percent) of that number had been exposed to some form of alcohol treatment. Focusing on the alcohol-related crime exclusively, the 43 defendants who were intoxicated at the time they committed the offense, the proportions of those who acknowledged alcoholism and were exposed to treatment were about the same. While the extent of involvement in treatment varied considerably, participation in treatment at least suggested a greater commitment to the admission of alcoholism than simply responding affirmatively because it was expedient. It also reflects that a fairly significant number of the violators had had some past exposure to information concerning the disease. To find so many of these offenders admitting their alcoholism and having been exposed to treatment was a surprise, and the writer suspects that in a similar group of non-Indian defendants convicted of alcohol-related crimes, that a past involvement with treatment would not have been nearly as great. This might suggest that greater efforts are being made to expose the alcoholic to treatment on the reservation than many would suspect. Alternatively, it could also reflect the intractability of alcoholism among Native Americans even in the face of treatment intervention.

Denial

Alcoholism, unlike most other diseases, has always been difficult to define. There are individual differences between alcoholics which give a markedly different look to the disease. It afflicts different victims in different ways and runs its course at different rates. Because of the fuzziness surrounding the symptoms of alcoholism, it has always been difficult to define. One commonly accepted definition is: "An alcoholic is an individual who uses alcohol to such an extent in such a way that it interferes with his personal, social, or occupational life."¹ In short, when a person is experiencing problems in his life because of his use of alcohol, he is an alcoholic. A defendant who has been convicted of an alcohol-related felony certainly is facing a very traumatic life crisis. Although that fact alone cannot support a diagnosis of alcoholism, it certainly suggests that the probation officer must look very

closely at the defendant's background to determine if there are other factors that might support such a conclusion. With this in mind, an effort was made to take a closer look at defendants who were convicted of alcohol-related felonies, but who denied they were alcoholic. It was felt that this closer look might provide some insight into denial among this population.

Fifteen defendants were identified as having been convicted of alcohol-related offenses but denied they were alcoholic or used alcohol abusively. On taking a closer look at the histories of these defendants, it was clear that many of them had factors in their background suggesting that indeed they had serious problems with alcohol, including extensive alcohol-related arrest histories, health and family problems, and employment difficulties. The arrest records of these defendants were easiest to quantify among these factors. In evaluating the prior records of these 15 defendants as a group, they had 211 prior police contacts as juveniles or adults. Of that number, there were 4 prior felony convictions, 65 prior convictions for clearly alcohol-related arrests, and 15 prior convictions for driving while under the influence. This certainly is an impressive number of arrests and convictions, although it must be noted that the arrest histories varied significantly, ranging from one youthful defendant who had only 2 alcohol-related arrests before being convicted of involuntary manslaughter, to another defendant who had 35 prior arrests, 8 of which were clearly related to alcohol, including 1 conviction for driving while intoxicated. The average for the "denial group" was 14 prior police contacts, with over 4 of them being alcohol-related convictions. It is apparent from these data that the majority of those who denied problems with alcohol had arrest histories that would suggest otherwise and that denial which is so much a part of this disease was also present among this group. In fact, not one of this number, given the alcohol-related conviction, prior arrest history, and other assorted social problems, could convincingly maintain they were not in need of alcohol treatment.

Crime Involving Loss of Life

The most serious cases within this population involve crimes which resulted in the loss of life. There were 12 such cases, either homicide or manslaughter convictions, and 11 of the perpetrators were under the influence of alcohol when they committed the offense. In the remaining case, although the defendant was not intoxicated, alcohol

¹Ray Oakley, *Drugs, Society and Human Behavior*. St. Louis: The C.V. Mosley Company, 1983, p. 173.

abuse was a factor, inasmuch as the defendant had become involved in an affray with the victim and several others who had been drinking heavily.

Six of these defendants were convicted of involuntary manslaughter, which involved driving under the influence which led to a fatality. Their past arrest histories include three defendants who had three prior convictions for driving while under the influence. Four of the six denied they were alcoholic even though as a group they had 18 prior alcohol-related convictions and one of them had 3 prior convictions for driving under the influence.

Conclusion

There are few surprises in evaluating the reservation felony convictions for these 10 years. The data substantiate the seriousness of alcoholism that exists among Native American people. In almost 70 percent of the felony convictions, the perpetrator was intoxicated at the time of the offense. The relationship between abusive drinking and violence has been clearly shown in many studies and was replicated here, inasmuch as 44 of the 62 crimes, almost 71 percent of the offenses, were violent crimes and in over 80 percent of these offenses, the defendants were under the influence. Offering some surprise was the fact that so many of the defendants, 40 of the 62, almost 65 percent, admitted to the probation officer that they were alcoholic or problem drinkers, and well over half of that group had some prior exposure to alcohol treatment. While more defendants than expected at least admitted they were having problems with alcohol, and a fair percentage had actually become involved in treatment, there was, as expected, a considerable number who were clearly experiencing denial, based on the nature of the convictions and extensive prior alcohol-related arrest history.

Probation work on reservations does indeed offer some very unique challenges. The case load for the most part is alcoholic, and the resources available to work with the problem are limited. For example,

on the Wind River Indian Reservation there is currently one small non-residential treatment program and its efforts are bolstered by outpatient counseling available through Bureau of Indian Affairs facilities. There is a background of unemployment and poverty, which provides few incentives to remain sober. Abuse of alcohol not only offers something to do to fill the time, but also a way of numbing the despair which is so common to reservation life. The problem is generational, passed from father to son, and the available role models give few examples in support of a life of sobriety. The proud culture which once was a part of the American Plains Indian was destroyed and has not yet been replaced by mechanisms that would help to combat the deleterious effect of alcohol abuse. The genetics of these people, which very likely predispose them toward alcohol dependency, complicate the treatment goal of sobriety.

The probation officer must be a realist in identifying what is possible in light of the problem and limited resources. The officer must understand he is working with a very different culture. Even a Native American probation officer is viewed as an outsider who represents an authority that has not always dealt fairly with Indian people. The effective probation officer should have an appreciation for the social milieu of the reservation and be tolerant of the special problems faced by such a case load. At the same time, the officer must be willing to hold clients accountable, as accountability is the cornerstone of ultimately guiding a client toward sobriety. This is a client population which can frustrate, and the officer must be willing to measure success by somewhat smaller increments. Perhaps more important than anything else is an attitude that even though the successes may be fewer, they are certainly possible, and a grasp of this possibility is paramount if one is to be at all successful in working with alcoholics, whether they are from the board room or the reservation.