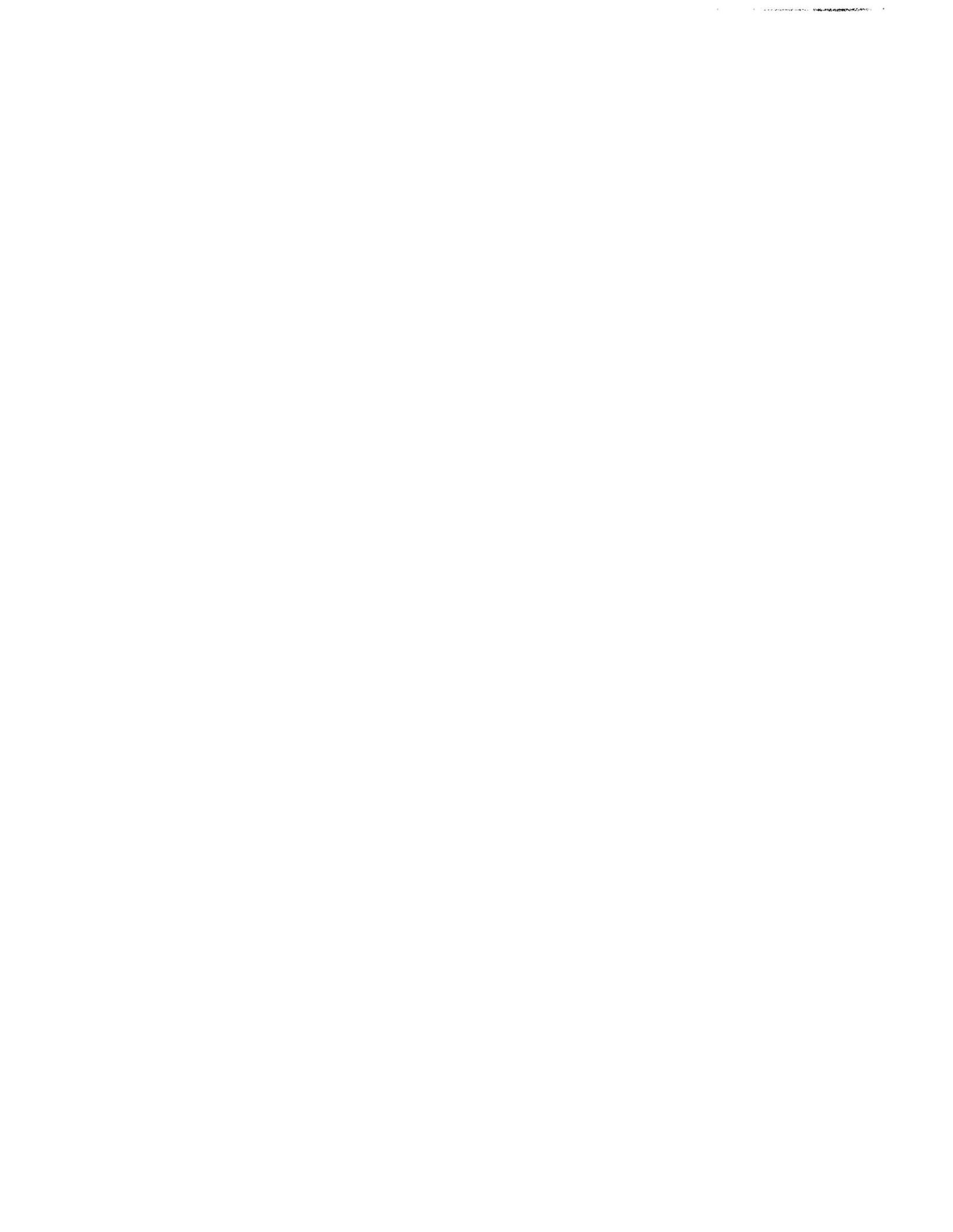
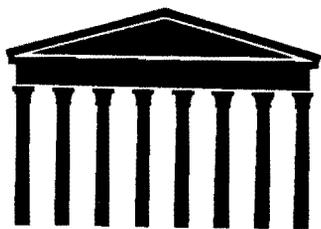




*AN INTRODUCTION
TO THE
FEDERAL PROBATION
SYSTEM*

WASHINGTON, D. C.





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FEDERAL PROBATION SYSTEM*

*The Federal Judicial Center
Washington, D. C.*

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PREFACE

In January 1973, As A Matter of Fact was published by the Federal Judicial Center as a handbook to answer common questions likely to be in the minds of newly appointed United States Probation Officers. As a publication, As A Matter of Fact met the purpose for which it was intended. It was well received by experienced officers in the field who found its material to be helpful and pertinent to everyday correctional situations. In addition, new officers found the material invaluable in comprehending the Federal Court System which had just become their employer.

When the first printing of As A Matter of Fact was expended, it was necessary to decide whether to reprint it, to rewrite it, or to revise it. The decision to revise the volume under a new title was made as the best alternative since it was found that about fifty percent of the material published in 1973 was obsolete or out of date by 1975. This dramatically points out the need for probation officers to realize the rapid changes constantly taking place in their profession. Probation is not static. It is dynamic and reflects the changes in the social mores as well as the laws. It requires staff members who are viable enough to grow, adapt and respond professionally to the changing society and new organizational structures and relationships.

Like its predecessor, the purpose of this volume will be to answer common questions likely to be in the minds of newly appointed probation officers. It is intended also to give the new officers a common base of information prior to their attending one of the formal orientation schools conducted by the Federal Judicial Center. This book endeavors to present some of the basic information which otherwise would be covered in the orientation programs thus making available additional time during the classes to cope with the more complex issues.

It serves also as an outline for chief probation officers in their initial orientation discussions with new staff and may be invaluable in measuring the new officers' grasp of the federal probation scene.

This publication is not intended to replace the Probation Officers Manual or other basic documents with which the probation officer must become familiar, but rather to put under one cover the information most helpful to the new officer.

Authorship of the new volume was delegated to a committee rather than any one individual. Appreciation is expressed to the authors who contributed their thoughts and philosophy in the form of articles and materials contained herein; and to those who rewrote materials previously published.

Credit is also due to those who assisted in editing the materials for inclusion. They include: Assistant Chiefs of the Division of Probation, Donald L. Chamlee, and Frederick R. Pivarnik; Deputy Director of Continuing Education and Training, Richard M. Mischke; Chief, Training Program Development, Bureau of Prisons, Dennis R. Hubbard; Administrative Officer, U.S. Parole Board, James C. Neagles; Assistant Professor of Law, University of Tennessee, Niel Cohen; and, Counsel Emeritus, National Council on Crime and Delinquency, Sol Rubin.

In addition, appreciation for their advice is expressed to: Chief U.S. Probation Officers George P. Adams, Chester C. McLaughlin, and William S. Pilcher; to Deputy Chief U.S. Probation Officer Herbert Vogt; to Supervising U.S. Probation Officer William P. Adams; and to U.S. Probation Officers Thomas L. Barnes, Paul F. Cromwell Jr., and Jerry P. Morgan.

These and others have been an invaluable aid in the compilation of this work.

JOHN W. SISSON, Jr.
Assistant Deputy Director
Continuing Education and
Training Division

FOREWORD

Due to the rapid growth of the Federal Probation Officer System in the last several years, it has become necessary for the Federal Judicial Center to reevaluate the type and amount of training which can be offered. We wish there were limitless funds and staff to provide all the training needed in this vital field of service within the Federal Judiciary. Unfortunately, it is not possible to train every new officer as soon as he or she enters on duty. We will continue our effort to offer orientation training as soon as possible after a new officer is on duty. We will also continue to offer other training as it can be provided. However, we are reaching a point where it is going to be an impossible task to educate and train probation officers other than through an orientation program.

This is one effort at providing a resource material to fill in the gap of some of the needed local training until a formal session can be scheduled. Other localized, packaged training materials will certainly be a thing of the future as we attempt to meet the training needs of a rapidly growing and changing system.

I feel this book will be as valuable as the preceding volume. It too will need to be updated as times, courts, and programs change. However, for now, it represents a step in the right direction.

WALTER E. HOFFMAN
DIRECTOR

The Federal Judicial Center

CHAPTER I

INTRODUCTION TO THE PROBATION SYSTEM

Welcome to the Federal Probation System. As a federal probation officer you occupy a key position in government. The daily exercise of your judgment and skills will have a profound effect on the lives and futures of countless people--not only those who are the immediate subjects of your work but all those whom their behavior ultimately affects.

Your position is unique. Fundamentally your job is to help people--people with deep hurts, people in need of understanding, people in need of guidance, people who need to know that someone cares. But also basic to your job is your unwavering dedication to upholding the law and making your community a safer place to live. The uniqueness of your work is that through your humanitarian efforts and the impact of your life, you will achieve the ultimate goal of corrections. You will help draw people out of crime and thereby afford the only real and lasting protection to all citizens.

Helping people is what probation is all about, but within a legal structure whose requirements though sometimes restrictive cannot be brushed aside. Organizational framework, agency policies and prescribed procedures although essential can seem rather sterile unless seen in perspective as means to an end.

There is reason--in law, in regulation, in rule or in experience--for all that is required of probation officers or recommended for their guidance. The Division of Probation holds firmly the view that whenever a particular policy or procedure ceases to make good sense, it should be modified or abolished. The Division looks to the field probation officers for continuing feedback to keep policy; practice and procedure in line with reality.

Purpose. Both the purpose and philosophy of the Probation System are revealed to a degree in the foregoing. The purpose is stated more concisely however in the following definition:

The central goal of the Probation System is to enhance the safety of the community by reducing the incidence of criminal acts by persons previously convicted. The goal is achieved through the counseling, guidance, assistance, surveillance and restraint of offenders to enable their reintegration into society as law abiding and productive members.

Philosophy. An excellent statement of probation philosophy is found in the introduction to Standards Relating to Probation. The document, authored by the American Bar Association which hold the copyright, is one of a series on Standards for Criminal Justice. The statement of probation philosophy follows:

The basic idea underlying a sentence to probation is very simple. Sentencing is in large part concerned with avoiding future crimes by helping the defendant learn to live productively in the community which he has offended against. Probation proceeds on the theory that the best way to pursue this goal is to orient the criminal sanction toward the community setting in those cases where it is compatible with the other objectives of sentencing. Other things being equal, the odds are that a given defendant will learn how to live successfully in the general community if he is dealt with in that community rather than shipped off to the artificial and atypical environment of an institution of confinement. Banishment from society, in a word, is not the way to integrate someone into society. Yet imprisonment involves just such banishment—albeit for a temporary sojourn in most cases.

This is of course not to say that probation should be used in all cases, or that it will always produce better results. There are many goals of sentencing, some of which in a given case may require the imposition of a sentence to imprisonment even in the face of a conclusion that probation is more likely to assure the public that the particular defendant will not offend again. And there are defendants as to whom forced removal from the environment which may in some part have contributed to their offense may be the best beginning to a constructive and useful life.

By the same token, however, it is to say that probation is a good bit more than the "matter of grace" or "leniency" which characterizes the philosophy of the general public and of many judges and legislatures on the subject. Probation is an affirmative correctional tool, a tool which is used not because it is of maximum benefit to the defendant (though, of course, this is an important side product), but because it is of maximum

benefit to the society which is sought to be served by the sentencing of criminals. The automatic response of many in the criminal justice system that imprisonment is the best sentence for crime unless particular reasons exist for "mitigating" the sentence is not a sound starting point in the framing of criminal sanctions. The premise of this report is that quite the opposite ought to be the case—that the automatic response in a sentencing situation ought to be probation, unless particular aggravating factors emerge in the case at hand. At least if such aggravating factors cannot be advanced as the basis for a more repressive sentence, probation offers more hope than a sentence to prison that the defendant will not become part of the depressing cycle which makes the gates of our prisons resemble a revolving door rather than a barrier to crime.

It must of course also be realized that this thesis cannot be practiced in a vacuum. Too often a sentencing judge is faced with the Hobson's choice of a sentence to an overcrowded prison that is almost a guarantee that the defendant will emerge a more dangerous man than when he entered or a sentence to an essentially unsupervised probation that is little more than a release of the defendant without sanction, as well as without incentive to avoid the commission of a new offense. Such a state of affairs represents a failure of the legislative process of the highest order. The criminal justice system has failed in this country for this reason more than any other; not enough attention has been paid to providing adequate correctional choices to those who must operate the system. The thesis of these standards is that an adequate correctional system will place great reliance on appropriately funded and manned probation services. Within such a context, probation can lead to significant improvement in the preventive effects of the criminal law, at much less of a financial burden than the more typical prison sentence. This much has been proven in those jurisdictions where it has had a chance to work. One should not treat lightly an approach to crime control that offers the hope of better results at less cost. This, in a sentence, is the hope of probation.

Note: The American Bar Association Standards are printed in individual volumes. They may be ordered from the American Bar Association, Circulation Department, 1155 East 60th Street, Chicago, Illinois 60637, telephone (312) 493-0533. The cost is \$3.25 per volume.

History. Although probation generally is regarded as having its origin solely in America, there were practices in the English courts as early as the 14th century which can be seen as its forerunners. Release of persons prior to conviction on recognizance or bail during good behavior established a pattern not dissimilar to suspension of sentence of convicted persons and release under prescribed conditions or restraints.

Similar and related practices developed also in the American colonies but the first recognized use of what now is regarded as embryonic probation did not occur until 1831 in the city of Boston when a judgment was rendered in Municipal Court creating the basis for legal enforcement of conditions of probation. Ten years later in the police court of the same city a shoemaker named John Augustus, with court approval, commenced providing volunteer services in the supervision of persons released by the court to his care.

The first probation law was enacted by the Massachusetts legislature in 1878. Two years later another law was added to the books permitting the appointment of probation officers for adult offenders throughout the cities and towns of the State. In 1898 an act of the legislature authorized appointment of probation officers by the Massachusetts Superior Courts and authorized the courts to fix their salaries.

What happened in Massachusetts in the last half of the 19th century had an obvious impact on the legislatures of other states. In the following two decades probation became authorized by law in the District of Columbia and 46 of the states. Probation now is authorized in every state of the union.

The federal courts were not among the first to enjoy probation services. Prior to 1916, federal judges had followed a practice of suspending sentence in many cases and using probation informally. However a Supreme Court decision that year (Killits ex parte 242 U. S. 27) held that a federal judge was without power to suspend sentence indefinitely. The court suggested "...probation legislation or such other means as the legislative mind may devise..." to answer the need of the judiciary to exercise "enlarged but wise discretion in the infinite variations which may be presented to them for judgment..."

The gestation and birth of the Federal Probation System was anything but uneventful. Between 1916 and 1925 probation legislation was introduced into Congress almost every year. Most of the proposals were opposed by the Department of Justice but were supported by a few vitally interested district court judges and had the strong support of the National Probation Association (now the National Council on Crime and Delinquency). The Act of Congress establishing a Probation System in the United States Courts was signed by President Coolidge on March 5, 1925.

Although the Probation Act has undergone amendment several times, two changes made in 1930 were among the more significant. The first removed the Probation System from the Civil Service and placed the power of appointment of probation officers in the hands of the judges of the district courts. The second placed upon probation officers the responsibility for the supervision for persons paroled from federal penal institutions.

The first probation officers, three in number, were appointed in 1927. By 1930 only five more had been added. In the succeeding 10 years the service grew to an authorized strength of 233 officers. Since then its growth has continued with major breakthroughs occurring in the mid-1950's when nearly 150 additional officer positions were authorized and again in 1972 when the Congress authorized an increase of 168 positions. In 1974 the authorized strength increased to 1,148, and in 1975 further action of Congress increased the staff to 1,468 officers, 20 probation officer assistants and 941 clerk stenographers.

Prior to 1940 the Probation System was administered by the Department of Justice, specifically the Bureau of Prisons. Following creation of the Administrative Office of the United States Courts, which came into being late in 1939, the administration of probation was transferred to the Judiciary and a Division of Probation was established within the Administrative Office. In the mid and late sixties several efforts were mounted without success to return the Probation Service to the Justice Department to place the three major components of federal corrections under the same roof. Much can be said for creation of a wholly unified corrections service. The view has prevailed, however, that the Probation System should continue to be completely insulated from any possible influence of the prosecutive arm of the government.

More detailed information on the development of probation generally may be found in Crime, Courts and Probation by Charles L. Chute and Marjorie Bell. A copy of the volume has been provided to each probation office. Reference is also made to Appendix A of this volume.

Present Composition. As of September, 1974, the Probation System has an authorized strength of 1,468 officers situated in 213 offices serving the 91 United States District Courts in the 50 states, the District of Columbia and the Commonwealth of Puerto Rico. In addition probation offices financed and administered locally serve the District Courts of the United States Virgin Islands, Guam, and the Panama Canal Zone. These offices and the offices of the Probation System cooperate closely in furnishing needed field services for one another in their respective areas.

The Probation System is responsible for supervision in the community of more than 60,000 persons--two thirds or more of whom have been granted probation by the courts and the remainder released on parole or mandatory release from institutions of the Bureau of Prisons and military disciplinary barracks (see "Board of Parole" in Chapter VIII). The Probation System is responsible also for conducting presentence investigations of virtually all persons convicted of offenses against the United States, for inquiring into the circumstances of juvenile offenders to ascertain whether prosecution should be deferred or diverted, for investigating parole arrangements prior to release of federal prisoners, and for investigating all violations of probation and parole. Annually the System prepares approximately 77,000 investigative reports.

Unlike many federal agencies the Probation System is not centralized. Local administration is in the hands of the chief probation officers of the 91 district courts who are directly responsible to the courts they serve. The programs and services of the field offices are co-ordinated by the Division of Probation of the Administrative Office of the United States Courts in Washington. The Probation Division likewise carries the responsibility for budgeting, personnel administration and promoting the efficient operation of the System.

Federal Corrections. The three major components of federal corrections are the Probation System, the Bureau of Prisons and the United States Board of Parole. As implied in the foregoing the Probation System stands at the entrance and exit points of the federal government's correctional efforts. It provides a community based rehabilitation program for offenders under the jurisdiction of the courts. It cooperates closely with the Bureau of Prisons in providing informational inputs following commitment, in maintaining contacts with families of prisoners and in providing prerelease information and planning assistance. In like manner the Probation System functions in close harmony with the United States Board of Parole furnishing all necessary field services for that body.

CHAPTER II

THE ROLE OF THE PROBATION OFFICER

The duties and responsibilities of probation officers flow from four sources: those imposed by statute, those imposed by rule, those assigned by the court and those assumed by administrative agreement.

Statutory Duties. The basic duties of probation officers as set forth by law are found in Title 18 of the United States Code. Section 3655 provides that the probation officer shall furnish to each probationer under his supervision a written statement of the conditions of probation and shall instruct him regarding the same; that he shall keep informed concerning the conduct and condition of each probationer under his supervision and shall report thereon to the court placing such person on probation; that he shall use all suitable methods not inconsistent with the conditions imposed by the court to aid probationers and to bring about improvements in their conduct and condition; that he shall keep records of his work; shall keep accurate and complete accounts of all monies collected from persons under his supervision; shall give receipts therefor and shall make at least monthly returns thereof; shall make such reports to the Director of the Administrative Office of the United States Courts as he may at any time require.

Section 3655 provides also that each probation officer shall perform such duties with respect to persons on parole as the Attorney General shall request. Section 4164 broadens the above provision to include persons on mandatory release. Section 4208(c) provides that it shall be the duty of probation officers to furnish the Board of Parole information concerning prisoners sentenced under Section 4208(a) and whenever not incompatible with the public interest their views and recommendations with respect to the parole disposition of such cases.

Sections 5008, 5016, 5019, and 5020 define responsibilities of probation officers as set out in the Federal Youth Corrections Act. Probation officers are required to perform such duties with respect to youth offenders on conditional release as the Attorney General shall request; are required to supervise youth offenders in the community; are required to make reports regarding youth offenders to the Youth Division of the Board of Parole; and are authorized to execute warrants issued by that division.

Duties Imposed by Rule. Rule 32(c) (1) of the Federal Rules of Criminal Procedure (see Chapter III) requires the probation service of the court to make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless the court otherwise directs. Rule 32(c) (2) identifies the basic information required to be included in a presentence report and in addition authorizes the court in its discretion to disclose to the defendant or his counsel the contents of the presentence report.

Duties Assigned by Court. In addition to the duties set out above under Section 3655, this section provides also that probation officers shall perform such other duties as the court may direct. Section 3401(c) provides that a United States magistrate, with the approval of a judge of the district court, may direct the probation service of the court to conduct presentence investigations and render reports to the magistrate prior to the imposition of sentence.

Duties Assumed by Administrative Agreement. As indicated in the previous chapter there is a close working relationship between the Probation System, the Bureau of Prisons and the Board of Parole. By virtue of an Administrative understanding dating from 1940 probation officers make social inquiries at the request of the Bureau of Prisons, maintain contact with prisoners' families and assist in developing release plans for persons returning to the community on parole or mandatory release. By formal agreement between the Director of the Administrative Office and the Secretaries of Army, Navy and Air Force, probation officers provide similar services on request of military establishments, and in addition provide supervision of persons paroled from military installations.

General. In addition to the specific duties set out above the probation officer has a broad responsibility to know his community, its culture, traditions, institutions and agencies. He should know all the social resources in the community and how to make use of them, and he should take an active interest in his community's social welfare.

Further the probation officer should do all he can to increase public understanding and knowledge of probation and parole and recognition of their advantages. The officer should handle publicity with dignity, tact, and friendliness, being mindful of the confidential nature of the court's work and his own responsibility to the offenders he is assisting.

Under the guidance of the chief, the probation officer should take advantage of radio and television facilities to foster public understanding of probation and parole and to explain his own responsibilities and objectives. Likewise he should keep relations with press representatives on a dignified and friendly level and should rely on the court to set the limits within which information about offenders may be divulged and publicized. The probation officer also should avail himself of every opportunity to give public talks on probation and parole and the role of the probation officer in dealing with the problems of delinquency and crime.

CHAPTER III

CRIMINAL PROCEDURE

For an intelligent understanding of the proceedings in criminal cases each probation officer should become acquainted with the Federal Rules of Criminal Procedure. A copy of the rules as amended to October 1, 1972, is included as Appendix D.

Authority for Rule Making. The power to prescribe rules of criminal procedure in the courts of the United States is vested in the Supreme Court by Sections 3771 and 3772 of Title 18, United States Code. Rules promulgated by the Supreme Court must be reported to Congress by the Chief Justice, and if Congress takes no negative action, they become effective 90 days after they have been thus reported.

Rules of Special Interest to Probation Officers. The attention of probation officers is directed in particular to Rules 7, 10, 11, 20, 32, 35, 38(a) (4), 43, 44, and 57. These rules cover the aspects of criminal procedure of most immediate concern to probation officers including the areas of indictment, arraignment, pleas, transfers between districts for plea and sentence, sentencing, stay of execution, the required presence of the defendant, the right to assigned counsel, and provision for local rules to be made by the district courts.

Rules Have Effect of Law. The sections cited above empowering the Supreme Court to prescribe rules of criminal procedure provide also that all laws in conflict with such rules shall be of no further force after the rules have taken effect.

Rule Making Process. The Judicial Conference of the United States (see Chapter IX) is required by Section 331 of Title 28, United States Code, to carry on a continuous study of the operation and effect of the General Rules of Practice and Procedure as prescribed by the Supreme Court including the Rules of Criminal Procedure. The statute requires also that the Judicial Conference recommend desirable changes or additions to the rules from time to time for consideration of the Supreme Court.

The Judicial Conference carries on its study of the operation and effect of the General Rules of Practice and Procedure through a standing committee on Rules of Practice and Procedure assisted by five advisory committees on special subjects. One of the advisory committees is the Advisory Committee on Criminal Rules. The standing committee is comprised of United States Circuit Judges, professors of law and practicing attorneys.

Included in the Advisory Committee on Criminal Rules are United States circuit judges, United States district judges, judges of State courts, and Assistant Attorney General, law professors and attorneys.

In practice the Advisory Committee does the spade work in preparing amendments or additions to the criminal rules. It then presents to the Committee on Rules of Practice and Procedure a draft of the proposed changes and additions with full explanation in notes appended to each of them. Before taking action on the proposals the Committee on Rules of Practice and Procedure circulates them to judges and lawyers throughout the United States requesting comments and suggestions for the committee's benefit. Generally a period of one year is allowed for receipt of such views. After full consideration of all points of view the Committee on Rules of Practice and Procedure makes its recommendations to the Judicial Conference of the United States. Changes and additions to the rules approved by the Judicial Conference are then submitted to the Supreme Court. If adopted by the Court they are then reported to the Congress as previously noted.

The process of rule making is a continuous one, the respective committees meeting several times each year.

CHAPTER IV

THE CRIMINAL LAW

Statutes of Special Interest to Probation Officers.

Most of the offenses committed by persons with whom probation officers will be working are violations of the criminal provisions of Title 18 of the United States Code. Whatever time a probation officer can spend in perusing and developing a nodding acquaintance with Part 1 of Title 18 (Sections 1 through 2520) will be time well invested. The Probation Officer should also be knowledgeable of the recently enacted Juvenile Justice and Delinquency Prevention Act (9-7-74 Public Law 93-415).

Other criminal law provisions coming to the probation officer's attention with reasonable frequency are those found in Sections 1306, 1324, 1325 and 1326 of Title 8 dealing with immigration problems; Sections 841, 844, 846 and 960 of Title 21 relating to narcotics; Sections 5811, 5841, 5851, 5854 and 5861 of Title 26 pertaining to firearms; Sections 7201, 7203 and 7206 of Title 26 covering income tax evasion and fraud.

Sentencing Alternatives. For many years Judge Walter E. Hoffman, Director, Federal Judicial Center, served on the faculties of institutes on sentencing and seminars for new judges, addressing the subjects of Sentencing Alternatives and Sentencing Philosophy. In a paper on the latter topic Judge Hoffman admonishes:

If any word of advice as to sentencing should be given to a new federal judge, it would be to "lean upon your probation officer" as he should have knowledge of all sentencing alternatives and the ability to apply them in the proper cases.

Since more than just a few other federal judges share Judge Hoffman's view, the burden to be borne by the probation officer seems clear. Not only for his own information but because of its great value to the judge, it is imperative that the probation officer quickly develop an intimate grasp of the alternatives available to the court in sentencing.

A chart is supplied as Appendix B which sets forth the alternatives in outline form. The alternatives fall into three basic categories--those applicable to juvenile offenders, those applicable to youth offenders and young adult offenders and those applicable to adult offenders. In each category the appropriate provision for the use of study and observation procedures are noted.

Through use of the chart and study of the cited sections of the criminal code the probation officer may acquire a systematic knowledge of sentencing alternatives.

A copy of a paper by Judge Hoffman is included as Appendix C.

Although the probation officer should be thoroughly conversant with the criminal laws and sentencing procedures, he should refrain from any attempt to interpret the law. In this respect he should seek the advice of the court or the United States Attorney. Because of the complexities of many penalty provisions the probation officer should look to the trained professional in the field of law for advice and interpretation.

CHAPTER V

THE COURT FAMILY

This chapter will serve to introduce the new probation officer to the work of the other principal officers of the district court. More detailed information will be found in the section of the United States Code alluded to in the respective paragraphs.

The Judge. Sections 81 through 144 of Title 28, United States Code, deal with judges of the United States District Courts. The judges are appointed by the President by and with the advice and consent of the Senate and hold office during good behavior. In each district that has more than one judge the one who is senior in commission and under 70 years of age is the chief judge of the district court.

The business of a court having more than one judge is divided among the judges as provided by the rules and orders of the court. The chief judge is responsible for the observance of such rules and orders and in addition divides the business and assigns the cases so far as the rules and orders do not otherwise prescribe.

The Magistrate. On implementation of Public Law 90-578 enacted October 17, 1968, United States magistrates assumed the duties and functions formerly performed by U.S. commissioners. These include processing complaints and issuing summonses and arrest warrants, issuing search warrants, issuing administrative inspection warrants (under the Comprehensive Drug Abuse Prevention and Control Act of 1970), conducting initial appearance proceedings under Rule 5(a) and (b) of the Federal Rules of Criminal Procedure, setting and reviewing bail and conducting preliminary examinations and removal hearings.

The magistrates also have trial jurisdiction over minor offenses—those misdemeanors which may be punished by imprisonment of one year or less and a fine of up to \$1,000. Included are illegal entry; theft of government property or from interstate shipments valued at under \$100; some Food and Drug Act violations; first violations of the Motor Carrier Act; certain fraud and forgery matters; obstruction of the mail; and miscellaneous offenses not proscribed by Act of Congress but punishable under state law in federal court under the Assimilated Crimes Act.

In the discretion of the district court the magistrate may perform any other duty "not inconsistent" with the Constitution or a specific statute. Under this authority several district courts have assigned magistrates to conduct arraignments of defendants in criminal cases, review prisoner petitions, serve as special masters in civil cases, conduct pretrial conferences and motion proceedings in both civil and criminal cases, try civil cases with the consent of the parties, and select juries. By direction of the court the magistrate may also review petitions requesting the appointment of counsel filed under the Criminal Justice Act by alleged parole or mandatory release violators. The law relating to magistrates is found in United States Code, Title 28, Section 631-639.

The Clerk of the Court. Subject to the direction of the court the clerk has a wide range of important and responsible duties. For litigants he is the gateway to the court. He keeps the court's records and is the court's fiscal officer. He functions as the court's executive officer and in this capacity can be a positive force in the initiation and operation of administrative procedures which best promote efficient and effective movement of the court's work.

In accordance with Section 751 of Title 28, United States Code, the clerk of each district court and his deputies exercise the powers and perform the duties assigned to them by the court.

The Bankruptcy Judge. The bankruptcy laws constitute Title 11 of the United States Code. A bankruptcy court may be presided over by either a district judge or a judicial officer whose title is Bankruptcy Judge. When presided over by a bankruptcy judge, the bankruptcy court is an inferior court to the district court and a person aggrieved by an order of a bankruptcy judge may appeal to the district court.

The bankruptcy judge is appointed by the district judges for a term of six years and may be removed by the judges for cause after notice and hearing. Bankruptcy proceedings are civil rather than criminal in nature. Consequently, except for certain crimes relating to bankruptcy (see Title 18, United States Code, Section 152), probation officers generally will have little official contact with bankruptcy judges.

The Court Reporter. The employment and duties of court reporters are covered in Title 28, United States Code, Section 753. Reporters are required to attend each session of the court and every other proceeding designated by rule or order of the

of the court or by one of the judges. Further they are required to record verbatim by shorthand or mechanical means, which may be augmented by electronic sound recording subject to regulations promulgated by the Judicial Conference: (1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule or order of the court or as may be requested by any party to the proceeding.

Reporters are appointed by each district court, the number being determined by standards prescribed by the Judicial Conference of the United States. Reporters receive an annual salary and in addition receive fees for transcripts ordered by parties to an action. Fees are not received for transcripts requested only by a judge or for transcripts of arraignments, pleas and proceedings in connection with the imposition of sentence. Reporters are not required for proceedings before a magistrate. Electronic recording normally is used for such proceedings unless a magistrate is conducting a hearing which is covered by Title 28, United States Code, Section 753.

CHAPTER VI

OTHER COURT OFFICERS

Other officers of the court with whom the probation officer has frequent official contact include the United States Attorney and his assistants, attorneys representing defendants in criminal proceedings and the United States Marshal and his deputies.

The United States Attorney. A United States attorney for each judicial district is appointed by the President by and with the advice and consent of the Senate. His term of appointment is four years. Assistant United States attorneys are appointed by the Attorney General for indefinite terms.

By statute each United States attorney is required within his district to prosecute for all offenses against the United States; to prosecute or defend for the government all civil actions, suits or proceedings in which the United States is concerned; to defend government officers and employees in civil actions or suits arising from the performance of their official duties; and generally to institute and prosecute proceedings for the collection of fines, penalties and forfeitures.

The United States attorney's office is a prime source of essential information for the probation officer in preparing the official account of the offense in presentence reports. Likewise in cases that have gone to trial the assistant who has handled the prosecution may have valuable insights into the behavior of the defendant and other witnesses during the trial. He also is the authoritative source as to the nature of the penalty which is permissible under the law in a particular case.

The United States attorney's office can be of considerable help to the probation officer in preparing for probation revocation proceedings and in many districts the United States attorney or one of his assistants represents the probation officer at revocation hearings.

In larger offices the functions of the United States attorney are discharged through specialized units dealing with criminal, civil, tax or other particular kinds of matters.

Private Defense Counsel. Any defendant in a criminal case who is financially able may retain an attorney of his own choosing.

Federal Public Defenders and Community Defenders.

Federal Public Defenders and attorneys supplied by Community Defender organizations serve the same purpose within the federal court system. Under the Criminal Justice Act (Title 18, United States Code, Section 3006A) they furnish legal representation to any person financially unable to obtain such (1) who is charged with a felony or misdemeanor or with juvenile delinquency by the commission of an act which, if committed by an adult would be such a felony or misdemeanor or with a violation of probation, (2) who is under arrest, when such representation is required by law, (3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief under Sections 2241, 2254, or 2255 of Title 28 or Section 4245 of Title 18, or (4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any federal law requires the appointment of counsel.

The Community Defender organization attorneys thus perform the same functions as the Federal Public Defender's office under the Act. However, the organization of the two offices is quite different.

A Federal Public Defender and his staff are government employees. The Federal Public Defender is appointed and is removable by the judicial council of his circuit (the U. S. Court of Appeals sitting as an administrative body). The judicial council also fixes his pay on a basis analogous to the U. S. attorney. This gives the Public Defender an independence from control by the U. S. District Court or any non-judicial authority; but all of the fringe benefits of a government employee.

A Community Defender organization on the other hand is not a government office but a nonprofit defense counsel service established and administered by any group authorized by a district criminal justice plan to provide representation. It is compensated for representing federal litigants either on the same basis as private attorneys, or on the basis of annual grants approved for it by the Judicial Conference of the United States.

Judicial districts may have one of three systems of indigent representations under the Criminal Justice Act:

- (1) appointment of private attorneys only, or a combination of private attorneys, and
- (2) a Federal Public Defender, or
- (3) a Community Defender organization.

The United States Marshal. A United States marshal for each judicial district is appointed by the President by and with the advice and consent of the Senate and serves a term of four years. As authorized by the Attorney General each marshal may appoint deputies and clerical assistants. Deputy marshals are subject to removal by the marshal pursuant to Civil Service regulations.

The United States marshal of each district is the marshal of the district court and may be required to attend any session of court. It is his duty to execute all lawful writs, process and orders including subpoenas, warrants of arrest and citations. He has legal custody of federal prisoners pending trial, hearing, or delivery to a federal confinement facility. Under guidelines established by the Bureau of Prisons the marshal usually designates the institutions to which committed offenders will be sent. In exceptional cases he requests designation from the Bureau.

The marshal is responsible for security of the court house and individual court rooms. He is responsible also for physical custody of federal prisoners in the court house and for their transportation to federal penal and correctional institution.

CHAPTER VII

ENFORCEMENT AGENCIES

The jurisdiction and functions of the enforcement agencies with which the probation officer is likely to have the most frequent contacts are described here.

Federal Bureau of Investigation. The FBI, an agency of the Department of Justice, is charged with investigating all violations of federal laws with the exception of those which have been assigned by legislative enactment or otherwise to some other federal agency.

The FBI has jurisdiction over some 185 investigative matters. Among these are espionage, sabotage, and other subversive activities; kidnapping; extortion; bank robbery; interstate transportation of stolen property; civil rights matters; interstate gambling violations; fraud against the government; and assault or killing the President or a federal officer. Cooperative services of the FBI for other duly authorized law enforcement agencies include fingerprint identification laboratory services, police training, and the National Crime Information Center.

The FBI will also attempt to locate and apprehend probation violators for whom warrants have been issued by the courts and parole and mandatory release violators for whom warrants have been issued by the Parole Board, regardless of whether the original convictions were for offenses within the FBI's investigative jurisdiction.

Immigration and Naturalization Service. The Immigration and Naturalization Service, Department of Justice, is responsible for administering the Immigration and Naturalization Laws relating to the admissions, exclusion, deportation, and naturalization of aliens. Specifically, the service inspects aliens to determine their admissibility into the United States; adjudicates requests of aliens for benefits under the law; prevents illegal entry into the United States; investigates, apprehends, and removes aliens in this country in violation of the law; and examines alien applicants wishing to become citizens.

The Border Patrol Division carries on enforcement activities in the immediate vicinity of national boundaries. The Investigations Division is responsible for enforcement activities in the balance of the nation and supplements Border Patrol efforts in the border areas.

Drug Enforcement Administration. The mission of the Drug Enforcement Administration, another agency of the Department of Justice, is to control narcotic and dangerous drug abuse through enforcement and prevention programs. The primary responsibility of the bureau is to enforce the laws and statutes relating to narcotic drugs, marihuana, depressants, stimulants, and hallucinogenic drugs.

Drug Enforcement Administration conducts domestic and international investigations of major drug traffickers, concentrating efforts at the source of illicit supply or diversion. The Administration places particular emphasis on the immobilization of clandestine manufacturers, international traffickers and origins of diversion from legitimate channels. In addition, Drug Enforcement Administration works cooperatively with other agencies as well as independently to institute national drug abuse prevention programs.

Drug Enforcement Administration also regulates the legal trade of narcotic and dangerous drugs. This entails establishing import-export and manufacturing quotas for various controlled drugs; registering all authorized handlers of drugs; and inspecting the premises and records of legal handlers.

Organized Crime and Racketeering Section. Operating under the supervision of the Justice Department in major metropolitan areas are "Strike Forces." These consist of prosecuting attorneys and representatives of federal law enforcement agencies having a special interest in organized crime activities.

Postal Inspection Service. The Inspection Service under an Assistant Postmaster General, protects the mails, postal funds, and property; investigates within the Postal Service conditions and needs which may affect the security and effectiveness of the Postal Service; apprehends those who violate the postal laws; and inspects and audits financial and nonfinancial operations.

Bureau of Customs. The Bureau of Customs, Department of the Treasury, engages in activities for the collection and protection of the revenue; the prevention of fraud and smuggling, and the processing and regulation of people, carriers, cargo and mail into and out of the United States; and performs a variety of functions for other government agencies in safeguarding agriculture, business, health, security and related consumer interests.

Customs is active in suppressing the traffic in illegal narcotics (in conjunction with the Drug Enforcement Administration), and enforcing munitions control, pier pilferages (in conjunction

with the FBI), preventing hijacking and other crimes aboard departing aircraft, through the "Sky Marshal" program; and enforcing regulations affecting articles in international trade where parallel regulations control domestic articles (such as copyright, trademark, and patent restrictions regulated domestically by the Patent Office or Copyright Office; and special marking provisions for wool, fur, and textile products controlled domestically by the Federal Trade Commission).

The Bureau of Customs enforces certain environmental protection programs for other agencies.

United States Secret Service. Subject to the direction of the Secretary of Treasury, the U. S. Secret Service is authorized to protect the person of the President of the United States, the members of his immediate family, the President elect, the Vice President, or other officer next in order of succession to the President, the Vice President elect, major Presidential or Vice Presidential candidates, former Presidents and their wives during his lifetime, widows of former Presidents until their death or remarriage, and minor children of former Presidents until they reach age 16, and visiting heads of a foreign state or foreign government.

The Secret Service is also authorized to detect and arrest any person committing any offense against the laws of the United States relating to coins, currency, and other obligations and securities of the United States and foreign governments; supervise the Executive Protective Service and the Treasury security force.

Bureau of Alcohol, Tobacco and Firearms. The AT and F, another Treasury Department agency, attempts to achieve voluntary compliance with the law under the Bureau's jurisdiction; to assure full collection of revenue due from legal industry; to suppress traffic in illicit untaxpaid distilled spirits, and the illegal possession and use of firearms, destructive devices and explosives; to assist federal, state, and local law enforcement agencies in reducing crime and violence; to eliminate commercial bribery, consumer deception and other improper trade practices in the distilled spirits industry.

Internal Revenue Service. The Intelligence Division of the Internal Revenue Service, Department of Treasury, conducts investigations involving criminal tax fraud and related criminal investigations.

Securities and Exchange Commission. The Securities and Exchange Commission is one of the independent agencies of the Executive Branch of the government. The Commission's enforcement activities are designed to secure compliance with statutes regulating the issuance of securities, the maintenance of securities exchanges, public utility holding companies, trust indentures and investment companies (mutual funds) and investment advisors. Enforcement activities include measures to compel obedience to the disclosure requirements of the registration and provisions of the act, to prevent fraud and deception in the purchase and sale of securities, to obtain court orders enjoining acts and practices which operate as a fraud upon investors or otherwise violate the laws, to revoke the registrations of brokers and dealers and investment advisors willfully engaged in such acts and practices, to suspend or expel from national securities exchanges or the National Association of Securities Dealers Incorporated, any member or officer who has violated any provision of the federal securities laws, and to prosecute persons who have engaged in fraudulent activities or other violations of those laws. To this end investigations are conducted into complaints or other evidence of securities violations. Evidence thus established of law violations in the purchase and sale of securities is used in appropriate administrative proceedings to revoke registrations or in actions instituted in federal courts to restrain or enjoin such activities. Where the evidence tends to establish fraud or other willful violation of the securities laws, the facts are referred to the Attorney General for criminal prosecution of the offenders. The Commission may assist in such prosecutions.

The Securities and Exchange Commission has offered to furnish to probation officers information about offenders originally investigated by that agency. The probation officer should communicate with the Chief of the Securities Violation Section, Division of Trading and Marketing, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549.

Detailed descriptions of these and other agencies are contained in a variety of sources. One which will be especially helpful to the probation officer is entitled United States Government Manual. Further information on this resource is available in the recommended reading list in this text.

CHAPTER VIII

RELATED CORRECTIONAL AGENCIES

The success of correctional efforts at the federal level is dependent on an intimate working relationship between the Probation System, the Federal Bureau of Prisons and United States Board of Parole. This chapter gives a brief description of the responsibilities and functions of the related agencies.

Bureau of Prisons. The control and management of federal penal and correctional institutions is vested by statute in the Attorney General of the United States (Title 18, United States Code, Section 4001). The same section authorizes the Attorney General to establish and conduct industries, farms, and other activities, to classify the inmates and provide for their proper government, discipline, treatment, care, rehabilitation, and reformation. Section 4041 provides that the Bureau of Prisons shall be in charge of a director who is appointed by and serves directly under the Attorney General. The duties of the Bureau of Prisons are spelled out in Section 4042. They include (1) management and regulation of all federal penal and correctional institutions, (2) provision of suitable quarters, and provision for the safe keeping, care and subsistence of all persons charged with or convicted of offenses against the United States or held as witnesses, (3) provision for the protection, instruction and discipline of all persons charged with or convicted of offenses against the United States, and (4) provision of technical assistance to state and local governments in the improvement of their correctional systems.

Section 4082 provides for commitment of convicted persons by the courts to the custody of the Attorney General who is empowered to designate the place of confinement and to transfer persons from one place of confinement to another. The section provides also for furloughs and work release.

The Bureau of Prisons operates 44 facilities including 15 Community Treatment Centers and has in its custody more than 23,000 offenders. In addition the Bureau establishes and monitors contracts with local jails for pretrial detention and short term commitments, with private and local government agencies for community programs, and with some state correctional systems for commitment of selected offenders.

The Bureau's primary objective is to carry out the judgment of the courts and to prepare offenders for return to the community as law-abiding productive citizens. Efforts are underway

to improve the federal prison system by developing a balanced program that includes increased educational and vocational training opportunities, a variety of counseling and therapy techniques, special units for specific treatment problems, and expanded community programs. Emphasis is being directed toward the increased development of a professionally trained staff, increased utilization of research and evaluation capabilities, expansion of technical assistance to state and local correctional systems, and provision of facilities to meet present and future needs.

Since 1969 the Bureau has expanded substantially its professional complement of teachers, case workers, psychiatrists and psychologists. In recognition of the need for a sound racial balance between staff and inmates a successful minority recruitment program has also been implemented with a large number of vacant positions being filled with qualified representatives of minority groups.

Formal training centers have been opened in Atlanta, Georgia and Dallas, Texas, giving the Bureau the capability of providing each new employee with introductory training in correctional techniques and career employees with inservice training. In addition to the training centers, an ongoing program to train all correctional staff in counseling and other skill areas has also been established, and full-time training coordinators have been appointed at each institution to direct local training efforts.

Significant program developments in recent years include special treatment units for offenders with drug abuse problems, extension of community based services such as community treatment centers and drug treatment programs to probationers and parolees, and increased mental health programs within the institutions.

The development of the Functional Unit System by the Federal Bureau of Prisons is proving to be a most significant step in correctional treatment and administration. Treatment units of approximately 100 inmates are developed around the concept that all parts of the resident's treatment and program are brought together under the administration and guidance of a Unit team which is responsible for the Case, Custody and Correction of the offender. Decisions are made with the resident in keeping with total Bureau and Institutional policy and procedure. The Unit Team is composed of an administrator (manager), a case manager, psychologist, correctional counselor, unit officers, educational representative, and other such staff as are necessary for its function. Staff involvement and availability in areas of treatment, program development, and decision-making is most important to the achievement of individual treatment goals. Follow-up

and evaluation of the residents and the Unit program are important responsibilities of the Unit team as it relates to the total mission of the institution. The Functional Unit System brings the resident, his team, and all things that are relative to his life and development, together in a concentrated effort to assure effective and successful re-entry into the community.

An ambitious building program has also been undertaken. The first new facility, the Robert F. Kennedy Youth Center, was opened in Morgantown, West Virginia, in 1968. In 1974, a new Youth Facility was opened in Pleasanton, California; and a former P.H.S. Hospital at Lexington, Kentucky was converted to a minimum security Adult institution. The San Diego, California, Metropolitan Correctional Center opened late in 1974. A Federal Center for Correctional Research at Butner, North Carolina, and Metropolitan Correctional Centers in New York and Chicago are all currently under construction with completion dates scheduled for 1975. Additional Metropolitan Correctional Centers are planned for other urban areas in the immediate future.

In an effort to make maximum use of available resources and assist case managers in the classification process, an automated data processing system has been developed. A segment referred to as "R-A-P-S" (rating, age, prior record and sentence) helps institution personnel establish treatment priorities by generating regular reports concerning areas of inmate needs, number of program enrollments, completions and withdrawals, reason for withdrawals, number of inmates with needs not yet programmed and needs for which there are no programs available. This system has been recently refined and is making valuable contributions toward more effective management and resource utilization.

As seen by the Bureau, the most critical problems it faces today are those related to facilities that are seriously over-crowded, too large, antiquated or located in remote areas. Such institutions were built in an era when prisons were designed solely as places of punishment and men are confined in multi-tiered cell blocks of steel and concrete. The Bureau's long range plans call for the replacement of these outdated facilities with smaller more manageable units designed to complement modern correctional philosophy.

The Bureau of Prisons is deeply involved in programs providing institutional treatment as well as aftercare for addicted offenders. After developing programs for persons committed under Title II of the Narcotics Addict Rehabilitation Act the Bureau recognized that many other offenders, although not eligible for

commitment under that Title, were in need of treatment for addiction problems. As a result the Drug Abuse program was inaugurated and currently operates in a number of institutions. Aftercare treatment offers a continuity of programming between the institutional phase of treatment and parole supervision. Since released offenders are under the jurisdiction of the Board of Parole and are officially supervised by the federal probation officers, close coordination is most important.

In 1961 the Bureau of Prisons stepped directly into community-based correctional programs with the establishment of its first prerelease guidance centers, which now are known as Community Treatment Centers. From the inception of the initial planning for the centers the Division of Probation was directly involved and provided a staff member on a full time basis to serve on the Bureau's planning task force..

The Community Treatment Centers provide extensive prerelease services for offenders during the last 90 to 120 days of their sentences. Since 1970, they also have provided community treatment programs for probationers, parolees and short term committed offenders as an alternative to confinement.

Board of Parole. The statute creating the Board of Parole is found in Title 18 of the United States Code at Section 4201. The Board consists of eight full time members appointed by the President by and with the advice and consent of the Senate. The members serve six year overlapping terms, and may be reappointed. Section 5005 of Title 18 created a Youth Correction Division. The Attorney General designates the Chairman of the Board and the Chairman of the Youth Division. Since the Board reorganized into regions during 1974 the Youth Division responsibilities have largely been delegated to the member in each Region who is the Regional Director. The Attorney General has designated all members of the Board to serve as members of the Youth Division as the need arises.

As indicated in Chapter II of this handbook, probation officers are required by law to perform such duties with respect to persons on parole as the Attorney General shall request. The Attorney General's authority in this respect has been delegated to the Board of Parole. Title 28, Part 2, Section 2.42 of the Code of Federal Regulations describes this delegation with respect to "mandatory releasees" as well as parolees under the Board's jurisdiction. A section of the Federal Youth Corrections Act provides that probation officers are required to "report to the Division respecting youth offenders under their supervision as the Division may direct."

Hearing Examiners assigned to each of the Board's five Regional Offices conduct personal interviews with parole applicants in the institution of confinement. The interviews are conducted by a panel of two Examiners who study the file on the prisoner prior to the interview. Following the interview the Examiners vote relative to parole and call the prisoner back into the room and tell him their decision to parole, review at a later date, or deny parole. Such decision may be appealed to the Regional Director if there is cause.

Further appeals are also possible to the National Appellate Board which is comprised of three of the members located at the Headquarters Office of the Board in Washington, D.C. One of those members is the Chairman of the Board, who is responsible for the overall administration of the Board, including its Regional Offices.

A decision to release a prisoner on parole is conditioned on approval by the Board's Regional Office of a satisfactory release place which is developed primarily by the prisoner himself in conjunction with his institutional caseworker, but which is investigated by a probation officer prior to issuance of a certificate of release by the Board's Regional Office.

Prisoners denied parole are usually released by operation of "good time credits" according to appropriate statutes prior to the maximum term imposed by the court. Such persons, called "mandatory releasees," remain under community supervision for the remainder of their terms, less 180 days, and are supervised in the same manner as parolees. Those with less than 180 days remaining on their sentences at the time of release receive no community supervision.

Each parolee or mandatory releasee is required to abide by the conditions imposed by the Board of Parole. The conditions are printed on the reverse of the release certificate. Any special conditions must be imposed or approved by the Board. The probation officer must report to the Board in detail all violations of parole or mandatory release. Where the facts justify, a member of the Board will issue a warrant for the releasee's arrest and detention. After a warrant is executed, a probation officer (other than the one who supervised him) conducts a preliminary interview and submits a summary or digest of the interview to the Board. Unless the Board decides to reinstate the releasee to supervision, arrangements are made for a revocation hearing by a representative of the Board. Such hearing usually takes place after the prisoner is returned to a federal institution,

but may take place in his own community under certain conditions. Adverse witnesses are allowed to be present at a revocation hearing, and a probation officer may be requested to appear at such hearing.

Periodic reports from the probation officer to the Board are required for certain parolees. On the basis of those reports the Board may approve a reduced reporting schedule by the releasee. In especially deserving cases the Board may order a discharge from supervision. In the absence of such approval each releasee must submit a written monthly report to the probation officer and report to him personally as directed.

General policy and procedural instructions are cleared with headquarters staff of the Probation Division before being issued to the field. Handling of specific cases is accomplished by direct communication with the Board through the Senior Analyst or other staff person of the appropriate Regional Office. The Board's Regional Offices are located in the following cities:

Philadelphia, Pennsylvania
Atlanta, Georgia
Kansas City, Missouri
Dallas, Texas
San Francisco, California

Included as Appendix D is a copy of the Federal Regulation describing in detail the policies and procedures of the Board under its Regional operation. Included in those Regulations are guidelines used by the Examiners as they vote relative to parole.

CHAPTER IX

ADMINISTRATIVE STRUCTURE OF THE JUDICIARY

The Constitution provides: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." The Supreme Court is the highest of three levels of courts in the federal system. On the second level are the United States Courts of Appeals, one such court in each of the 11 Judicial Circuits. On the third level are the 91 United States District Courts in the 50 states, the District of Columbia and the Commonwealth of Puerto Rico. In addition there are district courts in the Canal Zone, Guam and the Virgin Islands. The Judicial Branch is co-equal with the Executive and Legislative Branches and is self-governing within its prescribed statutory framework. The administration of the judiciary is exercised through the Judicial Conference of the United States, the Judicial Councils of the Circuits, the Judicial Conferences of the Circuits, the Administrative Office of the United States Courts and the Federal Judicial Center.

Judicial Conference of the United States. The Judicial Conference of the United States is the prime policy making arm of the United States courts. It is comprised of 24 members in addition to the Chief Justice of the United States who is Chairman. Other members of the Conference are the chief judge of each of the 11 courts of appeals, the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals, and one district judge from each circuit. Each district judge member is chosen by the circuit and district judges of the circuit he represents and serves a term of three years on the Conference. The Conference is required by statute to meet annually and at such other times as may be called by the Chief Justice. Customarily the Conference meets twice each year usually in the early Spring and early Fall.

The Conference is charged with the responsibility for making a comprehensive survey of the conditions of business in the courts of the United States, for preparing plans for assignment of judges to or from circuits or districts where necessary, and for submitting suggestions to the various courts in the interest of uniformity and expedition of business. The Conference is also required to carry on a continuous study of the operation and effect of the general rules of practice and procedure, as is detailed in Chapter III of this handbook. The Conference also is responsible for supervision and direction of the Administrative Office of the United States Courts.

The Judicial Conference carries out its responsibilities by utilizing a system of committees. At present, in addition to a five-member Executive Committee, there are general Committees on Court Administration, the Administration of the Criminal Law, and the Operation of the Jury System. There are standing Committees on the Administration of the Bankruptcy System, the Administration of the Probation System, the Budget, the Administration of the Federal Magistrates System, and Intercircuit Assignments. There is a special Committee to Implement the Criminal Justice Act, and a special or ad hoc Committee on Court Facilities and Design. In addition to these are the Standing Committee on Rules of Practice and Procedure (see Chapter III) and its Advisory Committees on Civil Rules, Criminal Rules, Appellate Rules, Bankruptcy Rules, and Rules of Evidence. Because of the changing nature of the problems facing the courts there is frequent change in the number and types of committees. Special or ad hoc committees normally are disbanded after completing their specific tasks.

Circuit Judicial Councils. The Circuit Councils are required to meet at least twice each year on call of the chief judge of the circuit. The chief judge, who serves as chairman, together with all other circuit judges for the circuit in regular active service comprise the Council. The Council is required by statute to make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit. The statute requires also that district judges shall promptly carry into effect all orders of the Judicial Council. The Council is empowered to appoint a circuit executive to exercise such administrative powers and perform such duties as may be delegated to him by the Circuit Council.

Judicial Conferences of Circuits. Circuit Judicial Conferences are held annually at a time and place designated by the chief judge of the circuit. The Conference membership includes all active circuit and district judges. Members of the bar of the circuit are also invited as active participants. The Conference has general responsibility for considering the business of the courts and advising means of improving the administration of justice within the circuit. The Conference also chooses the district judge from that circuit who shall serve as a member of the Judicial Conference of the United States.

Administrative Office of the United States Courts. The Administrative Office of the United States Courts was created by the Administrative Office Act of August 7, 1939, for the purpose of assuming the administrative functions of the United States courts other than those of the Supreme Court. Prior to its creation administrative services for the courts had been rendered by

the Department of Justice. The Administrative Office is headed by a Director and Deputy Director appointed by the Supreme Court of the United States. The office has administrative jurisdiction over the courts of appeals and district courts of the United States, the United States district court for the District of the Canal Zone and the district courts of Guam and the Virgin Islands, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court. The Director is assigned no administrative duties with respect to the Supreme Court of the United States except that he is required to "perform such other duties as may be assigned to him by the Supreme Court." The Administrative Office consists of six divisions and the office of General Counsel.

The Financial Management Division assists the Director in his duty of conducting the general business operations of the federal judiciary. Its function is to provide fiscal management, facilities and equipment for the efficient handling of the work of the federal courts.

The Services Division is charged with furnishing the courts with needed space and facilities, communications, printing, furniture, and office machines. All supplies necessary for the conduct of official business are available through this Division.

The Division of Personnel is responsible for administering a comprehensive personnel program for the federal judiciary. Under authority delegated by the Director this division fixes the grades and salaries of all supporting personnel of the courts whose salaries are not otherwise fixed by law.

The Division of Information Systems evaluates the effectiveness of existing information systems, develops new systems, evaluates the impact of outside changes on the system, evaluates changes recommended from within or without the federal court system, and originates changes when conditions dictate. In addition it has the responsibility of providing accurate and current statistical information as to state of judicial business in each federal court for the purpose of promoting prompt and efficient disposition of litigation.

The Division of Bankruptcy is charged with the general administrative supervision over the bankruptcy courts. It formulates and recommends bankruptcy legislation to the Judicial Conference and develops, installs and implements bankruptcy programs, policies, systems, and procedures.

The Division of Probation serves as the headquarters of the Federal Probation System. It assists the Director in establishing policies and procedures for the operation of the system, keeps the Judicial Conference informed of the current status of the system and recommends to the Conference legislation which is considered desirable for the effective administration of the probation system. The Division is charged also with the general supervision of the probation officers of the system.

The Division of Magistrates assists the Director in the performance of his duties under the Federal Magistrates Act. The division conducts surveys both general and special to determine the need for magistrate services and to recommend the appointment of magistrates to the Judicial Conference, the Judicial Councils of the circuits, and to the district courts. Recommendations also are made as to locations and salaries of magistrates. Further the division develops procedures and systems for the conduct of the business of the magistrates, carries out directives of the Judicial Conference and recommends legislation.

The Criminal Justice Act Unit is newly formed within the Administrative Office and bears responsibility for carrying out the agency's statutory responsibilities under the Criminal Justice Act. This Division formulates administrative guidelines, forms and manual issued to court appointed counsel and defender organizations. The Division reviews budget estimates submitted by federal public defender organizations and maintains files required by statute such as district court plans for furnishing representation.

The Division of Judicial Examination is another new branch of the Administrative Office responsible for developing and carrying out a comprehensive internal audit program. This program will include evaluation of the efficiency and effectiveness of the operations of the federal court system, except the Supreme Court. A staff of attorneys and auditors will examine the official records and procedures of U. S. district courts and Courts of Appeals, Federal Magistrates, Federal Probation Officers, Federal Public Defenders, Federal Bankruptcy Judges, Court reporters, the Customs Court, Court of Claims, and Court of Customs and Patent Appeals.

The Division of Clerks has been formed to provide an office in Washington responding to the specific needs of this important function in the court. The Clerks Division is responsible for nationwide coordination and administration of programs and policies affecting the offices of all the Clerks of U. S. District Courts and the Clerks of U. S. Courts of Appeals. This

Division interprets official policy for Clerks and provides guidance, support, and technical assistance. The Division is responsible for design, testing, and implementation of the systems used to accomplish the tasks assigned to clerks' offices.

The Office of the General Counsel renders legal opinions and advice with respect to statutes and rules affecting judicial administration at the request of the Director, Deputy Director, Assistant Directors and Division Chiefs of the Administrative Office and at the request of all other officers of the federal judiciary and other branches of government. The office works directly with various committees of the Judicial Conference of the United States including the Committee on the Administration of the Criminal Law and the Committee on the Operation of the Jury System. It provides a secretariat and staff service for the Advisory Committees on Federal Rules and Rules of Practice and Procedure.

In addition to the foregoing the Administrative Office provides staff services for the committees of the Judicial Conference of the United States and makes studies, surveys and reports on request of such committees. Special surveys and reports are also made by the office on request of the Judicial Councils of the circuits or on request of the chief judge of a district court.

The Federal Judicial Center. The Federal Judicial Center was established by Public Law 90-219 of December 20, 1967. Its purpose is "To further the development and adoption of improved judicial administration in the courts of the United States."

The Center is supervised by a Board of seven members: the Chief Justice of the United States, who is the permanent chairman of the Board; the Director of the Administrative Office of the United States Courts; and five members elected by the Judicial Conference of the United States--two active judges of the United States courts of appeals and three active judges of the United States district courts. The Act creating the Center requires the Board to establish policies and develop programs for the Center, to recommend methods for improving judicial administration in the United States courts, including the training of their personnel and management of their resources, and to consider and recommend to both public and private agencies aspects of the operation of the courts deemed worthy of special study.

The Director of the Center is selected by the Board and serves at their pleasure. The work of the Center is carried out through Departments of Research, Innovations and Systems Development, Education and Training, and Inter-Judicial Affairs.

The Research Division executes the research mission of the center, which is to identify those areas where lack of sufficient information hampers formulation of recommendations and programs to improve operation of the federal courts and to develop required information in those areas. Research efforts are directed both toward basic information development, such as judicial time studies, and toward facilitating choices among alternatives by developing intensive information concerning the strengths and weaknesses of each alternative.

The Innovations and Systems Development-Division assists the Board in the execution of its statutorily assigned function to "study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States." This includes development of court information systems which will aid judges and court administrators by giving insight into the dynamics of court processes so that they may ascertain how well specific practices work and, additionally, identify precisely where problems emanate. Development efforts are also directed toward improved systems for general management, juror utilization, court reporting, and studies or experiments associated with the use of systems procedures or modern technology in the courts.

The Education and Training Division discharges the Center function "to stimulate, create, develop and conduct programs of continuing education and training for personnel of the judicial branch of the government." In the execution of this function the Education and Training Division conducts courses and seminars for judges, bankruptcy judges, public defenders, clerks of court, courtroom deputies, magistrates, probation officers and others.

The Inter-Judicial Affairs Division is responsible primarily for coordination with other organizations working toward improved judicial administration in both federal and state courts. Close liaison is maintained with the four conferences of the American Bar Association's Section of Judicial Administration, the National Center for State Courts, and the National College of the State Judiciary. This Division also follows the work of the United States Congress as it affects the federal courts, and in conjunction with the Administrative Office publishes a monthly bulletin entitled The Third Branch containing news about the federal courts.

CHAPTER X

ADMINISTRATIVE STRUCTURE OF THE PROBATION SYSTEM

It is helpful generally to an officer or employee of any agency to have some grasp of the administrative structure of his organization. To an officer of the Probation System it is both helpful and important because the administration of this organization is not that of a conventional government establishment.

In an earlier chapter we noted that unlike most government agencies the probation service is not centralized. With considerable autonomy at the district level and allegiance to at least two agencies at the Washington level the locus of final authority varies with the nature of the particular issue at hand. This may be seen in what follows.

Court Authority. The Probation Act as amended (18 USC 3654), which vests in the District Courts the power to appoint Probation Officers, provides also that they shall serve "within the jurisdiction and under the direction of the Court making such appointment" (emphasis added). The probation office functions under the immediate direction of the district court, the chief probation officer being required by statute to "direct the work of all probation officers serving in such court." In all matters relating to probation unless otherwise specifically provided by law the district court is the final authority.

Administrative Office Responsibility. The duties of the Director of the Administrative Office of the United States Courts with respect to probation are delineated in Section 3656 of Title 18, United States Code. The Director or his authorized agent is required to investigate the work of the probation officers and to make recommendations to the respective judges. He is authorized to have access to the records of all probation officers and is required to collect for publication statistical and other information concerning the work of probation officers. It is his duty to formulate general rules for the proper conduct of probation work, to prescribe record forms and the kinds of statistics to be kept by the probation officers and to promote the efficient administration of the Probation System and the enforcement of the probation laws in all United States courts. The Director is required also to fix the salaries of the probation officers and provide for their necessary expenses. These duties are discharged primarily through the Division of Probation.

Responsibility of the Attorney General. As reflected in Chapter II the authority of the Attorney General in correctional matters is exercised primarily through the Board of Parole and the Bureau of Prisons. In handling specific cases it is the practice of these two agencies to deal directly with the probation offices. In matters of policy however or in implementing new programs or revisions of existing programs the director of the Bureau of Prisons and the chairman of the Board of Parole consult with the chief of the Division of Probation and communicate through the division to the probation officers in the field. Likewise the head of either agency or the probation officers may call on the Division of Probation in those rare instances in which a difference of views cannot readily be resolved.

The Division of Probation. The probation-related responsibilities assigned by statute to the Director of the Administrative Office are discharged by the Division of Probation through a broad range of functions. The more notable are identified here.

The division establishes standards of professional performance for presentence investigations, case supervision services, report writing, case records and inter-office and inter-agency cooperation. It formulates rules for field office operation, records management, professional services, and the submission of statistical data. It publishes and maintains a procedural manual for probation officers.

The division investigates and evaluates the work of probation offices through direct observation, review of examination reports, and analysis of statistical data. It enforces performance standards through requiring compliance, where authority exists, and consulting with courts and probation staffs. The division coordinates a system of 213 locally administered field offices. Likewise it coordinates planning with the Bureau of Prisons and Board of Parole relating to institutional pre-release services and parole services.

The division assists in administering the personnel program of the Probation System by recommending for adoption by the Judicial Conference standards for the appointment of probation officers, by assessing personnel needs, by developing budget estimates, and by enforcing personnel selection standards approved by the Judicial Conference.

The division cooperates closely with the Federal Judicial Center in the development and execution of training programs for the probation service. Likewise it coordinates with the Judicial Center and the probation offices special study projects and research.

The division edits Federal Probation quarterly, provides staff support to the Committee on the Administration of the Probation System and staff support for seminars and sentencing institutes for judges. The division recommends and assists in the development of legislation; it reviews all legislative proposals affecting criminal law and corrections; and formulates recommendations to the Judicial Conference of the United States.

The Division of Probation currently has a staff complement of 18 positions, 12 professional and six supporting. The staff consists of the chief, 10 assistants, an editor and six secretaries. It is of interest to note that no one has ever served as chief of the division or assistant chief who has not first had extensive experience as a federal probation officer.

Because of the limited size of staff and the wide range of functions, flexibility is essential and organizational lines of the division are fluid. However each of five assistants is assigned a geographical segment of the United States and is responsible for liaison with the courts and probation offices in his area, and for inspection, consultation and enforcement of performance standards. Each assistant has other specific responsibilities including editing the quarterly, coordinating the training program, coordinating special study projects and research in cooperation with the Federal Judicial Center and managing the personnel program, preparing budget estimate and reviewing legislature.

The Probation System Budget. It is important that each probation officer have an understanding of the complexities in the annual process of getting the Probation System's financial support. Financial provision for the System is made through the annual appropriation for the federal judiciary. Hence the development of the Probation System budget is accomplished as a part of the budget process for the entire judiciary.

It is the responsibility of the chief judge of each district court to submit to the director of the Administrative Office by the first of May each year a projection of the personnel and other needs of all the district court's activities. Prior to that time it is the chief probation officer's responsibility to inform his chief judge of the needs of the probation office. The projections received from the chief judges are reviewed by the Administrative Office and by the Judicial Conference Subcommittee on Supporting Personnel. Next they are presented to the Judicial Conference Committee on the Budget. The latter committee submits to the Judicial Conference at its Fall meeting a tentative budget for Conference action and transmittal to the Congress. The budget is for the fiscal year which begins the following July.

The proposed budget is not submitted directly to the Congress but first goes to the Office of Management and Budget (OMB) of the White House. There it is incorporated into the annual budget of the United States and is transmitted to the Congress at the opening of the next session. Thus the projections received from the courts in May reach the Congress the following January.

Once in the hands of the Congress the budget goes to the Committee on Appropriations of the House of Representatives. There it is parceled out to subcommittees, each of which has the responsibility of reviewing requests from one or more agencies. The judiciary budget is assigned to a subcommittee which reviews the requests of the Department of State, the Department of Justice, the Judiciary, and related agencies.

The subcommittee schedules hearing dates for the various agencies and on the appropriate date the Chairman of the Judicial Conference Committee on the Budget, the director of the Administration Office, the assistant directors and the chiefs of the divisions appear and testify in response to questions from the Chairman and subcommittee members. Well in advance of the hearing the Appropriations Committee is supplied with detailed written justifications in support of all aspects of the appropriation requested.

The hearing usually occurs in February or March. Later, customarily in April or May, the Appropriations Committee reports out an appropriation bill to the House of Representatives. Meanwhile the bill is sent to the Senate for action. Testimony in support of the request is offered to the Senate appropriation subcommittee. If any part of the request is later denied by the House, the director of the Administrative Office may appeal the reduction to the Senate Appropriations Subcommittee. If such items are restored by the Senate, thus putting the House and Senate versions of the appropriation bill at odds, the matter is referred to a joint committee of representatives and senators to iron out the differences. When an agreement is reached the bill goes back to the floor of each House for passage. Following final passage by the Congress the bill goes forward to the White House for signature by the President.

The entire process takes a minimum of 14 months and sometimes considerably longer. Because so much time is required to meet a need once it is known, it is imperative that each probation unit constantly look ahead at least two to three years to anticipate its future requirements.

Personnel. One chapter of the Probation Officers Manual is devoted in its entirety to matters of personnel. Highlighted here are items thought to be of interest to newly appointed officers.

When funds are available to add new positions to the system the responsibility for determining the districts to which they will be allocated rests with the Division of Probation. Some factors considered in allocating positions are the comparative size of work loads, the relative complexity of the types of cases handled, the geographical and travel problems of the districts and the degree of effectiveness of current staff utilization.

To enable the director of the Administrative Office to fulfill his fiscal responsibility no position, either new or one that becomes vacant, may be filled without prior authority from the Administrative Office.

Positions in the probation offices are classified by the Administrative Office on the basis of their duties and responsibilities and the minimum education and experience qualifications adopted by the Judicial Conference of the United States. These have been described in detail in the Judiciary Salary Plan, a summary of which has been provided to each probation office. The entrance level for probation officers is Grade JSP-9. On completion of one year's service in Grade 9 an officer becomes eligible to be considered for promotion to Grade JSP-11. Such promotion is dependent on the favorable recommendation of the chief probation officer and the court. On satisfactory completion of one year at the Grade 11 level an officer may be considered for promotion to Grade JSP-12 which is the journeyman probation officer level. A promotion to Grade 12 likewise is conditioned on recommendation of the chief probation officer and the court.

The basic work week for supporting personnel of the courts is 40 hours usually consisting of five 8-hour days. Daily schedules however may vary from office to office.

As indicated elsewhere the Federal Judicial Center is responsible for the training of all court personnel including those in the probation service. Training programs are developed in close cooperation with the Division of Probation and fall generally into three categories: orientation classes for new personnel, refresher classes, and management courses. Ordinarily an officer participates in a refresher class once each three years. A variety of management courses are offered to persons in professional and clerical positions with administrative responsibilities.

Employees of the Probation System are subject to the leave system described in Pamphlet 38 - Annual and Sick Leave Regulations, a copy of which is in each probation office. During the first three years of service employees are entitled to annual leave amounting to 13 working days per year. Between 3 years and 15 years of service they are entitled to 20 days per year and after 15 years are entitled to 26 days per year. Sick leave accumulates at the rate of 13 working days per year and may be accumulated indefinitely.

Both group life insurance and health insurance are available on an optional basis to probation employees and in each case a substantial part of the cost is borne by the government.

Membership in the U. S. Civil Service Retirement System is compulsory for all permanent probation employees. The Civil Service Retirement and Disability Fund is financed jointly by member employees and the government. Deductions of seven and one half percent are made from the basic salary of each employee each pay period to cover his share of the cost and are credited to his individual retirement record in the Administrative Office.

Probation officers are among those who may receive the special retirement benefits for employees in hazardous enforcement-type positions. Basically this means that the officer may apply for retirement as early as age 50 on completion of 20 years of service. It means also that the retirement annuity will be calculated at a rate somewhat higher than that applicable to other employees.

As indicated at the beginning of this section, detailed information on the foregoing subjects may be found in the Probation Officers Manual.

CHAPTER XI

CURRENT TRENDS

This chapter will serve to identify a few developments that either were introduced or commenced to catch fire beginning in the early 1960's. There is ample room to quarrel with the notion that some of the ideas were altogether novel, but on the other hand an idea discussed for years but given only lipservice may be considered an innovation when it finally takes hold.

Sentencing Councils. The first sentencing council in the federal system came into being in November, 1960, in the United States District Court for the Eastern District of Michigan. In the view of the judges and probation officers of that court the technique of bringing to bear on each case the viewpoints of several judges as well as the probation office seems to have proved its worth beyond any reasonable doubt.

Group Counseling. Group counseling was not new to the past decade but about 10 years ago was introduced as an integral part of the program of the United States Probation Office in Washington, D. C. Appendix E is a reprinted article reporting on that experience.

Caseload Management. Caseload management concepts have been much talked about for 20 or 25 years. Perhaps it was the attention given the subject by the San Francisco Project that in part at least triggered interest and action in the Federal Probation System. One results of the interest was the establishment of a research project for low-risk offenders by the Division of Probation in conjunction with four field offices. Cosponsoring the effort were the Division of Information Systems and the Federal Judicial Center.

Using objective criteria and psychological tests it was possible to identify a substantial number of individuals who represent a very low risk of violation of probation or parole. These individuals were assigned to large caseloads averaging 300 cases each. More than 1600 cases were supervised by five officers in four districts. The violation rates proved to be nominal.

The major benefit was a reduction in the caseloads of other officers who then were able to work more intensively with the difficult and more demanding cases. One office capitalized on the manpower saving to create two 30-offender caseloads of highest risk offenders. Experience seemed to show however

that the most intensive service might better be applied to intermediate risk offenders where the likelihood of effecting positive change could be greater. In another district the minimum supervision project was a key factor in making manpower available for a special program for narcotics offenders.

Elsewhere the probation offices of three districts have experimented with modified versions of the California Base Expectancy Scoring System. This utilizes a 12-factor objective profile, developed by actuarial studies, that has proven to be an accurate predictor of parole success. Preliminary evaluation seems to suggest similar accuracy in predicting success on probation. Each of the districts has used the system somewhat differently, but all to the development of better caseload management.

Paraprofessionals. The past four or five years have seen the first real efforts made to utilize persons without professional training, including ex-offenders, to assist probation and parole officers. One example is a project conducted in the U. S. Probation Office at Chicago which is reported in an article included as Appendix F. The appropriation for fiscal year 1973 funded the creation of the first paraprofessional positions as an integral part of the probation service. Twenty such positions, officially designated "probation officer assistant" now are assigned to the field offices.

Bonding of Ex-Offenders. In January 1971, bonding coverage was made available to eligible persons through more than 2,000 local state employment service offices under a program of the Manpower Administration of the U. S. Department of Labor.

The Congress in 1965 enacted a series of amendments to the Manpower Development and Training Act of 1962, one of which directed the Secretary of Labor to establish demonstration projects to assist in the placement of persons who could not obtain suitable employment because they had records which prevented their being covered by customary bonds. It had been pointed out to the Department of Labor that criminologists were of the opinion that inability to meet the requirements for fidelity bonding coverage is often a contributing factor to a return to crime.

Since 1966 the Manpower Administration has conducted a limited pilot program of bonding assistance through state employment service offices to determine the usefulness of providing fidelity bonding to ex-offenders and selected others, and to stimulate employers and commercial bonding firms to reexamine bonding practices in an effort to reduce barriers where employment is or may be denied for reasons other than ability to perform.

The bonding demonstration projects were piloted in Los Angeles, New York, Chicago, and Washington, D. C., and were gradually expanded to 51 cities in 29 states.

Eligibility for coverage is determined by a simple rule: Is the fidelity bond coverage necessary to remove the barrier between the man and the job?

More than 2,300 persons were in the experimental program. Most of them were persons with convictions. Only 30, less than two percent, at an average of less than \$600 a "defaulter," have defaulted. Evaluation of the study, according to the Manpower Administration, indicates that the placement potential is greatly increased for persons who formerly were unable to find suitable employment because of lack of bond coverage.

Further information about the proposed program may be obtained from local state employment service offices.

Community Treatment Centers. A joint effort of the Bureau of Prisons and the Division of Probation to make available the Bureau's community treatment centers and facilities for the use of probationers, parolees and mandatory releasees culminated in the enactment of Public Law 91-492 on October 22, 1970. This now offers at the time of sentencing an alternative to traditional confinement for selected offenders, many of whom are handled in a center as a "last resort." For persons already under supervision, a center program may mean the difference between success and failure in the community. For offenders who periodically experience adjustment problems, intervention by center staff and programs has a stabilizing effect.

College as a Parole Plan. Increasing attention has been given to programs that call for college enrollment while on parole. Similar efforts are underway in many parts of the United States.

Computer Use in Decision-Making. There seems to be general agreement that electronic devices cannot be substituted for human judgment in correctional decision-making. The extent to which they can be helpful in improving the decision-making process has not been fully explored. As a result of such computer research the United States Board of Parole has developed its salient factors scoring to aid in parole decision-making.

Volunteers in Corrections. There is nothing new about the use of volunteers in the Federal Probation System. From its

inception, as anticipated by the Probation Act itself, volunteers have been part of the federal program.

The resurgence of volunteerism in the past decade may have been stimulated by the success of those who have built their agencies carefully and thoughtfully and in close alliance with knowledgeable professionals. Those that are successful seem to agree on three essential ingredients: exceedingly careful selection of volunteers, thorough training for the tasks they are to do, and scrupulous supervision of their work for the agency.

An account of teamwork between professionals and volunteers in one court is included in the Appendix as Item G.

Probation Subsidy. Possibly one of the most notable correctional innovations was a program set in motion by an Act of the California State Legislature in 1965 under which county probation departments are subsidized by the state on the basis of reducing commitments of offenders to state institutions. The subvention is dependent on a formula which may provide amounts as high as \$4,000 per case. State funds, normally used to incarcerate offenders and treat them while on parole, are thus allocated to the counties for the development of adequate probation services. A dual purpose is served. Commitments are reduced, and offenders can be treated in their home communities where chances for rehabilitation are considerably increased.

After five years of the program's operation, no observable increase in criminal activity as a result of the subsidy program was reported. In the same period the program cost the state \$126 million less than imprisonment and parole would have cost for the same number of persons committed. The subsidy program however is not without critics and has been challenged by some in the field of law enforcement and others.

CHAPTER XII

LOOKING FORWARD

It is possible that even the expanding resources of the Federal Probation System will not keep pace with the work demands. The growing range of correctional treatment alternatives will result in ever greater demands for service and coordination. A few examples include community treatment centers or contract halfway houses in every large city, drug treatment programs of increasing sophistication, diversion or deferred prosecution programs to keep persons out of the criminal justice system, and contract services to meet specific needs of offenders. The job of U.S. probation officer will grow to meet these work demands. Officers will spend more and more time coordinating their own activities and other treatment resources to focus these forces for change on the offender.

While the job grows rapidly so does the system. Approximately one-half of all probation officers currently on duty have been appointed within the last 2 years. This leaves the system with two major challenges: (1) how to use these new resources wisely and in imaginative new ways that allow all staff the opportunity to move Federal Probation forward with the times, and (2) how to integrate these new personnel into a suddenly larger organization in such a way that they can both share the same sense of accomplishment in achieving the goals of Federal Probation and maintain the same high standards of quality service that characterize the system.

Regionalization. The central goal of the Division of Probation is to promote efficient operation of the probation system - a system composed of 2,429 employees serving the courts, Board of Parole, and the Bureau of Prisons.

The Probation Division is now organized according to regional boundaries identical to those adopted by the Federal Bureau of Prisons and United States Board of Parole. This reorganization recognizes the common interests shared with these agencies and the need to work closely with them to coordinate the Federal correctional system. One Division staff member is assigned to each of five regions. The staff member for each region will visit regularly in the regional offices of the Bureau and the Board and have liaison and oversight responsibility for U.S. probation offices in that region. This change makes it possible for the Division to share in the improved service for the field that regionalization anticipates.

Chief Probation Officers Meetings. In keeping with its commitment to service to the field the Probation Division carries out a series of meetings with chief probation officers throughout the Nation to discuss budget practices, current administrative policy, and personnel matters. These meetings are held annually in each region. Chief probation officers bear the major responsibility for developing the agendas for these meetings.

Orientation For New Probation Administrators. The Division also conducts in Washington, D.C., two and a half day orientation meetings for new probation administrators. The Washington location has the special advantage of introducing new chiefs to the many personnel in the Administrative Office with whom they will deal in the future.

Tours of Duty. To stay in touch with developments in the field a program of 30-day temporary duty is conducted each year. Annually six to eight probation officers complete 30-day periods of temporary duty in the Division of Probation in Washington, D.C. Six professional staff members appointed to the Division have previously completed this 30-day program.

The Selective Presentence Investigation Report. In January 1974 the Judicial Conference Committee on the Administration of the Probation System approved for distribution to the judges of the district courts and to all probation officers a monograph on selective presentence investigation reports for specific categories of offenders. This monograph includes an outline and format for a shorter form presentence investigation report which will serve jointly the needs of the courts, the probation officers, the Bureau of Prisons, and the Board of Parole.

The shorter form report will be useful in a variety of cases in which informed decisions do not require elaborate detail.

Voluntary Surrender Procedures. Working with the Judicial Conference Committee on the Administration of the Probation System, the Federal Bureau of Prisons, and the U.S. Marshal's Service, the Probation Division has developed a statement of procedures that provide for the voluntary surrender of selected sentenced offenders to Bureau of Prisons institutions. This effect substantial savings in transportation costs and frees U.S. marshals for more urgent duties.

Qualifications of New Appointees. In fiscal year 1974, 354 officers were appointed to fill new or vacant positions.

Thus of the authorized strength of 1,468 officers, approximately half have been appointed during the past 2 years.

In addition to possessing the minimum qualification of a bachelor's degree, 40.9 percent or 145 of these newly appointed officers have master's degrees. Five of this number have two master's degrees, two have doctoral degrees, and two possess law degrees. At least 33 percent of the officers who lack master's degrees have engaged in graduate study. Each year numerous officers improve their academic qualifications by earning advanced degrees. In addition to the education requirements, 75.3 percent of the new appointees had an average of four and a half years previous experience in probation or parole work.

The Federal Probation System: The Struggle To Achieve It and Its First 25 Years

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THE FIRST probation law in the United States was enacted by the Massachusetts legislature April 26, 1878. But it was not until 1925, when 30 states and at least 12 countries already had probation laws for adults, that a Federal probation law was enacted. Through a suspended sentence United States district courts had used a form of probation for nearly a century. But the use of the suspended sentence was met with mounting disapproval by the Department of Justice which considered suspension of sentence an infringement on executive pardoning power and therefore unconstitutional. The reaction of many judges ranged from "strong disapproval to open defiance." It was apparent the controversy had to be settled by the Supreme Court.

In 1915 Attorney General T. W. Gregory selected a case from the Northern District of Ohio where Judge John M. Killits suspended "during the good behavior of the defendant" the execution of a sentence of 5 years and ordered the court term to remain open for that period. The defendant, a first offender and a young man of reputable background, had pleaded guilty to embezzling \$4,700 by falsifying entries in the books of a Toledo bank. He had made full restitution and the bank's officers did not wish to prosecute. The Government moved that Judge Killits' order be vacated as being "beyond the powers of the court." The motion was denied by Judge Killits. A petition for writ of mandamus was prepared and filed with the Supreme Court on June 1, 1915. Judge Killits, as respondent, filed his answer October 14, 1915. He pointed out that the power to suspend sentence had been exercised continuously by Federal judges, that the Department of Justice had acquiesced in it for many years, and that it was the only amelioration possible as there was no Federal probation system. In one circuit, incidentally, it was admitted the practice of suspending sentences had in substance existed for "probably sixty years."

On December 4, 1916, the Supreme Court handed down its decision (*Ex parte United States*, 242

U.S. 27). The unanimous opinion, delivered by Chief Justice Edward D. White, held that Federal courts had no inherent power to suspend sentence indefinitely and that there was no reason nor right "to continue a practice which is inconsistent with the Constitution since its exercise in the very nature of things amounts to a refusal by the judicial power to perform a duty resting upon it and, as a consequence thereof, to an interference with both the legislative and executive authority as fixed by the Constitution." Probation legislation was suggested as a remedy. Until enactment of a probation law, district courts, as a result of the Killits ruling, would be deprived of the power to suspend sentence or to use any form of probation.

At least 60 districts in 39 states were suspending sentences at the time of the Killits case and more than 2,000 persons were at large on suspended sentences. Following the Killits decision two proclamations were signed by President Wilson on June 14, 1917, and August 21, 1917, respectively, granting amnesty and pardon to certain classes of cases under suspended sentences (see Department of Justice Circular No. 705, dated July 12, 1917).

Efforts To Achieve a Probation Law

The efforts to enact a probation law were fraught with difficulties the proponents of probation never anticipated. It was difficult to obtain agreement on a nationwide plan. As far back as 1890 attorneys general and their assistants expressed strong opposition not only to the suspended sentence but to probation as well. Attorney General George W. Wickersham was one exception. In 1909 he recommended enactment of a suspension of sentence law and in 1912 supported in principle a probation bill before a Senate committee.

The first bills for a Federal probation law were introduced in 1909. One of the bills, prepared by the New York State Probation Commission and the National Probation Association and introduced by Senator Robert L. Owen of Oklahoma,

provided for a suspension of sentence and probation and compensation of \$5 per diem for probation officers. The bill was greeted with indifference by some and considerable opposition by others.

At the time of the Killits decision several bills had been pending before the House Judiciary Committee. At the request of the Committee, Congressman Carl Hayden of Arizona introduced a bill which provided for a suspended sentence and probation, except for serious offenses and second felonies, but made no provision for probation officers. Despite its limitations, the bill passed both the House and the Senate and was sent to President Wilson on February 28, 1917. On advice of his attorney general, he allowed the bill to die by "pocket veto."

It should be mentioned at this point that one of the prime movers for a Federal probation law and prominently in the forefront throughout the entire crusade for a Federal Probation Act was Charles L. Chute who was active in the early days with the New York State Probation Commission and from 1921 to 1948 was general secretary of the National Probation Association (now the NCCD).

Many members of Congress were unfamiliar with probation. Some judges confused probation with parole, several using the term "parole" when sending to Mr. Chute their opinions about probation. When Federal judges were first circularized in 1916 for their views, about half were opposed to probation, regarding it as a form of leniency. Some favored probation for juveniles, but not for adults. Some were satisfied to continue suspending sentences and others believed the suspended sentence was beyond the powers of the court.

In 1919 Federal judges were asked again for their views as to a probation law. The responses were more favorable, but some still felt no need for probation, asserting that uniformity and severity of punishment would serve as a crime deterrent. Others continued to believe salaried probation officers were unnecessary and that United States marshals and volunteers could perform satisfactorily the functions of a probation officer.

In early 1920 Congressman Augustine Lonergan of Connecticut introduced a probation bill in the House resembling the New York State law. A companion bill was introduced in the Senate by Senator Calder of New York. This marked the beginning of a new effort to achieve a Federal probation law. A small but strong committee rep-

resenting the National Probation Association in support of the bill wrote Attorney General A. Mitchell Palmer, hoping to obtain his endorsement of the bill. Of strict law and order inclinations, Palmer replied: ". . . after careful consideration I have felt compelled to reach the conclusion that, in view of the present parole law, the executive pardoning power and the supervision of the Attorney General over prosecutions generally, there exists no immediate need for the inauguration of a probation system." It was believed by the NPA committee that Palmer's reply was prepared by subordinates who had a long-standing opposition to probation.

On March 8, 1920, Mr. Chute succeeded in arranging a meeting with Palmer, bringing with him a team of Washington probation officers, staff members of the U.S. Children's Bureau, and others, including Edwin J. Cooley, chief probation officer of New York City's magistrates courts. Cooley, in particular, impressed the Attorney General who, the next morning, announced in Washington papers that he would use all the influence of his office to enact a probation law. He pointed out that under the existing law judges had no legal power to suspend sentences in any case nor to place even first offenders on probation. He said "federal judges can surely be trusted with the discretion of selecting cases for probation if state judges can," and added that probation had been successful in the states where it had been used the most and that a Federal probation system would in no way interfere with the Federal parole system (established in 1910).

The Volstead Act (Prohibition Amendment) passed by Congress in 1919 created difficulties in obtaining support of a probation law. Congressman Andrew J. Volstead of Minnesota, chairman of the Judiciary Committee, was opposed to any enactment which would interfere with the Act he authored. Any action to be taken on the bill thus depended to a large extent upon him. He, together with other prohibitionists then in control of the Congress, believed judges would place violators of the prohibition law on probation. In an effort to stem such action, the prohibitionists introduced a bill which provided for a prison sentence for every prohibition violator! They ignored the fact that there were overcrowded prison conditions.

Judges Voice Opposition to a Probation Law

Some judges continued to express opposition to probation in principle. Judge George W. English

of the Eastern District of Illinois in a letter to Mr. Chute, dated July 10, 1919, said he was "unalterably and uncompromisingly opposed to any interference by outside parties, in determining who or what the qualifications of key appointees, as ministerial officers of my Court may be." He objected to Civil Service or the Department of Justice having anything to do with the appointment of probation officers.

Replying to a letter Mr. Chute wrote in December 1923 to a number of Federal judges seeking endorsement of a Federal Probation Act, Judge J. Foster Symes of the District of Colorado wrote:

I have your letter of December 10th, asking my endorsement for a Federal probation act. Frankly, permit me to say that I do not favor any such law, except possibly in the case of juvenile offenders. My observation of probation laws is that it has been abused and has tended to weaken the enforcement of our criminal laws.

What we need in this country is not a movement such as you advocate, to create new officials with resulting expense, but a movement to make the enforcement of our criminal laws more certain and swift.

I believe that one reason why the Federal laws are respected more than the state laws is the feeling among the criminal classes that there is a greater certainty of punishment.

In response to Mr. Chute's letter Judge D.C. Westenhaver of the Northern District of Ohio wrote:

Replying to your request for my opinion, I beg to say that I am opposed to the bill in its entirety. In my opinion, the power to suspend sentence and place offenders on parole should not be confided to the district judges nor anyone else In my opinion, the suspension, indeterminate sentence and parole systems wherever they exist, are one of the main causes contributing to the demoralization of the administration of criminal justice I sincerely hope your organization will abandon this project. (12-14-23)

A letter from Judge John F. McGee of the District of Minnesota read, in part:

I most sincerely hope that you will fail in your efforts, as I think they could not be more misdirected. The United States district courts have already been converted into police courts, and the efforts of your Association are directed towards converting them into juvenile courts also In this country, due to the efforts of people like yourselves, the murderer has a cell bedecked with flowers and is surrounded by a lot of silly people. The criminal should understand when he violates the law that he is going to a penal institution and is going to stay there. Just such efforts as your organization is making are largely responsible for the crime wave that is passing over this country today and threatening to engulf our institutions What we need in the administration of criminal laws in this country is celerity and severity. (12-19-23)

In his reply to Mr. Chute's letter, Judge Arthur J. Tuttle of Detroit wrote:

There is a large element in our country today who are crying out against the power which the federal judges already have. If you add to this absolute power to let people walk out of court practically free who have violated the law, you are going to increase this

sentiment against the federal judges I don't think the bill ought to pass and I think this is the reason why you have failed in your past efforts I am satisfied, however, that you are on the wrong track, that you are going to make a bad matter worse if you succeed in what you are trying to do I think neither this bill nor any other bill similar to it ought to be enacted into law. (12-14-23)

It should be pointed out that Judge Tuttle later became an "enthusiastic booster" of probation. There also may have been a change in the attitude of the other three judges who are quoted as being opposed to a Federal probation law.

Notwithstanding the opposition of many judges to probation in the Federal courts, there were a number of judges, and also U.S. attorneys, who supported a probation law, referring to the proposed bill as "meeting a crying need," that it was "one of the most meritorious pieces of legislation that has been proposed in recent years," and that "it will remedy a most vital defect in the administration of the federal criminal laws."

Objections Raised by the Department of Justice

Opposition to probation, however, prevailed in the Department of Justice. One of the assistants to new Attorney General Harry M. Daugherty was convinced the Department should stand firmly against probation, commenting: "I thoroughly agree with Judge McGee and hope that no such mushy policy will be indulged in as Congress turning courts into maudlin reform associations The place to do reforming is *inside* the walls and not with the law-breakers running loose in society."

In a 1924 memorandum to the Attorney General, a staff assistant wrote:

It [probation] is all a part of a wave of maudlin rot of misplaced sympathy for criminals that is going over the country. It would be a crime, however, if a probation system is established in the federal courts. Heaven knows they are losing in prestige fast enough . . . for the sake of preserving the dignity and maintaining what is left of wholesome fear for the United States tribunal . . . this Department should certainly go on record against a probation system being installed in federal courts.

Even the Department's superintendent of prisons in 1924 referred to probation as "part of maudlin sympathy for criminals." (Note how "maudlin" has been used in the three statements quoted above—maudlin reform, maudlin rot, maudlin sympathy.)

On December 12, 1923, Senator Royal S. Copeland of New York, a strong advocate of social legislation, introduced in the Senate a new bill (S. 1042) which removed some of the recurring objections of the Department of Justice and some

members of Congress, particularly the costs required to administer a probation law. The bill was sponsored in the House (H.R. 5195) by Representative George S. Graham of Pennsylvania, new chairman of the Judiciary Committee. The bill limited one probation officer to each judge. There was no objection to this limitation, but there was divided opinion on the civil service provision.

On March 5, 1924, Attorney General Daugherty wrote to Chairman Graham commenting on his bill:

... we all know that our country is crime-ridden and that our criminal laws and procedure protect the criminal class to such an extent that the paramount welfare of the whole people is disregarded and disrespect for law encouraged. If it were practicable to devise a humanitarian but wise probation system whereby first offenders against federal laws could be reformed without imprisonment and same could be administered uniformly, justly, and economically, without encouraging crime and disrespect for federal laws, I would favor same. The proposed bill does not seem to provide such a system.

Daugherty stated further there were approximately 125 Federal judges who undoubtedly would insist on at least one probation officer and that salaries, clerical assistants, travel costs, etc., would amount to an estimated \$500,000 per annum—a large amount at that time. He doubted, moreover, the feasibility of placing salaried probation officers under civil service and concluded by stating “the present need for a probation system does not seem to be sufficiently urgent to necessitate its creation at this time.”

It should be pointed out that there was a growing understanding and appreciation of the value of probation as a form of individualized treatment. The prison system was unable to handle the increasing number of commitments. A high proportion of offenders were being sent to prison for the first time—63 percent during the fiscal year 1923. There also was a growing realization of the economic advantages of probation.

Probation Bill Becomes Law

The bills introduced by Senator Copeland (S. 1042) and Representative Graham (H.R. 5195) were reported favorably in the Senate and the House, unamended. On May 24, 1924, Senator Copeland called his bill on third reading. The Senate passed it unanimously. But in the House there were misgivings and opposition. The bill was brought before the House six times by

Graham, only to receive bitter attacks by a few in opposition. One prohibitionist said all the “wets” were supporting the bill and that the bill would permit judges to place all bootleggers on probation! Another congressman believed there should be a provision limiting probation to first offenders.

An intensive effort was made among House members by the National Probation Association to overcome objections to the bill. On February 16, 1925, the bill was brought up again in the House and on March 2 for the sixth and last time. Despite continued opposition by some of the “drys” as well as “wets,” the bill was passed by a vote of 170 to 49 and sent to President Coolidge. As former governor of Massachusetts he was familiar with the functioning of probation and on March 4, 1925, approved the bill. Thus, 47 years after the enactment of the first probation law in the United States, the Federal courts now had a probation law. It is interesting to note that approximately 34 bills were introduced between 1909 and 1925 to establish a Federal probation law.

For a more detailed account of the struggle to enact a Federal probation law, the reader is encouraged to read chapter 6, “The Campaign for a Federal Act,” in *Crime, Courts, and Probation* by Charles L. Chute and Marjorie Bell of the National Probation and Parole Association (now NCCD).

Provisions of the Probation Act

The Act to provide for the establishment of a probation system in the United States courts, except in the District of Columbia,¹ (chapter 521, 43 Statutes at Large, 1260, 1261) gave the court, after conviction or after a plea of guilty or nolo contendere for any crime or offense not punishable by death or life imprisonment, the power to suspend the imposition or execution of sentence and place the defendant upon probation for such period and upon such terms and conditions it deemed best, and to revoke or modify any condition of probation or change the period of probation, provided the period of probation, together with any extension thereof, did not exceed 5 years. A fine, restitution, or reparation could be made a condition of probation as well as the support of those for whom the probationer was legally responsible. The probation officer was to report to the court on the conduct of each probationer. The court could discharge the probationer from fur-

¹ On August 2, 1949, the probation office of the U.S. District Court for the District of Columbia was transferred to the Administrative Office for budgetary and administrative purposes and on June 20, 1958, the Federal Probation Act became applicable to the District of Columbia (Public Law 85-463, 85th Congress).

ther supervision, or terminate the proceedings against him, or extend the period of probation.

The probation officer was given the power to arrest a probationer without a warrant. At any time after the probation period, but within the maximum period for which the defendant might originally have been sentenced, the court could issue a warrant, have the defendant brought before it, revoke probation or the suspension of sentence, and impose any sentence which might originally have been imposed.

The Act authorized the judge to appoint one or more persons to serve as probation officers *without* compensation and to appoint *one* probation officer with salary, the salary to be approved by the Attorney General. A civil service competitive examination was required of probation officers who were to receive salaries. The judge, in his discretion, was empowered to remove any probation officer serving his court. Actual expenses incurred in the performance of probation duties were allowed by the Act.

It was the duty of the probation officer to investigate any case referred to him by the court and to furnish each person on probation with a written statement of the conditions while under supervision. The Act provided that the probation officer use all suitable methods, not inconsistent with the conditions imposed by the court, to aid persons on probation and to bring about improvement in their conduct and condition. Each probation officer was to keep records of his work and an accurate and complete account of all moneys collected from probationers. He was to make such reports to the Attorney General as he required and to perform such other duties as the court directed.

Civil Service Selection

It was not until August 4, 1926, that the U.S. Civil Service Commission announced an open competitive examination for probation officers, paying an entrance salary of \$2,400 a year. After a probation period of 6 months, salaries could be advanced up to a maximum of \$3,000 a year. In requesting certification of eligibles, the appointing officer had the right to specify the sex. Applicants had to be high school graduates or have at least 14 credits for college entrance. If the applicant did not meet these requirements, but was otherwise qualified, he could take a 1¼-hour noncompetitive "mental test."

The experience requirements were (a) at least

1 year in paid probation work; or (b) at least 3 years in paid systematic and organized social work with an established social agency (1 year of college work could be substituted for each year lacking of this experience with courses in the social sciences, or 1 year in a recognized school of social work). The age requirement was 21 through 54. Retirement age was 70. An oral examination was required, unless waived, for all eligible applicants.

Early Years of the Probation System

Civil Service examinations had to be conducted throughout the country. Lists of eligibles were not ready until January 1927. Thus it was not until April 1927, 2 years after enactment of the Federal Probation Act, that the first salaried probation officer was appointed. Two more were appointed in the fiscal year 1927, three in 1928, and two in 1929. The \$50,000 appropriation recommended by the Bureau of the Budget for 1927 was reduced to \$30,000 because the full appropriation of the preceding year had not been drawn upon except for expenses of volunteers. The appropriation for 1928, 1929, and 1930 was \$25,000. It was increased to \$200,000 in 1931. By June 30, 1931, 62 salaried probation officers and 11 clerk-stenographers served 54 districts.

Caseloads were excessive. In 1932 the average caseload for the 63 salaried probation officers was 400! But despite unrealistic caseloads, the salaried officers demonstrated that they filled a longfelt need. They assumed supervision of those probationers released to volunteers who had offered little or nothing in the way of help.

In August 1933, 133 judges were asked for their views as to salaried probation officers. Of the 90 judges responding, 34 expressed no need for salaried officers. Seventy-five were opposed to civil service appointments. At least 700 volunteers were being used as probation officers. Among them were deputy marshals, narcotic agents, assistant U.S. attorneys, lawyers, and even relatives. In a few instances clerks of court and marshals combined probation supervision with their other duties.

Probation Act Is Amended

There was dissatisfaction among judges with the original Probation Act. An attempt was made in 1928 to amend it by doing away with the civil service provisions and giving judges the power to appoint more than one probation officer. The Act,

moreover, made no provisions for a probation director for the entire system. Until the appointment of a supervisor of probation in 1930, following an amendment to the original law, the probation system was administered by the superintendent of prisons who also was in charge of the prison industries and parole. There were no uniform probation practices nor statistics.

On June 6, 1930, President Hoover signed an act amending the original probation law, 46 U.S. Statutes at Large 503-4 (1930). The amended section 3 removed the appointment of probation officers from civil service and permitted more than one salaried probation officer for each judge. When more than one officer was appointed, provision was made for the judge to designate one as chief probation officer who would direct the work of all probation officers serving in the court or courts. Appointments were made by the court, but the salaries were fixed by the Attorney General who also provided for the necessary expenses of probation officers, including clerical service and expenses for travel when approved by the court.

Section 4, as amended, provided that the probation officer perform such duties with respect to parole, including field supervision, as the Attorney General may request. Provision also was made for the Attorney General to investigate the work of probation officers, to make recommendations to the court concerning their work, to have access to all probation records, to collect for publication statistical and other information concerning the work of probation officers, to prescribe record forms and statistics, to formulate general rules for the conduct of probation work, to promote the efficient administration of the probation system and the enforcement of probation laws in all courts, and to incorporate in his annual report a statement concerning the operation of the probation system. The Attorney General delegated these functions to the director of the Bureau of Prisons.

Supervisor of Probation Appointed

In December 1929 Sanford Bates, newly appointed superintendent of Federal prisons (title changed by law in 1930 to Director, Bureau of Prisons), asked Colonel Joel R. Moore to be the first supervisor of probation. Colonel Moore, who had been employed with the Records Court of Detroit for 10 years, accepted the challenge and entered on duty June 18, 1930.

Colonel Moore's first assignment was to sell

judges on the appointment of probation officers, to establish policies and uniform practices, and to locate office facilities for probation officers. In July 1930, on recommendation of Colonel Moore and Mr. Bates, the following appointment standards were announced by the Department of Justice:

1. *Age*: the ideal age of a probation officer is 30 to 45; it is improbable that persons under 25 will have acquired the kind of experience essential for success in probation work.

2. *Experience*: (a) high school plus 1 year of paid experience in probation work, or (b) high school plus 1 year in college, or (c) high school plus 2 years successful experience (unpaid) in a probation or other social agency where instruction and guidance have been offered by qualified administrators.

3. *Personal qualifications*: maturity plus high native intelligence, moral character, understanding; and sympathy, courtesy and discretion, patience and mental and physical energy. (D. of J. Circular No. 2116, 7-5-30, p. 1.)

Since the Attorney General had no means of enforcing the qualifications established by the Department of Justice, appointments to a large extent were of a political nature. Among those appointed as probation officers in the early years were deputy clerks, prohibition agents, tax collectors, policemen, deputy marshals, deputy sheriffs, salesmen, a streetcar conductor, a farmer, a prison guard, and a retired vaudeville entertainer! Relatives of the judge were among them. A master's thesis study by Edwin B. Zeigler in 1931 revealed that 14 of the 60 probation officers in service at that time had not completed high school, 14 were high school graduates, 11 had some college work, 11 had graduated from college, and 9 had taken some type of graduate work.

The 1930 personnel standards were in effect until January 1938 when efforts were made by the Attorney General to improve them. The new standards included (1) a degree from a college or university of recognized standing or equivalent training in an allied field (1 year of study in a recognized school of social work could be substituted for 2 years of college training); (2) at least 2 years of full-time experience in an accredited professional family or other casework agency, or equivalent experience in an allied field; (3) a maximum age limit of 53; (4) a pleasing personality and a good reputation; and (5) sufficient physical fitness to meet the standards prescribed by the U.S. Public Health Service.

When Colonel Moore entered on duty he was confronted with the task of how to utilize most advantageously the \$200,000 appropriated for the fiscal year 1931 when, as already stated, there were 62 probation officers and 11 clerk-stenogra-

phers. Quarters and facilities for probation services were meager. The officer in Mobile kept office hours between sessions of court at a table for counsel in the court room. The Los Angeles officer held down the end of a table in the reception room of the marshal's quarters. In Macon, Georgia, the probation officer was given space, without charge, in the law office of a retired lawyer friend. The officer for the Middle District of Pennsylvania had his office at his residence.

"Neither the courts nor the Department of Justice had exercised paternal responsibilities for the probation officer's needs," Colonel Moore recalled. "He (the probation officer) had to shift pretty much for himself. Only a fervent spirit and a dogged determination to do their work gave those new probation officers the incentive to carry on."

In the depression days it was difficult to obtain sufficient funds for travel costs. Probation travel was new to the Budget Bureau. "We had to fight for every increase in travel expenses for our continually growing service," said Colonel Moore.

Restricted in both time and travel funds, Colonel Moore had to maintain most of his field contacts through correspondence. In October 1930 a mimeographed *News Letter* was prepared for probation personnel. In July 1931 it became *Ye News Letter*, an issue of 17 pages. In Colonel Moore's words, "It served as a morale builder and a source of inspiration, instruction, and as an incentive to greater efforts . . . Its chatty personal-mention columns, its travel notes, and reporting of interesting situations helped to unify aims and to build coherence in activities."

Inservice training conferences were conducted in the early years as a regular practice. The first such conference met in October 1930 with the American Prison Congress. Thirty-two officers attended. A second conference, attended by 62 officers, was held in June 1931 in conjunction with the National Conference of Social Workers. Training conferences continued throughout the early years in various parts of the country, often on college and university campuses.

When Colonel Moore left the Federal probation service in 1937 to become warden of the State Prison of Southern Michigan, there were 171 salaried probation officers with an average caseload of 175 per officer. Commenting on Colonel Moore's 7 years as probation supervisor, Sanford Bates said: "The vigor and effectiveness of the

federal probation system in its early years were in large part due to his vision and perseverance."

Expansion Phase

Following the resignation of Colonel Moore, Richard A. Chappell, who was appointed a Federal probation officer in 1928 and named chief probation officer for the Northern District of Georgia in 1930, was called to Washington in 1937 to be supervisor of probation in the Bureau of Prisons. In 1939 he was named chief of probation and parole services, succeeding Dr. F. Lovell Bixby when he was appointed warden of the Federal Reformatory at Chillicothe, Ohio.

On August 7, 1939, a bill to establish the Administrative Office of the United States Courts was approved by President Roosevelt, the statute to take effect November 6. On that date Elmore Whitehurst, clerk of the House Judiciary Committee, was appointed assistant director. On November 22, Henry P. Chandler, a Chicago attorney and past president of the Chicago Bar Association, was named director by the Supreme Court and entered on duty December 1. He served as director for 19 years until his retirement in October 1956.

Probation officers were excluded from the Act establishing the Administrative Office and like United States attorneys and marshals were subject to the Department of Justice. The Department argued that the supervision of probationers, like that of parolees, was an executive function and should remain with the Department. On January 6, 1940, Mr. Chandler brought the matter in writing to Chief Justice Hughes who believed that probation officers, being appointed by the courts and subject to their direction, were a part of the judicial establishment and that the law for the Administrative Office in the form enacted contemplated that probation officers should come under it. Later in January the Judicial Conference adopted that view and settled the question.

In meeting with James V. Bennett, director of the Bureau of Prisons, Mr. Chandler stated that if he assumed supervision of the probation service he would make every effort to build upon the values that had been developed under the Department and "to coordinate the administration of probation still with the correctional methods that remain in the Department of Justice." The Judicial Conference instructed Mr. Chandler to undertake his duties in relation to probation "in a spirit

of full cooperation with the Attorney General and the Director of the Bureau of Prisons."

When steps were taken to arrange for transfer of the appropriation for the probation service to the Administrative Office there was objection from the House Appropriations Committee which believed there would be a relaxing of the appointment qualifications for probation officers and that probation officers would pay little attention to the supervision of parolees who were a responsibility of the Department of Justice. The Committee reluctantly agreed to the transfer of the appropriations but did so with this warning from Congressman Louis C. Rabaut:

We have agreed to this change with "our tongues in our cheek," so to speak, hopeful that the dual problem of probation and parole can be successfully handled under this new set-up. If proper attention is not given by probation officers to the matter of paroled convicts, however . . . you may expect a move to be made by me and other members of the committee to place this probation service back under the Department of Justice.

On July 1, 1940, general supervision of the probation service came under the Administrative Office. On recommendation of Mr. Bennett, Mr. Chappell was appointed chief of probation by Mr. Chandler, and on the recommendation of Mr. Chappell, Victor H. Evjen, who had been a probation officer with the Chicago Juvenile Court and the United States District Court for the Northern District of Illinois, was appointed assistant chief of probation. These two constituted the headquarters professional staff until 1948 when Louis J. Sharp, Federal probation officer at St. Louis, was appointed as a second assistant chief of probation.

In all of their contacts with judges and probation officers Mr. Chandler and his Probation Division staff emphasized that the duties to supervise persons on probation and parole were equal and that parole services were in no way to be subordinated. He made it clear that he would not cease to appeal to judges to appoint only qualified officers who would perform efficiently and serve the public interests. In reporting the appropriation bill for 1942 Congressman Rabaut said: "It is with considerable pleasure and interest that the committee has observed that, in the matter of recent appointments of probation officers, there has apparently been no compromise whatever with the standards which were previously employed, when this unit was in the Department of Justice, as to the character or type of applicants appointed."

Judicial Conference Establishes Appointment Qualifications

At its October 1940 meeting the Judicial Conference expressed its conviction "that in view of the responsibility and volume of their work, probation officers should be appointed solely on the basis of merit without regard to political considerations, and that training, experience and traits of character appropriate to the specialized work of a probation officer should in every instance be deemed essential qualifications." No more specific qualifications were formulated at that time, but pursuant to a resolution of the Judicial Conference at its September 1941 session the Chief Justice appointed a Committee on Standards of Qualifications of Probation Officers to determine whether it would be advisable to supplement the 1940 statement of principle by recommending definite qualifications for the appointment of probation officers and, if so, what the qualifications should be. To assist the work of the Committee, Mr. Chappell corresponded with 30 recognized probation leaders throughout the country, requesting their views as to qualifications for probation officers. He also conferred with the U.S. Civil Service Commission.

In its report² the Committee recommended the following requisite qualifications:

- (1) Exemplary character; (2) Good health and vigor; (3) An age at the time of appointment within the range of 24 to 45 years inclusive; (4) A liberal education of not less than collegiate grade, evidenced by a bachelor's degree (B.A. or B.S.) from a college of recognized standing, or its equivalent; and (5) Experience in personnel work for the welfare of others of not less than 2 years of specific training for welfare work (a) in a school of social service of recognized standing, or (b) in a professional course of a college or university of recognized standing.

The Committee recommended that future appointments of officers be for a probation period of 6 months, and that district courts be encouraged to call on the Administrative Office for help in assessing the qualifications of applicants and conducting competitive examinations if desired by the court. The report of the Committee was unanimously approved and adopted by the Judicial Conference at its September 1942 meeting.

Although most of the probation leaders with whom Mr. Chappell corresponded favored selection by civil service, the Committee stated in its report that this method had been tried before with results not altogether satisfactory. The Committee did not consider whether it was desirable to return to the civil service system.

It should be brought out that neither the Ad-

² See FEDERAL PROBATION, October-December 1942, pp. 3-7.

ministrative Office nor the Judicial Conference could go beyond persuasion since there was no legal limitation of the power of appointment in the district courts. The standards of qualification were not readily accepted by all judges, some of them relying upon the term "equivalent" as a loophole.

During the 10-year period following the October 1940 Judicial Conference statement as to the essential qualifications of probation officers and the 1942 requisite qualifications (see footnote 2), 161 appointments were made. Of that number, 94, or 58.4 percent, met the requirements of both education and experience (compared with 39.7 percent prior to 1940), 16.1 percent met the requirement of education only, 11.2 percent met only the experience requirement, and 14.3 percent met neither requirement. Appointments since 1950, however, were in increasing compliance with the Conference standards.³

Inservice Training

Institutes.—Mention has been made of the training conferences held by Colonel Moore during the early years of the probation service. Inservice training institutes of 3- and 4-day duration continued throughout the thirties and forties to be a helpful means of keeping probation officers abreast of the latest thinking in the overall correctional field, acquiring new insights, skills, and knowledge, and utilizing specialized training and experience to their fullest potential. Institutes were held in five regions of the country at 2-year intervals. They consisted of work sessions, small group meetings, formal papers by correctional and social work leaders, and discussions of day-to-day problems. They generally were held in cooperation with universities, with members of their sociology, social work, psychology, and education departments and school of law serving as lecturers. Representatives of the Bureau of Prisons central office and its institutions, the U.S. Board of Parole, and the U.S. Public Health Service addressed the institutes and participated in forum discussions.

Training Center.—In November 1949 the Administrative Office in cooperation with the U.S. District Court for the Northern District of Illi-

nois established a training center at Chicago for the Federal probation service. Under the direction of Ben S. Meeker, chief probation officer at Chicago, the training center sought and obtained the cooperation of the University of Chicago in developing courses of instruction. Recognized leaders in the correctional and related fields served on the Center's faculty. An indoctrination course was offered for newly appointed officers shortly following their entrance on duty and periodic refresher courses for all officers.

Monographs.—In 1943 the Probation Division published a monograph, *The Presentence Investigation Report* (revised in 1965) to serve as a guideline for conducting investigations and writing reports. In 1952 *The Case Record and Case Recording* was prepared in an effort to establish uniform case file procedures.

Manual.—In 1949 a 325-page *Probation Officers Manual*, prepared principally by Mr. Sharp, was distributed to the field. Prior to this time probation policies, methods, and procedures had been disseminated largely through bulletins and memoranda.

Periodical.—FEDERAL PROBATION, published quarterly by the Administrative Office in cooperation with the Federal Bureau of Prisons, was another source of training through its articles on all phases of the prevention and control of delinquency and crime, book reviews, and digests of professional journals. As previously mentioned, the Quarterly had its beginning in 1930 as a mimeographed *News Letter*. In September 1937, after acquiring the format of a professional periodical, its title was changed to FEDERAL PROBATION and was edited by Eugene S. Zemans. It made its first appearance in printed form in February 1939 with Mr. Chappell, then supervisor of probation in the Bureau of Prisons, as editor until 1953 when he was appointed a member, and later chairman, of the U.S. Board of Parole. When the Federal Probation System was transferred to the Administrative Office in 1940, Mr. Chappell, in addition to his responsibilities as chief of probation, continued as editor.

The quality of articles in the journal attracted the attention of college and university libraries and a wide range of persons in the correctional, judicial, law enforcement, educational, welfare, and crime prevention fields. It was mailed upon request, without charge. In 1950 the controlled circulation was approximately 4,500 and included 25 countries.⁴

³ After implementation of the Judiciary Salary Plan, adopted by the Judicial Conference in 1961, all but one of the probation officers appointed through December 1974 met the minimum requirements, including a bachelor's degree. Approximately 38 percent had a master's degree. Only one officer was not a college graduate. He had 16 years' prior experience as a Federal probation officer and was reappointed after an interim period of 7 years as a municipal court probation officer.

⁴ As of December 31, 1974 the circulation was 38,500 and included more than 50 countries.

Since 1940 the journal has been published jointly by the Administrative Office and the Bureau of Prisons. It was first printed at the U.S. Penitentiary at Fort Leavenworth, Kansas, and later by the Federal Reformatory at El Reno, Oklahoma, in their respective printshops operated by the Federal Prison Industries, Inc. Approximately 98 percent of the inmates assigned to the printing plant had no prior experience in printshop activities.

Investigation and Supervision

The investigative and supervisory functions of the Federal Probation System throughout its first 25 years were substantially the same as they are today. It has worked continuously in close association with the Bureau of Prisons and since 1930 also with the Board of Parole when the amendment to the original probation act provided that probation officers would perform such duties relating to parole as the Attorney General shall request. It cooperated with the two narcotic hospitals of the U.S. Public Health Service at that time, transmitting to them copies of presentence reports on addicts committed as a condition of probation, keeping in touch with the families of addict patients, and supervising them following their release.

Probation officers worked cooperatively with Federal law enforcement agencies (Federal Bureau of Investigation, Secret Service, Narcotic Bureau, Alcohol Tax Unit, Post Office Inspection Service, Immigration Service, Securities and Exchange Commission, Intelligence Unit of the Internal Revenue, and the Military Police and Shore Patrol), obtaining from them arrest data, sharing information about defendants, and notifying each other of violations of probation and parole. Community institutions and agencies were called on for assistance in helping probationers and parolees to become productive, responsible, law-abiding persons.

In 1944 the Federal Probation System was asked by the Army and the Air Force to supervise military prisoners released from disciplinary barracks.

Investigations.—Although it is a long-standing and well established principle that probation cannot succeed unless special care is exercised by the court in selecting persons for probation, presentence reports in the early years were perfunctory in many instances, some consisting of a single paragraph based on limited knowledge

and even on biases and hunches! In 1930 a 4-page printed presentence worksheet served as the basis for a report to the court. The filled-in worksheet frequently comprised the report. It contained a limited space under each of the following headings: (1) Complaint, (2) Statement of Defendants and Others, (3) Physical Condition, (4) Mental Condition, (5) Personal and Family History, (6) Habits, Associates, and Spare-Time Activities, (7) Employment History, (8) Home and Neighborhood Conditions, (9) Religious and Social Affiliations, (10) Social Agencies, Institutions, and Individuals Interested, (11) Analytical Summary, and (12) Plan, In Brief, Proposed. These were the outline headings generally followed at the time by juvenile courts and progressive adult courts and continued to be those recommended for use by Federal probation officers until 1941 when the Probation Division, with the assistance of the Bureau of Prisons and a small committee of chief probation officers, prepared a mimeographed guideline which set forth a standard outline, some investigation methods and procedures, and suggestions for writing the report. In 1943 the guidelines were broadened in scope and reproduced in the printed monograph, *The Presentence Investigation Report* (revised in 1965). This monograph contributed to uniformity in the format and content of reports across the country. Uniformity was essential then as today inasmuch as officers called on the network of offices in other cities for verification of data and information to complete their reports. In some instances data requested made up the larger part of a report. Uniform reports, as today, were also helpful to the Bureau of Prisons in commitment cases and to the Board of Parole in its parole considerations.

In the early years some judges did not require presentence reports, relying, in the disposition of their cases, on the report of the U.S. attorney, the arrest record, and the defendant's reputation locally. In other courts investigations were made in a relatively low proportion of cases. A few courts required investigations in virtually all criminal cases.

Rule 32-c of the *Federal Rules of Criminal Procedure* (1933) prescribed that the probation service of the court shall make a presentence investigation report to the court before the imposition of sentence or the granting of probation unless the court directed otherwise. Although it was anticipated this was to be the normal and

expected procedure, some courts required no investigation unless requested by the judge. It was argued that either way, the same ends were being achieved.

Reliable statistics on the number of defendants receiving presentence investigations were not maintained during the first 25-year period. What constituted a completely developed presentence report had not been defined. A partial report touching on only a few areas of what was considered to be a full-blown report was counted as a full report. Moreover, when two or three officers contributed data to the presentence report in its final form, each officer often would report a presentence investigation. This resulted in more investigations than defendants! It is estimated that in the forties between 50 and 60 percent of the defendants before the court received presentence investigations.

In addition to presentence investigations, probation officers conducted postsentence investigations, special investigations for the U.S. attorney on juveniles and youth offenders, investigations requested by Bureau of Prisons institutions, and also prerelease, violation, and transfer investigations on parolees, persons on conditional release, and military parolees.

Supervision.—As already stated, Federal probation officers supervised only probationers until 1930 when the 1910 Parole Act was amended, giving them, in addition, responsibility for the field supervision of parolees. In 1932 the Parole Act was further amended, providing for the release of prisoners prior to the expiration of their maximum term by earned "good time." They were released "as if on parole" and were known as being on conditional release (now referred to as mandatory release). They became an additional supervision responsibility of the probation officer.

As previously mentioned, the Federal Probation System, in response to a request from the Army and the Air Force in 1946, offered its facilities for the supervision of military parolees. And in 1947 the Judicial Conference recommended that courts be encouraged to use "deferred prosecution" in worthy cases of juveniles (under 18), and that they be under the informal supervision of probation officers. Under this procedure, which still prevails, the U.S. attorney deferred prosecution of carefully selected juveniles and placed them under supervision of a probation

officer for a definite period. On satisfactory completion of the term the U.S. attorney could dismiss the case or, in instances of subsequent delinquencies, process the original complaint forthwith. Thus the Federal probation officer supervised five categories of offenders: probationers, parolees, persons on conditional release, military offenders, and juveniles under deferred prosecution.

Mention should be made of the Federal Juvenile Delinquency Act (18 U.S.C. 5031-5037), enacted June 16, 1938, which gave recognition to the long-established principle that juvenile offenders need specialized care and treatment. The Act defined a juvenile as a person under 18 and provided that he should be proceeded against as a juvenile delinquent unless the Attorney General directed otherwise. He could be placed on probation for a period not to exceed his minority or committed to the custody of the Attorney General for a like period.

Attention should also be called to the Federal Youth Corrections Act (18 U.S.C. 5005-5026), enacted September 30, 1950. The Act established a specialized procedure for dealing with youthful offenders 18 and over, but under the age of 22 at the time of conviction, who were considered tractable. The Act provided for a flexible institutional treatment plan for those committed under it. Where the offense and record of previous delinquencies indicated a need for a longer period of correctional treatment than was possible under the Federal Juvenile Delinquency Act, a juvenile, with approval of the Attorney General, could be prosecuted as a youth offender.

The probation officer played a prominent role in the detention pending disposition, investigation, diversion,⁵ hearing (or criminal proceeding), and supervision of the juvenile and the youth offender.

The number of juveniles coming to the attention of probation officers, including those not heard under the Act, reached a high of 3,891 in 1946, followed by a decline through 1950 when there were 1,999 juveniles. Those heard under the Act ranged from a low of 43 percent of all juveniles in 1939, the first year the Act was operative, to a high of 69.6 percent in 1946, or an average of approximately 66 percent for the period 1939 through 1950.

In 1939, 41 percent of the juveniles were proceeded against under regular criminal statutes compared with a low of 1.5 percent in 1944. For the period 1944 through 1950 the proportion

⁵ Where it was agreed upon by the U.S. Attorney to be in the best interests of the Government and the juvenile or youth offender, every effort was made to divert him to local jurisdictions under the provisions of 18 U.S.C. 5001, enacted June 11, 1932.

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heard under criminal procedure averaged slightly less than 3 percent and the proportion handled without court action (diverted or dismissed) was approximately 30 percent.

The following table gives the supervision caseload from 1930 to 1950:

*Size of staff and supervision caseload
1930-1950*

Fiscal Year Ended June 30	Number of probation officers	Number under supervision	Average caseload per officer ¹
1930	8	2	2
1931	62	2	2
1932	63	25,213	400
1933	92	34,109	371
1934	110	26,028	237
1935	119	20,133	169
1936	142	25,401	179
1937	171	29,862	175
1938	172	27,467	185
1939	206	28,325	160
1940	233	34,562	148
1941	239	35,187	147
1942	251	34,359	137
1943	265	30,974	117
1944	269	30,153	112
1945	274	30,194	110
1946	280	30,618	109
1947	280	32,321	115
1948	285	32,613	114
1949	287	29,726	103
1950	303 ³	30,087	100

¹ In 1956 the Probation Division adopted a weighted figure to reflect the workload of an officer. The new method of computation included presentence investigations in addition to supervision cases. A value of 4 units was given to each presentence investigation completed per month and 1 unit for each supervision case. Thus, if an officer completed 6 investigations per month and supervised 51 persons, his workload was 75 (24 plus 51). This method was continued until 1969 when the weighted figure was discontinued. Instead, the average number of supervision cases and the average number of presentence investigations, respectively, were shown for each officer.

² No figures available.

³ On December 31, 1974, there were 1,468 probation officers.

Violation rates.—In any assessment of violation rates it should be kept in mind they seldom are comparable from district to district. Officers with heavy workloads, for example, may not be as responsive to violations as those with smaller workloads. A court which is more selective in its grant of probation may be expected to have a lower proportion of violations. A “when to revoke”

⁶ In 1963 another step was taken to obtain greater uniformity in reporting and also an understanding of the nature of the violations reported. Violation rates were determined for three types of violations—technical, minor, and major. A *technical* violation was an infraction of the conditions of probation, excluding a conviction for a new offense. A *minor* violation resulted from a conviction of a new offense where the period of imprisonment was less than 90 days, or where any probation granted on the new offense did not exceed 1 year. A *major* violation occurred when the violator had been convicted of a new offense and had been committed to imprisonment for 90 days or more, placed on probation for over 1 year, or had absconded with a felony charge outstanding. This method of reporting violations continues today.

policy may differ among probation officers and among judges, even in the same district. Some courts may revoke probation for a technical infraction of the probation conditions while others do so only for violation of law. An efficient police department or sheriff’s office may bring to the probation officer’s attention a greater proportion of arrests. Varying conditions and circumstances from district to district and from one year to another, such as unemployment, social unrest, changes in criminal statutes, etc., would preclude comparable data and valid comparisons. But despite these variables, violation rates for probationers, interestingly, changed but little from 1932, when violation figures were first available, to 1950.

Violation rates maintained by the Administrative Office from 1940 to 1948 were computed on the same basis as that adopted before the probation service was transferred from the Department of Justice, viz, the proportion of all persons under supervision during the year who violated. Although this method was used by a number of nonfederal probation services, the late Ronald H. Beattie, chief statistician for the Administrative Office, believed a more realistic measure would be a rate based on the number removed from supervision during the year and the number who committed violations. Beginning with 1948, violation rates were computed on this basis. Under this method the violation rate for probationers that year, for example, was 11.8 percent instead of 3.9 percent under the method used in previous years. The average violation rate for the 10-year period from 1941 to 1950 was 11.5 percent for probationers, 14.1 percent for parolees, 14.4 percent for persons on conditional release, and 3.3 percent for military parolees.

In 1959 probation officers were requested to submit to the Administrative Office reports on all violations, whether or not probation was revoked. Prior to this the practice had been to report only violations in those instances where probation had been revoked. This improved procedure helped to achieve uniformity in reporting violations.⁶

Postprobation adjustment studies.—Starting in 1948 a postprobation study of 403 probationers known to the Federal probation office for the Northern District of Alabama was conducted by the sociology department at the University of Alabama. These probationers’ supervision had terminated successfully during the period July 1, 1937, to December 31, 1942. They were inter-

viewed by probation officers in the districts where they resided at the time of the study and their records were cleared with the Federal Bureau of Investigation, local courts, and local law-enforcement offices. During a postprobation median period of 7½ years, 83.6 percent had no subsequent convictions of any kind (see FEDERAL PROBATION, June 1951, pp. 3-11).

In 1951 the sociology department at the University of Pennsylvania conducted a similar evaluative study of 500 probationers whose supervision under the probation office for the Eastern District of Pennsylvania had been completed during the period 1939 to 1944. The study, which covered a 5-year period for each probationer, found that 82.3 percent had no subsequent conviction. In an effort to assure a high degree of comparability between the two studies, the sampling procedures in both studies were reported to be virtually identical (see FEDERAL PROBATION, September 1955, pp. 10-16).

Probation and the War

This account of the first 25 years of the Federal Probation System would not be complete without commenting on the significant work performed by probation officers during World War II. They were engaged in many activities related to the war effort such as helping selective service boards determine the acceptability of persons with convictions, dealing with violators of the Selective Service Act, assisting war industries in determining which persons convicted of offenses might be considered for employment, cooperating with the Army in determining the suitability of persons with convictions who had been recruited or inducted, and supervising military parolees. Together with the Bureau of Prisons the Administrative Office succeeded in removing barriers to employment of persons considered good risks despite criminal records. The U.S. Civil Service Commission relaxed its rules, permitting, on recommendation of the probation officer, employment of probationers in government with the exception of certain classified positions. These activities relating to the prosecution of the war were performed by probation officers in addition to their regular supervisory and investigative duties. The supervision caseload during the war years averaged 119 per officer—with a high of 137 in 1942.

In the summer of 1946, as previously mentioned, the Administrative Office, at the request of the Department of the Army, agreed to have

probation officers investigate parole plans of Army and Air Force prisoners and supervise them following release on parole from disciplinary barracks. Probation officers worked in close conjunction with The Adjutant General's Office and the commandants of the 16 disciplinary barracks at that time. The service rendered by probation officers was expressed by military authorities as "of inestimable value to the Army and Air Force" in the operation of their parole programs. The success of their parole program, they said, "may be attributed largely to the keen human interest and thorough professional guidance which the officers of the federal probation service extend to each parolee under their supervision, even under conditions which have taxed their facilities."

The number of supervised military parolees reached its peak at the close of fiscal year 1948 when there were 2,447 under supervision. The following year the number dropped to 1,064, and in 1950 to 927.

Through September 1946 a total of 8,313 probationers had entered the armed services through induction or enlistment and maintained contact throughout their service with their probation officers. Only 61, or less than 1 percent, were known to have been dishonorably discharged.

During the war 76 probation officers, or approximately 28 percent of all probation officer positions in 1945, entered military service. The chief and assistant chief of probation also entered service. During their absence Lewis J. Grout, chief probation officer at Kansas City, Missouri, served as chief, and Louis J. Sharp, probation officer at St. Louis, Missouri, was assistant chief.

Here ends a capsule history of the struggle for a Federal Probation Act which began as far back as 1909, and some of the highlights of the Federal Probation System during its first quarter century of operation.

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SENTENCING ALTERNATIVES OF U.S. COURTS

JUVENILE OFFENDER
(Under age 18)

YOUTH OFFENDER
(Under age 22
per 18 U.S.C.
5006(e))

**YOUNG ADULT
OFFENDER**
(Under age
26 per 18
U.S.C. 4209)

ADULT OFFENDER
(Any age)

DISPOSITION BEFORE ADJUDICATION
(Applicable to any offender committing a violation of a law of the U.S. prior to age 18 except that for proceedings and disposition under FJDA, anyone under age 21) (5031)

- a. Diversion to local authorities.
- b. Prosecution deferred.

FEDERAL JUVENILE DELINQUENCY ACT

Where Attorney General certifies that State cannot or will not assume jurisdiction, proceedings by information.

Delinquency Proceedings (5032).
Speedy Trial Provisions (5036).
Dispositional Hearing (5037).

1. Probation*
2. Commitment to custody of Attorney General*

*To 21st birthday or maximum adult term, whichever sooner, unless has attained age 19 at time of disposition, in which case probation or commitment shall not exceed the lesser of 2 years or maximum adult term (5037(b)).

OTHER APPLICABLE PROCEDURES

When on advice of counsel a juvenile asks that he be proceeded against as an adult, the court may so order, except that where a juvenile, 16 or older, is charged with a felony otherwise punishable by over ten years imprisonment, the court may, after hearing, order criminal prosecution on motion to transfer filed by the Attorney General.

YOUTH CORRECTIONS ACT

1. Probation (5010(a))
2. Indeterminate commitment Y.C.A. (5010(b))
3. Indeterminate commitment Y.C.A. 5010(c) Any term in excess of 6 years and within statutory limits.

REGULAR CRIMINAL PROCEDURE

1. Definite sentence within statutory limits with parole eligibility at 1/3. (4202)
 - a. Probation. (3651)
 - b. Commitment to prison or if misdemeanor to jail
 - c. Split sentence - 6 months - jail plus probation
2. Indeterminate sentence
 - a. Judge in sentence specifies a minimum term of parole eligibility less than 1/3 of maximum sentence he imposes. (4208(a)(1))
 - b. Judge fixes a maximum term of imprisonment, specifying prisoner shall become eligible for parole at time Parole Board shall determine. (4208(a)(2))
3. Fine

NARCOTICS PROCEDURE

1. Special parole terms of 2 - 6 year minimum built into sentence. (21 U.S.C. 841)
2. One-year probation without entry of conviction for first time possessors of controlled substances, with provisions for dismissal of proceedings if successful, and also expungement of record for those under 21 at time of offense. (21 U.S.C. 844).
3. Community supervision for addicts as condition of regular probation or parole. (18 U.S.C. 3651, 4203, as amended by P.L. 92-293)
4. More severe penalties for person engaged in a continuing criminal enterprise plus forfeiture of profits and property used. (21 U.S.C. 848)
5. Dangerous special drug offender sentencing procedures include harsher penalties after special sentencing hearing. (21 U.S.C. 849)
6. Certain offenders can be sentenced to civil commitment in lieu of prosecution under NARA. (28 U.S.C. 2901-6)
7. Drug maintenance programs available as part of either civil or criminal commitment programs, as part of supervised aftercare programs, or as part of community treatment program for probationers, parolees, or conditional releasees. (P.L. 92-420)

ORGANIZED CRIME PROCEDURE

1. Besides penalty of fine and imprisonment, criminal forfeiture of property and business interests illegally derived. (18 U.S.C. 1963)
2. Increased sentence for dangerous special offenders after special sentencing hearing. (18 U.S.C. 3575)

OPTIONAL
WITH THE
COURT

STUDY

AND

OBSERVATION

PROCEDURES

MENTAL COMPETENCY PROCEDURES
(Not applicable to Juvenile Offenders)

DISPOSITION DEFERRED

Court orders study and report within 30 days. Study on out-patient basis unless otherwise ordered by court. (5037(c))

DISPOSITION DEFERRED

Court orders study and report within 60 days. 5010(e)

MAXIMUM SENTENCE ALLOWABLE BY LAW

Court orders study and report within 3 months. (4208(b))

DISPOSITION DEFERRED (NARA)

Court orders examination and report within 30 days. (18 U.S.C. 4252)

Preliminary hearing on motion of Court U.S. Attorney or Defendant

1. Probation*
2. Commitment to custody of Attorney General*

*To 21st birthday or maximum adult term, whichever sooner, unless has attained age 19 at time of disposition, in which case probation or commitment shall not exceed the lesser of 2 years or maximum adult term (5037(b)).

Defendant returned to court for:

1. Probation
2. Indeterminate Y.C.A.
3. Definite or indeterminate Commitment under any applicable provision.

Defendant must be returned to court for:

1. Probation.
2. Affirm or reduce original sentence.
3. Give definite or indeterminate commitment under any applicable provision (including Y.C.A.).

1. If addict is likely to be rehabilitated, court may order him committed for indeterminate period not to exceed 10 years, or maximum sentence if shorter. (18 U.S.C. 4253)
2. Court may impose any other authorized sentence. (Ibid)
3. Provision for conditional release under supervision after 6 months treatment. (18 U.S.C. 4254-5)

Commitment to suitable hospital or facility selected by the Court for observation and report.

Hearing after report and determination of competency under 4244 et seq.

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PART II



DEPARTMENT OF JUSTICE

U.S. Board of Parole

■

**PAROLE, RELEASE,
SUPERVISION, AND
RECOMMITMENT OF
PRISONERS, YOUTH
OFFENDERS, AND
JUVENILE DELINQUENTS**

RULES AND REGULATIONS

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE, U.S. BOARD OF PAROLE

PART 2—PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

The following rules reflect the revised organization, operation, procedures, and policies of the United States Board of Parole and are published under the authority of 28 CFR, Part O, Subpart V, and 18 U.S.C. 4201-4210, 5001-5037.

The Board of Parole expressly disclaims that its rules are subject to the implementing provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).

With the exception of § 2.20, these rules will become effective in the Board's Northeast Region (Region I) on June 5, 1974 and will apply to all subsequent parole and parole revocation hearings conducted in that region. Region I is comprised of the following states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia. Federal prisoners outside the Northeast Region will be considered for parole and parole revocation under the Board's present rules until such time as the revised procedures are made applicable to other regions as these regions become operational.

Section 2.20, the Board's paroling policy guidelines will become effective nationwide on June 5, 1974. This statement of policy is published in order to inform the public of the Board's customary paroling policy. The guidelines incorporated in the policy statement are merely indications of how the Board generally intends to exercise its discretion in making future parole release decisions.

Part 2 of 28 CFR is revised to read as follows:

Sec.	
2.1	Definitions.
2.2	Eligibility for parole, regular adult sentences.
2.3	Same; adult indeterminate sentences.
2.4	Same; juvenile delinquents.
2.5	Same; committed youth offenders.
2.6	Same; sentences under the Narcotic Addict Rehabilitation Act.
2.7	Same; sentences under the gun control statute.
2.8	Same; sentences of six months or less followed by probation.
2.9	Study prior to sentencing.
2.10	Date service of sentence commences.
2.11	Application for parole.
2.12	Hearing procedure.
2.13	Initial hearing.
2.14	Review hearings.
2.15	Petition for consideration of parole prior to date set at hearing.
2.16	Parole of prisoner in state or territorial institution.
2.17	Original jurisdiction cases.
2.18	Granting of parole.
2.19	Consideration by the Board.
2.20	Paroling policy guidelines; statement of general policy.
2.21	Reports considered.
2.22	Communication with the Board.

Sec.	
2.23	Delegation to hearing examiners.
2.24	Review of panel decision by the Regional Director and the National Appellate Board.
2.25	Appeal of hearing panel decision.
2.26	Appeal to National Appellate Board.
2.27	Appeal of original jurisdiction cases.
2.28	Reopening of cases.
2.29	Withheld and forfeited good time.
2.30	Release; modification of release date.
2.31	False or withheld information.
2.32	Committed fines.
2.33	Parole to detainees; statement of policy.
2.34	Parole to local or immigration detainees.
2.35	Mental competency proceedings.
2.36	Release plans.
2.37	Release on parole; statement of policy.
2.38	Sponsorship of parolees; statement of policy.
2.39	Mandatory release in the absence of parole.
2.40	Same; youth offenders.
2.41	Reports to police departments of names of parolees; statement of policy.
2.42	Community supervision by United States Probation Officers.
2.43	Duration of period of community supervision.
2.44	Conditions of release.
2.45	Travel by parolees and mandatory releasees.
2.46	Supervision reports, modification and discharge from supervision.
2.47	Modification and discharge from supervision; youth offenders.
2.48	Setting aside conviction.
2.49	Revocation of parole or mandatory release.
2.50	Same; youth offenders.
2.51	Unexpired term of imprisonment.
2.52	Execution of warrant; notice of alleged violations.
2.53	Warrant placed as a detainee and dispositional interview.
2.54	Revocation by the Board, preliminary interview.
2.55	Local revocation hearing.
2.56	Revocation hearing procedure.
2.57	Confidentiality of parole records.

AUTHORITY: 18 U.S.C. 42101-4210, 5001-5037; 28 CFR Part O, Subpart V.

§ 2.1 Definitions.

(a) For the purpose of this part, the term "Board" means the United States Board of Parole; and the terms "Youth Correction Division" and "Division" each mean the Youth Correction Division of the Board.

(b) As used in this part, the term "National Appellate Board" means the Chairman, Vice Chairman, and at least one member of the Board, all of whom also serve as National Appellate Board members in the headquarters office, i.e., Washington, D.C.

(c) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms have when those terms are used in Chapter 311 of Part IV of Title 18 of the United States Code or Chapter I, Part O, Subpart V of Title 28 of the Code of Federal Regulations.

§ 2.2 Eligibility for parole, regular adult sentences.

Except as set out in the following sections, a federal prisoner wherever confined and serving a definite term or terms of over one hundred and eighty

days may, in accordance with the regulations prescribed in this part, be released on parole after serving one-third of such term or terms or after fifteen years of a life sentence or a sentence of over forty-five years (18 U.S.C. 4202).

§ 2.3 Same; adult indeterminate sentences.

A Federal prisoner, other than a juvenile delinquent or a committed youth offender, who has been sentenced to a maximum term of imprisonment in excess of one year may, if the court has designated a minimum term to be served, which term may be less than, but not more than, one-third of the maximum sentence imposed, be released on parole after serving the minimum term. In cases in which a court imposes a maximum sentence of imprisonment upon a prisoner and specifies that the prisoner may become eligible for parole at such times as the Board may determine, the prisoner may be released on parole at any time in the discretion of the Board (18 U.S.C. 4208(a)).

§ 2.4 Same; juvenile delinquents.

A juvenile delinquent who has been committed and who, by his conduct, has given satisfactory evidence that he has reformed, may be released on parole at any time under such terms and conditions as the Board deems proper if it shall appear to the satisfaction of the Board that there is a reasonable probability that the juvenile will remain at liberty without violating the law (18 U.S.C. 5037).

§ 2.5 Same; committed youth offenders.

The Youth Correction Division may at any time, after reasonable notice to the Director of the Bureau of Prisons, release conditionally under supervision a committed youth offender. A youth offender committed under section 5010(b) of title 18 of the United States Code to a maximum six year term shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction. A youth offender committed under section 5010(c) of title 18 of the United States Code to a maximum term which is more than six years shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court (18 U.S.C. 5017).

§ 2.6 Same; sentences under the Narcotic Addict Rehabilitation Act.

The Narcotic Addict Rehabilitation Act provides for sentence to a maximum term for treatment as a narcotic addict. Parole may be ordered by the Board after at least six months in treatment, not including any period of time for "study" prior to final judgment of the Court. Before parole is ordered by the Board, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative may also report to the Board whether the prisoner should be released. Recer-

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ification by the Surgeon General prior to reparole consideration is not required (18 U.S.C. 4254).

§ 2.7 Same; sentences under the gun control statute.

A Federal prisoner sentenced under 18 U.S.C. 924 for violation of Federal gun control laws is considered eligible for parole at such time as the Board may determine. Prisoners sentenced under this provision are considered for parole in the same manner as if they had been sentenced under 18 U.S.C. 4208(a)(2).

§ 2.8 Same; sentences of six months or less followed by probation.

A Federal prisoner sentenced under 18 U.S.C. 3651 to serve a period of six months or less in a jail type or treatment institution, with a period of probation to follow, is not eligible for parole.

§ 2.9 Study prior to sentencing.

(a) When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing under the provisions of 18 U.S.C. 4208(b), the report to the sentencing court is prepared and submitted directly by the United States Bureau of Prisons.

(b) The court may order a youth to be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Youth Correction Division shall report its findings to the court (18 U.S.C. 5010(e)).

§ 2.10 Date service of sentence commences.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: *Provided, however*, That any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) Service of the sentence of any person who is committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served shall commence to run from the date on which he is received at such jail or other place of detention.

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run and continues to run uninterrupted from the date of conviction, except when such offender is on bail pending appeal or is in escape status.

§ 2.11 Application for parole.

(a) A prisoner, other than a juvenile delinquent, a committed youth offender, or an offender committed under the Narcotic Addict Rehabilitation Act, desiring to apply for parole shall execute such

application forms as may be prescribed by the Board. Such forms shall be available at each Federal institution and shall be provided to prisoners eligible for parole. Such prisoners may waive parole consideration on a form provided for that purpose. If such a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Board to the institution where he is confined, provided he has applied prior to 45 days from the first scheduled date of this visit. A prisoner who receives an initial hearing may not waive any subsequent review hearing scheduled by the Board except as provided in § 2.16 (c). New parole applications are not necessary for such review hearings.

(b) A prisoner who is required to apply before receiving a parole hearing but who fails to submit either an application or a waiver form shall be referred to the Board's representatives by the chief executive officer of the institution. The prisoner shall then receive an explanation of his right to apply for parole at a later date.

(c) Juvenile delinquents, youthful offenders, and those committed under the Narcotic Addict Rehabilitation Act shall not apply for parole. Instead, such prisoners shall be scheduled for initial hearings at the first visit to the institution by representatives of the Board after they have been classified by the institution. The Board may order parole as a result of any such hearing or may order review of such prisoner's case at a later date.

§ 2.12 Hearing procedure.

(a) Prisoners shall be given written notice of the time and place of the hearing described in §§ 2.13 and 2.14. Prisoners may be represented at hearings by a person of their choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner panel, and to provide such additional information as the examiner panel shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The presiding hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(b) No interviews with the Board, or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Board procedures. Hearings shall not be open to the public, and the records of all such hearings shall be treated as confidential and shall not be open to inspection by the prisoner concerned, his representative or any other unauthorized person.

§ 2.13 Initial hearing.

(a) An initial hearing shall be conducted by a panel of two hearing examiners designated by the Board. The examiner panel shall inform the prisoner of the decision and, if parole is denied, of the reasons therefor. The decision of the examiner panel, subject to provisions of § 2.23 (b) and (c) shall be final unless

action is initiated by the Regional Director pursuant to § 2.24.

(b) In accordance with § 2.18 the reasons for parole denial may include, but are not limited to, the following reasons, with further specification where appropriate:

(1) Release at this time would depreciate the seriousness of the offense committed and would thus be incompatible with the welfare of society.

(2) There does not appear to be a reasonable probability at this time that the prisoner would live and remain at liberty without violating the law.

(3) The prisoner has (a serious) (repeated) disciplinary infraction(s) in the institution.

(4) Additional institutional treatment is required to enhance the prisoner's capacity to lead a law-abiding life.

(c) In lieu of or in combination with the reasons in paragraph (b) (1) and (2) of this section the prisoner after initial hearings shall be furnished a guideline evaluation statement which includes the prisoner's salient factor score and offense severity rating as described in § 2.20, as well as the reasons for a decision to continue the prisoner for a period outside the range indicated by the guidelines.

(d) Written notification of the decision or referral under § 2.17 or § 2.24 shall be mailed or transmitted to the prisoner within fifteen working days of the date of the hearing. If parole is denied, the prisoner shall also receive in writing as a part of the decision, the reasons therefor.

§ 2.14 Review hearings.

All hearings subsequent to the initial hearing shall be considered as review hearings. Review hearings by examiners designated by the Board shall be scheduled for each Federal institution, and prisoners shall appear for such hearings in person, except for the following cases:

(a) A case receiving a continuance of six months or less shall be considered by an examiner panel on the record (including a current institutional progress report).

(b) A prisoner with a sentence under 18 U.S.C. 4208(a)(2) or 924 who receives a continuance to a date past one-third of his maximum sentence at an initial hearing shall upon completion of one-third of his sentence receive a review by an examiner panel on the record (including a current institutional progress report).

(c) A prisoner sentenced under the Youth Corrections Act or Federal Juvenile Delinquency Act who receives a continuance of two years or more shall receive a review by an examiner panel on the record (including a current institutional progress report) upon completion of eighteen months of such continuance.

(d) Notification of review decisions shall be given as set forth in § 2.13(c). No prisoner shall be continued for more than three years from the time of the last hearing without further review.

§ 2.15 Petition for consideration of parole prior to date set at hearing.

When a prisoner has met the minimum time of imprisonment required by law,

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the Bureau of Prisons may petition the responsible Regional Director for reopening the case under § 2.28 and consideration of parole prior to the date set by the Board at the initial or review hearing. The petition must show cause why it should be granted, i.e., an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.

§ 2.16 Parole of prisoner in state or territorial institution.

(a) Any person who has been convicted of any offense against the United States which is punishable by imprisonment but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Board on the same terms and conditions by the same authority, and subject to recommitment for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, the parole decision shall be made by an examiner panel of the appropriate region on the record only.

(c) Prisoners who are serving Federal sentences exclusively but who are being boarded in state, local, or territorial institutions may be considered for parole on the record only, provided they sign a waiver of their right to a personal hearing. If such a prisoner does not waive a personal hearing, he shall be transferred by the Bureau of Prisons to a Federal institution where he will be considered for parole at the next visit by an examiner panel of the Board.

§ 2.17 Original jurisdiction cases.

(a) A Regional Director may designate certain cases to be within the original jurisdiction of the Regional Directors. All original jurisdiction cases shall be heard by a panel of hearing examiners who shall follow the procedures provided in § 2.12. A summary of this hearing and any additional comments that the hearing examiners may deem germane shall be submitted to the five Regional Directors. The Regional Directors shall make the original decision by a majority vote.

(b) The following criteria will be used in designating cases for the original jurisdiction of the Regional Directors:

(1) *National security.* Prisoners who have committed serious crimes against the security of the nation, e.g., espionage or aggravated subversive activity.

(2) *Organized crime.* Persons who the Regional Director has reason to believe may have been professional criminals or

may have played a significant role in an organized criminal activity.

(3) *National or unusual interest.* Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial or prisoner status, or because of the community status of the offender or his victim.

(4) *Long-term sentences.* Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

§ 2.18 Granting of parole.

The granting of parole rests in the discretion of the Board of Parole. The Board may parole a prisoner who is otherwise eligible if (a) in the opinion of the Board such release is not incompatible with the welfare of society; (b) he has observed substantially the rules of the institution in which he is confined; and (c) there is a reasonable probability that he will live and remain at liberty without violating the laws (18 U.S.C. 4203(a)).

§ 2.19 Consideration by the Board.

In the exercise of its discretion, the Board generally considers some or all of the following factors and such others as it may deem appropriate:

(a) Sentence data:
(1) Type of sentence;
(2) Length of sentence;
(3) Recommendations of judge, U.S. Attorney, and other responsible officials.

(b) Present offense:
(1) Facts and circumstances of the offense;

(2) Mitigating and aggravating factors;

(3) Activities following arrest and prior to confinement, including adjustment on bond or probation, if any.

(c) Prior criminal record:

(1) Nature and pattern of offenses;
(2) Adjustment to previous probation, parole, and confinement;

(3) Detainers.
(d) Changes in motivation and behavior:

(1) Changes in attitude toward self and others;

(2) Reasons underlying changes;

(3) Personal goals and description of personal strength or resources available to maintain motivation for law abiding behavior.

(e) Personal and social history:

(1) Family and marital history;

(2) Intelligence and education;

(3) Employment and military experience;

(4) Physical and emotional health.

(f) Institutional experience:

(1) Program goals and accomplishments;

(i) Academic;

(ii) Vocational education, training or work assignments;

(iii) Therapy.

(2) General adjustment:

(i) Inter-personal relationships with staff and inmates;

(ii) Behavior, including misconduct.

(g) Community resources, including release plans:

(1) Residence; live alone, with family or others;

(2) Employment, training, or academic education;

(3) Special needs and resources to meet them.

(h) Results of scientific data and tools:

(1) Psychological tests and evaluations;

(2) Statistical parole experience tables (salient factor score).

(i) Paroling policy guidelines as set forth in § 2.20;

(j) Comments by hearing examiners, evaluative comments supporting a decision, including impressions gained from the hearing.

§ 2.20 Paroling policy guidelines: statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Board of Parole has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for the cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered. For example, cases with exceptionally good institutional program achievement may be considered for earlier release.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) These guidelines do not apply to parole revocation or reparole considerations. The Board shall review the guidelines periodically and may revise or modify them at any time as deemed appropriate.

RULES AND REGULATIONS

Adult guidelines for decisionmaking, average total time (in months) served before release (including jail time)

(Revised April 1974)

Offense characteristics—Severity of offense behavior (examples)	Offender characteristics—Parole prognosis (salient factor score)			
	Very good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
Less	6-10	8-12	10-14	12-16
Immigration law violations				
Minor theft (includes larceny and simple possession of stolen property less than \$1,000)				
Walkaway				
Low moderate	8-12	12-16	16-20	20-26
Alcohol law violations				
Counterfeit currency (passing/possession less than \$1,000)				
Drugs: Marijuana, possession (less than \$500)				
Firearms Act, possession/purchase/sale single weapon—not altered or machinegun				
Forgery/fraud (less than \$1,000)				
Income tax evasion (less than \$3,000)				
Selective Service Act violations				
Theft from mail (less than \$1,000)				
Moderate	12-16	16-20	20-24	24-30
Bribery of public officials				
Counterfeit currency (passing/possession \$1,000-\$19,999)				
Drugs:				
"Hard drugs," possession by drug user (less than \$500)				
Marijuana, possession (\$500 or more)				
Marijuana, sale (less than \$5,000)				
"Soft drugs," possession (less than \$5,000)				
"Soft drugs," sale (less than \$500)				
Embezzlement (less than \$20,000)				
Explosives, possession/transportation				
Firearms Act, possession/purchase/sale altered weapon(s), machinegun(s), or multiple weapons				
Income tax evasion (\$3,000-\$50,000)				
Interstate transportation of stolen/forged securities (less than \$20,000)				
Mailing threatening communications				
Misprison of felony				
Receiving stolen property with intent to resell (less than \$20,000)				
Smuggler of aliens				
Theft, forgery/fraud (\$1,000-\$19,999)				
Theft of motor vehicle (not multiple theft or for resale)				
High	16-20	20-26	26-32	32-38
Burglary or larceny (other than embezzlement) from bank or post office				
Counterfeit currency (passing/possession \$20,000 or more)				
Counterfeiting (manufacturing)				
Drugs:				
"Hard drugs," possession by drug-dependent user (\$500 or more)				
"Hard drugs," sale to support own habit				
Marijuana, sale (\$5,000 or more)				
"Soft drugs," possession (\$5,000 or more)				
"Soft drugs," sale (\$500-\$5,000)				
Embezzlement (\$20,000-\$100,000)				
Interstate transportation of stolen/forged securities (\$20,000-\$100,000)				
Mann Act (no force—commercial purposes)				
Organized vehicle theft				
Receiving stolen property (\$20,000-\$100,000)				
Robbery (no weapon or injury)				
Theft, forgery/fraud (\$20,000-\$100,000)				
Very high	26-36	36-46	46-56	56-66
Robbery (weapon)				
Drugs:				
"Hard drugs," possession by non-drug-dependent user (\$500 or more) or by nonuser (any quantity)				
"Hard drugs," sale for profit (no prior conviction for sale of "hard drugs")				
"Soft drugs," sale (more than \$6,000)				
Extortion				
Mann Act (force)				
Sexual act (force)				
Greatest				
Aggravated felony (e.g. robbery, sexual act, assault)—weapon fired or serious injury				
Aircraft hijacking				
Drugs: "Hard drugs," sale for profit (prior conviction(s) for sale of "hard drugs")				
Espionage				
Explosives (detonation)				
Kidnapping				
Willful homicide				

(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)

NOTES

1. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offenses listed.
2. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
3. If an offense behavior involved multiple separate offenses, the severity level may be increased.
4. If continuance is to be given, allow 30 days (1 month) for release program provision.
5. These guidelines are predicated upon good institutional conduct and program performance.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

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Youth guidelines for decisionmaking, average total time (in months) served before release (including jail time)

(Revised April 1974)

Offense characteristics—Severity of offense behavior (examples)	Offender characteristics—Parole prognosis (salient factor score)			
	Very good (11-9)	Good (8-6)	Fair (5-4)	Poor (2-0)
Low	6-10	8-12	10-14	12-16
Immigration law violations				
Minor theft (includes larceny and simple possession of stolen property less than \$1,000)				
Walkaway				
Low moderate	8-12	12-16	16-20	20-26
Alcohol law violations				
Counterfeit currency (passing/possession less than \$1,000)				
Drugs: Marijuana, possession (less than \$500)				
Firearms Act, possession/purchase/sale single weapon—not altered or machinegun				
Forgery/fraud (less than \$1,000)				
Income tax evasion (less than \$3,000)				
Selective Service Act violations				
Theft from mail (less than \$1,000)				
Moderate	9-13	13-17	17-21	21-26
Bribery of public officials				
Counterfeit currency (passing/possession \$1,000-\$19,999)				
Drugs:				
"Hard drugs," possession by drug user (less than \$500)				
Marijuana, possession (\$500 or more)				
Marijuana, sale (less than \$5,000)				
"Soft drugs," possession (less than \$5,000)				
"Soft drugs," sale (less than \$500)				
Embezzlement (less than \$20,000)				
Explosives, possession/transportation				
Firearms act, possession/purchase/sale altered weapon(s), machinegun(s), or multiple weapons				
Income tax evasion (\$3,000-\$50,000)				
Interstate transportation of stolen/forged securities (less than \$20,000)				
Mailing threatening communications				
Misprison of felony				
Receiving stolen property with intent to resell (less than \$20,000)				
Smuggler of aliens				
Theft, forgery/fraud (\$1,000-\$19,999)				
Theft of motor vehicle (not multiple theft or for resale)				
High	12-16	16-20	20-24	24-28
Burglary or larceny (other than embezzlement) from bank or post office				
Counterfeit currency (passing/possession \$20,000 or more)				
Counterfeiting (manufacturing)				
Drugs:				
"Hard drugs," possession by drug dependent user (\$500 or more)				
"Hard drugs," sale to support own habit				
Marijuana, sale (\$5,000 or more)				
"Soft drugs," possession (\$5,000 or more)				
"Soft drugs," sale (\$500-\$5,000)				
Embezzlement (\$20,000-\$100,000)				
Interstate transportation of stolen/forged securities (\$20,000-\$100,000)				
Mann Act (no force—commercial purposes)				
Organized vehicle theft				
Receiving stolen property (\$20,000-\$100,000)				
Robbery (no weapon or injury)				
Theft, forgery/fraud (\$20,000-\$100,000)				
Very high	20-27	27-32	32-36	36-42
Robbery (weapon)				
Drugs:				
"Hard drugs," possession by non-drug-dependent user (\$500 or more) or by nonuser (any quantity)				
"Hard drugs," sale for profit [no prior conviction for sale of "hard drugs"]				
"Soft drugs," sale (more than \$5,000)				
Extortion				
Mann Act (force)				
Sexual act (force)				
Greatest				
Aggravated felony (e.g. robbery, sexual act, assault)—weapon fired or serious injury				
Aircraft hijacking				
Drugs: "Hard drugs," sale for profit [prior conviction(s) for sale of "hard drugs"]				
Espionage				
Explosives (detonation)				
Kidnapping				
Willful homicide				

NOTES

1. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offenses listed.
2. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
3. If an offense behavior involved multiple separate offenses, the severity level may be increased.
4. If a continuance is to be given, allow 30 days (1 month) for release program provision.
5. These guidelines are predicated upon good institutional conduct and program performance.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

RULES AND REGULATIONS

NARA guidelines for decisionmaking, average total time (in months) served before release (including jail time)

(Revised April 1974)

Offense characteristics—Severity offense behavior (examples)	Offender characteristics—Parole prognosis (salient factor score)			
	Very good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
Low Immigration law violations Minor theft (includes larceny and simple possession of stolen property less than \$1,000) Walkaway	6-12	6-12	12-18	12-18
Low moderate Alcohol law violations Counterfeit currency (passing/possession less than \$1,000) Drugs: Marijuana, possession (less than \$500) Firearms Act, possession/purchase/sale single weapon—not altered or machinegun Forgery/fraud (less than \$1,000) Income tax evasion (less than \$3,000) Selective Service Act violations Theft from mail (less than \$1,000)	6-12	6-12	12-18	12-18
Moderate Bribery of public officials Counterfeit currency (passing/possession \$1,000-\$19,999) Drugs: "Hard drugs," possession by drug user (less than \$500) Marijuana, possession (\$500 or more) Marijuana, sale (less than \$5,000) "Soft drugs," possession (less than \$5,000) "Soft drugs," sale (less than \$500) Embezzlement (less than \$20,000) Explosive, possession/transportation Firearms Act, possession/purchase/sale altered weapon(s), machine-guns(s), or multiple weapons Income tax evasion (\$3,000-\$50,000) Interstate transportation of stolen/forged securities (less than \$20,000) Mailing threatening communications Misprison of felony Receiving stolen property with intent to resell (less than \$20,000) Smuggler of aliens Theft, forgery/fraud (\$1,000-\$19,999) Theft of motor vehicle (not multiple theft or for resale)	12-18	12-18	18-24	18-24
High Burglary or larceny (other than embezzlement) from bank or post office Counterfeit currency (passing/possession \$20,000 or more) Counterfeiting (Manufacturing) Drugs: "Hard drugs," possession by drug-dependent user (\$500 or more) "Hard drugs," sale to support own habit Marijuana, sale (\$5,000 or more) "Soft drugs," possession (\$5,000 or more) "Soft drugs," sale (\$500-\$5,000) Embezzlement (\$20,000-\$100,000) Interstate transportation of stolen/forged securities (\$20,000-\$100,000) Mann Act (no force—commercial purposes) Organized vehicle theft Receiving stolen property (\$20,000-\$100,000) Robbery (no weapon or injury) Theft, forgery/fraud (\$20,000-\$100,000)	12-18	12-18	18-24	18-24
Very high Robbery (weapon) Drugs: "Hard drugs," possession by non-drug-dependent user (\$500 or more) or by nonuser (any quantity) "Hard drugs," sale for profit (no prior conviction for sale of "hard drugs") "Soft drugs," sale (more than \$5,000) Extortion Mann Act (force) Sexual act (force)	20-26	20-26	26-32	26-32
Greatest Aggravated felony (e.g. robbery, sexual act, assault)—weapon fired or serious injury Aircraft hijacking Drugs: "Hard drugs," sale for profit [prior conviction(s) for sale of "hard drugs"] Espionage Explosives (detonation) Kidnapping Willful homicide	(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)			

NOTES

1. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offenses listed.
2. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
3. If an offense behavior involved multiple separate offenses, the severity level may be increased.
4. If a continuance is to be given, allow 30 days (1 month) for release program provision.
5. These guidelines are predicated upon good institutional conduct and program performance.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

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(Revised October 1978)

GUIDELINE EVALUATION WORKSHEET

Case Name Register Number

SALIENT FACTORS

Item A
 No prior convictions (adult or juvenile)=2
 One or two prior convictions=1
 Three or more prior convictions=0

Item B
 No prior incarcerations (adult or juvenile)=2
 One or two prior incarcerations=1
 Three or more prior incarcerations=0

Item C
 Age at first commitment (adult or juvenile) 18 years or older=1
 Otherwise=0

Item D
 Commitment offense did not involve auto theft=1
 Otherwise=0

Item E
 Never had parole revoked or been committed for a new offense while on parole=1
 Otherwise=0

Item F
 No history of heroin, cocaine, or barbiturate dependence=1
 Otherwise=0

Item G
 Has completed 12th grade or received GED=1
 Otherwise=0

Item H
 Verified employment (or full-time school attendance) for a total of at least 6 months during last 2 years in the community=1
 Otherwise=0

Item I
 Release plan to live with spouse and/or children=1
 Otherwise=0

Total Score

Offense Severity: Rate the severity of the present offense by placing a check in the appropriate category. If there is a disagreement, each examiner will initial the category he chooses.

Low	High
Low Moderate	Very High
Moderate	Greatest
	(e.g. willful homicide, kidnapping)

Jail Time (Months)..... + Prison Time (Months)..... = Total Time Served To Date Months.
 Guidelines Used: Youth Adult NARA
 Tentative Decision

§ 2.21 Reports considered.

Decisions as to whether a parole shall be granted or denied shall be determined on the basis of the application, if any, submitted by the prisoner, together with the classification study and all reports assembled by all the services which shall have been active in the development of the case. These reports may include the reports by the prosecution officers, reports by or for the sentencing court, records from the Federal Bureau of Investigation, reports from the officials in each institution in which the applicant shall have been confined, all records of social agency contacts, and all correspondence and such other records as are necessary or appropriate for complete presentation of the case. Before making a decision as to whether a parole should be granted or denied in any particular case, the Board will consider all available relevant and pertinent information concerning the case. The Board encourages the submission of such information by interested persons.

§ 2.22 Communication with the Board.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Board of Parole must submit a written request to the appropriate regional office setting forth the nature of the information to be discussed. Such personal interview may be conducted by staff personnel in the regional offices. Personal interviews, however, shall not be held by an examiner or member of the Board, except under the Board's appeals procedures.

§ 2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority to make decisions relative to the granting or denial of parole, or reparole and revocation or reinstatement of parole or mandatory release and to fix conditions of parole.

(b) Hearing examiners shall function as two-man panels and the concurrence of both examiners shall be required for their decision. In the event of a split decision by the panel, the appropriate regional Administrative Hearing Examiner shall cast the deciding vote.

(c) When a hearing examiner panel proposes to make a decision which falls outside of explicit guidelines for parole decision-making promulgated by the Board, the case shall be reviewed by the appropriate regional Administrative Hearing Examiner. When an Administrative Hearing Examiner does not concur in a decision of an examiner panel to set a parole effective date or continuance outside the Board's guidelines he may with the concurrence of the Regional Director modify the date to the nearest limit of the guidelines.

(d) In the event the Administrative Hearing Examiner is serving as a member of a hearing examiner panel or is otherwise unavailable, cases requiring his action under paragraphs (b) and (c) of this section will be referred to another hearing examiner.

§ 2.24 Review of panel decision by the Regional Director and the National Appellate Board.

A regional Director may review the decision of any examiner panel and refer

this decision, prior to written notification to the prisoner, with his recommendation and vote to the National Appellate Board for reconsideration and any action it may deem appropriate. Written notice of this reconsideration action shall be mailed or transmitted to the prisoner within fifteen working days of the date of the hearing. The Regional Director and each member of the National Appellate Board shall have one vote and decisions shall be based upon the concurrence of two out of three votes.

§ 2.25 Appeal of hearing panel decision.

(a) A prisoner may file with the responsible Regional Director a written appeal of a decision of a hearing examiner panel or a decision under § 2.24 to grant, deny or revoke parole or to revoke mandatory release. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision. The appeal shall be considered by the Regional Director who may affirm the decision, order a new institutional hearing, order a regional appellate hearing, reverse the decision, or modify a continuance or the effective date of parole. Reversal of an examiner panel decision or the modification of such a decision by more than one hundred eighty days, whether based upon the record or following a regional appellate hearing, shall require the concurrence of two out of three Regional Directors. Appellate decisions requiring a second or additional vote shall be referred to other Regional Directors on a rotating basis as established by the Chairman.

(b) Regional appellate hearings shall be held at the regional office before the Regional Director. Attorneys, relatives and other interested parties who wish to appear must submit a written request to the Regional Director stating their relationship to the prisoner and the general nature of the information they wish to present. The Regional Director shall determine if the requested appearances will be permitted. The prisoner shall not appear personally.

(c) If no appeal is filed within thirty days of entry of the original decision, this decision shall stand as the final decision of the Board.

(d) Appeals under this section may be based only upon the following grounds:

(1) The reasons given for a denial or continuance do not support the decision; or

(2) There was significant information in existence but not known at the time of the hearing.

§ 2.26 Appeal to National Appellate Board.

(a) A prisoner may file a written appeal of the Regional Director's decision under § 2.25 to the National Appellate Board on a form provided for that purpose within thirty days after the entry of the Regional Director's written decision. The National Appellate Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or

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order a rehearing at the institutional or regional level.

(b) The bases for such appeal shall be the same as for a regional appeal as set forth in § 2.25(d). However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appellate Board.

(c) Decisions of the National Appellate Board shall be final.

§ 2.27 Appeal of original jurisdiction cases.

(a) Cases decided under the procedure specified in § 2.17 may be appealed within thirty days of the entry of the decision to the National Appellate Board. The National Appellate Board, upon the concurrence of two members, may affirm the decision or schedule the case for a review by the entire Board at its next quarterly meeting. A quorum of five members shall be required and all decisions shall be by a majority vote. The Chairman shall vote on the decision only in the absence of a member. This appellate decision shall be final.

(b) If an appellate hearing is scheduled, attorneys, relatives, or other interested parties who wish to speak for or against parole at such hearing must submit a written request to the Chairman of the Board stating their relationship to the prisoner and the general nature of the material they wish to present. The Chairman shall determine if the requested appearances will be permitted.

(c) If no appeal is filed within thirty days of the entry of the Regional Director's decision, this decision shall stand as the final decision of the Board.

(d) The bases for this appeal shall be the same as for a regional appeal as set forth in § 2.25(d).

§ 2.28 Reopening of cases.

Notwithstanding the appeal procedure of § 2.25 and § 2.26, the appropriate Regional Director may on his own motion reopen a case at any time upon the receipt of new information of substantial significance and may then schedule an institutional hearing or take any other action authorized under the provisions of § 2.25. Original jurisdiction cases may be reopened under the procedure of this section on the motion of two out of three Regional Directors and may be scheduled for an institutional hearing or for review by the Regional Directors on the record.

§ 2.29 Withheld and forfeited good time.

(a) Section 4202 of title 18 of the United States Code permits Federal prisoners to be paroled if they have observed the rules of the institution in which they are confined and if they are otherwise eligible for parole. Any forfeiture of statutory good time shall be deemed to indicate that the prisoner has violated the rules of the institution to a serious degree, and a parole will not be granted in any such case in which such a forfeiture remains effective against the prisoner concerned. Any withholding of statutory good time shall be deemed to indicate that the prisoner has engaged in some

less serious breach of the rules of the institution. Nevertheless, parole will not usually be granted unless and until such good time has been restored.

(b) Neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from applying for and receiving a parole hearing.

(c) The above restrictions shall not apply, however, to the forfeiture or withholding of *extra good time* which is granted because of meritorious behavior. Parole may be ordered without regard to a prisoner's status insofar as *extra good time* is concerned, although the reasons for any forfeiture or withholding will be included among the other factors used in making the parole decision.

§ 2.30 Release; modification of release date.

(a) When an effective date has been set by the Board, release on that date shall be conditioned upon continued good conduct by the prisoner and the completion of a satisfactory plan for his supervision. The appropriate Regional Director may, on his own motion, reconsider any case prior to release and may reopen and advance or retard a parole date. If such previously granted parole date is retarded for more than sixty days because of institutional misconduct, the prisoner will be given a new hearing in accordance with § 2.12. The purpose of the hearing is to determine if the prisoner's parole grant should be rescinded or a new parole date established. Such hearings will be held on the next hearing docket at a Federal institution. If such a prisoner's misconduct occurred in a Federal Community Treatment Center or a state or local Halfway House, he shall be placed on the first hearing docket after return to a Federal institution.

(b) In any case of a prisoner who has been notified of parole and who has subsequently engaged in conduct in violation of the rules of his custody or confinement sufficient to become a matter of record, the Regional Director shall be advised promptly of such violation. The prisoner shall not be released until the institution has been advised that no change has been made in the Board's order to parole.

§ 2.31 False or withheld information.

All paroles are ordered on the assumption that information from the prisoner has not been fraudulently given or withheld from the Board. If evidence comes to the attention of the Board that a prisoner willfully concealed or misrepresented information deemed significant, the Board, acting under the procedures of § 2.17 may act to rescind or revoke the parole.

§ 2.32 Committed fines.

In any case in which a prisoner shall have had a fine imposed upon him by the committing court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until

payment of the fine, or until the fine commitment order is discharged according to law as follows:

(a) An indigent prisoner may make application to a U.S. Magistrate in the District wherein he is incarcerated or to the chief executive officer of the institution setting forth, under institutional regulations, his inability to pay such fine; if the magistrate or chief executive officer shall find that the prisoner, having no assets exceeding \$20 in value except such as are by law exempt from being taken on execution for debt, is unable to pay the fine, and if the prisoner takes a prescribed oath of indigency, he shall be discharged from the commitment obligation of the committed fine sentence.

(b) If the prisoner is found to possess assets in excess of the exemption in paragraph (a) of this section nevertheless if the Board shall find that retention of all of such assets if reasonably necessary for his support or that of his family, upon taking of the prescribed oath concerning his assets the prisoner shall be discharged from the commitment obligation of the committed fine sentence. If the Board shall find that retention by the prisoner of any part of his assets is reasonably necessary for his support or that of his family, the prisoner upon taking of the prescribed oath concerning his assets, shall be discharged from the commitment obligation of the committed fine sentence upon payment on account on his fine of that portion of his assets in excess of the amount found to be reasonably necessary for his support or that of his family.

(c) Discharge from the commitment obligation of any committed fine sentence does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

§ 2.33 Parole to detainees; statement of policy.

The policy of the Board with regard to parole to detainees is in general accord with the principles recommended by the Association of Administrators of the Interstate Compact for the Supervision of Parolees and Probationers:

(a) The status of detainees held against prisoners in Federal institutions will be investigated, so far as is reasonably possible, prior to parole hearings.

(b) In appropriate cases summary information regarding such prisoner will be provided to state or local authorities. The Board urges institution officials to provide such information.

(c) Where the detainee is not lifted, the Board may grant parole to such detainee if a prisoner is considered in other respects to be a good parole risk. Ordinarily, however, the Board will grant parole to such detainee only if the status of that detainee has been investigated.

(d) The Board will cooperate in working out arrangements for concurrent supervision with other jurisdictions where it is feasible and where release on parole appears to be justified.

(e) The presence of a detainee is not of itself a valid reason for the denial

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of parole. It is recognized that where the prisoner appears to be a good parole risk, there may be distinct advantage in granting parole despite a detainer.

§ 2.34 Parole to local or immigration detainers.

(a) When a state or local detainer is outstanding against a prisoner whom the Board wishes to parole, the Board may order either of the following:

(1) "Parole to the actual physical custody of the detaining authorities only." In this event, release is not to be effected except to the detainer. When such a detainer is withdrawn, the prisoner is not to be released unless and until the Board makes a new order of parole.

(2) "Parole to the actual physical custody of the detaining authorities or an approved plan." In this event, release is to be effected even though the detainer might be withdrawn, providing there is an acceptable plan for community supervision.

(b) When the Board wishes to parole a prisoner subject to a detainer filed by Federal immigration officials, the Board may order one of the following:

(1) "Parole for deportation only." In this event, release is not to be effected unless immigration officials make full arrangements for deportation immediately upon release.

(2) "Parole to the actual physical custody of the immigration authorities only." In this event, release is not to be effected unless immigration officials take the prisoner into custody—regardless of whether or not deportation follows.

(3) "Parole to the actual physical custody of the immigration authorities or an approved plan." In this event, release is to be effected regardless of whether or not immigration officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(c) As used in this section "parole to a detainer" means release to the "physical custody" of the authorities who have lodged the detainer. Temporary detention in a jail in the county where the institution of confinement is located does not constitute release on parole. If the authorities who lodged the detainer do not take the prisoner into custody for any reason, he shall be returned to the institution to await further order from the Board.

§ 2.35 Mental competency proceedings.

(a) Whenever a prisoner or parolee is scheduled for a hearing in accordance with the provisions of this part and reasonable doubt exists as to his mental competency, i.e., his ability to understand the nature of and participate in scheduled proceedings, a preliminary hearing to determine his mental competency shall be conducted by a panel of hearing examiners or other official(s) (including a U.S. Probation Officer) designated by the Board of Parole.

(b) At the competency hearing, the hearing examiners or designated of-

ficial(s) shall receive oral or written psychiatric testimony and other evidence that may be available. A preliminary determination of the prisoner's mental competency shall be made upon the testimony, evidence, and personal observations of the prisoner. If the examiner panel or designated official(s) determines that the prisoner is mentally competent, the previously scheduled hearing shall be held. If they determine that the prisoner is not mentally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiners or designated official(s) determine that a person is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Director for review. If the Regional Director concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner or parolee has recovered sufficiently to understand the nature of and participate in the proceedings and, in the case of a parolee, may order such parolee committed to a Bureau of Prison's facility for further examination. In any such case, the Regional Director shall require a progress report at least every six months on the mental health of the prisoner. When the Regional Director determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest possible date.

(d) If the Regional Director disagrees with the findings of the hearing examiners or designated official(s) as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

§ 2.36 Release plans.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Director. In general, the following factors should be present before a prisoner is released after parole has been granted:

(1) The probation officer to whom the releasee is assigned may, in his discretion, require that there be available to the releasee an adviser who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside. The adviser should act as a source of advice for the releasee relative to community adjustment. The adviser may provide special services such as vocational placement, personal counsel, or referral to community agencies. The adviser is expected to report to the probation officer any law violation or serious misconduct on the part of the releasee. The adviser may be required by the probation officer to countersign the parolee's monthly supervision report to indicate actual contact with the parolee.

(2) There should be satisfactory evidence that the prospective parolee will be legitimately employed following his release; and

(3) There should be satisfactory assurance that necessary aftercare will be available to a parolee who is ill or who has some other problem which requires special care.

(b) Generally, parolees will be released only to the place of their legal residence unless the Board is satisfied that another place of residence will serve the public interest more effectively or will improve the probabilities of the applicant's readjustment.

(c) Insofar as it is practicable, the details of each plan for release shall be verified by a field investigation by the United States Probation Officer of the District into which release will be made.

(d) Any of the requirements described in this section may be waived by the Regional Director whenever circumstances warrant.

§ 2.37 Release on parole; statement of policy.

Parole release dates generally will not be set more than six months from the date of the parole hearing. Exceptions may be made in extraordinary situations or when necessary to permit an adequate period of residence in a Community Treatment Center. Such residence in a Community Treatment Center shall not generally exceed one hundred twenty days. An effective date of parole shall not be set for a Saturday, Sunday or a legal holiday. A parole grant may be retarded by the Regional Director for up to one hundred twenty days without a hearing for development and approval of release plans.

§ 2.38 Sponsorship of parolees; statement of policy.

It is the policy of the Youth Corrections Division to cooperate with groups desiring to serve as sponsors of parolees. In all cases, sponsors shall serve under the direction of and in cooperation with the probation officers to whom the parolees are assigned.

§ 2.39 Mandatory release in the absence of parole.

A prisoner shall be mandatorily released by operation of law at the end of the sentence imposed by the court less such good time deductions and extra good time deductions as he may have earned through his behavior and efforts at the institution of confinement. He shall be released as if on parole, under supervision until the expiration of the maximum term or terms for which he was sentenced less one hundred eighty days. Insofar as possible, release plans shall be completed before the release of any such prisoner.

§ 2.40 Same; youth offenders.

A prisoner committed under the Youth Corrections Act must be initially released conditionally under supervision not later than two years before the expiration of the term imposed by the court.

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§ 2.41 Reports to police departments of names of parolees; statement of policy.

Names of parolees under supervision will not routinely be furnished to a police department of a community, except as required by law. All such notifications are to be regarded as confidential.

§ 2.42 Community supervision by United States Probation Officers.

(a) Pursuant to section 3655 of title 18 of the United States Code, United States Probation Officers are required to provide such parole services as the Attorney General may request. The Attorney General has delegated his authority in this regard to the Board (28 CFR 0.126(b)). In conformity with the foregoing, probation officers function as parole officers and provide supervision to parolees and mandatory releasees under the Board's jurisdiction.

(b) A parolee or mandatory releasee may be transferred to a new district of supervision with the permission of the probation officers of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Board.

§ 2.43 Duration of period of community supervision.

(a) Any prisoner, with the exception of those sentenced prior to June 29, 1932, who is released under the provisions of laws relating to parole, shall continue until the expiration of the maximum term or terms specified in his sentence without deductions of allowance for good time. Prisoners sentenced prior to June 29, 1932, shall receive reductions in their maximum term or terms of imprisonment for such good time allowances as may be authorized by law.

(b) The Regional Director may discharge from supervision prior to the normal expiration date as provided in § 2.46(b), but the sentence is not thus commuted and such a parolee may be reinstated to supervision or retaken on the basis of a violator warrant.

(c) For certain narcotic offenses a prisoner will have a "special parole term" imposed by the court at the time of sentencing. The period of supervision under the basic sentence is served separately and must be completed prior to the beginning of any "special parole term." The "special parole term" will not be aggregated with the basic sentence for any purpose, including computation of time to serve following parole revocation, if any.

§ 2.44 Conditions of release.

The conditions of release are printed on the release certificate and are binding regardless of whether the releasee signs the certificate. The Board, or a member thereof, may add special conditions or modify the conditions of release at any time.

§ 2.45 Travel by parolees and mandatory releasees.

(a) The probation officer may approve travel outside the district without ap-

proval of the Regional Director in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purposes of employment, shopping, or recreation.

(b) Specific advance approval by the Regional Director is required for other travel, including travel outside the continental limits of the United States, employment more than fifty miles outside the district, and vacations exceeding thirty days. A special condition imposed by the Regional Director prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

§ 2.46 Supervision reports, modification and discharge from supervision.

(a) All parolees and mandatory releasees shall make such reports to the United States Probation Officers to whom they have been assigned as may be required by the Board or Probation Officers. Probation Officers shall submit summary reviews of the progress of parolees and mandatory releasees according to Board policy. On the basis of summary reviews of the progress of parolees, the Regional Director may modify the reporting requirement of parolees or releasees.

(b) After the parolee or mandatory releasee has been under supervision for at least one year, the Regional Director may, in his discretion, permit the parolee to submit a written report to his probation officer on a less frequent basis than once a month. After a period of such reduced reporting the Regional Director may further order that the parolee be discharged from all supervision by the Probation Officer. In the latter instances, a parolee may be reinstated to supervision or a warrant may be issued for him as a violator at any time prior to the expiration of the sentence or sentences imposed by the court. Other modification in the reporting requirements may be made by the Regional Director at any time during the parolee's term.

§ 2.47 Modification and discharge from supervision; youth offenders.

A committed youth offender may remain under supervision until the expiration of his sentence or he may be released from supervision or unconditionally discharged at any time after one year of continuous supervision on parole.

§ 2.48 Setting aside conviction.

When an unconditional discharge has been granted to a youth offender prior to the expiration of his maximum term of sentence, his conviction shall be automatically set aside and the Regional Director shall issue to the youth offender a certificate to that effect.

§ 2.49 Revocation of parole or mandatory release.

(a) If a parolee or mandatory releasee violates any of the conditions of his re-

lease, and satisfactory evidence thereof is presented to the Board, or a member thereof, a warrant may be issued and the offender returned to an institution. Warrants shall be issued or withdrawn only by the Board, or a member thereof.

(b) A warrant for the apprehension of any parolee shall be issued only within the maximum term or terms for which the prisoner was sentenced.

(c) A warrant for the apprehension of any mandatory releasee shall be issued only within the maximum term or terms for which the prisoner was sentenced, less one hundred eighty days.

§ 2.50 Same, youth offenders.

In addition to issuance of a warrant on the basis of violation of any of the conditions of release, the Youth Corrections Division may, when the Division is of the opinion that such youth offender would benefit by further treatment, direct his return to custody or issue a warrant for his apprehension and return to custody. Upon his return to custody, such youth offender shall be given a revocation hearing under the same provisions as adult offenders as specified in § 2.54-§ 2.56. Following the revocation hearing parole may be reinstated, revoked or the terms and conditions thereof may be modified.

§ 2.51 Unexpired term of imprisonment.

The time a prisoner was on parole or mandatory release is not credited to the service of his sentence if revocation occurs. When a warrant is issued the sentence ceases to run, but begins to run again when the releasee is taken into Federal custody by the execution of the Board's violation warrant. However, the sentences of prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act run uninterruptedly from the date of conviction without regard to any revocation, except as provided in § 2.10(c). In no case may the commitment of a person under the Federal Juvenile Delinquency Act extend past his twenty-first birthday.

§ 2.52 Execution of warrant; notice of alleged violations.

(a) Any officer of any Federal correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant shall be delivered shall execute such warrant by taking such prisoner and returning him to the custody of the Attorney General. The warrant shall be considered delivered to a Federal officer when the warrant is signed and placed in the mail at the Board headquarters or regional office before the expiration of the maximum term of sentence.

(b) On arrest of the prisoner the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the alleged violations of parole or mandatory release upon which the warrant was issued.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee or man-

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datory releasee is to be continued under supervision by the probation officer until the normal expiration of the sentence, or until the warrant is executed, whichever comes first. Monthly supervision reports are to be submitted, and the releasee must continue to abide by all the conditions of release.

§ 2.53 Warrant placed as a detainer and dispositional interview.

(a) In those instances where the prisoner is serving a new sentence in an institution, the warrant may be placed there as a detainer. Such prisoner shall be advised that he may communicate with the Board relative to disposition of the warrant, and may request that it be withdrawn or executed so his violator term will run concurrently with the new sentence. Should further information be deemed necessary, the Regional Director may designate a hearing examiner panel to conduct a dispositional interview at the institution where the prisoner is confined. At such dispositional interview the prisoner may be represented by counsel of his own choice and may call witnesses in his own behalf, provided he bears their expenses. He shall be given timely notice of the dispositional interview and its procedure.

(b) Following the dispositional review the Regional Director may:

- (1) Let the detainer stand
- (2) Withdraw the detainer and close the case if the expiration date has passed;
- (3) Withdraw the detainer and reinstate to supervision; thus permitting the federal sentence time to run uninterrupted from the time of his original release on parole or mandatory release.
- (4) Execute warrant, thus permitting the sentence to run from that point in time. If the warrant is executed, a previously conducted dispositional interview may be construed as a revocation hearing.

(c) In all cases, including those where a dispositional interview is not conducted, the Board shall conduct annual reviews relative to the disposition of the warrant. These decisions will be made by the Regional Director. The Board shall request periodic reports from institution officials for its consideration.

§ 2.54 Revocation by the Board, preliminary interview.

(a) A prisoner who is retaken on a warrant issued by a Board Member shall be given a preliminary interview by an official designated by the Regional Director to determine if there is probable cause to hold the prisoner for a revocation hearing and, if so, whether such revocation hearing should be conducted in the locality of the charged violation(s) or in a Federal institution. The official designated to conduct the preliminary interview may be a United States Probation Officer in the district where the prisoner is confined, provided he is not the officer who recommended that the warrant be issued.

(b) At the beginning of the preliminary interview, the hearing officer shall explain the Board's revocation procedure to the prisoner and shall advise the prisoner that he may have the preliminary interview postponed so that he may obtain representation by an attorney or may arrange for the attendance of witnesses. The prisoner shall also be advised that if he cannot afford to retain an attorney he may apply to a United States District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing. The prisoner may also request the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the prisoner admits a violation or has been convicted of a new offense committed while on supervision or unless the hearing officer finds good cause for their non-attendance. At the preliminary interview the hearing officer shall review the violation charges with the prisoner, receive the statements of witnesses and documentary evidence on behalf of the prisoner, and allow cross-examination of those adverse witnesses in attendance.

(c) At the conclusion of the preliminary interview, the hearing officer shall prepare and submit to the Regional Director a summary of the interview, which shall include recommended findings of whether there is probable cause to hold the prisoner for a revocation hearing. Upon receipt of the summary of the preliminary interview, the Regional Director shall either order the prisoner reinstated to supervision, order that a revocation hearing be conducted in the locality of the charged violation(s), or direct that the prisoner be transferred to a Federal institution for a revocation hearing.

(d) The prisoner shall be retained in local custody pending completion of the preliminary interview, submission of the summary of the hearing officer, and notification by the Regional Director relative to further action.

(e) A postponed preliminary interview may be conducted as a local revocation hearing, by an examiner panel or other hearing officer designated by the Regional Director provided that the prisoner has been advised that the postponed preliminary interview will constitute his final revocation hearing.

§ 2.55 Local revocation hearing.

(a) If the prisoner requests a local revocation hearing prior to his return to a Federal institution, he shall be given a revocation hearing reasonably near the place of an alleged violation if the following conditions are met:

- (1) The local hearing would facilitate the production of witnesses or the retention of counsel;
- (2) The prisoner has not been convicted of a crime committed while under supervision; and
- (3) The prisoner denies that he has violated any condition of his release. Otherwise, he shall be given a revocation

hearing after he is returned to a Federal institution. However, the Regional Director may, on his own motion, designate a case for a local revocation hearing.

(b) If there are two or more alleged violations, the hearing shall be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant, as determined by the Regional Director.

(c) Following the hearing the prisoner shall be retained in custody until final action is taken relative to revocation or reinstatement, or until other instructions are issued by the Regional Director.

§ 2.56 Revocation hearing procedure.

(a) A revocation hearing shall be conducted by a hearing examiner panel or, in a local revocation hearing only, by another official designated by the Regional Director. In the latter case, the decision relative to revocation shall be made by an examiner panel on the basis of the hearing summary pursuant to the provisions of § 2.23. A revocation decision may be appealed under the provisions of § 2.25, § 2.26, or § 2.27 as applicable.

(b) The purpose of the revocation hearing shall be to determine whether the prisoner has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(c) The alleged violator may present voluntary witnesses and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(d) If the alleged violator has not been convicted of a new criminal offense while under supervision and does not admit violation of any of the conditions of his release, the Board shall, on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocations may be based. Those adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance.

(e) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by reading or summarizing the appropriate document for the alleged violator.

§ 2.57 Confidentiality of parole records.

To the end that the objectives and procedures of professionalized parole may be advanced and, more specifically so that the channels of information vital to sound parole actions may be kept open and that offenders released on parole may be protected against publicity deleterious to their adjustment, the following principles relating to the confidential-

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ity of parole records shall be followed by the Board:

(a) Dates of sentence and commitment, parole eligibility dates, mandatory release dates, dates of termination of sentence and whether an inmate is being considered for parole, has been granted or denied parole, and if granted parole, the effective date set by the Board will

be disclosed in individual cases upon proper inquiry by a party in interest.

(b) Who, if any one, has supported or opposed an application for parole may be revealed at the Board's discretion only in the most exceptional circumstances, with the express approval of such person(s) and after a decision relative to parole has been made.

(c) Other matters contained in parole

records, including how a member votes relative to parole, will be held strictly confidential and will not be disclosed to unauthorized persons.

Dated: May 28, 1974.

MAURICE H. SIGLER,
Chairman,
U.S. Board of Parole.

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AN INVITATION TO GROUP COUNSELING

EDITOR'S NOTE

This article originally appeared in the Federal Probation Quarterly, September 1961. When contacted about the article, Mr. Vogt, now Deputy Chief Probation Officer, indicated that he still feels the first three or four contacts with a client are highly significant. If they can be conducted in a fairly open manner where such things as responsibility, goals, and distortions can be clarified, they provide a useful function. He still feels that the group approach is one of the most productive ways in developing relationship, reducing anxieties and clarifying distortion. Mr. Vogt further states, "I have been doing some thinking about the usefulness of short term group sessions in our setting rather than on-going open ended groups and I am coming to the conclusion that with our particular clients perhaps ten to fifteen sessions aimed at working on certain specific goals such as clarification of authority and using behavior modification techniques is probably better suited for our clientele. In our setting we don't really have the time nor generally the skill to get into basic personality change, however, the behavior modification and reality therapy models can work effectively."

An Invitation to Group Counseling

BY HERBERT VOGT

Supervising Probation Officer, United States District Court, Washington, D.C.

ABOUT 10 years ago the probation office of the United States District Court for the District of Columbia began using group methods as an adjunct to its supervision techniques. Since that time a number of probation officers have conducted special types of groups. I have been especially interested in the long-term, ongoing, open-ended group for which 8 to 12 probationers are selected on the basis of their interests, problems, and needs. For the past 3 years, however, I have conducted orientation groups which include persons recently placed on probation and parole. We meet one evening a week for 4 weeks, for 75 to 90 minutes. The primary emphasis is on (1) specific goals the members wish to pursue, (2) evaluating the problem areas and treatment needs, (3) eliminating some of the distorted attitudes and feelings that our probationers and parolees have about probation officers, (4) interpreting the functions and role of the probation officer, and (5) determining whether the problem areas are related in any way to the offenses and what the probationers and parolees, together with the probation officer, might be able to do to resolve these problems and needs.

In the first meeting the group members tend to display some resistance and misgivings; they question the feasibility of men and women getting together to talk over problems. I find that a simple, honest, to-the-point presentation of the significance and meaning of group interaction and the constructive influence of human beings on one another conveys especially well the message I try to get across. The basic concepts of persons using their own resources to help each other needs to be reiterated and reemphasized at each of the four meetings.

The purpose of this article is to present an approach to the group which has been found to be especially helpful in capturing and holding their interest and attention, in getting them to listen and to become involved in looking squarely and objectively at where they have been, where they are at this time, what options are available to them, and what they might wish to do about their particular situation.

The Substance of What Is Said

If you were to be a participant in one of these orientation sessions you would hear throughout each of the four meetings something along the lines of the following remarks and, in general, the sequence in which they are presented. In substance they give what I try to get across to the group participants. The remarks are not read. And at each of the four meetings they are interspersed with questions and answers and dialogue. The general remarks follow:

"Group counseling is one of the new ways in which probation officers are trying to give a helping hand. In the group, the officer tries to help people to help each other succeed on probation and parole as rapidly and as completely as possible. In several cities across the country probation officers are now meeting regularly with groups of persons under their supervision. Their experience has been that group members have been helped to get a firmer grip on their lives and move on to better things. This office wants to offer you the same kind of help.

"Making a successful community adjustment is no overnight matter. It takes time to work out the problems that come up. The counselor does not expect a person to progress all at once. He believes that if a person comes to the group and takes part in the discussions, he will begin to get some returns for his effort to learn about himself.

"Because most people's jobs prevent them from coming during the weekday, your group meeting will be held on the same weekday evening in each week or possibly during the day on Saturday. The meetings will last about an hour and a half because this is usually the best length of time to have a meaningful 'rap' session.

"As a probation officer, the group counselor wants to do his job well. His job is to help as many of his people as he can be free of trouble for good, and be successfully on their way. He believes that if a person is given a chance to solve the problems of everyday living, the chances are good that he will comply with the conditions of his supervision. The counseling group is a part of the probation officer's job. He will, therefore,

consider a person's attendance at his group meetings a part of his efforts to succeed on probation or parole."

What Will I Get Out of Group Counseling?

"In a counseling group several people get together and talk about what is on their minds in trying to make it and to improve themselves. There is nothing mysterious or unusual about getting together as we do. In some respects, it is like a kind of free discussion between good friends who want to take the time to hear each other out and get each other's opinions.

"It has been our experience that when people can be encouraged to talk freely about themselves, about their problems, and their plans for the future, they can come closer to being the kind of person they have always wanted to be.

"Of course, this kind of open give-and-take will take a while to develop. At first, it is like any new experience. The people are strangers to each other or, at best, have only a nodding acquaintance. But it has one strong advantage that usually helps people solve their problems together. They all have one important interest in common that they may not share, as persons, with any other groups they are in; each wants to make his way toward being a completely free member of society, with no strings attached.

"This kind of group has another advantage that may not be easy to see at first. But after a while, it can get to mean a lot to the person in a group. The person who has to live up to conditions that someone else sets up sometimes worries about matters or has things on his mind that most other people can't understand. Sometimes he has trouble finding someone who will hear him out and will not back away from him. The person on probation or parole too often may feel cut off from help. On the other hand, people who have been in groups of this kind have reported that one of the things they valued most was the support and understanding interest the group gave them. 'If I couldn't have talked it over with the group,' one person said, 'I don't know where I could have turned.'

"There are no lessons in the group, no lectures, and no homework. Your group leader, a probation officer, acts as guide and moderator in the discussions. He will sometimes offer the benefit of his training and experience, but he will not shove anything down anyone's throat. Mostly, he would rather have group members come out with

their own ideas. He realizes that he does not have any final answers. What he tries to do is help a person think through his own answers.

"There is probably no problem you can think of that at least one other person in the group has not had to face. Every person approaches problems in his own way. If you listen, you sometimes get new and sound ideas from the experiences, solutions, and suggestions of others who have been in exactly the same boat. Sometimes, the most valuable opportunity a person has is to sit down and figure it out by himself. Many of us, no matter who we are, know how tangled up a problem can get at times. Sometimes we want to get ourselves untangled. Other times we are pulled this way and that by different ideas about how to set things straight. We may have conflicting feelings that make us want to do first one thing and then another. At times we are not sure why some things bother us or why we want to do other things that really don't seem like such a good idea. Occasionally, we even wonder how we got ourselves into such a difficult spot in the first place.

"There is no shame in being bewildered or confused. Everyone of us who is trying to be his own boss gets his lines crossed at times. But it does take time to unravel all the knots. All of us have suffered the consequences of plunging ahead without thinking of what we were doing. The counseling group is set up for just exactly this kind of experience. In it, a person can sit still and take stock of himself, if he is so minded. He can learn what has happened to him, where he is in his life course right now, and where he is going.

"Since the group leader is also a probation officer, he is a representative of law and order. Group members, to some extent, are responsible to him, but far more to themselves for their conduct in the community. Now, this may not, at first, seem to be of any use at all. In fact, it may look like one good reason *not* to speak out in the group. Often, people who have power, legal or otherwise—police, courts, employers, teachers, or parents—have been the ones from whom a probationer has kept farthest away.

"The group leader's attitude toward a probationer getting into unlawful activity or breaking the rules of probation would have to be the same whether he heard about it in the group or privately. He is a probation officer and he, too, has his rules to follow. On the other hand, he is not

running the group to check up on anybody. He could do that much more easily and quickly than by holding group meetings.

"He has learned that the people with whom he deals are much more to him than law violators. In his daily contact with them, he knows that they have many problems and that a lot of their other problems have had some bearing on their law violations. He figures that if he works to solve the other problems with them, the chances of helping them toward success are much better. This is why, in the group, you will discover that he wants you to take the time to get things off your chest. You will most likely have to check out the sincerity of his interest in your own way. But you will find that he, in his own way, will care about what is happening to you. One important result will be that some group members will find it a lot easier to act natural in front of a person with authority than they ever have before. Group members sometimes find new and even pleasant ways of working along with people as a result of their give and take with the counselor."

Where the Probationer or Parolee Now Stands

"A person on probation or parole is young. Most are between 18 and 35. He is almost always moving away from one type of life and trying to move into another. The meaning of the word "probation" has to do with a person proving himself. "Parole" originally meant "word of honor." His teenage years are usually not too far behind him. The period of youth in our country is likely to be a mixed up time for most of us; for some it is a wild period—a time of finding and doing our thing.

"For some probationers and parolees, their

period of youth was time off from the business of maturing and making something of one's self. Some ended up pulling time in institutions, not too long ago, because they took too much time out from making time in their lives. For others, a close call in court reminds them that they took a wrong turn somewhere and it is now time to get their affairs back on the right track. Every person who comes into this office knows that he is up to bat.

"All around him, he may find that he has to catch up. Some people his own age may be further along because things went alright for them. In the meantime, they may have learned about a job, established more security for themselves, and gotten more training. Some of his old associates may be pulling him back to activities that he is trying to shake off. He may be finding it difficult to fall into step with new people. His personal and family life may be showing the effects of having been out of it either actually or in his interests. Many things may be unsettled, and he wants to take hold and set a true course for himself. Whether he thinks about it or not, he probably can use all the guidance and authority he can get."

This, then, is what I try to get across at each of our four group counseling sessions, not necessarily in the language or in the sequence presented nor at the same session. Parts may be reiterated and reemphasized at each of the meetings. And at each meeting I remind our participants that the constructive influence of human beings upon one another—a resource that has been with us since the creation of man—can be and is a potential for change.

In the past we have tended to rely primarily on an individual, probationer-to-officer type of interaction supplemented by casework services of the environmental manipulative kind. It is suggested that the time has come for us to examine other approaches, particularly those derived from the study of social psychology, group dynamics, human relations, and their practical application in group psychotherapy. Research studies indicate that in many instances (with alcoholics, for instance) a group approach is more successful than an individual technique in effecting an improvement in behavior and perception of societal norms.

—ALEXANDER B. SMITH, LOUIS BERLIN, AND ALEXANDER BASSIN (1960).

USE OF INDIGENOUS NONPROFESSIONALS IN PROBATION AND PAROLE

Editor's Note.

This article originally appeared in Federal Probation. One of the authors, William S. Pilcher, is now Chief Probation Officer, Northern District of Illinois. On October 29, 1974, he provided the following Authors Up-Date.

Authors Up-Date

Shortly after this article was written a decision was made to extend the POCA project by one year. The one year continuation phase (referred to as Phase II) featured a number of modifications from the design of the original study (Phase I). Most notable was the assignment of at least one full or part-time POA to every probation officer in the Chicago office. This arrangement made it possible to explore a number of additional questions related to the ability of POA's and PO's to work together effectively.

The outcome of both phases is summarized in the following statement which was originally published as Chapter 12 in POCA Project Final Report Phase II.*

The primary conclusions drawn from Phase I of POCA relate to recruitment, training, supervision of indigenous paraprofessionals and, to some degree, effectiveness of service provided by them. Important insights were also gained about the effective response of professional probation officers to the employment of paraprofessionals on staff.

It quickly became clear during the early months of Phase I that recruitment of POA's, both ex-offenders and non-offenders, was a relatively easy task. Indeed, the number of applicants would have easily doubled if it were not for the restriction of low social position. Many inquiries had to be refused application because they had completed college. As it was far more people who met the criteria for employment applied than could be

* The POCA Project Final Report Phase II was written by Gregory Witkowski, Ellen Ryan and George J. Basiel. Donald W. Beless wrote "the Phase I" section of Chapter 12.

hired. In addition, concern about maintaining a racially balanced pool of POA applicants proved unwarranted as well-qualified black and white ex-offenders and non-offenders were available for employment throughout Phase I.

Informally structured orientation and initial training sessions proved to be the most beneficial and productive for POA's during the pre-case assignment period. Until the POA had experienced a period of time supervising one or two clients, it was extremely difficult for him to respond to any type of formal, classroom-like discussion, especially encompassing theoretical and abstract material. POA's were, however, very responsive to descriptive material, audio-visual presentations, role playing, and semi-structured group discussions.

After case assignment, each POA was assigned to one of the two POCA supervisors. Two supervisory and in-service training groups, each with approximately twenty POA's were thereby established. Originally, the primary mode of supervision and in-service training was to have been the individual supervisor/POA conference. However, the size of the supervision groups and schedule conflicts between supervisors and POA's (most of whom worked at other jobs during normal office hours), prohibited more than one individual conference per month in most instances. As a result, supervision and in-service training were accomplished in large measure through group meetings. As would be expected, this arrangement was not entirely satisfactory.

While group meetings were generally a beneficial and efficient mechanism for teaching and discussing generalizable topics (such as: alcoholism, revocation procedures, interviewing techniques, etc.), they were inadequate for meeting specific case-related needs of POA's. And, as with all groups, some POA's were held back by the group and others were left behind.

It is, therefore, clear that while some degree of group supervision is helpful both as a source of camaraderie and teaching efficiency, para-professionals -- especially beginning ones -- need the kind of special attention that can only come through heavy reliance on individualized supervision. This, of course, means that assigning twenty POA's, or 15 or 10 for that matter, to one supervisor is simply too much. The maximum ratio recommended at this point is no more than five POA's to one supervisor.

The service delivery activities of POA's indicate that they are able to perform many of the field tasks normally carried out by professional probation officers supervising clients. POA's had more direct contact with their clients than did probation officers with control clients.

The content of POA recordings indicates they spent a large amount of time helping clients find jobs, listening to and giving advice about family and job-related problems, attending court hearings, and making referrals to community resources.

In general, POA's performed their duties well and were well satisfied with their Phase I POCA experience. Three-fourths of the POA's were given at least satisfactory job performance ratings at the end of Phase I and 85 per cent indicated a high level of job satisfaction. Almost one-half were planning careers in the human services field and about one-half of this group had already taken important steps toward that goal by attaining further education and/or securing a full-time human services job.

The overall results of Phase I indicate that POA's are indeed able to improve and enrich the quality of probation and parole in both its surveillance and helping functions. As speculated in the project proposal, POA's were able to establish communication links with clients where few, if any, had existed before. In particular, barriers due to racial, ethnic or economic differences between client and potential helper were frequently lowered through assignment of POA's to clients with similar social and economic backgrounds.

The evidence from Phase I thus supports the notion that the use of indigenous paraprofessionals can make significant contributions to the field of corrections while at the same time provide meaningful and satisfying career opportunities for certain under-educated, under-skilled individuals. In addition, in a real sense the POA experience for ex-offenders may often be rehabilitative and reclaiming.

The lack of significant differences between experimental and control clients in any of the outcome variables measured, indicates that POA's can at best supervise some types of offenders and perform some types of tasks without sacrificing public safety or offender rehabilitation. Indeed, the evidence suggests that minority offenders living in the inner-city are far more likely to be seen regularly by a POA than by a probation officer. In general, POA's were usually willing to go where many probation officers were understandably reluctant to go, at best alone and unarmed. POA's took great pride in their "street knowledge" and ability "to do a job" on the street. Their pride was well founded.

As expected, most POA's had some difficulty rendering informal reports on their case-related contacts, and great difficulty preparing formal reports for court and inter-office use. If such reports are required of POA's, a good deal of supervision and in-service training time must be allocated for the teaching of writing skills. In general, recording devices such as the code-a-phone are especially helpful in aiding paraprofessionals who have difficulty in writing.

Clients were found to be both receptive and responsive to POA supervision. With only one exception, all experimental unit probationers, parolees and mandatory releasees accepted the supervision of indigenous POA's without question, though in appearance and demeanor, POA's were quite unlike the typical probation officers.

The receptivity of staff probation officers was considerably less enthusiastic but, at least insofar as Phase I is of concern, skepticism on the part of professional staff was undoubtedly partially a function of the action design. During Phase I, all POA's were employed only part-time and were assigned to an experimental unit isolated from normal contact with usual office activities. Interaction between probation officers and POA's was almost non-existent, resulting in both groups viewing the other as a threat. Many probation officers, particularly those from other judicial districts who learned of POCA while attending the Training School, expressed concern that they would lose their jobs to non-professionals and that the use of POA's represented a major step backwards in the campaign to professionalize corrections. POA's on the other hand, had little use for probation officers whom they considered aloof and out of touch with the problems, lifestyles, values and goals of most inner-city clients.

The lesson is obvious. POA's should be well-integrated into regular staff operations and their assignments and responsibilities should cover, insofar as possible, a full range service delivery activities. Part-time POA's present a particular problem in this regard. While they may be used more flexibly and, it may be argued, their indigenous qualities less attenuated by professional identification, part-time POA's are likely to remain somewhat detached from regular staff and thus, perhaps from certain office routines and operating procedures. In Phase I the lack of cross-fertilization between POA's and probation officers was considered a serious handicap to both groups.

In summary, the major conclusion derived from Phase I is that indigenous paraprofessionals, including ex-offenders, represent a feasible and viable supplement to professional probation and parole work. From administrative, supervisory and service delivery perspectives, the use of paraprofessionals in probation is indicated. As stated previously, there is no evidence to suggest that employing paraprofessionals in corrections compromises either the potential rehabilitation of clients or efforts to professionalize correctional practice. The evidence from this study is, in fact, to the contrary.

Given the results of the Initial Phase of POCA, recommendations were made for a Continuation Phase. The purpose was to establish a permanent position and to evaluate further the use of paraprofessionals in the parole and probation system. The following comprise the research questions proposed for Phase II, as well as the results which reflect on these questions.

1. What use would be made of paraprofessionals, both full and part-time, when assigned randomly to probation officers? Whereas in Phase I, all POA's were supervised by two officers, POA's in Phase II were assigned randomly to the officers, on a ratio of one POA to every two officers for part-time POA's and on a one-to-one ratio for full-time POA's. Moreover, little direction was given to officers with regard to the use to which POA's should be put. It is evident from the data that the POA's were used extensively, but with little variation in the range of tasks assigned. The majority of tasks assigned to full and part-time POA's were supervisory in nature. Only 8% of the assignments for the full-time POA's and 3.5% for part-time POA's were investigative; virtually none were for the purpose of developing resources in the community. Several reasons for this situation are suggested: Less supervisory time is required for such tasks, moreover the officers viewed POA's as less capable of producing written material than they are for other work.

2. What probation and parole tasks can be managed effectively by the POA's? Given the rather limited tasks assigned, the POA's as rated by officers, functioned very effectively. Similar evaluations, although less formal, were given by supervisors and various administrators. With regard to the part-time POA's, for example, officers rated the results of 85% of the contacts and the POA's performance in 92% of the contacts as very satisfactory or satisfactory. Given these results, it is surprising that the POA's were not given a wider variety of tasks. The reasons for this is a possible area for further research, although one suggestion is that with each additional new task assigned, greater demands are made on the officers' time for supervision. The time required to supervise the POA, particularly in written and "court-visible" material, such as presentence reports, was a constant complaint by officers.

Concerning how innovating the POA's methods were, there is little to suggest. POA's were generally more felxible with regard to the time and location of their contacts; however, it must be remembered that these were men who had other full-time jobs. Whether this flexibility would remain is doubtful. Full-time POA's were obviously becoming more and more like the officers with regard to their hours, location of contacts and methods. Several of the part-time POA's suggested the establishment and explored the possibility of developing offices in the local community.

3. How effectively do POA's and staff officers function as a service delivery team? As can be seen from the various tables of assignments made and completed, the teams varied considerably. Of the variables analyzed, the objective criteria of productivity is highly related to the clarity of officer training procedures and supervision. This is certainly not a surprising finding, nor is it suggested that all of the significant variables were investigated. However, it is important that the means which foster the development of explicit training procedures,

including specific criteria for evaluation of tasks, be encouraged in future programs using paraprofessionals. As with all projects of this nature, it is difficult to establish that the POA's and the increased contact provided by them, significantly contributed to a low recidivism rate among the clients. This question was to have been answered by Phase I. However, it is clear that POA's were favorably received by clients, and in many cases served as impetus for clients to seek professional assistance from officers, which might not have otherwise occurred.

4. How do officers respond to POA's? What are the officers' concerns about their own role? The major implications of the data have been previously discussed. With regard to the functioning of POA's officers in general, gave a satisfactory rating. However, other areas for example, attitudes of officers about the use of POA's, require further exploration. Only one of the officers interviewed stated that he considered the POA's to be a threat to his position. In contrast, of the POA's interviewed, seven reported sensing some resentment among professional staff members, although four of the seven reported a change in a positive direction. Interestingly, when officers were asked about the opinions of other officers and staff, they attributed considerably more negativism to other staff than they admitted having themselves. However, many further suggested that a change in a positive direction was noted as the officers worked with the POA's.

The officers continued to maintain a division of labor between themselves and the POA. This was consistent, for example, with the criteria used for evaluation of tasks. The distinction seems to be the following:

- a) treatment (casework) should continue to be primarily reserved for officers with the exception of a few having special ability.
- b) court related activities (presentence interviews and writing presentence reports) should be reserved for officers, primarily because of the special skills required. By and large, these involved verbal and writing skills, which officers consistently suggest deficient among POA's.

5. What are the relative advantages of using various types of POA's, e.g., full vs. part-time, ex-offender, etc.? As has been indicated throughout the report, the two groups of POA's do not differ significantly in the number of contacts, nor apparently in the type, although full-time POA's were assigned slightly more investigative tasks. Consequently, what must be ascertained is the function most appropriately served by POA's for an individual office. Both full and part-time people are extremely useful, but each as a group is somewhat different. Full-time POA's appear to be identifying much more with office and officers. It was this group, for example, which was more concerned with "titles," office furnishings, etc. Given the closeness with the office, they are easier to supervise. Therefore, they are potentially more likely to

function as members of the department. In contrast, the part-time POA's raise fewer status problems. They provide a useful service in that they are a readily accessible extension of the office in the community. However, they are more difficult to supervise, even insofar as the assignment of tasks. However, it must be added that the majority of the officers favored the hiring of full-time rather than part-time POA's.

With regard to other characteristics, the majority of officers did not object, but only a small number saw the hiring of ex-offenders as having any particular advantages. Also, when asked if the background of POA's and clients should be similar, only a small number of POA's favored this practice.

6. How do clients respond to the use of POA's? The response of clients to POA's is somewhat difficult to gauge, although the trends suggested by the data are interesting. Clients who worked with both officers and POA's were not able to specify distinct differences between them, except that POA's are "easier to talk to." However, a large percentage would prefer to work with POA's and would rather have a POA go to court with them. Of course, one could question whether the reason is that POA's are more easily manipulated. This assumption is questionable. The reason for this stated preference may be the close personal contact and the relationship between client and POA. Clients suggested that POA's were more personally concerned and involved.

RECOMMENDATIONS - PHASE II

The recommendstions which resulted from Phase II must be divided into two separate sections: those recommendations made by the subjects (officers and POA's), and those recommendations generated by the data, which deal primarily with future projects.

Recommendations from the subjects were primarily of a practical nature, summarized from the terminal interviews with the officers and POA's. A variety of areas were covered, ranging from selection of POA's to supervision in the case of the officers, and program changes in the case of the POA's.

Officers suggested various criteria for the selection of new POA's. Unfortunately, these were often very general, comprising a constellation of personality characteristics and experience which would comprise the prototype of the ideal officer. Most officers did, however, strongly support the premise that paraprofessionals should be primarily minority group members.

Within the area of program changes, the officers strongly recommended improved communication among the various staff members, but particularly between officers and POA's. Moreover, many of the recommendations for supervision also consisted of methods through which communication would be improved.

In general, the recommendations contain the implicit request for greater structure and support from supervisors. This was contained in the various recommendations about training, supervision, and program. To some extent, this may also be the reason for the limitation in the tasks assigned.

POA's recommendations, on the other hand, were primarily in the area of training and orientation. These covered a wide range, including more formal courses, training in a variety of counseling techniques, courses incourt procedures, field-work, etc. Moreover, several POA's also suggested that they be assigned smaller caseloads, which they could supervise on a highly individualized manner.

As can be seen from the recommendations of both officers and POA's, there is an implicit suggestion that the goal towards which both should be directed is the increasing professionalism of the POA. If the various recommendations were followed, there would be virtually no distinction between the two. In essence, the paraprofessional would lose whatever distinct character he might initially have had.

Given the various data collected, the following recommendations seem evident for the future utilization of POA's.

- 1) Various staff members, particularly POA's should be adequately oriented. Specific roles should be developed for the POA, i.e., carefully delineated functions.
- 2) POA's need not be a drain on the officers' time. Methods should be developed whereby assignments can be made easily, without involving the constant attention of the officers. It also seems reasonable that POA's could be developed into a specialized corps of workers, with specific functions such as employment counseling.
- 3) Specific criteria need to be developed for the evaluation of the POA's performance. Initial attempts have been provided in this report. A detailed job analysis is also provided in Appendix F, which could reasonably provide the basis for the development of specific criteria.
- 4) Although various characteristics were suggested with regard to selection of POA's the most frequently mentioned deficits seem to be within the area of verbal skills, grammar, etc. Various means should be taken to upgrade these skills both with current and future POA's

Finally, various suggestions for future research are also evident.

- a) One, of course, is the development of specific operational criteria for various probation tasks, i.e., indicators that POA's are ready for the assignment of more complex cases.
- b) Future research could also analyze the effect of using POA's as has been done in the current project, versus using POA's in specific roles, such as employment resources.
- c) Finally, the POA position might be an excellent opportunity to develop specific training programs. For example, behavior analysis and modification has proved very successful in areas of mental health. The principles of such a theory could be developed into a specific training program for paraprofessionals. One area of difficulty for a POA has been their lack of training with regard to working with problem clients.

The principles of behavior analysis could be developed into a training program for paraprofessionals.

After four years, our research on the use of indigenous paraprofessionals came to a close October 1, 1972. This research project led to the creation of "case-aide" positions within the Division of Probation's regular organizational structure as there was Congressional funding of 20 such positions in the Administrative Office budget for Fiscal Year 1973. Shortly after the conclusion of the four year POCA Project, an additional one year research project was funded by the National Institute of Mental Health with the purpose of monitoring the start-up and first ten months experience of Federal Probation Office employment of case aides, in order to study, (1) the manner in which the decision to institutionalize an experimental program was reached, (2) the experiences of individual case aides, (3) the functional evolution of the case aide position, (4) the institutional responses -- structural and operational -- of the involved Federal Probation Office branches, and (5) innovations in the functions performed by the case aides and in institutional adjustments to the case aide position. A draft of this one year follow-up research study will have been prepared by December 1974 and the final version prepared by January 1975.

Use of Indigenous Nonprofessionals in Probation and Parole

BY DONALD W. BELESS, WILLIAM S. PILCHER, AND ELLEN JO RYAN*

PERHAPS the most significant development in corrections during the past decade has been the rapid expansion in the use of nonprofessionals as agents of direct service. In large measure, this has been an outgrowth of a long-standing, severe shortage of professionally trained manpower and mounting disenchantment with some professional treatment models. There simply are not enough professionals to fill even a fraction of existing correctional positions. And, even if there were, there is little evidence to support a belief that success rates (by whatever standards) would increase markedly. Numerous special research projects featuring intensive services provided by highly trained professionals have failed to reveal consistently favorable results.

Correctional work entails a wide variety of tasks aimed toward rehabilitating a widely diversified group of people. While some of these tasks and some offenders clearly require professional competence to effect change, others do not. Indeed, it may well be that certain tasks and certain kinds of offenders may be more effectively served by nonprofessionals working in teams with professionals.

It is this proposition which has been a focal point for a large active research project currently underway at the U.S. probation office in Chicago. This article presents a rationale for that study, and reports on over 2 years of work with offenders by nonprofessionals.

Nonprofessionals and the Manpower Shortage

Manpower needs in corrections have reached a critical stage in the last few years. In 1965, the President's Commission on Law Enforcement and Administration of Justice reported an immediate need to increase the correctional work force eight-fold. In actual numbers, probation and parole could have absorbed 20,000 additional workers in

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1965.¹ Korn put the problem in a somewhat different perspective: "many of the present difficulties in corrections stem not so much from deficiencies in the numbers of personnel as from deficiencies in what the personnel are doing."² This is consistent with Loughery's view that

... probation must get out of the country doctor era and into the age of the clinic. We can no longer waste the training of probation officers on inappropriate tasks. We are less in need of extra probation officers than we are in need of a corps of auxiliary workers to spread the effect of the officers we already have³

Cressey pointed out that subscribing to a theory of correctional rehabilitation which can be implemented only by highly educated professionals, while concurrently recognizing that there probably never will be enough professionals, has led correctional workers into a welter of frustration. Instead, he recommended making

... maximum use of the personnel actually available to act as rehabilitation agents. There is no shortage of mature, moral, average, fine, run-of-the-mill men and women of the kind making up the majority of the personnel manning our factories, our businesses, and our prisons—men and women who have a high school education at most.⁴

According to Sigurdson, expanding the role of the nonprofessional is the most realistic alternative available to alleviate the correctional manpower shortage for several reasons.⁵ There exists a large pool of untrained, unemployed, nonprofessionals who can be trained to perform significant reform roles under professional guidance. Economically, it would be efficient to use them because with the increase in automation, many people "leaving production occupations will be available for service of rehabilitating criminals."⁶

The history of the nonprofessional in corrections goes back many years. Probation in the United States was begun in 1841 by volunteers

¹ C.W. Phillips, "Developing Correctional Manpower," *Crime and Delinquency*, 15 (3), July 1969, pp. 415-419.

² R.R. Korn, "Issues and Strategies of Implementation in the Use of Offenders in Resocializing Other Offenders," *Offenders as a Correctional Manpower Resource*. Report of a seminar convened by the Joint Commission on Correctional Manpower and Training, June 1968, pp. 73-84.

³ D.L. Loughery, Jr., "Innovations in Probation Management," *Crime and Delinquency*, 15 (2), April 1969, pp. 247-258.

⁴ D.R. Cressey, "Theoretical Foundations for Using Criminals in the Rehabilitation of Criminals," *Key Issues*, Vol. 2, 1965, pp. 87-101.

⁵ H.R. Sigurdson, "Expanding the Role of the Non-professional," *Crime and Delinquency*, 15 (3), July 1969, pp. 420-429.

⁶ See footnote 4.

of whom John Augustus, a Boston cobbler, was the first. Today, over 200 courts in the United States, most of them adult misdemeanor or juvenile courts, are now using part- or full-time volunteers to provide correctional services. Many of these volunteers are well-educated, middle-class businessmen or professionals in other fields. Goddard and Jacobson described the volunteer as an unpaid worker who provides more or less regular and continuing services.⁷ Much of the volunteer's usefulness stems from his knowledge of community resources and opportunity. Goddard and Jacobson found that juvenile-court use of volunteers in Eugene, Oregon, enabled the court to reduce the probation period.

A protracted delinquent status through official court supervision re-enforces the concept of self as "delinquent." The use of volunteers, who are not identified as court officials, allows the court to withdraw officially at an earlier point, lessen the danger of re-enforcing the delinquent self-concept, and still meet the needs of the child.⁸

Lee described the use of citizen volunteers from all walks of life in the circuit court juvenile department of Eugene, Oregon.⁹ They befriended youngsters with the implicit goal of enhancing performance in school, employment, family, and peer relationships. At present, the State of Oregon Division of Corrections is conducting an operation entitled "Project Most." Professional probation and parole officers have been involved in training nonprofessionals to work in teams with professionals. A few former offenders have been employed, and the staff reports a high degree of optimism about the impact the nonprofessionals will have upon the Oregon correctional system.¹⁰

The Nonprofessional in Other Professions

Other professions have been well-served by the nonprofessional. Presently, career lines are emerging for them in all the major service fields. In public school education, the teacher's aide performs many of the routine organizational and administrative functions, leaving the highly trained teacher with more time to concentrate on

subject matter. The laboratory assistant, the nurse's aide, the medical and dental assistant have all demonstrated their value to the professions they serve. In recent years, social work has made much greater use of the nonprofessional. Farrar and Hemmy conducted a study using nonprofessionals teamed with professionals to provide many tangible services to a group of aged people.¹¹ Cudaback studied case sharing between welfare service aides, formerly AFDC clients, and caseworkers in a large urban welfare department.¹² Perlmutter and Durham used teenagers to serve as "pals" to youngsters referred for social work service within the public school system of Champaign, Illinois.¹³ Cain and Epstein recruited a group of housewives who served as volunteer case aides in a state mental hospital to provide a one-to-one relationship for patients, helping them to reestablish interpersonal relationships and to make realistic release plans.¹⁴

The Indigenous Nonprofessional

In the last 10 years, a movement to recruit auxiliary personnel from within the ranks or at least from the same social class as the population served has gained increasing strength. Such persons, often designated as *indigenous* paraprofessionals, are being used in a variety of social services including corrections. While related to volunteer programs and similarly addressed to manpower shortages, the rationale for the indigenous paraprofessional in corrections differs somewhat from that of the volunteer.

Most professional corrections workers agree that a large segment of their clientele are, by virtue of their norms, values, and life styles, alienated from the main stream of society. Frequently, these clients are referred to as hard-to-reach, unmotivated, mistrustful, and resentful of authority. There exists, in other words, a marked *social distance* between many middle-class professional corrections workers and a large segment of their lower-class clientele.

Such social distance and concomitant lack of rapport, while not categorically impossible to overcome in time, characteristically inhibit the development of a working relationship between client and professional to the point of client non-engagement in the rehabilitative process. Moreover, social distance by definition discourages client identification with the professional and often makes it difficult for the professional to

⁷ J. Goddard and G.D. Jacobson, "Volunteer Services in a Juvenile Court," *Crime and Delinquency*, 13 (2), April 1967, pp. 327-343.

⁸ See footnote 7.

⁹ R.J. Lee, "Volunteer Case Aide Program," *Crime and Delinquency*, 14 (4), October 1968, pp. 331-335.

¹⁰ Other noteworthy programs using volunteers are being conducted in Royal Oak, Michigan; Denver, Colorado Springs, and Boulder, Colorado.

¹¹ M. Farrar and M.L. Hemmy, "Use of Non-professional Staff in Work with the Aged," *Social Work*, 8 (3), July 1963, pp. 44-50.

¹² D. Cudaback, "Case Sharing in the AFDC Program: The Use of Welfare Service Aides," *Social Work*, 14 (3), July 1969, pp. 93-99.

¹³ F. Perlmutter and D. Durham, "Using Teen-agers to Supplement Casework Service," *Social Work*, 10 (2), April 1965, pp. 41-46.

¹⁴ L.P. Cain and D.W. Epstein, "The Utilization of Housewives as Volunteer Case Aides," *Social Casework*, 48 (5), May 1967, pp. 282-285.

serve as an effective role model. The indigenous worker, conversely, has often experienced situations and problems similar to those that beset certain clients. The result may be greater facility in developing productive relationships with these clients.

Current interracial tensions in certain areas of major cities point out the need for experimenting with nonprofessionals recruited from groups having ethnic or racial affinity with certain offender populations. A communication gap resulting from social and cultural distance between middle-class professionals of any race and the lower-class minority group clients is a growing problem in rehabilitation services. Also differences in racial composition between staff members of correctional agencies and their clientele pose many problems.

Grosser noted that indigenous persons bring to their staff positions unique qualities: an affinity with lower class life, the folk wisdom of the urban slum, the ability to communicate with and be accepted by the ethnic poor. He saw the local resident worker as "a bridge between the lower-class client and the middle-class professional worker."¹⁵ Rieff and Riessman described the indigenous worker as follows:

He is a peer of the client and shares a common background, language, ethnic origin, style and group of interests . . . he "belongs," he is a "significant other," he is "one of us." The style of the nonprofessional is significantly related to his effectiveness, because it matches the client's.¹⁶

Grosser found that indigenous workers assess the community's attitudes and predict lower-class views more accurately than middle-class professionals, but he also found the beliefs of his indigenous group closer to those of professionals than to those of the community which they served.¹⁷

The vast majority of corrections professionals are whites living in comfortable circumstances and quite well educated. However, in metropolitan areas a large proportion of the offender population belongs to lower socioeconomic groups, and a majority are nonwhite. Cultural and value system differences between the professional and offender groups impede understanding.

¹⁵ C.F. Grosser, "Local Residents as Mediators Between Middle-Class Professional Workers and Lower-Class Clients," *Social Service Review*, 40 (1), March 1966, pp. 56-63.

¹⁶ R. Reiff and F. Riessman, *The Indigenous Non-professional*. New York: National Institute of Labor Education, 1964, pp. 44-48.

¹⁷ See footnote 15.

¹⁸ J.E. Gordon, "Project Cause, the Federal Anti-Poverty Program, and Some Implications of Sub-Professional Training," *American Psychologist*, May 1965, p. 334.

¹⁹ F. Riessman, "The 'Helper' Therapy Principle," *Social Work*, 10 (2), April 1965, pp. 27-32.

²⁰ R. Volkman and D.R. Cressey, "Differential Association and the Rehabilitation of Drug Addicts," *The American Journal of Sociology*, LXIX (2), September 1963, pp. 129-142.

Gordon suggested the manner in which nonprofessionals from the same milieu as the disadvantaged client might be more successful than professionals:

- The indigenous leader can communicate instantly to the suspicious and distrustful client, avoiding noblesse oblige, in a way that many middle-class professionals cannot do when dealing with disaffected, hostile, anomic youths who see the middle-class agency worker as a part of the system against which he is fighting . . . Indigenous personnel who "speak the client's language" can form an extremely effective bridge between the milieu of the client and the milieu of the agency; they can make important contributions to the counseling team in contacting the clients to be served, in maintaining them through their agency contacts, and may be particularly effective in followup work with the clients in their home, community, and on the job. A client is more likely to be able to report continuing difficulties, after his counseling contacts, to an indigenous worker, than he is to the professional interviewer toward whom the ethic of mutual cooperation and courtesy requires that he affirm the success of the counseling and deny continued problems.¹⁸

The Ex-Offender as a Correctional Worker

A logical extension of using the indigenous paraprofessional in corrections is use of the former offender. Drawing upon the experience of Alcoholics Anonymous, Synanon, and other self-help groups, it appears that those who have experienced and overcome a problem have a unique capacity to help others with similar problems. In addition, evidence exists which indicates that "role reversal" is a key method in rehabilitation of certain offenders. Riessman characterized this phenomenon as the helper therapy principle and concluded

. . . perhaps, then, social work's strategy ought to be to devise ways of creating more helpers! Or, to be more exact, to find ways to transform recipients of help into dispensers of help, thus, reversing their roles, and to structure the situation so that recipients of help will be placed in roles requiring the giving of assistance.¹⁹

Cressey advocated using criminals to reform criminals. He attributed the success of self-help programs,

. . . to the fact that such programs require the reformee to perform the role of reformer thus, enabling him to gain experience in the role which the group has identified as desirable. The most effective mechanism for exerting group pressure on members will be found in groups so organized that criminals are induced to join with non-criminals for the purpose of changing other criminals. A group in which criminal A joins with some non-criminals to change criminal B is probably most effective in changing criminal A, not B; in order to change criminal B, criminal A must necessarily share the values of the anti-criminal members.²⁰

Cressey's principle has been implemented in a number of action research programs. Among the most notable is J. D. Grant's "New Careers Development Organization."

USE OF INDIGENOUS NONPROFESSIONALS IN PROBATION AND PAROLE

Probation Officer—Case Aide Project at Chicago

Recently the Chicago-based Probation Officer-Case Aide (POCA) action research project has experimented with the use of indigenous nonprofessionals in federal probation and parole.²¹ A refocused, 1-year continuation study is scheduled to terminate October 1, 1972. A major goal of the project was an examination of the effects of using part-time indigenous paraprofessionals—a portion of whom were ex-offenders themselves—as assistants to probation officers. While primary interest centered on the effects of the experimental service on client outcomes, attempts were also to be made to assess changes in the probation officer assistants (POA's). Areas of specific interest concerning the POA's were degree of job satisfaction, quality of performance, and changes in career aspirations, beliefs and attitudes. Another project goal was exploration of the kinds of tasks indigenous nonprofessionals are best equipped to manage, and those areas best left to professional staff officers.

The Subject Sample.—Subject selection criteria were structured so that offenders served by the project would be representative of a hard-core conventional criminal group from the lower-socioeconomic class,²² the kind of client who has a high rate of recidivism, and who could benefit most from intensive casework services. Many more minority group members fall into this criminal group than into white collar criminal and racketeer groups. Accordingly, eligibility was restricted to certain offense categories: postal theft, interstate auto theft, interstate shipment theft, narcotics violations, forgery, counterfeiting, and bank robbery. Subjects included only male probationers, parolees, and persons on mandatory release who were at least 21 years old and residents of Chicago. Selection was limited to black Americans and white Americans.

Eligible subjects were picked up by the project as they entered probation, parole, or mandatory release supervision. By a process of random assignment, a total of 161 offenders served as experimental subjects, and 141 offenders formed a control group receiving normal supervision service from probation staff officers.

The Probation Officer Assistant.—Each subject

in the experimental unit was assigned to a POA. Altogether, 53 POA's were employed by the POCA Project. Two professionally trained probation staff officers each supervised 20 POA's. While POA's provided direct correctional services, the supervisors retained legal responsibility for all subjects assigned to POA's.

Applicants for the position of POA were recruited primarily from neighborhoods having high proportions of project-offender clients. The majority of applicants came to the project via recommendations of probation staff officers, referrals from local social service agencies, and self-referrals prompted by word of mouth. Because recruitment never presented any serious problems, the project staff was always able to maintain a rather sizeable waiting list of applicants. Occasional difficulty in recruiting white applicants was alleviated by preparation of a recruiting leaflet which described the project and POA position, and gave a telephone number. The leaflet was distributed widely among service agencies and offices of the State employment service.

The actual selection of POA's was perhaps the most critical point. In a program aimed at re-orienting offenders to an acceptable and constructive role in society, the staff sought persons with basic integrity whom both clients and offenders could trust. The project staff tried to select those applicants who, according to professional judgment, possessed personal characteristics considered essential for successful participation in the helping process. Few POA's below the age of 25 were selected; younger applicants did not seem to possess a sufficient degree of maturity. POA's were recruited from the same socioeconomic level as experimental subjects. Because facilitating communication is often the key to the problem of establishing a mutually satisfactory relationship between worker and client, it seemed likely that communication between subject and POA could be enhanced if they shared a common socioeconomic base.

POA selection was limited to white Americans and black Americans, with POA matched to subject by race. The assumption was made that, at least in the lower socioeconomic class from which both subjects and POA's were drawn, there is less social and cultural distance among members within each racial group, than between the two groups. Since a primary object of the POCA Project was to reduce social distance between correctional worker and recipient of

²¹ A final research report will be available sometime early in 1972.
²² Determination of social class was based on Hollingshead's *Two Factor Index of Social Position*, 1965, Yale Station, New Haven, Conn., 1957 (mimeographed, copyright by author). This instrument provides a means of arriving at a rough but useful classification of social position through categorization of an individual's educational and occupational level.

FEDERAL PROBATION

correctional services, matching along the dimension of race was essential. One potential problem with this policy was that it might appear discriminatory to the casual observer. However, matched assignments were made on the basis of diagnostic considerations, not discrimination. Matches were also made along other dimensions considered relevant. For example, rehabilitated alcoholics and drug users were paired with subjects afflicted with these problems.

Both POA and subject groups were also restricted to men only. Because women constitute less than 10 percent of the client population served by the probation office in Chicago, with the small numbers of subjects potentially eligible, matching would have proved difficult.

Applicants for the position of POA were interviewed by a selection committee composed of the action director and training consultant. Each wrote a brief interview summary and made an independent rating on a 5-point overall evaluation scale ranging from very high to very low.²⁸ Among the characteristics considered were level of motivation, degree of empathy, capacity for relationship, emotional stability, maturity, perceptiveness, and sensitivity. It is interesting to note that of 12 applicants receiving the highest rating and accepted for assignment of cases, all were black. Completion of high school was the median level of POA education, with nearly half the group having some college credits. While there were no minimum educational requirements for POA's, it was apparent that those applicants with more education tended to fair better in the overall selection process.

Orientation.—After being interviewed, applicants attended an orientation program which consisted of four evening meetings spread over a 2-week period. Each session lasted approximately 2½ hours. The men were introduced to the purposes, policies, and procedures of the probation office, and the envisioned role of the POA was discussed extensively.

Care was taken throughout orientation to avoid emphasizing status distinctions between probation officer and POA. In order that the POA not perceive himself as a second-class provider of services, orientation stressed the fact that quality services required a high level of team work. The utilization of POA's was presented to the trainees from a positive perspective. Staff shared with

²⁸ While it was recognized that such judgments were highly subjective, there was a high degree of agreement between judges on the independent ratings.

them the conviction that utilization of POA's was based on a belief they have much to contribute to the rehabilitation of offenders, rather than simply because there is a manpower shortage. POA's were made aware of the staff's hope that their contributions in correctional services would result in significant new career lines, as has been the case in other fields such as medicine and education. In short, the project staff was careful to minimize the possibility of dealing with POA's in a condescending fashion, emphasizing rather the cooperative aspects of the POA-probation officer relationship.

The expectations of orientation were not great. The project staff planned for the essential learning to take place during inservice individual and group supervision meetings. Project staff members had been advised in earlier exploratory contacts with other agencies using indigenous nonprofessionals to avoid the dangers of extended, formal training programs. Too much formal programming at the outset presents the possibility of intimidating or boring the trainees, and furthermore, may "bleed out" the very qualities which make indigenous workers valuable.

The POA Role.—All POA's worked on a part-time basis and were paid according to the number of cases supervised, three being the maximum POA caseload. POA's varied in their general approach to the role of change agent. Some appeared quite proficient at counseling. A larger group were more skilled in providing concrete services either directly or through referrals to appropriate resources. Examples of tasks handled include: assistance with securing adequate housing and welfare benefits, referral for medical and mental health services, and help with locating employment and training. A few POA's functioned primarily as surveillants.

The project staff members found that a sizeable number of POA's were able to establish a positive working relationship with their clients. Their ability to empathize and simply listen proved an obvious benefit to the clients. With few exceptions, clients were receptive to POA supervision even though it meant more contacts with the probation office than is ordinarily the case under regular supervision. In particular, the staff members were impressed with the response of black clients (representing approximately 72 percent of the experimental caseload) to black POA's. The level of mutual rapport and client identification appeared to be unusually high. One veteran recipient

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of correctional services commented after meeting his lavishly dressed and heavily bearded POA for the first time: "Well, I see the Federal Probation System is finally hiring some good men!"

For the most part, the project staff was pleased with the performance of the POA's. Motivation was generally high, and they demonstrated the ability to form relationships with clients, helping them with a variety of problems. Undoubtedly, POA's themselves benefitted from their roles. A number of the men found solutions to some of their own problems while working with problems of others. One man, a black nonoffender with a history of alcoholism, was appointed chief counselor and director of a program for alcoholic recovery of employees sponsored by the U.S. Post Office in Chicago. Another man, a white former offender and barber by trade, joined the POCA Project and began attending classes at a local junior college. He was later admitted to a major university in the criminal justice program and was hired by the State of Illinois Department of Corrections as an adult parole officer. Another man, a black former offender, after serving as a POA, obtained employment with the Illinois Department of Corrections as a youth supervisor.

POA's were also active participants at professional meetings. At the 1970 National Institute on Crime and Delinquency held in Chicago, two POA's participated on panels and workshops. Other POA's have discussed their work with probation officers at training sessions at the Federal Probation Service Training Center in Chicago. A number of trips were arranged for POA's at the expense of the POCA Project to visit federal penal and correctional institutions. In all situations where POA's had succeeded in advancing in correctional career lines, they have maintained that their achievements were directly related to their participation in the POCA Project.

Some Tentative Conclusions

While final conclusions about many aspects of the POCA project must await the final report, a few tentative conclusions may be drawn at this time. First, the experience gained confirms the operational feasibility of employing indigenous nonprofessionals as case aides in the Federal Probation Service. Nonprofessionals, including minority group members and selected ex-offenders from

the local community, were found to be interested, available, and able to work well under professional supervision. Second, there is mounting evidence that indigenous nonprofessionals can provide a productive and effective service to professional probation officers. The POA's were frequently able to intervene in cases where probation staff officers might have encountered problems.

The use of nonprofessionals is not intended in any way to denigrate the role of professionals or the professionalization of corrections, which is essential if there is to be any hope of success in meeting the complexities of rehabilitating offenders. Rather, the intent is to point out a possible solution to one of the serious problems often confronting correctional workers. With clients differing markedly from professional workers in cultural and social values, a wider use of indigenous workers seems indicated. Terwilliger recommended that professionals "devise and welcome experimentation in working with nonprofessionals and be guided simply by what works."²⁴ Grosser saw "the learned objectivity of the professional worker plus the heightened perception of the non-professional worker" as the "ideal combination of qualities!"²⁵

The development of a paraprofessional position also presents a means of increasing the number of Blacks urgently needed in probation work. Although approximately 36 percent of the offenders supervised by the Chicago Office are black, the percentage of Blacks was twice as large in the POCA Project sample due to the nature of the selection criteria. The higher proportion of Blacks resulted primarily from limiting the project sample to Chicago residents whereas the office services clients for the entire 18 counties of the Northern District of Illinois.

The paraprofessional position in corrections could serve as an entry point to a career line for Blacks and members of other minority groups with potential advancement to professional status contingent upon good performance, additional training, and achievement of an academic degree. Further exploration in the use of indigenous nonprofessionals in probation and parole work is necessary; however, the Project has clearly demonstrated that benefit can accrue to society through effective utilization and inclusion of the poor, the alienated, and others cut off from normal participation in the "mainstream" of American life.

²⁴ C. Terwilliger, "The Non-professional in Correction," *Crime and Delinquency*, 12 (3), July 1966, pp. 277-285.

²⁵ See footnote 15.

"BAND-AIDS," NOT PRISONS

Once there was a mythical city of 100,000 people in the United States.

It had no city hospital for seriously injured people, so emergency cases were taken to a nearby state hospital.

However, the state hospital was so badly operated, poorly conceived and over-crowded, that most injured people who were taken there did not get better. Rather, nearly all of them got worse.

Many of them died in the hospital, either physically or emotionally. Those who died there emotionally were sometimes even worse off than those who physically died there.

Those who stayed there for a short period of time and were treated and released were nearly always hurt more than they were helped. The vast majority of those who were released returned to the hospital over and over again, each time in worse condition than before because the hospital was such a poor institution.

When someone had an injured or dying friend or relative, he almost hoped that the ambulance would not take him to the hospital. It was so over-crowded, under-staffed, dirty, inefficient and terrible. The alternative, to let him die without being taken to the hospital often seemed even better.

Yet, they kept taking the injured to the hospital. Because there were always an increasing number of people living in the city, more and more people were injured and it got worse and worse.

Finally one man got an idea. Why don't we train a lot of our citizens in first aid? Then, when there is an accident, the injured could be treated without going to the hospital, where about ninety per cent of the injured only got worse. Maybe, he reasoned, if we truly knew how to help the injured person with first aid right there in the community --- in the city --- then he could not have to go to the hospital, where the chances were that he would not get better but only get worse.

Most of the people of the city laughed at him when he asked five of his friends to join him and learn how to give first aid to the injured.

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However, the few people who started to learn how to give first aid to the injured decided that if they could only help two people out of ten, it would be better than the hospital which, at best, only helped one person out of ten.

How they laughed at the six citizens. They even gave them a name that made them sound ridiculous. They called them the "Band-Aiders." They scornfully gave them this name to make it sound silly to try to help a severely injured person with band-aids. However, the six people sort of liked the name that had been given to them so they called themselves, "The Band-Aiders."

Folks in the city did not laugh quite so much when, after a few years, hundreds of citizens were trained and became very good at first aid. Slowly, they began to realize that, although some 90% of the injured taken to the hospital got infected even more severely and went on to worse problems, most of those who got first aid from the "Band-Aiders" got better and did not have to go to the hospital at all.

After many years, the city began to realize that putting on band-aids was not all that silly. Sure, there probably were times that the Band-Aiders did more harm than good. But not nearly as many times as the hospital hurt more than it helped.

Finally it got to the point where only the most seriously injured were taken to the hospital. They are still being hurt more than they are being helped. The rest, who are not quite so seriously injured, are getting band-aids now. Most of them get better.

The story --- and the analogy --- is not really mythical at all. The hospital is, of course, the prison. The injured are the apprehended criminals. The "Band-Aiders" are the volunteers who, working under the direction, supervision, surveillance, support and guidance of professionals, are becoming extremely effective.

Volunteers in the criminal justice system can, and are, doing exactly what our mythical Band-Aiders did. They are keeping many young offenders from going to prison knowing that once there, there is little hope for the future.

To be more specific, in a six month period of time in 1959, before one court started using volunteers, thirty one felony cases were brought to the Municipal Court for preliminary examination to determine if a crime had been committed and if the defendant probably committed the crime. If the lower court, the Municipal Court,

found that those two factors did occur, then the case was sent to the higher, adult felony court, for trial and final determination of guilt and innocence. If guilt was determined, then the higher court would sentence the defendant, often to prison.

Thirty out of the thirty-one cases were sent to the higher court for trial and possible prison sentences. Only one case, for lack of evidence, was not sent on to the higher court.

Six years later, in 1965, also during a six month period of time, thirty five cases were brought before the same court. Of those thirty five cases, ten were reduced to misdemeanors.

Two factors are highly significant. First, while the total population and number of felonies increased greatly from 1959 to 1965, nation-wide, the number of cases processed as felonies stayed about the same in that city. The "Band-Aiders" were keeping the number down. Hundreds of lay and professional volunteers, doing everything from serving as a friend to group psychotherapy, became involved.

Secondly, almost thirty per cent of the cases brought to the court were reduced from felonies to misdemeanors and were not sent on for trial and possible prison terms in the adult felony court.

Like the Band-Aiders who kept many injured people from going to the hospital, where the injured nearly always only got worse, so the volunteers were keeping many apprehended criminals from going to prison where they almost always got more hurt, scarred and dangerous than before.

As a further indication of the effectiveness of the volunteers, so many cases were reduced from felonies to misdemeanors that the parole officer in charge of the state parole office of the county in which that particular city was located noted a great decrease in the number of cases which were sent on to the higher court and received a prison and parole sentence. The operation of the parole office was materially changed because of the reduced number on parole, following a prison term.

How is it that the volunteers, working under the direction of professionals, were so effective? A few simple but extremely important facts stand out. First, the great majority of felonies are not characterized by extreme violence. A few of them are, but the great majority are not.

Murder, rape and robbery armed are the three violent felonies that come before the court most often. They involve extreme violence.

However, less than 10% of all felonies involve acts which give rise to the crime of murder, rape and robbery-armed. This means that the vast majority of felonies do not involve extreme violence.

What they do involve are acts of less violence or of fraud and deceit. In this category are such crimes as larceny from an automobile, larceny from a building, breaking and entering, unlawfully driving away a motor vehicle, etc.

In the vast majority of states in the United States, all felonies, including but not limited to the most violent felonies, first go to a lower court for a preliminary examination. Unless that lower court, often called a city court or a municipal court, finds that a crime was committed and that there is probable cause for believing the defendant did commit the crime, then the defendant is not sent for trial to the higher court. The function of the lower court is an adult misdemeanor court excepting only for the preliminary examination in felonies. The function of the higher court is to handle felonies in adult cases but only after the lower court rules that there is sufficient evidence for the higher court to do so.

Thus, there is a preliminary step where the lower court can, upon the request and petition of the police and prosecutor, reduce the crime from a felony to a misdemeanor. It is also possible for the court, alone, to do this in extreme cases without the petition and consent of the law enforcement agencies but those cases are not very common.

Thus, when a lower court really mobilizes the resources of the community, the police and the prosecutor will often see fit to write a misdemeanor charge in the first instance instead of a felony charge or will be prone to reduce felony charges to a misdemeanor in other cases. (Many acts give rise to either a felony or misdemeanor charge. Often, either can be processed.)

This is exactly what happened on numerous occasions in the city referred to above. Thus, it came to be that many cases were never presented by the prosecutor's office as felonies and many other cases originally presented as felonies were reduced to misdemeanors.

In view of the fact that about 80 to 90% of those committing felonies first commit misdemeanors and appear before our lower court and also considering the fact that felonies originally go to the lower court for preliminary examinations, it is obvious that if the lower court really does the job then we can substantially reduce the number of felony cases which are processed to the higher courts and on to prison and parole sentences.

This is true for a very simple reason. The lower, adult misdemeanor court in that city developed services which the higher, adult felony court simply did not have.

The reason why this lower court, with virtually no funds whatsoever, did develop these services is because it did not equate rehabilitative services with money and budget. In the higher court in the county referred to in this chapter, money meant services. If you had one dollar worth of money, you gave one dollar worth of services. Never did you give any more.

In the lower, adult misdemeanor court, money was not equated to services. Because of the volunteers, about one quarter of a million dollars in services was furnished its citizens on an extremely low budget of less than \$18,000 a year.

The lower court having established these services, what would you do if you were a prosecutor in a few of the following examples?

A young 17 year old youth has just driven away an automobile without permission. As you check into the case you find out that he has no prior record but he is extremely lonely. His father is alcoholic and his mother works outside of the home. He dropped out of high-school and has never really had a good positive influence in his life.

It is obvious to you that he needs a one-to-one friend who will listen to him, give him counseling and guidance, do for him what one friend does for another, help him to find a job, spend leisure time with him and help him gain dignity, pride and self-respect by enhancing his dignity through the art of listening, sharing and caring.

Obviously, the professional probation officer in the higher court does not have time to do this since he has a case load of over 75 probationers. Also, because he is so busy with pre-sentence investigations and administration, he only spends about ten per cent of his time counseling and supervising probationers. The vast majority of his time is spent in administration, management and investigations.

In the lower court, the volunteer can spend several hours each week, if necessary, since he has a case-load of just one probationer. Also, he is blessed with a number of professionals who can guide him, counsel him and share frustrations, failures and successes along the way.

What would you do if you were that prosecutor? Would you send the young man to the higher court for minimal probation or possibly on to prison followed by parole which would not really give him any help? Or, would you seek to have the case handled as a misdemeanor so that one of the hundreds of one-to-one volunteers in that lower court could work with him on an individual basis? The answer is obvious, particularly when it has been your experience as prosecutor to know that the recidivism rate and general success rate of the one-to-one volunteer under such circumstances is far better than the professional probation officer, over-burdened and under-staffed, in the higher court.

Or, perhaps, you have a young woman who has been guilty of larceny from an automobile. She stole a transistor radio from the front seat of a car. As you begin to investigate the matter a little bit more, you find out that she has attempted suicide on two previous occasions. The attorney for the defendant urges you to do what you can to solve the psychiatric problem which has caused her to become a menace to herself and to society.

You know that if the case is processed as a felony, absolutely no court or prison psychiatric services will be available to her because of her lack of money. However, the adult misdemeanor court in the city has a group of volunteer psychiatrists and psychologists who are willing to work with her on a one-to-one basis without any fee. They also have a group psychotherapy program in which a small number of approximately eight to twelve defendants who have emotional problems can meet on a group basis for two hours a week with a volunteer psychiatrist.

You know full well if she is referred to the higher courts and is convicted, that probation will simply mean a two or three minute meeting once a month with the probation officer of the higher court or she will receive a prison-parole term. You know that there is no chance she will get psychiatric help in that court or prison.

Do you think that you would have incentive, as a prosecutor, to process the case as a misdemeanor rather than a felony?

The next defendant who appears before you, Mr. Prosecutor, is an alcoholic. He broke into a store while drunk simply to steal a submarine sandwich and a bottle of beer. After he drank half of the beer and ate half of the sandwich, he passed out on the floor "dead" drunk. The next morning the owner found the store had been broken into and discovered the defendant on the floor. The charge would normally be breaking and entering, a felony.

You know that in the lower court, the adult misdemeanor court, the rehabilitative services include the assistance of a pre-sentence investigator who is a recovered alcoholic. He can make referrals to an alcohol information school and to the program of Alcoholics Anonymous which is directed by a recovered alcoholic who was previously referred to the court A.A. program by the judge. You know that the program is extremely effective for rarely can anyone but a recovered alcoholic succeed with an alcoholic.

You also know that in certain extreme cases, volunteer medical doctors will prescribe Antibus which is extremely effective in the limited number of cases where it is utilized.

You also know that in the higher court the probation officer, in the two or three minutes a month that he would have time to spend with the alcoholic, is unable to give him any real services. Prison, of course, will only make the situation worse.

What are you going to do, Mr. Prosecutor? Are you going to send him on to the higher court with a felony charge or will you seek to process the case in the lower court as a misdemeanor, even if it has to be reduced from a felony, so that the defendant can receive the assistance which he so desperately needs.

Or perhaps you, Mr. Prosecutor, are faced with a young man or woman who has need for professional services. Perhaps the teeth are crooked, dirty and cause the defendant to have extreme halitosis. Perhaps the defendant is badly in need of marriage counseling, his marriage being in complete shambles which causes him great emotional turmoil. Perhaps it is a case in which you suspect mild brain damage. Or maybe it is a case in which the legal problems of the defendant have become so desperate that he is beyond the point of control. Perhaps it is a case in which the I.Q. is relatively high but achievement is extremely low and there has never been an eye examination.

Are you going to send them to the higher court on a felony charge and then on to prison or to that one helpless probation officer? Or, are you going to reduce the cases from a felony, or present them as misdemeanors in the first case, so that the lower court of the city, which has volunteer dentists, medical doctors, marriage counselors, lawyers and optometrists who freely give of their services even to defendants who cannot afford professional assistance, will really solve the problem? Just as a matter of common sense, what do you think you should do in this case, Mr. Prosecutor?

Or, perhaps, it is a case in which the defendant obviously needs intensive professional counseling. Because of volunteers, the adult misdemeanor court has intensive professional services where well trained professionals can meet with the probationer for several hours a month at no cost to the defendant. You know that their services are extremely effective for you have seen what has been and is being done in your city.

Are you going to present the case to the court as a felony, insist that it be processed as a felony and sent to the higher court for minimal probation services or a prison term? Or are you going to have the matter handled as a misdemeanor where adequate professional services are possible?

Or perhaps you have an early offender who has never committed an offense before. You feel that it is a case in which the apprehended offender has really lived a reasonably good life but he committed a sudden, stupid act for absolutely no reason whatsoever. Would you be interested in a diversionary program where the early offender could earn dignity, pride, self-respect and a dismissal or would you like to have him sent to the higher court for a possible prison term.

You know that the vast majority of cases which are handled in a diversionary manner are done so very successfully because the program is tough, realistic, intelligent and thoroughly administered by volunteer retirees. You know that only about two per cent of the apprehended offenders who are referred to this program have failed to comply with the terms of the diverted procedure. The rest of them have earned dismissals and have gone on to the higher court or even come back to the lower court again.

Are you going to insist that these persons be handled as felons and sent to the higher court for a very minimal probation experience with virtually no rehabilitative services or possibly on to a prison sentence? Or are you going to do what you know is effective and process the case as a misdemeanor?

The answer, of course, is obvious. It was obvious to the prosecutor and to the police of the City of Royal Oak which we have been using as our example. This Michigan city of 100,000 people in the Detroit Metropolitan area did experience the things which are set forth above.

There are many, many different areas in which we have to be extremely effective as we work in the criminal justice system.

Some of us find ourselves working with juveniles before they commit offenses, some with juveniles who have committed offenses, some with prisoners who are forgotten and who are languishing in our prisons, some with parolees and others in bringing about systems change. All of these are extremely vital and important.

One of the very vital areas of concern in criminal justice is the young adult misdemeanor. Nearly all felons, nearly all prisoners and parolees are first misdemeanants. Also many times an act can be processed either as a misdemeanor or as a felony and should be handled as a misdemeanor for many reasons.

We urge the reader to do all he can to involve the volunteer and the professional in intensive, intelligent and individualized probationary services at the adult misdemeanor court level so that many offenders will not even be sent to a court where a prison term is possible.

Like the Band-Aiders in our example, volunteers and professionals, working together, can successfully accomplish this goal. When we do this on a massive, nation-wide scale we will greatly reduce the number of offenders who are sent to prison.

Since prison almost inevitably does more harm than good, it is important that this be one goal that we achieve in the near future.

As indicated above, the key words seem to begin with the letter "I". These words are Intensive, Individualized and Intelligent rehabilitative services.

By Intensive, we mean that several hours a month should be given to the needs of each probationer. This, of course, depends upon what those needs are. However, in some cases, it might involve as many as ten hours a month in services. Sometimes, the need for that amount of time continues or diminishes as the probation period goes to its conclusion.

Those who say that probation is not successful should know that the term "probation" usually refers to a very minimal type of supervision where the defendant reports by telephone, letter or, at best, in person for only a very few minutes once every one to six months or even perhaps only once a year.

We have often thought it would be good if we had a different name for that minimal type of probation. To call that method of probation and the kind of probation which we have been talking about, where the volunteer and professional combine to give intensive

services for many hours per month, by the same name is like calling a sand lot game, involving six year olds, and a major league game, involving the most skilled professionals, the one name of baseball. We are talking about two entirely different things.

The second tremendous need for effective probation is to give Individualized services. This means that we should spend five to twenty hours after guilt is determined but before sentencing to investigate the case & accomplish the following goals:

- 1) Gather information to help the judge sentence the defendant.
- 2) Evaluate this information and prepare a probation plan of rehabilitative services.
- 3) Divert those cases in which the problem is medical, emotional or involves some other difficulty which makes it inappropriate for court action. For example, some cases are psychiatric cases and should be treated medically by competent professionals and should not be in court at all. These cases should be diverted out of the court system.
- 4) Prepare the defendant for a probation department which will really share, care, and, with firmness, discipline and intelligence, give love to the offender.
- 5) Recommend in each case what is needed and constantly demand that the Probation Department increase and expand its services until they are total and complete.

The last requirement is Intelligence. This means that volunteers must be carefully recruited, screened, orientated, trained, supervised, supported, etc. All kinds of problems are presented to the court. It is necessary that we have all kinds of resources in solving those problems. There is no way the court can buy all the resources it needs which involve psychiatrists, psychologists, lawyers, medical doctors, dentists, professional counselors, one-to-one volunteers serving as friends, experts in alcoholism, marriage counselors, etc. The only way the court can receive these services is by and through the intelligent, intensive and individualized use of volunteers. We need both professional volunteers and lay volunteers.

When we bring all this together, we are extremely effective in reducing the necessity to process many apprehended felony offenders to prisons. Whenever anyone is diverted from a prison term, we greatly increase the possibility that he will make a successful adjustment to society and to a better and happier life. (And at tremendous savings to the taxpayers.)

One of the things which became evident in Royal Oak was that many hours had to be spent in the proper administration and management of a volunteer-professional rehabilitative program. In 1959, one man, the judge, spent one fourth of his time or 500 hours a year on the total criminal court process in our city. By 1965, about 500 citizens, nearly all of them volunteers, were giving 50,000 hours a year to the same process. Of those 50,000 hours, 14,000 hours were spent in the administration of the program by seven retirees who worked full time for the court. The cost to the taxpayer for their administrative services was absolutely zero, since some of them volunteered their time and others were paid by contributions from businessmen who believed in the necessity of the proper administration and management of the program.

This chapter began with a fairy tale. If this chapter had been written only ten years ago, it would have ended in a fairy tale. No one would have believed that it was possible to harness the citizen power of a community to give Intensive, Intelligent and Individualized rehabilitative misdemeanor court services.

Now, what we are suggesting is not a pretend or make-believe fantasy. In the last ten years the number of citizens involved as volunteers in courts and corrections has grown from virtually zero to about one-third of a million volunteers who are involved in some 2,000 programs in courts, jails, prisons and juvenile institutions. In another three to five years one million of our citizens will be involved. Most of these volunteers give their time to juvenile and adult misdemeanor courts.

We can work hard, involve the citizens of our community and develop rehabilitative court services which will prevent many of our offenders from a felony conviction and a prison term. "Band-Aids" are effective.

This is what hundreds of communities are doing now. This is what thousands of our communities must do in the future if we are going to solve the problem and the challenge of crime in a free society.

CIVIL DISABILITIES: THE FORGOTTEN PUNISHMENT

AUTHOR'S UPDATE

Civil Disabilities: The Forgotten Punishment was written in 1971. With few exceptions, it still accurately describes the status of the American law of civil disabilities.

The most significant recent developments involve efforts to alleviate the employment problems of ex-convicts. The states of Florida and Washington, for example, have enacted statutes which permit the denial of employment and occupational licenses only for offenses closely related to the job or license sought. Fla. Stat. Ann. § 112.011 (1973); Ch. 135, § 2 [1973] Laws of Washington 406. Private efforts, such as that of the American Bar Association National Clearinghouse on Offender Employment Restrictions, have also been influential in altering public opinion through research and publications which have shed light on the ex-convict's employment difficulties. A recent law enacted by the Hawaii legislature represents the most far-reaching reform to date. This provision removes public and licensed employment restrictions based solely on a criminal record. It also prohibits discrimination in private employment on the basis of an arrest or court record. 15 Cr. L. Rep. 2548 (Sept. 25, 1974).

The courts have been much slower than the legislatures in removing discrimination based on criminal conviction. Although in the past three years there have been a few lower court judicial decisions invalidating various state civil disability laws, there is clearly no discernible trend in this direction. This is demonstrated by the United States Supreme Court's recent decision in Richardson v. Ramirez, 94 S. Ct. 2655 (June 24, 1974), which upheld California laws disfranchising persons convicted of certain crimes. The Supreme Court's refusal to find that the Constitution is violated by what was thought to be the most vulnerable civil disability laws indicates that the various provisions described in Civil Disabilities: The Forgotten Punishment will be a part of the American system of criminal justice for some time.

October, 1974
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Civil Disabilities: The Forgotten Punishment

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THE CONDITIONS in the Nation's prisons, long a dormant area of active social concern, have recently come under sharp public censure and penetrating legal scrutiny. As the result of this increased interest, correctional officials have brought about some progressive reforms which have kindled the ancient hope that the recidivism rate will decline. Unfortunately, those who harbor such beliefs often overlook the superstructure of statutory and regulatory disabilities that adversely affect the criminal offender's rehabilitation both during his time in prison and, perhaps more crucially, after his release. These "civil disabilities," imposed by every state and the Federal Government upon many convicted offenders, may deprive these persons of such privileges as voting, holding public office, obtaining many jobs and occupational licenses, entering judicially enforceable instruments, serving as a juror or fiduciary, maintaining family relationships, obtaining insurance and pension benefits, and many others. Despite the widespread enactment of civil disability laws, until recently there had been no comprehensive study of the extent and effect of civil disabilities in the United States.

In an effort to examine this virtually virgin area of peno-correctional law, the *Vanderbilt Law Review* published a comprehensive survey and evaluation of the civil consequences of a criminal conviction.¹ The results of this study, partly summarized below, emphasize the neglect and lack of commitment the public, through its elected representatives, has shown toward the rehabilitation of convicted offenders. This oversight is especially significant today since many convicted criminals are young offenders being punished for their encounters with drugs, civil rights, or the military. This group will join all other ex-convicts in being forever shackled with the stigma of their conviction until a massive restructuring of the collateral consequences of

criminal conviction is undertaken by the courts and legislatures.

Civil disabilities are not the product of American jurisprudence. Convicted persons were saddled with civil disabilities in both ancient Greece and Rome. English law, reflecting a Roman heritage and certain fiscal and philosophical considerations, imposed civil disabilities through "attainder." The attained criminal generally forfeiting his civil and proprietary rights, became "civilly dead." American jurisprudence blindly followed the English tradition and adopted a host of civil disability laws. Thirteen states retain various parts of the concept of civil death, including, in some states, the general loss of civil rights. Every other state and the Federal Government have enacted specific disability provisions that deprive convicted persons of various rights and privileges.

Every convicted person, however, is not within the purview of the civil disability laws. Most such statutes are applicable only when the offender has been "convicted" of a crime. This requirement may pose problems when judgment and sentence have not been imposed and when the offender appeals his conviction. Similarly, civil disability laws apply only to certain crimes. While perhaps most provisions apply to convictions for a "felony," others require the offense to be an "infamous crime" or a crime "involving moral turpitude." The use of such broad classes of crimes presents two problems. First, it may be difficult to ascertain whether a particular crime is within a certain class of crimes. Secondly, the class may include more crimes than are necessary for that particular disability. In an effort to avoid these problems, some disability provisions specify the exact crimes for which the statute is

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¹ As already stated, the material for this article was primarily drawn from the 302-page study published as the October 1970 issue of the *Vanderbilt Law Review*. Entitled "The Collateral Consequences of a Criminal Conviction," this exhaustive project lists, categorizes and evaluates the civil disability laws and related judicial developments in all 50 states, the Federal Government and numerous model acts. Readers interested in a more complete treatment of the subject, including the many details and exceptions necessarily omitted from this article, should consult the *Vanderbilt Law Review* study. Copies of the *Vanderbilt* study can be obtained for \$2.30, including postage, by writing the *Vanderbilt Law Review*, Vanderbilt School of Law, Nashville, Tenn. 37203.

For purposes of this article, the terms "offender," "convicted offender," "criminal offender," "criminal," and the like generally refer to persons who have been convicted of a serious crime. Terms such as "prisoner" and "convict" refer to offenders who are incarcerated. "Ex-convict" refers to offenders who have been released from a correctional institution.

applicable. Civil disability laws also present difficulties when the offender was convicted of a crime in another state. Although most states do not distinguish between in-state and out-of-state convictions, a few states apply their civil disability laws only to persons convicted in that state. The wisdom behind the latter view is questionable since convicted burglars, for example, present the same threat to the people of a certain state no matter where the conviction occurred.

Loss of United States Citizenship

Despite the common belief that the deprivation of United States citizenship is one of the many disabilities resulting from a criminal conviction, the convicted criminal probably does not lose his national citizenship. Congress has only provided for denationalization for conviction of serious crimes involving antigovernment behavior, and even these narrow provisions are presumably unconstitutional in view of several recent Supreme Court decisions. Criminal conviction also will rarely affect an offender's right to obtain a passport. The passport application merely requires an applicant to list his conviction for antigovernment crimes such as treason, and the passport office makes no independent check of an applicant's criminal record.

Loss of Right To Vote and Hold Public Office

In most states, citizens convicted of serious crimes are technically disfranchised in state and federal elections both during and after confinement in prison. Even where a prisoner is not legally disfranchised he may still be unable to vote because of his inaccessibility to voting machinery, including the absentee ballot. Although the provisions denying convicted citizens the privilege of voting have generally withstood constitutional attack, recent cases, elevating the right to vote to a preferred right in our system of government, subject this disability to serious constitutional doubt. Irrespective of the constitutional challenges, the disfranchise provisions, often disqualifying harmless ex-offenders, are subject to criticism for their part in preventing the convicted offender from assuming his role as a responsible citizen with a stake in the society in which he lives.

Criminal conviction may also disqualify a citizen from holding public office. Although the United States Constitution does not disqualify a convicted person from holding federal office,

numerous federal statutes exclude persons convicted of certain crimes from holding such positions. It is questionable, however, if many of these federal statutes will withstand judicial scrutiny since Congress may not be able to supplement the qualifications contained in the Constitution.

As a general rule, a person with a criminal record stands a better chance of qualifying for a federal office than for a state or local office. In most states citizens convicted of serious crimes are directly or indirectly ineligible to hold all or most state offices. Often these provisions require automatic forfeiture of offices held at the time of conviction, although a few states require that the convicted incumbent be impeached before his office must be vacated.

The provisions making convicted citizens ineligible for public office are designed to protect the public rather than to punish the criminal. Considering the overly inclusive application of these statutes, however, the same end could be accomplished by more specific statutes that impose this disability only when the conviction was for a crime indicating that the offender would threaten the public if permitted to run for a public office. Such provisions would provide the public with the protection it needs while allowing most released offenders to participate in the civic culture. It is also arguable that the United States should adopt the Swedish system of permitting informed voters to elect the candidate of their choice, irrespective of his criminal record.

Loss of Employment Opportunities

It is no longer disputed that an important factor in the convicted offender's tendency to commit postrelease crimes is his difficulty in finding legitimate employment commensurate with his ability and financial needs. Much of this discrimination is the result of prejudices of private employers who may even refuse to hire an individual because of arrests not leading to conviction. The private employer may also refuse to hire an ex-convict for a position requiring a fidelity bond because many fidelity insurance companies refuse to bond ex-offenders.

The ex-convict faces an even greater barrier in retaining or obtaining employment requiring an occupational license than he does unlicensed employment. The rapidly increasing number of occupations requiring such licenses aggravates this problem. Today, for example, occupational licenses are required for everything from barbers

to minnow dealers.² Laws of the Federal Government, every state, and countless municipalities exclude the offender convicted of a serious crime from holding many of these licenses. While many of the provisions directly disqualify persons convicted of certain general or specific crimes, other provisions may indirectly disqualify ex-convicts by requiring that the applicant possess "good moral character" or practice "professional" conduct, standards subject to potential abuse against ex-convicts.

Governments, despite their attempts to rehabilitate convicted persons, also often refuse to hire ex-convicts. Both federal and state statutes prohibit persons convicted of certain crimes from holding various routine governmental positions. Sometimes the provisions do not require criminal conviction—an applicant's "immoral conduct" is a sufficient ground to deny him employment. Of course, a criminal conviction may constitute immoral conduct.

These provisions, barring many ex-offenders from private, licensed, and public employment, desperately need re-examination. For example, a law that permits a city to refuse to hire an ex-convict as a tree trimmer because of his criminal conviction does nothing but detract from efforts to rehabilitate convicted offenders.³ It certainly does not protect the public from any significant threat. Public employers must begin to set an example for private employers by hiring and training ex-convicts. In addition, private employers should be encouraged to employ ex-offenders through such federally sponsored programs as fidelity bonding and tax-incentives, and licensing standards must be made more realistic and specific. If anything, in many cases the public is overprotected and actually harmed by unnecessary or excessively restrictive licensing provisions that do not require a determination of the suitability of *this* individual for *this* license.

Loss of Judicial Rights

Frequently, the American judicial system convicts the criminal then reminds him of the conviction whenever he voluntarily or involuntarily becomes a participant in that system. In a few states, for example, the prisoner cannot bring a suit in his own name. Even where he can maintain a suit in his own name, often he must sue

through a personal representative who is appointed to protect the prisoner's interests.

Although prisoners in some states lose their capacity to sue during imprisonment, in all states suits can be maintained against prisoners. In most states, however, the prisoner is not permitted to appear personally to defend himself. Many states authorize the appointment of a trustee to manage the affairs of prisoners. In these states the trustee can sue in the prisoner's behalf. Taking a surprisingly modern approach to this problem, Arkansas provides by statute that judgment cannot be rendered against a prisoner until a defense has been entered for him by a retained or appointed representative.⁴

In some states, criminal conviction may substantially impair the offender's right to execute and enforce valid legal instruments, including wills. For example, a few states, adhering to a strict view of the ancient civil death concept, deny the convict the right to enter all or certain contracts, or prohibit him from enforcing the contracts he makes. These statutes do nothing but frustrate the inmate's successful rehabilitation as is illustrated by the fact that in some of these states it is questionable if a convict could enter a legally enforceable contract for a correspondence course to improve his education.

Just as criminal conviction does not usually impair the offender's right to contract, it also rarely makes him incompetent to serve as a witness in a judicial proceeding. If his conviction is for perjury or a related offense, however, in a few states he is *automatically precluded* from testifying. Even when the convict can testify in court, his conviction is usually admissible to impeach his credibility. Perhaps it would be best to limit the use of a criminal conviction for impeachment purposes to crimes involving a falsehood or breach of trust.

Although many criminal convictions are the result of a jury verdict, in most states an offender convicted of a serious crime is not permitted to serve as a juror. A few states even disqualify persons under indictment for certain crimes. The statutes often follow no logical pattern. In Pennsylvania, for example, some counties disqualify from jury service persons convicted of a "felony," while other counties bar persons convicted of a crime involving "moral turpitude."⁵ The courts disagree whether a new trial is required when a jury contains an ex-offender who should have been disqualified from jury service.

² E.g., Okla. Stat. Ann., tit. 29, § 822 (Supp. 1970-71).

³ *Atencio v. Rossmiller*, Civil No. C-1493 (D. Colo., January 18, 1970).

⁴ Ark. Stat. Ann. § 27-833 (1962).

⁵ E.g., Pa. Stat. Ann., tit. 17, §§ 1262(c), 1279(c), & 1333 (1962).

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Just as the criminal offender may have difficulty serving as a juror, he may also be disqualified from serving as a court-appointed fiduciary, such as an executor, administrator, trustee, testamentary guardian, or guardian ad litem. Unlike the juror qualification statutes, the former offender under this disability is usually disqualified because of the judge's wide discretion in making or approving the appointment. It is submitted that too many judicial officials automatically exclude ex-convicts from these positions of trust, irrespective of the circumstances and evidence of rehabilitation.

Loss of Domestic Rights

Perhaps nothing is as detrimental to the rehabilitative efforts of correctional personnel as the disintegration of the prisoner's family. Unfortunately, present laws and practices discourage convicted offenders from obtaining or retaining strong family ties. Some state statutes even attempt to prevent certain offenders from beginning families. For example, a few states, evidently assuming that criminal tendencies are congenital, prohibit the marriage of habitual criminals.⁶ Moreover, the laws of at least nine states authorize the sterilization of specified offenders.

Similarly, most states make criminal conviction or imprisonment a ground for divorce. An offender's conviction may also cost him his children. Even if his parental responsibilities are not lost as part of a divorce decree, a parent's incarceration may bring him within the purview of state statutes authorizing the termination of parental rights if a child is found neglected or dependent. In some states a parent's criminal conviction may also permit the adoption of his children without his consent.

Although it is submitted that incompatible families should not be forced to stay together, it must be recognized that the state has an interest in promoting the family ties of convicted offenders. The laws should focus on methods of encouraging, not discouraging, these ties. A start in this direction can be achieved through variations of work release and family visit programs where prisoners and their families are permitted to live together under appropriate conditions. Increased use of family counseling would also help. These efforts will be only of limited success, however, until the existing statutory scheme is

altered to reflect the important and neglected policy of preserving the prisoner's family relationship.

Loss of Property Rights

Criminal conviction may cost the offender his property as well as his family. Modern statutes that affect the offender's property rights had their origin in the common law concept of attainder which resulted in the forfeiture of the convict's land and chattels. Paralleling restrictions on attainder in the United States Constitution, a large majority of the states have substantially abolished the feudal doctrine. Consequently, in the United States, property divestment upon criminal conviction is a limited and almost nonexistent practice. At least three states, however, have enacted express divestment statutes which restrict the life convict's retention or inheritance of property. Theoretically, these statutes are designed to protect the life convict's creditors or spouse.

The convicted person's capacity to acquire property by inheritance is governed entirely by state statutes of descent and distribution. As a general rule, the convicted offender retains the right to inherit from anyone. The major exception to this rule is contained in "slayer's statutes" which preclude an offender from inheriting from the person he is convicted of feloniously killing. In addition to the rule that the killer cannot inherit from his victim, some jurisdictions do not permit a spouse guilty of abandonment or non-support to inherit from the innocent spouse. Of course a prisoner may suffer from a technical reading of this type of statute.

Many convicts lose their home, land, and other property since they are unable to supervise their business interests while in prison. As a result of this financial loss, they are subject to severe rehabilitative setback. They may suffer the psychological frustrations that result from their inability to control what is rightfully theirs and therefore lose some incentive to return to the outside world. One method of circumventing this restriction on a convict's economic activity and alleviating the resulting hardship on the prisoner and his family is through the appointment of a representative to act for him. Eighteen states have specific statutory provisions for the management of the inmate's estate by the appointment of a guardian, trustee, or committee. Many of these laws, however, provide only a limited degree of protection since they apply only to spec-

⁶ N.D. Cent. Code § 14-03-07 (Supp. 1969); Va. Code Ann. § 20-46 (Supp. 1970); Wash. Rev. Code Ann. § 26.04.030 (1961).

ified classes of convicts and to relatively few situations.

Loss of Insurance, Pensions, Workman's Compensation Benefits

A criminal conviction, imprisonment, or involvement in criminal activity can have a substantial impact upon the ability of an offender to obtain, enforce, or benefit from a life insurance policy. Most major life insurance companies refuse to insure a convict because the company is uncertain about his future prospects for rehabilitation. After the inmate's release from prison, however, few companies will automatically deny him life insurance merely because of his conviction. Most companies make the decision whether to issue life insurance to ex-convicts after considering such factors as the gravity, proximity, and amount of violence involved in the offense, the likelihood of return to crime, the demonstrated degree of rehabilitation, and the number of convictions.

A more restrictive policy prevails when the ex-convict attempts to procure automobile insurance. Automobile insurance underwriters often deny policies to applicants with criminal records because of the contention that the existence of an insured's criminal record prejudicially affects the insurer's chance of defending a claim against its insured. It is noteworthy, however, that insurers have not been able to supply the states with the underwriting statistics necessary to support this assumption. The convicted offender who is denied regular automobile insurance may have to resort to other means of obtaining coverage. For example, "high risk" insurance and the assigned risk plan available in most states provide the necessary coverage at significantly higher rates.

Criminal conviction may affect an offender's pension just as it affects his insurance. Many offenders who fulfill the statutory requirements of age and years of service for public pension benefits may nevertheless be precluded from participating in a pension fund. The Federal Government and at least 18 states directly disqualify some government employees convicted of various offenses from participating in annuity, pension, or retirement programs. The Federal Government has extended this principle to recipients of Social Security. In the absence of a

direct disqualification provision, a criminal conviction may still deprive the offender of pension benefits on the basis of general formulas requiring honorable and faithful service as a precondition to the receipt of pension benefits. As in the employment situation described above, the unconfined discretion vested by these general standards often leads to harsh results. In a recent case, for example, a police officer forfeited his disability pension benefits when he was convicted of a misdemeanor that he had committed *during his employment*.⁷ As a result of this minor conviction, for which he was fined only \$100, the pension board permanently discontinued his disability payments of over \$346 per month.

A worker's receipt of workman's compensation benefits may also be adversely affected by his criminal conviction. At the present time only two states use the recipient's criminal conviction as grounds for terminating his workman's compensation benefits for preconviction injuries. However, the offender is not as fortunate when he sustains an injury while working in prison, even though he was required to perform the task which caused his injury. Although federal prisoners are usually compensated for their inprison injuries, a majority of the states do not provide for such compensation. By so immunizing themselves from liability, these states encourage unsafe working conditions and poor treatment of prisoners by supervisory guards. Since many prison industries perform valuable work for the states, the denial of benefits to convict-employees may be likened to a form of indentured servitude.

Restoration of Civil Rights and Privileges

Although most states provide procedures for terminating some or all civil disabilities some time after the offender's conviction, it is submitted that the existence of meaningful relief from the collateral consequences of a criminal conviction is more illusory than real. Yet, the necessity of a ceremony terminating the stigma and disabilities conferred by a criminal conviction is recognized as an important rehabilitative mechanism markedly absent from the present process. One method presently available in many states for the restoration of rights is a pardon by the governor. This act of executive grace, however, is a vacuous and unrealistic alternative for all but the few ex-offenders having the necessary political connections. Even if an ex-convict is able to secure a pardon, many courts rule that the

⁷ *Fromm v. Board of Directors of Police and Firemen's Retirement System*, 81 N.J. Super. 138, 195 A.2d 82 (App. Div. 1963).

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acceptance of a pardon constitutes an implied confession of guilt that does not obliterate the conviction. Thus, the presumably fortunate ex-convict receiving an executive pardon may still be disqualified from occupational and professional licenses that, by statute, can be issued only to persons without criminal records.

Realizing the weaknesses of the pardon procedure, at least 13 states have adopted automatic restoration procedures. Enacted to facilitate the restoration of an offender's civil rights and to make the administration of restoration more efficient and economical, these procedures restore the offender's civil rights automatically upon fulfillment of certain conditions, such as completion of the prison sentence, probation, or parole. Unfortunately, since automatic restoration is usually construed by courts as tantamount to a pardon, the procedure generally does not restore the ex-convict's eligibility to receive an occupational or professional license, despite the evidence of rehabilitation.

The most enlightened and penologically progressive method of restoration now in existence is contained in expunction or annulment procedures adopted by about a quarter of the states. Both kinds of statutes are designed to restore forfeited rights and uplift the offender's status by exonerating him from the fact of his conviction and concealing the conviction from the public view. Although subject to restrictive interpretation in the licensing and occupational areas, these procedures are presently the most effective in allowing ex-convicts to escape their past record.

Restorative relief in states without automatic restoration, expunction, or annulment procedures is governed by miscellaneous provisions in which an administrative board, the judiciary, or the legislature is vested with the power to restore civil rights. In an attempt to unify these myriad procedures, several model restoration acts have been proposed, each reflecting the belief that the extant procedures are too cumbersome, costly, or unrealistic.

Constitutionality of Civil Disabilities

The recent extension of constitutional guarantees to students, welfare recipients, and prisoners lends encouragement to the possibility that the judiciary will more fully recognize the constitutional infirmities that infect most civil disa-

bility statutes. Susceptible to broadside constitutional challenges, civil disability laws have recently been invalidated in two important cases. Both cases are noteworthy for their utilization of the equal protection clause of the 14th amendment to strike down civil disability laws. In one case a federal court overturned the New Jersey voting disability statute, which established arbitrary classifications of disabling crimes.⁸ After reviewing the erratic and haphazard history of the statute, the court observed that "it is hard to understand why Bill Sikes should be ineligible for the franchise and Fagan eligible." The court was referring to the New Jersey statute's senseless classification which disfranchised persons convicted of blasphemy, polygamy, or larceny over \$6, but did not disfranchise those convicted of fraud, tax fraud, bribery, embezzlement, attempted murder, kidnapping, bomb-carrying, or, like Fagan in the court's reference to Oliver Twist, receiving stolen property. It is relevant to note that many of the Nation's civil disability statutes are as inartfully drawn and equally subject to constitutional attack.

The second important disability case is *Muhammad Ali v. Division of State Athletic Commission*,⁹ in which a federal court enjoined the New York State Athletic Commission from denying a former heavyweight champion renewal of a license to box because of his conviction, still under appeal, for refusal to be inducted into the armed forces. The court relied on the plaintiff's extensive investigation which revealed that the Commission had customarily granted licenses to other offenders, many of whom had been convicted of rape, arson, burglary, and other crimes involving moral turpitude. Armed with this decision as a precedent, future lawsuits in behalf of ex-convicts based on investigations of licensing or occupation commissions' files may expose the arbitrary and capricious policies employed by these commissions in refusing ex-convicts legitimate work opportunities.

Fruitful constitutional challenge may also be predicated on the due process and cruel and unusual punishment provisions in the constitution. By raising the standards of fairness, rationality, and proportionality of punishment embodied in these guarantees, law suits may markedly limit both mandatory and discretionary disabilities. It has been argued persuasively, for example, that barring entrance to the legal profession for a drug or selective service conviction is an unconstitu-

⁸ *Stephans v. Yeomans*, Civ. No. 1005-70 (D. N.J. Oct. 30, 1970).
⁹ 316 F. Supp. 1246 (S.D.N.Y. 1970).

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tional denial of due process because the offense was neither rationally nor directly connected to the functions of the occupation. Extending this principle of rational and direct connection to ex-convict applicants for all public jobs and licenses could prevent many of the injustices perpetrated against ex-convicts in the job market.

Civil Disabilities and Modern Corrections

Although, as previously noted, the law does not technically exact the price of citizenship for the commission of a crime, relating this seemingly happy fact to offenders is a difficult and almost embarrassing task when the long list of forfeited rights and privileges are recounted in the same breath. An inmate's typical response is: "What good is it for me to be a good citizen when society will not treat me like one?" This valid yet perplexing question epitomizes the negative impact the forfeiture of rights and privileges has on the rehabilitation of the offender. By implicitly sanctioning community attitudes of mistrust toward all offenders, whether law-abiding or not, civil disabilities are at war with the basic concepts of rehabilitation theory.

Although the imposition of civil disabilities is felt less by the inmate than the releasee, the convict's knowledge of the loss of certain rights may deprive him of the incentive to start his life anew. A recent survey found that convicts were overwhelmingly aware of the effect their conviction would have on future job opportunities.

The debilitating influence of civil disabilities on the offender is vastly magnified upon his release. Civil disabilities discourage the ex-convict from participating in normal community life by restricting him from activities routinely performed by other members of the community. By thus denying the offender access to the norms of community living, civil disabilities retard his full socialization into the law-abiding community and produce attitudes of rejection and estrangement from the very institutions that foster development of lawful conduct. It has been demonstrated, for example, that disfranchisement of minority groups often increases their feelings of alienation and frustration. Similarly, depriving ex-convicts of the symbolic power of the vote may decrease their desire to participate in a society

that gives them no voice in changing oppressive and archaic policies that affect their lives.

Civil disabilities also operate as a causative factor in the social degradation of the ex-convict by promoting what one writer has termed the "management of status" in the community.¹⁰ According to this theory, community attitudes prevent convicted offenders from attaining the same station in life as those persons without a criminal record, everything else being equal. Civil disabilities visibly mark the offender as automatically unworthy and unfit for the performance of certain functions. This badge helps to shape society's concept of the lawbreaker and demonstrates to the offender that he is not free to pursue an ordinary life. Until this machinery of status management is dismantled, the imposition of civil disabilities will remain an arbitrary societal control over the status of convicted persons.

Recommendations and Conclusions

Substantial reform of the disability schemes in all states and the Federal Government is imperative before full rehabilitation of criminal offenders can be achieved. In addition to the need for uniformity among jurisdictions, remedial action of a threefold nature is required. First, the entire scheme of civil disabilities must be re-examined and restrictions that are not necessary to protect the public must be eliminated. Secondly, existing provisions that call for the blanket application of disabilities must be replaced by procedures whereby a convicted person will lose only those rights and privileges that are related to the criminal offense to the extent that the offender's exercise of a function would pose a direct, substantial threat to society. Thirdly, imaginative measures are needed to ensure that the disabilities imposed are removed as soon as the convict's rehabilitative progress indicates this action is warranted.

It is recognized that neither the adoption of these recommendations nor the total elimination of civil disabilities will free society from crime and recidivism. But it may help. The crime rate will remain unacceptably high until ex-convicts re-establish themselves as productive members of a nonretributive community. To the extent that civil disabilities impede this progress, they must be reassessed and revamped to conform to modern theories and methods.

¹⁰ See Schrag, *The Correctional System: Problems and Perspectives*, 381 *Annals* 11 (1969).

Disclosure of the Presentence Investigation Report

BY WILLIAM G. ZASTROW

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FOR THE PAST 20 years there has been considerable debate over the issue of disclosure of the presentence investigation report to the defendant and his attorney. A majority of the judiciary and their probation staffs have argued strongly against disclosure or even partial disclosure of the report.

The issue of disclosure has been the subject of recommendations from the Advisory Committee on the Federal Rules of Criminal Procedure in 1944, 1962, 1964, 1966, and 1970.

The present Rule 32 (c) (2) authorizes the court to release presentence information.

The court before imposing sentence may disclose to the defendant or his counsel all or part of the material contained in the report of the presentence investigation and afford an opportunity to the defendant or his counsel to comment thereon. Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government.¹

The preliminary draft of proposed amendments (January 1970) to the Federal Rules of Criminal Procedure for United States District Courts enlarges the rule of disclosure. (Rule 32.2 (c) (1).)

Before imposing sentence, the court shall permit the defendant and his counsel, if he is so represented, to read the report of the presentence investigation unless in the opinion of the court the report contains information which if disclosed would be harmful to the defendant or other persons, and the court shall afford the defendant or his counsel an opportunity to comment thereon.

The proposed amendments also provide a safeguard for handling such information the court believes may be harmful to the defendant or others. (Rule 32.2 (c) (2).)

If the court is of the view that there is information in the presentence report, disclosure of which would be harmful to the defendant or other persons, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the background information contained therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

The report of studies and recommendations made by the Bureau of Prisons and the Youth Corrections Division of the U. S. Board of Parole

pursuant to 18 U.S.C. 4208(b), 5010(e), or 5034 would be considered a presentence investigation within the meaning of the rule.

In recent years three organizations have recommended that the presentence report be disclosed to the defense—the American Bar Association in its *Standards Relating to Sentencing Alternatives and Procedures*, the American Law Institute in its *Model Penal Code*, and the National Council on Crime and Delinquency in its *Model Sentencing Act*.

From my contacts with federal and state probation officers, it is obvious that the practice of disclosing the presentence report varies greatly from district to district and from state to state. In some federal districts the presentence is completely confidential. In other districts, one of the judges may reveal the presentence report while his fellow judges in the same district maintain that it is a confidential document.

In some districts a copy of the statement of the offense, the defendant's version of the offense, and the prior record are routinely made available to the defendant and his attorney. Some courts direct that the full presentence be reviewed by the defendant and his attorney.

Some judges will argue that due to their extensive law training and years on the bench presiding at trials, they are able to carefully evaluate information in the presentence report and separate fact from hearsay. Unless the report is carefully written and hearsay is so labeled, it may be difficult to perform the necessary winnowing.

Arguments Against Disclosure

A number of arguments have been advanced against the release of the presentence report to the defendant and his attorney. Some of them are the following:

1. Confidential sources will "dry up." This would deprive the court of information both useful and necessary in the sentencing process.

2. The sentencing process would be delayed, sentence hearings would be protracted, the proba-

¹ Rule 32 (c) (2), Federal Rules of Criminal Procedure.

DISCLOSURE OF THE PRESENTENCE INVESTIGATION REPORT

tion officer would be required to testify at such hearings and reveal his sources of information.

3. Revealing information to the defendant would damage the working relationship between the defendant and the probation officer and might, in certain instances, hurt him emotionally.

4. Informants might be subject to retribution at the hands of the defendant or the disclosed information might prove embarrassing to both the defendant and the informant.

5. Disclosure would result in fewer probation grants.

Arguments for Disclosure

Proponents for disclosure base their arguments on fairness to the defendant.

Although due process probably does not require disclosure of the presentence report (Williams vs. Oklahoma, 358 U.S. 576), if the fact basis of the report is incorrect, re-sentencing may be required by the Fifth Amendment (Townsend vs. Burke, 334 U.S. 736 and Baker vs. U.S., 388 Fed. 2nd 931). If disclosure is not permitted, such inaccuracies are uncovered only if a judge has articulated his reasons for imposing a particular sentence.²

Following are some of the arguments for disclosure:

1. Proponents for revealing the presentence report maintain that disclosure helps the defendant better understand the reason for the court's disposition of his case and may well be the first step in his rehabilitation.

2. At the trial level, the defendant and his attorney have available to them the evidence which will be presented and consequently an overview of the entire trial process. But nondisclosure of the presentence report excludes the defendant from the sentencing process.

3. The defendant is given an opportunity to refute damaging information which may be based solely on hearsay. Or he may clarify statements that are inaccurate or are exaggerated. On this point Justice William O. Douglas has made a succinct statement in support of disclosure of the presentence report.

The imposition of sentence is of critical importance to a man convicted of crime. Trial judges need presentence reports so they may have at their disposal the fullest possible information. . . . But while the formal rules of evidence do not apply to restrict the factors which the sentencing judge may consider, fairness would, in my opinion, require that the defendant be advised of the facts—perhaps very damaging to him—on which the judge intends to rely. The presentence report may be inaccurate, a flaw which may be of constitutional dimension. . . . It may exaggerate the gravity of the defendant's prior offenses. The investigator may have

made an incomplete investigation. . . . There may be countervailing factors not disclosed by the probation report. In many areas we can rely on the sound exercise of discretion by the trial judge; but how can a judge know whether or not the presentence report calls for a reply by the defendant? Its faults may not appear on the face of the document. . . . Whatever should be the rule for the federal courts, it ought not to be one which permits a judge to impose sentence on the basis of which the defendant may be unaware and to which he has not been afforded an opportunity to reply.³

Practice of Disclosure in the Eastern District of Wisconsin

In the Eastern District of Wisconsin the presentence report has been routinely available to the defense counsel for approximately 5 years. Needless to say, when we commenced disclosure of the presentence report on direction of the court, we approached our task of report writing with some misgivings. We consequently developed some "mechanics" which we believed would be helpful in the preparation of our reports. These "mechanics" have led to a more thorough, accurate, and objective report.

In our district, immediately after the defendant has entered a plea of guilty or has been found guilty, he is directed to contact our office, accompanied by his attorney. In the presence of his attorney, the defendant is informed of the purpose of the presentence investigation, the areas covered by the report, and the material which we believe is essential. He is also told that the presentence report will be available to his attorney for review and comment.

In the course of the investigation attorneys have volunteered to secure medical and psychiatric data or other documented information which they believe will be helpful in the preparation of our report. The defendant, in the presence of his attorney, is asked to sign releases for confidential information such as school records, medical history, and employment.

Family members interviewed are informed that information they present to us will be available to the defense attorney.

Where we obtain information which is contrary to that furnished by the defendant, he is re-interviewed. If the defendant maintains that his initial statement is correct, both versions are placed in the presentence report.

Arrest records are reviewed with him to determine whether he attests to their accuracy. If any arrest is challenged, the arresting agency is contacted to determine whether there is an error.

² *Georgetown Law Journal*, Vol. 58, No. 3, February 1970.

³ Opinion of Mr. Justice Douglas, 39 F.R.D. 275, 278 (1966), dissenting from promulgation of changes in F.R.Crim.P. 32(c) (2).

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Arrests which did not result in a conviction are eliminated from the presentence report.

When the report is completed, the defense attorney is invited to our office at his convenience to read the report, take such notes as he desires, and to discuss the report with the probation officer who conducted the investigation or, if he is not present, with the chief probation officer. He is also invited to challenge such portions of the report he believes may be inaccurate. In 5 years, only three minor challenges have resulted which the court quickly resolved at the time of sentence.

It is the opinion of the staff that through disclosure of the presentence report, we have received considerably more help from the defense attorney in the presentence investigation and that the defendant has a better understanding of the disposition ultimately arrived at by the court.

After reviewing the presentence report, the defense attorney often is aware of certain facets of his client's life about which he had no previous knowledge. In some instances the attorney has assisted his client in setting up a probation plan and at the time of sentencing has made a recommendation to the court based on this plan.

Where the defense attorney is aware that there is a probability of commitment, he often reviews with the probation officer the type of dispositions available to the court and in his statement of mitigation often has proposed a disposition which he believes best meets the needs of his client.

In the Eastern District of Wisconsin the court has asked for a specific recommendation in each case. We have eliminated from the presentence report our recommendation to the court. The

reason for this is obvious. Should we recommend a commitment and the court disagrees and places the defendant on probation, our relationship with the client at best would be off to a poor start.

The argument that revealing the presentence investigation would probably lead to less probation grants has not been proved. During calendar year 1970, dispositions in our district resulted in approximately 70 percent probation grants compared to 30 percent commitments.

In Conclusion

Release of the presentence report to the defense attorney has not resulted in the problems we at first anticipated.

Sources of information have not dried up.

In many instances we have observed a more helpful and cooperative attitude on the part of the defendant and his counsel.

There is less "sparring" between the client and officer at the outset of probation. The probationer is aware that we have knowledge of many of the facets of his life—his problems, his strengths, his weaknesses, his potential.

The probation officer becomes a better and more objective investigator, carefully screening fact from hearsay.

Presentence summaries are less judgmental and more analytical.

The presentence investigation is a basic working document in the judicial and correctional process. Fairness to the defendant should require its release to the defendant and his defense attorney.

Fundamental fairness to the defendant requires that the substance of all derogatory information which adversely affects his interests and which has not otherwise been disclosed in open court should be called to the attention of the defendant, his attorney, and others who are acting on his behalf.—AMERICAN BAR ASSOCIATION *Standards Relating to Sentencing Alternatives and Procedures*.

The Diversion of Offenders

BY ROBERT M. CARTER, D.CRIM.

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DIVERSION is increasingly being suggested as a viable alternative to traditional processing of offenders through the criminal justice system. This article is in two parts. The first segment attributes the current emphasis on diversion to three factors: (1) increasing recognition of deficiencies in the nonsystem of justice, (2) re-discovery of the ancient truth that the community itself significantly impacts upon behavior, and (3) growing demands of the citizenry to be active participants in the affairs of government. The second section identifies major unresolved problem areas in the diversion process, such as the absence of guidelines for diversion, fiscal complexities, political and social issues, inadequate and uneven community resources, lack of assessment or evaluation of diversion programs, and the need for redefining traditional roles.

I. Origins of Diversion

Although there is considerable discussion and writing by academicians, administrators, and researchers about the system of criminal and/or juvenile justice, the United States does not have a single system of justice. Each level of government, indeed each jurisdiction, has its own unique system. These many "systems"—all established to enforce the standards of conduct believed necessary for the protection of individuals and the preservation of the community—are a collectivity of some 40 thousand law enforcement agencies and a multiplicity of courts, prosecution and defense agencies, probation and parole departments, correctional institutions and related community-based organizations. It is clear that our approach to criminal and juvenile justice sacrifices much in the way of efficiency and effectiveness in order to preserve local autonomy and to protect the individual.

The many systems of justice in existence in the United States in the early 1970's are not the same as those which emerged following the American Revolution. Indeed this 200-year evolution has not been uniform or consistent; some of the innovations and changes in our systems have

been generated by judicial decisions and legislative decrees; others have evolved more by chance than by design. Trial by jury and the principle of bail, for example, are relatively old and date back to our European heritage in general and the English Common Law in particular. Probation and parole began in the 19th century and the juvenile court is a 20th century innovation.

Coupled with the numerous criminal and juvenile justice arrangements in the United States and their uneven development is the separation of functions within the systems. There are similar components in all systems ranging from apprehension through prosecution and adjudication to correction. Although in fact interwoven and interdependent one with the other, these components typically function independently and autonomously. This separateness of functions, which on one hand prevents the possibility of a "police state," on the other leads to some extraordinary complex problems. Not the least of these is that the systems of justice are not integrated, coordinated, and effective entities, but rather are fragmented nonsystems with agencies tied together by the processing of an increasing number of adult and juvenile offenders. These nonsystems are marked by an unequal quality of justice, inadequate fiscal, manpower and training resources, shortages in equipment and facilities, lack of relevant research and evaluation to provide some measure of effectiveness and, until recently, a general indifference and apathy on the part of the public which the systems were designed to serve.

Society Itself Contributes to Criminal Behavior

Society deals with crime in a manner which reflects its beliefs about the nature and cause of crime. Many centuries ago, for example, when crime was believed to be the product of the possession of the mind and body by an evil spirit, the primitive response was simple: drive the devil out of the body by whatever means were avail-

able for such purposes. The American tradition as relates to the etiology of crime has focused, until recently, upon the individual as a free agent—able to choose between good and evil and aware of the differences between right and wrong. Our “treatment” of crime accordingly reflected the simplistic notion that criminality was housed solely within the psyche and soma of the offender. Regardless of whether the prevalent philosophy was revenge, retaliation, retribution or rehabilitation, the individual was seen as being of primary importance.

We have long assumed that the criminal or delinquent either willfully disregards legitimate authority by his illegal acts or suffers from some personal defect or shortcoming. There is much to learn, however, about the mysteries by which a society generates abnormal responses within its own circles. But this has become increasingly apparent: Society itself contributes significantly to such behavior. Indeed, it is the self-same social structure expressing its force and influence in an ambivalent manner which helps create on one hand the conforming individual—the person respectful of the social and legal codes—and on the other the deviant and lawbreaker who are disrespectful of the law. We have only recently become aware that crime and delinquency are symptoms of failures and disorganization of the community as well as of individual offenders. In particular, these failures may be seen as depriving offenders of contact with those social institutions which are basically responsible for assuring the development of law-abiding conduct.

Note, for example, that it has become increasingly common to discuss the “decline in respect for law and order.” In every quarter, and with increasing intensity, we hear that the citizenry, for reasons as yet unclear, is not only failing to honor specific laws, but also displays a mounting disregard for the “rule of law” itself as an essential aspect of the democratic way of life. But even as this concern is echoed, it is not clear that we are all agreed as to what is meant by “decline in respect for law and order” or precisely to whom or to what we are referring. It may be that a large amount of what we observe and label as “disrespect for law” in a wide range and diversity of communities is in fact a normal reaction of normal persons to an abnormal condition or situation.

As knowledge expands to recognize the role of society in the creation of deviance, justice sys-

tems themselves will be modified. The implementation of knowledge, of course, always lags behind the development of knowledge.

Mass Disaffection by Large Segment of Population

Concurrent with the recognition that (1) the justice system is but a nonsystem and (2) the community itself has an enormous impact upon the crime problem, there has been—particularly within the past decade—the emergence of mass disaffection of a large segment of our population. This disaffection with the American system is often described in terms which suggest that citizens are not involved in decision-making and are acted upon by the government rather than impacting upon government. The disaffection has been manifested in many communities and in various ways.

We have, for example, been witness to mass civil disorder unparalleled in recent times. We have seen our young people in revolt against the war in Vietnam, the grape industry, selective service, marijuana laws, prison administration, presidential and congressional candidates, Supreme Court nominees, and Dow Chemical. We have observed rebellion against the establishment ranging from burning ghettos and campuses everywhere to looters in the North, freedom riders in the South, and maniacal bombers from East to West. Young and old, black and white, rich and poor have withstood tear gas and mace, billy clubs and bullets, insults and assaults, jail and prison in order to lie down in front of troop trains, sit-in at university administration buildings, love-in in public parks, wade-in at nonintegrated beaches and lie-in within legislative buildings. The establishment has been challenged on such issues as the legal-oriented entities of the draft, the rights of Blacks to use the same restrooms and drinking fountains as whites, the death penalty, and free speech. Young people have challenged socially oriented norms with “mod” dress and hair styles, language, rock music, and psychedelic forms, colors, and patterns. We have seen the emergence of the hippy and yippy, the youthful drug culture, black, yellow, red, and brown power advocates, and organizations such as the Panthers, Women’s Lib, the Third World Liberation Front, and the Peace and Freedom Party.

But this disaffection or unrest is not restricted to youth alone. Increasingly, adults are rebelling

against the system. One need look no further than the recent slowdowns, work stoppages, and strikes of such tradition-oriented groups as police and fire officials, military personnel, social workers, school teachers, and indeed even prison inmates. Adult participation in protest has generally been more moderate than that of youth; some have been through membership in political organizations of a left wing orientation; others have joined conservative right wing organizations such as the Birch Society or Minutemen. Millions of Americans protested against the political establishment by voting for a third or fourth party or not voting at all in the last Presidential election.

Movement Toward Diversion

These three phenomena—recognition that the community impacts significantly upon behavior, the uncertainty as to the effectiveness or quality of justice in the nonsystem of justice, and the growing desire of the citizenry for active, relevant and meaningful participation in every area of governmental affairs and community life—are moving the responses to the challenge of crime in a new direction. This direction is typically referred to as “diversion” and relates specifically to movement away from the justice system. It is most likely a prelude to “absorption” . . . a process in which communities engage a wide variety of deviant behavior without referral to or only minimum interaction with the traditional establishment agencies.

Diversion is justice-system oriented and focuses upon the development of specific alternatives for the justice system processing of offenders. The diversion model and its application has been generated from a belief that the control of crime and delinquency would be improved by handling criminals and delinquents outside the traditional system. Diversion is also predicated upon the reported effects of the “labeling” process and the impact of the “self-fulfilling prophecy.” Whether diversion, at long range, is more effective than the established justice system and whether the “labeling” and “self-fulfilling” phenomena are operationally significant is unclear. These uncertainties do not dictate against diversion models, but rather should serve to restrain unbounded enthusiasm based upon belief and emotion rather than fact.

Absorption may be defined generally as the attempts of parents, peers, police, schools, and

neighborhoods to address social problems—including those of crime and delinquency—by minimizing referral to or entry into one or more of the official governmental agencies designated to handle those manifesting deviant behavior. If there has already been a referral, absorption involves the removal of the transgressor from the official processes by offering solutions, techniques or methods of dealing with him outside of the usual agency channels. Absorption is not restricted to the criminal offender or delinquent. It is, for example, equally applicable to deviants within the educational process. Absorption is adaptive behavior within the community in which alternative strategies are developed for coping with social problems. These involve the extensive use of community and personal resources.

II. Diversion: Some Practical/Operational Issues

There are issues about diversion—involving both philosophy and practice—which demand in depth examination. Failure to address these completely interwoven issues is likely to result in diversion efforts which are every bit as fragmented and disjointed as those justice system practices which, in some measure, led to the diversion movement. Rather clearly, there is a need to explore operational aspects of diversion, examine the community, its role and resources and determine the latent and manifest impact of diversion on the justice system. These requirements are in fact, mandates for assessment and evaluation. There is an explicit need to: (1) Determine the guidelines and standards which define those eligible or ineligible for diversion, those agencies which are appropriate to receive those who are diverted, and programmatic activities of the agencies which receive diverted cases; (2) identify or develop, and mobilize, resources in a community, determine techniques for increasing community “tolerance” levels, enhance the delivery system for these resources and, make more equitable the availability of resources to diverse types of communities; (3) determine the impact of diversion practices on the justice systems overall as well as their component parts and examine the need for possible administrative, organizational and legal changes; (4) prepare a complete methodology for evaluating the effectiveness of diversion, keeping in mind that being “progressive” is not synonymous with being “successful.”

The need for diversion guidelines is critical. Without some minimum standards for practice

and procedure and general consensus or agreement on philosophy, there is a distinct possibility that diversion may become the source of continuing and substantial inequities. Basic questions—such as who is (or is not) to be diverted, by whom, on what basis, and to what programmatic activities—should be answered by some shared understandings. Without such common understandings, the justice system—through increased use of nonsystematic diversion—may become more confused, autonomous, and fragmented.

Some minimum standards are needed, for example, to guide the *selection of individuals* for diversion. Diversion practices may be exclusionary and identify types of offenders who are deemed ineligible, such as those with a history of violence or felony offenders. Or practice may be permissive and allow that all offenders who will benefit from nonjustice system treatment are to be considered eligible, regardless of other considerations. Diversion may be restricted to adjudicated offenders, or it may include nonadjudicated offenders. If the former, diversion is from the system after entry; if the latter, diversion is an alternative to entry into the system. Both raise substantial legal issues.

Determinations as to time frames are required, i.e., the optimum time for diversion, the length of time or duration of diversion, and so on. Guidelines are also needed as to actions to be taken if the person diverted fails to comply with the actual or implied conditions of diversion or if it appears that the diversion plan is inappropriate.

Meaningful standards are necessary, for the *selection of agencies* to receive those who are diverted. Diversion need not necessarily be made to private agencies; it may be appropriate for there to be diversion to those public agencies which normally have been either minimally or not at all concerned with the offender population. And it may be appropriate for diversion to be to individuals rather than agencies. The selection of agencies requires community inventories which in turn may indicate the need for new private and/or public agencies or combinations/consortiums/conglomerates of established agencies which address needs of offenders.

Of equal significance is the complex and politically sensitive problem of sifting through a wide variety of potential diversion agencies including those with "unusual" or nontraditional characteristics such as those with an ex-offender or ex-

addict staff. Underlying many of these guidelines are fiscal considerations—including possible requirements for subsidies to agencies which handle those who are diverted. A delicate issue arises from public support of private agencies in terms of performance objectives and standards, constraints and expectations. The subsidy issue is made even more complex as the need arises to determine which public agency at what level of government pays the subsidies to these new partners in the justice system.

There is, of course, a requirement to examine the *programmatic activities* of the agencies which receive diverted offenders. While an inventory of these various programs and some estimate of their effectiveness are essential to rational diversion practice, a basic question emerges as to whether offenders should be diverted if appropriate (or at least similar) programs exist within the justice system. And if such programs already exist in the justice system, the advantages, if any, which accrue by transfer of these programs and clientele to community-based, nonjustice system organizations must be established.

The movement of programs and offenders to nonjustice system organizations will require new roles for justice and nonjustice system personnel. As an example, the probation or parole officer realistically might be required to become a catalyst and seek to activate a community and its caretakers to absorb the offender as a member of that community. This would require a complete knowledge of community resources and diagnosis of clientele needs. There would be an emphasis on reducing the alienation of the offender from his community by impairing the continued maintenance of a criminal identity and encouraging a community identity. The officer would no longer find employment for the offender, but instead direct him into the normal channels of job seeking in the community. Residential, marital, medical, financial or other problems would be addressed by assisting the offender engage those community resources which deal with these problem areas. This new role, then, might be one of insuring a process of community, not correctional absorption. Again illustrating interrelationships of these issues, note that the "new role" phenomenon itself raises questions about training for and acceptance of the role and methods or techniques of implementation.

Imbalance in Community Resources a Problem

Other issues arise as one examines the role and resources of the community. Not at all insignificant is the complex issue of imbalance among communities to accept cases which are diverted and to provide necessary services and resources. Some communities have distinct economic advantages over others—and it is clear that diversion has an economic, as well as a motivation base. Middle- and upper-class communities and their citizens, socially and economically secure, often have internal financial resources available to mobilize a wide range of agencies of diversion or specialized services ranging from psychiatric care through private schools. The differences in resource levels need scrutiny, for it would be socially disastrous to deny diversion to those who are economically disadvantaged; diversion cannot be restricted to the affluent. Without action to balance resource requirements with the capacity of delivering services, the poor and the disadvantaged will continue to flow into and through the justice agencies.

A parallel community-based problem occurs where there is a low community tolerance for diversion. How is community tolerance to be increased? A simple demonstration of need may be insufficient. Numerous examples of low or non-tolerance may be cited ranging from open through latent resistance and hostility directed against self-help groups and agency halfway houses. And besides the very difficult "how," there is the related question of "who" is responsible for dealing with community fears and anxieties. Is every justice agency seeking to divert offenders responsible for its own resource development or is some overall plan among cooperating justice agencies more rational? And again, as one question leads to another, if a plan is necessary, who designs and implements it, and how are activities financed and monitored?

Diversion Will Result in Significant Changes

Although changes in justice systems are inevitable consequences of an increased use of diversion, there is a distinct probability that the changes will be both unplanned and unsystematic. These changes may range from administrative and organizational restructuring and modification in procedure and policy on one hand through

major changes in the populations which are serviced by the justice systems on the other.

As justice agencies become partners with communities, there may be requirements in all agencies for organizational change to include new bureaus or divisions of "community service." This would require new personnel or reassignment of personnel, development and acceptance of new roles such as those of diagnostician and/or catalyst, innovative training, perhaps additional funding and different kinds of facilities, and new understandings within the agencies and communities themselves. Permanent linkages with community organizations may be required. Traditional pyramid, hierarchical organizational models may have to be flattened. New information systems will be required, and continuing involvement or monitoring of diverted cases may be desirable.

The large scale diversion of offenders—either from or after entry into the justice system—may have other consequences for the justice agencies. If, for example, substantial numbers of offenders are diverted by local law enforcement to community-based agencies, there will be, in all likelihood, reduced inputs to prosecution, adjudication and correctional agencies. Lessened inputs will alleviate some of the backlog in the judicial system and reduce caseload pressure in probation and parole and size of institutional population. While these occurrences are desirable, at some point in time the bureaucratic instinct for survival may be threatened. Reactions protective of the establishment may set in. Of greater significance, however, is that increased diversion may leave the justice system with a unique clientele of hardened, recalcitrant, difficult offenders who seem unlikely to "make it" in the community. These offenders may have complex problems requiring long-range treatment and they may represent a major threat to and be rejected by their communities. In addition to creating major management problems, these offenders will require new and different programs, facilities and staff for treatment. In short, extensive diversion may not only "threaten" the justice establishment, it may change the justice system population and alter the system itself.

Planning and Evaluation Necessary

There are yet other important aspects of diversion which require attention—planning and evaluation. A lack of mid-range and strategic planning and systematic evaluation has long been a major

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defect in justice operations from law enforcement through corrections. The movement toward diversion of offenders mandates that planning and evaluation not be "tacked on" to operational processes, but rather be built-in, continually updated, constantly reviewed. The questions about planning and evaluation are familiar—criteria must be established, funds must be made available, personnel, software and hardware must be obtained, methodologies developed, responsibilities delineated. Without such planning and evaluation, it appears certain that diversion practices will produce more confusion and chaos than clarity and consistency.

Conclusion

This article has explored the origins of diversion and identified some of the major operational and philosophical problems associated with the

movement. Diversion is seen as an outgrowth of a fragmented justice system which has been neither just nor efficient, the increasing demands of our citizenry to be participants in the affairs of government including the justice system, and recognition that the community is an appropriate base for many justice operations. But even as there is increasing momentum toward diversion, there is a pressing need for guidelines, standards and shared understandings, examination of the role and resources of the community, study of the long range impact of diversion on the justice system and society, and planning and evaluation.

Diversion is both a challenge and an opportunity. As a potentially major mechanism of the justice system, diversion requires considered attention. Although changes in our justice systems are indicated, rapid movement to untested and ill-defined alternatives is inappropriate.

Rehabilitation in Corrections: A Reassessment*

BY LAWRENCE W. PIERCE

U.S. District Judge, Southern District of New York

IT IS CLEAR that change in corrections is necessary and inevitable. But, I believe that it is a change in perspective which offers the greatest chance of achieving results on a broad scale which are both more effective and more acceptable to the public. In all likelihood, correctional funding practices, especially in State systems, are not going to change significantly in the foreseeable future. Accepting that assumption as correct, the major challenge facing us is to find ways to reorder the existing elements; to devise more effective combinations with what we have.

In the interest of achieving this, I propose that we consider shorter prison sentences for offenders who are convicted of crimes which do not involve violence or acts of moral turpitude; I propose that we consider yet another use for the isolated rural prisons that dot the landscape in most of our states; and I propose that we consider an implementation of the community-based center concept structured on a truly noncoercive basis.

There can be little disagreement that whatever notable achievements may have occurred within correctional systems heretofore, the image of corrections has been severely tarnished by the ex-

treme events which have occurred in prisons across this country in the recent past.

I do not mean to disdain the many achievements or proposals for improvements in corrections which abound across the country. Most are unquestionably meritorious. They include construction of new and smaller facilities closer to metropolitan areas, better trained and ethnically representative correction personnel, improved health care, better educational and vocational training programs, decent diets, liberalized furlough and visiting privileges, work/study release programs, and many more.

These ideas represent improvements within the *existing* concepts which govern corrections. Like many of you, I would urge that we should examine the underlying precepts of *both* sentencing and corrections in an effort to create new sentencing alternatives and new correctional program approaches or, if that is not feasible, at least to rearrange our existing resources in order to achieve our goals of controlling crime and reclaiming offenders.

Let me be more explicit. Few would deny the fundamental principle that freedom and individual liberty befit man's nature and, further, as we define them in the United States, they are among our most precious possessions. In fact, the devel-

* Adapted from the keynote address delivered August 12, 1973, at the Annual Meeting of the American Correctional Association, Seattle, Washington.

opment and refinement of concepts of freedom and liberty in the United States, as reflected in our Constitution, our Bill of Rights, our statutory and case law rank this country high among the nations of the world which purport to place a premium upon the protection and enjoyment of individual freedom. Indeed, we like to think that we are unique in this respect when measured against most other nations. With these few observations of the seemingly obvious, let me relate this to our practices of imprisonment.

In a land which values freedom and liberty highly, we would reasonably expect the length of prison sentences given to criminal offenders here to be shorter than prison sentences meted out in some other country where the concept of individual liberty is viewed differently. In other words, a shorter deprivation of liberty here might well be deemed the equivalent of a longer deprivation elsewhere.

Following this reasoning to its logical conclusion, if we were to study the length of sentences in most other lands and compare them with the length of sentences in the United States for similar crimes, we *should* find prison sentences here to be considerably shorter in duration.

And yet my colleague, Judge Marvin Frankel, in his recent book, *Criminal Sentences*, states that the United States probably has the longest sentences by a wide margin of any industrialized nation in the world, and he cites a 1967 American Bar Association report which states that "[s]entences in excess of five years are rare in most European countries."¹ That report gives as an example Sweden where in 1964, out of a total of 11,227 commitments to prison, only 38 persons—less than one-half of one percent—were committed to terms of more than 4 years.

Sentence statistics are perhaps unavoidably difficult to compare because of inevitable variables, but the available United States statistics, in general, bear Judge Frankel out. For instance, a recent report from the Administrative Office of the United States Courts indicates that in the Federal

system in 1971 out of a total of approximately 15,500 commitments to prison, about 4,000 persons—or 26 percent—were committed to terms of 5 years or more.² The same report indicates that the average prison sentence meted out in the Federal courts in 1971 was nearly 4 years.³ In the State systems in the United States, one report says that in 1960 more than 50 percent of the adult felony offenders sentenced to State prisons were committed for maximum terms of 5 years or more.⁴

Obviously, these general statistics lump together violent and nonviolent offenders. But, it is well to point out that in the United States even nonviolent offenders are subjected to relatively long prison sentences. The report from the Administrative Office of the United States Courts indicates that in 1971, for instance, the average sentence for persons convicted and sent to prison for auto theft was 3 years; the average sentence for postal theft was 2½ years.⁵ Data furnished by the American Bar Association Commission on Correctional Facilities and Services show that reports compiled in 1970 from 33 states revealed that 63 percent of the persons sentenced to prison for more than a year, were sentenced for nonviolent crimes. In the Federal system, 90 percent of the persons sent to prison each year are nonviolent offenders. And in 1972, more than 5,000 offenders of the 21,000 in the Federal prison population were persons convicted of nonviolent crimes who had no prior prison commitment.⁶

Given this general picture of our sentencing practices, I agree with Judge Frankel's observation that "we in this country send far too many people to prison for terms that are far too long," particularly to the extent that he is referring to offenders who are not recidivists and who have not been convicted of crimes involving violence or acts of moral turpitude. Although, I might add that to the extent that a conviction is seen as an early warning sign of a developing pattern of criminal behavior—and to the extent that we believe we can arrest that development through the use of some form of imprisonment, it might very well be argued that we might consider sending more people to prisons for far shorter periods of time.

This leads me to discussion of the role of corrections in the criminal justice scheme. To ask a rhetorical question, how did corrections get into the position of assuming responsibility for rehabilitating offenders, so many of whom are so-

¹ M. Frankel, *Criminal Sentences*, p. 58-59 (Hill & Wang, 1972-73), quoting A.B.A. Project on Minimum Standards for Criminal Justice, *Standards Relating to Sentencing Alternatives and Procedures*, approved by the A.B.A. House of Delegates in August 1968 (New York, Office of Criminal Justice Project, 1968), p. 57.

² Federal Offender Datagraphs, p. A-18, *supra*, n. 3.

³ *Id.* See also, Bureau of Prisons Annual Report 1972, U.S. Department of Justice, p. 2.

⁴ The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts*, 17 (1967).

⁵ Federal Offender Datagraphs, p. A-18, *supra*, n. 3.

⁶ Letter from the Resource Center on Correctional Law and Legal Services, A Project of the American Bar Association Commission on Correctional Facilities and Services, June 8, 1973.

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called "behavior disorder types," while those in the professions of psychiatry and psychology have wisely and successfully managed to avoid making such a commitment? It is not uncommon for the psychiatrist and the psychologist to define their roles as "arresting this or that condition" or "helping the individual reach a state of remission," or "improving the individual's level of functioning in the community." Yet, it is corrections which finds itself committed to the flat-out role of rehabilitating the most difficult, intractable, unmotivated, seemingly indifferent individuals in our society.

I join the chorus of those who are suggesting that this commitment be reassessed. At a minimum, the definition of rehabilitation should be broadened beyond the simplistic notion that the effectiveness of corrections should be measured by how many convicted offenders it converts into model citizens.

Unless we are talking about first offenders, I submit that a more sensible measure of effectiveness would be to determine first whether we have succeeded in causing the offender to commit fewer crimes.

While attaining such a goal is hardly the achievement of the millenium, it nevertheless may very well represent an important net social gain to society.

There are other measures to apply as well. For example, if the individual hardly did an honest day's work in his life—never held a steady job—yet under probation or parole supervision manages to keep a job for, say, 4 months or for half a year or longer, this may represent an important net social gain to society.

Since rehabilitation is essentially a treatment concept, as used by corrections, it should embrace the idea of "arrested condition" and of "remission" and of "improved functioning in the community." Thereby, at the least, corrections would find itself credited for those periods of remission when no new conviction occurs as well as being charged with the "relapses" of offenders when new convictions do occur.

In any event, the least ideal setting for the achievement of any notion of rehabilitation is an isolated setting of punitive confinement wherein are housed mainly unmotivated persons whose principal concern is to get out as soon as possible

and return to their home communities. It is a grossly incomplete statement to say, as some have claimed, that prison is a microcosm of society. The fact is that prison is the retributive and incapacitative underpinning necessary to sustain the enforcement of society's criminal laws. However, when a just judicial determination is made that a convicted offender be sentenced to prison, that person should find himself imprisoned in a humane setting with a "rehabilitative climate." To speak of a "rehabilitative climate" is not to impose upon the prisons the responsibility of rehabilitation as such. It is to contend that it suffices to provide modest program inputs during the short prison portion of a sentence, i.e., program components which can be said to be normally conducive to human development and well-being. This would include but obviously not be limited to: providing counseling and group discussion, promoting literacy and language training, providing library materials, offering adequate opportunities for physical exercise and recreation, requiring performance of simple work tasks designed to develop regular work habits, and providing spiritual guidance for those who desire it. Perhaps a good example of what I have in mind would be one of the better-run Army stockades as described by the MacCormick Committee in its 1970 report on army confinement facilities.⁷

Given a humane setting with a rehabilitative climate, I suggest that many of the types of offenders I have described could be and should be sentenced to shorter terms and such prison terms should be seen as principally retributive and incapacitative with only modest program inputs. I would add a significant appendage: *Following his prison term, the offender would be assigned for a period of time to a noncoercive program of assistance in the community.* It could work something like this:

Suppose that a person convicted of a nonviolent crime was sentenced to 3 years. And let's assume that the 3-year sentence was split at the time of sentencing into 6 months imprisonment and 2½ years of assignment to a correctional community services center. Let's assume further that the 6 months imprisonment is intended to serve three specific purposes: (1) the exacting of retribution for the particular crime committed; (2) specific deterrence coupled with incapacitation for that limited period; and (3) diagnostic assessment to identify whatever educational, vocational, legal,

⁷ Report of the Special Civilian Committee for the Study of the United States Army Confinement System (U.S. Government Printing Office, 1970).

social, psychological, and other needs the particular offender has, if any. Let's assume that upon the completion of the 6 months imprisonment and upon his return to the community he is referred to a nearby correctional community services center which is structured and staffed to speak to his identified needs either directly or on a contract referral basis. For the 2½-year balance of his term of sentence the offender would be entitled to draw upon the helping services offered by the center if he so chose to do so. If he did not choose to do so, and was not a recidivist, since society would have already exacted its retribution from him, if he wasn't seen or heard from for the entire 2½-year balance of his sentence he would be in *no violation* of probation, parole, or aftercare status. The option of taking advantage of the services available to him for that period would be solely his. He could avail himself of these services or he could reject them. This community services concept would represent society's acknowledgement that more often than not there is a relationship between lack of marketable skills, lack of an education, personal, legal, social, mental health and other problems, and the commission of crime. It would represent society's attempt to compensate for whatever might be the offender's or society's failures in this regard. Further, in allowing the offender the option of using or rejecting the services of the center, we would simply be acknowledging that "you can lead a horse to water, but you can't make him drink."

The one insistence would be that the offender not be convicted of a new crime. If he was, he would be sentenced to prison for the new crime, and a decision could be made thereafter as to his likely assignment to conventional parole status.

For recidivists, another colleague of mine, Judge Constance Baker Motley, has suggested a system of graduated sentences in a recent lecture series at the Northwestern University School of Law. She urges that no prison term be imposed on most first offenders, but that there should be ever increasing mandatory minimum prison sentences imposed on repeaters, keyed solely to the number of prior convictions.⁸

To summarize the approach I have described, it would envision short, flat, prison sentences, possibly ranging between 4 and 8 months, for nonviolent offenders, followed by noncoercive sup-

port and help in the community. The prison portion of the sentence would address itself to the retribution and incapacitation exacted of the offender by society, and the community support phase would address itself to the reality that so many offenders are persons with identifiable problems which can be ameliorated if help is made available in the community to those who are willing to seek help. The short prison term, since it would be principally retributive, would require only modest program inputs, while the much longer periods of helping services in the community would represent the major rehabilitative input.

As to these offenders, there would be no utilization of our limited parole resources for purposes of supervision, no commitment of valuable staff time to overseeing reporting, no tracking down of the offender to determine whether he's working, or living with a paramour, or has left the jurisdiction, or is associating with questionable companions. These valuable resources would be reserved for more intensive supervision of the violent offender and the inveterate recidivist. And as to those who did call upon the correctional community services center for help, we would have the assurance that the resources expended would be focused on those most likely to be responsive to such help.

Before turning loose this rearrangement of concepts for your critical scrutiny, let me list some of the likely consequences of such an approach:

(1) Although providing modest program inputs during the offender's stay in prison, it separates out the major share of supportive help and resources and offers it in the community where it is apt to be most effective since that is where the offender's personal needs are greatest and where he is expected to meet the acid test of conforming to society's laws.

(2) In removing the major share of supportive services from the prisons and offering them in the community, the almost inevitable conflict between "treaters" and "keepers" so often found in prisons would be drastically reduced.

(3) It could result in the transfer of authorized appropriations and selected personnel lines for professional services from prison budgets to correctional community services center budgets, thereby meeting the initial startup costs for the correctional centers.

(4) It lends itself to the inauguration of an

⁸ C. B. Motley, "The Criminal Justice System and 'Law and Order,'" Rosenthal Foundation Lecture Series, Northwestern University School of Law (Excerpts reprinted in N.Y.L.J., July 12, 13, 16, 1973).

affiliation system for professional services, i.e., specific center staff could be affiliated with a particular prison with the likelihood of regularly scheduled visits to the prison particularly for diagnostic purposes.

(5) It allows for the recruitment at the correctional community services center of personnel who reflect the ethnic mix of those served by the center—an easier task by far since the centers would be located in or near the urban areas in which the majority of offenders tend to live.

(6) It enables the present rural prison facilities to be utilized for the limited purposes of custody and diagnosis—and though usually distant from metropolitan areas, the use of such facilities could be more easily tolerated since the offenders' prison stay would be much shorter.

(7) It enables rural prison facilities to continue to draw its custodial staff from the surrounding communities whose economies are dependent upon such institutions—although an intensive effort to attract minority staff for these distant institutions should be initiated, or continued if already underway.

(8) Awareness of the short sentence would tend to alleviate the pressures on offenders and decrease tensions in our prisons.

(9) The brisk changeover in prison population at a fairly constant rate should effectively prevent an entrenched prisoner political system from developing thereby easing the pressure on custodial staff and hopefully enabling them to willingly assist in the creation of a humane and civilized atmosphere.

(10) The short sentence with the expectation of returning soon to the community should help promote family stability and should decrease the prospect of creating whole families of long-term public wards.

(11) Although the offender will have been incapacitated from the commission of additional crime in the community for a shorter period, the likelihood is that many more offenders would be committed and thus the overall period of general incapacitation would probably be about the same in terms of potential criminal hours or days or months spent in prison.

(12) The constant struggle to obtain the resources to keep vocational equipment modern and up to date would diminish, since the correctional community services centers could make use of local vocational training programs possibly on a contract basis, thereby also reducing the problem

of first recruiting and then retaining qualified vocational training instructors. The same could be said for most academic programs as well.

(13) Since the community services center would be based on a demand for help theory, the resources of the center would be concentrated on persons who need and wish to use them, not on tracking down and attempting to control recalcitrants. This, combined with the flexibility provided by the contract services, should make for maximum use of all resources at all times directed to people who have evidenced a desire for them.

(14) From my own perspective as a judge, and of concern to those of you who are correctional administrators, such an approach should result in a dramatic decrease in prisoners' civil rights suits and in petitions for habeas corpus. Not only because conditions in prisons would presumably improve, but a flat 4- to 8-month prison sentence for this category of offenders would eliminate all the present esoteric computations of good time and conditional releases, plus the litigation engendered by parole denials and revocations.

(15) From the point of view of prosecutors and the courts, no doubt this kind of program approach would produce many more guilty pleas without the hazards and indignities of plea bargaining.

(16) Furthermore, and finally, with such a program approach corrections could drop its defensiveness about the inability to Rehabilitate, with a capital "R," every individual offender who passes through the criminal justice process. A program such as I have suggested recognizes the fundamental fact that there are limits to what we are able to accomplish. It seeks not to undertake the impossible task of remaking the offender in the subjective image of ourselves, but to identify the critical crime causing factors in his life and to attempt to assist him in overcoming them, without necessarily attempting to change his life style or mores. To the extent that he commits no more or, at the least, fewer crimes, we will have achieved important societal gains.

Now, clearly there are serious questions to be raised with respect to such an approach.

(1) The most glaring problem is the dangerous offender. Any person who has demonstrated through his prior acts that he is a danger to others has to be incapacitated. Accurate identification of such persons is the core of the problem and this is a subject for another time. Suffice it to say

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as I have indicated that the greater number of persons sentenced to prison in a given year are convicted of nonviolent crimes—as many as 90 percent of our Federal offenders sent to prison and 63 percent of those sent to State prison. It is from among these offenders that one would expect to find prime candidates for this approach.

(2) A major problem would be gaining community acceptance of community-based centers. This will not come easily. I am one of a handful of administrators who can make that statement from firsthand knowledge, having presided over the setting up of one of the first major community-based center networks in the country. A great deal will depend upon a judicious selection of sites, skillful community organization work to promote understanding of the purposes of the centers, and careful screening out of those offenders who would be likely to fulfill the dire predictions which are certain to be made. And it must be acknowledged that even with the best of screening, mere assignment to such a program is certainly in and of itself not going to convert convicted offenders into model citizens any more than present correctional efforts do.

(3) Consideration would have to be given to the fact that honest, hardworking, law-abiding

citizens also need and might well demand the same kind of assistance provided to the offenders. Will we deny such assistance to them while granting it to offenders? The answer, which looks more to the future than to now, would be to consider how such services might be offered in terms of *crime prevention* as against *criminal correction*.

I can think of no greater sentencing need facing me personally as a judge than the need to have available consolidated, coordinated, and diversified services to speak to the needs of sentenced offenders upon their return to the community. Through such means, the public may well be able to realize its expectation that persons such as I have described can move from a cycle of criminal behavior onto a broad boulevard of legal and, possibly, social conformity.

What I have sought to outline here is a concept directed at seeking ways to use our totality of funds, personnel, facilities, and energies so as to achieve maximum impact on the broadest group of offenders. It is an effort designed to promote consideration and discussion of practical, feasible, realistic and hopefully promising approaches to the problem of crime which seems presently to overwhelm us.

Probation and Parole Revocation: The Anomaly of Divergent Procedures

BY H. RICHMOND FISHER*

AS A PROCEDURAL matter, the differences between probation and parole in the Federal system are sharply distinguishable. Probation is given by a court as part of the sentencing process upon entering a judgment of conviction. The court in ordering probation may impose a sentence of imprisonment and suspend its execution, or may suspend the imposition of sentence. It is the court that judicially sets the conditions, determines the period of probation (normally up to 5 years), modifies probation during its continuance, transfers probation jurisdiction to another judicial district when necessary, issues a warrant for the probationer's arrest on an alleged probation violation, and conducts the probation revocation hearing.¹ The probation officer acts directly for the court in supervising persons on probation.

Parole, on the other hand, is another form of conditional release within the jurisdiction of the

United States Board of Parole, an administrative body. In the course of the sentencing process, the court may designate a definite time minimum for parole eligibility less than the normal one-third of the maximum term imposed² (which would otherwise obtain as the time minimum). The court may also fix a maximum period to be served and specify that the prisoner may become eligible for parole at such time as the Board of Parole may determine.³ This kind of sentencing, known as the "indeterminate sentence," gives the Board of Parole the maximum leeway in determining the period of incarceration. Regardless of the court's declarations in the sentence, the ultimate decision as to the length of the parole term is left within the administrative discretion of the Board.

The conditions of parole are established administratively and any modifications therein are made by the Board. U.S. probation officers super-

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¹ 18 U.S.C. 3651, 3653. The 1-year term of probation provided in cases involving simple possession of a controlled substance is entered without judgment of conviction or a specific term sentence (21 U.S.C. 844(b)). Probation given a juvenile may be for a period not exceeding his minority (18 U.S.C.A. 5034).

² 18 U.S.C. 4208(a)(1). The normal period is described in 18 U.S.C. 4202.

³ 18 U.S.C. 4208(a)(2).

wise parolees as they do probationers, but in supervising parolees, they are acting for the Department of Justice and not the courts. It is the Board, or a member thereof who issues a warrant for a parole violation. As a matter of administrative rather than statutory procedure, the initial interview with an arrested parolee is conducted by a U.S. probation officer who hands the arrested person two forms to execute, CJA Form 22 (Statement of Parole or Mandatory Releasee Concerning Appointment of Counsel Under the Criminal Justice Act) and the Revocation Hearing Election Form. The first advises the arrestee that he may request the assistance of counsel at the subsequent revocation hearing and asks him to admit or deny the charges against him. The second form presents three alternative procedures to be followed; the parolee must choose one. These forms are completed without the presence of counsel.

The actual parole revocation hearing is before a member of the Board, or more frequently, a hearing examiner of the Board.

These procedures—the one judicial (probation) and the other administrative (parole)—follow two diverse patterns of administration and invoke the power of two branches of government. Theoretically, however, both procedures involve one status—the conditioned liberty of an offender who is free to live his life within the restrictions of an order, and who on violation thereof will hear the same clank of a grated door, and breathe the same institutional smells of the prison.⁴

The purpose of this article is to examine probation and parole revocation procedures in the light of recent Supreme Court rulings. Their procedural differences and similarities will be discussed and suggestions will be offered to move the proceedings closer to the fifth amendment guarantee that no person “be deprived . . . of liberty . . . without due process of law . . .” First, however, let us survey the theories upon which the philosophy of conditioned liberty is based.

Conditioned Liberty

Several theories of probation and parole status have been relied upon by the judicial system to restrict the rights of the probationer or parolee.

First, under the grace theory, the person's release under supervision is not a right to which he

is entitled, but a privilege, a merciful act by the court or the parole board. In this view, the status is a gift, conditioned by the grantor, which may be revoked for violation of one of its conditions.

The fact that potential probationers and parolees must sign forms specifying the conditions of their liberty has given birth to the contract theory; an agreement similar to any business contract exists between the person and the state. This rationale holds that acceptance of the contract estops the persons from complaining about its terms, regardless of the rights withheld.

A third theory is that probationers are in the legal custody of the court and parolees in the custody of the parole board. The custody theory restricts the person's status to that of a quasi-prisoner and shields him from judicial review on both nonconstitutional and constitutional grounds. Two other theoretical foundations have developed from the custody concept. The exhausted rights theory stipulates that the offender has exhausted all his due process rights during his trial and subsequent sentencing procedures. His postconviction status is therefore immune from application of the fifth and sixth amendment safeguards. The *parens patriae* theory assumes that “[t]he Board [of Parole] has an identity of interest with [the parolee] . . . [to] foster his rehabilitation . . .”⁵ Because they have the same interest, the prisoner need not fear the Parole Board, and, therefore, no reason exists for judicial examination and review of his situation.

The various theories have been criticized on several grounds. The process of insulating the alleged violator from the normal right to test the justification for depriving him of his liberty runs counter to the notion that he is a reintegrated member of society. As one writer notes, “[i]t encourages arbitrary treatment of parolees [and probationers] by administrators whose decisions are not made subject to the possibility of judicial review.”⁶

Second, an examination of the theories points out logical inconsistencies within and among these concepts. The very idea of “grace” a benevolent disposition by a benign sovereign, is antithetical to a democracy where government is by the consent of the governed, not by the whim of a monarch. Probation and parole are used extensively at the state and federal levels and have become firmly entrenched in our criminal justice system. How can such an established practice be termed an act of grace? Here, too, the right-

⁴ Grünhut, *Penal Reform*, pp. 297-304, and 312-316 (1948).

⁵ 129 U. Penn. L. Rev. 282, p. 289 (1971).

⁶ *Id.*

privilege distinction surrounding conditioned liberty dissolves. "Parole is made available neither as a right, nor as a privilege. It is the implementation of a correctional policy and is no more a matter of grace than the decision to rehabilitate a slum or locate a highway."⁷

Recent case law supports this critique. *Hewitt v. North Carolina*, 415 F.2d 1316 (4th Cir. 1969), rejected the idea that probation is an act of grace or a privilege for which constitutional safeguards are not required. *Hahn v. Burke*, 430 F.2d 100 (7th Cir. 1970), held that although probation is a privilege and not a right, essential procedural due process of law depends not on the right-privilege distinction, but on the extent to which the prisoner will be "condemned to suffer grievous loss," namely his liberty.⁸ Recently, the Supreme Court dismissed the right-privilege distinction entirely and applied the "grievous loss" test to the status of a parolee in holding that his conditioned liberty is entitled to certain procedural safeguards under the 14th amendment.⁹

The flaw of the contract theory lies in the fact that there is no bilateral negotiation of terms, and the person released may not have the option to refuse. The *Hahn* court, *supra*, noted that "probation is in fact not a contract. The probationer does not enter into the agreement on an equal status with the state."¹⁰

The custody concept conflicts directly with the practice of forfeiting release-time upon violation of a parole or probation condition. If one sentenced or reincarcerated for a violation of his conditioned liberty agreement receives no credit for his time spent on probation or parole, how can it be said that he was "in custody" during the conditioned liberty status?

The *parens patriae* rationale has been applied traditionally to the situations of mental incompetents and juveniles, but was rejected in the latter area several years ago by *In re Gault*.¹¹

By revoking the conditioned liberty status, the state admits that its interests in allowing probation and parole for the betterment of both society and the individual are not the same as the prisoner's concern for his own welfare.

It is not surprising that the theories conflict

with one another. The idea that probation and parole are the gifts of gracious sovereign agrees neither with the idea that conditioned liberty is the result of a bilateral contract between the prisoner and the state, nor with the identity of interest that supposedly exists between the prisoner and the state under the *parens patriae* theory. The contract concept posits a waiver of rights, while the exhausted rights theory assumes that a probationer or parolee has no rights to waive.

The most recent Supreme Court pronouncements on parole and probation revocation proceedings are found in two cases decided last year—*Morrissey v. Brewer*¹² and *Gagnon v. Scarpelli*.¹³ *Morrissey* granted certain procedural safeguards to parolees and *Gagnon* extended these rights to probationers, while granting a limited right to counsel to both parolees and probationers in the revocation process.

This article will discuss the two cases and their influence on Federal parole and probation proceedings.

Although parole revocation is not a step in the criminal prosecution process, the Supreme Court in *Morrissey* stated that the termination of a parolee's conditioned liberty does indeed result in grievous loss and falls under the protection of the 14th amendment. "Its termination calls for some orderly process, however, informal."¹⁴ As soon as is convenient after arrest, a "preliminary hearing" should be held to determine whether or not there is probable cause to believe that the parolee violated a condition of his parole agreement. The hearing should be conducted by someone not directly involved in the case. A nonjudicial officer such as a parole officer other than the one who has made the report of parole violations or recommended revocation will suffice. The procedural safeguards afforded the parolee at this stage are as follows: (1) notice of the hearing and "that its purpose is to determine whether there is probable cause to believe he has committed a parole violation; (2) a statement of alleged violations; (3) the right to appear and speak on his own behalf and present "letters, documents, or individuals who can give relevant information to the officer"; (4) the right, on request, to have adverse witnesses "made available for questioning in his presence" upon determination of the hearing officer that the witness would face no risk of harm if his identity were disclosed. The hearing officer is to prepare a summary of the proceedings and

⁷ *Id.*, p. 294.

⁸ *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J. concurring), quoted in *Goldberg v. Kelly*, 397 U.S. 154, 163 (1970); 430 F.2d, p. 103.

⁹ *Morrissey v. Brewer*, 408 U.S. 471 (1972).

¹⁰ 420 F.2d, p. 104.

¹¹ 387 U.S. 1 (1967).

¹² 408 U.S. 471 (1972).

¹³ 411 U.S. 778 (1973).

¹⁴ 408 U.S., p. 482.

determine whether or not there is "probable cause to hold the parolee for the final decision of the parole board on revocation." If so, the parolee is to be returned to the correctional institution to await the final decision. In summing up the nature of the factual inquiry the Court cautioned, "[i]t should be remembered that this is not a final determination calling for 'formal findings of fact or conclusions of law.' No interest would be served by formalism in this process; informality will not lessen the utility of this inquiry in reducing the risk of error."

The second step in the parole revocation process is the revocation hearing. This hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration whether the facts as determined warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest the violation does not warrant revocation. The revocation hearing must be tendered within a reasonable time after the parolee is taken into custody. A lapse of 2 months is not unreasonable.¹⁵

Noting that each State must design its own code of procedure, the Court set forth the minimum requirements of due process that must be afforded the parolee: (1) Written notice of the alleged parole violations; (2) disclosure of the evidence against him; (3) the opportunity to appear and speak on his own behalf and present witnesses and documentary evidence; (4) "the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); [(5)] a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and [finally] a written statement by the factfinders as to the evidence relied on and reasons for revoking parole."

Concerning the nature of the revocation hearing, the Court stated that it had no intention of equating this proceeding to a criminal prosecution. "It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."¹⁶

The Supreme Court in *Gagnon v. Scarpelli* ex-

tended the *Morrissey* requirements to probation revocation proceedings. Although it is not a step in a criminal prosecution, probation revocation, like parole revocation, does culminate in a loss of liberty. Therefore, a probationer is entitled to the preliminary and final revocation hearings in accordance with the *Morrissey* procedural safeguards. In fact the Court found no difference between the due process rights required in parole and probation revocation proceedings.

The Supreme Court then took *Morrissey* one step further by establishing a qualified right to counsel for indigent prisoners in both parole and probation revocation proceedings. The Court noted that the effectiveness of the *Morrissey* procedures may well depend on the prisoner's ability to articulate his side of the story.

Despite the informal nature of the proceedings and the absence of technical rules of procedure or evidence, the unskilled or uneducated probationer or parolee may well have difficulty in presenting his version of a disputed set of facts where the presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence.¹⁷

The court said, however, that a state does not have a constitutional obligation to provide counsel for indigents in every probation or parole revocation proceeding. This is so because a revocation proceeding is not a full-fledged criminal trial with the latter's array of substantive and procedural rights. A criminal trial utilizes formal rules of evidence and the services of trained advocates whose objective is to convince a jury of their respective points of view. A probation or parole revocation proceeding, on the other hand, involves informal procedures, no formal rules of evidence, and takes place before a hearing body of officials who have had considerable experience with the problems and practice of parole.

The Court also suggested that the introduction of counsel into the revocation proceedings might change them into adversary contests, while the role of the hearing body may become that of a trial judge. The entire process might lose its sensitivity to the rehabilitative needs of the individual probationer or parolee. The appearance of counsel would also increase the administrative costs of the revocation proceedings.

However, the Supreme Court stated, "there will remain certain cases in which fairness—the touchstone of due process—will require that the State provide at its expense counsel for indigent probationers and parolees." The Court did not formulate a precise set of guidelines, but stated

¹⁵ *Id.*, p. 487.

¹⁶ *Id.*, p. 486-489.

¹⁷ 411 U.S., p. 786-787.

that counsel should be provided an indigent probationer or parolee at the State's expense where, after being informed of his right, the individual so requests

. . . based on a timely and colorable claim (1) that he has not committed the alleged violation of the condition upon which he is at liberty; or (2) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.¹⁸

The agency making this determination should also consider the individual's ability to speak effectively for himself. Where a request for counsel at a preliminary or final revocation is denied, the reasons must be clearly stated in the record.

The indigent parolee, then, is entitled to court-appointed counsel only if the *Gagnon* conditions are satisfied, while his more affluent peer has the unqualified right to retain counsel. Thus, the protection afforded the two classes of parolees is not yet equal.

Probation Revocation

The Administrative Office of the United States Courts has presented recommended revocation procedures to meet the requirements of *Morrissey* and *Gagnon*.¹⁹

Alleged probation violators need not be arrested. They may be cited to appear in court without having been taken into custody. If necessary, a probationer may be arrested without a warrant by a probation officer for cause, or the court may issue a warrant of arrest for alleged violation of probation. In either event, the accused shall have a preliminary hearing before a Federal judge or magistrate, as soon as possible. In addition to the arrest warrant the alleged violator must be presented with the petition for the warrant which lists the alleged violations. The probationer must be allowed to appear personally at the preliminary hearing and present evidence and witnesses on his own behalf. He may introduce "letters, documents, or individuals who can give relevant information to the hearing officer."²⁰

The accused has the right to confront and cross-examine any witness who has supplied information that supports revocation, unless the hearing officer decides that the witness "would be

subject to risk of harm if his identity were disclosed."²¹

A written report of the preliminary hearing must be prepared. This contains an informal summary of the proceedings including the probationer's responses to questions and an evaluation of the significance of the evidence for and against revocation. A written report must also contain a determination whether or not there is probable cause to hold the revocation hearing.

In Federal practice an indigent probationer shall be represented by counsel appointed by the U.S. magistrate or the court "in every criminal case in which the defendant is charged . . . with a violation of probation." 18 U.S.C. 3006A(b). The exigencies of the particular case and the statutory requirement of holding the preliminary hearing "as soon as possible" may make it impossible to provide an attorney for the preliminary hearing. The services of an attorney at this stage may not be required in certain cases, i.e., if the probationer has been convicted of a subsequent offense and there are no mitigating circumstances involved.

The judicial officer presiding at the preliminary hearing has the discretion to grant bail to the probationer pursuant to Rule 32(f) of the Federal Rules of Criminal Procedure.

The procedural safeguards enumerated in *Gagnon* shall apply to the final revocation hearing: Written notice of the alleged violation of probation; disclosure to the probationer of evidence against him; the opportunity to be heard in person and to present witnesses and documentary evidence on his behalf; the right to confront and cross-examine adverse witnesses, unless the court finds good cause to disallow confrontation; a written statement by the court concerning the evidence relied on and reasons for revoking probation. The requirement of a neutral and detached hearing body is satisfied by the fact that the court revokes probation in Federal cases.

Parole Revocation

As opposed to the judicial nature of probation revocation, parole revocation is an administrative procedure. Only the Board of Parole may issue a warrant for the retaking of a parolee. He is then allowed to appear before the Board, one of its members, or an examiner selected by the Board. The Parole Board may revoke parole or modify its terms and conditions. If the first option is chosen, the "prisoner may be required to serve

¹⁸ *Id.*, p. 790.

¹⁹ Memorandum to all Chief Probation Officers and Officers in Charge of Units, from Wayne P. Jackson, Chief, Division of Probation, Administrative Office of the United States Courts, August 27, 1973 (hereinafter cited as Jackson Memorandum).

²⁰ Jackson Memorandum, p. 2.

²¹ *Id.*

all or any part of the remainder of the term for which he was sentenced."

The process begins when the U.S. marshal takes custody of the prisoner in compliance with the warrant issued by the Parole Board. The probation officer then takes charge and presents the prisoner with two forms to complete and sign. Criminal Justice Act (CJA) Form 22 asks him to list those charges in the Parole Board warrant that he wishes to contest, those he does not contest, and any convictions received since mandatory release or parole was granted. This form also advises the individual that he may apply to the U.S. District Court for the appointment of an attorney to represent him at his preliminary interview and/or revocation hearing. This request is granted "if the U.S. magistrate or the court determines that the interests of justice so require" and if he is found to be indigent.²²

The Revocation Hearing Election Form states three courses of action, from which the parolee may choose one.²³ If he has been convicted of a crime while on parole, or if he admits to a violation of his parole agreement, he will be returned to a Federal facility where he will be granted a revocation hearing by the Parole Board. He will also be returned to a Federal institution if he requests his revocation hearing there. If the parolee has not been convicted of an offense while on parole and if he denies the alleged violation he may request a revocation hearing in the community at which he may be represented by counsel.

Next, as soon as conveniently possible after arrest, a preliminary interview is held to determine whether or not there is probable cause to believe that the individual did in fact violate a condition of his parole, and, therefore, should be detained for a revocation hearing. The Board of Parole is currently developing the implementation of its recent revocation guidelines, and their exact application is not yet clear. However, it is assumed that a final conviction of a subsequent offense or the admission of the charges brought against him would sufficiently establish probable cause and thus eliminate the need for the preliminary hearing, unless the individual claims mitigat-

ing circumstances. The preliminary interview is directed by a probation officer other than the one who had been supervising the accused and who had recommended his arrest.²⁴ If this cannot be arranged, the preliminary interview may be held before a U.S. magistrate, if so authorized by the U.S. District Court. The magistrate should be thoroughly briefed on the nature of the preliminary interview by the chief probation officer or someone designated by him.

Preliminary Interview

If the parolee (1) has not been convicted of an offense while on parole and (2) if he denies the alleged violation, he is advised that he may request the probation officer or magistrate to ask adverse witnesses to appear at the hearing for confrontation and cross-examination. It is important to note that the rights of confrontation and cross-examination are granted only if these conditions are met. However, the alleged violator must always be advised that he may present witnesses and documents on his own behalf at this stage. Also, he may be represented by his retained or court-appointed counsel.

An adverse witness may include the supervising probation officer whose testimony would support revocation, and who would attend upon request. The Board of Parole, however, does not have subpoena power to enforce the request as to other witnesses. An adverse witness need not appear if the probation officer conducting the hearing finds "good cause" for disallowing the witness's appearance.

Where the prisoner admits the alleged violations, and does not request that witnesses appear on his behalf at the preliminary interview, but does request that witnesses be interviewed who might present mitigating information, the probation officer should make a "reasonable effort" to obtain this information and present it to the Board.

Arranging for the presentation of witnesses, documents, and the services of retained or appointed counsel may postpone the preliminary interview. This postponed interview may then take place as the revocation hearing when conducted by an examiner who has been selected by the Board. This may occur unless efforts to secure the services of an examiner cause additional delay in the hearing. This merging of the preliminary interview and the revocation hearing into one proceeding may be more expedient, but it ap-

²² C.J.A. Form 22 (February 1971): Statement of Parolee or Mandatory Releasee Concerning Appointment of Counsel Under the Criminal Justice Act (found in the Appendix to the U. S. Probation Officers Manual), 28 C.F.R. Sec. 2.44 (September 24, 1973).

²³ Revocation Election Hearing Form (Parole Form F-2, Temporary Revision, February 1971). It is found in the appendix to the U. S. Probation Officers Manual, note 59 *supra*.

²⁴ Memorandum to Wayne P. Jackson, Chief of the Division of Probation, Administrative Office of the United States Courts, from Maurice H. Sigler, Chairman of the U.S. Board of Parole, August 9, 1972 (hereinafter cited as the Sigler Memorandum).

appears contrary to the *Morrissey* requirements of a probable cause hearing followed by a separate revocation proceeding. Upon completion of the preliminary interview, the probation officer or U.S. magistrate prepares a summary of the interview, makes a recommendation, and sends these to the Parole Board headquarters in Washington, D.C. The summary evaluates the weight of the evidence (1) supporting revocation and (2) supporting the parolee's position. The recommendation includes the reasons and the evidence on which it is based.

The Local Revocation Hearing

Only the parolee who (1) has not been convicted of an offense while on parole and (2) denies the allegations of violation is granted a local revocation hearing. As in the preliminary interview, the right to confront and cross-examine adverse witnesses exists only if these two conditions are satisfied. One whose revocation hearing takes place at the institution from which he was released is not entitled to these rights. If the parolee is entitled to a local revocation hearing, but desires a hearing at the institution, he must waive his rights of confrontation and cross-examination.

One who qualifies for a local revocation hearing, but wishes to postpone the presentation of his own witnesses and evidence and the cross-examination of adverse witnesses may make such a request of the probation officer or interviewer. A preliminary interview will then be held and the probation officer will promptly send his summary and recommendation to Washington. The usual local revocation hearing will then be conducted.

At the local revocation hearing, the parolee is presented with the evidence against him and allowed to cross-examine any adverse witnesses present as in the preliminary interview. Again, an adverse witness need not appear if there is danger involved, or if "other good cause" is found by the hearing examiner. If the examiner believes that such "other good cause" exists, he should discuss it with the parole executive, who will seek the advice of the Board's legal counsel. The alleged violator is advised that he may present evidence and witnesses on his own behalf, as in the preliminary interview.

A decision resulting from a revocation hearing

may be appealed to the Regional Director and then to a National Appellate Board only in the Northeast Parole Board Region. In the other regions there is no right of appeal.²⁵

Why Not Create a Single Revocation Procedure?

The existence of two divergent procedures for cancelling conditional liberty (probation and parole) is an anachronism. Now that the Supreme Court has discarded the concept that they are conditions of grace to be terminated arbitrarily, it is time to consider committing the revocation of all forms of conditional liberty to the judicial process of the courts.

Why should the decision of "guilt" inherent in the revocation charge remain the determination of an administrative officer who is lacking in certain tenure and necessary judicial expertise? The Due Process Clause of the fifth amendment is a living standard of fairness that "is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process."²⁶ In *Morrissey*, the Supreme Court incorporated into the procedures for revoking parole the whole panoply of judicial process rights including the right to a finding of probable cause on preliminary hearing and a reasoned final hearing culminating in a written opinion of law and fact prior to imposition of imprisonment.

In *Gagnon* the Supreme Court stated that the due process rights guaranteed the individual in parole and probation proceedings are equal. What, then, is the justification for committing a judicial decision that determines the issue of liberty versus imprisonment to a triple-tiered administrative process with the important determination left to a hearing examiner? Why not treat parole revocation as it should be treated—as an aspect of the judicial sentencing procedure, similar to probation revocation? Why not provide counsel as of right to a parolee faced with revocation as is done under the Federal Criminal Justice Act (18 U.S.C. §3006A) in the case of probationers faced with revocation? Indeed, it was established long ago that serious constitutional problems are generated where imprisonment is based on administrative rather than judicial determinations.²⁷ These suggested reforms would move the Federal judicial system closer toward fulfillment of the fifth amendment demand that no person, "be deprived of . . . liberty . . . without due process of law . . ."

²⁵ 38 Federal Register 184 Part II sect. 2.43, September 24, 1973.

²⁶ *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, pp. 162-163 (1951) (Justice Frankfurter concurring).

²⁷ *Wong Wing v. United States*, 163 U.S. 228 (1896).

Organized Against Crime: A Full-Service Clearinghouse

BY JAMES L. HURD, JACK L. FEVURLY, AND ELGIN L. CRULL*

IN OCTOBER 1972, under the direction of the Kentucky Bureau of Corrections, the Federal Bureau of Prisons, and the U.S. Probation Service, a pilot project, "The Clearinghouse for Ex-offenders," was established. The opening of the clearinghouse was the combination of many months of negotiation and planning between local, State, and Federal governments to strengthen community-based corrections.

The clearinghouse has been in operation for 18 months, and the results achieved have prompted the Kentucky Bureau of Corrections to establish another clearinghouse in Lexington, Kentucky, the State's second largest metropolitan area. The clearinghouse for ex-offenders has focused on meeting the vocational needs of the ex-offender by bringing together the resources of various community agencies and coordinating them so they may better serve the needs of clients.

Agencies Appoint Specialists

Prior to the establishment of the clearinghouse in Louisville, there were numerous agencies in the community attempting to assist the ex-offender in finding employment and in adjusting to life on "the outside." Personnel of the United States Probation Office, Federal Bureau of Prisons, State Employment Service, Bureau of Vocational Rehabilitation, State Division of Probation and Parole, Dismas House of Louisville, Inc., and Jefferson County Jail were all involved in helping the ex-offender prepare for and find suitable employment. All of these agencies and institutions took an active role in the areas of employment placement and the provision of social services to the ex-offender.

Some firsts for our community had come about as a result of this growing concern among agencies and institutions. Four agencies—the State Employment Service, Jefferson County Jail, Bureau of Vocational Rehabilitation, and State Di-

vision of Probation and Parole—had appointed corrections specialists to work specifically with the ex-offender in obtaining suitable employment and other related social services (training, tools, work clothes, bonding, etc.). The Federal Bureau of Prisons in July 1971 had assigned an employment placement officer in the metropolitan area. Thus, each of these agencies was working in its own way to assist the ex-offender.

Problems Appear

That each of these separate agencies had recognized the vocational barriers facing the ex-offender was certainly a step forward for the community; however, problems became immediately obvious. Duplication was inevitable with each agency working at a separate location. Clients naturally desiring to get help wherever possible would seek help at all four agencies. Employers were approached in behalf of the ex-offender by the separate agencies. This resulted in a waste of their time, and more often than not alienated them as a future job resource. Another problem with this splintered approach was that in many instances job leads a particular agency developed would go unfilled. The counselor in that particular agency might not have on his caseload the type individual the employer was seeking. Thus, the job opening the employer was willing to fill with an ex-offender would be lost.

It became obvious that with each corrections specialist operating at a separate location and within his own agency, much was being lost in the way of resource sharing. The ex-offender as well as the agency was the loser. It was from this setting that the concept of a clearinghouse for ex-offenders arose and began to take shape. The task was to implement what was obviously needed, a centralized service facility or clearinghouse where the ex-offender could receive intensive consideration of his vocational needs.

A Plan is Drawn

A decision was made in the initial stages of planning to involve all agencies and institutions

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in the community that were engaged in adult corrections.

The Kentucky Bureau of Corrections and the Kentucky Crime Commission were very receptive when approached, and were an integral part of the process from the very first. Local agencies and institutions, having recognized the importance of employment in the rehabilitative process, were ready and willing to sit down and discuss a coordinated effort. In two short meetings the outline of the proposed clearinghouse was completed. The need was easily documented as representatives from each of the agencies related difficulties of the previous year in working to assist ex-offenders with problems related to vocation. Statistics to substantiate these expressed needs were quickly obtained from agency files and a proposal was drawn up. The proposal stated the need for the clearinghouse in the following manner:

Presently in the City of Louisville there are several agencies (U.S. Probation Office, Federal Bureau of Prisons, Kentucky State Employment Office, Bureau of Vocational Rehabilitation, Dismas House of Louisville, Inc., Kentucky Division of Probation and Parole, and the Jefferson County Jail), attempting to help ex-offenders find employment. As the new statewide prerelease and work release programs are implemented, job placement will become even more crucial. As agencies have attempted to take a more active role in helping the ex-offender readjust into legitimate society, the number of employment placement agencies have grown and coordination problems have multiplied. In addition, the job market continues to be tight and placements become even more scarce. Once the word is out that an employer has just hired an ex-offender, he is often besieged with many telephone calls. Persons involved with job placement have become concerned because many employers who previously cooperated no longer want to be bothered. Coordination of employment placement for prisoners and ex-offenders is essential. Many of the agencies attempting to make job placements are also involved with rehabilitation services, mental health services and emergency funds. Ideally, these services should be available to the client in an organized process. However, there is no single agency where the ex-offender can get comprehensive immediate consideration of his needs. Often the client with multiple problems is the responsibility of many agencies. At the same time the client, and often his counselor, do not know which agency to contact first. Many clients fall by the wayside with no benefit. Several agencies in the Louisville area have appointed staff to deal exclusively with ex-offenders. Other agencies are increasingly helping ex-offenders. Coordination of services is seen as an urgent need. The proposed clearinghouse will bring together various community resources to serve the particular needs of the ex-offender. A strong persistent effort to provide immediate services will be maintained. The run-around and put-off can be reduced considerably through the effective functioning of such a clearinghouse. In cases where the ex-offender needs the services of existing community agencies, the clearinghouse will act as facilitator or referral agency. Counselors from each of these agencies will come to the clearinghouse on scheduled days of the week to meet with ex-offenders who seek various services. The client will be directed to the proper counselor or counselors who can deal with the client's needs. The program will be tailored to the client's needs. Progress will be documented in terms of the number of agencies who partici-

pate and the number of clients who complete their counseling and rehabilitation programs culminating in a steady job placement—our ultimate goal.

The proposal for the clearinghouse along with a budget outline was presented to the Kentucky Crime Commission. The Commission, seeing the need for such a service, funded the clearinghouse and Kentucky Bureau of Corrections provided the State matching funds and became the subgrantee.

Implementation

The stage was then set for one coordinated, unified effort. The various agencies had recognized the necessity of providing specialized services to the ex-offender particularly as they related to employment. It was now possible to bring together these various bodies to eliminate duplication and provide comprehensive services in a coordinated manner. Office space was obtained, and the various agencies, as promised, dispatched their counselors to work from this one centralized location.

The Clearinghouse for Ex-offenders of Louisville and Jefferson County, the State Employment Service, and the State Division of Probation and Parole assigned full-time counselors to the clearinghouse to work along with a full-time director and secretary. On a part-time basis the clearinghouse has persons from the Federal Bureau of Prisons, the Bureau of Vocational Rehabilitation, and the Dismas House of Louisville, Inc. The Bureau of Prisons representative and the Vocational Rehabilitation representative assist with the regular caseload work while the counselor from the Dismas House uses the resources and services of the clearinghouse to assist residents in finding suitable employment. He also shares any particular resources that he has with others in the clearinghouse. In addition, the prerelease program at the Kentucky State Reformatory has assigned one of its employment placement counselors to the clearinghouse 2 days a week. This counselor, like the employment counselor from the Dismas House, uses clearinghouse job resources to place paroled inmates into jobs.

With the various agencies now under one roof it is possible to coordinate and share resources. Employers are not deluged with numerous calls in the ex-offender's behalf but are contacted in a systematic manner. Job leads are shared by the various counselors, and in most all cases a job opening can be filled with an ex-offender from one of the counselor's caseloads. So the clearinghouse works to serve the best interests of the clients, the employers, and the agencies.

Services Provided

The following is an outline of services provided by the clearinghouse:

Primary Purpose: To coordinate and implement job placement of the ex-offender in Louisville and Jefferson County. This includes:

- (1) Job development
- (2) Job placement
- (3) Job change (upgrade)
- (4) Job adjustment
- (5) Involvement in job training (M.D.T.A., O.J.T., Area Vocational Schools, ACTION-CEP)
- (6) Provision of Vocational Rehabilitation services (medical, dental, work clothes, tools, etc.)
- (7) Bonding for ex-offenders thru the Federal Bonding Program

Secondary Purpose: To act as a facilitator in obtaining other needed social services for the ex-offender. For example:

- (1) Mental Health Services
- (2) Emergency funds
- (3) Drug Abuse Counseling
- (4) Legal Services
- (5) Temporary Lodging

Participating Agencies:

- (1) U.S. Probation Office
- (2) State Division of Probation & Parole
- (3) Federal Bureau of Prisons
- (4) Dismas House, Inc.
- (5) Kentucky State Employment Office
- (6) Jefferson County Jail
- (7) Vocational Rehabilitation of the Department of Education

Results Obtained

During the first 18 months of operation, the clearinghouse has provided services for 1,259 ex-offenders. Persons may come in for any number of services ranging from job placement to bonding on jobs obtained through their own efforts. Other clients are employed, but seeking upgrades into better paying or more self-satisfying positions. The clearinghouse has assisted in 803 job placements in the Jefferson County area. This figure represents placement of the underemployed as well as the unemployed. Average wage earned was slightly over \$2.50 per hour. These job placements came about as a result of 2,332 referrals to employment interviews set up by the various clearinghouse counselors.

Many clients entering the clearinghouse are interested in vocational training or furthering academic skills on the high school or college levels. In each case the counselor can help the client determine which of the available programs best suit his expectations and capabilities and assist him in making the appropriate contacts. Since opening, the clearinghouse has counseled and referred 91 persons to the various vocational training programs in our community. Results have varied with about half of those individuals actually enrolling for the training. In many cases, the indi-

vidual is unable to support himself and participate in vocational training at the same time. Only the MDTA (Manpower Development and Training Act) program through the Department of Labor provides a living allowance while in training. This persistent problem has prompted the clearinghouse to begin negotiations with various funding sources in order to provide ex-offenders with a subsistence allowance while being trained.

The Vocational Rehabilitation counselor who is stationed at the clearinghouse once a week has provided services for 72 individuals. These services range from assistance in providing a set of dentures, to payment of tuition to attend college. One former inmate had no teeth when released to Louisville from a prison in Florida. Surgery had been performed while he was incarcerated on a conviction for interstate transportation of stolen property. He had a job lined up in heavy industry but needed a set of teeth. The clearinghouse through our vocational rehabilitation counselor was able in a matter of weeks to have the man fitted with dentures.

Since the clearinghouse works with people recently released from jail and major institutions, there is often a need for financial support on an emergency basis. For major financial assistance, i.e., rent, food, tools, clothing, child care, the counselor can set up appointments with the appropriate agencies. Two hundred ninety-seven referrals to other agencies have been made since opening our doors in October 1972. For less demanding financial needs such as transportation costs to job interviews, the clearinghouse has access to Lotta Crabtree funds, a special fund set up to assist ex-offenders to "get back on their feet."

The clearinghouse realized from the start that followup was a necessary component of the program. Procedures have been worked out for keeping in close contact with the probation and/or parole officer where an individual is under supervision. Where a client is not under supervision, it is the responsibility of the counselor to follow up on that individual for at least a 3-month period. Most of our followup has been done by phone or mail. Time limitations and volume of intake have prevented as thorough a followup as we would like. To date, the clearinghouse has made 1,387 followup contacts.

Job Resources: Job Bank and Employer File

The State Employment Service along with providing a full-time counselor has allowed the clear-

inghouse access to their computerized job bank. Each day, the clearinghouse is provided with microfiche containing job orders called in by employers; counselors can sit down with their client and review the job orders. A direct telephone line to the job bank allows counselors to clear job referrals with the referral control unit at the employment service before calling an employer to set up an interview. One to one counseling and the assessment of needs are done in the counselor's office and the client is ushered to the job bank viewers area where specific job possibilities are discussed. In every case the employer is contacted before the client is sent on the interview.

In addition to the computerized job bank provided by the State Employment Service, the clearinghouse has developed its own employer file which is used daily by the various agency counselors. The employer file has been developed through employer visits (50) and telephone contacts (1,350) and contains information as to working conditions, wages paid, skills required, and employer expectations. One hundred seventy-five employers are currently listed in the file and they range from major market employers to smaller business concerns with highly specialized needs. Each counselor at the clearinghouse has access to these files, and before contacting an employer, the counselor checks the file to see when the last contact was made. All contacts with employers are documented to avoid duplicate efforts.

As might be expected, employer response to hiring the ex-offender has been mixed. An initial letter campaign followed by telephone contacts resulted in one employer in three responding positively to the idea of employing an ex-offender. This nucleus of employers was used as a base upon which to build the employer file.

Referral, Physical Setup, and Location

The clearinghouse is located in downtown Louisville in close proximity to the State Probation and Parole Offices, Federal Probation Office, State Employment Service, and the Jefferson County Jail. Since these are the primary sources of referral, it was felt that an easily accessible location was necessary. Clients can reach the clearinghouse "on foot" when referred for service. The office is set up in the traditional manner with a reception area and adjoining offices for counselors from the various agencies. Office space is made available for the part-time counselors who come in to the clearinghouse at designated

times during the week. There is a separate area which contains the job bank viewers.

The clearinghouse receives a steady stream of referrals from the State Probation and Parole Office, Federal Probation Office, State Employment Office, and the Jefferson County Jail. Other community service agencies such as Metropolitan Social Services Department, River Region Mental Health, and Salvation Army refer clients when appropriate. Referrals of this kind are coordinated by telephone so that appointments can be scheduled and some basic information concerning specific needs can be obtained before the client's arrival. In addition there are walk-in clients who simply come in on their own seeking assistance.

Case History

An ex-offender visited the clearinghouse despondent over the fact that his entire previous job experience had been as a security guard. He had been out of prison several months and unable to land a job due to his record of conviction and his limited work history. Federal law prohibited his carrying a weapon. He had come up against a blank wall and needed assistance in reentering the labor market. His record of imprisonment presented a serious barrier to reemployment as a security guard. He needed to redirect his aspirations in order to be gainfully employed. A counselor at the clearinghouse was able to work with him and present realistic alternatives. The counselor's knowledge of the labor market in the area along with his previous experience in dealing with personnel managers in industry and the public sector enabled him to set up two interviews for entry level positions in building maintenance. The prospective employers were fully apprised of the offender's record. Additionally, they were informed of the supportive services available to the man through the clearinghouse. Transportation money was provided for the client to go on both interviews. Three days later he was hired as a building maintenance man by the City of Louisville earning \$2.79 per hour. He is now receiving on-the-job training and learning a new skill that will render him employable in the future.

Conclusion

One official from the Bureau of Prisons said of the clearinghouse, "We don't know if it's the answer, but we know it's better than what we had." The project utilizes community resources already

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in existence, and this keeps the cost from being prohibitive. It has brought together Federal, State, and local agencies to work on a common problem, that of solving the vocational needs of the ex-offender. It has provided one central location where the offender can get immediate help with his vocational needs, and it has improved the delivery of social services to the ex-offender by providing him or her with a knowledgeable spokesman who can expedite that delivery.

Evaluative Research in Corrections: Status and Prospects*

BY STUART ADAMS, PH.D.

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BY MANY indications, criminal justice is facing an evaluation crisis. Billions of dollars are being earmarked for new criminal justice programs, and pressures for evaluation are rising. At the same time, complaints about ineffective measurement and wasted research resources also are rising. We are troubled by confusion over research methods and strategies, by shortages of good evaluators, and by indifference to research on the part of many administrators and officials.

This is clearly a time for taking stock. What is the present status of criminal justice evaluation? What kinds of evaluation, if any, are paying off? What will the evaluative research of tomorrow be like? And who will be doing it?

These issues have been addressed in a volume prepared for the National Institute for Law Enforcement and Criminal Justice, research arm of the Law Enforcement Assistance Administration.¹ The work was done by the Advanced Institute for Studies in Crime and Justice, a research unit within the American University Law School. The volume, *Evaluative Research in Corrections: A Practical Guide*, outlines for administrators and researchers how assessment in corrections and criminal justice can be improved. The present article summarizes some portions of the volume.

* Revised version of a paper presented at the 1973 meetings of the American Society of Criminology, New York City, November 2-6, 1973.

¹ The work was performed under contract with the Institute. The opinions expressed here are the author's.

² Walter C. Bailey, "Correctional Outcome: An Evaluation of 100 Reports," *Journal of Criminal Law, Criminology and Police Science*, 57 (June 1966), pp. 153-160.

³ Stuart Adams, "Some Findings From Correctional Caseload Research," *Federal Probation*, December 1967, pp. 48-57.

⁴ James Robison and Gerald Smith, "The Effectiveness of Correctional Programs," *Crime and Delinquency*, January 1971, pp. 67-80.

Evaluation Today

What is the present status of evaluation in corrections? One approach to this question is through currently available reviews of research. Evaluative studies have been done in vast numbers in corrections over the past 15 or 20 years. Although there has been no systematic appraisal of this body of research, several fragmentary evaluations have been made.

Bailey (1966) reviewed and assessed 100 evaluative reports from the whole range of correctional studies and found them to be mostly unsystematic or nonexperimental. They were deficient in good behavioral theory and generally unable to demonstrate positive effects from treatment. The 100 studies included 22 experimental designs, 9 of which reported statistically significant improvement associated with treatment. Bailey's final conclusion was that ". . . it seems quite clear . . . that evidence supporting the efficacy of correctional treatment is slight, inconsistent, and of questionable reliability."²

Adams (1967) reviewed 22 experimental studies of the effectiveness of reduced probation and parole caseloads in California. Thirteen (59 percent) of these experiments showed either significant reduction in recidivism or a benefit/cost ratio higher than unity.³

Robison and Smith (1971) examined several studies, primarily controlled experiments, bearing upon major decision points in California corrections. The authors found ". . . no evidence to support any program's claim to superior rehabilitative efficacy."⁴

Kassebaum, Ward, and Wilner (1971) in a

massive controlled experimental study of group counseling in a California prison found negative results. They commented that negative findings have appeared in growing numbers in correctional evaluation in recent years. They surmised that corrections might become cool toward outside researchers and secretive about research findings because of this ". . . dearth of good tidings for both the treatment specialists and the program administrators."⁵

Martinson (1971) reviewed 231 published and unpublished evaluative studies of correctional programs, focusing on research of more rigorous kinds. He reported ". . . little evidence . . . that any prevailing mode of treatment has a decisive effect in reducing the recidivism of convicted offenders."⁶

Speer (1972) examined 21 controlled experimental studies of psychotherapy in corrections and identified 11 studies that included followup data on community performance after treatment. Of the 11 studies, 6 (or 55 percent) indicated a reduction in subsequent arrests and amount of time spent in jail. The most definitive finding was that out of 8 studies of juvenile treatment, 6 showed significant improvement; of the 3 involving adults, none showed significant improvement.⁷

Berkowitz (1973) reviewed 38 evaluative studies that were generally representative of 400 LEAA-funded projects under the California Council on Criminal Justice. Specified within the 38 projects were 154 measurable objectives. Of these, 60 (or about 40 percent) were judged to have been achieved. The reviewer also identified 73 methodological deficiencies in the 38 projects. Goal attainment was highest and deficiency rate lowest in the 5 experimental projects included among the 38 studies.⁸

The conclusions from these seven evaluations of evaluation can be grouped under three headings:

(1) *Subjective conclusion from vaguely defined samples:* The gist of three of the reviews is

⁵ Gene Kassebaum, David A. Ward, and Daniel M. Wilner, *Prison Treatment and Parole Survival*. New York: John Wiley and Sons, Inc., 1971, p. 309.

⁶ Robert Martinson, *Treatment Evaluation Survey*, 1971, unpublished monograph. Cited in Kassebaum, et al., 1971, p. 309.

⁷ David C. Speer, "The Role of the Crisis Intervention Model in the Rehabilitation of Criminal Offenders." Buffalo: Erie County Suicide Prevention and Crisis Service, 1972. Unpublished paper.

⁸ Francine Berkowitz, *Evaluation of Crime Control Programs in California: A Review*. Sacramento: California Council on Criminal Justice, April 1973.

⁹ Arthur Gerstenfeld, *Effective Management of Research and Development*. Reading, Mass.: Addison Wesley Publishing Co., 1970, p. 1.

¹⁰ Jerome W. Blood (ed.), *Utilizing R & D By-Products*. New York: American Management Association, 1967, p. 16.

¹¹ Lawrence P. Lessing, "The World of du Pont: How To Win at Research," *Fortune*, 42 (October 1956), pp. 115-134.

that correctional programs are not effective; that the most rigorous evaluative studies show few results; and that correctional managers may become concerned enough about this poor showing to exclude university researchers from agencies and withhold negative findings from the public. The reviews are skeptical and polemical in tone; they question the integrity of correctional administrators; and they clearly ignore some impressive evidence of program effectiveness.

(2) *Objective conclusions from balanced samples:* Two of the reviews imply that a scanning of the whole spectrum of evaluative research in corrections will disclose some good research and some effective programs. The statistically significant positive findings, which tend to come in slightly higher proportions from controlled experimental designs, are relatively few. In the experimental designs, which make up from one-eighth to one-fourth the reviewed studies, about half pay off.

(3) *Objective conclusions from selected samples:* The remaining two reviews indicate that if one takes only controlled experimental designs in selected areas of corrections, at least half of the studies will show either statistically significant effects associated with treatment or benefit/cost ratios higher than unity.

There are, clearly, sharp differences among these three groups of observers. Yet there is one sense in which all seven observers agree. Some are much more skeptical than others, but all see research with practical payoff as being a small percentage of the total.

Is this good or bad, relatively? What does experience show in other fields? Gerstenfeld observes that ". . . studies indicate that more than 50 percent of all R & D projects fail . . ." ⁹ Blood narrows this estimate a bit: ". . . an average of four out of five engineers and scientists work on projects that do not reach commercial success."¹⁰ And *Fortune* Magazine quotes a former president of du Pont as estimating that not more than one in 20 of du Pont's research projects eventually pay off.¹¹

If we turn to medicine, some assessments are equally restrained. White, in an article on medical progress, states that during three decades of intensive biomedical research there has been no improvement in life expectancy of adults, and no discovery of ". . . effective means . . . for coping with the stubborn complex of social illnesses that

now predominate in the economically advanced countries."¹²

These are rough comparisons. They suggest, nevertheless, that evaluation in corrections is as productive, generally speaking, as evaluation in industry or medicine. We distinguish here between corrections and criminal justice; evaluation in the areas of law enforcement and the courts seems less far along than in corrections.

Worthwhile Kinds of Evaluation

If we conclude that correctional research is doing about as well as can be expected under the circumstances, yet we would like it to do better, what could one suggest? One possibility is to find out what kinds of research pay off—and consider expanding those kinds. But what pays off?

This brings us to case studies. In the absence of a computer printout of all studies that have "made a difference" (that is, have visibly impacted correctional practice) in the past two decades, we will take examples from recall.

Probation in California was a survey of 60 county probation departments in the State of California in 1956.¹³ It found probation operations to be generally substandard in comparison with the guidelines of the professional associations. The study recommended a probation subsidy by the State to bring county operations up to an acceptable level. The California Assembly at first rejected the recommendation, but after a followup survey and the development of a performance-based subsidy plan that carried important benefits for both State and counties, the recommendation was enacted into law.¹⁴ In the last 8 years, an estimated 40,000 California offenders have remained in the community after conviction rather than going into State institutions.¹⁵

¹² Kerr White, "Life and Death and Medicine," *Scientific American*, 229 (September 1973), pp. 23-33.

¹³ Stuart Adams and Milton Burdman, *Probation in California*. Sacramento: Special Study Commission on Correctional Facilities and Services, 1957.

¹⁴ Robert L. Smith, *The Board of Corrections Probation Study*. Sacramento: California Board of Corrections, 1965. See also, Robert L. Smith, *The Quiet Revolution*. U.S. Department of Health, Education and Welfare, DHEW Publication Number (SRS) 73-26911.

¹⁵ Robert L. Smith, personal communication (taped interview), June 5, 1974.

¹⁶ Stuart Adams, *The Preston Impact Study*. Sacramento: California Youth Authority, 1959. Also, Stuart Adams, *A Proposal for the Comparison of Institutional and Community Treatment for Juveniles*. Sacramento: California Youth Authority, 1959.

¹⁷ A form of dissolution is now in fact being proposed for the CYA by California Senate Bill 391, which would merge the diminished CYA with the adult Department of Corrections.

¹⁸ Marguerite Q. Warren, "The Community Treatment Project," in Norman Johnston, Leonard Savitz and Marvin E. Wolfgang (eds.), *The Sociology of Punishment and Correction*. New York: John Wiley & Sons, Inc., 1970 (2nd ed.), pp. 671-683.

¹⁹ Leon G. Leiberg, Roberta Rovner-Piezenik and John F. Holahan, *Project Crossroads*. District of Columbia: National Committee for Children and Youth, 3 volumes, 1970-1971.

²⁰ Stuart Adams, Charles Reynolds, and Dewey F. Meadows, *Narcotic-Involved Offenders in the Department of Corrections*. District of Columbia: Department of Corrections, Research Report No. 12, February 1969.

The *Preston Impact Study* (1959) examined the effects of a State training school program on older delinquents.¹⁶ It used tape-recorded interviews with a panel of subjects during their stays at Preston to trace attitude and information changes. The study concluded from the developmental evidence thus disclosed that Preston was antirehabilitative. It recommended to the California Youth Authority executive staff that a controlled experimental test of community versus institutional treatment be set up to check this conclusion. Executive staff agreed—a risky decision, perhaps, since it opened up the possibility that their empire would be dissolved if community treatment proved more effective.¹⁷

The CYA *Community Treatment Project*¹⁸ provided the experimental test called for by the Preston Impact Study. During 1961 to 1974, CYA used an interpersonal-maturity typology, differential treatment, ward-staff matching on personality and behavioral characteristics, and a complicated experimental design to study the comparative outcomes of community and institutional treatment. This landmark project, some minor flaws notwithstanding, has strongly influenced thought and planning in juvenile corrections not only in California but also nationwide and worldwide.

Project Crossroads, in the District of Columbia (1968-71), also had an impact. The project was designed to explore the possibility of diverting young first offenders from adjudication by providing counseling, job-finding, educational placement, and other services during a 90-day period after arrest and before trial. Successful participation led to dropping of adjudication. The project demonstrated, by means of a quasi-experimental design, that recidivism rates were reduced significantly and that job status and earnings were upgraded.¹⁹ Economically, the project showed benefit/cost ratios of about 2 to 1. The project has now become part of the operations of the D.C. Superior Court. Along with the Manhattan Court Employment Project, it has served as a model for about 30 or 40 other pretrial diversion projects in the Nation. It has also led to congressional interest (S. 798, Mr. Burdick, and H.R. 9907, Mr. Railsback) in providing a sound legislative base for pretrial diversion programs.

Another evaluative study that made a difference was a time-series analysis entitled *Narcotic-Involved Offenders in the D.C. Department of Corrections*.²⁰ Done in February 1969, it found that

the rate of intake of such offenders was describing the early stages of an exponential curve. Intake, in ordinary language, had begun to shift abruptly from a long, gradual rise to a steep, upward climb. The study recommended quick development of community-based treatment in place of prison for these offenders, otherwise the D.C. prisons would soon be vastly overloaded. The result, within 6 months, was two halfway houses for narcotic-involved offenders. Within 12 months, these were expanded into a District-wide Narcotics Treatment Administration—now apparently necessary for what looked like a full-blown heroin epidemic in the District's high-risk population. Within 2 years the program grew into (proportionately) the largest methadone maintenance treatment program in the Nation.

From these five cases, what can we say—tentatively—about evaluation projects that pay off?

First, all kinds of research designs are represented. This suggests that payoff can come from anywhere within the methods spectrum—as Bailey and Berkowitz have shown. The five cases included surveys, a panel-interview, a time series, a quasi-experiment, and a rather elaborate controlled experiment in three phases: perhaps the most difficult and at the same time the most informative experiment thus far seen in the social-behavioral field. Paradoxically, the biggest impact came from the crudest of the five studies—the field survey of county probation departments—and the recommendations that followed from the survey.

Second, the five cases tell us that we can often get high impact from a small study. The Narcotic-Offender study took only a man-month of time and cost at most two thousand dollars, but it led to the rather quick establishment of one of the major narcotic-addiction treatment programs in the Nation.

Third, projects with impact have thus far been changing the system rather than the offender. There seems to have been little gain up to now from attempts to “change the offender.” A possible exception is the D.C. Narcotics Treatment Administration, which has seen a marked reduction in heroin use in the District. The reduction is presently being interpreted as largely the result of attitudinal and behavioral changes by program clientele.²¹ It may also be argued that

CTP was effective in changing its clients. There is a tendency to dismiss CTP with comments such as, “Well, it does at least as well as the institutional program, and it costs less.” This evaluation fails to give credit for the marked change in performance of selected categories among the various I-level types. It is probable, however, that the major impact of CTP is to induce communities to provide increasingly for the treatment of juvenile delinquents at the local rather than the state level. And in this respect, CTP is much less potent than the probation subsidy.

Fourth, the projects with impact seem to come out of situations where researchers are active in making recommendations and in following through on planning. Rather than finishing their work with a final report, they conclude with both a final report and a documented plan for either a more rigorous follow-on study or an action program.

Fifth, the projects with impact tend quickly to set off a chain of actions and decisions by planners, administrators, and officials in other agencies or political entities. This may result because the impacting project or study implies system change, which involves a widening circle of actors. Why the major impacts have thus far worked out as system change rather than offender change is not clear. The explanation may be simply that it is futile to “tinker with” or “fine tune” the present correctional processes in the hope of making significant changes in offenders. In essence, the only real option open to the researcher, the correctional administrator, and the public is to seek major, constructive changes in the correctional system.

What do these five cases tell us about increasing the rate of payoff in correctional evaluation? Conduct more surveys? Engage in more exploratory or nonexperimental studies? We could make clearer decisions about this if we had an opportunity to examine a broader range and larger number of case studies. We could also profit from some advance knowledge about how much change and how much stability we are facing in the next decades. If change in corrections is going to accelerate, we will need freer and more imaginative studies; more resourcefulness and less mechanical following of traditional research rules.

Provisionally, payoff can come from any methodological direction, so we should not become enamored of elaborate statistical techniques or of controlled experimental designs—no more than

²¹ Robert L. DuPont and Mark H. Greene, “The Dynamics of a Heroin Addiction Epidemic: Heroin Use Has Declined in Washington, D.C.,” *Science*, 181 (August 24, 1973), pp. 716-722.

circumstances warrant. It seems important also to shape evaluative procedures and subject matters more closely to the information requirements and the decision needs of the time. For the present, it appears wise to focus more on changing the system than on changing the offender, accepting that at a later time the reverse emphasis might become more appropriate. We need, of course, to learn how to change the offender, although resources should not be expended heedlessly in attempting this change in "unworkable" structures or procedures. And here we note that Speer and CTP make a partial case for the possibility of changing youthful offenders, even within the present system.²² Finally, we appear to need a new breed of researchers—people who can formulate realistic though innovative program plans as well as execute competent studies in a variety of research designs.

Tomorrow's Evaluative Research

What will tomorrow's evaluative research in corrections be like? We must be tentative, again, but it seems that evaluation will become more varied, focus less on certainty and more on utility of knowledge, answer questions more quickly, and come from researchers who are more flexible or adaptable—possibly individuals who are increasingly making a career of correctional or criminal justice research.

Campbell talks about "trapped" and "experimental" administrators.²³ The former are emotionally involved in their programs and occasionally show an inclination to shelve or bury negative research findings. The latter are more detached and pragmatic; they regard programs as something to be retained if they work and to be replaced if they don't. We obviously need more experimental administrators as heads of agencies.

We also need experimental rather than trapped researchers: Persons who don't have to "go by the book," who are comfortable with a quasi-experiment when a controlled experiment can't be

done, who can effectively use nonexperimental studies to aid planning and decision-making, and who have an interest in contemporary methods—from cost-benefit analysis to simulation.

In recent years there have been 10 or more demonstration projects in adult pretrial diversion, all carried out as quasi-experiments. This development comes at a time when there is increasing discussion about the unsuitability of the true experiment for action research in contemporary social agencies. The pretrial diversion studies are providing at least partial validation for the argument that research is tending toward increase in both flexibility and power to impact.²⁴

Tomorrow's Evaluators

Who is going to do the evaluation? Part of the evaluation crisis is lack of staff, and particularly the right kind of staff. Most state departments of correction lack research units altogether. Most state planning agencies for criminal justice programs also lack evaluators, although they are receiving increasing support and guidance from LEAA in developing or finding evaluative capability. The new National Association of State Criminal Justice Planning Agencies should eventually prove to be another important source of guidance and support.

In their search for evaluative capability, the state agencies are not sure which way to turn. They are leaning, understandably, toward evaluation of programs by outsiders: University faculty, consulting firms, and research institutes. "You can't evaluate your own boss," was the slogan at a recent regional meeting of state planning agency evaluators.²⁵ And "Evaluation research is one of the few ways of keeping the corrections business honest," one university professor recently remarked, apparently implying that this can best be done from the outside.²⁶

LEAA, Etzioni, and Rossi have complicated this dialogue in a number of ways. LEAA reported at a meeting on evaluation called by the U.S. General Accounting Office early in 1973 that extensive failure resulted when research monies were given "hands-off" to a number of selected universities. "Although a variety of methods was used to carefully select the universities, LEAA was (hard) pressed to identify any results from the research."²⁷

Professor Etzioni had remarked earlier on the fact that university faculty members were not good prospects for applied research tasks. They

²² Speer's discovery that 75 percent of the experiments with juvenile offenders in psychotherapy result in significant reductions in recidivism may of course have implications for only a small portion of the total juvenile offender population.

²³ Donald T. Campbell, "Reforms as Experiments," *American Psychologist*, 24 (April 1969), pp. 409-429.

²⁴ Project Crossroads (footnote 19) is a good illustration of resourcefulness in criminal justice research under difficult conditions.

²⁵ *Proceedings*, Southeast Evaluation Symposium, Raleigh, N.C., the North Carolina State Planning Agency, June 15-17, 1973.

²⁶ David A. Ward, "Evaluative Research for Corrections," *Prisoners in America*, Lloyd E. Ohlin (ed.). Englewood Cliffs: Prentice Hall, Inc., 1973, pp. 184-206.

²⁷ *Evaluation of Law Enforcement Assistance Administration Programs: A Conference Summary*. Washington, D.C.: National Academy of Public Administration and the U.S. General Accounting Office, February 22-23, 1973, p. 9.

tended to turn the tasks into basic research projects in line with their own academic interests. Etzioni referred to Professor Rossi's description of such practice as "Robin Hooding."²⁸

Evaluation by consulting firms also has its drawbacks. Professor Roos observes that while the academic researcher is perhaps somewhat unresponsive to the decision-maker's needs, the consulting firm is likely to be oversensitive to the decision-maker's wishes. "Instances have been observed where a consulting organization asked to evaluate a program provides its client with a whitewash which the evaluator assumes, or has been told, the client expects."²⁹

Are there solutions to these obviously serious problems with outside evaluation? With respect to university-based research, Professor Brooks sees a need to change the academic reward structure.

That structure is not geared to encourage faculty participation in the evaluation of agency action programs. Confronted with time limitations, the need to gather and analyze data on projects designed by others . . . and a paucity of opportunity for career-boosting publications, most academicians prefer to remain aloof.³⁰

While acknowledging that the university reward structure needs changing, Brooks is not sanguine. "We've known for a long time that it needs changing." As for consulting firms, Brooks is equally pessimistic, and he has no suggestions to offer.

These capsule comments should not obscure the fact that some university faculty and some consulting organizations have done commendable work in evaluation. However, they underscore two conclusions. First, these outside evaluators must somehow be induced to raise the quality and relevance of their work. Second, the correctional ad-

ministrator who seeks outside evaluation should realize the problems he faces and be prepared to deal with those problems in more knowledgeable manner.

What of the correctional agencies themselves? To what extent should they plan to carry the bulk of evaluative research? Or should they accept the dictum that "You can't evaluate your own boss"?

One issue is capability. The record here is favorable to the agency research units. If we compare the final agency reports on the PICO Project,³¹ the Community Treatment Project,³² and the Youth Center Research Project³³ with final university staff reports such as *Street Gangs and Street Workers*,³⁴ *C-Unit: Search for Community*,³⁵ and *Prison Treatment and Parole Survival*,³⁶ it is clear that the correctional agency research shows better design, more objective reporting, and products of greater utility to the decision-maker. This would argue for expanding agency research efforts.

The fairness of the foregoing comparison is not immediately evident. One can question the representativeness of both the research and the researchers. However, the point most worthy of emphasis here is that in the past 20 years the best evaluations of correctional agency programs have been done by agency research staff.

There is a second crucial issue—recruitment. Can capable persons be attracted into and retained in correctional or criminal justice research in sufficient numbers to meet the rising need? The recent history of recruitment shows young researchers staying with an agency only a short time—many soon returning to the campus as teachers, where occasionally they become writers of abrasive polemics on corrections. The latter is understandable, given the dehumanizing and irrational aspects of the correctional enterprise. Nevertheless, it tends to complicate the staffing problem.

How, then, can agency evaluation units develop and improve themselves? Clearly, some thought to methods of attracting and retaining productive researchers is required. There is another possibility. Emrich has suggested that effective research staffers can be developed within agencies.³⁷ He proposes an "apprenticeship model" of evaluation, in which existing administrative or operational staff will undertake assessment of projects, receiving guidance as needed from researcher-consultants. In time the apprentices may become masters.

²⁸ Amitai Etzioni, "Redirecting Research Dollars," *Washington Post*, June 11, 1972.

²⁹ Noralou P. Roos, "Evaluation, Quasi-Experimentation and Public Policy," in *Quasi-Experimental Approaches*, James A. Caporaso and Leslie L. Roos, Jr., (eds.). Evanston: Northwestern University Press, 1973, p. 297.

³⁰ Michael E. Brooks, "Dimensions of and Constraints on Evaluative Research," *Proceedings, Southeast Evaluation Symposium*, Raleigh: North Carolina State Planning Agency, June 15-17, 1973.

³¹ Stuart Adams, *Interaction Between Individual Interview Therapy and Amenability Classification in Older Youth Authority Wards*. Sacramento: California Youth Authority, Research Report No. 20, January 1961. Reprinted as "The PICO Project," in *The Sociology of Punishment and Correction*, Norman Johnston, et al., (eds.). New York: John Wiley and Sons, Inc., 1970 (2nd ed.), pp. 548-561.

³² Ted B. Palmer, "California's Community Treatment Project for Delinquents," *Journal of Research in Crime and Delinquency*, 8 (January 1971), pp. 74-82.

³³ Carl Jesness, et al., *The Youth Center Research Project*. Sacramento: American Justice Institute, 1972 (2 vols.).

³⁴ Malcolm W. Klein, *Street Gangs and Street Workers*. Englewood Cliffs, N.J.: Prentice Hall, Inc., 1971.

³⁵ Elliot Studt, *C-Unit: Search for Community in Prison*. New York: Russell Sage Foundation, 1968.

³⁶ Gene Kassebaum, et al., *Prison Treatment and Parole Survival*. New York: John Wiley and Sons, Inc., 1971.

³⁷ Robert Emrich, "Models for the Evaluation of State Criminal Justice Programs," *Proceedings: Research Workshop*. San Francisco: California Probation, Parole and Correctional Association, May 29-June 1, 1973.

This proposal brings to mind the fact that some of the notable early studies in California corrections, particularly the Special Intensive Parole Unit (SIPU) 1953-64, and the Pilot Intensive Counseling Organization (PICO) 1955-61, were begun by operations or treatment staff, with outside consultation. And in the Los Angeles County Probation Department, six probation officers proposed and carried out a controlled experimental study of the effects of group counseling on juvenile probationers—an experiment that yielded positive results in a brief but workmanlike effort.³⁸

Critical as the staffing problem may be, its final resolution is difficult to foresee. If an on-the-spot recommendation were required, the evidence apparently supports wider development of correctional agency research units. Three such units have compiled good records of evaluative research production and program planning and development over the past several years. Furthermore, they have disseminated their major findings over a broad audience, apparently to good effect. These units now serve as models for other agencies. Their ability to combine superior research productivity with effective planning and development within the same unit makes them stand out in comparison with other possible sources of evaluation and planning. Their powerful role in technology transfer adds further to their importance as models.

There remain other issues that bear significantly on the prospects of correctional and criminal justice evaluative research. These can only be alluded to here. One is the matter of agency administration: Effective evaluation and planning require pragmatic, experimental stances by forward-looking, supportive administrators. There is need for adequate organizational and fiscal support for research. There is need to eliminate the excessive level of trial-and-error in present-day evaluation, and to reduce some of the duplication in projects and evaluative studies between states in the current evaluation drive.

The list can be expanded further. There is need for better use of theory as a guide to evaluation, and a need for long-range as well as short-range strategies for evaluation. There is need to encourage the development of a sound research tradition in corrections, relatively independent

of academic departments and consulting organizations. And, finally, there is need for the encouragement and support of meaningful careers within the areas of correctional and criminal justice research.

Summing Up

In summary, we note that correctional evaluation has been an active and relatively productive enterprise over the past two or more decades. Its accomplishments may be compared favorably with achievements not only in social action fields but also in more remote kinds of endeavor.

Many of the products of evaluative research have impacted heavily on corrections and criminal justice, as witness the Probation Subsidy Program in California, the Narcotics Treatment Administration in the District of Columbia, and the pretrial diversion programs now under development in many states. In corrections, the impact of evaluation has shown up primarily as system change; there appears to be less evidence of progress in furthering offender change, except possibly with juvenile offenders.

The impact of evaluation thus far has come primarily from "weak" research designs that produce information of low certainty levels. Controlled experimental studies, or other "strong" designs, with perhaps one or two exceptions, have exerted little influence. More recently, the quasi-experiment and cost-benefit analysis have been teamed successfully in efforts that have brought strong support to pretrial diversion as a criminal justice procedure.

What form correctional evaluation will take in the future depends largely upon the rapidity of change and the spread of systems thinking in criminal justice. It also depends upon the extent to which rational long-range strategies of evaluation emerge. The likelihood is strong that some forms of traditional evaluation (e.g., controlled experimentation) will decline in importance and that contemporary methods (cost-benefit analysis, operations research, systems analysis, and simulation) will grow in importance.

Staffing of an expanding criminal justice evaluation effort poses some severe problems. Widespread disappointment with university-based and consulting-firm research and the relative success of agency-based research where there has been good support suggests that more emphasis should be placed on the latter approach to evaluation.

³⁸ Stuart Adams, "An Experimental Assessment of Group Counseling With Juvenile Probationers," *Journal of the California Probation, Parole and Correctional Association*, 2 (Spring 1965), pp. 19-25.

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However, there is also need to improve and to make more responsible the contributions of university faculty and consulting organizations.

Given the development of several additional agency research units with high capability and also more concern for the recruitment or development of "experimental" administrators of agencies, the groundwork may be laid for the

emergence of a strong correctional research tradition based within the field of corrections itself. Such a tradition would aid greatly in defining productive research models, recruiting and holding promising staff, building and disseminating a body of operationally relevant research, and speeding the development of a more rational and more humane correctional process.

The Philosophy of Corrections: Revisited*

BY WILLIAM E. AMOS, ED.D.

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WHEN INVITED to address this convocation, I readily accepted without defining a theme for my comments. After some thought I felt that I did not want to repeat many of the themes or positions that are popular today in corrections and leave the impression that I believe and advocate all of them. This would be intellectually dishonest. There is no question that much is wrong with the correctional process, however, I am not at all sure that the principal issues are the ones receiving the attention.

History of Corrections

Corrections in the United States may be traced back to the early colonial period when it was felt that by punishing the offender we could cause him to no longer desire to perform antisocial acts. It was during this period that offenders were degraded in public and incapacitated for significant periods of time. We thereafter, as a result of the influence of the Quakers, adopted the philosophy that adequate meditation and moral instruction would cause the offender to terminate his illegal behavior. It was also at this time that the concept of "doing time" evolved. Evolving out of this philosophy was the concept that communication between offenders was contaminating and that adequate discipline with religion and separation of offenders would act to reduce traits of criminality. During this period, from about 1830 to 1870, the well-known Auburn and Pennsylvania systems came into being. Although both systems differed from each other in some aspects, both of them allowed no verbal contact between prisoners and stressed the importance of self-righteous visitors proclaiming both the gospel of good behavior and of religion to the inmate. This system did not work and actually tended to drive many offenders mad as a result of a lack of contact with others and what often amounted to almost total isolation.

After the Civil War, around 1870, we entered into what is commonly recognized as the reformatory era. It was during this time that the use of

release by parole evolved as well as the indeterminate sentence and the belief that the way to succeed was through education.

Initially the emphasis was upon vocational education and, doubtless, many did gain trades that they could use legitimately. Around 1900 the industrial era emerged upon our Nation, and it started to be recognized that although people could be educated in prisons, they needed to gain a desire to use the education in order for the training to be meaningful. Therefore, for the next 30 some years there was a strong emphasis upon the industrial prison. Inmates performed labor during the day and gained education at night. For a variety of reasons, this approach was no panacea and when the depression struck this country with the associated lack of employment, laws were rapidly passed which greatly diminished the ability of our correctional institutions to maintain industry that was in competition with civilian industry.

With the advent of the behavioral sciences during the last 40 years, it has been emphasized that individuals are molded by societal and psychological pressures during their developmental years and that the adult is a product of the environmental mode out of which he grew. During this time the classification system was adopted and the theories from the Freudian school of psychology became quite prevalent with respect to causation and cure of antisocial behavior. Recently there has been emerging, with regard to the offender, a feeling which I would call societal guilt. The overall assumption is that the offender is not responsible for his behavior because agents outside of himself allowed him to evolve in an environment that tended to produce an antisocial individual.

Present Status of Corrections

During the past two decades our system has been in a state of active turmoil. The various social agencies and service institutions are continually being criticized and attacked, and in many cases drastically modified. I will be the first to admit that drastic modifications in many of our

* A convocation address presented at Culver-Stockton College, Canton, Missouri, October 18, 1973.

institutions are greatly needed, but I am not sure that the changes that have occurred in many instances have been the ones that will have a long-term productive effect on our Nation.

As a part of our national psychology we are very short-term oriented. When we have a problem we like to jump in and find the answer. We are not geared to face social issues that have been developing over scores of years and to develop needed remedies that may take a like period of time. I think that this has been one of the most frustrating elements of the Viet Nam conflict. It was long-term, drawn out, and we could see no end. I think this gradually resulted in changes of attitude that caused great national pressure, not that we were morally opposed to the war. Consequently, those social institutions that are more visible are attacked first. We have gone through the problems of welfare, the police, the courts, the schools, and the churches. Now corrections, which has been hidden for many years in the wasteland of America, has suddenly become visible. The activists have found a new and fertile ground, and much of what they see is personally reprehensible to them. Unfortunately, great numbers of these activists are not as concerned with human beings as much as they are concerned with: (1) pulling down the system, and (2) promoting their own reputations. Regardless of how you see the attack on corrections by various individuals and organizations, the point is that our correctional programs and institutions are no longer hidden from the public, they are under attack and are going to have to respond in one form or another.

Another very important factor in considering the status of corrections today is to see it within the frame of reference of the changing value system of our country. The "puritan work ethic," the accountability of man for his behavior and actions, the responsibility of a person for his own welfare, the purpose of marriage and home as the foundation of our social structure, and the modification of standards of behavior and attitudes have all drastically changed in recent years. It has become popular to ignore those laws that one disagrees with, to challenge the right of authority and laws that limit free expression, and there is a great belief that the rights of the individual far outweigh the rights of society. The point that I am making does not depend on whether one is a liberal or conservative. The point is that America's changing value system

has a profound impact on the criminal justice process. I think another national development that has so affected our thinking in recent years and has been reflected in the modification of our institutions would be the various assumptions that have been held concerning human behavior. More than any other culture or any other society of comparable size and structure, we have become professionally oriented. By that I mean we have developed an awe for professionals and their contributions that fall into the areas of law, medicine, and the behavioral sciences. We operate on the assumption that there is an answer to any question if the proper interdisciplinary approach is taken. Some of these assumptions have led us to believe that: (1) All behavior can be modified; (2) people commit crimes primarily out of necessity and need; and (3) what we need to do is provide more money for research studies that will furnish us with creative, innovative answers. In summary, what I am saying is that our national philosophy regarding corrections is that, if we had better training of professional staff and more money for programs we could rehabilitate most of the people that are committed to correctional agencies.

Our National Corrections Philosophy Should Be Modified

At this point in my presentation I would like to set forth a proposed modification of our national philosophy. That proposed modification is primarily based on the following premise: Behavioral sciences at this stage do not know how to rehabilitate criminal offenders.

During the past 25 years I have been involved at the local and national level with the administration of programs in education, manpower development, corrections, and various other rehabilitation programs. I have visited all 50 states and observed programs that have been funded by the Federal Government, as well as private organizations, and if there is one thing that I have learned it is simply this: We really do not know what we are doing. As a behavioral scientist I disagree with the feeling that behavioral science has not had an opportunity. Within the last 15 years there have been more funds provided for social research and consultation relating to the behavioral sciences in this country than at any time in history. From the viewpoint of developing models for national implementation, very little of a positive nature has resulted from

this mammoth expenditure. This does not mean that we have not learned, that people have not been helped, or that knowledge of importance that can be recognized in national policy has not been gained. What we have been looking for are models in which we can place numbers of people and hopefully have them come out of the other end of the funnel modified in their behavior and attitudes. This simply has not occurred. From my experience, the one identifiable factor that has made a particular program successful has been the unique personality of the particular person who has provided leadership for the program. I have seen this in large programs relating to manpower and I have seen this in small situations such as a work supervisor in a juvenile institution.

Another element of great importance is the inadequate research that the behavioral sciences have provided. In recent years much of the research has been designed and interpreted to support the particular philosophy of the researcher and not to contribute new knowledge. This is a serious charge, but it is a charge that I do not back away from. There are innumerable other factors that have been important in this period of social change, but I feel that those I have mentioned have had a particular impact.

Correctional Philosophy Should Not Be Based on Rehabilitation

My proposal for you today is that the philosophy of the correctional system in our society should not be based on rehabilitation of the offender. At this point, allow me to state some of my reasons and recommendations:

(1) *The medical and behavioral sciences do not have the capability of rehabilitating the criminal offender on an organized and consistent basis.*

(2) *When we speak of rehabilitation we assume that the subject in question has been habilitated.* In many cases the clients of correctional agencies have a long history of acting out, antisocial behavior that does not reflect that they have ever been habilitated as to social norms, values, behavior, and expectations.

(3) *We are probably as confinement-oriented as any country on earth.* As a result we have placed many categories of individuals in correctional institutions for treatment that is beyond the capa-

bility of the system. These include the medical, social, and psychological misfits that society has not provided programs or facilities for and whom the correctional system inherits.

(4) *Only those persons committed for the following reasons should be placed in the institutional setting:* (a) Those sentenced for deterrence; (b) those sentenced for accountability; and (c) those sentenced as physical threats to society.

(5) *More structured and controlled alternatives to incarceration should be provided the courts.* Most of the programs provided now are too permissive, have limited resources, and have little control over the individual in their care.

(6) *The courts, the public, and parole boards realize that some persons have to be incarcerated for the welfare of society. The National Advisory Commission on Criminal Justice Standards and Goals states the following:*

It also must be conceded that there are dangerous or confirmed criminals who by any light must be considered poor, almost hopeless, prospects for social reintegration. For the safety of the public, they must be locked up until the passage of time at least has reduced them to the point where they no longer are a threat. There are plenty of prisons for this type of offender, and corrections has proved itself eminently capable of confining them securely. The Commission has not found it necessary to consider them at length in this report, except to recommend extended prison terms.¹

(7) *We move towards a more active use of community-based programs for those who need not be placed in an institutional setting.*

Let us for a moment look at what is happening in corrections. First of all, for the most part, convicted offenders receive suspended sentences and probation. Those not placed on probation usually have a record of community maladjustment that indicates that if they are released to the community they will rapidly become reinvolved with multiple community service agencies for a significant period of time. Further, their community environment (including associates) has either definitely influenced them toward illegal behavior or, at best, failed to effectively control or stop behavior that is unacceptable. Recognizing this picture—that of an offender in an environment where he is strongly influenced to violate the law—we need to ask what we can reasonably expect a community program to accomplish. We are not magicians! At best, a community correctional program has only a few hours a day that can be devoted to the individual offender, and that time is in competition with several more hours a day where the offender may be in contact with

¹ National Advisory Council on Correctional Justice Standards and Goals, *Report of the Task Force on Corrections* (working draft of chapter 17—"Priorities and Implementation Strategies," undated), Vol. 4, p. 21.

an environment that has led him in the past to commit antisocial acts.

What kind of community programs are being proposed for offenders? Essentially, these programs provide housing, guidance, opportunities for vocational and academic education, a stable environment, and psychotherapy. But will those presently being incarcerated respond to such programs? Our information at this time would suggest that a limited number probably would.

In community programs we can work with those individuals that are willing to participate. If the offender is not motivated, a community program for him will fail. We are already putting many of the highly motivated individuals on probation.

Please do not think that I'm against community corrections! I'm not. What I am against is the concept of community corrections on a wholesale basis. Community corrections is not a panacea. It is one correctional tool, among many. Because some of the more vocal or academic correctional writers feel community corrections is the final answer, that does not mean that their statements are necessarily accurate or valid. Different programs work for different people. We cannot forget individual differences.

(8) *Correctional institutions and parole boards should not be evaluated on the basis of how well their clients perform in the community.* A major portion of these individuals have been exposed to the various social agencies in our society and have failed. They are the sum product of genetic inheritance, deprivation, rejection, and failure. Their formative years, in many instances, were a total tragedy. As an older youth or adult they enter a correctional system after other agencies and institutions have proven inadequate. We also fail to realize that for many of these offenders the criminal or antisocial life style is very satisfying and they resist all efforts to modify their behavior or values. Others have such a hardened long-term value system that change or insight is next to impossible.

An additional group is motivated by political or racial hatred to such an extent that behavior

modification is actively resisted both psychologically and physiologically

(9) *A national system of accreditation of institutions should be implemented and institutions should be required to offer services and resources that meet the requirements that should be expected in a Nation that values human dignity and the rights of individuals.* I further believe that a program to construct a number of smaller institutions that will allow many of our huge human warehouses to be discarded should receive the highest priority. I realize that this is the opposite position taken by many who advocate no new construction in the foreseeable future.

Summary

In summary, I want to emphasize the following:

(1) We should confine fewer people.

(2) The philosophy of confinement should be deterrence, accountability, and the protection of society—not rehabilitation.

(3) Adequate training or rehabilitation centers should be operated by other agencies to service those offenders whose offenses are directly related to educational, physical, or psychological deficiencies. These agencies may be vocational rehabilitation, welfare, educational, or even private agencies.

(4) Whenever a person is confined he should be provided the protection, services, and opportunities that would reflect our belief in the dignity and nature of man. I would further propose that a National Inmate Bill of Rights be prepared, and all states be urged to adopt and implement it.

I believe that such a national philosophy, if implemented, would allow us to operate a criminal justice system that would better serve both the inmate and society.

I have not comprehensively covered all of the important aspects of my position. I perhaps have too strongly left the impression that institutions and the helping professions are completely inadequate. This is not true. We know a great deal and many lives are positively touched, but when seen in the total perspective my statement stands.

Now both the public and the correctional staff expect prisoners to be, at least, no worse for the correctional experience and, at most, prepared to take their places in society without further involvement with the law.—NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, 1973.

Crisis Intervention in a Probation Setting

BY GLORIA CUNNINGHAM*

IN THE LIGHT of a great amount of attention being focused on the criminal justice system, not all of it welcome, it is disappointing to note that the practice and techniques of probation supervision are still being viewed primarily as an afterthought in the criminal justice process. An article details a series of glamorous, innovative and unworkable alternatives to incarceration and includes somewhere as a footnote that probation supervision might also be viewed as such an alternative. Concepts of community-based corrections are being vigorously discussed at conferences and seminars without reference to insights available from a long tradition of probation and parole supervision, as if these services had somehow operated in a vacuum. As a change of pace let us assume for the length of one article that probation is indeed a viable alternative to imprisonment, that in the majority of cases it can help to mitigate some of the destructive effects of violative behavior, and that the personnel are people of intelligence and integrity involved in a professional relationship with their clients with the intent of achieving an acceptable balance between the needs of the individual and his community. It is important to acknowledge

that these assumptions are at least possible if probation is to be lifted from its stepchild status and given the attention it deserves as a medium of immense potential in effecting positive change in both the individual and his environment.

One of the effects of probation's low prestige is its theoretical isolation from the broad spectrum of interventive techniques potentially applicable to the law violator. This has in turn resulted in the probation officer having to operate with either no clear frame of reference or from one so narrow and inappropriate that it creates more problems than it solves. Regardless of how others view us or ignore us we still have the day-to-day responsibility for thousands of adults and juveniles under supervision. It is to our advantage to broaden our frame of reference and become familiar with some of the conceptual tools and pragmatic techniques used in other settings which are applicable to probation. In the process of doing so we may learn more effective ways of helping our probationers. We may experience a degree of increased personal satisfaction from our work. We may also learn that we have much to contribute to the total fund of knowledge of techniques of intervention and social treatment. A case in point is the emerging body of concepts referred to as crisis theory. Other disciplines and practice settings through research and empirical observations have contributed a variety

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of insights about the unique attributes of a person in a crisis which should have value to us as practitioners. At the same time it is possible that we can add to these insights as a result of our experience with clients in the crisis state and because of the fact that we practice in a crisis setting.

The concept of crisis is certainly a familiar one in criminal justice. It is perhaps one of the most ubiquitous features of courts, penal institutions, and parole agencies. Crisis theory however, as this term is variously defined in the literature, has not been widely applied in corrections except in the most informal way. But the theory did not create the phenomenon of crisis and practitioners in the helping professions have probably always recognized some of the unique features of a human being in a crisis state and intuitively or otherwise have modified their interventive efforts to accommodate or capitalize on them. This is as true of practitioners in probation and parole as it is of practitioners in psychiatry. The earliest published attempt to identify elements of the crisis response is Lindemann's classic study of the survivors of the Coconut Grove fire,¹ and the literature in the 1950's and 1960's reflects attempts at further specification of these theoretical formulations to a wide variety of mental health and social welfare settings. There has been little attempt to review the implications of crisis theory for corrections or the potential contribution of correctional practice for the development of crisis theory. There is value in both approaches. Our clients come to us at a point of crisis in their lives. More skilled use of the techniques of intervention being developed can increase our effectiveness as practitioners. On the other hand the criminal justice system offers a unique laboratory for further examination of the human response to crisis. Unlike mental health or social welfare settings, the correctional setting is the crisis-producing event with which the client has to cope, the crisis of arrest, trial, sentencing, incarceration, the imposition of controls on behavior and release on parole. In view of the impact of the penal system itself on the offender and his family it seems probable that workers in corrections have evolved techniques intended to exploit the

rehabilitative potential of the crisis state which might be generalizable to other fields of practice if made more explicit.

Elements of Crisis Theory

Since so little has appeared in correctional journals about crisis theory a brief review of some underlying concepts is in order.² There are three core concerns in crisis theory: the nature of the event or stress which evokes the crisis state, the nature of human response to crisis, and the interventive techniques involved in its resolution. The event may be acute and dramatic such as a natural disaster, combat, major surgery, or the death of a loved one. It is helpful in arriving at an understanding of crisis theory to recall one's own response to this kind of life event and to remember for example, the mixed physiological and emotional reaction to acute stress. The event precipitating the crisis can also be part of the normal biological, social, or emotional changes that occur during a lifetime; puberty, senescence, marriage, pregnancy, divorce, retirement. Every individual develops certain characteristic responses to changing circumstances and ways of integrating these changes so as to maintain an adaptive balance or homeostasis in interaction with his environment. A crisis arises when the adaptive mechanisms generally drawn upon are not totally adequate to some severe stress. While individuals react differently, the "state of crisis" is characterized by an upsurge in tension and anxiety which is likely to increase the more inadequate characteristic coping mechanisms prove to be. A person is apt to feel overwhelmed and helpless and confused to the extent of not being able to grasp the reality of his situation or the options available to bring about a resolution. Also a current crisis can stir up past threats or inadequately resolved past crises which can in turn heighten the individual's sense of vulnerability and the illusion of pathology. But an important insight of crisis theory is that the crisis state and its associated response pattern is not a pathological reaction. It is more or less "normal" bio-emotional response to an abnormal event in the life of the person experiencing the crisis.

After the initial disorganization in response to the threat or "hazardous event" there tends to occur eventually the thrust to restore oneself to a level of more organized functioning again. If past patterns of crisis resolution are ineffective new ones must be found which may be more or

¹ Erich Lindemann, "Symptomatology and Management of Acute Grief," *American Journal of Psychiatry*, Vol. 101, September 1944.

² For a more detailed presentation the reader is referred to Lydia Rapoport, "Crisis Intervention as a Mode of Brief Treatment," *Theories of Social Casework*, ed. by Robert W. Roberts and Robert H. Nee (Chicago: University of Chicago Press, 1970), p. 265; and Howard J. Parad, ed. *Crisis Intervention: Selected Readings* (New York: Family Service Association of America, 1965).

less successful, adaptive, or maladaptive. New energy becomes available to help in the process and there often occurs a rapid barely conscious reassessment of essential values, priorities, and goals which may have profound and far-reaching effects on the individual. All of the usual parameters which he has used to motivate or direct his behavior are suddenly gone or rapidly disintegrating. Part of the mounting terror of the crisis state is the fear that the person himself, the "I," the "me" he has always known is also disintegrating. There is no time to defend against the unfamiliar ways of thinking or new forms of behavior. Anything that gives promise of a stable reality once again will be quickly grasped. As stated by Perlman, "The moments of felt crisis are moments when the iron of personality structure and patterning is white hot. This is because of the pervasive inner sense of shakeup and disorganization; emotion is intense; self-mobilization to flight or to flee, to struggle or to collapse is high, though it often cannot be sustained for long and may end in capitulation. The feeling is that something radically different must happen at once on the outside or within the self."³ It is precisely in these areas and at this point in time that a skilled probation officer can intervene and help to direct this energy, this motivation to do *something*, into constructive problem-solving channels. Because of his acute feelings of discomfort and helplessness and the heightened motivation to do something about it, the individual in crisis is more likely to respond positively to anyone who can provide direction and hope in restoring a degree of emotional equilibrium. If this occurs successful crisis resolution ideally adds to his repertoire of coping abilities and problem-solving mechanisms.

The implications for social treatment fall into three very general categories: intervention because of the crisis with the goal of helping to restore the client to his former state of stability, intervention to prevent regression or deterioration to a less adaptive level of functioning which might occur because of the crisis, and utilization of the crisis state to bring about a more adaptive level of general functioning than existed prior to the crisis. There is nothing mutually exclusive about these three interventive goals although one may be present or dominant when the others are

not. All are possible and appropriate to a probation setting.

Crisis intervention is viewed as being of essentially short duration. Treatment goals are limited to the extent that major concern is with the current crisis rather than with character reformation. Information gathering or "diagnosis" is focused on clarifying the various elements of the crisis, the positive or regressive coping mechanisms of the client, and the options available for positive crisis resolution. Etiological factors and developmental history are of interest only insofar as they throw light on the current stress. In contrast to more traditional treatment the worker assumes a more directive role with the intent of lowering the client's immobilizing anxiety and moving him from his state of helplessness toward one of increased mastery and autonomy. This is achieved in part by breaking down the total problem into more manageable segments and pointing out personal and environmental resources which may be brought to bear on the situation. Whether or not these techniques are viewed in a crisis context they are somehow more compatible with corrections than other models which have emerged from the medical-psychiatric frame of reference.

Rapoport makes it very clear that the crisis state should not be confused with chronic crisis situations. She identifies certain kinds of clients whose crises are largely self-generated and for whom being in crisis is a life style.⁴ The distinction is an important one to the extent that it emphasizes the need to apply this or any interventive technique on a selective basis. If carried too far, however, it tends to perpetuate certain myths about probation caseloads and confuses the task of classification and diagnosis. The chronic crisis or crisis-prone client is not unique to corrections or welfare settings, but may be found bedeviling workers in private suburban family service agencies or analysts on Park Avenue. It is a myth to believe that only certain types of people violate the law, whether one chooses to identify the type as teenager, Italian, black, psychopath, or severe acting out character disorder. The inherent danger in this kind of diagnostic type-casting by practice setting is a familiar one to probation and parole officers. Our clients are declared untreatable or unresponsive to rehabilitative service and are denied service by other community agencies simply because they are being referred by a probation officer. It may well be

³ Helen Harris Perlman, *Persona: Social Role and Personality*. Chicago and London: University of Chicago Press, 1968, p. 30.

⁴ Rapoport, *op. cit.*, 304-305.

that a corrections caseload contains a higher proportion of the chronic crisis client, but the individuals who make up probation caseloads are not a special breed. They are probably more representative of the general population than is usually assumed by professionals and lay persons alike. Not only is crisis intervention applicable to this service population, but it is possible that research directed toward the adaptive, coping, and survival patterns of these clients might be among the most fruitful for crisis theorists.

To clarify the point of view of this article, it is not the presumably higher percentage of crisis-prone or chronic-crisis clients in correctional caseloads which makes crisis intervention applicable to these settings. What is relevant is the fact that for most of the people who get caught up in the criminal justice system the very experience itself produces a state of crisis. This presumes that most of the people who are arrested or sentenced for an offense will respond with essentially the same crisis pattern as clients in any other setting and are capable of utilizing crisis intervention techniques in much the same way.

The Presentence Phase as Crisis

Certain points in the criminal justice process are more apt to produce a state of crisis than others. Among these are the arrest and initial detention, the presentence phase, at the point of actual or threatened revocation of probation, and when an offender is released from an institution and returned to the community. There are several aspects of the presentence period as crisis which are unique and which have implications as to how the worker intervenes in the situation. The criminal justice system imposes on the offender a sequential crisis—a series of hazardous events of increasing intensity. If a scale of severity of crisis could be established very high on the list would be those few minutes of exquisite anxiety before the judge passes sentence, before it is known if the next part of one's life will be spent on the streets or in prison. It is almost axiomatic in corrections to say that more can be accomplished with a client during the presentence than in an extended period of probation. If this is true then crisis theory offers some explanation.

Typically the first interaction between adult offenders and the probation officer occurs between the finding of guilt and the imposition of sentence. The defendant is in limbo "waiting for the other shoe to drop." He may be coming down from the

trauma of the guilty verdict while having to gear up for the threat of the sentence. Theoretically this poses a problem for the probation officer in deciding which to relate to, but in practice the client's choice is generally to see the experience all of a piece and to postpone any reaction to the one crisis in favor of steeling himself for the next. An exception is when the guilty verdict was really unexpected. From the point of view of general theory it seems that the prolonged, sequential crisis of increasing severity call for a somewhat more complex pattern of coping abilities than is typical of other settings.

By the time of the first interview with the probation officer the client may have been in a crisis state for some time and may have developed some new mechanisms for dealing with these recurrent and similar threats. He may be sullen and defiant, super cool, totally confused and immobilized, or perhaps more typically, in a state of fluctuation between helplessness and control. The first task of the probation officer is to make some decisions and choices as to which of the coping mechanisms can be supported as constructive. This is determined partly on the basis of a quick assessment of the person and the broader implications of his crisis situation. For example, the guilt-ridden breast-beating, remorseful defendant may kindle joy in the hearts of defense counsels, but it is not the most desirable state for the client for an extended period of time. People in such a state are apt to do self-destructive things like confessing their guilt unnecessarily to their employers or mother-in-law. It may be more helpful to move a defendant beyond this point to more constructive behavior such as finding a new job or mending a sagging marital relationship.

Successful intervention by the probation officer at this point in time is limited by the extent to which he has knowledge of the probable sentence. Certain defendants will probably be placed on probation; others will probably be incarcerated. While the probable outcome may be stressed, it is helpful to many clients in crisis to discuss all possible dispositions and to do this in the light of the kinds of decisions and planning the client will have to make. What resources does the family have if the breadwinner is sent to prison? Do children have to be told if their father is on probation? Many clients bring up such questions anyway, but many others, especially first offenders, are either too unfamiliar with the reality or too immobilized to be able to ask such ques-

tions. Crisis theory suggests that these considerations which tend to be postponed until after sentencing may serve several purposes if discussed during the presentence phase. Their discussion lessens the sense of the unknown and reminds the client that whatever the disposition and in spite of limited autonomy he will have continuing rights, responsibilities and relationships.

The corrections client is in some ways more truly helpless in his crisis than clients in other settings. He cannot uncommit a felony, wipe out past convictions, or suddenly produce a stable work history. For this reason anything he can do to restore some sense of mastery or to improve his position is important, even if it is in terms as negative as how to do time with less difficulty than in the past. With most defendants the discussions can be more positive. Clients can be motivated to use this time to find jobs, enroll in training or treatment programs, or to begin to work out interpersonal and relationship problems. Judges and professionals in general are suspicious of such "foxhole conversions" but we tend to encourage them anyway. It is possible that we undervalue their lasting impact. Maybe if the defendant is given more focused and forceful help at this crucial period around the direction and quality of these choices, more durable and positive change can be effected.

Crisis theory provides some insight for the immediate postsentence phase. If a prison sentence is imposed the nature of the interventive tasks with both the client and his family is fairly clear and comparable to those used in other crisis settings. In most situations the general goal is to mitigate the degenerative effects of the crisis and to do what can be done to get everyone functioning again. What is less clear is the nature of the followthrough that should or does take place when the client is placed on probation. The "other shoe" has dropped and the worker-client relationship has suddenly expanded from several days or weeks to as much as several years. Role relationships and mutual tasks are altered. The client withdraws and this withdrawal is an almost universal phenomenon. No matter how dynamic, positive or helpful the relationship may have been during the presentence phase, the probationer is difficult to engage in continuing problem-solving after sentencing. The clients who possess that configuration of attributes defining them as "most treatable,"—bright, sensitive, insightful—are the ones who tend to withdraw first and farthest. In

psychiatric consultation the client's sudden loss of involvement and anxiety about his status as offender are often cited as evidence for a diagnosis of "psychopath." Crisis theory suggests another interpretation, the common human need to pull back from the severity of the crisis now past, to engage in some denial, and to block out reminders of this acutely painful experience. In most other settings there is no expectation that the worker-client relationship will continue beyond the point of client choice or crisis resolution. Once the relationship has served its purpose the client can dispose of its remnants along with other aspects of the crisis experience according to his own pattern. In corrections, however, not only must the relationship endure, but the probation officer is a very real part of the crisis that the client is trying to dismiss, the hazardous event with which the client must cope, part of the system which can still send him to prison. At the very least the probation officer is a constant reminder, and the more persistent a worker is about engaging the client after sentencing the more threatening this may seem to a person trying to restore some sense of equilibrium. Another factor entering into the problem is that for most defendants the priority concern throughout this crisis period is to avoid incarceration. Whatever else may be identified during the presentence phase as contributing or related problems, most of the emotional energy has been bound up in anticipation of the sentence. When probation is assured there is little problem-solving energy available to invest in other issues. The analogy which compares the presentence with the intake phase in a private agency is misleading and unrealistic as to the kinds of assumptions it raises as to social treatment and followthrough after sentencing. The insight into psychodynamics provided by crisis theory suggests that *only* the most brilliant psychopaths and con artists could "give the probation officer what he wants" and live up to these unrealistic expectations of immediate and continuing involvement in the rehabilitation process.

It is possible that the types of service patterns which have emerged in corrections may actually be the most realistic and useful ones given the setting and the crisis implications of the relationship. A common pattern is the periodic, usually monthly, interviews interspersed with intensive contacts around a particular problem or period of stress. It is a pattern which requires

a low level of investment from the client, but it provides the opportunity for a reassessment of the relationship and hopefully over time a re-constructed image of the probation officer as a helping person. This form of "supervision" is disparaged by many professionals, but it may well be the most helpful for the greatest number of probationers when it is not permitted to drop to the level of mere check-in reporting. If it is true that we can accomplish much with our clients during the presentence phase and at other points of crisis, and that very little gets accomplished at other times because of the client's tendency to withdraw from the situation that produces the crisis anxiety, then perhaps we should invest most of our time and treatment energies toward those periods when it will be most effective and accept without professional guilt the intervening periods of diluted involvement on the part of both the worker and client.

The psychotherapy model has provided corrections with valuable insights about the nature and etiology of a violative behavior, but as a model for effecting change or rehabilitation with probation clients it has been something less than a success. Probation officers are still being advised to identify a few of their most treatable clients for intensive service and to allocate the balance of their time to the rest of the caseload on as needed basis or on a scale of declining frequency dependent on treatability. In this way the officer meets the administrative demands of surveillance and caseload coverage, tedious as these may be, while reserving a portion of his time at least for "real" treatment of the selected few. Implied is that the only quality service being offered is to the intensive clients and that any interventive effort on the part of the "as needed" group is definitely second rate. This form of classification of clients and service sounds very logical but it simply does not work. Perhaps one reason it does not work is because we have not let our clients in on what we expect of them. The very treatable people have a way of not keeping appointments, getting arrested, forming their own encounter groups, or entering traditional analysis. Meanwhile the "as needed" people are stacked up in the waiting room, in crisis, asking for more and more of our second-rate service. What is unfortunate about this situation is that the tremendous prestige of the long-term intensive service model which has been awkwardly imposed on so many probation departments may

have prevented us from being sensitive to the more effective and equitable service patterns emerging from our own practice.

Worker Tasks in the Presentence Phase

Let us summarize some of the above points in order to make more specific their implications for the actual tasks of the probation officer during and immediately following the presentence period. The discussion rests on certain assumptions, first that given caseload size and the high pressure conditions that exist in most probation agencies it is unrealistic to think in terms of long-term intensive counseling for a significant proportion of the people under supervision. A second assumption is that long-term intensive counseling may be unnecessary for most of these people, that is it may not be any more effective than the periodic nonintensive service patterns which now exist. We do not really know the truth of this assumption, research findings notwithstanding, since measures of treatment effectiveness in most research designs are so poorly conceived. However, as long as intensive service patterns are a utopian consideration it may liberate our thinking and practice to realize that more accessible service patterns may be just as good. Third, many defendants will be experiencing a crisis reaction at the time of our initial contact with them, and a more knowledgeable application of the insights gained from crisis theory and our own experience will increase the potency of this period in the client's life in bringing about positive change.

In applying the crisis framework the first task of the officer is to determine if the defendant is actually experiencing a crisis state and how this is being shown. We are accustomed to think in terms of causative factors of the violative behavior in conducting our study. It may be more helpful to look at the client in his total situation in order to determine not so much what is causative but what is remediable in either the client or his environment, or both. If the client has need of additional supportive resources in his environment, vocational, medical, familial, etc., now is the time to call them in to play. If attitude change or reformation of the client's self-image, his perceptions of goals, relationships or values is indicated, now is the time that the individual will be more likely to integrate changed perceptions and behavior. Defendants have their own ideas about what changes are indicated and are verbal about telling us. "If I could get off aid."

"If my folks would just stop yammering at me!" "If I could stop drugs." "If I hadn't been so stupid, unhappy, greedy, impulsive, afraid of what they'd think—it never would have happened." If worker and client are in agreement on some of these issues, they can identify those which offer some hope of solution and direct their mutual problem-solving efforts in this direction. As an example, an identified source of distress may be a disruptive marital situation. It is really not too important as to whether the marital situation "caused" the violative behavior or if it was the other way around. They may even be unrelated. What is important is that if it is a recognized problem that gives some hope of being improved then this is an optimum time to try and bring about the improvement. Intensive short-term work at this point may actually achieve better results than a more leisurely approach to the same problem during probation supervision, even if there was the time for a more leisurely approach to anything.⁵

Many of the problems identified during the presentence cannot be even partially resolved during the period of a few days or weeks it takes to conduct the investigation. Some can, however, and in many other situations the probation officer can set in motion problem-solving efforts on the part of the defendant or can call into the picture enough supplemental resources so that the client can continue to work out his problems with only minimal intervention from a probation officer. An alteration in communication patterns between spouses brought about during a crisis period may have continuing impact on the resolution of both long-standing and emerging difficulties. Putting a destitute offender in touch with appropriate welfare resources may be the single most effective task an officer can do to reduce the likelihood of another law violation. In situations which require more extended activity on the part of client and worker it is suggested that an agreement to this effect be determined prior to the disposition. This agreement would include shared recognition of certain aspects of the client and his situation which need further attention and the open understanding that if he receives probation an attempt will be made to deal with these aspects in more depth. Further the amount of time to be devoted to this activity should be limited and specified in advance. For example, if the problem area is

one involving relationships with other family members, four or five closely spaced joint or individual interviews can be projected for shortly after the onset of probation. If the issue is one of developing a community resource then a short period of intensive work with both client and resource is indicated. Setting the agreement in advance of the disposition takes advantage of the stronger motivation operating during the crisis state. Specifying and limiting in advance the amount of time the worker and client will have to invest in this activity takes into consideration the time limitations of the worker and the possible need for the client to withdraw from too intensive an involvement with the officer. Focusing on what is actually remediable will prevent both from indulging in grandiose goals of rebirth and rejuvenation and the inevitable disappointment this entails. Once outstanding difficulties have been dealt with in some way the client can be placed on a nonintensive reporting schedule with the understanding that intensive contacts can be resumed for short periods of time if other problems develop.

An additional task for the officer during this time is to come to terms with the client's emotional and or physical withdrawal as effectively as he can. Probation officers are realists and by and large do not expect large doses of gratitude, respect, and admiration from their clients. It can be disconcerting however, when the defendant who has been so dependent and responsive prior to sentencing suddenly has difficulty remembering the officer's face and name, much less appointment times and monthly report forms, and all of this in spite of the fact that the officer was such a nice guy in recommending probation. We are accustomed conceptually and in practice to deal with the authority elements of our role. We have developed a general philosophy, techniques, and individual styles in the constructive blending of our responsibilities to the court, community and the offender. We interpret to the client that yes, under certain conditions, we can and do ask for revocation of supervision and incarceration. This is an overwhelming but straightforward reality. Reference to the crisis framework provides help in recognizing some of the more subtle effects of this apparent conflict in role responsibilities on the relationship between client and worker. What the officer should understand and maybe help his client to understand is what a truly pervasive, deeply rooted threat he, the officer, is to

⁵ See William J. Reid and Ann W. Shyne, *Brief and Extended Casework*. New York: Columbia University Press, 1969.

some clients. In addition to the objective reality of incarceration the officer may also precipitate once again the same frightening processes of personal disintegration, the "almost annihilation" the person has just struggled through with a tremendous expenditure of psychic energy. As with every other aspect of the crisis response, individuals will evidence this withdrawal in individual ways. It may be low level and temporary or intense and enduring. The potentially negative results of the withdrawal can probably be reduced by the extent to which the officer is able to give positive help and direction in crisis resolution prior to sentencing. The important insight for the officer is to be able to recognize it for what it is, a normal and permissible response within certain limits, and perhaps even a desirable step in the client's restored or improved functioning.

The above comments are applicable to clients in crisis. They are not intended to be viewed as appropriate to all defendants. The high-risk offender, for example, must be supervised within a framework of control rather than crisis resolution or problem-solving, although these concepts are not mutually exclusive. Other clients have different concrete and relationship needs and will be more responsive to other forms of help and intervention. To some extent the above comments represent an attempt to add another dimension to the informal classification every officer engages in as a basis for allocating his time. It identifies more accurately those defendants who may derive maximum benefit from our rehabilitative efforts during the presentence phase or immediately after sentence and at other points of crisis. It recognizes the possibility that any further investment of time in their behalf may be a waste because it is unnecessary. An added dividend for beleaguered probation staff is the knowledge that this reduced investment of time does not represent second-rate service but quite possibly the best available for this group of offenders.

Violation as Crisis

What is interesting and perhaps worthy of closer investigation is the fact that even though the probation officer is part of the crisis-producing event and in spite of all the negative implications this has for a continuing relationship, many clients do eventually see their probation officers in a helping role. A partial explanation is that, although part of the crisis, the officer is often of great help in the resolution of the crisis. When

new crises occur in the life of the probationer, past experience in receiving help and the probation officer's accessibility point the client in the direction of the worker as a resource person. This reality is often overlooked, that for many of our clients the probation officer is the only person who has some concern for the welfare of the client and enough status and clout to effectively intervene with others in the client's behalf. Crisis theory stresses the importance of prompt and decisive action on the part of the worker as early as possible in the crisis situation. This is a familiar concept to probation officers and is in fact almost a core value of correctional practice where accessibility and promptness of response are taken more seriously than in social work generally. This is not because probation officers are more dedicated or altruistic. It is related to the high degree of accountability probation officers have to their courts and communities for the behavior of their clients. Practice wisdom tells us that a client in crisis is a potential violator and the earlier the officer can intervene the less destructive will be the outcome. There is little that crisis theorists can tell us about this aspect of intervention that we do not already know. They can, however, help us to apply our interventive efforts in a more focused and efficient manner. At this point in time we already know something about how the client is likely to react to crisis. We know some of the positive coping resources, personal and environmental, that can be most quickly called upon to stave off further violative behavior.

Every violation extracts some toll from the worker even if it is only in terms of extra paper work and court appearances. Everyone, it seems continues to have totally unrealistic expectations for probation and parole supervision. The failure of the system or the officer is implied in every revocation. This suggests another aspect of crisis which may be unique to corrections. In a diluted way the behavior of the client can interfere with the homeostasis of the probation officer, that is the violative behavior of the client can produce a crisis state in the worker. (People who work with children may share this reaction because of the heightened sense of responsibility adults tend to have for their underage and vulnerable charges.) This observation may have implications for general crisis theory in view of the interaction in this relationship which may be different from other helping relationships. It is not neces-

sarily a case of countertransference nor is it necessarily negative. It may even be one of the things that makes crisis intervention work so well. This presumes of course that the worker does not become overwhelmed by his own or the client's crisis anxiety but rather uses it to mobilize his interventive efforts more effectively.

Short of actual revocation, the threat of violation is a powerful tool available to the probation officer when used in a crisis context. Violation should be a real possibility, however, and not a threat invoked to scare the client into behaving in a certain way. Many of the same considerations and techniques discussed in connection with the presentence phase are applicable to the potential violator situation. The positive differences are those associated with the greater knowledge the probation officer has of his client. The negative differences are those associated with the fact that the officer is *the* threat in a much more immediate sense at the point of violation than at the time of the original sentence. Theoretically it should be more difficult for the client and family to view the officer as both threat and helper. In practice it may not be all that much of a problem to the clients. One real dividend is that if the client and worker can weather this type of crisis through joint problem-solving efforts, the potential for future constructive work is greatly enhanced. Both probation and parole revocation are becoming more adversary in nature which will have many implications as to how revocation can be dealt with in a more constructive or less destructive way for all parties involved.

Return to the Community

Although not strictly a probation issue the parolee's return to the community is a very important form of crisis which the criminal justice system imposes on the offender, and which the system itself both recognizes and attempts to lessen in a variety of ways. Parole supervision itself, furloughs, and halfway houses all represent attempts to provide the offender with more options and resources to cope more effectively during this crisis period. For the parolee the world has not stood still. Friends have gone or changed and family members unaccountably adjusted to the offender's absence and must now adjust to his return. As brutal as the prison experience may have been it had become predictable. The survival patterns in prison are maladaptive to the free community. New or former survival patterns

which have been dormant must be quickly revitalized. Perhaps most difficult to face is the reality that being home again is never quite as good, quite as free as it was supposed to be. Most reasonably sensitive parole officers interact with their returning parolees in a manner that is consistent with the implications of crisis intervention. They tend to be directive in their focus on the concrete reality issues of housing, employment, and family responsibilities. The officer can be very effective in helping both the parolee and his family make the best use of whatever community resources do exist, in preparing the client for some of the more subtle aspects of the crisis experiences, and in conveying something positive about the client's eventual ability to absorb the shocks. Parolees expect problems in finding a job. They do not expect to have problems crossing the street in heavy traffic or in handling money, nor do they expect the occasional fleeting sense of homesickness for the institution which had at least become familiar. It helps to prepare them in advance for this type of overreaction to the small adjustments so that they know they are not experiencing some new form of craziness but a fairly common reaction. Here it is important to keep in mind the crisis concept of breaking down the total problem into smaller more manageable parts. Discussions about the conditions of parole may be much more appropriate for the returned parolee in a state of crisis than one more ambiguously focused on his reactions to being in prison and his feelings about being home. There is a place for such discussions, but not if the client is already overwhelmed with intense and conflicting emotions on these issues, and not if they interfere with his struggle to attain some sense of mastery and control. To focus instead on parole conditions is a realistic step in helping the client in crisis to know something about the parameters of acceptable behavior. It provides him with some of the data he needs to plan for the months ahead.

Like the defendant before sentencing the parolee is placed in the ambiguous position of having to rely on the help and direction of the one person most capable of catapulting him deeper into the crisis panic. Unlike the defendant, the parolee knows that the probation or parole officer is not just a hypothetical threat to his security. By virtue of having been in prison he knows that parole revocations are an everyday reality. Yet he has very compelling social and emotional needs

that only the parole officer can appreciate and help him with. Perhaps more so than with the new probationer it is important to convey to the returning parolee that emotional distancing is permissible. There will be surveillance and controls on his behavior. Help is available to meet his immediate concerns, but he will not have to pay a price for such help by interminable soul-searching, by responsiveness to treatment, or even by forming a positive relationship. This is probably good advice for any parolee but for the parolee in crisis it is a means of both relieving some of the pressure while offering realistic supports.

When the returning parolee is viewed within the context of a client in crisis much of his impulsive, erratic, and self-defeating behavior becomes a bit more comprehensible, and he seems more like any other person undergoing stress. Up to this point we have been discussing intervention with the parolee primarily in terms of preventing regression because of the crisis state to violative or destructive forms of behavior. Many men and women return home with a genuine intention of changing their behavior to avoid further criminal activity. They are often willing to share their changed perceptions with the officer and are ready to accept help as to how they can be put into practice. The crisis of the homecoming can provide for the highly charged emotional state that facilitates integration of positive changes, the strong motivation needed to override restoration of old patterns of adaptation. The officer who recognizes this special state of readiness can direct and reinforce the change work that the client is undertaking on himself. The goal of intervention is directed toward helping the client achieve whatever attainable improved levels of functioning he has set for himself, not just to prevent regression.

In closing, the cautionary note will be repeated. Not every defendant, violator, or parolee is in a state of crisis, and even when they are they

may not want, need, or be responsive to crisis intervention techniques. For clients not experiencing crisis other approaches will be more appropriate. Also, neither the phenomenon of crisis nor the techniques of crisis intervention are totally new to practitioners as accustomed to dealing with crisis features as are probation and parole officers. It is unlikely that crisis theory can provide correctional workers with a whole new set of methods for working with their clients. Hopefully it can become a conceptual tool that will lend increased precision and dignity to the many interventive tasks they already do so well. The partly "hidden agenda" of this article has been to encourage probation and parole officers to look more closely at some of these tasks and to do so, initially at least, without concern for the extent of the professional or academic sanction they may have. We may discover that our practice wisdom includes many accessible, effective and sophisticated techniques which can enrich or be enriched by other areas of knowledge or practice settings. In the process of this examination we should also separate ourselves from the expectations and claims that others make for us. We are not going to prevent delinquency or cure crime. We have a significant contribution to make, however, perhaps greater than we realize. We have a vast empirical base which can be used to inform emerging theories of crime causation, control, and the treatment of the offender. We know something about the complex interplay of factors that will enable one person to cope but another to fail, or which might enable a person to cope at one point in time but not another. We know much about the creative utilization of community resources and the gross and subtle environmental factors that impinge upon a person's adjustment. Probation and parole officers work hard at a difficult job for worthy goals, and there is no need to assume a defensive stance in relation to the value or legitimacy of these efforts.

PROBATION is a desirable disposition in appropriate cases because . . . it affirmatively promotes the rehabilitation of the offender by continuing normal community contacts; it avoids the negative and frequently stultifying effects of confinement which often severely and unnecessarily complicate the reintegration of the offender into the community . . .

—STANDARDS RELATING TO PROBATION, The American Bar Association, 1970

Correctional Workers: Counseling Con Men?

BY JOHN STRATTON

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“BEWARE of any helpers. Helpers are con men who promise you something for nothing. They spoil you and keep you dependent and immature.”¹

This statement by Fritz Perls is one which requires examination and consideration by everyone in the so-called “helping” professions. Probation officers and parole agents are considered by society and themselves to be one group of social helpers. As a probation officer, observations over the years have led to the belief that some of the behaviors and techniques used in counseling by probation officers and parole agents fall into Perls’ definition of a helper.

Employment criteria for either profession generally requires the possession of a bachelor’s degree from an accredited college or its equivalent. As a result, the background can and does range from majors in home economics to accounting, without requiring any training in the fields of psychology and sociology. While some correctional workers do have extensive backgrounds in psychology or sociology, even these people seldom have any specific training or experience in counseling theory, techniques, or philosophy. But immediately upon employment, a large portion of their time is directly engaged in counseling aimed at rehabilitation. In a sense, this group along with other social agency workers become, by employment alone, the only unlicensed paid therapists in the country.

Ask any correctional worker why he decided on his profession and one of the most common responses will be “I wanted to help people.” This discussion will be limited to the counseling role of the probation officer’s and parole agent’s function and will attempt to look at Perls’ concept of helpers pointing out some of the ways members of these professions “con” those they supervise as well as “spoil” the people they wish to help by keeping them dependent and immature. It will also offer some suggestions for becoming more effective in the therapeutic relationship.

The Helper as a Con Man

If asked to define a “con man,” a common response would probably be: “Someone who gains your confidence and then proceeds to take something very important from you.” “Deceitful,” “dishonest,” and “fraudulent” are words effectively used in describing a con man.

As a helper, what type of behavior would bring the worker into the con-man category? There is the matter of being dishonest in a relationship with the other person, which can occur in various ways. One of the most common ways is hiding behind the bureaucratic wall when the risk is more than the worker is willing to give.

The bureaucratic wall serves the same function as any other wall, it can be used to keep out those people whom you don’t want to get close to. That agency wall also creates limits and defines areas of involvement through policies and procedures thereby giving the worker a means of avoiding responsibility for decisions he should make by hiding behind that wall and allowing him to “pass the buck” through the use of established rules and lines of command.

If he so chooses, the worker can interpret rules and regulations in such a way that he establishes a role for himself which leaves no leeway in establishing a meaningful relationship with the people under his supervision. In maintaining such a role, and never allowing the probationers to see him on a human level, the officer elicits the same non-authentic role responses from the other person. The probationer interprets his role in response to the definition he receives of the worker’s role, and if that consists of detached noninvolvement, with a better-than-you attitude, the probationer won’t be willing to involve himself, and will let the officer talk at him—not with him. The interchange between these two people then becomes a communication between roles as determined by the worker and the rules, rather than two people communicating openly with each other.

A popularized method of politely “conning” the other person is by verbalizing interest or stating a desire to do something with them when in reality you are saying “No.” In the bureaucratic

¹ Fritz S. Perls, *In and Out the Garbage Pail*. LaFayette, Calif.: Real People Press, 1969.

structure, this is accomplished quite easily through use of the word "But" followed by a rule or role definition. Examples of this indirect "No" approach are such statements as:

"I'd really like to talk to your father *but* I only work until 5 p.m." "I'd like to help you *but* my caseload is too large." "I really want to have you involved in a family treatment program *but* my supervisor won't let me." "Yes, I'm very interested in discussing that with you *but* it will have to be at another time."

The specific words at times may be different, but the formula remains the same, with the probationer or parolee getting the message that the other person is not really concerned about him and is saying "No." If correctional workers wonder why those under their supervision are sometimes dishonest with them, it may be that they have learned some of their behavior from contacts with the bureaucratic structure.

If a correctional worker believes in what he is doing, is concerned for the welfare of the person he is working with, and has a solid foundation for what he wishes to accomplish, it then becomes possible with some risk, effort, and fortitude to be able to do something of value for the other person. However, in many social agencies with their defined policies and procedures, officers find it easier to do what has been done in the past, viewing the effort to do something new and innovative as being more than they are willing to invest of themselves or take the responsibility and time to do.

At times in the bureaucratic maze, it is worthwhile to consider the life style of the turtle. The turtle never moves forward until he sticks his neck out. The shell is a safe, warm, place and furnishes a turtle with the ability to retreat and hibernate for long periods of time. The correctional worker is also given the opportunity to retreat and hibernate in the bureaucratic shell, or he can take responsibility for what he does both with his probationers and the agency for which he works. The conning of the probationer is not done by the bureaucratic wall, nor by the rules, regulations, policies, or procedures—it is done by the correctional officer when he uses these as excuses or methods of avoiding the responsibility of telling the probationer what he as an individual is honestly willing or unwilling to do with the other person.

Another method of "conning" the other person by attempting to impress him with the worker's

pseudoassimilation of culture, image, clothes, and lingo. When the correctional worker's life style is different from the person he is supervising or investigating, an honest approach about different values and living patterns seems much more appropriate than attempting to be like the client as a method of establishing confidence and rapport. Such things as using street language, wearing clothing similar to the probationer's, identifying by hair styles, adopting handshakes and other mannerisms when these customs or fads are uncomfortable or foreign to the worker, make it equally uncomfortable for the other person, and begin the artificial relationship. These in themselves are dishonest representations of the probation officer or parole agent and what he really is. The gap between what a person really is and what he pretends to be is perceived readily, especially by people who have been conned and treated dishonestly in prior relationships—a rather common experience for probationers and parolees.

Another form of dishonesty is when the counseling process is used as a time to exchange social pleasantries rather than as a therapeutic encounter. When the worker uses only the socially acceptable words and behavior, those of the nature acceptable in interchanges with fellow workers or on a personal basis, the encounter is not a therapeutic one. The routine goes: "Hi, Mr. Jones, how are you? Everything OK? Anything new? Great! See you in a month." This approach allows both parties involved to be very comfortable and feel superficially "nice" about each other but prohibits them from accomplishing anything toward the rehabilitative process, which, after all, is the purpose of this particular counseling relationship.

Oftentimes the safeness of a "nice" relationship stops the probation officer or parole agent from confronting the person under supervision and dealing with the responsibilities he has in determining what happens to him. It is much safer, in the socially appropriate context, to talk about what the situation was like in the past, and generalities about what is going to be different in the future. Really dealing with what is happening to the person, his feelings about his present situation, his responsibilities, attitudes, behavior, and what changes he must make, is risk involving. It takes real honesty on the part of the worker to be able to confront and deal with problems that create pain and emotional upheaval for the one he is providing service for.

In a true therapeutic encounter, there is the opportunity for having honest expression of thought and feelings, regardless of the discomforts to either person involved in the relationship, whether it be the officer or the person he supervises. While it is possible to keep the time devoted to counseling on a very pleasant nonthreatening level, it serves no purpose for the probationer and involves neither party of the relationship in the rehabilitative process. Being the "nice guy" may meet the worker's needs, but it also allows the other person an opportunity to avoid the reality of the situation and deprives him of the chances for change.

Counseling is a unique relationship between two people and by its very nature requires honest expression by both parties. If the probationer is willing to honestly express what his feelings are, then the worker should also be willing to reach into his own experiences and say, "I've felt something like that myself," allowing the other person to know him on a human level. The ability to say what is really felt by the probation officer or parole agent regardless of whether the other's feelings will be hurt or if he will become angry; this is the risk of relating honestly with another human being and allows the person the opportunity to honestly look at himself. By not letting the one being supervised know how his behavior, expressions, or appearance affect the worker, deprives him of an honest opinion of how he affects others, and the opportunity to be able to do something different if he chooses.

Spoiling Clients, Keeping Them Dependent and Immature

A comfortable, easy way out for a probation officer is to do for the probationer what he is capable of doing for himself. This very act is one of the most degrading things one can do to another human being because it deprives him of the ability and initiative to perform the simplest acts for himself and creates a dependency that is unrealistic and unhealthy for both parties involved. Most people under supervision will readily accept the offer of "help" since one of the usual problems of clients is a believed inability to accept responsibility which coincides with the worker's need to do for others.

While this type of "help" can make the worker feel as if he is performing excellent services for the people he supervises, the only one he really helps is himself in polishing his own view of his

role as a helper. The officer may receive the admiration of his fellow workers and oftentimes his supervisor feels good about the services he has performed. While there may be some uncertainty that the people receiving such help are always benefited, it seems much clearer that the people giving such help are profiting from their role.

In reality, the help given might be appropriate if this were a social situation. This relationship, however, is a therapeutic one where the thrust is to get the probationer to do the necessary things for himself, rather than doing them for him. The worker should discourage the use of crutches and unneeded supports, and at least attempt to establish a pattern of responsibility and initiative in the person being supervised.

One example is the case of a probation officer who tried to "help" a young probationer fulfill his "lifetime goal" of becoming an oceanographer. The probation officer spent hours in the library researching what requirements were necessary, and then proceeded to persuade various members of the community into donating the necessary expensive equipment for the underwater courses. The YMCA was willing to provide the lessons for the underwater qualifications and even transportation was arranged. The probation officer received a great deal of personal satisfaction in having arranged this marvelous opportunity for the young man. The probationer, however, didn't manage to get to one lesson. The experience gained from this situation was that some new insights were formulated regarding the role of helper by one probation officer.

If another approach had been used, one which placed the responsibility on the young man, a different result may have been reached. While he may not have followed through on meeting the requirements necessary to become an oceanographer, he at least would have been forced to evaluate whether this really was a lifetime goal, and one probation officer would not have wasted many hours and used up valuable resources in what turned out to be a futile gesture.

Letting the little things slip by, such as failure to keep appointments, make payments, or being consistently late, points out the dangers of spoiling the probationer. These little things, while not of considerable individual importance standing alone, generally form a habit pattern of irresponsibility extending into all areas of a person's life.

In asking what a person under supervision

wants, that question should not be designed for the purpose of having the worker secure the wants for him. Asking what a probationer wants can be used in order to reinforce him to go out and secure those goals through efforts he expends himself. This relationship can produce support, not another creation of dependence which allows the person under supervision to fall back on the worker when everything doesn't work out quite right. It is often less taxing and more rewarding personally for the officer to secure a job for his probationer than to confront him to determine whether he really wants a job and if so provide him with methods and alternatives needed to acquire a job. If the worker locates the job, he has fulfilled his own needs but keeps the probationer dependent and immature by depriving him of the responsibility and self-satisfaction inherent in locating that job himself.

A different form of allowing individuals to escape responsibility occurs when a parent wants to be relieved of the discipline and care of his child. Rather than confronting the parent with the necessity for proper performance in his role as a parent, the officer offers to set limits, make rules, or even remove the child from the home. In the parent-child relationship when one party

can dump responsibility, that relationship and its previous interactions are destroyed and chances for successful reintegration in the future are poor.

Conclusion

Throughout this article, examples have been given to demonstrate weaknesses in the counseling process with probationers and parolees. Creating a dependence by doing too much for another person, not forcing him to take responsibility in any area, and crawling behind that bureaucratic wall when the situation is risky, all deprive a probation officer or parole agent of his full effectiveness.

There is another way of approaching people who are on probation or parole, but it will create personal risk and takes basic honesty, caring and warmth. Being willing to break down some of the barriers which exist and open up to another person on a human level, that choice is an individual one and the pain and hurt that arise out of that caring is also a choice of an individual nature. The rewards are there, too, and much more fulfilling because of the risks and personal honesty involved in allowing a person to grow and become his own person.

THE PROBATION OFFICER must be aware of, concerned about, and actively engaged in changing social conditions which contribute to the dehumanizing of individuals. He must be vitally concerned with social reform and with reform of the system for administration of criminal justice. But, in his concern for changing the system, he cannot afford to neglect his probationer. There is relatively little he can do as an individual to change the overall system; but he can determine that his treatment of the probationer will not be an extension of the brutality, callousness, unconcern, and delay which so frequently characterize the system prior to his getting the probationer for treatment.—CLAUDE T. MANGRUM

PURPOSES AND PHILOSOPHY OF SENTENCING*

BY

HONORABLE WALTER E. HOFFMAN**

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Purposes and Philosophy of Sentencing

"What's next?"

The criminal defendant has been afforded the right of allocution; now the judge must chart the course of his (or her) life for a period of time. The task is awesome under the best of circumstances. For the newly appointed district judge; it can seem overwhelming. Yet, however burdensome the judge considers his duty to sentence the criminal defendant, guidelines do exist upon which he may rely. The current provisions of Title 18 of the United States Code have numerous delineations relevant to the sentencing of criminal offenders which contain alternatives of discretionary implementation by the district judge, as well as mandatory provisions which prescribe defined parameters to which the judges must adhere when imposing sentence. Unfortunately, the distinction between the discretionary and mandatory nature of sentencing is neither well-defined nor unanimously agreed upon by the legal community. The purpose of this paper is to provide some assistance.

Some few of the new judges have had prior experience on the state court bench. If so, they already know of the problems of sentencing. Nevertheless, all judges must realize that our federal judicial system affords our judges, or enables us to obtain, more information about an offender

than any other judicial system in the entire world. If you have previously served as a state court judge, it is now your duty to familiarize yourself with the "tools of your trade," with the belief that you may improve any existing philosophy which you may have acquired over the years.

The vast majority of district judges have had little or no experience in the field of criminal law and procedure prior to their appointment. Except those who have served as United States Attorneys or state court judges or prosecutors, it is a reasonable approximation that less than one percent of the legal business of each new judge was devoted to criminal practice. Suddenly, and without training or advice, the newly created jurist is faced with the borderline decisions of what to do with a particular offender. Fortunately, the probation officer is always willing to render the necessary assistance and recommendation, if the judge is equally willing to realize that the probation officer is a highly competent person in his field with vastly greater opportunities to know the defendant, his background, and what sentence is appropriate. If any word of advice as to sentencing should be given to a new federal judge, it would be to "lean upon your probation officer" as he should have knowledge of all sentencing alternatives and the ability to apply them in the proper cases.

Webster defines the word "philosophy" in varying terms. It is called "a love or pursuit of wisdom"; "a search for the underlying causes and principles of reality"; "the sum of an individual's ideas and convictions"; and "a critical examination of the grounds for fundamental beliefs and an analysis of the basic concepts employed in the expression of such beliefs." We can probably start with the premise that there is no such thing as a standardized sentencing philosophy in criminal cases -- nor do we believe that such a Utopia is attainable. Nevertheless, by the free exchange of views between judges at seminars, sentencing institutes, sentencing councils, and otherwise, we believe that the philosophy of sentencing analysis will defeat the criticism directed against federal judges on the issue of disparity.

The Problem of Disparity

In preparing a similar program in 1969 we sought information from the Director of the Bureau of Prisons as to the existence of disparate sentences recently imposed. To our gratification the reply was as follows:

"In our opinion, the issue of disparity in sentencing is no longer a significant problem. While this was a serious issue some six to eight years ago, the Sentencing Institutes and the implementation of 18 U.S.C., §§ 4208(a)(2) and (b) have done much to correct the gross inequities we saw earlier."

The foregoing statement remains essentially correct today and, in our view, fully justifies the expense of sentencing institutes, and the value of varying sentencing alternatives provided by Congress in 1958. To the credit of the three branches of our government, the problem of disparity has been attacked with vigor and substantial success.

This is not to say that all disparity has been eliminated. Some judges and the public in general entertain a relatively fixed idea that a particular crime calls for a particular sentence, regardless of the offender. They likewise feel that no provision, other than the statutory parole eligibility date, should be granted as to particular crimes. Take, for example, the bank robber -- and there were 1,853 convictions for this offense during the fiscal year ending June 30, 1975, double the number of cases tried in fiscal 1970. While the sentences ranged from one to twenty-five years, the average sentence was approximately ten and one-half years. But, a twenty-seven-year-old first offender, with no prior record other than three arrests for drunk and disorderly, received a maximum sentence of twenty years, with no provision for early parole consideration. If this offender had been sentenced under § 4208(a)(2), it certainly would have afforded greater prospects for ultimate rehabilitation which, absent the factor of deterrence, is the ultimate objective of confinement.

It is impossible for any judge to predict the prospects of rehabilitation in all cases. Even the hardened criminal may infrequently see the error of his ways at some point during confinement. In any event, the defendant will, on some date, be released. Since the judge seldom, if ever, sees the defendant following the day of sentencing, is it not preferable to voice confidence in the Executive by permitting the Board of Parole to exercise its judgment as to the appropriate time of release, all as provided under indeterminate commitments -- §§ 4208(a)(2), 5034 and 5010(b)? Some federal judges, both on the trial and appellate level, have expressed a lack of confidence in the Board of Parole. In fact, the trial judges lean to the view that the Board releases offenders at too early a date when given the discretion vested by statute; whereas, many appellate judges indicate that the Board does not exercise its discretion soon enough. There are some trial judges who misconstrue the meaning of a sentence under §4208(a)(2), believing as they do that it mandatorily calls for parole prior to the expiration of one-third of the sentence. Such is not the case. Personally, the author of this paper joins with the views of the Director of the Bureau of Prisons and the Chairman of the Board of Parole that, as a general rule, sentences of three years or more, imposed in an adult case,

should be subject to § 4208(a)(2), thus granting the flexibility necessary in the exercise of discretion.

Disparate sentences are not always the result of lengthy terms. A "slap on the wrist" sentence may likewise create disparity. While the purported excessive sentence is the subject of violent criticism, we know that, where there are two defendants jointly involved in an identical crime and having essentially similar backgrounds, it creates an issue of disparity for one judge to impose a five-year sentence as to one defendant, with another judge imposing a three-month sentence as to the other defendant. Caution should be exercised in such a situation and the probation officer should keep the sentencing judge fully advised as to sentences imposed upon co-defendants. This does not mean that the two sentences should be equal, but it does suggest that equality is appropriate where the background is substantially identical.

With the progress made in eliminating disparity in the federal system, we wonder as to the need of legislation providing for the appellate review of sentences. While this is not within the purview of our discussion, it is significant to note that the approval or disapproval of legislation providing for appellate review of sentencing has been presented to the Judicial Conference of the United States on a number

of occasions. Prior to the 1969 fall session such legislation had been approved by a one or two vote margin, but at the 1970 session similar legislation was disapproved. The suggestion has been made that a statutory scheme for review of sentences by three district judges would be more acceptable, all of which could be accomplished by examining the presentence report, obtaining the views of the sentencing judge, and directing a hearing if the same is deemed appropriate. Such a procedure would be akin to the use of sentencing councils now invoked in certain areas.

The Dangerous Offender

We all recognize that the only judicial solution to the "dangerous offender" is confinement and, of course, this is not a solution of the problem.

Under the Model Sentencing Act, published by the National Council on Crime and Delinquency in 1963, a "dangerous offender" is defined as one who has committed a serious assault, and who suffers from a serious mental disturbance that contributes to the likelihood of his committing such a crime again. Sentences up to thirty years are suggested for these offenders, but only after referral to a diagnostic center. The principal difficulty with this definition lies in pinpointing a mental disturbance which gives rise to the

probability of committing similar assaultive crimes in the future. The Model Sentencing Act also classifies the racketeer as a "dangerous offender," probably because his leadership prompts others to commit assaultive criminal acts. As to nondangerous offenders, the Act recommends a maximum of five years, including parole time. It is argued that not many nondangerous offenders require commitment, except the repetitive criminal and white collar criminal for whom a fine would be no deterrent. The views expressed in the Model Sentencing Act are worthy of consideration but, in general, the five-year sentence is inadequate to meet all situations involving the habitual nondangerous offender and, as to the "dangerous offender," the trouble lies in ascertaining the mental disturbance tied in with the likelihood of committing assaultive crimes in the future.

Legislation establishing a new Federal Criminal Code, based in part on recommendations submitted by the National Commission on Reform of Federal Criminal Laws, is now pending before Congress. While it is impossible to outline all provisions of the proposed Code, some are worthy of note. On the subject of sentencing, both felonies and misdemeanors are divided into classes, each of which imposes different maximum terms of imprisonment based on the seriousness of the offense. The indefinite sentencing similar to 18 U.S.C.

§4208(a)(2) is generally followed; the authorized term for a Class A felony, for example, is the duration of the defendant's life or any period of time, Class B is imprisonment for not more than thirty years, Class C not more than fifteen years, and so on. Sentencing under the proposed Code will obviously become more complex and will require extensive study, if and when enacted by Congress, and it will serve no useful purpose to extend this paper by further discussion.

Under present procedures, an attempt to identify the "dangerous offender" is made when a defendant is initially received at a federal penal institution. The presentence report gives the background information, both social and criminal. The institutional classification committee does a diagnostic workup on each inmate. Background information is augmented, if necessary, by further investigation of primary sources. Detainers, pending charges, and circumstances of earlier offenses are verified wherever possible. Records of institutional commitments are reviewed. Prior incidents of violence, aggressive and assaultive behavior generally provide the hallmark to the identification of a "dangerous offender." In the absence of a study under §4208(b), these factors, together with the views of the probation officer, are substantially all that the sentencing judge possesses in identifying such an offender, with the

additional factor of the circumstances of the prisoner's offense in question. However, the sentencing judge can be mistaken in his identification of a "dangerous offender" and, for this reason, it is better to resort to a sentence under §4208(a)(2), thus permitting the more adequate facilities of the penal institution to become operative.

Even a sentence under §4208(b)-- for study and report -- will not always reveal the "dangerous offender." Most federal penal institutions maintain the services of a psychiatrist and/or psychologist. There are several psychological tests which may reveal personality structures in which violence is most likely to occur. The psychiatrist is sometimes able to uncover hostile and aggressive impulses which may lead to violence. Nevertheless, there are no known tests or other diagnostic tools which are completely reliable in identifying the "dangerous offender" and it is conceded by all that further study and research in this field is definitely needed.

When an inmate is deemed to be a "dangerous offender," he is confined in close-custody penitentiaries where an industrial work program is of primary importance. If an apparent psychosis is indicated, and intensive psychiatric treatment is required, the person is customarily transferred to the Medical Center at Springfield, Missouri. Otherwise, some "dangerous offenders" will receive specific treatment and training needs which, in addition to psychiatric treatment,

may include education, individual and group counseling, vocational or on-the-job training, religious counseling, assistance with family problems and drug addiction, Alcoholics Anonymous, and the like.

In rare instances the sentencing judge may secure the services of a local psychiatrist to assess an individual for the purpose of identifying a "dangerous offender." It is unlikely, however, that such a service would be beneficial for the local psychiatrist would probably not be able to render an opinion in the absence of a prolonged study. Frequently it is important to determine how the prisoner relates to authority and to his peers, as well as how he accepts frustrations. These determinations require more time and study than a local psychiatrist is capable of undertaking.

The term "dangerous offender" needs a description to promote a more common understanding. It may be related to his past acts or a condition which may have resulted in causing physical harm to a person, or even the taking of a life. But it may also be occasioned by the present physical and mental condition of an individual. The violence proneness or potential is what we are striving to ascertain. An act of violence may be accidental and may not, standing alone, reflect "dangerous." Similarly, offenses committed under the typical "unwritten law" involving husbands and wives do not necessarily point to a "dangerous offender."

When offenders are classified as "dangerous," and when they are finally released on parole, they are placed under attempted close and intensive parole supervision. It is acknowledged, of course, that a probation officer serving as the parole officer cannot constantly track a paroled "dangerous offender" and this is a problem inherent in the system. We know that "dangerous offenders" sometimes repeat their acts of violence, but unless we are prepared to keep them confined forever, they must, sooner or later, be given a further chance in life, even though release subjects society to an additional risk.

Effects of Confinement -- Expectations of Correction --
Available Facilities

There is, of course, little expectation for rehabilitation or correction with respect to inmates who have been in and out of institutions over long periods of time. For them, confinement and incapacitation are the primary concerns. Nevertheless, over a number of years there can be a process of "measuring change" even with this type of criminal. While a sentence under §4208(a)(2) holds out little hope for the lifetime criminal, as he fully realizes that he is a poor parole prospect, there have been infrequent instances occasioned by increased age or the process of "measuring change" which justifies the use of the indeterminate sentence alternative. At least it affords a goal for which the inmate may strive.

Turning now to the class of criminals who fall somewhat short of being perpetuals, it is vitally important in the field of correction and possible rehabilitation that confinement be terminated at a time when the offender is most capable of making his own way in the community. To keep a youth, or adult, well beyond the time when the institutional staff and parole authorities believe him to be ready for a trial in the community can be deleterious. If for no other reason, judges should give consideration to the indeterminate provisions of §§5034, 5010(b) and 4208(a)(2). The utter frustration confronting a prisoner who may be ripe for a trial in the community, but who cannot be released on parole for another two or three years by reason of a straight sentence, may result in a continuation of a life of crime after the parole finally becomes effective. With the exception of the "dangerous offender," parole granted at the right time does not present any great danger to society. True, there are many recidivists, but if they are so inclined they will quickly be picked up and their parole revoked. They would, under any circumstances, be only advancing their criminal activity by a brief period of time. We submit that the risk of the indeterminate sentence is justified.

Federal penal or correctional institutions are classified for the purpose of separating various types of offenders

from one another. It may be appropriate for a sentencing judge to recommend that two or more defendants involved in a joint crime be sent to separate places of confinement. The various institutions are classified to receive certain categories of offenders -- juveniles and youths; young adults; intermediate adults; long-term adults; and special categories such as women, medical, and psychiatric patients. Since rehabilitative goals can best be accomplished in small institutions, and since the juveniles and young adults are the most likely prospects for rehabilitation, the largest expenditures are in these institutions where intensive treatment and training programs are available. The youngest offenders are sent to Ashland, Tallahassee, Englewood, Milan Petersburg, Pleasanton, Seagoville, and El Reno where the optimum capacity is 550 or less at each institution. Two of the newest and most innovative correctional centers are at Morgantown, West Virginia, and Pleasanton, California. In both institutions there are intensive research programs in existence and they are the most modern penal institutions in the world for this type of offender.

Community treatment centers, or halfway houses as they are sometimes called, are relatively new adjuncts to the correctional program. They are a valuable assist to selective individuals in their transition into the community. At the present time there is a daily population of approximately 322 individuals functioning either in the federally

operated or contract centers. In addition to the economic and productivity gains, mounting evidence demonstrates center effectiveness in tending to prevent further criminal activity. Under 18 U.S.C., §3651, a court may require, as a condition of probation, that a defendant reside in or participate in a program of a residential community treatment center, or both, for all or part of the period of probation. During this period the probationer may work at legitimate occupations. The problem here is that the Attorney General must certify that adequate treatment facilities, personnel, and programs are available. Such centers are generally not available except in larger cities such as Atlanta, Chicago, Dallas, Detroit, Houston, Kansas City, Long Beach, Los Angeles, New York and Oakland and, in addition, state and federal cooperation is sorely needed to develop successful programs. However, even judges presiding in areas where such centers are not available have occasion to sentence defendants who live in areas where a center is located and, therefore, may use this statute.

The contract work-release programs are also an innovation. The average daily number of federal offenders in work-release programs is approximately 67. The figure is approximate because it does not include "job releases"; i.e., the situation defined by the Bureau to include those prisoners

who have a regular eight hour per day job and who are not "institutionalized" because of their jobs. Also, the figure only includes established institutions and not contract centers or local jail programs. The percentage of those who escape, attempt to escape, or commit a crime is reasonably low, according to the Bureau of Prisons.

The number of job placements per year secured through probation departments is approximately 7,000, 5,000 of which are placed through half-way houses and community centers.

The Board of Parole plays a major role in seeking the reintegration of the offender into society as a law-abiding, self-supporting person. In many instances the board recommends placement of individuals in community treatment centers, where the offender is thereafter visited.

In sum, the prison and parole authorities are exerting their best efforts to determine the potential of the person, his treatment needs and motivation, his emotional self-control, his knowledge and vocational competence -- all for the purpose of developing realistic future plans which must ultimately be met in any event. Just as the judges are subject to error, the penal and parole authorities are not infallible, but their advanced programs seem to merit the confidence of the judiciary to the extent, at least, of making sentences flexible to authorize release on parole at a time deemed to be appropriate.

Release Procedures

With no effort to repeat what has heretofore been said, the only existing release procedure, other than parole, is the mandatory release provision of 18 U.S.C. §§4161-4163. This is frequently referred to as good-time allowances, industrial good-time, and discharge.

Summarized briefly, the good-time allowances (available where the record of conduct shows a faithful observance of all rules and not being subjected to punishment) are:

<u>Term of Sentence</u>	<u>Time Allowance</u>
Life sentence	No time allowed
10 years or more	10 days each month
5 to 10 years	8 days each month
3 to 5 years	7 days each month
1 to 3 years	6 days each month
6 mos. to 1 year	5 days each month

Industrial good-time (§4162) is in addition to the good-time allowance under §4161. It is allowed, in the discretion of the Attorney General (Bureau of Prisons), without regard to the length of the sentence. Employment in an industry or camp may be allowed not to exceed three days for each month of actual employment during the first year, and five days for each month during any year beyond

the first year. Similarly, the same allowance may be made to a prisoner performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations.

Discharge from the penal or correctional institution follows as a matter of course, with the sentence being credited by the good-time allowances, provided that the prisoner is not wanted by the authorities of any state. The foregoing assumes that the prisoner is not previously released on parole.

Eligibility for parole (may be released) is covered under 18 U.S.C. §4202. It does not apply to a juvenile delinquent or committed youth offender (Youth Corrections Act). As to all other federal prisoners, if the term is "over one hundred and eighty days," they are eligible for parole after serving one-third of their term or terms or, in the event of a life sentence or sentence in excess of 45 years, after serving 15 years. Eligibility for parole is not a mandatory release.

On October 30, 1969, the Bureau of Prisons released Policy Statement 7600.51 implementing the Bail Reform Act of 1966 and judicial decisions regarding jail-time credit on sentences. Credit for time spent in custody while awaiting trial is given with respect to commitments under the

Federal Youth Corrections Act and the Juvenile Delinquency Act, as well as split-sentences, regular adult sentences, and commitments under Title II of the Narcotic Addict Rehabilitation Act, 18 U.S.C. §4251, et seq. Many complex problems arise by reason of computing jail-time credit and a reference to Policy Statement 7600.51 is necessary to resolve the particular issue presented. The Policy Statement appears to have been generally acceptable to the courts during the past five years, thus tending to promote uniformity. Of course, the adjustment for credit for time in custody while awaiting trial merely advances the mandatory release date and, with respect to the Youth Corrections Act, the conditional release date, and has no reference to a parole date.

Judges err when imposing sentences on retrial following reversal, and other like procedures. A defendant must receive credit for all time spent in custody under an invalid sentence. Judges, aware of the fact that a person has served eighteen months on a judgment which was reversed or vacated, may be inclined to give a new sentence of one year. If so, the defendant is automatically released as the eighteen months already served must be credited upon the new sentence.

Sentencing Alternatives -- Some Suggestions and Pitfalls

- (1) Juvenile Delinquency Act
(18 U.S.C. §§5031-5042)

Under the Juvenile Justice and Delinquency Prevention Act of 1974, a "juvenile" is one who has not reached his eighteenth birthday at the time he commits a crime punishable by laws of the United States. It should be noted that it is the age of the person at the time the crime is committed which is controlling and not the age at the time the offender is actually tried, or the time the criminal information is filed. This standard is specifically incorporated into the Act by the 1974 amendments to 18 U.S.C. §5031, which includes within this definition those persons over eighteen years of age who are alleged to have committed an act of juvenile delinquency prior to their eighteenth birthdays. The amendment also includes capital crimes within the definition.

Unlike prior procedure, the amendments provide that a juvenile shall not be proceeded against in a federal court unless the state courts refuse jurisdiction, or do not have adequate services available. Once a person falls within the purview of the Act and is proceeded against in a federal court, he or she must be proceeded against as a juvenile unless a request is made, with the advice of counsel, that he or she wishes to be treated as an adult. A juvenile offender may also be proceeded against as an adult if he or she is over sixteen years of age, has allegedly committed a felony, and, upon motion of the Attorney General, is found

by the court to have no reasonable prospects for rehabilitation before his or her twenty-first birthday. 18 U.S.C. §5032. Thus, the choice of juvenile status or adult trial is no longer entirely within the discretion of the Attorney General. Specific criteria are listed in the Act, as amended, by which the court must assess the prospects for rehabilitation and findings are required with regard to each criterion.

Some earlier decisions have questioned whether a juvenile offender may be required to abandon his right to trial by jury. See e.g., Nieves v. United States, 280 F. Supp. 994 (S.D.N.Y. 1968). However, most courts, relying on McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed 2d 647 (1971), which held "that trial by jury in the juvenile courts' adjudicative stage is not a constitutional requirement," have held that the federal statute does not impair any right to a jury trial. See United States v. King, 482 F.2d 454 (6th Cir) cert. denied 414 U.S. 1076 (1973); United States v. James, 464 F.2d 1228 (9th Cir. 1972); Cotton v. United States, 446 F.2d 107 (8th Cir. 1971). These cases seem correctly decided. Although McKeiver was concerned with state court practice and not the Federal Juvenile Delinquency Act, its reasoning is fully applicable to federal proceedings. The Act merely affords a juvenile an opportunity to a forum and the juvenile who intelligently does enter the federal system

does so with full realization that he is foregoing a trial by jury. If a person can knowingly and intelligently waive a trial by jury as an adult, it seems equally clear that a "juvenile" can waive trial by jury, if the consequences of signing the consent are properly explained.

At one time the trial of a case under the Juvenile Delinquency Act was deemed only to necessitate the same degree of proof as would be required under an ordinary civil action. United States v. Borders, 154 F. Supp.214 (N.D.Ala., 1957), affd. 256 F.2d 458 (5 Cir., 1958). However, since In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967), and In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), it seems clear that the degree of proof required is the same as in an adult criminal case; i.e. proof beyond a reasonable doubt. United States v. Costanzo, 395 F.2d. 441 (4 Cir., 1968), cert. denied 393 U.S. 883, 89 S.Ct. 189, 21 L.Ed.2d 157.

Probation, not exceeding the time when the "juvenile" reaches the age of twenty-one years, is available as an alternative.

Commitment for a period not exceeding the time when the "juvenile" reaches the age of twenty-one years is likewise available; subject, however, to the limitation that the commitment may not exceed the time for which the person

could have been committed if tried as an adult. Thus, a fifteen-year-old boy who would have been sentenced under the National Motor Vehicle Theft Act cannot be committed for a longer period than five years, even though he may not have attained the age of twenty-one years when the five-year period expires. Similarly, a seventeen-year-old boy committing a misdemeanor cannot be required to serve more than one year.

A "juvenile" may be committed for study and report under 18 U.S.C. §5037(c). The report must be made within thirty days unless the court grants additional time.

A committed juvenile delinquent is eligible for parole at any time following his commitment. It is for this reason that the eligibility for parole statute, 18 U.S.C. §4202, is inapplicable to juvenile offenders prosecuted under the Juvenile Delinquency Act.

The statute, 18 U.S.C. §5034, requires the assignment of counsel. Even if the parents, guardian or custodian are financially able to employ counsel and do not do so, the court must assign an attorney pending employment of private counsel. There is a special provision that the juvenile must be brought to trial within thirty days from the date detention began, subject to certain exceptions. 18 U.S.C. §5036.

There are definite advantages to being tried under the Juvenile Delinquency Act. In the first place, the criminal

information merely charges the commission of an act of juvenile delinquency and does not charge the specific crime which would have been stated if the boy had been charged as an adult. The limitation on the length of commitment restricts the power of the court to commit for a period beyond the time when the "juvenile" reaches the age of twenty-one years. In fact, the only disadvantage, if the same be considered as such, is that the "juvenile" is not entitled to a jury trial under the Juvenile Delinquency Act.

Proceedings under the Juvenile Delinquency Act are frequently heard in chambers, but such a practice is not mandatory. 18 U.S.C. §5032. It does tend to give an informal atmosphere to the court proceeding and, above all, protects the "juvenile" from publicity through news media.

We should ever be mindful of the obligation, wherever possible, to divert the cases of juvenile offenders to the state and local authorities. While the federal system may be more adequate in many instances, confinement in the federal institution usually brings about a forced separation between the child and his parents which should be avoided if there is any prospect of assumption of parental responsibility.

(2) Federal Youth Corrections Act
(18 U.S.C. §§5005-5026)

While a "youth offender" is defined as a person under the age of twenty-two years at the time of conviction (18 U.S.C.

§ 5006 (e)), it is nevertheless provided that a person who has attained his twenty-second birthday, but has not attained his twenty-sixth birthday at the time of his conviction, may be sentenced under the Youth Corrections Act when the court finds that there is reasonable grounds to believe that the defendant will benefit from treatment thereunder, 18 U.S.C. § 4209. Judges should be hesitant to use the Youth Corrections Act for individuals between 22 and 26, bearing in mind that the primary purpose of the Act is to reach offenders in the critical age of 18 to 22. Moreover, where the offender falls within the age of 22 to 26, the Youth Corrections Act sentencing provisions are not available if the individual has been convicted of an offense requiring imposition of a mandatory penalty such as a narcotic violation, 26 U.S.C. § 7237. However, if the youth offender falls within the 18 to 22 age bracket, he may be sentenced under the Youth Corrections Act even though it involves an offense calling for a mandatory penalty if he had been sentenced as an adult.

Technically and legally a person between the age of 22 and 26 years is a young adult offender, even though sentenced under the Youth Corrections Act. 18 U.S.C. § 4209 refers to "Young Adult Offenders" and it is significant that this section is not incorporated within the Youth Corrections Act. Furthermore, § 4209 only refers to a "benefit from the treatment" provided by the Youth Corrections Act. Immediately the question arises whether a "young adult offender" between the age of 22 and 26 and sentenced under the Youth Corrections Act is eligible for a certificate setting aside his conviction

under 18 U.S.C. § 5021. We believe that Congress, in providing for the discretionary sentencing of young adult offenders between the ages of 22 and 26 under the Youth Corrections Act, must have intended to accord all benefits thereunder, one of which is to have the conviction set aside prior to the expiration of the maximum sentence upon unconditional discharge or, in the event of probation, before the expiration of the maximum period of probation if unconditionally discharged by the court. 18 U.S.C. § 5021(a) and § 5021(b).

A sentence pursuant to the Youth Corrections Act should not be automatically imposed merely because the defendant falls within the 18 to 22-year-old bracket. The purpose of the Act was to provide individual corrective treatment for an indeterminate period, subject to statutory limitations. Statistics demonstrate that the period of life between 16 and 23 years of age is the focal source of crime; it is when habitual criminals are spawned. For these reasons, among others, additional efforts are devoted to rehabilitation and a restoration of normality. However, a youth offender who is already a recidivist as to other than minor offenses, or who has previously been sentenced under either the Juvenile Delinquency Act or the Youth Corrections Act, is only infrequently good material for further efforts of rehabilitation.

Section 5010(d) of the Act provides that a youth offender may be sentenced under any applicable penalty provision "[i]f the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c)...." Yet, not every court which has considered the question has agreed that it is necessary for a sentencing court to affirmatively find that a youthful offender would not be able to derive maximum benefit from treatment under the Act. Compare Cox v. United States, 473 F.2d 334 (4 Cir. 1973) with United States v. Kaylor, 491 F.2d 1133 (2 Cir. 1974). The conflict was finally resolved by the Supreme Court in Dorszynski v. United States, 418 U.S. 424 (1974). In Dorszynski the Court held that before any adult sentence may be imposed § 5010(d) requires that the sentencing judge find explicitly that the convicted defendant would receive no benefit from treatment under the Act. Nevertheless, the Court rejected the proposition that the sentencing judge must explain the reasons for his finding, holding instead that once the finding of "no benefit" is made, the sentencing judge has in fact exercised and rejected the option of the Act's treatment. Thus further, more substantive standards are unwarranted and unreviewable.

If commitment is deemed necessary, the most frequently used statute under the Youth Corrections Act is § 5010(b) which provides, in substance, for an indeterminate sentence for treatment and supervision until discharged by the Youth

Correction Division of the Board of Parole as provided by § 5017 (c) which means, as we know, that a conditional release must occur not later than four years from the date of conviction, with an unconditional discharge not later than six years from the date of conviction.

Judges fall into error in attempting to commit a youth offender for a definite term, such as two years, and still invoke § 5010(b). A commitment for a term certain runs counter to § 5017(c) and, unless amended, would be treated as an adult sentence. The words "for treatment and supervision" and "in lieu of the penalty of imprisonment otherwise provided by law" are contained in § 5010(b) and this manifestly demonstrates that no definite term should be fixed by the Court. Even in misdemeanor cases for which one year's imprisonment is the maximum punishment if sentenced as an adult, if the Youth Corrections Act is invoked, there is reputable authority to the effect that the correctional institution may confine the youth offender for more than one year "for treatment and supervision." Cunningham v. United States, 256 F.2d 467 (5 Cir. 1958); United States v. Horning, 409 F.2d 424, 426 (4 Cir. 1969).

At this point it would be well to know the familiar pitfall encountered by judges in failing to warn a defendant, between the ages of 18 and 26, of a possible sentence under

the Youth Corrections Act when accepting a plea of guilty. This is true whether the defendant is charged with a felony carrying a maximum penalty of five years, or a misdemeanor with a one-year maximum. Rule 11, Federal Rules of Criminal Procedure, requires a judge to advise as to the maximum possible punishment among other requirements. Since there are many felonies carrying a five-year maximum, it follows that a sentence under the Youth Correction Act may entail a possible six-year maximum, although this is highly unlikely. In Pilkington v. United States, 315 F.2d 204 (4 Cir. 1963), the court vacated a guilty plea on a motion under 28 U.S.C. § 2255, merely because the judge, prior to accepting the plea, did not advise the defendant as to the six-year maximum under § 5010(b), even though defendant had been told of the five-year maximum sentence under the adult statute. Pilkington has become a prolific source for prisoners seeking relief. It has been followed in the First, Fourth, Sixth, Seventh, Eighth, Ninth and Tenth Circuits. Only the Fifth Circuit has expressly repudiated this decision. Rawls v. United States, 330 F.2d 777 (5Cir.1964); Marvel v. United States, 335 F.2d 101 (5 Cir. 1964). The First Circuit has extended Pilkington to encompass a situation where the judge failed, in a narcotics case, to advise that the defendant was not eligible for parole, Durant v. United States, 410 F.2d 689 (1Cir. 1969), although this is apparently no longer the law as the recent amendments to Rule 11, Federal

Rules of Criminal Procedure, no longer require that a defendant be warned of the "possible consequences" of his plea. The Seventh Circuit has interpreted Pilkington as requiring specific advice as to consecutive sentences. Marshall v. United States, 431 F.2d 355 (7 Cir. 1970). In short, it is less complicated for a district judge to try a case on a plea of not guilty than it is on a plea of guilty. While Rule 11 is now redrafted eliminating the requirement that a defendant be advised as to "the consequences of the plea," and substituting the requirement that the judge advise the defendant of "the mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute" confining the offense "to which the plea is offered," it would be well for all judges, except in the Fifth Circuit, to follow Pilkington at least until the new Rule 11 has been interpreted and judicial decisions have decided the issue.

It is possible, of course, to sentence for a term in excess of six years, where the statute permits same if sentenced as an adult, with the Court stating that it considered the youth offender incapable of deriving maximum benefit from treatment within six years. A definite sentence of five years under § 5010(c) would not stand and, unless amended, would be treated as a straight adult sentence.

Thus, a youth offender-bank robber could be sentenced under § 5010(c) to a term of ten years. Under § 5017(d), the youth offender-bank robber so sentenced would have to be conditionally released not later than eight years after sentence, but this does not mean that he cannot be released conditionally at an earlier date, and the statute imposes no restriction upon his conditional release. For this reason there appears to be no particular advantage to resorting to a sentence under § 5010(c), other than as a means of expression on the part of the sentencing judge.

The Youth Corrections Act, with its many advantages, presents problems which have caused some judges to decline to use it. These major defects, unless corrected by appropriate amendment, may tend to defeat the purpose of the Act. For example:

(1) The imposition of sentence of a youth offender is suspended and the defendant is placed upon probation for a period of four years under the usual conditions. After three years and ten months from the date sentence was suspended, the defendant violates the terms of his probation. When he is finally brought before the court as a probation violator and adjudged to be such, there remains only fifteen days of the four-year period. Probation is set aside and the defendant

is committed under § 5010(b). He arrives at the correctional institution ten days prior to the expiration of the four-year period from the date of the conviction. He must be conditionally released after serving ten days since the direction in § 5017(c) is to the effect that both conditional and unconditional release dates under a commitment pursuant to § 5010(b) are computed from the date of conviction. Obviously this is a deterrent to any judge contemplating probation under the Youth Corrections Act.

(2) If two commitments are made simultaneously under § 5010 (b), the periods of service are bound to run concurrently, even though the court specifies that they run consecutively.

(3) If a defendant is already serving a state or prior federal sentence, any subsequent commitment under the Youth Corrections Act "for treatment and supervision" will be shortened by the elapsed time served in state custody or under a prior federal sentence.

From the foregoing it is clear that the vice in the Youth Corrections Act lies in computing all times from the date of conviction. Section 5020 authorizing the Youth Correction Division of the Board of Parole to effect the return of the youth offender for "further treatment" after conditional release, but before unconditional discharge, does not cure the defect. Assuming that the youth offender did nothing wrong following his mandatory conditional release under

§ 5017(c), it is questionable whether any attempt to resort to § 5020 would be constitutionally permissible.

Section 5023(b) makes it plain that the Youth Corrections Act shall have no effect upon the Juvenile Delinquency Act. It follows that if a defendant is adjudged a juvenile delinquent under the latter Act and placed on probation, any subsequent commitment sentence for violation of the terms of probation must be under the Juvenile Delinquency Act, even though the age at the time of the commitment sentence is 18 years or over. The essential difference between the two acts lies in the fact that there must be a conviction for a specific crime to bring into play the Youth Corrections Act, whereas the Juvenile Delinquency Act calls for a determination of a status of being a juvenile delinquent, even though that status cannot be determined under In re Gault without proof beyond a reasonable doubt.

Finally, there is a study and report proviso in § 5010(e) which enables the court to ascertain whether a youth offender will derive benefit from treatment under § 5010(b) or § 5010(c), with a required report within 60 days, or such additional period as the court may grant. As it is known that the Executive generally favors the use of the Youth Corrections Act, this commitment for observation and study is not used to any great extent.

(3) Observation and Study Prior to Sentence

We have previously mentioned the alternatives available to judges, prior to sentence, to commit defendants, following a finding of guilt or any acceptance of a plea of guilty, for a fixed period of time to permit defendants to be studied and a report made to the court. As to adults, these statutes are found in 18 U.S.C. §§ 4208(b) and 4208(c), with a required imposition of a maximum sentence of imprisonment, and a report forthcoming within three months which period may be extended for a maximum additional three months by court order. Under the Juvenile Delinquency Act, the study and report statute is found in 18 U.S.C. § 5037(c). Under the Federal Youth Corrections Act, the statute is found in 18 U.S.C. § 5010(e).

When §§ 4208(b) and 4208(c) were enacted, it was thought that, by reason of the imposition of the maximum sentence, it would be unnecessary to return the defendant to court for any modification of sentence. This issue was put to rest by the Supreme Court's decision in Behrens, which held that the defendant's presence in court was required when the sentence was modified under § 4208(b).

Wherever the observation and study provisions are invoked, it is highly important that the presentence report be first completed and forwarded. This background and behavior information is vital to the final report. It should,

wherever possible, include the judge's reasoning for resorting to the observation and study alternative.

In selecting offenders for these special examinations judges should apply certain criteria. Obviously all offenders cannot be sent away for observation, study and report. The unusual personality and behavior of the offender, the nature of the offense, the offender's social history, and the nature of the treatment under consideration are of major importance. Individuals with apparent personality disturbance or mental disorder, or defect as exhibited by unusual attitudes or behaviors, are frequently referred for examination. Certain types of offenders are typical subjects of special examinations by reason of the offense committed such as sexual offenses, arson, aggressive physical assaults, and crimes without any apparent motive. Unusual and unexplained backgrounds of recidivism and prior history of mental disorder will frequently bring about a study of this type.

The foregoing statutes should not be invoked as a substitute for determining mental competency for trial. Wherever that question is in doubt, the trial and sentence should be deferred pending a judicial determination of competency under 18 U.S.C. § 4244. The Speedy Trial Act

of 1974 has recently been interpreted by the Ninth Circuit by providing that the period of time devoted to mental examinations and hearings constitutes "excludable time" as to high-risk defendants.

While any recommendation contained in the observation and study report is not binding upon the court in passing final sentence, it stands to reason that if a court resorts to same it should, as a general rule, follow the recommendation. If this were not so, why go to the trouble and expense of using these statutes? Under no circumstances should the court use these statutes as a substitute for the belief that the offender should at least be confined for a brief period of time.

(4) The Split-sentence Statute

In 1958 Congress amended 18 U.S.C. § 3651 so that, as to offenses not punishable by death or life imprisonment, if the maximum punishment provided for such offense is more than six months, the court may impose a sentence in excess of six months and provide that the defendant be confined in a jail-type institution or treatment institution for a period not exceeding six months, and suspend the execution of the remainder of the sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

This statute serves its purpose especially where the nature of the offense is such that a sentence is likely to operate as a deterrent to the defendant and others. Income tax violators, postal thefts by employees, bank embezzlers under certain circumstances, thefts by long-shoremen unloading vessels, and many similar offenses are illustrative of potential uses of the split-sentence provisions. Even the common bootlegger, when operating in an area where the illegal whiskey flows freely, is a likely candidate for a split sentence on his first or second conviction.

The split-sentence provision should never be used for the sole purpose of retribution. If deterrence plays no part in the factor of sentencing in a particular case, it is more logical to assume that the offender should either be given a straight sentence or be placed on probation subject to exceptional circumstances indicating obvious perjury on the part of the offender where most judges have a feeling that the defendant has compounded his crime and is deserving of commitment.

The split-sentence statute has its advocates and opponents. Where it is felt that the offender had to be committed to custody in order to feel the force of the law, as well as being subjected to a substantial period of helpful guidance

and supervision by a probation officer, the split-sentence statute serves a beneficent purpose. Similarly, it affords the same opportunity on a single-count indictment, which previously existed under a multiple-count indictment or information by giving the court the right to impose a short sentence on one count and grant probation on another. Where a person has a prior record of convictions of a minor nature, for which he has been placed on probation, and thereafter either commits another crime of a slightly more serious nature (or violates the terms of probation), it is obvious that probation may not be considered and yet a lengthy period of confinement may not be appropriate. The split sentence is probably the answer in such a case. Likewise, we have the offender who is addicted to alcohol and commits a not-too-serious crime. In all probability a "drying out process" is needed, followed by probation at a time when the offender at least starts out being sober.

There is the argument that the judge is sometimes inclined to impose a split sentence when, in fact, the offender should be granted probation from the outset. This is, admittedly, a potential vice in the split-sentence statute. If the offender is a likely candidate for probation, the stigma of even a short jail sentence is likely to jeopardize the future of the individual. Moreover, the judge cannot very successfully determine the value of a commitment of

six months or less in the terms of rehabilitation, as it is extremely unlikely that such a short period of confinement can fit in with any rehabilitation program.

Good time allowances are applicable to split sentences if the actual period of confinement is six months, but are not allowable if the actual confinement is less than six months. It is not the policy of the Bureau of Prisons to send a prisoner sentenced thereunder to an ordinary county or city jail wherever the commitment period exceeds thirty days and, therefore, split-sentence offenders are generally sent to a correctional institution or a penal farm. Under § 4202 the split-sentence offender, if confined for a period of six months, would become eligible for parole after serving one-third of said sentence, even though good time allowances are granted. Once again, if it is the intention of the sentencing judge imposing a split sentence to permit good time allowance, the time of commitment should be six months, but if the sentencing judge desires to require the service of the entire time of confinement a commitment for 179 days would be in order, in which event neither good time allowance nor parole would be granted.

On balance, it is submitted that the split-sentence statute has been used with reasonable discretion during its seventeen years' existence. While it may have resulted

in a few offenders being committed for a brief period whereas outright probation may have been more appropriate, it has undoubtedly brought about shorter periods of actual confinement in situations where the sentencing judge feels compelled to impress upon the offender the force of the law.

(5) The Indeterminate Sentence
(18 U.S.C. § 4208)

Perhaps too much emphasis has already been placed upon this alternative. In sum, as a general rule, the provisions of 18 U.S.C. §4208(a)(2) should be invoked with respect to all sentences of three years or more. However, a sentence under § 4208(a)(2) does not per se indicate early parole. It merely supplies flexibility to program the individual in prison and to grant parole based on his adjustment and readiness for release.

Another indeterminate sentence statute, infrequently used, is § 4208(a)(1). The sentencing judge may impose a minimum term, at the expiration of which the offender shall become eligible for parole, but this minimum term cannot be more than one-third of the sentence imposed. The only purpose of this statute is to encourage those judges who sometimes lack complete faith in the operation of the parole system to reduce below one-third of the total

sentence the period wherein the prisoner may be considered for parole, and at the same time, not relinquish to the parole authorities all discretion as to the time of release. As the judge will not know what progress the prisoner makes towards rehabilitation, it is submitted that a sentence under § 4208(a)(2) is preferable.

Neither of the foregoing indeterminate sentence statutes can be invoked unless the sentence of imprisonment exceeds one year.

While reference has been made to the term "indeterminate sentence," unlike many state statutes the federal provisions are not truly "indeterminate." There is, in any event, a maximum period of time the inmate must serve unless given a life sentence. This answers the critics of the true indeterminate sentence who argue that inmates become frustrated as to the mandatory release dates.

(6) Probation
(18 U.S.C. § 3651)

In excess of one-half of all federal offenders are placed on probation. There has been a gradual increase in the percentage of probation granted during the past seventeen years, all presumably due to a more enlightened viewpoint of sentencing. We realize that the primary function of a sentence, whether it be probation or imprisonment, is

rehabilitation. As the Supreme Court said in Williams v. People of State of New York, 337 U.S. 241, 248, 69 S.Ct.1079, 93 L.Ed. 1337 (1949): "Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become the important goals of criminal jurisprudence."

Aside from the difference in custodial costs versus probation, which is approximately ten to one, there are such factors as loss of the prisoner's working capacity and support for his dependents during confinement. When measured in the light of difficulties confronting a committed person reentering the community following his release on parole, together with the atmosphere, associations and stigma of imprisonment, it at least emphasizes the fact that we, as judges, should proceed cautiously before rejecting probation and ordering commitment.

This is not to say that all defendants should be placed on probation; nor does it mean that all defendants should receive light sentences. Aside from the dangerous offender who must be correctively treated in custody, judges universally agree that there is no fixed criteria in determining proper subjects for probation. As stated in the Model Penal Code, the offenders shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities, and defendants shall be placed on probation, given suspended sentences or fines whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the offender. The emphasized words are,

of course, not capable of precise definition.

Disclosure of the contents of presentence reports to the defendant or his counsel has been the subject of lively debate for many years.

The recent amendments to the Federal Rules of Criminal Procedure now mandate the disclosure of presentence reports subject to certain qualifications. See Rule 32(c) effective December 1, 1975. For many years certain judges have voluntarily permitted disclosure and report, very significantly, that there is little or no trouble in handling the situation and the "sources of information" are not "dried up" to any appreciable extent. There are, of course, exceptions stated in Rule 32(c) as to the disclosure of certain portions of the presentence report. Moreover, the recommendation of the probation officer to the court as to the ultimate disposition of the case is not subject to disclosure.

The role of the probation officer is of major importance to the court. Among other things, the probation officer should --

1. Provide the court with all significant information regarding the defendant;
2. Analyze from the viewpoint of rehabilitation prospects the data included in the presentence report;

3. Unless the court otherwise directs, offer a specific recommendation which should be confidential and preferably set forth in a separate report. Whether the judge follows the recommendation is less important than the fact that he has the advantage of considering a specific point of view which may result in a conference leading to a disposition of the case which is contrary to what either the judge or probation officer initially thought was in order;
4. Be prepared to justify his recommendation on the basis of the data contained in the presentence report;
5. Present to the court, if probation is recommended, a suitable plan for the probationer following his release including, but not limited to, his residence, employment, and necessary supporting services such as medical or psychiatric help, counseling, vocational training, etc.;
6. Advise the court, if commitment is recommended, as to available sentencing alternatives;
7. Be prepared to discuss all aspects of the report and recommendation after the judge has had an opportunity to read the presentence investigation.

Any involved case should properly be considered in chambers by the judge and the probation officer.

The probation term is likewise important. Some judges feel that the maximum of five years probation is justified in order to keep the defendant "in line" for a lengthy period. If an appeal is noted from a sentence of probation, a stay may be granted or, if not stayed, the court shall specify when the term of probation shall commence. Rule 38(a)(4), Federal Rules of Criminal Procedure. The consensus seems to be that after two years under supervision the law of diminishing returns sets in. It is true that probation may be terminated at an earlier date, and the law further provides that the court has the option of extending the period of probation up to a maximum of five years from the date of sentence or, if an appeal is noted, from the date of final action by an appellate court if a stay is granted. The better view seems to be that, other than in exceptional cases, the period of probation should not be more than three years, nor less than one year.

Moreover, consecutive sentences granting probation for a total term in excess of five years have been declared invalid as to the excess over and above five years. Fox v.

United States, 354 F.2d 752 (10 Cir. 1965). An interesting question arises whether a court, faced with a probation violator under five years probation, may, when the violation occurs sixty days prior to the expiration of the original probationary term, impose a new term of probation which will run beyond the original five-year term. It is believed that no such power exists, but the overall effect may be harmful to the defendant as the court, confronted with the necessity of enforcing the terms and conditions of probation, may be inclined to order commitment; whereas, the court, if given some discretion to extend the probation period beyond five years, may have continued the defendant on probation. Apparently, however, this is a matter for Congress. The question perhaps may be answered by continuing, with the consent of the defendant, the hearing on the revocation of probation to some date or dates beyond the five-year period as it appears to be a settled principle of law that if the offense giving rise to the violation of probation is committed within the period of probation, a revocation hearing may be conducted after the period has expired.

Further, with reference to presentence reports the judges should --

1. Afford the probation officer at least two to three weeks working time to prepare a report and, where an

investigation must be made outside the immediate judicial district, a period of four to five weeks is preferable;

2. Familiarize themselves with Publication 103, The Presentence Investigation Report, published in February 1965. This document will acquaint the judges with the guidelines followed by probation officers, and judges have the right to expect that the probation officers will abide by this document in preparing their reports.

The conditions which may be imposed in granting probation are flexible. Section 3651 provides that, among the conditions thereof, the defendant may be required to (1) pay a fine in one or several sums, (2) make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had, and (3) support persons for whose support he is legally responsible. As a matter of practice, courts have adopted "General Conditions of Probation" incorporating the foregoing, as well as other conditions. It is not necessary that the sentencing order specifically refer to the conditions of probation with the exception of a fine, restitution, reparation, or some special condition.

Problems arise with respect to conditions imposed. As frequently occurs with respect to a multi-count indictment involving a series of checks, a defendant may plead guilty to one count and the remaining counts are dismissed. It has been held that restitution may be made a condition of probation only as to the count upon which there is a conviction, and not as to the counts which were dismissed even though it is apparent that other checks were cashed. Karrell v. United States, 181 F.2d 981 (9 Cir. 1950); United States v. Taylor, 305 F.2d 183 (4 Cir. 1962), cert. den. 371 U.S. 894, 83 S.Ct. 193, 9 L.Ed.2d 126. A condition that a defendant donate a pint of blood is void as invading the physical person of the defendant in an unwarranted manner. Springer v. United States, 148 F.2d 411 (9 Cir.1945). In tax evasion cases a condition may be imposed requiring the payment of income taxes and penalties for any year for which the defendant was convicted, either as shown by the defendant's tax return or as determined and assessed by Internal Revenue Service, but a condition that the defendant pay all taxes and penalties found to be due is illegal as such a condition could involve years for which the defendant was not convicted. United States v. Taylor, supra. Limitations as to the defendant's returning to the place of

employment which directly or indirectly gave rise to the commission of the offense have been upheld. Whaley v. United States, 324 F.2d 356 (9Cir. 1963), cert. den. 376 U.S. 911, 84 S.Ct. 665, 11 L.Ed. 2d 609; Stone v. United States, 153 F.2d 331 (9 Cir. 1946). Prior to the passage of the Criminal Justice Act many courts imposed, as a condition of probation, the payment of a reasonable attorney's fee. At best, such a requirement is of doubtful validity as the proviso with respect to restitution or reparation is applicable only as to "aggrieved parties" for actual damages or loss. It does not appear that this issue has ever been tested in an appellate court, probably because the attorney who failed to receive payment elected not to press the issue.

In short, conditions imposed as a requirement of probation must be reasonable and within the general framework of § 3651.

It is now settled law that, upon a charge of violating the terms and conditions of probation, the defendant is entitled to a hearing with the assistance of court-appointed counsel if requested. Mempa v. Rhay, 389 U.S. 128, 88 S.Ct.254, 19 L.Ed.2d 336 (1967).

The years have proven that judges are relying more upon their probation officers than in days past. The quality of

probation officers has substantially improved by reason of the standards invoked by the Judicial Conference of the United States. We believe that this quality will continue to improve with the cooperation of the judges.

(7) Fines and Restitution

Perhaps the greatest problem confronting the probation officer stems from the imposition of unrealistic fines and restitution requirements. When financial conditions are imposed which are beyond the capabilities of the probationer to meet, it frequently results in undue hardship which defeats the prospects of rehabilitation. And if rehabilitation is thwarted, confinement may have been more appropriate under the circumstances. Likewise, an unrealistic fine or restitution requirement will, in all probability, bring about a report of a violation of probation solely because of failure to pay. The judge then faces the problem of revocation of probation with the only alternative being confinement. There is compelling authority to the effect that probation cannot be revoked and confinement ordered solely because of failure to pay a fine or make restitution, if the defendant is, in fact, financially unable to pay the fine due to circumstances beyond his control. Tate v. Short, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971); United States v. Taylor, 4 Cir. 321 F.2d 339 (1963). While

realistic fines are certainly in order, judges should avoid the imposition of fines and restitution which are beyond the reasonable ability of the offender to pay.

In any event, if fines or restitutions are imposed as a condition of probation, the court should give the probation officer wide authority in scheduling payments, and should be prepared to grant extensions whenever recommended.

(8) Deferred Prosecution

What has been customarily referred to as The Brooklyn Plan has become a part of our system for many years. From a practical standpoint it does not involve the judges. It is, in effect, a voluntary system of probation wherein the offender, generally in the juvenile or youth offender age category, agrees to submit to voluntary probation supervision for a period of months or years. The complaint is issued and thereafter, with the consent of the United States Attorney, no indictment follows pending the period of voluntary supervision. If the offender completes the probationary term, the complaint is dismissed on motion of the prosecution, and in many instances action on the motion to dismiss is the first and only time the court will realize that the charge was ever pending. If the offender fails to adhere to voluntary supervision, the United States Attorney then presents the case to a grand jury or, if it

involves a misdemeanor, he causes a criminal information to be filed.

The Brooklyn Plan has its advantages in that it protects the record of the offender. There is no statutory authority for this procedure and, in some quarters, the constitutionality of such action has been questioned in that the accused is not accorded a speedy trial on the complaint. Since the plan is invoked in only selected cases, the issue of constitutionality does not appear to be of great consequence. Moreover, under the Speedy Trial Act of 1974, Congress took cognizance of the term "deferred prosecution" by excluding the period of time a defendant is under deferred prosecution from the terms of the Act.

There have been situations in which the court, following receipt of evidence, has urged the use of the plan by merely delaying any adjudication of juvenile delinquency. We may assume that such action is within the discretion of the judge. However, in such a case the criminal information charging the commission of an act of juvenile delinquency has already been filed.

There is a movement on foot to legalize the so-called Brooklyn Plan by statute, and to extend the authority of voluntary probation to offenders over the age of 18 years.

In fact, some jurisdictions now permit offenders over the age of 18 to be handled under such a plan, and there does not appear to be any valid objection to such a procedure. In general, the proposal is to permit first offenders in misdemeanors and minor felonies to accept a term of voluntary probation to avoid prosecution and thereby protect their records. It would require the consent of the prosecutor, the defendant, and the defendant's attorney. There are instances in which such a procedure would serve to benefit the prosecution and defense. For example, 18 U.S.C. §912 makes it a felony for one who falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such. There is a division of authority as to whether an "intent to defraud" constitutes an essential element of the offense, although the presence of such intent may be a consideration in determining the gravity of the offense; United States v. Guthrie, 387 F.2d 569 (4 Cir. 1967), holding that the original statute, 18 U.S.C., § 76, which included the words "with intent to defraud," has been effectively amended by the revision and codification in 1948, together with the revisor's note, all of which was accepted by Congress.

What, then, is to be done with the practical jokester who falsely represents himself to be a special agent of the

Federal Bureau of Investigation, but who injures no one by reason of such representation? Technically, under Guthrie, he must be found guilty. Certainly some method of voluntary probation would have been adequate under these circumstances, thereby avoiding the stigma of a felony conviction. It is for these reasons that we believe much can be accomplished by legislation along these lines.

The Sentencing Council

In multi-judge courts the practice has developed to create sentencing councils. In one form or another many of the larger cities have adopted this procedure. While the methods of operation may vary, it substantially provides that, after one judge has heard the case and the defendant has been found guilty, the presentence report is thereafter prepared. This report is submitted to a panel of three judges, including the sentencing judge. Each judge then submits his views as to the sentence to be imposed. This is frequently done by a panel conference in conjunction with the probation officer to whom the case was assigned.

The results obtained from sentencing councils in Detroit, Chicago and Brooklyn have been favorably received. While the

sentencing judge always controls the final decision, he is afforded the views of his colleagues in advance of imposing sentence. Such a procedure certainly tends to promote uniformity of sentencing even though it is recognized that each defendant must be treated on an individual basis.

While it may be inconvenient to invoke sentencing councils in all areas, there is nothing to prevent judges, even from different districts or states, from voluntarily adopting a like procedure which will involve the exchange of presentence reports and subsequent communication by mail or telephone. Experience dictates that there is a wide divergence of opinion between judges in discussing selected cases at seminars and sentencing institutes. If the variance exists at these opportunities to confer, it is fair to assume that there will be differences among members participating in sentencing councils or their equivalent.

Sentencing councils are innovations in the field of criminal procedure. Once again, there is no statutory authority for same. Manifestly, sentencing councils in one form or another will continue to grow and, in due time, may receive statutory recognition.

Length of Sentence

There are those who may argue that, if § 4208(a)(2) is so strongly recommended, why not impose the maximum sentence

in each case as the offender may, in such event, be released on parole at any time. There are several answers to this inquiry. Undoubtedly the length of the sentence under § 4208(a)(2)--or, in fact, under any sentencing alternative--should provide sufficient opportunity to control and treat the individual, both while in confinement and during parole, for public protection and to assist the offender. Obviously the length of the sentence should be related to the offense and the nature of the offender. However, an excessive sentence should never be imposed merely because § 4208(a)(2) is used. The end result would be that prisoners released on parole may remain under parole supervision for many years, as § 4208 provides that the parole continues "until the expiration of the maximum term or terms for which he was sentenced." Like probation, the effective period of parole supervision is probably not more than two years. Thereafter, supervision is gradually reduced and eventually terminated, even though the sentence may still be in effect. For these reasons, among others, we urge the judges to refrain from giving maximum or near-maximum sentences merely because § 4208(a)(2) is used. A more realistic approach is to give the offender a sentence the judge thinks is appropriate, bearing in mind the nature of the offense and the offender, which sentence may properly

be the maximum under unusual circumstances. Where a judge imposes the maximum sentence pursuant to § 4208(a)(2) under the mistaken belief that he was required to impose the maximum term, it has been held that the defendant is entitled to be resentenced. United States v. Lewis, 392 F.2d 440 (4 Cir. 1968).

The Board of Parole has repeatedly stated that it would welcome transcripts of sentencing, as the information may be of value in understanding the offense, the offender, and the sentence imposed. As a rule the official reporter does not transcribe the sentencing procedure for several weeks following the disposition of the case and, by that time, the judge has turned to other duties. Judges could assist in this regard by instructing the probation officer to attach to the presentence report a summarization of any special comments made by the judge in imposing sentence.

The Factor of Deterrence

One of the most troublesome aspects in the philosophy of sentencing is the case where some type of confinement must be ordered solely because confinement will tend to prevent others, as well as the defendant, from committing a like crime. To a certain degree deterrence is interlocked with retribution, although judges are hesitant to admit this fact.

In a case involving two stockbrokers who misappropriated customers' funds in handling stock transactions, the

total amount of the loss was in the neighborhood of \$650,000. Each defendant had an excellent record and reputation. Before they commenced their series of misappropriations, they would have passed any FBI investigation for any position. They visualized that they could, in a brief period of time, become wealthy by "borrowing" the money from the customers, investing same to their own profit, and then repaying the customers by juggling the accounts. They entered guilty pleas and, of course, restitution was out of the question. It is unlikely that deterrence was a major factor in sentencing in this case, yet probation was likewise out of the question. Call it retribution if you will, but we all know that the public cannot be expected to accept probation in such a case. A sentence of five years under § 4208(a)(2) was imposed. Because these defendants were model prisoners, they were released after serving one full year.

An interesting aftermath of this case is that, following release on parole, the Internal Revenue Service has pursued one of the defendants--who has secured reasonably gainful employment--by a series of attachments of wages for income taxes due by reason of the embezzled funds. We wonder how effective rehabilitation can be secured under such circumstances.

True deterrence is perhaps best exhibited by the handling of income tax violators. The success of our voluntary system of collecting taxes, either federal or state, is essentially based upon the honesty of the average citizen. When a citizen willfully evades his income taxes, judges often feel required to order commitment, even though for a brief period of time, to protect the system of voluntary tax collection, thereby causing other citizens to take note of potential confinement for like offenses. Several years ago a doctor was found guilty of income tax evasion and a split sentence was imposed, with the defendant actually serving 90 days. Before that time had expired, the Internal Revenue Service in the area involved received 34 amended tax returns from members of the medical profession.

From the days that we were young children the threat of possible punishment has deterred us in varying degrees as we travel life's road.

The typical income tax offender is not likely to repeat his crime and a prison sentence is generally not necessary as far as he is concerned. Nevertheless, the effect of the sentence on other potential offenders must be considered. The fear of a prison sentence does deter many persons in all walks of life from violating certain laws, especially

income tax laws. At the first Sentencing Institute at Boulder, Colorado, the consensus was that, in income tax cases, "commitment is the rule and probation the exception because imprisonment would be a deterrent--and a needed deterrent--to others." Probation on condition that the tax and civil penalties be paid merely calls upon the defendant to do what he is legally bound to do.

Aside from professional and prominent businessmen probation may be appropriate in income tax cases. There is no inflexible rule that can be established in any case where deterrence is a factor for consideration. The principal difficulty confronting a judge is to distinguish between deterrence and retribution. It is admittedly no easy task.

Suspending the Execution of Sentences

The only material difference in suspending the imposition of sentence and placing the defendant on probation, as contrasted with suspending the execution of a sentence and placing the defendant on probation, is that, under the latter, a definite term is imposed at the time of sentencing, whereas under the former no term certain is imposed unless and until the defendant violates the terms of his probation. Wherever supervision is deemed appropriate, it would appear that suspending the imposition of

any sentence is preferable as it permits the court, in the event of a violation of probation, to evaluate the overall sentence at a then current time.

There are times when it is evident that a defendant will not respond to supervision under a probation officer and yet commitment is not the immediate solution. In such event, imposition of sentence could be suspended and the defendant placed on probation without supervision or, at the election of the sentencing judge, a term certain may be imposed with the execution of the sentence suspended and the defendant placed on probation, again without supervision. The fact that a term certain hangs over the head of a probationer sometimes strikes a responsive chord with a person who is not amenable to guidance and supervision of a probation officer.

If the court does suspend the execution of a sentence, it is important to note that the court must put the defendant on probation, either with or without supervision, as otherwise there is no final judgment and the sentence is a nullity. United States v. Ellenbogen, 390 F.2d 537, 541 (2 Cir. 1968); United States v. Graham, 325 F.2d 922 (6 Cir. 1963); United States v. Sams, 340 F.2d 1014 (3 Cir. 1965), cert. den. 380 U.S. 974, 85 S.Ct. 1336, 14 L.Ed.2d 270; Hodges v. United States, '35 F.2d 594 (10 Cir. 1929).

Contrary to many state practices, it is not permissible to impose a sentence of three years and suspend the execution of one year, thus leaving two years to serve. Nor can probation be made conditional on serving a portion of a sentence. United States v. Greenhaus, 85 F.2d 116 (2 Cir. 1936); Sibo v. United States, 332 F.2d 176 (2 Cir. 1964). Of course, the split-sentence statute, § 3651, does permit the imposition of a sentence in excess of six months, with the defendant being required to serve a period not exceeding six months, and the execution of the remainder of the sentence being suspended with the defendant being placed on probation for the remainder of the term of the sentence. The Bureau of Prisons claims that a split-sentence can be used under a sentence pursuant to the Federal Youth Corrections Act, but the author of this paper, along with the Board of Parole, disagrees for the reason that the Youth Corrections Act is designed for treatment and supervision of the youth offender and a split-sentence would be meaningless under such circumstances. A recent Ninth Circuit decision holds, without discussion, that the split-sentence is not available to a defendant sentenced under the Youth Corrections Act. United States v. Bauer and Rew (9 Cir. 1975) unreported.

Concurrent Sentence with State Sentence Being Served

It is not legally permissible to direct that a federal sentence run concurrently with a state sentence then being

served. However, as the Attorney General has the right to designate the place where the defendant shall serve his federal sentence, the court may recommend to the Attorney General that the state penitentiary be designated as the place where the defendant shall serve his federal sentence. This accomplishes the same purpose and is universally followed by the Attorney General. United States v. Janiec, 505F.2d 983(3Cir.1974).

Detainers--Right to Speedy Trial

Sentencing Offender Already Serving Another Sentence

With the advent of the "writ writer" in state and federal penal institutions, judges are besieged by requests for a speedy trial on charges for which detainers or bench warrants are outstanding. Probationers in the federal court are frequently convicted of state or separate federal offenses and, if for no other purpose than to clear the record, the probation officer reports the conviction and a bench warrant follows.

It is no longer possible to avoid the speedy trial issue by merely noting that the defendant is confined in a state or federal institution because of a different crime. On March 9, 1971, the United States became a party to the interstate compact on detainers. In Smith v. Hooey, 393 U.S. 374, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969), it was said

that a state was at least under a duty to attempt to procure the presence of the wanted defendant pursuant to a writ of habeas corpus ad prosequendum. In 1970, Dickey v. Florida, 398 U.S. 30, 90 S.Ct. 1564, 25 L.Ed.2d 26 (1970), was decided and the issue was completely resolved. It seems clear that knowledge of the whereabouts of a person wanted for trial on a criminal charge, even though incarcerated in another jurisdiction, is sufficient to raise a presumption of prejudice when there is an "unreasonable" delay in bringing the wanted party back to the demanding jurisdiction. Pitts v. North Carolina, 395 F.2d 182 (4 Cir., 1968), and authorities therein cited.

In the federal court these questions arise in habeas corpus proceedings and by reason of the fact that, in federal criminal cases, detainees are placed by the United States Marshal with penal authorities in other jurisdictions. Admittedly this becomes a nuisance problem as, in the vast majority of cases when the defendant is finally released to the detainer, it is likely that he will be given a chance of rehabilitation in the outside world even if found guilty.

To release the detainer automatically is not the solution as it would tend to promote recidivism and, if the detainee is a probation violator, a dismissal would be deleterious to the probation system.

The Speedy Trial Act of 1974 merely codifies, with harsher sanctions, the language in Smith v. Hooey and Dickey v. Florida, both supra. Under §3161(j) of the Act the United States Attorney is required to "promptly" undertake to obtain the presence of the defendant and to advise him of his right to a speedy trial. If the defendant elects to be tried, the government must do so within the limits of the Act, 18 U.S.C. §3161(j)(3), Failure to do so would result in dismissal of the indictment or information.

The judge, clerk, or United States Attorney should not bypass requests for a speedy trial, either on the original charge or as a probation violator. A letter from the judge or the probation officer to the detainee explaining that he is entitled to a speedy trial but, if found guilty (or determined to be a probation violator), the probable sentence would be consecutive in light of the fact that the court would not have the benefit of the classification study from the state or federal institution where the defendant is confined, generally puts an end to the matter. If not, and if the United States Attorney desires to press the original charge, a writ of habeas corpus ad prosequendum should issue. When the defendant is brought before the court and counsel has been appointed, if the defendant is

plainly guilty (or is an admitted probation violator), the attorney will readily see that his client runs a genuine risk of having a consecutive sentence imposed and will probably arrange for the execution of a waiver of the right to a speedy trial. Of course, if there is doubt as to guilt, the defendant should be tried at an early date.

Some judges have followed the practice of trying the defendant borrowed from another jurisdiction, either on the original charge or as a probation violator, and if found guilty, electing to defer sentence until the completion of the state or federal sentence then being served. The principal objection to this procedure is that Rule 32(a) provides that "sentence shall be imposed without unreasonable delay." Whether the "delay" occasioned by the desire of the sentencing judge to await the completion of the prior sentence is "unreasonable" is an open question. Until the issue is authoritatively decided, it is a better practice to avoid delaying the imposition of sentence as to defendants serving prior sentences in state or federal institutions. Cf. United States v. Pruitt, 341 F.2d 700 (4 Cir., 1965), in which the court delayed imposing sentence where there were other pending charges in the same court and the same judge was scheduled to hear the later charges without a jury, with the judge electing to await the outcome of the later charges

before reviewing the presentence report with respect to the earlier charges; all of which was deemed to be a "reasonable delay."

Narcotic Addict Rehabilitation Act

During 1966, Congress enacted legislation in a worthy attempt to attack the narcotic problem. 28 U.S.C., §§ 2901-2906; 18 U.S.C., §§ 4251-4255; 42 U.S.C., §§ 3401-3426. Judges have previously received through the Administrative Office sundry comments and forms ably prepared by Chief Judge Adrian A. Spears of the Western District of Texas, as well as a jury charge and memorandum opinion by Chief Judge Roszel C. Thomsen of the District of Maryland, in the case of John William Kelly, a voluntary patient who was an admitted addict and who, after examination, contested the civil commitment under the belief that he was not likely to be rehabilitated by the planned treatment. Reference to these documents, together with other forms later received from the Administrative Office, would assist any judge far more than anything which would be stated in this outline.

The key to the Act is that it is directed to the addict who is likely to be rehabilitated through treatment. It deals with an "eligible individual" and there are specific exclusions to that classification as provided by statute. 28 U.S.C. § 2901(g); 18 U.S.C. § 4251(f). The voluntary

civil commitment provisions of 42 U.S.C. §§ 3401-3426 do not make reference to an "eligible individual" and are available to addicts who do not have criminal charges pending against them, or are not on probation, or who are not serving a sentence and are not on parole. However, it is provided that if an addict is on probation, parole or mandatory release, he may avail himself of the benefits of the voluntary commitment statute, if the authority authorized to require his return to custody consents to the commitment.

If there are criminal charges pending, they may be held in abeyance if the defendant-addict agrees to submit to an immediate examination to determine whether he is an addict and whether he is likely to be rehabilitated through treatment. If, after examination, he is determined to be an addict who is likely to be rehabilitated through treatment, he is civilly committed to the Surgeon General and he may not voluntarily withdraw from treatment which may last as much as 36 months. If he successfully completes the treatment, the criminal charge is dismissed, but if he does not, the prosecution may be resumed. If the initial examination, made within 30 days, discloses that the person is either not an addict or will not likely be rehabilitated through treatment, the prosecution continues.

The term "eligible offender" as used in 28 U.S.C. § 2901(g) means any person charged with an offense against the United States, subject to the exclusions therein noted. The statutory provisions of 18 U.S.C. § 4251(f) refer to an "eligible offender" as any person who is convicted of an offense against the United States, subject to the exclusions therein noted. Of course, to be an "eligible offender" entitled to the benefits of NARA, the so-called "eligible offender" must be an addict who is likely to be rehabilitated through treatment. Where the person has been convicted and the provisions of § 4251 apply, the commitment is for an indefinite term, to the custody of the Attorney General, not exceeding ten years, but in no event exceeding the maximum sentence that could otherwise have been imposed.

When there is a pending criminal charge or when the defendant has been convicted, there is no right to trial by jury as to the issues raised by the determination of addiction and whether the person is likely to be rehabilitated through treatment. However, when the proceedings are under the voluntary commitment provisions of 42 U.S.C. §§ 3401-3426, there is a right to a jury trial on all issues of fact with respect to the alleged narcotic addiction. 42 U.S.C. § 3414.

After a period of five years it is noted that NARA is receiving less use, the reasons being that defendants are fearful of longer sentences and assistance from local and state agencies has been a major factor in the diminished use of the program by drug offenders. Voluntary commitments have decreased substantially, chiefly because of apparent lack of cooperation by the addicts and the increase in number of involuntary defendants by reason of recidivism. Judges, in their preliminary remarks to petitioners under the voluntary commitment proceedings, would do well to emphasize the need for cooperation on the part of the particular patient. Other than the foregoing, the judges' role is essentially confined to following the statutory proceedings, including the extensive warnings and/or advices which must be given to any defendant or voluntary patient, and wherever possible, the duty to detect addicts either before or after conviction who may be within the category of an "eligible offender."

Medical and Psychiatric Reports

Judges quickly discover that psychiatrists and psychologists use terms which, to laymen and those unacquainted with the "language," are meaningless. They remind us of some of the Latin words we attempt to use in writing opinions. There is a booklet entitled "A Psychiatric Glossary" which

is of assistance to the courts in understanding and interpreting the reports. Likewise, medical reference books will generally supply an adequate definition of the confusing terms. Despite the efforts of the Director of the Bureau of Prisons urging that clinical reports be written, insofar as possible, in non-technical language, judges and attorneys are still required to seek further explanation.

Problems involving defendants who are mentally disturbed or incompetent at the time of arraignment were presumably assigned for discussion at prior seminars. Suffice it to say that whenever any question of mental competency is raised by the defendant, his attorney, or the United States Attorney, it is appropriate to resort to 18 U.S.C., § 4244, before proceeding further. If the judge does not take this precaution, and if there is a conviction and commitment, it will be followed by a motion under 28 U.S.C., § 2255.

There are situations in which no issue of mental competency is apparent to anyone prior to trial but, during the trial or before sentencing, the question may arise. A sentence under 18 U.S.C., § 4208(b), is then appropriate. While the latter statute is not designed to report as to possible mental incompetency, mental disease or irresistible impulse at the time of the criminal act, there have been cases wherein such facts were reported following study and observation, and which resulted in a vacation of the sentence imposed.

It is important to become familiar with the psychiatric terms because of the potential dangerous offender. If we are confronted with a mentally incompetent, potentially dangerous offender, he should be put away--either in a state institution or at the Medical Center for Federal Prisoners at Springfield, Missouri. The difficulty is that, all too frequently, the mentally disturbed dangerous offender is released at an early date, often due to crowded conditions or inadequate facilities. The judges cannot, however, be charged with the responsibility of the early release of this type of individual.

Often the reports from psychiatrists are very abbreviated and, as stated before, in technical language. Orders may be entered by the court requiring the production of staff notes and more comprehensive reports, thereby enabling the defense attorney and the court to have a more accurate picture of the individual involved. Wherever mental competency is in issue, the defendant's attorney should be provided with all available information possible. Such action precludes many a post-conviction motion. Nevertheless, the defendant is not entitled to have his attorney present when examined by a psychiatrist, either privately or while confined in a hospital. United States v. Albright, 388 F.2d 719 (4 Cir., 1968).

In the last cited case, the prosecution was met with the surprise defense of mental incompetency at the time of the commission of the offense. The Government unsuccessfully attempted to exclude the defendant's psychiatric testimony, but was granted a recess in the jury trial then underway. An order was entered requiring the defendant to submit to a psychiatric examination. The trial was in recess for 23 days. Upon the resumption of the trial, the previously called psychiatrist for the defense testified, as did the psychiatrist who examined the defendant pursuant to court order entered while the trial was in progress. The opinion in this case, which upholds the action of the lower court, contains an interesting discussion of the problems confronting a court with respect to the use of psychiatric testimony and reports, including the delicate subject of self-incrimination under the Fifth Amendment as related to the testimony of psychiatrists. It is particularly valuable in upholding the inherent power of a court to require a defendant to submit to a psychiatric examination during the course of trial, when there has been no prior indication that insanity would be resorted to as a defense.

Amendments to the Federal Rules of Criminal Procedure, effective December 1, 1975, eliminate many surprises at trial, including the secret defense of mental incompetency.

Rule 12.2 requires a defendant to give advance notice of his intention to rely upon mental inability to formulate the requisite criminal intent if he intends to introduce expert testimony on the subject. The objective of Rule 12.2 is to give the prosecution time to meet the issue of mental incompetency and to cause the defendant to be subjected to a mental examination prior to trial. The enactment of Rule 12.2 should have some effect upon collateral attacks under 18 U.S.C. § 2255 where the issue of mental competency is raised for the first time.

Plea Bargaining

Congress has now amended Rule 11, Federal Rules of Criminal Procedure, to authorize plea agreements, or plea bargaining as it is so frequently denominated. The Supreme Court had previously approved plea agreement procedures, under certain circumstances, in at least two decided cases.

The use of the term "plea agreement" is the determination by Congress that federal courts should not participate in discussions on the "bargaining" level. Rule 11(e)(1). Nevertheless, the Advisory Committee Note makes clear that the judge may participate in such discussions as may occur when the plea agreement is disclosed in open court or, upon a showing of good cause, in camera. Rule 11(e)(2). The

newly adopted Rule contemplates that the parties to the agreement shall appear before the court with an "agreed package" to accomplish one or more of the following:

- (1) The attorney for the Government will move for dismissal of one or more of the charges upon the acceptance of a plea of guilty or nolo contendere to one or more specific charges.
- (2) The attorney for the Government will recommend, or not oppose the defendant's request for, a particular sentence with the understanding that such recommendation or request shall not be binding upon the court.
- (3) The parties agree that a specific sentence is the appropriate disposition of the case.

Courts are not required to accept any plea agreement. A few federal judges have already let it be known that any such agreement will be rejected, principally because these judges feel that an agreement as to a recommended or particular sentence is an unlawful delegation of the judge's sentencing authority or that, in the opinion of the judge, the public is opposed to plea bargaining. All of the arguments against plea agreements were forcefully presented to Congress as reflected in the testimony given at several hearings. Since the plea agreement procedure does not attempt to define criteria for the acceptance or rejection of the agreement, it must be assumed that the decision is left to the discretion of the individual trial judge. Likewise, there may be certain attorneys for the Government who will decline

to enter into discussions relating to plea agreements as there is nothing contained in Rule 11 which mandates any such action on the part of the Government attorney. However, the Department of Justice has given general approval to the Rule 11 amendments specifying a procedure leading to a plea agreement openly disclosed on the record, and no longer the subject of secret actions.

The principal reason for the revision of Rule 11 was to do away with the informal and largely invisible manner of plea discussions. They were seldom, if ever, disclosed in open court. Now, under Rule 11, the entire agreement must be spread upon the record in open court. While the final responsibility for the acceptance or rejection of a plea agreement must rest upon the judge, aided only by a probation officer in certain cases, there is an increased responsibility placed upon the prosecutor and, to a lesser extent, defense counsel to arrive at an agreement which is reasonably fair and just to the defendant and society as a whole. The success or failure of the new plea agreement procedure will depend upon the approach to the problem by the attorneys. Under the practice prevailing prior to the Rule 11 amendment, the attorney for the Government was seldom called upon for a recommendation as to sentence and frequently declined to make a recommendation if called upon to do so. Defense

counsel only infrequently suggested a specific sentence and, in many instances, judges disregarded them as merely being a plea for leniency. Now, under Rule 11, the trial judge, while not required to accept any plea agreement, must at least give it consideration. Indeed, in the exercise of their supervisory powers over district courts, it is quite possible that courts of appeal will require district courts to entertain and consider plea agreements as the Fifth Circuit did in Bryan v. United States, 492 F.2d 775, 780-81 (1974), prior to the enactment of amended Rule 11. The field of education in sentencing alternatives is now open to prosecutors and defense attorneys alike. What may not have appeared to the sentencing judge and his probation officer as a suitable alternative may now be adopted when it appears that the attorneys for the Government and defendant have thoroughly explored the justification for a particular sentence which is the subject of agreement.

The judge will, on occasions, be required to reject a plea agreement, either on his own initiative or on recommendation of a probation officer. The danger lies in the attorney for the Government who, because he is anxious to dispose of the case without trial, finally agrees to a sentence which is not compatible with the interests of society. The Department of Justice regularly trains its field attorneys and, as

a part of this training, attempts to guide its representatives on the important subject of plea agreements. While a trial judge may be amenable to reasonable suggestions in sentencing, it is unlikely that the judge will accept a "slap on the wrist" sentence with its consequent criticism. On the other hand, the attorney for the Government may have a weak case which would justify a more lenient agreement on his part. This is a factor which may properly be considered by the court and counsel.

It is important to eliminate last-minute plea agreements after jurors and witnesses have appeared in court for the trial. The expense is appreciable, but the saving of time is of even greater significance. Rule 11(e)(5) specifies that the existence of a plea agreement shall be noted at the time of arraignment or at such other time, prior to trial, as may be fixed by the court. With the Speedy Trial Act now in effect, and a diminishing time period for the starting of a criminal trial ultimately being reduced to 60 days from the date of arraignment, it is important for the trial judge or magistrate to set a deadline for the submission of any plea agreement, beyond which the court will not entertain such plea. As a general rule in a non-protracted criminal case, a defense attorney should be able to conduct a reasonable investigation leading to a plea agreement, if his client

indicates a desire or willingness to plead guilty, within 15 to 20 days following arraignment. The court would, nevertheless, set a firm trial date at the arraignment even if the prospects of a plea agreement are likely. If then, the plea agreement does not materialize, the case will proceed to trial as scheduled. In a complex or protracted case, the deadline for notification of the existence of a plea agreement may properly be set as late as a few days prior to trial. Since plea agreements would ordinarily operate to the benefit of a defendant facing a specific sentence, or a recommendation to the court for a fixed sentence, reasonable adherence to the deadline established will promote the early submission of agreements.

If the court rejects the plea agreement, in whole or in part, with respect to the proposed dismissal of other charges and/or any agreement as to a specific sentence, Rule 11(e)(4) requires that the court inform the parties, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement. The defendant must be afforded the opportunity to then withdraw his plea, and the court must advise the defendant that, if he persists in his guilty plea or plea of nolo contendere, the disposition of the case may be less

favorable to the defendant than that contemplated by the plea agreement. The court is not required to give reasons for the rejection, although it may do so in its discretion. Congress saw fit, on a showing of good cause, to permit the notification of the existence of a plea agreement and the rejection of such an agreement to be made in camera. The obvious reason is to avoid the stigma of publication of a guilty plea in a case involving an individual whose rights would be seriously affected if the public knew that, at some stage of the proceedings, the defendant was willing to plead guilty. While the in camera provisions of Rules 11(e)(2) and 11(e)(4) were not before the Supreme Court, the modification by Congress was essential to the due administration of justice.

An obvious conflict in judicial decisions will arise with respect to that portion of Rule 11 which is restricted solely to the Government attorney agreeing to recommend a particular sentence, or otherwise agreeing not to oppose the defendant's request for a particular sentence, all with the understanding that such recommendation or request shall not be binding upon the court and the defendant has been so advised in open court. Certainly, under these circumstances, there is no need for a rejection procedure as provided by Rule 11(e)(4). The legislative history acknowledges that

many courts decline to be bound by mere recommendations or requests. It is, of course, of utmost importance to warn the defendant that the court is not bound by the recommendation or request. If Rule 11(e)(4) is interpreted by appellate courts as a requirement that a defendant be permitted to withdraw his plea of guilty (nolo contendere) where the court rejects the plea, it will go a long way toward emasculating plea agreements where the sole procedure involves a recommendation by the Government attorney or his agreement not to oppose a request for a particular sentence. It will also result in "testing out the judge" for the defendant has nothing to lose; if the plea is rejected, the Government attorney and defendant can come forward with a slightly greater (or lesser) sentence recommendation or request until the judge finally agrees. The legislative history refers to correspondence between Judges William H. Webster and Frank Kaufman which specifically deals with this point but, unfortunately, the correspondence is not incorporated in the printed record. Logic dictates that a defendant, having been advised that the recommendation will not be binding on the court, should not be afforded the opportunity to withdraw his plea. Moreover, in many of these cases a recommendation or request will include an agreement to discuss other charges, in which event, the rejection and withdrawal procedure would become operative.

In order to implement the plea agreement procedure whenever the court sees fit to refer the matter to a probation officer, a change has been made in Rule 32(c)(1) relating to presentence reports. The prior rule prohibited a judge from examining a presentence report unless the defendant had pleaded guilty or nolo contendere. Under a plea agreement procedure involving a dismissal of other charges and/or an agreement for a specific sentence, while the defendant may have entered a plea of guilty (nolo contendere), there is no assurance that the plea will be accepted and the plea is conditional in nature. With the amendment to Rule 32(c)(1), a judge may, with the written consent of the defendant, inspect a presentence report at any time. This enables the judge to study the report in advance of any determination of acceptance or rejection of the plea agreement. If the defendant refuses to execute the written consent form under Rule 32(c)(1), the answer is rather obvious -- the plea agreement will be rejected.

Conclusion

The author of this article on the purposes and philosophy of sentencing is fully aware of the fact that few, if any, judges will agree--either in whole or in part--with the statements made herein. It is merely a compilation of experiences, views and occasional pertinent authorities

accumulated over a period of nearly twenty-two years as a district judge. If it has been of any benefit to any member of the judiciary, the efforts have been rewarded. The judges are at liberty to disagree with the expressed views. As indicated earlier, there is no standardized philosophy of sentencing attainable.

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REGULAR CRIMINAL PROCEDURE

1. Definite sentence within statutory limits with parole eligibility at 1/3. (4202)
 - a. Probation. (3651)
 - b. Commitment to prison or if misdemeanor to jail
 - c. Split sentence - 6 months - jail plus probation
2. Indeterminate sentence
 - a. Judge in sentence specifies a minimum term of parole eligibility less than 1/3 of maximum sentence he imposes. (4208(a)(1))
 - b. Judge fixes a maximum term of imprisonment, specifying prisoner shall become eligible for parole at time Parole Board shall determine. (4208(a)(2))
3. Fine

P R O C E D U R E S

MAXIMUM SENTENCE ALLOWABLE BY LAW

Court orders study and report within 3 months. (4208(b))

Defendant must be returned to court for:

1. Probation.
2. Affirm or reduce original sentence.
3. Give definite or indeterminate commitment under any applicable provision (including Y.C.A.).

NARCOTICS PROCEDURE

1. Special parole terms of 2 - 6 year minimum built into sentence. (21 U.S.C. 841)
2. One-Year probation without entry of conviction for first time possessors of controlled substances, with provisions for dismissal of proceedings if successful, and also expungement of record for those under 21 at time of offense. (21 U.S.C. 844)
3. Community supervision for addicts as condition of regular probation or parole. (18 U.S.C. 3651, 4203, as amended by P.L. 92-293)
4. More severe penalties for person engaged in a continuing criminal enterprise plus forfeiture of profits and property used. (21 U.S.C. 848)
5. Dangerous special drug offender sentencing procedures include harsher penalties after special sentencing hearing. (21 U.S.C. 849)
6. Certain offenders can be sentenced to civil commitment in lieu of prosecution under NARA. (28 U.S.C. 2901-6)
7. Drug maintenance programs available as part of either civil or criminal commitment programs, as part of supervised aftercare programs, or as part of community treatment program for probationers, parolees, or conditional releasees. (P.L. 92-420)

DISPOSITION DEFERRED (NARA)

Court orders examination and report within 30 days. (18 U.S.C. 4252)

1. If addict is likely to be rehabilitated, court may order him committed for indeterminate period not to exceed 10 years or maximum sentence if shorter. (18 U.S.C. 4253)
2. Court may impose any other authorized sentence. (Ibid)
3. Provision for conditional release under supervision after 6 months treatment. (18 U.S.C. 4254-5)

ORGANIZED CRIME PROCEDURE

1. Besides penalty of fine and imprisonment, criminal forfeiture of property and business interests illegally derived. (18 U.S.C. 1963)
2. Increased sentence for dangerous special offenders after special sentencing hearing. (18 U.S.C. 3575)