A Thesis

Entitled

The Treatment of Criminals with Disabilities: An Ongoing Debate

By

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Chapter One

Introduction

This project examines the treatment of people with disabilities during criminal legal processes and incarceration in the United States and Northwest Ohio. I am interested in what accommodations the accused and criminals with disabilities receive in court and in prison and how decisions about accommodations are made. Society constantly struggles with questions of appropriate treatment for individuals with disabilities and with questions of appropriate treatment for criminals. Because at least 25 percent of the prison population have disabilities, this is an important and timely topic. The existing literature is not well developed. There are relatively few studies of how the legal and prison systems deal with people who have disabilities. The studies that do exist tend to be contradictory or confusing. For example, many scholars say that people with disabilities should not be treated any differently from those who do not have disabilities. But, at the same time, the need for at least some accommodations for individuals with disabilities is acknowledged. This study begins to address this gap in the literature by examining how judges, prosecutors, and prison officials make decisions about appropriate accommodations for the accused and for convicted criminals.
To investigate how decisions about accommodating people with disabilities are made in the criminal justice system, I surveyed judges, prosecutors, and jail and prison directors in Northwest Ohio. This interview study of a small number of decision makers explores their experiences with the accused and criminals who have disabilities. My study addresses the following issues: the types of disabilities criminals have, the accommodations they receive, awareness of existing laws which mandate how prisoners with disabilities would be treated, and what decision makers believe needs to be done to improve treatment of criminals with disabilities in the future. Decision makers in the criminal justice system do not appear to be well educated about the laws governing accommodations for people with disabilities, and they believe that most individuals are fully accommodated. I recommend that judges, prosecutors, and jail and prison officials receive better education and training about appropriate accommodations for people with disabilities.

The remainder of this thesis will consist of the following parts: a comprehensive review of the literature, a discussion of my study methodology, an analysis of my interview data, and a conclusion with recommendations to improve the treatment of people with disabilities in the criminal justice system.
The population of individuals with disabilities is one that is often overlooked. Before the Americans with Disabilities Act (ADA) was passed in 1990, treatment of individuals with disabilities was not a positive focus of society, and improvements had yet to be made. People with disabilities were placed in institutions and were not given equal opportunities as those who did not have disabilities. The same is true when looking at the accused and criminals with disabilities. There is little knowledge about how they were treated in the legal system. This chapter will specifically examine the literature on the treatment of people with disabilities within the criminal justice system. I begin with definitions of the terms *impairment*, *disability*, and *handicap*.

According to Deborah Kaplan (2000), director of the World Institute on Disability, the term *impairment* is defined as a loss of any psychological or anatomical function. When an individual has a *disability*, he or she is said to have a restriction, which is the result of impairment. This restriction is what keeps an individual from being able to perform tasks just like anyone else in the general population. Another key point to note is that when a person has a disability, he or she is also discriminated against in society. To clarify, a person who uses a wheelchair has a disability because of the impairment or injury. It is not, however, that
the person has the impairment because of the disability. A *handicap* is a disadvantage for an individual caused by an impairment or disability that keeps the individual from performing daily life tasks. As Kaplan (2000) states:

> Handicap is therefore a function of the relationship between disabled persons and their environment. It occurs when they encounter cultural, physical or social barriers, which prevent their access to the various systems of society that are available to other citizens. Thus, handicap is the loss or limitation of opportunities to take part in the life of the community on an equal level with others (p. 2).

A handicap is largely dependent on a person’s age, race, sex, and gender. This means that a person with a handicap is limited due to his or her age, race, sex, and gender. Before we look into the treatment of individuals with disabilities, both in society and in prison, a general history of the treatment of people with disabilities is necessary.

In the remainder of this chapter, I will first examine the history of how people with disabilities have been treated in general, and then I will go into more detail about criminals with disabilities. This section will examine the early social conditions and laws pertaining to people with disabilities. I will then look at the social history of people with disabilities from within the field of disability studies. From there I will examine how people with disabilities are treated in the legal system. Here, I will examine in more detail particular types of disabilities and how criminals who have them are treated in the legal system. This will include individuals with learning disabilities, those who are hearing impaired, and people who have developmental and intellectual disabilities. Finally, I will examine the recommendations in the literature on how to combat the mistreatment of criminals with disabilities.
A Brief History of the General Treatment of Individuals with Disabilities

The eugenics movement characterized how people with disabilities were viewed in the 19th and early 20th centuries. Eugenics was rooted in assumptions that individuals and society evolve together toward “perfection.” Herbert Spencer, a sociologist from England, believed that society evolves following the “survival of the fittest” rule. He believed that individuals were either fit or unfit to live based on their ability to adapt and prosper in the social conditions of any given time period. Spencer argued “all evil results from the non-adaptation of constitution to condition” (Spencer, 1972, p. 8). That is, everything that lives has to adapt to changing social and environmental conditions. If something does not adapt, it becomes prone to all types of pathologies.

Spencer applied this logic to people with disabilities. If a person has a disability, according to Spencer, then he or she may not be suited to live. However, if that individual is able to adapt and prosper then the opposite is true. From Spencer’s perspective, individuals with disabilities must learn new ways of living to properly adapt to society. A person who is blind, for example, has to learn his or her environment by touch, just as a person who is deaf learns about life by sight. Spencer called this the law of physical and mental modification. This means that to live a productive life, one has to adapt according to one’s conditions. However, Spencer argued that society should not seek to accommodate individuals with disabilities to make it easier for them to live productively. It is an individual’s responsibility to adapt.

Spencer’s primary idea of societal evolution is that the social structure becomes increasingly differentiated and specialized over time. As population increases, the complexity of society increases. “This increase in heterogeneity, which in both classes of aggregates
goes with growth, presents another trait in common” (Spencer, 1972, p.15). However, when the groups get relatively larger, the similarities among individuals become less clear. People with disabilities may be seen as pathological. Spencer stated: “All imperfection is unfitness to the conditions of existence” (Spencer, 1972, p. 12). Thus, anyone who is poorly adapted to live under prevailing social conditions impedes the progress of evolution in society (Spencer, 1972). He believed that evolution was synonymous with improving society: “Progress, therefore, is not an accident, but a necessity” (Spencer, 1972, p. 13). Spencer viewed people with disabilities (as well as poor people) as unable to contribute to the evolution of society. He advocated that the disabled and poor be allowed to die out naturally over time.

In the 1920s Henry Goddard wrote about individuals with intellectual disabilities. In contrast to Spencer, Goddard advocated the sterilization of criminals and people with disabilities. In fact, disabled individuals during the early 1900s were not referred to as “disabled”; instead, they were referred to as “morons” or “imbeciles.” “According to him, morons formed the real criminal class in America” (Perske, 2007, p. 216). Such harsh words were the direct result of prejudices and stereotypes. As Perske (2007) notes, these prejudices led to quarantining and sterilization campaigns. “Consequently, persons with these disabilities were sent to live out their lives in large, isolated institutions most often called ‘state schools for mental defectives’” (Perske, 2007, p. 217). Despite what disabilities people may or may not have had, anyone placed in one of these institutions was treated as having mental disabilities.

Sir Francis Galton was the driving force behind the eugenics movement in the early 20th century. Similar to Spencer and Goddard, Galton believed that it was necessary to figure out who is fit for society and who is not fit (Galton, 1909). People with disabilities were
viewed as undesirable drags on societal resources. Another aim of eugenics, according to Galton, was to help individuals who were fit for society to contribute as much as they could. Galton believed that sterilizing people with disabilities (particularly women) would reduce the biological reproduction of unfit people and free resources for those he saw as deserving.

When deciding who was fit or unfit, Galton examined several qualities of a person. “A considerable list of qualities can be easily compiled that nearly everyone except ‘cranks’ would take in to account when picking out the best specimens of this class” (Galton, 1909, p. 36). These qualities included a person’s health, energy, ability, and manliness. The same standards were applied to individuals with disabilities. If they were not completely healthy, they were to be shut out of society. If someone was blind, for example, his or her overall health was not that of individuals who could see. Other examples of unfit groups included the deaf, the physically and mentally challenged, and those with diabetes and epilepsy. According to Galton, these were all groups who were not fit (Galton, 1909).

Another concept within the field of eugenics is that of the “thriving family.” Galton argued that children who achieve more than their peers are evidence of thriving families. “The definition of a thriving family, that will pass muster for the moment at least, is one in which the children have gained distinctly superior positions to those who were their classmates in early life” (Galton, 1909, p. 36). These superior families were to be held up as role models for the nation.

To improve society based on eugenics, Galton advocated a three-stage movement: 1) Eugenics must be accepted as an idea, 2) it must be recognized as an actual concept, and 3) it must be introduced as a new religion. Thus, if we learn to accept such a movement, then perhaps we can also learn to eliminate the unfit (including people with disabilities). From
there, we can learn to accept those who are fit for the contributions they offer to society.

Galton explains it this way: “The improvement of our stock seems to me one of the highest we can reasonably attempt” (Galton, 1909, p. 42).

Lynn (2001) explains that many people were in favor of the eugenics movement. Galton defined eugenics as a movement in which the quality of genetics could be improved, largely by the sterilization of the portion of the population with disabilities. Three dimensions were assessed: health, moral character, and intelligence.

Galton argued in his hereditary genius that the intelligence of a population is a major component in its cultural, scientific, and economic achievements; that these are the defining characteristics of civilization; that civilization is better than barbarism; and to maintain, promote and advance civilization, intelligence of the population needs to be improved and prevented from declining (Lynn, 2001, p. 4).

Galton also argued that moral character is embedded in one’s personality and that personality is genetic.

Another idea within the eugenics movement was that of diseases lying within genetics. Thus, a person with a disability would need to be dealt with so he or she could not reproduce.

Disability Studies Perspectives

The modern disability studies movement developed in opposition to eugenics and to similar approaches that view disability as a pathology. The disability studies literature identifies four common models of understanding disabilities: the moral model, the medical model, the rehabilitation model, and the disability model. Kaplan (2000) explains each paradigm as follows.
The moral model views disability as a sin. This model is the oldest of the four. It views disability as a moral failing and can be understood as blaming the disabled for their own problems.

The medical model views disability as a pathology and attempts to devise a remedy. Eugenics is an extreme version of the medical model approach to disability. Inherent in the medical model is that a disabled person must engage in the sick role. The sick role excuses individuals from daily obligations. Individuals with disabilities visit doctors for help, thus allowing disabilities to become a health concern.

The rehabilitation model proposes therapy to help people deal with their disabilities. According to this perspective, a disabled person still needs to be “fixed” by a therapeutic method. Burch and Sutherland (2006) explain that: “In both of these [medical and rehabilitation] paradigms, disabilities, and the complications relating to them, lie in the individual” (p. 127), just as in the case of the moral model. Moreover, both models fail to address the way in which people with disabilities fit into society. Perhaps this is why, historically, an individual with a disability was placed in a mental institution.

Finally, the disability model examines disability from social, cultural, historical, and philosophical perspectives. It views disability as a set of social and cultural barriers external to an individual and something that can be overcome. Kaplan (2000) states:

The disability model has taken hold as the disability rights and independent living movements have gained strength. This model regards disability as a normal aspect of life, not as a deviance and rejects the notion that persons with disabilities are in some inherent way ‘defective’ (p. 2).

The disability model recognizes that the medical and rehabilitation models are dominant because most professionals adhere to them. Professionals have a tendency to generalize about people with disabilities; however, proponents of the disability model recognize that
individuals with disabilities are discriminated against. The disability model does not look at how an impairment affects a person’s ability to live. Rather, it looks at the barriers a person faces because of the social construction of society (Hayes, 2007).

**Laws About Disability**

Laws concerning individuals with disabilities stem back to the early 1920s, but as Barnartt and Seelman (1988) report, “The first federal law which explicitly discussed disabled people did not occur until 1956 and the bulk of laws relating to disabled people did not occur until the 1970s” (p. 37). Barnartt and Seelman argue that “there has never been much attention to the citizenship aspect of civil rights for disabled people as there has been for minorities, but there has been more attention for access given to them than there has been for racial and ethnic groups” (p. 37). From 1920 until 1950, the focus toward people who had disabilities was on rehabilitation and vocational concerns. This is in direct contrast to the eugenics movement during this time period. According to Perske (2007), the 1950s brought about some positive changes. Parents of children with disabilities began to fight for better lives for their children. “Together, parents and workers fought to bring back hundreds from these far off institutions” (p. 217). Prior to this time in history, individuals who had disabilities were often placed in mental institutions. During the early 1950s and 1960s, the legal system in the United States was beginning to put individuals with disabilities in jails and prisons. Individuals with disabilities were not included in the civil rights movement of the 1960s. However, the 1970s was a brighter decade. “Beginning in 1973, civil rights issues were explicitly applied to disabled people” (Barnartt & Seelman, 1988, p. 39). In fact, this was known as the Rehabilitation Act. Other laws focused on transportation and equal access
to education, as well as mandates for interpreters and other accommodations that should be provided for people with specific disabilities.

The 1980s marked a new approach for people with disabilities, known as the disability studies movement. As Burch and Sutherland (2006) explain, “Beginning in earnest in the 1980s, disability studies emerged with and from the Disability Civil Rights Movement” (p. 127). Before this new era, people with disabilities were often overlooked and ignored. People only paid attention to a person’s race, class, and gender as if the population of individuals with disabilities did not exist, and those individuals were rarely seen in public, as institutions were their primary homes. People with disabilities had been treated differently than their peers who did not have disabilities. However, this moment in history helped society to realize that individuals with disabilities were just like anyone in society who did not have a disability. “In the past two decades, disability studies, within disability history, has taken root” (Burch & Sutherland, 2006, p. 127).

The Americans with Disabilities Act (ADA) emerged from the disability studies (disability rights) movement. It was a promising new law because it mandated that individuals with disabilities not only be given accommodations, but also be treated just as anyone else in society. The ADA, however, has its limits. “While most of the litigation [centers] around the employment context, which is covered in Title II of the act, several recent cases have considered whether the ADA applies to state prison facilities” (Lange, 1998, p. 875). Three separate court cases have discussed whether the ADA should or should not be applied to state prisons. Because of the act’s vague language, conflicts have arisen.

According to Ferguson (2007), it is hard to decide who deserves or does not deserve equal treatment in society, as she states: “The term vulnerable is often used to include the
poor, the medically under-served, the chronically high [drug abusers], those with disabilities, those with mental illnesses, alcohol and substance abusers, and immigrants” (p. 1358). The reason that people are often afraid to serve the vulnerable, Ferguson says, is the inability to afford programs for these individuals, as the proper resources are just not available to serve the population who needs it the most. Therefore, choices must be made as to what types of programs should be provided, who should receive these programs, and how effective these programs should be. When deciding the types of services to be made available, such groups as individuals with disabilities are often left out of the picture. Hence, this is why it is said that the treatment of such individuals is less than adequate.

According to Mary Bodlovic (1993), an author on disability discrimination, issues regarding disabilities are not crowd pleasers. She states: “With disability, as with other discriminations, the basic issue is about power” (p. 239). Another aspect is that discrimination is very easy to engage in. Individuals with disabilities notice it when it happens, and the problem occurs in prison as well as in public. Many public officials, including probation officers, misunderstand a person who has a disability. Bodlovic also claims: “Anti-discrimination is more about attitudes than technology and about encouraging and maximizing potential” (p. 239). The treatment of people with disabilities within the prison system will be discussed in the next section. This awful treatment is happening in other realms of the criminal justice system as well. Before the 1950s, criminals with disabilities were forced to go to jail without any explanation of their behaviors. A person was not even allowed to explain that he or she had a disability. Greifinger (2006) argues that prisoners with disabilities are not receiving adequate services, and that this is a violation of ADA laws: “Title II of the ADA guarantees disabled persons equal access to state services
and programs, an assurance that the rights these programs fulfill will be protected” (p. 253). Greifinger also adds the following: “Title III mandates ‘reasonable accommodation’ to the needs of the disabled in public facilities” (p. 253). He explains that before the passage of the ADA, people with disabilities were overlooked, especially in prison. In general, sentencing to prison for a person with a disability should be contingent on the amount of participation the individual will engage in a specific program such as special training or rehabilitation.

The Treatment of People with Disabilities in Prison

According to current literature, the treatment of prisoners with disabilities is in need of improvement. In fact, prison sentences for individuals with disabilities are more of a detriment than a time of rehabilitation. Prisoners with disabilities are not viewed as fit for rehabilitation and they are often ridiculed. Harley (1996) argues that:

Crime and criminal behavior have increased significantly in the last 20 years, and so has the number of individuals being placed in prisons. A large number of adjudicated and incarcerated offenders with disabilities, who are in need of rehabilitation services, are not receiving such services (p. 45).

This presents a major problem because prisoners with disabilities are treated harsher than other prisoners. Because of the maltreatment, prisoners with disabilities are simply pushed aside to make room for individuals without disabilities. Another result of the mistreatment of prisoners with disabilities is that they are given the label of criminal, which sticks with them. Therefore, because they do not receive appropriate services, they are more likely to remain criminals. A report called “No one knows: Identifying and supporting prisoners with learning difficulties and learning disabilities: The views of prison staff,” based on a unique survey of inmates in prison in England and Wales, shows that some prisoners with learning disabilities do not even know why they are in prison (McMillan, 2007).
Greifinger (2006) also argues that the population of prisoners with disabilities is disadvantaged. As he says, “They may not be allowed to enroll in programs and prerelease training or education because of their problems with learning, mobility, or being housed in a medical or psychiatric unit” (p. 253). In 1998, a ruling was in place that said the ADA could be applied to prisons; however, that is not happening, as many prisoners are being denied accommodations. An example is a man who used a wheelchair to become mobile. He was not given proper medical care or reasonable accommodations under the ADA, as he was placed in a cell so small that he could not maneuver his wheelchair (Greifinger, 2006).

Prisons are seeing more mentally, physically, and psychologically disturbed individuals with and without disabilities (Cropsey, Wexler, Melnick, Taxman, & Young, 2007). Cropsey et al. also state the following:

Although the state is responsible for providing care for offenders who are incarcerated, as mandated by various Supreme Court decisions (e.g., Estelle V. Gamble, 1976 [made it a constitutional right to provide health care to inmates; failure results in violation of the Eighth Amendment]), we know relatively little about the capability of the correctional agencies to address these needs (p. 59).

Due to this problem, the population of individuals with disabilities is under-represented, not only in general society, but also in prison. This means that individuals with disabilities are a large population, and their voices are not being heard enough. According to Cropsey et al.:

“Furthermore, prisoners have other problems, such as histories of poor education and vocational training that have generally limited their ability to financially support themselves through legitimate employment” (2007, p. 60).

Robertson (2007) argues that unless we know how to better treat criminals with disabilities, such maltreatment will only continue. According to Robertson, inmates in the general prison population often abuse prisoners who have disabilities. It is as though inmates
pick on prisoners with disabilities just because they have disabilities. Another reason for maltreatment in prison may be due to a person’s race. Robertson explains it in the following way: “Critics of the Johnson decision [which made prison segregation unconstitutional] could point to Lindell v. Houser (2006) [racial assault amongst desegregated prisoners] as anecdotal proof that race does matter after all” (p. 186).

The Treatment of People with Learning Disabilities

In this section we will examine people who have learning impairments. By definition, a learning disability is one in which an individual functions below average in any of the following: social skills, leisure and work, daily living, and basic academics. Suzanne Hayes (2007) says of the learning impaired who are convicted, “They may be sent to prison or the judge may say they must do some special work in the community instead of punishment” (p. 146). Also, individuals with learning impairments might not go to court. Instead, they may be placed in hospitals or special correctional centers. “Over the past few decades, there has been increasing research and clinical attention to the issues surrounding the offender with a learning disability” (Hayes, 2007, p. 147).

According to Hayes (2007), there are five major dimensions which explain why individuals with disabilities are treated as they are in prison. 1) A minimum in the amount of offenders with learning disabilities; 2) a lack of proper identification of those who have learning disabilities; 3) no awareness of the presence of a disability; 4) no ways to help the individuals; and 5) the absence of appropriate services for the group. These dimensions result in the poor treatment of individuals with disabilities. The population of persons in prison who have learning disabilities is thought to be quite high; however, it can vary from prison to prison and from jurisdiction to jurisdiction (Hayes, 2007). As Hayes puts it, there is no
adequate communication between learning disability advocates and the criminal justice system.

**The Treatment of People with Hearing Disabilities**

Another category of individuals who are often mistreated in prison is those who are deaf and hard of hearing. As Vernon and Miller (2005) state: “Deaf people in America and throughout the world face serious barriers when they enter the criminal justice system” (p. 283). These problems begin during the arrest and go through the trial. One problem people who are deaf face, according to Vernon and Miller, is the lack of interpreters during the legal process, leading to communication difficulties. “Approximately 40 percent of deaf individuals face communication barriers” (p. 285).

Sometimes deaf people escape punishment because either the police feel sorry for them or are not trained to find interpreters. However, this is not fair because under the ADA, individuals who are deaf, whether in jail or not, have the right to interpreters. Vernon and Miller (2005) claim that one quarter of inmates who have hearing impairments do not receive interpreters, and without this accommodation, a person in question may not even know what he or she is in trouble for. “They may have little or no understanding of how criminal justice is administered or of their legal rights within the system” (Vernon & Miller, 2005, p. 286). Because of their communication problems, people who are deaf or hard of hearing are treated poorly, not only by the police but also by individuals within prison. Upon arrest, deaf people have the right to an interpreter and to avoid self-incrimination.

Schneider and Sales (2004) argue that prison life is unpleasant for not only people without disabilities, but it is more challenging for individuals who have trouble hearing. Although there are alternative programs for inmates—including therapy for sex offenders,
rehabilitation for alcoholics, and educational workshops—according to Schneider and Sales, “often these same programs and services are inaccessible to hard of hearing prisoners” (p. 78). Schneider and Sales say there is a mandate for new and altered correctional facilities with guidelines that there must be a minimum of three percent of accessible cells and an additional three percent of these cells must be accessible to inmates with hearing impairments. A further difficulty for the deaf and hard of hearing in prison is the unequal participation in activities such as work (Schneider & Sales, 2004).

The Treatment of People with Mental Illness

People with mental illness constitute another group that may be mistreated in the legal system. Individuals with mental challenges make up the highest percentage of people within prison (Cropsey et al., 2007). Some public officials understand a person’s condition while others do not. For example, a police officer should be able to understand that a person with a mental illness cannot control his or her behavior, and should not threaten such a person, as one woman described happened to her daughter. According to Rivera (2004), “One officer stated, ‘If you were my daughter, I would knock you across the room.’ The officer’s behavior exemplifies the problem that the criminal justice system is ill-equipped to handle mentally ill offenders” (p. 108). This is not to say that officers do not want to help them, but that they may not be able to because of a lack of proper resources. Offenders with mental illness claim that the treatment is not up to par. So, with the passage of the Mentally Ill Offender Treatment and Crime Reduction Act of 2004, it can be shown that the proper treatment of such individuals can reduce the amount of crime committed by offenders with mental illness, and thus can make a difference. By the very nature of this act, it can be said that it indeed helps to prevent the mentally ill offender from being recycled back into the
prison system. Like Rivera, Allen (2007) argues that prison is not a good place, especially when a person’s mental health is less than adequate, and he states, “The conditions in which so many prisoners with mental problems are being held are a national disgrace” (p. 7).

Wertlieb (1991) argues about the M’Naghten insanity test that is frequently used with people who have a mental impairment. This is a test to see if individuals who have a mental impairment are in fact guilty or not guilty of the crime. To test this defense, officials such as judges look at whether the person who committed the crime did it purposefully or not. If in fact the evidence does not show that the act was intentional, then the person is found not guilty by insanity. Having a mental disorder alone does not let the offender off the hook. “Since the person who is retarded might have a surface understanding of the impact of his or her behavior without any real appreciation, critics have argued that this test is unjust” (p. 341). Wertlieb also adds that rarely is anyone with or without a mental disability found not guilty by reason of insanity. The insanity defense is not appropriate because a person also has to be deemed mentally ill. The insanity plea varies across jurisdictions. However, the defense known as diminished capacity only gives people with disabilities lighter sentences instead of treatment programs, says Wertlieb. She explains it this way: “In a recently proposed model statute, advocates recommended that when a person who has a mental disability is acquitted of a crime by virtue of diminished capacity, the court should appoint a multidisciplinary evaluation team to determine the appropriate services” (p. 343).

The Treatment of People with Developmental Disabilities

People with developmental disabilities are yet another group who experiences discrimination in prison. Repeat offenders are examined in this section. Such individuals are usually arrested for small crimes, and many factors can lead to repeat offenses. Linhorst,
McCutchen, and Bennett (2003) reported on individuals who were placed in a special
program after sentencing, and found that those who completed the program were less likely
to be arrested after case closure than those who dropped out of the program. Just as the
groups discussed previously, the treatment of individuals who have mental disabilities is
inadequate. “Persons with mental retardation and other developmental disabilities who enter
the criminal justice system face considerable adversities” (Linhorst et al., 2003, p. 210).
Upon arrest, these individuals are not always able to comprehend what is going on or have an
understanding of their rights. As a result, sentences for people in this group are often harsh.
“They are less likely to receive a reduced charge through a plea bargaining, and, if convicted
are likely to be incarcerated because judges and prosecutors often view them as poor
candidates for probation” (p. 210). They are also less likely to be given treatment, according
to Linhorst et al. (2003). Another point that should be made is that people with
developmental disabilities are also less likely to receive parole because they do not
understand the rules of prison and behave accordingly. Because of these problems, many
prisoners with developmental disabilities, once released, often return to prison.

The Treatment of People with Mental Retardation

The treatment of criminals in prison with mental retardation (MR) is similar to the
treatment of criminals without disabilities, which is unfair. Petersilia (1997) looks at the
treatment of such individuals in California. “MR inmates in California are not usually
identified or given specialized programming” (p. 358). They are essentially treated the same
as prisoners who do not have disabilities. Petersilia claims the following about these mentally
retarded individuals: “On one hand, we do not wish to excuse the criminal behavior of
[those] who are MR, but many offenders with MR are not so much law breakers as they are
low-functioning citizens who lack training on how to function responsibly in a complex society” (p. 359). Given this situation, proper treatment of these inmates is quite costly. Because individuals who are mentally retarded may lack proper training in how to behave in society, they don’t understand that their criminal actions are wrong. Their ways of thinking can be far from adult ways of thinking. This explains why these individuals are not able to make logical decisions, and can result in potentially dangerous criminal activity. “Studies have shown that although their rates of crime are similar to non-disabled persons, and consist mostly of less serious felonies such as property crime, the offender with MR is disproportionately represented in correctional agencies” (Petersilia, 1997, p. 360).

When offenders with MR encounter the police, their chances of arrest are high (Petersilia, 1997). Because of their poor decision-making abilities, people with MR do not try to resist arrest. In fact, they often do not understand what they did to get arrested in the first place. Public officials typically are not trained to identify disabilities such as MR, and a person’s disability may not be noticeable enough to draw attention. It can be a hidden disability. “Even if the offender with MR is identified, special handling or programming is extremely rare” (Petersilia, 1997, p. 360). According to Petersilia, a person with MR may be identified during the questioning or incarceration process when it is often too late to use special accommodations. Or, such a person is perceived as just slow, not incapable. Because offenders with MR are often unemployed and live in poor conditions, they are less likely to make bail. “Although it is difficult to isolate the detention factors from other variables such as the severity of the crime, research has consistently found a relationship between being held in jail for pretrial and the severity of court dispositions” (Petersilia, 1997, p. 361).
When it is time for the sentencing process, individuals with MR are more likely to receive longer sentences. “The offender with MR is subjected to the same judicial procedures, which are confrontational, legalistic, and impersonal, as are persons having greater intellectual capacity” (Petersilia, 1997, p. 361). However, because of how individuals with disabilities are handled, the treatment of these individuals is somewhat unequal if they receive harsher sentences. During trial, individuals with MR generally have difficulty remembering important details about a crime. “At sentencing, MR offenders do not often look like a good prospect for probation, which is more commonly granted to individuals with higher educational and work achievements” (p. 362). In jail, MR prisoners are mixed with the general population, and they are mistreated. “Housed with the general prison population, the offenders with MR are often cruelly abused or victimized” (p. 362). Because of this harsh treatment, a higher percentage of them are more likely to get into trouble, and as a result, their chances for parole are usually slim. Even upon release, they will likely have trouble because they may be unable to work or pursue life tasks because they have a criminal record.

**The Treatment of People with Intellectual Disabilities**

Individuals with intellectual disabilities also experience problems in the legal system. Glaser and Deane (1999) state that even though they have intellectual disabilities, inmates are held accountable for their actions. As previously noted, public officials have failed to recognize people with these disabilities. Glaser and Deane state, “It is only in recent times that there has been recognition of the social processes of stigmatization and segregation that has contributed to the marginalization of people with intellectual [disabilities]” (p. 338). However, we are slowly moving away from discrimination and stigmatization and moving toward integration. Prisoners who have intellectual disabilities are now expected to behave
just as those who do not have disabilities. According to Glaser and Deane (1999), “Such an approach assumes that people with [intellectual disabilities] possess the skills necessary to fulfill these expectations” (p. 338). Thus, it is thought that individuals with intellectual disabilities should not be excused from the same responsibilities of people who are not disabled. However, like others with disabilities, individuals with intellectual disabilities are often disadvantaged. They may be poor, abused, or just part of the minority.

Glaser and Deane (1999) specifically looked at two types of prisons and compared the treatment of inmates with intellectual disabilities in each. One was a regular prison; the other was a correctional unit strictly for individuals with intellectual disabilities. The results of the study were very interesting. As Glaser and Deane state, “There were marked differences between the 109 prisoners admitted to the prison unit (sample A) and the general male prison population” (p. 340). For example, the study showed that prisoners with intellectual disabilities were less likely to receive parole and were more likely to receive longer sentences. Representatives in the second facility were studied based on dimensions such as family history, whether or not they had previously been in prison, their levels of intellectual functioning, and medical histories. This sample was compared to sex offenders and a control group. The sample was also compared to the groups who went to either the specialized facility or the maximum-security prison. It is interesting to note that 35 out of the 42 individuals in sample B had intellectual disabilities, and more than half of the individuals were unemployed.

Recommendations

In order to better assist individuals with disabilities, both in general and within the legal system, we must make some important changes. However, before these changes can be
implemented, several different recommendations for dealing with people with disabilities in the legal system are proposed. These are 1) better identification and awareness by public officials of individuals with disabilities; 2) proper accommodations for all individuals with disabilities, regardless of the onset or duration of disability; 3) courses public officials can take that are designed to help them understand how to provide appropriate services for individuals with disabilities; and 4) teaching public officials how to administer appropriate services and to make certain they are effective for each particular disability (McNeil, 2000). For example, if a person is blind and needs documents put into Braille, then it should be the job of public officials to provide that accommodation. Likewise, if a person is deaf, McNeil says it is the responsibility of public officials to provide an interpreter, which is one way to make prison cells more accessible. McNeil also adds that evaluation of provisions is important in identifying ways of preventing recidivism rates among individuals with disabilities. He states the following: “Actuarial risk assessment tools have been available for some time and are gaining credibility in some quarters” (p. 9). In other words, McNeil suggests developing programs for helping criminals with disabilities lead normal lives when they leave prison. Of course, the rate of recidivism is partly contingent upon the level of adequate services a prisoner with a disability received.

Wertlieb (1991) suggests that public officials implement alternatives to incarceration for prisoners with disabilities. She explains it like this: “While incarceration might often be the most reasonable and appropriate punishment, sometimes alternative procedures are more suitable given the nature of the crime” (p. 345). However, she adds that these alternative programs may not work for people with mental disabilities because individuals may not understand rules regardless of the facility in which they are placed.
Another suggestion proposed by Petersilia (1997) is to train public officials to recognize when a person has a disability. This is half the problem. If public officials cannot recognize someone with a disability, they cannot begin to help him or her correctly. She also highly recommends, however, that punishment should be the same whether an individual has a disability or not. Thus, consistency in the criminal justice system is a must. For example, if an individual without a disability is tried for murder and receives life without parole, an individual who is blind should get the same sentence for the same type of crime. Because individuals who have mental disabilities are disadvantaged, Petersilia proposes using special correctional programs. Critics argue that these types of programs are successful because they teach individuals to obey the law, and the programs save money. Petersilia says: “In Fort Worth, the Volunteers of America work with the adult probation department in specialized programs for MR probationers” (p. 370). These programs teach skills in daily living and in finding and keeping employment, and they help individuals to eliminate drug and alcohol use.

A recommendation by Rivera (2004) is that the staff of a prison needs to include persons who understand how to provide appropriate services for inmates with disabilities. For example, if an inmate who is blind needs Braille, then someone must be present to provide it. The same principle applies to inmates with all types of disabilities. Yes, it may be costly, but untrained staff is the major reason for the maltreatment of prisoners with disabilities today. If this problem continues, Rivera says, criminals with disabilities will continue to find themselves on the streets or back in prison after release. Schneider and Sales (2004) also recommend that special programs be implemented for people with disabilities. These programs include therapy for sex offenders, rehabilitation for alcohol and drug
abusers, and educational programs. Regarding the latter, the rate of recidivism for individuals who lack a high school diploma is high. Cropsey et al. (2007) argue that there are not enough services available to help criminals with disabilities. They suggest that a more diverse variety of services needs to be provided so that criminals who have disabilities will not have as difficult a time as they do now when they are released back into society.

Regarding types of services to provide for individuals with disabilities in prison, James Davis (1991) suggests trying community service—a form of involuntary labor—as an alternative to punishment. Davis explains that it is a successful measure in most cases and it has its benefits. First, community service is a good means of establishing a cohesiveness between the community and the offender, which is good for the spirits of the individuals involved. Another advantage of community service is that it teaches an offender (with or without a disability) about employment. However, if community service is to be utilized, Davis says, it must be explained clearly. He states that individuals need to understand why they are receiving community service over an alternative punishment, and how much better community service can be for them.

The most important recommendation to help prevent further maltreatment of individuals with disabilities in prison is to focus on the social barriers (for example, stairs with no alternative entrance, parking that is too far away from an entrance, or lack of appropriate signage) that cause the handicap, and focus less on the disability itself. In other words, we need to focus more on why an individual is unable to participate in daily activities, not the fact that he or she is disabled. According to Galambos (2004), “Little attention was given to the societal barriers that might impede achievements” (p. 163). She adds that even when people take into consideration a person’s disability, they still may not be familiar with
how to help the person. She argues that because an individual has a disability, people assume
he or she is incapable of carrying out daily tasks both in general and in prison. Galambos
treatment and care plans” (p. 165). Finally, she claims that the discipline of social work does
not do enough to help people with disabilities in the areas of research, practice, and
education. In fact, more research needs to be conducted on individuals with disabilities,
especially on how to treat and work with them during the legal process. The bulk of research
on people with disabilities in prison is on individuals with mental and learning disabilities.
Within the practice area, people who assist these individuals need to focus more on abilities
instead of disabilities. For example, when social workers look at a person’s abilities, they
notice talents just as they do for individuals without disabilities. In the educational realm,
schools need to have curricula in which disability matters are addressed. Once that is
accomplished, schools can include disability content in coursework to help all students learn
to be more aware of such issues. From there, schools can develop intervention programs that
could eventually put an end to the maltreatment of people with disabilities.

Summary

This review of literature has examined the maltreatment of people with disabilities
both in general society and in the criminal justice system. People with disabilities have been
and continue to be overlooked. Definitions of impairment, disability, and handicap were
examined as well as the history of treatment of individuals with disabilities. These definitions
have changed over time and this is due to the socially constructed nature of disability.
Individuals with disabilities were segregated from society and placed in institutions. For
example, there were schools for the deaf, the blind, and the mentally retarded. The eugenics
movement in the 1920s was one in which attitudes toward people with disabilities was beginning to get worse. This movement did not succeed, but unfortunately, the bulk of laws concerning people with disabilities did not surface until the 1970s. The Rehabilitation Act of 1973 applied civil rights issues to people with disabilities. The paradigm shift between each of the four models of disability (moral, medical, rehabilitation, and disability) has helped to improve the lives of people with disabilities. This shift in paradigms took social thinking from it being sinful to have a disability, to a disability being accepted. In the 1980s a new discipline known as disability studies emerged. This discipline was a new advocacy movement.

Individuals with disabilities experience the same barriers in prison as they do in general society. The first and foremost recommendation to remedy the situation is to provide training for prison staff on how to appropriately identify people with disabilities so proper accommodations and services can be administered. Second, there must be consistency across all jurisdictions for prisoners with disabilities. Next, there needs to be a diverse variety of services provided to individuals with disabilities including educational opportunities, job placement, and independent living skills. Another recommendation is to use community service instead of jail time because it has been very successful. Finally, more research must be done on the maltreatment of not only prisoners with disabilities, but also the maltreatment of individuals with disabilities in the general population. When improvements are made, perhaps the maltreatment of individuals with disabilities will be a thing of the past. However, there is a long process ahead to ensure equal representation. First we need to find the money to fund these programs and then they need to be implemented. This thesis helps to understand
how decision makers in the criminal justice system view people with disabilities and make judgments concerning their treatment in the legal system, in jails, and in prisons.
Nine individuals—two judges, two prosecutors, two inmate services directors, and three ADA coordinators—were asked about how inmates with disabilities are handled in the criminal justice system. The participants were selected from the population of judges, prosecutors, and ADA prison coordinators and inmate services directors in Northwest Ohio. The selection process was as follows. I recruited the respondents from four different counties in Ohio: Allen, Lorain, Lucas, and Marion. These counties were selected because that is where ADA coordinators were located according to information available on the prison institution Internet pages. I contacted participants via telephone or email. A total of 12 people were identified and contacted. Three people declined to participate in the study because of time constraints. One ADA coordinator expressed a strong interest in participating but was not available to be interviewed during the time frame of this study.

Participants ranged in age from 34 to 53 years old, with a median age of 43. There were four males and five females in the sample. Participation in this study was voluntary. Each participant was given informed consent and had the chance to ask questions before and after the survey. Participants were promised confidentiality. In the discussion of my findings, the respondents’ names have been changed to protect their identities.
Each person who agreed to participate in this study was sent a list of questions by email. All participants preferred that method because it was a fast and efficient way to get answers returned. Consent forms were first faxed to each participant, and then the questions were emailed after signed informed consent forms were returned.

The survey questions were semi-structured and open-ended (Stephens, 2007). This method, rather than a more structured instrument, was employed, because I wanted to explore each individual’s experiences working in the criminal justice system (Marshall & Rossman, 2006). “Qualitative researchers rely quite extensively on in-depth” research methods when exploring new topics of study (Marshall & Rossman, 2006, p. 101). I chose open-ended questions because I needed to learn as much as possible about the participants’ experiences. In this case, I was learning about participants’ views on accommodating the accused and inmates with disabilities. To facilitate this process, I used an informal conversational method when constructing the questions and conducting the survey by email (Marshall & Rossman, 2006).

Thirteen different questions were explored for this study (see Appendix). They included when participants were born; their career histories; participants’ reason(s) for wanting to work in the criminal justice system; their views of how individuals with disabilities are treated in general; the types of accommodations they provide and instances when they cannot provide accommodations; any specific laws besides the ADA that participants should follow; the obstacles they face on the job; what they would change about their jobs; and what recommendations they may have for improving the treatment of individuals with disabilities.
The data was coded and analyzed based on the topics that emerged using an inclusive case methodology. No questions or responses were left out of the analysis. This helped me to discover patterns in my data. I used the coded data along with specific quotations from the participants as a tool for my analysis. I also compared my findings with information conveyed in the literature on this topic.

While I have learned much about how decision makers in the criminal justice system of Northwest Ohio approach the accommodation of people with disabilities, this study is subject to some methodological limitations. First, the sample of participants was very small. This means that my findings may not be generalizable beyond the group of people I interviewed. Second, the participants studied were from Toledo and Northwest Ohio, so their responses may not reflect the views of judges, prosecutors, and prison officers elsewhere. Third, my sample of participants is not based on representative sampling techniques and may not reflect the population of judges, prosecutors, and prison officials.
Chapter Four

Analysis

This project examines how judges, prosecutors, and prison officials make decisions about accommodating the criminally accused and inmates with disabilities in the criminal justice system. This chapter reports and analyzes the data from my survey of judges, prosecutors, and prison officials. The data suggest that decision makers have limited knowledge about the history of laws that govern accommodations for people with disabilities in the criminal justice system. However, they believe that inmates receive appropriate accommodations even though resources are limited.

Career Histories of Participants

All of the respondents, with the exception of one judge, have been employed in their current positions for five years or more. This suggests that most of the participants in this study have had adequate experience not only with inmates without disabilities, but with inmates with disabilities also. This is especially true for the ADA coordinators who tend to have long careers with the Ohio Department of Corrections. For example, Ann\(^1\) “started out as a mental health therapist.” Dennis started out as a corrections officer and is “a 14 year

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\(^1\) All individuals who participated in my survey have been given pseudonyms to protect confidentiality.
veteran of the Ohio Department of Rehabilitation and Correction.” ADA coordinators appear to have the most experience for the positions they currently hold.

Monica has been a prosecutor for Toledo Municipal Court since October 2007. Tom has been a prosecutor since 1985. Eric has been a judge since 1997 and Gary since January 2007. They all report that their levels of experience working with people with disabilities are “very small” but they have had some.

Each participant in the study reported somewhat different reasons for entering into careers in criminal justice. Both judges (Gary and Eric) explained that they wanted to utilize their talents in multiple ways. Gary stated the following reason for entering the criminal justice system: “I have wanted to be a member of the judiciary system for many years and utilize my talents as an arbiter, rather than an advocate.”

Monica, a prosecutor, gave the following reason for choosing a career in criminal justice: “In grade school I knew I wanted to be an attorney. I was interested in the criminal justice system and how it worked.” She credited the position she is in today to her lifelong passion for legal work. In contrast, an inmate services director named June “fell” into prosecuting work: “I came temporarily to make some extra money and started loving it and I am still here 14 years later.” All participants said they believe working in the justice system gives them stability and security because they can perform various jobs in one field. Ann’s motivation goes back to her college experiences. She worked with crime victims. She reported: “While working with victims, I was able to learn and gain experience working with multiple aspects of the criminal justice system.” Thus, she was able to see not only the impact a crime had on a victim, but also the impact it had on an offender. Because she could see the impact of crime from many angles, she started working with offenders.
Offenders with Disabilities

Most of the participants reported that they accommodate disabled people in the criminal justice system for any need that is recognized by the Americans with Disabilities Act. Ann explained it this way: “Reasonable accommodations are based upon requests from the offenders for something that has not been provided by the institution.” Such accommodations include handicap-accessible cells, interpreters, special televisions for the blind and visually impaired, and mobility aids such as canes. However, Ann and Dennis, prison ADA coordinators, reported that they will not accommodate requests that may produce undue hardship for other inmates or requests that don’t follow ADA protocol. Ann explained it this way: “[We will not provide accommodations] if the request does not qualify under the Americans with Disabilities Act or if granting the request constitutes a threat to security or may present an undue hardship to the prison.” The ADA coordinators believe that they have no discretion and must follow ADA standards as defined by Ohio Department of Rehabilitation and Corrections protocol. This means that some accommodations are not provided. June, for example, said that she cannot accommodate someone who is psychotic or won’t eat or drink. In other words, while prison officials might want to accommodate such individuals, they cannot do so because they don’t work in a mental health facility.

In contrast, it is very interesting to note that the two judges and the two prosecutors said they will accommodate whatever is necessary for the accused. ADA coordinators and inmate services directors deal directly with the accused for extended periods of time, while judges and prosecutors see them for only a short time (during the trial). Thus, Jane and June, inmate services directors, feel that mentally disturbed inmates don’t belong in jail because prison staff doesn’t have the experience to help them. The inmates belong in a mental
hospital instead. This suggests that inmates with mental disabilities may not get the help they need if they cannot be transferred to a psychiatric hospital.

All of the participants believe that the accused and inmates with disabilities should be held to the same standards as inmates without disabilities. Monica put it this way: “The judges and court personnel treat an individual with disabilities like any other individual.” She added that they receive the same sentences for the same crimes committed by other offenders. Tom, a prosecutor, believes that the accused with disabilities actually receive better treatment than other accused people if they are provided with appropriate accommodations.

Similar to the judges, prosecutors, and prison officials surveyed for this study, most scholars argue that individuals with disabilities should be held to the same standards as everyone else in society. If individuals are treated equally in educational settings, for example, there is no reason the same should not be true in the criminal justice system. In other words, just because a person has a disability, in most cases that shouldn’t exempt him or her from being held responsible for the crime he or she may have committed.

Unfortunately, the belief that accused individuals and inmates with disabilities are fully accommodated and treated like those who are not disabled contradicts the current literature about the treatment of inmates with disabilities. For example, Harley (1996) and McMillan (2007) both say that the treatment of inmates with disabilities is in need of improvement. These authors find that individuals who go through the criminal justice system are mistreated simply because they have disabilities. Greifinger (2006) argues that inmates who have disabilities are often not allowed to participate in programs such as early release. He finds that disabled inmates are disadvantaged compared to those without disabilities. As
my study suggests, it appears that judges, prosecutors, and prison officials believe that following the ADA has created a level playing field for people with disabilities in the criminal justice system. These beliefs may make it more difficult to achieve full accommodations in the future, as decision makers have no reason to make further improvements if the problems are considered to be resolved.

As I was surveying the participants, another question of interest was what specific laws should be followed when serving inmates with disabilities. It is interesting that both of the judges said this type of question was too broad, and they noted that they were unsure of any such laws aside from the ADA. However, Jane, an inmate services director, noted that laws such as those governing the mentally ill when the accused are found guilty by reason of insanity also apply. All of the respondents, except the judges, were aware of laws governing the treatment of people with mental and psychological disabilities. However, none of the respondents mentioned the laws that predate the ADA, suggesting that they may not be aware of the history of laws that govern accommodations. One such law is the Rehabilitation Act of 1973. This is the law that initially mandated equal treatment for people with disabilities. This act made it mandatory to provide accommodations such as interpreters and made it possible for individuals with disabilities to be included in aspects of daily life (Barnartt & Seelman, 1988). While knowing about laws that predate the ADA does not affect accommodations based on the ADA today, it does suggest that historical knowledge about accommodating people with disabilities is limited. My data do not allow me to say why the two judges surveyed did not demonstrate knowledge of laws pertinent to the accommodation of disabilities beyond the ADA. It may be that better education for judges is needed.
Obstacles to Accommodating People with Disabilities

Despite claiming that most people are well accommodated, all of the study participants reported facing obstacles to accommodating people with disabilities while working in the criminal justice system. These obstacles include limited resources, limited funding, and overcrowding. Five participants agreed that limited resources are a real problem when it comes to serving people with disabilities. According to Ann, an ADA coordinator: “Sometimes accommodations are too costly or funding may take a long time to approve.” June, an inmate services director, explained that taxpayer attitudes contribute to resource shortages. She said, “The biggest obstacle is attitude. Many taxpayers do not want to do anything for the inmates.” This suggests that inmates with disabilities are being denied accommodations simply because there isn’t enough money to serve them.

Other important issues are recidivism and overcrowding. Monica, a prosecutor, explained: “The main concern I have with the criminal justice system is it doesn’t appear to be rehabilitative in any way.” She also added that if inmates get the proper help, the recidivism rate will go down. For Dennis, the main obstacle is overcrowding. He stated that most of the people who enter the criminal justice system have disabilities and there isn’t enough room to house all of them.

All participants said they love their jobs. Dennis and Tom both said they have no means of changing their work. Dennis added the following: “My job is very challenging but it gives me the flexibility to know people, understand their needs, educate them in safety matters, and hopefully make their lives better.” June believes there is a communication barrier in her facility. This suggests that people are not adequately made aware about
offenders with disabilities and those mentally challenged individuals who may belong in a mental hospital rather than jail. She would like to see better communication in her facility.

Both judges explained that they would like to see the caseload decrease. Gary explained it as follows: “The only thing I would change about the job is the caseload.” He also explained that there are too few judges and so many cases that spending too much time on one single individual is impossible. Monica said she is tired of the limited resources. She explained that there is a shortage of prosecutors and, as a result, the people who need a prosecutor have to wait a very long time. Monica would like to see more prosecutors at her office. Jane misses the daily contact with clients. Prior to being a supervisor, she was a counselor. Now she doesn’t have daily contact with different clients themselves. Francis, another ADA coordinator, loves her job and finds that it is always changing depending on the new laws and inmates she sees. With each new case, there are different inmates with different disabilities. She likes the variety.

A final point to note is what the participants think needs to be done to ensure that the accused and inmates with disabilities receive appropriate accommodations. Dennis (ADA coordinator), Jane (inmate services director), Tom (prosecutor), and Gary (judge) all believe that criminals are treated fairly. Dennis believes that inmates with disabilities should be treated the same as inmates without disabilities (also see Petersilia, 1997) and adds the following: “Frequently we have the tendency to let them have extra privileges, allow them not to work, or make unnecessary accommodations because of their [disabilities]. I honestly believe that this practice hurts [individuals] upon their release because the outside world either will not or cannot make the accommodations for them.” Jane believes people who come to the Lucas County Corrections Center receive good treatment. “We strive daily to
meet the needs of all who are housed here, remembering that this is a pretrial facility and those housed here are presumed innocent until proven guilty.”

In contrast, Francis, an ADA coordinator, thinks there should be more attention paid to those with disabilities. Often, the accused and convicted do not even explain they have disabilities until it is too late. If the inmates wait until the trial takes place, then it is highly unlikely that the officials will be able to accommodate the inmates because it is too late in the process. This is very similar to McNeil’s (2000) findings. He explains that officials must have better training and learn to identify individuals with disabilities. He also recommends that part of that training must consist of courses public officials can take to administer proper accommodations and make sure they are effective (see also Petersilia, 1997).

Monica, a prosecutor, believes that better types of services and accommodations must be offered to prevent high recidivism rates. She explained it this way: “If people were better able to manage their [disabilities], then the Court would not be a revolving door.” In other words, she argues that when inmates enter the criminal justice system, they are not being rehabilitated. They are just being punished. Similarly, Wertlieb (1991) says that inmates are being punished rather than rehabilitated.

To summarize, decision makers appear to have limited historical knowledge about the laws governing accommodations for inmates with disabilities. Most agree that both the accused and convicted are well accommodated, despite the fact that there are limited resources. Most participants believe the criminal justice system still needs improvement.
Chapter Five

Conclusion

This thesis examines the treatment of individuals with disabilities in the criminal justice system. I explored how decision makers (judges, prosecutors, prison administrators, and ADA coordinators) decide what accommodations and services should be provided to the accused and criminals with disabilities. This is very important to me because I have a disability as well, and I have always been interested in how people with disabilities are treated in the trial process and in prison. It is a very important topic that has been often ignored in the literature. Many studies examine the accommodations of prisoners with disabilities but do not focus on the specific decisions related to providing accommodations. This thesis begins to fill this gap in the literature by surveying a small group of decision makers in the criminal justice system.

The results from this study include the following. First, I found that the decision makers in my study are not all grounded in the history of laws that govern how to accommodate the accused and inmates with disabilities. They are, of course, familiar with the Americans with Disabilities Act. The judges and prosecutors I interviewed reported that they provide whatever accommodations accused individuals need. In contrast, the ADA coordinators I surveyed explained that they must adhere to ADA protocol and do not provide
accommodations that are not considered reasonable by the ADA. This apparent contradiction may be due to the fact that judges and prosecutors see the individuals for only a short duration while prison officials deal with inmates for longer periods of time. However, it may also be possible that judges and prosecutors are simply not responsible for providing accommodations to people accused of crimes. In contrast, prison officials report utilizing the specific policies mandated in the ADA and the Ohio Department of Rehabilitation and Corrections policy. They are also required to have a basic understanding of how the policies operate and what accommodations must be provided to inmates who have disabilities (ODRC, 1999).

Another interesting finding is that most of the participants are in agreement that the accused and inmates with disabilities receive full accommodations. This is exactly what the current ODRC policy states should happen. It says that inmates with disabilities should receive accommodations as long as the accommodations do not produce security problems or hardship for other inmates or the institution. ODRC policy is intended to avoid discrimination against people with disabilities. However, the existing literature suggests that just the opposite takes place in many prisons despite the policy of non-discrimination. Scholars explain that individuals with disabilities face barriers in the criminal justice system (Greifinger, 2006; Rivera, 2004; Harley, 1996). This suggests that decision makers may need more education about the barriers people with disabilities face in prison and about acceptable appropriate accommodations. It is possible that decision makers are resistant to implementing additional types of accommodations since they believe that full accommodations are already being provided.
A final key finding from this study is that even though resources and money are not available to provide all accommodations, officials strive to accommodate each person who goes through the criminal justice system. Such accommodations include special televisions for the blind, interpreters for the deaf, and wheelchair accessible cells. It is interesting that judges, prosecutors, and prison officials say that full accommodations are not possible without more resources, and that these statements contradict their reports of fully accommodating all individuals with impairments. Judges call for smaller caseloads, prosecutors want a more rehabilitative focus in the criminal justice system, and prison officials need more resources to provide accommodations and rehabilitative programming.

Drawing from this research, I have developed some recommendations for improving the treatment of the accused and inmates with disabilities. First, as the literature suggests, training tools must be in place for public officials and decision makers in the criminal justice system (Davis, 1991; Petersilia, 1997). ODRC policy gives responsibility for this training to ADA coordinators at Ohio prisons (ODRC, 1999). This training must include hiring an outside person with experience in helping people with disabilities, as most staff at the courts, jails, and prisons are not able to handle it alone (see also Rivera, 2004). For example, if an inmate is blind, then a specialist who knows how to work with the blind must be called in to help. If there are only a few people with a specific disability, I recommend that consultants be on call if the prison staff has questions about how to appropriately provide accommodations.

Another tool for better training our public officials is to have them take specific courses on how to accommodate people with disabilities. They need to understand what it is like to have disabilities. Decision makers should be required to take part in training programs
where they play the roles of people with various disabilities so they see first-hand what those individuals may experience. I believe part of this coursework should include information on appropriate accommodations and how to administer them properly. The evidence to date suggests that decision makers (especially judges and prosecutors) do not fully understand what is meant by appropriate versus inappropriate accommodations. I also do not believe that they fully grasp the laws that govern how to provide appropriate accommodations. This extensive training would help them learn the relevant laws. All decision makers should be required to go through this training before they can work in the criminal justice system. There should also be a test they must pass to determine how well they understand how to advise the accused and criminals with disabilities. The decision makers surveyed in this study suggest that better training is needed, but there is very little money available at this time. It seems clear that more money must be allocated for disability-related training and programs for further progress to be made.

Finally, I recommend that more research be conducted in the area of disability law as applied in the criminal justice system. There is little information about how accommodations are made for the accused when they are arraigned, appear before judges, or go to trial. Prison systems appear to screen inmates for impairments at the beginning of their sentences, but there is no similar system for the accused. They are not screened before this time. Future studies should assess how often disabilities are identified and accommodated in the processing of people accused of crimes.

To conclude, I have enjoyed this study and I have learned a great deal about the treatment of people accused of crimes and inmates with disabilities. By implementing better training requirements, the treatment of individuals with disabilities in the criminal justice
system will be greatly improved. While these changes will not occur overnight, it is hoped that they will happen with time. The treatment of people with disabilities, both in society and in prison, has improved over the past few decades but there is still much work to be done.
References


Appendix:
Survey Questions

1. What is your educational background? Please give as much information as possible.
2. Please describe your career history.
3. What was it that made you decide to work for the criminal justice system? Please explain.
4a. What types of disabilities have you encountered in the population you work with?
4b. What accommodations do you provide for such individuals?
4c. Are there ever circumstances where you do not, or cannot, accommodate persons with disabilities? Please explain.
5. How do you view the treatment of individuals with disabilities in the criminal justice system? Please explain.
6. Are there any laws you are aware of that designate how an individual should be treated in the criminal justice system? If so, what are they and what are their provisions?
7. What are the obstacles you face working for the criminal justice system? Please explain.
8. Is there anything you would change about your job? Why or why not?
9. What do you think needs to be done to improve the treatment of the accused and/or prisoners with disabilities? Please explain.
10. When were you born?
11. What is your sex?