

As a Matter of Fact . . .

Three thick, parallel orange diagonal lines originate from the three dots of the title 'As a Matter of Fact . . .' and extend downwards, crossing the horizontal boundary between the light beige upper half and the dark black lower half of the cover. The lines are slightly curved and end near the bottom of the page.

An Introduction to Federal Probation

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Preface

The purpose of this handbook is 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. The handbook 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.

The handbook will serve also as an outline for chief probation officers in their initial orientation discussions with new staff and may be valuable to measure the new officers' grasp of the federal probation scene.

The handbook 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 appointee.

The author has drawn heavily on earlier publications of the Federal Judicial Center and the Administrative Office of the United States Courts, particularly the Circuit Executive Guide and the Guide to the Administrative Organization of the United States Courts. In some instances entire sections are reproduced almost verbatim. Other chapters reflect the contributions of Mr. Norman A. Carlson, Director of the Federal Bureau of Prisons; Mr. Maurice H. Sigler, Chairman of the U. S. Board of Parole; Mr. Carl H. Imlay, General Counsel of the Administrative Office of the U. S. Courts; and Messrs. H. Kent Presson and Peter G. McCabe, assistant chiefs respectively of the Divisions of Bankruptcy and Magistrates.

The author is indebted to Probation Officers Ivan T. Green and Stuart A. Makagon, for assistance in the initial drafting of several chapters, to Mrs. Becky Baumgardner and Mrs. Diana Harner for typing the manuscript, and to Chief Probation Officer Robert M. Latta for making available the facilities of his office and the assistance of the above members of his staff.

Credit is due also to Chief Judge Albert Lee Stephens, Jr., Central District of California, for

proposing that such a handbook be compiled, and to the staff of the Division of Probation for their insight, guidance, and helpful criticism.

M. A. S.

FOREWORD

The Probation System is the largest of the services within the Federal Judiciary in terms of number of members, and is one of the most senior in terms of receiving professional education and training. It is time that a handbook be compiled and published as a reference guide for those worthy men and women who join this dedicated group and desire to be more effective and professional in their chosen careers. Indeed, the material collected herein provides informative reading for all members of the court family, and I heartily recommend it.

This handbook-guide represents our first effort in this direction, and I feel that it is well done and has achieved its objective. As times change and the courts change, this publication will be updated as necessary to keep abreast and reflect those current developments.



ALFRED P. MURRAH
Director
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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 unwaivering 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 holds 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 \$2.00 per volume or \$1.00 in lots of ten or more (same or assorted titles).

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 but never at a fast enough pace to provide staffing on the basis of the known need. Major breakthroughs occurred 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.

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. Reprints of three articles from the June, 1950, issue of Federal Probation dealing with early development of the Probation System will be found in Appendices A, B and C.

Present Composition. As of January, 1973, the Probation System has an authorized strength in excess of 800 officers situated in 190 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 50,000 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 70,000 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 coordinated 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 Administra-

tive 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 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 a United States Circuit Judge, two professors of law and two practicing attorneys. Included

in the Advisory Committee on Criminal Rules are three United States circuit judges, six United States district judges, two judges of State courts, one Assistant Attorney General, one law professor, and three attorneys in private practice.

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.

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; Section 7201, 7203 and 7206 of Title 26 covering income tax evasion and fraud; Section 1472 of Title 49 dealing with aircraft piracy; and Section 462 of Title 50 regarding Selective Service violations.

Sentencing Alternatives. For many years Chief Judge Walter E. Hoffman, United States District Court,

Eastern District of Virginia, has 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 E 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 provisions 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 the paper by Chief Judge Hoffman referred to earlier is included as Appendix F. Likewise two articles reprinted from Federal Probation dealing with narcotic treatment programs of the Bureau of Prisons are included as Appendices G and H.

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 sections 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, conducting preliminary examinations, setting and reviewing bail and conducting 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 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 and conduct pretrial conferences and motion proceedings in both civil and criminal cases. 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 Referee in Bankruptcy. 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 Referee in Bankruptcy. When presided over by a referee the bankruptcy court is an inferior court to the district court and a person aggrieved by an order of a referee may appeal to the district court.

The referee in bankruptcy 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 referees.

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 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 pre-sentence 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 institutions.

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.

Bureau of Narcotics and Dangerous Drugs. The mission of the Bureau of Narcotics and Dangerous Drugs, 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.

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

The bureau 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 Bureau of Narcotics and Dangerous Drugs), 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.

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 three locations 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 correctional officers as counselors has also been established, and full-time training coordinators have been appointed to 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. 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. A Federal Center for Correctional Research at Butner, North Carolina, a Youth Complex in California and Metropolitan Correctional Centers in New York and Chicago are all currently under construction with completion dates scheduled for 1974. Three additional Metropolitan Correctional Centers are planned for Philadelphia, San Francisco and San Diego.

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 members appointed by the President by and with the advice and consent of the Senate. The members serve terms of six years on an overlapping basis. Three members of the Board constitute the Youth Correction Division, created by Section 5005 of Title 18. The Chairman of the Board is designated by the Attorney General as is also the Chairman of the Youth Division. 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, Section 0.125 of the Code of Federal Regulations provides in part that subject to the general supervision and direction of the Attorney General as to policy and programming, the Board of Parole shall have "...responsibility for the supervision, through Federal probation officers of Federal parolees and Federal mandatory releasees upon the expiration of their sentences with

allowances for statutory good time, and for prescribing and modifying the terms and conditions governing the prisoner during parole or mandatory release."

The Youth Correction Division was created by statute specifically to administer parole and related functions of the Federal Youth Corrections Act. The Division is responsible also for parole of federal juvenile delinquents and for young adults confined in any of the Bureau of Prisons "youth institutions." Probation officers are required by the Youth Corrections Act to "report to the Division respecting youth offenders under their supervision as the Division may direct."

Personal interviews are held with parole applicants in the institution of confinement by one of the members or one of the parole hearing examiners appointed by the Board. Examiners may recommend relative to parole but do not vote. Each release on parole is conditioned on Board approval of a satisfactory release plan which is developed primarily by the prisoner himself in conjunction with his institutional caseworker but is investigated by a probation officer prior to issuance of a parole certificate of release.

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.

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. Special conditions imposed by the Board may also be entered on the certificate. 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 conducts a preliminary interview and submits a summary or digest of the interview to the Board. A representative of the Board later conducts a revocation hearing with the alleged violator. The probation officer who supervised the case may be included among the adverse witnesses requested to appear at the revocation 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 or in especially deserving cases 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 Parole Executive, the Youth Division Executive or other staff member of the Board. Included as Appendix I is a copy of a booklet entitled You and the Parole Board which answers many of the questions most frequently asked by prisoners or their families.

In January, 1971, the Board of Parole issued specific guidelines for the supervision of persons under its jurisdiction to be implemented as quickly as sufficient probation personnel become available. A copy of the guidelines will be found in Appendix J.

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 Implementation of the Federal Magistrates Act, 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, Admiralty 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 Division of Business Administration 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 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 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 Department 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 Department of Innovations and Systems Development 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 Department of Education and Training 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 Department conducts courses and seminars for judges, referees, public defenders, clerks of court, courtroom deputies, magistrates, probation officers and others.

The Department of Inter-Judicial Affairs 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 Department 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 190 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 nine positions, six professional and three supporting. The staff consists of the chief, four assistants, an editor and three 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 the four 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. In addition 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.

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 Administrative 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. After the bill has passed the House it is sent to the Senate for action. If the amounts requested by the judiciary have been included in the House bill no further action is taken by the Administrative Office except to answer questions that may be raised by the Senate. If any part of the request has been denied by the House, the director of the Administrative Office may request a hearing before a Senate Appropriations Subcommittee to appeal the items disallowed by the House. 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 regional institutes. Ordinarily an officer participates in a regional institute once each three years and in refresher classes on a similar schedule. In addition specialized programs are conducted by the Center including executive and management training.

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 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. Although each retirement application under these provisions is considered individually on its merits, to date all such applications by probation officers have been approved by the Civil Service Commission.

As indicated at the beginning of this section,

detailed information on the foregoing subjects may be found in the Probation Officers Manual.

CHAPTER XI - A DECADE OF INNOVATION

This chapter will serve to identify a few developments that either were introduced or commenced to catch fire during the period 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. An article reprinted from Federal Probation describing and evaluating the Sentencing Council will be found in Appendix K.

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 L 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 (Appendix M) that in part at least triggered interest and action in the Federal Probation System. One result 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 N. 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 91-942 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. Throughout the first 18 months of the program's operation 64 percent of all persons under supervision accepted by the centers were successfully returned to supervision. During the year ending June 30, 1972, 214 probationers and parolees were referred, 202 were accepted and at year's end 51 were still in the program. Of the others 96 had positive outcomes, and 55 negative.

College as a Parole Plan. Increasing attention has been given to programs that call for college enrollment on parole. One such program is described in Appendix O. 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, in fact the surface has barely been scratched. Item P in the Appendix describes the research effort of the United States Board of Parole in this relatively new realm.

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. Unfortunately volunteer programs in many agencies have been less than successful, as many as eight of ten folding up almost as soon as the first enthusiasm has faded.

The resurgence of volunteerism in the past decade may have been stimulated by the success of a few 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 Q.

Probation Subsidy. Possibly the most notable correctional innovation of the 1960's 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 - CURRENT TRENDS

It is debatable whether any clearcut legislative or correctional trends may at present be positively identified. There is no denying however that the winds of change are blowing and that some proposals and topics of concern seem to surface with greater frequency than others.

Legislative Signposts. Perhaps the most notable of the straws in the legislative wind are the several measures introduced in the last Congress aimed at improving or overhauling the federal parole system. Likewise it is noteworthy that extensive hearings relating to parole were conducted by committees in both the Senate and the House. Proposals for correctional change were not limited however to parole. Bills such as the proposed Correctional Services Improvement Act were much broader in their prospective reach. For example that bill would have provided for the construction of various new federal correctional facilities which in time could be turned over to the States. It would have provided for the creation of a Federal Corrections Coordinating Council and would have established a Federal Corrections Institute. It also would have made changes in parole eligibilities of some

offenders and would have afforded new procedures for commitment of persons found not guilty by reason of insanity.

Several bills on penal reform, reduction of recidivism, establishment of a Juvenile Justice Institute, appellate review of sentences and full scale revision of the federal criminal code also were introduced. Since the more significant proposals have been reviewed by the General Counsel of the Administrative Office in Federal Probation magazine, it is suggested that each new probation officer take time to read the column "Legislation," in each issue of the quarterly for 1971 and 1972.

Correctional Currents. Near the top of any list of significant correctional portents must be the steadily mounting concern with the rights of offenders, not only during the correctional process, but also with the need for restoration of rights, lost as the result of conviction, that continue to haunt the ex-offender long after completion of probation or prison sentence (Appendices R, S).

Also of considerable significance is the growing awareness outside correctional circles of the problems faced within. Public interest is increasing, more of a sense of community responsibility seems to be developing, and Congressional concern is at the highest point in many

years. Increasing involvement of correctional volunteers is notable, not the least conspicuous aspect of which is an American Bar Association project in which lawyers are serving as volunteer parole officers.

The movement toward expansion of community based correctional programs continues. Likewise interest seems to be growing in viewing more realistically the vast area of victimless crime. Awareness is mounting that the overwhelming immensity of the total crime problem must be met through new and nontraditional methods. (An article by Dr. Robert M. Carter in Federal Probation for December, 1972, deals with the concept of diversion from the criminal justice system).

There is growing recognition that probation services stand in need of massive funding and personnel increases, and it is highly significant that the Chief Justice of the United States has spoken out on this subject in his most recent address to the American Bar Association.

Change and the Probation Officer. Recommendations for change flow freely. Witness the myriad loosed by the President's Commission on Law Enforcement and Administration of Justice (1967), the President's Task Force on Prisoner Rehabilitation (1970), and the National Conference

on Corrections (1971) to name a few. But implementation stumbles forward haltingly at best.

Too often change for the better has been externally imposed on corrections--by legislation or by court decree. Corrections however is a living reality and reform is as imperative as progress is inevitable. Many of the forward steps of recent years have flowed from piecemeal recognition of the abridgment of offenders' basic rights--the realization that too often less than fundamental fairness has prevailed.

The men and women of the probation service should be the cutting edge of correctional reform. Recognizing a wrong to be righted they should wait neither for legislative act nor court decree. Rather each officer should be the living guarantee of equal justice and fair treatment for every offender with whom he works.

Appendix

Legislative Background of the Federal Probation Act

BY J. M. MASTER

Probation Officer, United States District Court, Southern District of New York

WITH THE SIGNATURE of President Calvin Coolidge, the Federal Probation Act became law on March 4, 1925. Like the human beings it serves, however, federal probation survived the trying and hazardous periods of infancy and adolescence before reaching majority and the sanction of legality. During the subsequent 25 years, the federal probation service has grown into a system covering the length and

breadth of the United States and its Territories. Since the appointment of its first full-time paid officer,¹ it has acquired over 300 probation officers, has established operating units in practically every federal district court, and has become the largest functioning probation organization in the world.

By reason of the Federal Probation Act, thousands of individuals convicted of violating federal law have had the opportunity to make amends to society without the necessity of being caged behind bars. Each passing year, as the federal pro-

¹ G. A. Daley, appointed April 26, 1927 by the United States District Court for the Southern District of New York.

bation system continues to grow, the number of lawbreakers who have to be imprisoned decreases. The consequent saving of public funds runs into thousands of dollars annually. More than one-third of those convicted each year are placed on probation by the federal courts. In terms of other and more essential values, the benefits to these probationers, their families, their communities, and society cannot be measured quantitatively. We lack any device to evaluate the homes maintained intact, the individuals rehabilitated, or the intrinsic worth of their continued participation in everyday functions.

Were all defendants who were convicted prior to 1925 sentenced to imprisonment by rule of thumb in the federal courts? Why did the Federal Government for close to half a century after passage of the first state probation act in Massachusetts, in 1878, fail to provide for probation? The answers to these questions lie in the fact that federal probation's history began over a century before the Congressional law providing probation for the federal courts.

Early Beginnings of Federal Probation

Federal probation can be considered as having germinated in the dissatisfaction of federal judges with the harsh and severe penalties they were compelled to impose upon wrongdoers. The laws provided no alternatives. To ameliorate this situation, some of the judges began to use their discretion in modifying the prescribed penalties and gradually developing more humane methods of dealing with law violators.

The earliest instance of the exercise of such discretion in the federal courts is attributed to Chief Justice Marshal. In 1808, and again in 1809, then sitting at a Court of the United States for the Fifth Circuit and Virginia District, the Chief Justice suspended in two cases before him that part of the sentences calling for flogging. Court records attest to the continued exercise of suspension powers by federal judges in Pennsylvania since 1854, in the Southern District of New York since 1858, since 1860 in the Eastern District of Michigan, since 1865 in the Virginias, and subsequently in other Districts.²

² Answer of John M. Killits to the Rule of the United States Supreme Court to show cause why writ of mandamus should not issue, filed October 14, 1915. *Ex parte United States*, 242 U. S. 27.

Federal Judge H. G. Connor, Eastern District of North Carolina, in a letter dated March 6, 1920, stated that the records of that court disclosed that its judges exercised suspension powers from the time of its establishment and "This was not only approved but practiced by Chief Justice Marshal, who presided in this District for more than thirty years." National Probation and Parole Association files.

Extent of Early Practices

Under the common law of England, suspension of sentence or postponement of sentence, together with release of the wrongdoer on good behavior, was among the outstanding devices developed in the state courts to avoid the severity of punishment for crime. In the federal courts similar developments took place. A variety of practices was devised by federal judges to mitigate punishment, regardless of the lack of permissive or enabling legislation.

Documentary data, fortunately still available and in the possession of the Administrative Office of the United States Courts, portray a fairly clear picture of this extralegal era of federal probation. Not only the variety of practices followed, but also the extent of their acceptance by the federal courts, thus, is recorded historically. Nor were these informal practices merely occasional or exceptional, or restricted to but a few of the courts.

Probation on an informal level was established in a number of federal courts prior to any act of Congress to provide for such services. These practices, through the use of suspension powers, became firmly established during the second half of the nineteenth century. By the time informal probation was barred by ruling of the Supreme Court, in 1916, such practices were followed in at least 60 of the United States district courts, located in 39 of the states, besides the federal courts of Puerto Rico, the District of Columbia, and the Territory of Alaska.

Informal Probation Practices

The early informal probation practices followed can be divided roughly into five principal groups. These alternatives to ordering sentences executed provided for the following methods of disposition:

1. Partial suspension of sentence
2. Suspension of sentence in entirety
3. Continuance for sentence
4. Suspension of sentence with provision for oversight
5. Suspension with other provisos, which can be considered unclassified suspensions

The practice of partial suspension of sentence existed in 13 of the district courts, located in 12 of the States. Three general procedures developed under this practice. The first entailed the payment of the fine and costs called for by the statute, other punishment prescribed being suspended. The second involved the so-called "mixed sentence" or

"combination sentence"—the sentencing to imprisonment on one count of an indictment or on one indictment, while suspending sentence on the remaining counts or indictments (still practiced). The third procedure, followed by a few of the courts, called for the suspension of the balance of sentence after a portion of it had been served.

At least 36 of the courts, which were in 27 States, besides those in Puerto Rico, the District of Columbia, and Alaska, practiced suspension of sentence in entirety. The suspensions were either of the imposition of sentence, or of its execution, with or without provision for discharge, dismissal, or other form of final disposition. Those courts providing for definite terms of suspension (but 7 of the 36) would, at a later date, have the case stricken from the record, nol-prossed, or permit withdrawal of the plea and dismiss the case; or, the case would be discharged as soon as suspended, or after good behavior, or at a later term.

A number of courts followed a practice similar to suspension, but fundamentally different. They preferred to continue cases for sentence, defer sentence, or file the indictment without sentencing. These varied methods of continuance usually were to the next term or a later term of court, or from term to term. While some of the courts provided for a final termination of cases so continued, others did not. The foregoing procedures were established in 25 of the district courts, situated in 24 of the states.

While some of the courts would continue, postpone, or defer sentence, others would not impose sentence, would omit pronouncement of sentence, or would allow the case to go without passing sentence. The underlying purpose of the practice of filing the indictment was to provide a basis for arrest and punishment of the malefactor in the event of any future law violation. The state courts of New England had established this precedent. Of interest is the fact that federal courts in North Carolina and Illinois followed this practice, as well as those in New England. Under sentence continuance, customarily the defendant would be released upon his own recognizance, conditioned upon good behavior.

The fourth general group of early informal probation practices in the federal courts consisted of suspension of sentence with some provision for

oversight. Thus, sentences would be deferred, continued, suspended, or the indictment filed, with the requirement that the defendant report or be under supervision, or both. These procedures came very close to current probation requirements in that control and oversight of the defendant were ordered in conjunction with the suspension of sentence. And these procedures were practiced not just in one or two courts, but in 11 of the federal courts, located in as many of the states in different sections of the United States.³

Being without probation officers, the courts provided for supervision by delegating that responsibility to someone selected by the court. Some of the courts would designate a parent, an adult friend, or some other responsible person to supervise. Others required regular reporting to a United States marshal, a local state court's probation department, or directly to the federal judge himself. In some of the courts both personal and written reporting were required. The existence of such advanced practices in the federal courts prior to passage of the Federal Probation Act, undoubtedly will constitute a surprise to many of the readers.

Of additional note is the fact that a more progressive precedent already was established at that time in two of the Districts. In the Eastern District of Pennsylvania and in the District of Kansas practices were followed similar to that called for under the "Brooklyn Plan," or probation on a deferred prosecution level. In the former District, the United States attorney would keep juveniles out of the court, handling them through his own office with the aid of the juveniles' parents and the Children's Aid Society. In the latter District, it was the custom with respect to certain cases, "especially those of boys who were favorably situated, to accept a plea of guilty and procrastinate the rendition of judgment therein from term to term requiring the defendant, in the meantime, to give bond and furnish the court and district attorney with reports of his conduct."

There also were suspension practices which cannot be assigned to any particular category. Some of the courts would suspend sentence with the requirement that bond be posted as a guarantee of future good conduct and law observance. In others, suspension, discharge, or remittance of sentence would be contingent upon and during good behavior. No provisions, however, were made to determine whether the defendant continued good. Another practice involved the suspension or

³ These federal courts included the United States District Courts for the Northern District of California, the District of Connecticut, the Northern District of Florida, the Northern District of Illinois, the District of Kansas, the District of Massachusetts, the Western District of Michigan, the District of New Jersey, the District of Oregon, the Eastern District of Pennsylvania, and the District of Vermont.

nonexecution of judgment on condition that the defendant be deported or depart from the jurisdiction of the court. This latter practice continues a current one in some state courts and, from time to time, a requirement by federal courts as a special condition of probation.

Opposition to Informal Practices

The early informal practices were not accepted by all federal courts, nor were they generally favored by federal judges. Differing and conflicting opinions concerning the advisability or legality of suspending sentences and their power to exercise such authority existed among the judges. Some just questioned the practice, others voiced serious concern over its legality, and still others openly decried it. At the same time, many of the judges used the suspension power on the basis of its assumed legality and unchallenged authority. This conflict led to the more serious question of suspension powers.

As early as 1890 the Attorney General of the United States officially voiced concern over the use of informal probation practices in the federal courts, stating "I am not aware by what provision of law a judge can suspend sentence at all. On this matter, however, I express no opinion." In 1912, the federal court for the Eastern District of Illinois barred the suspension power in that District by rule of Court. Just 2 years later the practice was under fire in Congress, with a member urging passage of permissive legislation "so that there will be no question but that they may exercise that power."

The Attorney General initiated an examination of the legality of suspension authority early in 1914. This study of the law indicated the lack of any statutory authority and became the opening wedge for an official challenge of the practice. The first step to curb the practice in the federal courts was taken on January 30, 1914. On that day, the Attorney General issued a memorandum instructing all United States attorneys to oppose any and all suspensions of sentence in the federal district courts, it being the opinion of the Attorney General that no court had such power.

Judicial reaction to this challenge varied, ranging from agreement or acquiescence to questionable consideration, divergence of opinion, and disregard or defiance. The opinion of the judges opposing the Attorney General was expressed aptly by Judge C. M. Hough. The latter, after careful

consideration of the issue, stated "I have looked through the authorities cited The net result is . . . I naturally prefer home authority and the practice of the states where the power of the courts has not been wholly emasculated."

A rather similar response was met with on the part of United States attorneys. Some requested the legal decision upon which the ruling was based, others confirmed acceptance of the practice in their districts, and a few took open issue with the Attorney General's ruling. On the other hand, there were United States attorneys who concurred strongly with the ruling. They referred to the suspension practice as the "evil custom . . . well entrenched," as one which ". . . frequently caused us much difficulty," and the discontinuance of which ". . . will work needed reforms."

The issue soon became a heated one. The Attorney General felt called upon to declare his position as "finally fixed." He stated that, regardless of the "wisdom or unwisdom" of judicial interpretation, the "Department has no more right to tolerate usurpations than the judiciary to indulge therein . . .," considering suspension an infringement by the judiciary upon the legislative and executive powers under the Constitution.

The Attorney General held that Congress was entrusted with establishing the ranges of punishment and "within this range the Court exercises absolute discretion. Beyond it, it ought not to go." He also felt called upon to assert that "judges confine themselves to their true function of administering rather than defrauding the law; . . . if the guilt is established, let the judge impose the punishment decreed by law . . . so that the court when so acting, may be enforcing the law and not flying into the very teeth of it."

Regardless of the Attorney General's position in the matter, some of the federal judges continued their informal probation and suspension practices. In the face of this open defiance, the Attorney General proceeded to have material collated for a test case. It was obvious that only a Supreme Court ruling would resolve the issue. Both sides awaited this final determination. The opportune case, in the judgment of the Attorney General, occurred when Judge John M. Killits of the Northern District of Ohio suspended execution of a sentence in his Court, in 1915, in disregard of the Attorney General's decision.

The Killits Case

In the summer of 1914, an assistant cashier and

head paying teller in a Toledo, Ohio, bank, named James J. Henahan, embezzled \$4,700.00 by falsifying entries in the bank's books. Following indictment, the defendant entered a plea of guilty on March 5, 1915, and was sentenced by Judge Killits to 5 years' imprisonment, the shortest sentence which "under the statute could have been imposed." The defendant then made immediate application for suspension of execution of sentence, to which the United States attorney objected.

The court, nevertheless, ordered execution of the sentence suspended at once and the term of court kept open for 5 years for this purpose, during the good behavior of the defendant. The Government then moved that this order be vacated as "being beyond the powers of the court." Judge Killits overruled this motion. The Government then, through the United States attorney, filed a "praecipe for a commitment," which the clerk of the court refused to issue. A motion that the court order the clerk to do so also was denied by Judge Killits.

The Attorney General then ordered a petition for mandamus prepared and it was filed with the United States Supreme Court on June 1, 1915. This action was instituted on the grounds that the court presided over by Judge Killits "refused to execute its lawful judgment and can be compelled to do so by mandate" of the Supreme Court. Judge Killits, as respondent, filed his answer on October 14, 1915. The Supreme Court handed down its ruling on December 4, 1916.⁴

Judge Killits had argued that suspension powers in one form or another had been exercised continuously by federal judges; that such power had been acquiesced in by the Department of Justice and the President for nearly a century; that it was necessary for the proper administration of justice; and that it should exist since there was no federal probation system.

In the capacity of amicus curiae, the New York State Probation Commission submitted a memorandum to the Supreme Court on the issue, relating the history of probation and its dependence upon suspension power, which had been exercised "from very early times." Two members of the bar of the First Circuit also filed a brief in support of the practice in the First Circuit and in behalf of Judge Killits' action "at the request of the judges for this circuit."

⁴ *Ex parte United States*, 242 U. S. 27.

⁵ See Bethuel Matthew Webster, Jr., *The Federal Probation System*, National Probation Association, New York, September, 1926, p. 13.

The Supreme Court, however, held that there was no reason or right "to continue a practice which is inconsistent with the Constitution since its exercise in the very nature of things amounts to 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." The opinion of the Supreme Court was delivered by Mr. Chief Justice White on December 4, 1916.

Killits Decision Barred Suspension

This decision in the Killits case "rendered further arguments in favor of or against the practice mere pedantry; for, in spite of uncertain authority, diverse practice, and legal history, the mandamus in the Killits case served as a permanent injunction against the continued imposition of suspended sentences in federal criminal cases."⁵ The decision applied to the indefinite suspension of both the imposition and the execution of sentence.

Following this victory, the Attorney General circularized all the United States attorneys, advising them of the Supreme Court ruling and instructing that "Pronouncement or execution of sentence in criminal cases could not be suspended. . . . This settles previous doubts in the matter and insures the uniform practice in all district courts." Consequently, the hitherto discretionary and humane practices followed by federal judges for more than a century were barred until such time as Congress would pass a probation act.

The Supreme Court dated its mandate in the Killits case until the end of its term. Thereby, the Attorney General was provided an interval of time in which to develop a general policy for dealing with the many suspension orders by federal courts which now stood invalid. It was estimated that there were "more than 5,000 of these cases." A *Proclamation of Amnesty and Pardons* for those affected by the ruling was prepared by the Attorney General for signature by the President. Such an extension of general clemency was in accord with precedents set by earlier Presidential proclamations of amnesty. President Woodrow Wilson signed the Proclamation on June 11, 1917.

Suspension barred, federal judges had to comply with and impose the sentences provided for federal crimes. This situation served but to revitalize the efforts to secure probation and a greater individualization of justice in the federal courts. Hitherto, the efforts had been sustained but not

impelled by necessity. There now was an absolute necessity to secure Congressional enactment of a probation law. The campaign for the bill was initiated and carried to its successful conclusion by the National Probation Association under the personal direction of its active secretary, Charles L. Chute.

Legislative Effort To Establish Probation

The movement to secure a Federal Probation Act started almost half a century ago. A careful study of the bills for probation in the United States Congress⁶ reveals that "The first probation bill was introduced at the 60th Congress, 2nd Session, on January 11, 1909 by Representative McCall of Massachusetts." On June 18, 1909 Senator Robert T. Owen of Oklahoma introduced a bill in the Senate at the 61st Congress, 1st Session, to provide for probation. Since this initial endeavor, legislative proposals to accomplish this purpose were submitted at each Congressional session without success until 1925. The repeated failures can be laid at the door of the Attorneys General and their assistants in the Department of Justice who were in charge of the prisons.

During his early tenure of office, Attorney General George W. Wickersham was favorable toward probation. In his report for the fiscal year 1909, he recommended the enactment of a probation law. His superintendent of prisons considered probation too expensive, estimating its cost to the Government would "reach half a million annually." In 1912, the Attorney General disapproved a bill submitted by the committee on the Judiciary after having "had the matter very carefully studied by the superintendent and assistant superintendent of prisons of this Department." In 1913 the Attorney General expressed himself as favorable only to a "properly guarded probation act," but he was reliably reported as "disinclined to take any action in the matter."

The following four successors to the office of Attorney General also continued under the strong antiprobation influence established in the Department of Justice. J. C. McReynolds appears to have lacked any real interest in probation and was easily turned against such proposals. T. W. Gregory became adamant in his opposition and continued so until he left office in 1919. Through his efforts suspension of sentence was barred in the federal

courts. A. Mitchell Palmer, who followed, accepted the Departmental policy at first, but later, in 1920, approved a probation measure. Harry M. Daugherty, who was next in office, accepted the Department's established opposition policy.

The bases for the opposition to probation by the prison officials in the Department are indicated by their comments and memoranda. The memorandum, one of the earliest, prepared for Attorney General Gregory and titled *Should the Federal Government Have a Probation Law* contained the following statements:

For minors, yes, For adults, no. The reason? One reason is that a majority of the States have probation laws for minors while only a minority have such laws for adults . . . society does not hold a minor to a strict accountability for his crimes as it does the adult . . . punishment must always be such as is likely to deter them from further offenses; it must make a lasting impression for them . . . the more certain we can make the punishment, the closer we approach the ideal, since it is the effect of punishment and not its severity that is the real deterrent. How has the man who was put on probation suffered any real punishment? . . .

Proponents of probation urge as their principal argument that probation saves a man through the saving of his self-respect—that his self-respect is destroyed once he sees the prison doors close on him. This plea is unsound in principle . . . 20 years ago or even 10 years ago a probation law would not have been out of place . . . But there has been a change, a change so wonderful that only those who have been in prison or connected with their management fully realize its extent . . . Shall we keep on passing laws making it easier for law-breakers? . . . there is no large demand for a probation law for adult offenders. Executive clemency may be invoked to relieve worthy cases. . . .

Bills submitted for the opinion of the Attorney General usually wound up with the Department's prison personnel, for their judgment and advice in preparation of the Attorneys General's replies. And their policy remained consistent in its opposition to probation. As late as 1923 and 1924, their memoranda professed the following views:

. . . the necessary machinery for the operation of a probation system for the federal courts would be too cumbersome for practical use . . . and would lead to feeling that violation of the law is not a very serious matter. . . .

It is all a part of a wave of maudlin 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 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.

At the same time, in 1924, the Department's superintendent of prisons sponsored the erection of additional federal penal institutions. He had the rashness to testify before a Congressional committee that "A man who stays in prison for a few years with nothing to do comes out very little better than he was when he went in" and that 3,000

⁶ See Jane Cooper, *The Federal Probation Law*, University of New Hampshire, Bureau of Government Research, Durham, N. H., January, 1948.

of the more than 6,500 prisoners in the three federal penal institutions were without any work to do. But he opposed probation because it was "part of a wave of maudlin sympathy for criminals!" Upon this official's recommendation, nonetheless, the Attorney General decided that additional institutions "would be less expensive and provide a more practical method of reformation without endangering respect for federal law and the enforcement thereof" than would a probation system.

The proponents of imprisonment as a crime deterrent and wholesome reformatory therapy also found ready support among other members of the Department. In particular, one of the Attorney General's key assistants during the 1920's (ironically enough, this Assistant Attorney General, after passage of the Federal Probation Act, was assigned responsibility for the initial development of federal probation) championed the opposition of probation. In commenting upon the efforts to secure probation this official expressed the ". . . hope that no such mushy policy will be indulged in as Congress turning federal courts into maudlin reform associations . . . the place to do reforming is *inside* the walls and not with the law-breakers running loose in society."

The growth of federal criminal legislation, its inelasticity with respect to punishment provided, and the mounting problem of dealing with the "growing number of persons being thrown upon the already overcrowded federal penal system" sparked the mounting tension over the issue of providing a federal probation system. Contributing to the delay in securing the passage of probation legislation by Congress was the determination of those seeking such legislation to secure a bill on an ideal level.

Growing public opinion in favor of probation could not be suppressed. The sponsors of probation for the federal courts intensified their efforts with each successive defeat, remaining unswerving and undaunted in their determination to achieve this step in progress. No trick was left unturned to accomplish the objective. Even political endorsement on the national level was secured, the Democratic National Convention of 1924 including in its platform the resolution "We favor extension of the probation principle to the courts of the United States."

Ultimate Victory and Passage of Probation Act

The campaign for probation, first started in

1909, reached its final stages when Senator Royal S. Copeland of New York introduced a bill on December 12, 1923. It was sponsored in the House by Representative George S. Graham. To overcome the opposition, which now included the dregs of the Anti-Saloon League, *steam roller* tactics became necessary. Reported on without amendment in the Senate on May 19, 1924, the bill was reached on the Unanimous Consent Calendar on January 5, 1924, but three objections tabled it.

Reported on without amendment in the Senate on May 19, 1924, the bill was considered in the Committee on the Whole on May 22. There being no objections and no debate, it passed the Senate unanimously without a negative vote under suspension of rules. Following debate in the House, the bill passed by a vote of 170 against 49, on March 2, 1925. The following day, the bill was signed by the Speaker and President pro tempore, then being transmitted to the President of the United States.

Only once before had a probation bill reached this stage of enactment. In 1917, H. R. 20414, introduced by Representative Carl Hayden, was reported back with amendments, debated before the House, passed and referred to the Senate Committee on the Judiciary. Referred back to the floor, it was passed. Jubilation over this apparent success, however, was premature. President Woodrow Wilson, at the suggestion of the Attorney General, withheld his approval and the bill received "what is known as a *pocket veto*, that is, it was neither approved nor vetoed and the session of Congress expired before the expiration of the 10 days within which the President may act upon Bills. The Bill, therefore, did not become a law."

President Calvin Coolidge, a former Governor of the State of Massachusetts, was well aware of probation's merits and constructive possibilities. Many close associates also had urged his favorable consideration, foremost among them being Mr. Herbert C. Parsons, the Commissioner of Probation in Massachusetts. Consequently, immediately following receipt of the bill from Congress, the President dispatched it to Mr. James M. Beck, Acting Attorney General, "with the request that you advise me immediately whether there is any objection to approval . . ." Mr. Beck's reply; delivered by personal messenger to the White House, said "I know of no reason why you should not approve it." Thereupon, the President signed the measure, which became law that day, March 4, 1925.

Thus, success finally marked the close of the legislative campaign for a federal probation law which had started back in 1909 with the introduction of the first bill at the 60th Congress. In all, during the course of the 16 years' struggle to secure the Federal Probation Act, 34 bills were in-

troduced in Congress before Public Law No. 596, 68th Congress, S. 1042 became law March 4, 1925. Its enactment truly was "a great achievement won under difficulties that the public—even our probation public—will never realize."

The Establishment and Early Years of the Federal Probation System

BY SANFORD BATES

Commissioner, New Jersey Department of Institutions and Agencies

IN CELEBRATION of the twenty-fifth anniversary of probation in the United States courts and in consideration of its phenomenal growth and development in terms of coverage and excellence of administration, it is well to think upon, for a moment, the fairly recent development of this whole department of criminal justice which we now call probation.

Setting of the Federal Probation System

Federal vs. state crimes.—Those who are familiar with American criminal jurisprudence need not be reminded that in addition to, and to some extent paralleling, the criminal jurisprudence of each of the 48 American states there is a federal system of criminal justice. When the states first formed themselves into a federated Union certain powers and duties were delegated to the Federal Government. From the beginning of the Union, therefore, there has always existed a limited number of offenses against laws to secure the general well-being of the Nation as a whole. Crimes against the currency, crimes committed upon the high seas, violations of the postal laws and regulations, and crimes committed on army or other governmental reservations, are typical examples of offenses known as federal crimes. The vast bulk of crimes, however, are punished by the several states. Murder, robbery, theft, arson, fraud, and the host of misdemeanors, both *mala prohibita* and *mala in se*, were left to the states to punish

or prevent. Previous to the last 2 decades the amount of federal crime was relatively small and its prosecution and punishment occupied a correspondingly insignificant position in general community attempts to enforce law and order.

It is not surprising to find, therefore, that during the whole of the nineteenth century the Federal Government took practically no interest in its prisoners and while most of the states were developing systems of penal discipline the Government was content to "board" its prisoners in county jails. It was not until 1895 that any agitation developed for the construction of a Government prison. This being so, it was likewise not surprising that the correctional device known as probation was not used in the federal system as a substitute for imprisonment.

Effect of Killits Case.—From 1878, when probation was officially born in Massachusetts, up to the second decade of the twentieth century, its use developed rapidly in the states. In 1916 in the so-called Killits case,¹ however, the United States Supreme Court held that federal judges had no power to suspend a sentence and put an offender on probation. That effectually nipped in the bud any development of probation in the criminal courts of the Federal Government.

Occasionally a socially-minded judge would devise a method whereby he could give some of the benefits of probation, and one or two courts adopted the expedient of continuing the case for several months and in the meantime placing certain restrictions upon the defendant. Judge James

¹ *Ex parte United States*, 242 U. S. 27.

C. Lowell of Massachusetts, under the guidance, no doubt, of that celebrated leader of Massachusetts probation, Herbert C. Parsons, tried this method with some good results.

Passage of the federal probation law.—In the meantime, not long after the Killits decision, the National Probation Association and others interested in the development of this twentieth-century experiment in penology, vigorously renewed their campaign in Congress to have probation officially recognized. It was not until 1925, however, that they succeeded in having a bill passed and then not without considerable effort.

One of the able and persistent leaders in the campaign was Charles L. Chute, then Secretary of the National Probation Association. Speaking editorially in the April 1925 issue of *The Probation Bulletin*, he said:

The greatest credit is due to Congressman George S. Graham of Philadelphia, Chairman of the Judiciary Committee, who strongly and consistently urged the measure in the House; also to Senator Royal S. Copeland of New York, who introduced and secured its passage in the Senate. Senator Samuel Shortridge of California, as Chairman of the Judiciary subcommittee which reported the bill, also interested himself greatly in the bill as did many other Senators and Congressmen. Our Committee on Federal Probation, headed by Judge Edwin L. Garvin, U. S. District Court, Brooklyn, N. Y., deserves our thanks as does each of the group who went to Washington for the hearings. Herbert C. Parsons and Charles M. Davenport, both of Boston, deserve special credit for assisting the General Secretary at critical times in Washington.

It was said that officials in the Department of Justice were not hospitable to the idea of probation. Many of the federal judges were entirely unacquainted with its possibilities. Those in charge of the prosecution of criminal cases for the Government might well have felt that the adoption of probation would minimize the effectiveness of federal criminal justice, which during a long course of years had come to be a very efficient and wholesome influence in the maintenance of law. The federal criminal judicial system, detached from local and political conditions, had for generations been feared by the wary criminal. The motto of many a cautious promoter is said to have been, "Make any statements you want to, but do not send them through the mails."

Growth of federal criminal legislation facilitated adoption of probation.—The growing respect for the success of the Federal Government in apprehending and bringing to justice criminal offenders against whom local governments were unsuccessful may have led in the early years of the twentieth century to the rapid increase in the number of federal crimes. Whatever the reason,

Congress has in the last 35 years passed criminal laws which have resulted in quadrupling the number of persons arrested by federal agents. The narcotic laws, the prohibition law, the National Motor Vehicle Theft Act, the Mann ("White Slave") Act, the kidnapping statute, the National Bank Robbery Act, the interstate commerce theft statute, and new restrictions with reference to federal financial activities, all of which seemed to create crimes of a somewhat different nature from the traditional federal crimes referred to above, have placed upon the Federal Government the burden of the apprehension, trial, and punishment of these new groups of offenders.

It became increasingly difficult to handle the growing numbers of persons being thrown upon the already overcrowded federal penal system. Even in 1925, when the probation bill received the approval of the President of the United States, the Government faced conditions which made the use of probation a welcome addition as a means at the disposal of the federal judges. When, added to the success of many of the progressive states in dealing with offenders through probation, the economic features of this new system were explained to a subcommittee of the Judiciary; when the possibility was shown that without in any way weakening the sanctions of the criminal law men could be saved for useful law-abiding lives through the expedient of probation, Congress acquiesced and the Federal Probation Act was passed and was made immediately effective by the signature of President Coolidge on March 4, 1925.

It is interesting to note from the proceedings before the Judiciary Committee on this bill that Herbert Parsons, Nestor of Probation, was an enthusiastic witness. This language from him is significant:

There is not a provision of this bill that is not perfectly familiar in Massachusetts practice. . . . Let me say that the present federal law clothes the courts with precisely the same power that we have in Massachusetts, that is, an unlimited power to place on probation.

It does not relate to his offense, or the seriousness of his offense, to his age, or to any other circumstance, if, in the discretion of the judge, he is a safe risk in the community, under such supervision as the court can provide.

Later, in 1928, when the same committee had before it a bill to strengthen and amend the 1925 Act, Parsons showed his wisdom and foresight in calling for a strong central supervision of federal probation. He emphasized with vigor not only the economy of probation but the protection which would come to the community from the investigation which the probation officers would undertake

and the restraint on minor offenders which could be imposed through the system.

Small appropriations during early years.—It will be noted that the 1925 Act limited each Federal judge to one officer: that it placed these officers under the classified Civil Service. There were 132 federal judges in 84 districts in the 48 states and many of them felt that if they were to have a probation officer they wanted one of their own choosing.² Partly due to this feeling, perhaps; partly due to the lukewarm attitude of the Department of Justice, partly owing to the fact that the Committee on Appropriations felt that the law was not yet in the shape they would like to have it, only nominal appropriations were granted to carry on the work. In the years 1927, 1928, and 1929 a sum of \$25,000 was appropriated. This was sufficient to appoint only eight salaried probation officers.

Inefficiency of voluntary probation officer system.—During the period from 1925 on, the use of voluntary probation officers was quite freely indulged in by the federal courts. It was said at one time that as many as 40,000 people had been placed in the care of voluntary probation officers. It is safe to say that in the long run this process was about as effective as placing the cases on file or discharging them completely. The courts were still working in the dark. They had no trained investigators to aid the judges in properly selecting offenders; no skilled probationary supervisors clothed with official responsibility and authority to check up painstakingly on behavior of probationers. So it is not hard to see why the system of unpaid or voluntary probation officers was to a great extent a failure. Development of a salaried system of probation service, under the Act of 1925, progressed very slowly. At the beginning of 1930 there had been appointed a salaried probation officer in each of the following districts: Massachusetts, Southern New York, Eastern Pennsylvania, Western Pennsylvania, Eastern Illinois, Southern West Virginia, Georgia, and Southern California. The Massachusetts officer had as high as 450 persons in his care. The New York officer had 380. On June 30, 1931 there were 1,494 under supervision in Southern West Virginia.

It became evident that no substantial appropriations would be forthcoming from Congress until amendments to the 1925 Act had been made. The Committee itself took a keen interest in the sub-

ject. Congressman Charles Andrew Christopher-son of South Dakota, George Russell Stobbs of Massachusetts and Fiorella Henry LaGuardia of New York, of the Judiciary Committee, and Congressman Milton Williams Shreve of Pennsylvania and William Bacon Oliver of Alabama, of the Appropriations Committee, showed an intelligent interest in the subject matter and are entitled to great credit for the development of the Federal Probation System.

Amendment of federal law.—In December of 1929, members of the Judiciary Committee reported a bill, House 3975, containing certain amendments to the law, chief among which were:

1. Judges were empowered to appoint without reference to the civil service list.
2. The Attorney General was made responsible for the development and coordination of the probation system.
3. The limit that only one officer should be appointed for each district was removed.
4. The Attorney General was authorized to appoint an agent to prescribe record forms, investigate the work of the different officers, and "by all suitable means to promote the efficient administration of the probation system and the enforcement of the probation laws in all United States courts."
5. Probation officers were required to perform such duties with respect to persons on parole as the Attorney General should request.

After some debate the act embodying the above provisions was passed on June 6, 1930.

Immediately following the adoption of these amendments the committee on appropriations showed their confidence in the system by increasing the annual appropriation from \$25,000 to \$200,000. It was estimated that this would provide salaries and expenses for 40 officers.

Development of Probation Under the Bureau of Prisons

Assistance of experts.—Pursuant to the injunction contained in the Act of Congress, the Bureau of Prisons of the Department of Justice undertook to build up the probation service, to weld it together into an efficient whole with uniform standards and activities and to bring its operations into line with the most advanced thought in the country. Attorney General William DeWitt Mitchell, from the beginning, took a deep interest in the extension of probation.

Appointment of supervisor.—One of the first

² As of April 1, 1930 there were 212 judges serving the 84 districts and the United States District Court for the District of Columbia.

steps was to secure as probation supervisor, to be the executive officer and chief helmsman of this new arm of the service, Joel R. Moore of Detroit, a man of energy and education to whom probation had become as second nature, whose experience in the Records Court in Detroit had attracted the attention of the Director of the Bureau. Mr. Moore took hold on June 18, 1930 and the vigor and effectiveness of the federal probation system in its early years was in large part due to his vision and perseverance.

Early talks to be performed.—The first job, of course, was to "sell" probation to some of the doubting Thomases who wear the judicial ermine of the United States. This was work for a real enthusiast, but Moore accomplished it until the demand for probation service and more probation service was almost unanimous in the federal judiciary. The second job was to apportion the money where it would do the most good. In this many districts had to be temporarily disappointed but the allotment was finally decided on the basis of the amount of criminal business coming into each district. The enthusiasm of the judges and the judicial district generally was given consideration.

Congress expressed its concern that federal probation be developed as an integrated, supervised, and controlled system. In making the increased appropriation, this proviso was inserted on the request of the subcommittee on appropriations:

Provided, That no part of this or any other appropriation shall be used to defray the salary or expenses of any probation officer who does not comply with the official orders, regulations, and probation standards promulgated by the Attorney General."

Choice of probation officers.—With the elimination of the Civil Service requirement, the job of picking high type of personnel for these positions was a delicate and difficult one. In all but one or two instances it was found that the judge's sole purpose was to select for this important mission the most qualified man that he could find. Early in the game the qualifications of a successful probation officer and his duties and responsibilities were clearly stated by the supervisor of probation in a circular letter to United States district judges prepared by him for the signature of the Attorney General. From that circular we quote in part as follows:

SALARIED PROBATION OFFICERS

1. *Selection and Appointment.*—By an amendment approved June 6, 1930, to the Probation Act of March

4, 1925, and supported by Appropriation of Funds, July 3, 1930, to the Department of Justice, Bureau of Prisons, Probation Section, the selection and appointment of salaried probation officers now rests solely in the wisdom and authority of the several judges of the United States District Courts. Note that selection by the United States District Judge is no longer required to be made from certified Civil Service list.

The several United States District Judges may appoint a probation officer for service in their courts so far as the funds of the Department of Justice will extend, which during the coming fiscal year will extend the number of such salaried probation officers to about fifty-four depending upon the volume of service and expense. Each of the several districts has been considered in the allocation of Department of Justice funds in this extension of probation service.

At this time the Department of Justice desires only to advise and assist the several Judges by brief statement of the commonly accepted qualifications of men and women for probation service.

2. *Qualifications.*—a. *Age.* The age of persons selected for probation service is important insofar as maturity affects fitness for duty. That is, the person selected must possess physical vigor, mental adaptability and moral force.

The work of a probation officer is exacting from both a mental and physical standpoint. One of advanced age cannot ordinarily be expected to perform many of the duties for which the position calls.

On the other hand, a probation officer must continually exercise mature judgment and the officer who is too youthful or too inexperienced is likely to make serious errors.

The ideal age of a probation officer is probably thirty to forty-five. It is improbable that persons under twenty-five will have acquired experience essential for success in probation work.

b. *Education and Experience.*—It is commonly agreed that the probation officer should have at least:

(1) High school education, plus one year in college, or

(2) High school education, plus one year's experience in paid probation work, organized system, or

(3) High school education, plus one year's experience as paid worker in some organized agency that trains in case work, or

(4) High school education, plus two years of successful experience as unpaid worker in probation or other social agency service in which instruction and guidance has been afforded by qualified administrators. It is essential that the probation officer be one who is thoroughly trained in the technique of social investigation and it is desirable that his experience shall have been in the field of delinquency.

c. *Personal Qualifications.*—Among the personal qualifications a probation officer should possess are the following:

(1) Good moral character with sound standards of conduct in private and public life.

(2) Point of view and sympathetic understanding of others, especially those with conduct standards inferior to his own.

(3) Patience when dealing with the offender, in standing up under criticism, and in working steadily toward objective.

(4) Thoughtfulness in dealing with his superior officers, with public officials or private citizens whose co-operation is being sought, and with probationers committed to his charge.

(5) Discretion in the expression of his views and sentiments, in his conduct in and out of court, and in the use of his power.

(6) Courtesy and friendliness in his relations with the court, the public, and the probationer.

(7) Judgment based on ability to assemble and assess pertinent facts; and based on thorough knowledge of social factors entering into the problem of each individual offender and his readjustment to society.

(8) High native intelligence as distinct from knowledge or skill acquired by education, experience and training.

(9) Physical and mental energy sufficient to enable him to perform arduous duties, if necessary, under pressure.

(10) Emotional balance.

Occasionally it seemed evident that the court underestimated the necessity for observing the advice of the Attorney General as to standard qualifications for probation officers and that appointments to these positions might possibly be regarded in the nature of political appointments. However, it is to the credit of the judges and to the foresight of the new supervisor that appointments of the latter nature were kept to a surprisingly low number.

Professionalization of staff.—The next task was to inculcate into these recruits of the probation service something of the spirit of the new penology and an acquaintance with the ideals of their profession. They had to be made to see that after all they were engaged in a branch of social service as well as acting as officers of the Department of Justice. This work likewise was performed with general satisfaction.

Mail contacts between the central Bureau and the field offices had the dual purpose of instruction and raising of professional morale.

Supervision through personal contacts.—With the continual increase of probation officers, most of whom were inexperienced in casework methods and lacking the knowledge of probation principles and technique, the supervisor of probation found that the use of bulletins, circulars, etc., and individual instruction by letter had to be supplemented by his individual contact with the officers. His administrative duties kept him a large part of the time in Washington. His visits to the districts were delayed. So he adopted the old-fashioned teachers' institute method of gathering them together for group instruction. By authority of the Attorney General he called the new officers together with the eight old officers into a group school of instruction held at Louisville in October at the time of the Prison Congress. There, for 4 days and nights, with the assistance of the old officers and of the other members of the Prison Bureau staff and eminent persons in prison, parole, and probation work, he put the 33 officers of the system at that time through an intensive

course of training. This plan was used again in June 1931 at the time of the meeting at Minneapolis of the National Probation Association and that National Conference of Social Workers. At the time all but one of the 63 officers participated in an intensive institute program of prepared papers and discussions, exercises and problem-solving and also again enjoyed their fill of inspiration and instruction from leaders in social and penological work in the country.

Values Derived from Extension of Federal Probation

Economic advantages.—On June 30, 1930, there were 4,222 probationers under the supervision of the existing federal probation force, 8 officers in 10 districts. Fourteen months later there were 14,175 probationers and 993 parolees under the supervision of the 63 officers in the 55 districts. The average cost of supervising these probationers was a little over \$21 and the average cost of maintaining an inmate in a penal institution was about \$300 a year at that time.³ In addition to this saving in money, over \$220,000 has been collected in fines by these probation officers, collected from men who have been given the opportunity to go to work to earn the money to pay this debt, instead of being released entirely or thrown into prison where they could not earn it.

Human advantages.—But beyond all this was the possibility of an incalculable saving in manhood and womanhood. Many of our federal judges realized the value of probation not only as an investigating service which gave to the judge knowledge of the offender without which he could not intelligently act, but as an opportunity for the rehabilitation and reconstruction of the offender under more hopeful and normal surroundings than was possible in prison or reformatory.

Many of the offenders coming into the federal penal system now are guilty of crimes which do not involve a very large degree of moral turpitude. It would be unthinkable today if there were not some alternative to imprisonment, an alternative which, in turning the culprit free, would retain a measure of control and guidance for his benefit and the protection of society.

Deterrent value of probation.—It is true that we must not be too idealistic. Probation cannot be applied in every case but it is astonishing how the deterrent effect of probation has been so little understood. Probation puts the offender under an

³ EDITOR'S NOTE: As of January 1, 1950 there were 304 probation officers in 86 districts supervising 29,882 persons, including 21,828 probationers, 4,343 parolees, 2,765 persons on conditional release, and 946 military parolees. In 1949 the per capita cost for probationers was \$67.53 and for federal prisoners, \$1,138.80.

obligation and forces him to rehabilitate himself. One of our judges has said:

Having recently held court for a week in Albany, where the court has the benefit of a very efficient probation officer, I could see how valuable such an officer could be to the court. The deterrent influence of a probation term received striking illustration when counsel for a defendant sentenced under the Prohibition Act, informed me that his client preferred to serve his term in jail, which I had suspended, rather than to serve the year's probation which I had imposed.

Probation may be regarded as an investment in humanity. It has been shown many times that a dollar invested in good probation will return from 2 to 4 dollars in fines collected, restitution made and families supported. Further than that it encourages rather than embitters. It builds up rather than degrades. It is an investment in community protection. It puts men to work to earn money rather than in confinement at public expense.

Here, then, is the brief story of the establishment and early development of the federal probation system. From the meager beginnings outlined above we now have developed to a point in the federal system where there are 304 probation officers with an annual appropriation of approximately \$2,300,000.

From the days when the Bureau of Prisons

established and forwarded the work of probation and parole supervision, the responsibility has been taken over by the Administrative Office of the United States Courts. The same high standards are being maintained and the same efficient service rendered to the courts throughout the country. There are now one or more probation offices in each of the district courts in the continental United States with the exception of the District of Utah.⁴ There also are probation offices in the District of Puerto Rico and the District of Hawaii. No one can compute the value of such service.

To be a routine probation officer, to receive reports and deliver oneself of an occasional homily is not particularly difficult; but to possess insight into human nature; to have a personality which at once restrains and yet encourages the man who is in trouble; to possess to an unusual degree that patience, wisdom, courage, and good humor necessary if one would act as official mentor and big brother to our erring citizens, these comprise one of the most difficult yet important tasks given to human beings to perform.

One cannot but have an admiring appreciation for Mr. Henry P. Chandler and Mr. Richard A. Chappell and the others who, carrying forward such slender beginnings, have developed federal probation into a constructive force.

⁴ The facilities of the probation office for the District of Idaho are available to the United States District Court for the District of Utah.

The Federal Probation System Today

BY RICHARD A. CHAPPELL

Chief of Probation, Administrative Office of the United States Courts

IN 1916 THE SUPREME COURT of the United States in the "Killits" case, held that federal district judges were without power to suspend sentences but suggested "probation legislation or such other means as the legislative mind may devise, . . . to enable courts to meet by the exercise of an enlarged but wise discretion the infinite variations which may be presented to them for judgment. . . ."¹

On March 4, 1925 President Coolidge signed the bill sanctioning a federal probation system. It was not until 1927, however, that the first probation officers—three in number—were appointed.

The federal probation act, which was based on the best probation laws and practices of the states, enabled the courts through qualified and salaried probation officers to obtain essential personal data and social background information about individual offenders before the court, and to provide a system of effective supervision over offenders, under suspension of sentence, in order to reclaim them and at the same time protect society. Prior to the enactment of the probation law there were no provisions for paid probation officers in the federal courts. Those who volunteered their services generally were not qualified by formal education, experience, or understanding of human nature to perform the important investigation responsibilities of a probation officer and to render adequate and helpful supervision. Today there are 304 full-time federal probation officers serving 86 district courts in 48 states, Puerto Rico, Hawaii, and the District of Columbia. These officers are located at 137 field offices and supervise a daily average of approximately 30,000 persons, a relatively small number in comparison to the estimated million or more adult offenders under supervision of 6,500 probation and parole officers in state and local jurisdictions.

Under the provisions of the federal probation law² a court may suspend the imposition or execution of sentence and place the defendant on probation for a period not to exceed 5 years. Pro-

bation may not be granted in offenses punishable by death or life imprisonment.

The court having jurisdiction over the probationer may revoke the probation and require the probationer to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. At any time during the period of probation, or within 5 years from the date probation began, the court may issue a warrant and revoke probation for a violation during the period of probation.

Growth of the Probation System

In its growth and development the federal probation service has passed through three distinct periods. The first period, from 1927 to 1930, was one of experimentation during which eight officers—of whom I was one—carried out their probation duties with little guidance and encouragement and practically no co-ordination of effort. The interests of the judges in the probation officers' efforts and their receptivity to presentence investigations varied. Without office space, typewriters, forms, and with little travel funds, we virtually were told "start work and shift for yourself." The first big task of the early officer was to demonstrate to a skeptical court and public the value of probation supervision and presentence investigations.

Federal law-enforcement officers and prosecuting attorneys were somewhat suspicious of the probation officers. At the outset, they viewed probation as leniency and softness that would tend to undo their success in apprehending and convicting offenders by releasing them from the penalties prescribed by law.

The remarks of the United States attorney in the court which I served illustrate the attitude of many prosecutors in those early days toward probation. When I was introduced to him as a probation officer he said: "So you are the new probation officer? The Government pays me to 'put them in' and then pays you to 'turn them out.' Just how does that make sense?"

It was only after probation officers had demon-

¹ *Ex parte United States*, 242 U. S. 27.

² 18 U. S. C. Sec. 3651-3656.

strated that they did not favor probation for hardened offenders and that they would take action against probation violators that the apprehending and prosecuting officers began to accept them as useful members of the official court family.

The second phase began in 1930 with the appointment of Colonel Joel R. Moore as supervisor of probation in the Bureau of Prisons. This phase was one of expansion. The system grew from 8 officers in 1930 to 233 officers in 1940 when the service was transferred to the Administrative Office of the United States Courts.

The third phase began on July 1, 1940 when the Administrative Office of the United States Courts took over the functions of the federal probation system previously performed by the Federal Bureau of Prisons.³ It was one of continued expansion and refinement of procedures. Under Henry P. Chandler, Director of the Administrative Office, considerable emphasis has been given to the qualifications of officers and the quality of their work. In-service training institutes have stressed casework skills, methods, and practices. Bulletins, monographs, and a probation officer's manual have outlined techniques and specific procedures relating to presentence investiga-

tions, presentence reports, counseling, supervision records, interoffice practices, and statistical reporting. Judges have been brought closer to the day-to-day problems of probation, and through discussions at circuit conferences and consideration on committees of the Judicial Conference of the United States, they have assumed increasing responsibility for the sound administration of the service.

All of the 137 field offices of the federal probation service work in close co-operation in developing presentence investigations and parole plans and in supervising probationers and parolees. In investigating a person a probation officer in one district may call on one or more districts to procure certain information or leads for investigation which are essential to round out the presentence report or to develop an adequate program of supervision. In some instances one officer may request the officer of another district—often across the entire country—to prepare the larger part of the presentence investigation report because most of the essential information for a comprehensive report may be found in the second district.

Where circumstances warrant, probationers and parolees are permitted to change their residence to other districts and if both courts concur, the jurisdiction of the case may be transferred from the court of the first district to the court of the second district. Clearly defined interoffice pro-

SIZE OF STAFF AND CASE LOADS FROM 1930 TO 1950

Fiscal Year Ended June 30	Number of Probation Officers	NUMBER UNDER SUPERVISION			Average Case Load Per Officer
		Total	Probationers	Parolees and Conditional Release Cases ¹	
1930	8	²	4,281	²	²
1931	62	²	13,321	²	²
1932	63	25,213	23,200	2,013	400
1933	92	34,109	30,870	3,239	371
1934	110	26,028	22,926	3,102	237
1935	119	20,133	17,233	2,900	169
1936	142	25,401	22,027	3,374	179
1937	171	29,862	25,526	4,336	175
1938	172	31,879	27,467	4,412	185
1939	206	33,060	28,325	4,735	160
1940	233	34,562	29,221	5,341	148
1941	239	35,187	29,454	5,733	147
1942	251	34,359	28,591	5,768	137
1943	265	30,974	24,521	6,453	117
1944	269	30,153	23,775	6,378	112
1945	274	30,194	23,866	6,328	110
1946	280	30,618	22,903	7,715	109
1947	280	32,321	22,278	10,043 ³	115
1948	285	32,613	21,882	10,731 ⁴	114
1949	287	29,726	21,557	8,169 ⁵	103
1950 ⁷	304	30,092	22,122	7,970 ⁶	98

¹ Conditional-release cases occurred first in 1933 as a result of new legislation

² No figures available

³ Includes 1,110 military parolees

⁴ Includes 2,447 military parolees

⁵ Includes 1,064 military parolees

⁶ Includes 931 military prisoners

⁷ Case load as a March 31, 1950

cedures have been established. With a minimum of time and effort a probation officer may communicate with any one of the network of 137 offices for information he needs in connection with his investigation and supervision work.

As shown in the table on page 31, the case load in 1930 was well over 500 for each officer! As of March 31, 1950 the average number supervised by each officer was 98—a case load which begins to approach the standard case load of between 50 and 75 recommended by recognized authorities in the correctional field.

Although the average number of persons under supervision of the federal probation system has been around 31,000 in recent years, the total number of different persons supervised in the course of a year has been above 50,000. During the fiscal year ended June 30, 1949, a total of 53,293 persons were under supervision, including 31,898 probationers, 9,629 parolees, 7,785 persons on conditional release, and 3,981 military parolees.

Excessive case loads are and always have been one of the most serious handicaps of the federal probation service. It is impossible for probation to work efficiently when the burden of the staff is too great. The quality of presentence investigation and presentence reports, and of supervision as well, suffers because there is not enough time to devote to each task. This situation has been brought to the attention of the Congress year after year, and substantial gains have been made as a result of increased appropriations, but ample funds have never been available.

Fortunately, among federal probationers there are a substantial number who require a minimum of attention and time. By classifying cases according to the help and services required, and devoting more time to those in special need of assistance and guidance, the probation officers have been able to meet the more pressing needs of those whom they supervise.

Types of Offenders Investigated and Supervised

The federal probation officer investigates and supervises four types of offenders: (1) probationers; (2) parolees; (3) persons on conditional release; and (4) military parolees.

The first three types have been convicted of offenses against federal laws. Military parolees, on the other hand, are persons released on parole from Army disciplinary barracks. They have been soldiers who were convicted by general court-

martial for offenses of either civil or military nature.

The types of offenders investigated and supervised by federal probation officers include the following major offense groups:

MAJOR OFFENSE GROUPS	PERCENT OF TOTAL CASES
Immigration laws.....	29.6
Fraud and other theft (interstate commerce, embezzlement, forgery, transportation of stolen property, breaking and entering, theft, etc.).....	24.3
Liquor laws.....	14.0
Transportation of stolen vehicle.....	9.3
Narcotics (including marihuana).....	4.8
Federal Juvenile Delinquency Act.....	3.0
Migratory bird laws.....	2.3
Food and drug act.....	1.5
Motor carrier act.....	1.4
Offenses committed on United States reservations and the high seas.....	1.1
Antitrust violations.....	0.8
White slave traffic.....	0.5
Selective service act.....	0.9
Other offenses (robbery, assault, counterfeiting, prison escape, mutiny, riots, etc.).....	6.5

* Based on 33,073 defendants convicted during the fiscal year ended June 30, 1949.

The Presentence Investigation

Presentence investigation and supervision are the principal functions of the probation officer. The success of probation is dependent in large measure on the care exercised in the selection of persons who are to receive probation. The presentence investigation report is an aid in this selective process. It is a preliminary inquiry for the court and aims at proving neither guilt nor the innocence of the defendant. Its primary purpose is to focus light on the character and personality of the defendant as well as his problems and needs. Ordinarily the presentence investigation is not commenced until after guilt has been established.

In addition to the assistance the report renders the court in shaping sentence, the presentence investigation report is of help to the probation officer during the period of probation supervision, and in the event of commitment to an institution is helpful to the institutional authorities in classifying a prisoner and in developing a treatment and prerelease training program. The report also is referred to in parole selection and planning.

In developing the presentence investigation report the probation officer has the delicate and significant task of gathering and evaluating all per-

tinent data, and setting forth the facts in written report to the court so as to give an impartial, impersonal, and comprehensive picture of the defendant. Commenting recently on the value of presentence investigation reports to the court the Supreme Court of the United States said the following:⁴

Under the practice of individualizing punishments, investigational techniques have been given an important role. Probation workers making reports of their investigations have not been trained to prosecute but to aid offenders. Their reports have been given a high value by conscientious judges who want to sentence persons on the best available information rather than on guesswork and inadequate information. To deprive sentencing judges of this kind of information would undermine modern penological procedural policies that have been cautiously adopted throughout the nation after careful consideration and experimentation. We must recognize that most of the information now relied upon by judges to guide them in the intelligent imposition of sentences would be unavailable if information were restricted to that given in open court by witnesses subject to cross-examination. And the modern probation report draws on information concerning every aspect of a defendant's life. . . .

In a footnote reference the court in its opinion refers at this point to *The Presentence Investigation Report*, a monograph published by the Administrative Office of the United States Courts which suggests the framework into which information can be inserted to give the sentencing judge a composite picture of the defendant. The type of information suggested by the monograph includes data under the following marginal headings: (1) Offense; (2) Prior Record; (3) Family History; (4) Home and Neighborhood; (5) Education; (6) Religion; (7) Interests and Activities; (8) Health (physical and mental); (9) Employment; (10) Resources; (11) Summary; (12) Plan; and (13) Agencies Interested.

Probation Supervision

The primary purpose of probation is the protection of society. By restoring the offender to good citizenship society is being protected. Probation is a constructive, humanitarian method of administering criminal justice. Basic in its philosophy is the firm conviction of the reformability of the wrongdoer. It is not a gesture of leniency nor a coddling of serious offenders. It is a method of treatment. It is not a cure-all for crime, but when properly administered it is effective in its results. Probation offers hope and encouragement instead of embitterment and despair and saves the individual for future useful living.

Reviewing the purposes of the Federal Probation Act, Chief Justice Charles Evans Hughes said:⁵

The Federal Probation Act confers an authority commensurate with its object. It was designed to provide a period of grace in order to aid the rehabilitation of a penitent offender; to take advantage of an opportunity for reformation which actual service of the suspended sentence might make less probable. . . . It is necessary to individualize each case, to give that careful, humane and comprehensive consideration to the particular situation of each offender which would be possible only in the exercise of a broad discretion.

To release on probation those who are incapable of making good is not serving the best interests of either society or the offender. Neither is it wise to extend probation to those who have committed crimes considered by the community to be very serious. As a rule the federal courts have been fairly liberal in their use of probation, but they realize that there is a point beyond which it is not safe to go in applying this method of treatment. The good reputation that probation now enjoys in the federal court system is due in large measure to the discriminating care with which judges have used probation.

Probation supervision is primarily a counseling relationship between the probation officer and the probationer. Through interviews at the office and at the probationer's home the probation officer helps the probationer to develop capacities and resources which will enable him to resolve his problems and needs and live happily in his home and as a law-abiding and useful member of the community. Whenever he can, the probation officer enlists the help of family members, friends, the probationer's employer, his church, and other community agencies to bring about a satisfactory probation and postprobation adjustment. By instilling in the probationer a feeling of self-worth, self-respect, and a sense of belonging; by helping him to acquire socially approved habits, attitudes, and social values; by giving him insight into the motives underlying his behavior; by helping him to understand that he as an individual in society must accept certain socially imposed responsibilities, restraints, and deprivations, the probation officer helps the probationer to alter his outlook on life, to change his attitudes about himself as well as those toward others, and guides him to a life of social usefulness.

During the period of supervision the probation officer maintains a case file on each person under supervision. The file contains a chronological record of all pertinent contacts and actions taken, including dates, persons interviewed, problems

⁴ *Samuel Titto Williams v. The People of the State of New York*, 337 U. S. 241, 249 (June 6, 1949).

⁵ *Burns v. United States*, 287 U. S. 216.

presented, and an estimate of the results accomplished. In general, the case file consists of all information pertinent to treatment, including the probationer's attitudes, feelings, habits, and ways of responding. It shows what the probationer is trying to do about his problems and needs and what the probation officer is doing to help him resolve each of them. It shows the progress and growth of the probationer.

The case file not only helps the probation officer to supervise the probationer, but also enables him to evaluate his efforts. It also is helpful for training purposes and as a source of information for surveys and research.

If at any time it is deemed advisable for a probationer to move from one district to another the jurisdiction of the probationer may be transferred with the approval of the courts of the two districts.⁶ When jurisdiction is transferred the control of the probation officer in the second district is much more direct and the influence of the officer on the probationer is believed to be more effective. Moreover, in the event of an alleged violation of probation the revocation hearing may be conducted by the court to which jurisdiction has been transferred. Transferring the jurisdiction of a case not only results in more effective supervision, but also is economical in that alleged probation violators need not be transported—often over great distances—to the court of the first district for a revocation hearing.

The Probation Officer and the Court

The authority for the appointment of federal probation officers rests with the courts which they serve. All probation officers serve under the direction of the courts appointing them. Congress recognized the confidential relationship between the court and the probation officer when it vested the power of appointment in the courts.

The duties of probation officers as set forth in Section 3655 of the probation statute are as follows:

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.

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.

He shall use all suitable methods, not inconsistent with the conditions imposed by the court, to aid proba-

tioners and to bring about improvements in their conduct and condition.

He shall keep records of his work; shall keep accurate and complete accounts of all moneys 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; and shall perform such other duties as the court may direct.

Each probation officer shall perform such duties with respect to persons on parole as the Attorney General shall request.

The success of probation is directly related to the quality of the personnel entrusted with its administration. To assign probationers to inexperienced and untrained persons results in ineffective probation work and may even bring discredit to the probation service. In the last analysis probation is no better than the personnel who administer it.

A confidential relationship exists between the probation officer and the court. That is why the probation officer often is referred to as the "right arm" of the court in criminal cases. One of the probation officer's very important and exacting responsibilities is to make a presentence investigation in every criminal case unless otherwise directed by the court.⁷ The Federal Rules specify that "the report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court."

After the presentence investigation has been completed and prepared in report form the probation officer presents the report to the judge and in some instances discusses it with the judge in his chambers. Because of the confidential nature of the report it is usually not read in open court. The court, however, may desire to question the defendant on one or more phases of the report for clarification or more complete information, or to meet any new information which may militate against him in the matter of sentence.

If the defendant is placed on probation he remains under the general supervision and guidance of the probation officer for the full period of probation. If the defendant is committed to a penal or correctional institution, the presentence investigation report is transmitted to the institution to assist it in classifying the prisoner and in developing a treatment and prerelease program.

⁶ 18 U. S. C. Sec. 3653.

⁷ See Rule 32-c of the Federal Rules of Criminal Procedure.

During the period of probation supervision the probation officer, acting for the court, renders every possible assistance to help the probationer to help himself to become a respectable, law-abiding citizen.

A number of judges contend that the granting of probation is the beginning—not the end—of the court's responsibility for the probationer. Accordingly, probation officers in some courts are requested to give periodic reports about each probationer under supervision. These reports are not limited solely to alleged probation violations or difficulties in making a satisfactory probation adjustment; they also include the special accomplishments of the various probationers. In some courts the judge calls the probationer into his chambers on satisfactory completion of probation and gives him words of encouragement for the future.

It is the judgment of recognized authorities in correctional work that periodic, helpful personal contacts between the probation officer and the probationer in the home and community are an indispensable part of treatment by probation, that the selection of a person for probation and supervising him are inseparable, and that a proper balance between presentence investigation work and supervision should be maintained at all times. The effectiveness of supervision, they find, is in direct proportion to the extent to which presentence investigations are used and the care with which persons are selected for probation treatment.

A recent study of the distribution of work of probation officers in the federal service showed that their time was about evenly divided between investigation and supervision.

The Probation Officer and the Bureau of Prisons

As was previously stated, the federal probation system was administered by the Federal Bureau of Prisons of the Department of Justice until 1940 when it was transferred to the Administrative Office of the United States Courts. The probation officers, however, have continued to work in close relationship with the Bureau of Prisons and its more than 20 institutions.⁸

When a defendant is sentenced to one of the Government's penal and correctional institutions

the presentence investigation report is transmitted to the institution where it is used in determining the prisoner's personal problems and needs, what medical attention is required, the work assignment for which he is most suited, what educational and vocational training would be most beneficial, and what help he needs to resolve some of his emotional difficulties. In general, the report provides helpful information in developing a balanced program of institutional treatment for the prisoner. If additional information is required from time to time about the prisoner, the classification officer at the institution frequently calls on the probation officer for this help. The report and subsequent information submitted by the probation officer also are helpful in developing a release plan for the prisoner and in prerelease training to prepare him for the difficult transition from prison life to normal community living. The release plan provides for suitable residence, satisfactory employment, and a reputable parole advisor who will work closely with the probation officer in giving the parolee help and guidance during the period of parole supervision. In a sense, the probation officer serves as a liaison between the institution and the family and community during the period of imprisonment, and later supervises him in the community as a parolee or a person on conditional release.

The Probation Officer and the United States Board of Parole

Mistakenly probation and parole often are used interchangeably as though the terms were synonymous. Probation should not be confused with parole. In probation, when properly applied, the offender does *not* go to prison, but is given a chance to demonstrate his worth in normal community living. Parole, on the other hand, is supervision in the community following imprisonment. It is a form of release granted *after* a prisoner has served a portion of his sentence in a penal or correctional institution. A probationer is placed on probation by the judge. A parolee is released from imprisonment on parole by the Federal Government's parole board.

Prisoners who do not receive parole may be released prior to the expiration of their sentence by reason of deductions in sentence resulting from "good time." Upon release such a person is treated as if released on parole and is subject to all provisions of the law relating to the parole of United

⁸ On January 1, 1950 the Federal Prison System included one maximum custody penitentiary, two penitentiaries for habitual offenders, three medium custody penitentiaries, four reformatories, including a reformatory for women, three institutions for juvenile and youthful offenders, seven correctional institutions, three camps, one medical center, and the detention headquarters in New York City.

States prisoners until the expiration of the maximum sentence.

The Government's parole program is under the administration of a Board of Parole consisting of five members appointed by the Attorney General of the United States.⁹ The federal probation officer acts as the field agent for the Board of Parole, submitting information to the institutional classification and parole officer, helping to develop parole plans, supervising the parolee while under supervision, and reporting to the Board of Parole any alleged violations of the conditions of parole. On a warrant issued by the Parole Board a parolee may be taken into custody by any federal officer authorized to serve criminal process within the United States.

The probation officer gives the same attention to parolees that he gives to probationers and uses every means at his disposal to help each of them to make a satisfactory home and community adjustment. If it appears that the parolee is making no effort to comply with the conditions of his release, or has committed a new offense, the probation officer submits a complete, accurate report to the parole board, together with recommendations whether a parole warrant should be issued. If the board considers the alleged violation not serious enough to justify issuance of a warrant, the parolee continues under supervision. If a warrant is issued the parolee is taken into custody, usually by the United States marshal. Later, at the institution to which he has been sent, he is granted a parole board hearing to determine whether parole is to be revoked.

The probation officer also investigates and supervises persons on conditional release who, as previously indicated, are supervised as though they are on parole and are subject to all provisions of the law relating to parolees.

The Probation Officer and the Army's Parole Program

In 1944 the federal probation service was asked by the Army to extend its facilities for the supervision of its parolees. The number of prisoners released on parole, however, was relatively small until the war was terminated. The peak number of military parolees under the supervision of the federal probation system was 2,728 in March

1948. Since that time the number has decreased to less than 1,000. More than 7,000 military parolees were received from August 1946 through December 1949 for supervision by the federal probation system.

Military prisoners at disciplinary barracks may be released on parole after one-third of the sentence has been served and under conditions somewhat similar to those prescribed for federal parolees. The Secretaries of the Army and Air Force, acting on the recommendations of the Army and Air Force Clemency and Parole Board, are the paroling authorities for Army and Air Force general prisoners confined in disciplinary barracks. Military prisoners paroled from Army disciplinary barracks remain under the parole jurisdiction of the Secretaries of the Army and Air Force.

Some military prisoners are confined at federal penal and correctional institutions and so far as parole is concerned are under the jurisdiction of the United States Board of Parole.

The investigation and supervision procedures followed in the case of military parolees are similar to those used for nonmilitary parolees. The parole procedures also are similar to those used for federal prisoners released on parole.

Policies and procedures relating to military parole are established by the Secretaries of the Army and the Air Force and the parole program is administered by The Adjutant General. In the performance of their duties in connection with military parole the federal probation officers work in close conjunction with the Office of The Adjutant General and the commandants and parole officers of each of the disciplinary barracks.

The Probation Officer and the Juvenile Offender Program

On June 16, 1938 the Federal Juvenile Delinquency Act was enacted giving recognition to the long-established juvenile court principle that the young offender needs specialized care and treatment.¹⁰ Under the provisions of the Act a youthful offender who has not attained his 18th birthday, unless diverted to local jurisdictions, may be proceeded against as a juvenile delinquent instead of being tried as an adult under criminal procedure. Under the Act the court, if it finds a young offender to be delinquent, may place him on probation for a period not to exceed his minority or commit him to the custody of the Attorney Gen-

⁹ 18 U. S. C. Chapter 311.

¹⁰ Since 1932 the federal statute (18 U. S. C. Sec. 5001) has granted United States attorneys authority to surrender a person under 21 who has committed a federal offense and who is a delinquent under the laws of a state, to local authorities if they are willing to accept jurisdiction.

eral for a like period. The Attorney General may designate any public or private agency or foster home for the custody, care, subsistence, education, and training of the juvenile during the period for which he was committed.

The probation officer plays a most important role in the investigation, detention, diversion, hearing, and supervision of the young offender. He works with the juvenile through each step of the court process, and not only represents and serves the court, but also co-operates with the United States attorney, the commissioner, and the marshal. He also works in close relation with the Bureau of Prisons which, acting for the Attorney General, is responsible for the juvenile's care and custody in the case of commitment.

Immediately upon the arrest of a juvenile the probation officer makes a preliminary investigation which includes an interview with the juvenile and his family, and considers the possibilities of diversion of the case to a local court. The final decision with respect to diversion rests with the United States attorney. The facts at the probation officer's disposal are made available to the United States attorney and if need be to the United States commissioner. The probation officer co-operates with the court and other officials in arranging for an early court hearing if it is decided by the United States attorney to proceed against the juvenile in the federal court under the provisions of the Federal Juvenile Delinquency Act.

The probation officer also has a responsibility for notifying the marshal of suitable places for detention pending disposition of the case and also for doing what he can to shorten the detention period of a juvenile. The law provides that a juvenile shall not be detained in a jail or similar place of detention unless in the opinion of the law-enforcement officer such detention is necessary to make secure the custody of the juvenile or to insure his safety or that of others.

On the completion of the presentence investigation report the probation officer transmits copies to the Bureau of Prisons which will use the information in the report for early consideration for placement plans in the event the juvenile is committed by the court to the custody of the Attorney General, and for determining what type of treatment and custody is most suited for his needs.

The probation officer also works closely with the Bureau of Prisons and the United States Board of Parole in developing parole plans and a prerelease

training program for the juvenile, and supervises him during the period of parole in the community.

If the juvenile is placed on probation the probation officer gives intensive supervision with special consideration to the many problems which are troublesome to youth in their formative years. The probation officer's work with the youthful offender from the time he is arrested until he completes his period of supervision is one of the most important and exacting responsibilities of the probation officer.

The Probation Officer and the United States Public Health Service

The United States Public Health Service operates two hospitals for the care and treatment of persons addicted to the use of narcotic drugs whether or not convicted under the Harrison Narcotic Act or the Marihuana Tax Act. One of the methods by which a patient may be admitted to either of the two hospitals is by the direct admission of convicted addicts placed on probation by the federal courts on condition that they submit to treatment until cured. When a defendant is found to be a narcotic addict, and is placed on probation on condition that he receive a period of treatment, the United States attorney or the probation officer prepares a preadmission report. This report, together with a copy of the presentence investigation report, is transmitted to the institution. The probation officer acts as a liaison between the hospital and the home and the community in the same manner as he does in his relations with prisoners confined at federal penal and correctional institutions. He co-operates with the hospital in procuring pertinent information which will be helpful in the treatment program, keeps in touch with the probationer's family, assists with his adjustment on return to the community, and supervises him during the remainder of the probation period.

As with the Federal Bureau of Prisons, the United States Board of Parole, and the Army and Air Force military prison and parole program, the relationship of the federal probation service with the United States Public Health Service has been a very happy one.

The Probation Officer and Federal Law-Enforcement Agencies

The federal law-enforcement agencies which are responsible for the arrest of persons who have

committed offenses against the federal laws include the Federal Bureau of Investigation, Alcohol Tax Unit, Secret Service, Narcotic Bureau, Intelligence Unit of the Internal Revenue, Securities and Exchange Commission, Post Office Inspection Service, Immigration Service, and Military Police and Shore Patrol. In conducting a presentence investigation the probation officer calls on these agencies to secure first-hand information about the nature and circumstances of the offense. He also keeps in touch with them for any information coming to their attention concerning conduct which may be regarded as a violation of probation or parole. The probation officer also obtains the FBI criminal record on each defendant, clears each case with local police authorities, juvenile and adult courts, and penal and correctional institutions in order to have a complete record of arrests, convictions, dispositions, and the defendant's institutional adjustment if he had a commitment record.

The probation officer notifies the Federal Bureau of Investigation of the sentence pronounced by the court and requests that the probation officer be notified of any arrests and convictions which come to the Bureau's attention during the period of probation, parole, and conditional release.

The Probation Officer and Community Agencies

It is a well established fact in probation work that no probation office is sufficient unto itself. The probation officer endeavors to supply as much of what has been lacking in the past life of the probationer as he is capable of giving but he never tries to do this alone. He knows that he should not attempt to undertake what other institutions and agencies are better equipped to do. Depending on the nature and complexity of the many problems and needs with which those under his supervision are confronted, he calls on the various community institutions and agencies for assistance. They include schools, churches, guidance clinics, hospitals and dispensaries, employment and vocational services, family welfare organizations, prisoner-aid societies, psychiatric services, fraternal organizations, big brothers and big sisters, mental and social hygiene societies, and Alcoholics Anonymous. The probation officer maintains a resource file of the co-operating agencies which he may call on for assistance in the overall rehabilitation program for each person under supervision.

Unless probation and parole co-ordinate their efforts with all the constructive social institutions and agencies of the community, they are destined to fail.

Violation Rates

The proportion of probationers, parolees, persons on conditional release, and military parolees who were reported as violators during the past 5 years is as follows:

FISCAL YEAR ENDED JUNE 30	PERCENT OF CASES TERMINATED EXCLUDING TRANSFERS			
	Proba- tioners	Parolees	Conditional Release Cases	Military Parolees
1945	10.9	10.8	10.2	-
1946	11.4	14.8	12.2	-
1947	11.7	17.1	13.8	4.4
1948	11.8	15.3	14.5	2.9
1949	12.5	20.0	21.7	3.4

From this table it will be observed that approximately 87 out of every 100 completed probation satisfactorily, and approximately 80 out of every 100 in the case of parolees and persons on conditional release. Military parolees have made an unusually fine adjustment under supervision, with only 3.4 percent violating the conditions of parole during 1949.

The increase in the percentage of violations during 1949 cannot be explained. There are a number of possible explanations but it is only conjecture as to what part each played. In evaluating the worth of probation and parole one should keep in mind not the proportion of violators but the 80 or 90 out of every 100 who make good.

Cost of Probation versus Cost of Imprisonment

Imprisonment costs from 10 to 20 times as much as probation. The daily per capita cost of federal probationers during 1949 was 18.5 cents as compared with a daily cost of \$3.12 for each federal prisoner. On yearly basis the comparative cost is \$67.53 for probationers and \$1,138.80 for persons who are imprisoned, or a difference of \$1,071.27. Based on an estimate of a daily average of 30,000 persons under supervision, the savings of probation over imprisonment are approximately 32 million dollars a year.

While under supervision in their home communities, these 30,000 persons are gainfully employed, support their families who otherwise would be public charges, pay taxes, and are spared the stigma and incalculable social costs involved in

imprisonment. The social costs and social consequences of imprisonment cannot be measured in terms of dollars and cents.

Although incomplete, the record of earnings during 1949 of a monthly average of 13,635 probationers who were employed was over 26 million dollars.

Of interest is the war record of probationers under the supervision of the federal courts. During the war a total of 8,313 federal probationers entered military service and only 61 were known to have received dishonorable discharges during the period 1940 through 1946.

Selection and Appointment of Probation Officers

The success of probation is in direct ratio to the type and quality of personnel to whom it is entrusted. Probation is a specialized task which requires training, skills, personality, and character of high order. Entrusted to untrained and unskilled persons, probation is wasteful and also may be disastrous.

Both Mr. James V. Bennett, Director of the Federal Bureau of Prisons, and Mr. Chandler of the Administrative Office have been deeply concerned with the problems in relation to the appointment of qualified persons for the probation service. On Mr. Bennett's recommendation in 1937, when the probation service was administered by the Bureau of Prisons, high standards for probation officers were promulgated by Attorney General Homer Cummings. With the transfer of the probation system to the Administrative Office in 1940 Mr. Chandler has continued to encourage the appointment of probation officers who possess specialized training and experience and the traits of character required for effective probation work. Mr. Chandler aptly set forth the qualifications of a probation officer in the following statement:¹¹

Probation officers need a wide range of qualifications which I would summarize as strong character, understanding, and patience. I put character first because with a probation officer as with a parent, example counts for more than precept. A probation officer must have learned to manage his own life successfully before he can hope to help others manage theirs. In his character, strength and unselfishness must be combined. He must have in his personality the quiet force that commands respect. He must have an inclination, not to say a passion, for helping others, that leads him to put forth the utmost efforts without counting the cost. He must not yield to seeming reverses but have the patience and persistence to surmount them. He must give the financial compensation a very subordinate place in his thinking, because . . . his greatest rewards will come in the opportunities that the work brings of serving his fellow-

men. In fact, the best probation officers are those who like ministers have an inward call to the work. This is far from the attitude of a man who takes or is given a position of probation officer as just another way of earning a living, and I would make it a prerequisite for appointment.

But the best intentions without understanding of the conditions encountered are not enough. A probation officer needs to have knowledge of the factors in personality and particularly of the motives of action and how to call them forth. He needs to be acquainted with the community, its industries, its schools, its health and character-building agencies, and its churches. He needs to know where to go for help and how to get it. He must have a disposition that wins cooperation. This is personal service of a high order, and in addition to natural ability it calls for education and experience. . . .

Recognizing the need for qualified personnel in probation work, the Judicial Conference of Senior Circuit Judges (now known as the Judicial Conference of the United States) in September 1942 recommended to the various district courts that in the appointment of probation officers the appointee should be required to possess the following 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 college grade, evidenced by a bachelor's degree (B.A. or B.S.) from a college of recognized standing, or its equivalent
- (5) Experience in personnel work for the welfare of others of not less than 2 years, or 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.

Although 13 percent of all probation officers now in service who were appointed since these standards were established met neither the qualifications of education or experience it is encouraging to note that 75 percent were college graduates and that 15.7 percent of them had master's degrees. Of the 291 probation officers in the federal probation service on December 31, 1949, a total of 187, or 64.3 percent, were college graduates and 40 of them, or 13.7 percent of the 291 officers, had master's degrees. Considering that a number of those now in service were appointed 10 or more years before the present minimum standards were established, the present picture is somewhat encouraging. Every effort is being made by the Administrative Office to encourage the appointment of probation officers who meet the minimum requirements recommended by the Judicial Conference of the United States.

In-Service Training

Five regional in-service training institutes are conducted at 2-year intervals for federal probation officers in co-operation with leading univer-

¹¹ From "Probation: What It Can Do and What It Takes," *FEDERAL PROBATION*, March 1948, pp. 11-16.

sities in the respective areas. Of 4-day duration, they are especially helpful in keeping probation officers abreast with the latest developments in the correctional field, serve as an exchange of worthwhile experiences and practices, refine the inter-office procedures among the 137 field offices of the probation system, and help to achieve a mutual strengthening of purpose. Leaders in their specialized fields, including officials of the Federal Bureau of Prisons, the United States Board of Parole, the United States Public Health Service, and faculty members of the host universities serve as lecturers. Two hours of each day are devoted to an analysis and discussion of supervision methods and procedures followed in the development of presentence reports and case records. Parole officers of federal penal and correctional institutions, as well as probation and parole officers of state jurisdictions, are invited to participate in these conferences.

In November 1949 the Administrative Office of the United States Courts, in conjunction with the District Court for the Northern District of Illinois and the School of Social Service Administration of the University of Chicago, established a training center at Chicago for the instruction of newly-appointed officers. The center will supplement the training at each of the five regional institutes and will offer a type of specialized training, including supervised field work, which is not now received at these institutes.

In co-operation with the Federal Bureau of Prisons, the Probation Division publishes *FEDERAL PROBATION*, a quarterly journal of correctional philosophy and practice. Edited by the Probation Division and printed by the Federal Prison Industries, Inc., at the El Reno Reformatory, Oklahoma,

the magazine deals with all phases of the prevention and control of delinquency and crime. Judges, lawyers, criminologists, psychiatrists, psychologists, probation and parole authorities, prison administrators, and social welfare workers are contributors to its pages. The journal is another means of keeping probation officers informed of new developments in correctional work. *FEDERAL PROBATION* is not only distributed to courts and their supporting personnel, but also to United States attorneys, state and local judges, probation and parole officers, prison personnel, social welfare agencies, prisoners' aid and crime prevention organizations, and university and municipal libraries.

Conclusion

Considerable progress has been made by the federal probation service since its beginning 25 years ago. A constant effort will be made in the years ahead to attain progressively higher standards of personnel selection, gradual reductions in supervision loads, more comprehensive presentence investigations with increasing diagnostic value, greater opportunities for psychiatric services, wider enlistment of community resources, and fuller utilization of the growing body of knowledge in the correctional field. The extent to which the federal probation service realizes these goals will determine the measure of success it will achieve in helping society's erring citizens to become useful members of the community. By reclaiming these transgressors of the law the federal probation service is fulfilling its primary objective of protecting society against delinquency and crime.

Preventive justice is no less important than preventive medicine. If we think of the legal orders in terms of social engineering, it must be evident that sanitary engineering is not the least important feature. Prevention at the source rather than penal treatment afterward must be a large item in dealing with crime.

—DEAN ROSCOE POUND

RULES OF CRIMINAL PROCEDURE
FOR THE
UNITED STATES DISTRICT COURTS

WITH FORMS

AS AMENDED TO OCTOBER 1, 1972



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¹ Resigned from Congress effective 12 noon May 9, 1972.

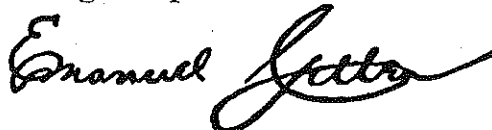
² Resigned from Congress effective at the close of business on August 29, 1972.

FOREWORD

This document contains the Rules of Criminal Procedure for the United States District Courts, as promulgated and amended by the United States Supreme Court to October 1, 1972, together with forms adopted by the Court, pursuant to Title 18, United States Code, section 3771. It has been prepared by Joseph Fischer, Esq., the law revision counsel of Subcommittee No. 3, of which Representative Robert W. Kastenmeier is chairman, in response to the need for an official up-to-date document containing the latest amendments.

For the convenience of the user, where a rule has been amended a reference to the citation and effective date of the amendment follows the text of the rule, as amended.

The United States Supreme Court Advisory Committee on Rules of Criminal Procedure prepared extensive notes covering various aspects and provisions of the rules. These notes may be found in Title 18, United States Code, following the particular rule to which they relate.



Chairman, Committee on the Judiciary.

OCTOBER 1, 1972.

III

AUTHORITY FOR PROMULGATION OF RULES

Title 18, United States Code

§ 3771. Procedure to and including verdict.

The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of pleading, practice, and procedure with respect to any or all proceedings prior to and including verdict, or finding of guilty or not guilty by the court if a jury has been waived, or plea of guilty, in criminal cases and proceedings to punish for criminal contempt of court in the United States district courts, in the district courts for the District of the Canal Zone and the Virgin Islands, in the Supreme Court of Puerto Rico, and in proceedings before United States magistrates. Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court. (June 25, 1948, ch. 645, 62 Stat. 846; May 24, 1949, ch. 139, § 59, 63 Stat. 98; May 10, 1950, ch. 174, § 1, 64 Stat. 158; July 7, 1958, Pub. L. 85-508, § 12(k), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86-3, § 14(g), 73 Stat. 11; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(2), 82 Stat. 1115.)

IV

HISTORICAL NOTE

The Supreme Court promulgates rules of criminal procedure for the district courts pursuant to two sections of Title 18, United States Code. Section 3771 authorizes the Court to prescribe rules for all criminal proceedings prior to and including verdict, or finding of guilty or not guilty by the court, or plea of guilty. Section 3772 empowers the Court to prescribe rules with respect to all proceedings after verdict or finding of guilty by the court, or plea of guilty.

Proceedings Prior to and Including Verdict

By act of June 29, 1940, ch. 445, 54 Stat. 688 (subsequently 18 U.S. Code, § 3771), the Supreme Court was authorized to prescribe general rules of criminal procedures prior to and including verdict, finding of guilty or not guilty by the court, or plea of guilty, in criminal proceedings; which were not to take effect until (1) they had been first reported to the Congress by the Attorney General at the beginning of a regular session, and (2) after the close of that session.

By a 1949 amendment to 18 United States Code, § 3771, the Chief Justice of the United States, instead of the Attorney General, now reports the rules to Congress. In 1950, the section was further amended so that amendments to the rules may be reported to Congress not later than May 1 each year and become effective 90 days after being reported.

The original rules pursuant to that act were adopted by order of the Court on December 26, 1944, transmitted to the Congress by the Attorney General on January 3, 1945, and became effective on March 21, 1946 (327 U.S. 821; Cong. Rec., vol. 91, pt. 1, p. 17; Exec. Comm. 4; H. Doc. 12, 79th Cong.).

Amendments were adopted by order of the Court dated December 27, 1948, transmitted to the Congress by the Attorney General on January 3, 1949, and became effective October 20, 1949 (335 U.S. 949; Cong. Rec., vol. 95, pt. 1, p. 13; Exec. Comm. 16; H. Doc. 30, 81st Cong.). The amendments affected Rules 17(e)(2), 41(b)(3), 41(g), 54(a)(1), 54(b), 54(c), 55, 56, and 57(a) and Forms 1-27, inclusive.

Further amendments were adopted by order of the Court dated April 9, 1956, transmitted to the Congress by the Chief Justice on the same day, and became effective on July 8, 1956 (350 U.S. 1017; Cong. Rec., vol. 102, pt. 5, p. 5973; Exec. Comm. 16; H. Doc. 377, 84th Cong.). The amendments affected Rules 41(a), 46(a)(2), 54(a)(1), and 54(c).

Further amendments were adopted by order of the Court dated February 28, 1966, transmitted to the Congress by the Chief Justice on the same day, and became effective on July 1, 1966 (383 U.S. 1087; Cong. Rec., vol. 112, p. 4229; Exec. Comm. 2093; H. Doc. 390, 89th Cong.). The amendments affected Rules 4, 5, 6, 7, 11, 14, 16, 17, 18, 20, 21, 23, 24, 25, 28, 29, 30, 32, 33, 34, 35, 37, 38, 40, 44, 45, 46, 49, 54, 55, and 56, and Form 26, and included new Rules 17.1 and 26.1.

HISTORICAL NOTE

Further amendments were adopted by the Court by order dated December 4, 1967, transmitted to the Congress by the Chief Justice on January 15, 1968, and became effective July 1, 1968, together with the new Federal Rules of Appellate Procedure (389 U.S. 1063; Cong. Rec., vol. 114, p. H84, Daily Issue; Exec. Comm. 1361; H. Doc. 204, 90th Cong.). The amendments affected Rules 45(b), 49(c), 56 and 57, and abrogated the chapter heading "VIII. Appeal", all of Rules 37 and 39, and subdivisions (b) and (c) of Rule 38, and Forms 26 and 27.

On March 1, 1971, the Court adopted additional amendments which were transmitted to the Congress by the Chief Justice on March 1, 1971. These amendments became effective July 1, 1971 (401 U.S. 1017; Cong. Rec., vol. 117, p. H1136, Daily Issue; Exec. Comm. 341; H. Doc. 92-57). The amendments affected subdivision (a) of Rule 45 and all of Rule 56.

Additional amendments were adopted by the Court by order dated April 24, 1972, transmitted to the Congress by the Chief Justice, accompanied by his letter of transmittal dated April 24, 1972. These amendments became effective October 1, 1972 (406 U.S. 979; Cong. Rec., vol. 118, p. H3538, Daily Issue; Exec. Comm. 1903; H. Doc. 92-285). The amendments affected Rules 1, 3, 4(b) and (c), 5, 5.1, 6(b), 7(c), 9(b), (c) and (d), 17(a) and (g), 31(e), 32(b), 38(a), 40, 41, 44, 46, 50, 54 and 55.

Proceedings After Verdict

By act of February 24, 1933, ch. 119, 47 Stat. 904, as amended (subsequently 18 U.S. Code, § 3772), the Supreme Court was authorized to prescribe general rules of criminal procedure with respect to proceedings after verdict or finding of guilty by the court, or plea of guilty, which became effective on dates fixed by the Court. These rules are not required to be submitted to Congress.

Rules 32 to 39, inclusive, were adopted by order of the Court on February 8, 1946, and became effective on March 21, 1946 (327 U.S. 825). Prior rules promulgated on May 7, 1934 (292 U.S. 659), were not specifically rescinded by that order but were superseded by these later rules.

Amendments to Rules 37(a)(1), 38(a)(3), 38(c), and 39(b)(2) were adopted by order of the Court dated December 27, 1948, and became effective on January 1, 1949 (335 U.S. 917).

Additional amendment to Rule 37 was adopted by order of the Court dated April 12, 1954, and became effective on July 1, 1954 (346 U.S. 941).

The Court adopted separate Federal Rules of Appellate Procedure by order dated December 4, 1967, transmitted to the Congress on January 15, 1968, effective July 1, 1968. As noted above, Rules 37, 38(b) and (c), and 39, and Forms 26 and 27, have been abrogated effective July 1, 1968, by that same order.

VII

HISTORICAL NOTE

Advisory Committee Notes

The notes of the Advisory Committee appointed by the Supreme Court to assist it in preparing the original rules and amendments are set out in Title 18, United States Code, following the particular rule to which they relate. In addition, the rules and amendments, together with Advisory Committee notes, are set out in the House documents listed above.

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RULES OF CRIMINAL PROCEDURE
FOR THE
UNITED STATES DISTRICT COURTS ¹

Effective March 21, 1946, as amended to October 1, 1972

TITLE I. SCOPE, PURPOSE, AND CONSTRUCTION

Rule 1. Scope. These rules govern the procedure in all criminal proceedings in the courts of the United States, as defined in Rule 54(c); and, whenever specifically provided in one of the rules, to preliminary, supplementary, and special proceedings before United States magistrates and at proceedings before state and local judicial officers.

(As amended April 24, 1972, eff. Oct. 1, 1972.)

Rule 2. Purpose and Construction. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

TITLE II. PRELIMINARY PROCEEDINGS

Rule 3. The Complaint. The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate.

(As amended April 24, 1972, eff. Oct. 1, 1972.)

Rule 4. Warrant or Summons Upon Complaint.

(a) **ISSUANCE.** If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) **FORM.**

(1) *Warrant.* The warrant shall be signed by the magistrate and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.

¹ Title amended Dec. 27, 1948, effective Oct. 20, 1949.

(c) **EXECUTION OR SERVICE; AND RETURN.**

(1) *By Whom.* The warrant shall be executed by a marshal or by some other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2) *Territorial Limits.* The warrant may be executed or the summons may be served at any place within the jurisdiction of the United States.

(3) *Manner.* The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant, as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

(4) *Return.* The officer executing a warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the government any unexecuted warrant shall be returned to the magistrate by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable. At the request of the attorney for the government made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to the marshal or other authorized person for execution or service.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 5. Initial Appearance Before the Magistrate.

(a) **IN GENERAL.** An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available federal magistrate or, in the event that a federal magistrate is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. § 3041. If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or given a summons, appears initially before the magistrate, the magistrate shall proceed in accordance with the applicable subdivisions of this rule.

(b) **MINOR OFFENSES.** If the charge against the defendant is a minor offense triable by a United States magistrate under 18 U.S.C. § 3401, the United States magistrate shall proceed in accordance with the Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates.

(c) **OFFENSES NOT TRIABLE BY THE UNITED STATES MAGISTRATE.** If the charge against the defendant is not triable by the United States magistrate, the defendant shall not be called upon to plead. The magistrate shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall also inform the defendant of his right to a preliminary examination. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by statute or in these rules.

A defendant is entitled to a preliminary examination, unless waived, when charged with any offense, other than a petty offense, which is to be tried by a judge of the district court. If the defendant waives preliminary examination, the magistrate shall forthwith hold him to answer in the district court. If the defendant does not waive the preliminary examination, the magistrate shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if he is not in custody, provided, however, that the preliminary examination shall not be held if the defendant is indicted or if an information against the defendant is filed in district court before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be extended one or more times by a federal magistrate. In the absence of such consent by the defendant, time limits may be extended by a judge of the United States only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 5.1. Preliminary Examination.

(a) **PROBABLE CAUSE FINDING.** If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the federal magistrate shall forthwith hold him to answer in district court. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 12.

(b) **DISCHARGE OF DEFENDANT.** If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the federal magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

(c) **RECORDS.** After concluding the proceeding the federal magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding. The magistrate shall promptly make or cause to be made a record or summary of such proceeding.

(1) On timely application to a federal magistrate, the attorney for a defendant in a criminal case may be given the opportunity to have the recording of the hearing on preliminary examination made available for his information in connection with any further hearing or in connection with his preparation for trial. The court may, by local rule, appoint the place for and define the conditions under which such opportunity may be afforded counsel.

(2) On application of a defendant addressed to the court or any judge thereof, an order may issue that the federal magistrate make available a copy of the transcript, or of a portion thereof, to defense counsel. Such order shall provide for prepayment of costs of such transcript by the defendant unless the defendant makes a sufficient affidavit that he is unable to pay or to give security therefor, in which case the expense shall be paid by the Director of the Administrative Office of the United States Courts from available appropriated funds. Counsel for the government may move also that a copy of the transcript, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

(As added Apr. 24, 1972, eff. Oct. 1, 1972.)

TITLE III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury.

(a) **SUMMONING GRAND JURIES.** The court shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of not less than 16 nor more than 23 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.

(b) **OBJECTIONS TO GRAND JURY AND TO GRAND JURORS.**

(1) *Challenges.* The attorney for the government or a defendant who has been held to answer in the district court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(2) *Motion To Dismiss.* A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. It shall be made in the manner prescribed in 28 U.S.C. § 1867(e) and shall be granted under the conditions prescribed in that statute. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not

legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) **FOREMAN AND DEPUTY FOREMAN.** The court shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreman, the deputy foreman shall act as foreman.

(d) **WHO MAY BE PRESENT.** Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(e) **SECRECY OF PROCEEDINGS AND DISCLOSURE.** Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(f) **FINDING AND RETURN OF INDICTMENT.** An indictment may be found only upon the concurrence of 12 or more jurors. The indictment shall be returned by the grand jury to a judge in open court. If the defendant is in custody or has given bail and 12 jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

(g) **DISCHARGE AND EXCUSE.** A grand jury shall serve until discharged by the court but no grand jury may serve more than 18 months. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(As amended, Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 7. The Indictment and the Information.

(a) **USE OF INDICTMENT OR INFORMATION.** An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information. An information may be filed without leave of court.

(b) **WAIVER OF INDICTMENT.** An offense which may be punished by imprisonment for a term exceeding one year or at hard labor may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment.

(c) **NATURE AND CONTENTS.**

(1) *In General.* The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(2) *Criminal Forfeiture.* When an offense charged may result in a criminal forfeiture, the indictment or the information shall allege the extent of the interest or property subject to forfeiture.

(3) *Harmless Error.* Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

(d) **SURPLUSAGE.** The court on motion of the defendant may strike surplusage from the indictment or information.

(e) **AMENDMENT OF INFORMATION.** The court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) **BILL OF PARTICULARS.** The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires. (As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 8. Joinder of Offenses and of Defendants.

(a) **JOINDER OF OFFENSES.** Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same

act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) **JOINDER OF DEFENDANTS.** Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9. Warrant or Summons Upon Indictment or Information.

(a) **ISSUANCE.** Upon the request of the attorney for the government the court shall issue a warrant for each defendant named in the information, if it is supported by oath, or in the indictment. The clerk shall issue a summons instead of a warrant upon the request of the attorney for the government or by direction of the court. Upon like request or direction he shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to the marshal or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) **FORM.**

(1) *Warrant.* The form of the warrant shall be as provided in Rule 4 (b) (1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the court or, if the information or indictment charges a minor offense, before a United States magistrate. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court or, if the information or indictment charges a minor offense, before a United States magistrate at a stated time and place.

(c) **EXECUTION OR SERVICE; AND RETURN.**

(1) *Execution or Service.* The warrant shall be executed or the summons served as provided in Rule 4 (c) (1), (2) and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the district or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the court or, before a United States magistrate.

(2) *Return.* The officer executing a warrant shall make return thereof to the court or United States magistrate. At the request of the attorney for the government any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the government made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled or a summons re-

turned unserved or a duplicate thereof may be delivered by the clerk to the marshal or other authorized person for execution or service.

(d) **REMAND TO UNITED STATES MAGISTRATE FOR TRIAL OF MINOR OFFENSES.** If the information or indictment charges a minor offense and the return is to a judge of the district court, the case may be remanded to a United States magistrate for further proceedings in accordance with the Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972.)

TITLE IV. ARRAIGNMENT, AND PREPARATION FOR TRIAL

Rule 10. Arraignment. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

Rule 11. Pleas. A defendant may plead not guilty, guilty or, with the consent of the court, *nolo contendere*. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of *nolo contendere* without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 12. Pleadings and Motions Before Trial; Defenses and Objections.

(a) **PLEADINGS AND MOTIONS.** Pleadings in criminal proceedings shall be the indictment and the information, and the pleas of not guilty, guilty and *nolo contendere*. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) **THE MOTION RAISING DEFENSES AND OBJECTIONS.**

(1) *Defenses and Objections Which May Be Raised.* Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and Objections Which Must Be Raised.* Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown

may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

(3) *Time of Making Motion.* The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

(4) *Hearing on Motion.* A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. An issue of fact shall be tried by a jury if a jury trial is required under the Constitution or an act of Congress. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

(5) *Effect of Determination.* If a motion is determined adversely to the defendant he shall be permitted to plead if he had not previously pleaded. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect the provisions of any act of Congress relating to periods of limitations.

Rule 13. Trial Together of Indictments or Informations. The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

Rule 14. Relief From Prejudicial Joinder. If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection *in camera* any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 15. Depositions.

(a) **WHEN TAKEN.** If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of a defendant and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to

appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) NOTICE OF TAKING. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) DEFENDANT'S COUNSEL AND PAYMENT OF EXPENSES. If a defendant is without counsel the court shall advise him of his right and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the government. In that event the marshal shall make payment accordingly.

(d) HOW TAKEN. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(e) USE. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) OBJECTIONS TO ADMISSIBILITY. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

Rule 16. Discovery and Inspection.

(a) DEFENDANT'S STATEMENTS; REPORTS OF EXAMINATIONS AND TESTS; DEFENDANT'S GRAND JURY TESTIMONY. Upon motion of a defendant the court may order the attorney for the government to permit the defendant to inspect and copy or photograph any relevant (1) written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise

of due diligence may become known, to the attorney for the government, and (3) recorded testimony of the defendant before a grand jury.

(b) OTHER BOOKS, PAPERS, DOCUMENTS, TANGIBLE OBJECTS OR PLACES. Upon motion of a defendant the court may order the attorney for the government to permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, upon a showing of materiality to the preparation of his defense and that the request is reasonable. Except as provided in subdivision (a) (2), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by government agents in connection with the investigation or prosecution of the case, or of statements made by government witnesses or prospective government witnesses (other than the defendant) to agents of the government except as provided in 18 U.S.C., § 3500.

(c) DISCOVERY BY THE GOVERNMENT. If the court grants relief sought by the defendant under subdivision (a) (2) or subdivision (b) of this rule, it may, upon motion of the government, condition its order by requiring that the defendant permit the government to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within his possession, custody or control, upon a showing of materiality to the preparation of the government's case and that the request is reasonable. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by government or defense witnesses, or by prospective government or defense witnesses, to the defendant, his agents or attorneys.

(d) TIME, PLACE AND MANNER OF DISCOVERY AND INSPECTION. An order of the court granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(e) PROTECTIVE ORDERS. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the government the court may permit the government to make such showing, in whole or in part, in the form of a written statement to be inspected by the court *in camera*. If the court enters an order granting relief following a showing *in camera*, the entire text of the government's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(f) TIME OF MOTIONS. A motion under this rule may be made only within 10 days after arraignment or at such reasonable later time as the court may permit. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

(g) **CONTINUING DUTY TO DISCLOSE; FAILURE TO COMPLY.** If, subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under the rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 17. Subpoena.

(a) **FOR ATTENDANCE OF WITNESSES; FORM; ISSUANCE.** A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served. A subpoena shall be issued by a United States magistrate in a proceeding before him, but it need not be under the seal of the court.

(b) **DEFENDANTS UNABLE TO PAY.** The court shall order at any time that a subpoena be issued for service on a named witness upon an *ex parte* application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government.

(c) **FOR PRODUCTION OF DOCUMENTARY EVIDENCE AND OF OBJECTS.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) **SERVICE.** A subpoena may be served by the marshal, by his deputy or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof.

(e) **PLACE OF SERVICE.**

(1) *In United States.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the United States.

(2) *Abroad.* A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in Title 28, U.S.C., § 1783.

(f) **FOR TAKING DEPOSITIONS; PLACE OF EXAMINATION.**

(1) *Issuance.* An order to take a deposition authorizes the issuance by the clerk of the court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein.

(2) *Place.* A resident of the district in which the deposition is to be taken may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person. A non-resident of the district may be required to attend only in the county where he is served with a subpoena or within 40 miles from the place of service or at such other place as is fixed by the court.

(g) **CONTEMPT.** Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued or of the court for the district in which it issued if it was issued by a United States magistrate.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 17.1. Pretrial Conference. At any time after the filing of the indictment or information the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his attorney. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

(As added Feb. 28, 1966, eff. July 1, 1966.)

TITLE V. VENUE

Rule 18. Place of Prosecution and Trial. Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 19. [Transfer Within the District.] Rescinded, Feb. 28, 1966, eff. July 1, 1966.

Rule 20. Transfer From the District for Plea and Sentence.

(a) **INDICTMENT OR INFORMATION PENDING.** A defendant arrested or held in a district other than that in which the indictment or information is pending against him may state in writing that he wishes to plead guilty or *nolo contendere*, to waive trial in the district in

which the indictment or information is pending and to consent to disposition of the case in the district in which he was arrested or is held, subject to the approval of the United States attorney for each district. Upon receipt of the defendant's statement and of the written approval of the United States attorneys, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant is held and the prosecution shall continue in that district.

(b) **INDICTMENT OR INFORMATION NOT PENDING.** A defendant arrested on a warrant issued upon a complaint in a district other than the district of arrest may state in writing that he wishes to plead guilty or *nolo contendere*, to waive trial in the district in which the warrant was issued and to consent to disposition of the case in the district in which he was arrested, subject to the approval of the United States attorney for each district. Upon receipt of the defendant's statement and of the written approval of the United States attorneys and upon the filing of an information or the return of an indictment, the clerk of the court for the district in which the warrant was issued shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant was arrested and the prosecution shall continue in that district. When the defendant is brought before the court to plead to an information filed in the district where the warrant was issued, he may at that time waive indictment as provided in Rule 7, and the prosecution may continue based upon the information originally filed.

(c) **EFFECT OF NOT GUILTY PLEA.** If after the proceeding has been transferred pursuant to subdivision (a) or (b) of this rule the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced and the proceeding shall be restored to the docket of that court. The defendant's statement that he wishes to plead guilty or *nolo contendere* shall not be used against him.

(d) **JUVENILES.** A juvenile (as defined in 18 U.S.C., § 5031) who is arrested or held in a district other than that in which he is alleged to have committed an act in violation of a law of the United States not punishable by death or life imprisonment may, after he has been advised by counsel and with the approval of the court and the United States attorney, consent to be proceeded against as a juvenile delinquent in the district in which he is arrested or held. The consent shall be given in writing before the court but only after the court has apprised the juvenile of his rights, including the right to be returned to the district in which he is alleged to have committed the act, and of the consequences of such consent.

(e) **SUMMONS.** For the purpose of initiating a transfer under this rule a person who appears in response to a summons issued under Rule 4 shall be treated as if he had been arrested on a warrant in the district of such appearance.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 21. Transfer From the District for Trial.

(a) **FOR PREJUDICE IN THE DISTRICT.** The court upon motion of the defendant shall transfer the proceeding as to him to another

district whether or not such district is specified in the defendants motion if the court is satisfied that there exists in the district where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial at any place fixed by law for holding court in that district.

(b) **TRANSFER IN OTHER CASES.** For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to him or any one or more of the counts thereof to another district.

(c) **PROCEEDINGS ON TRANSFER.** When a transfer is ordered the clerk shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that district. (As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 22. Time of Motion To Transfer. A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

TITLE VI. TRIAL

Rule 23. Trial by Jury or by the Court.

(a) **TRIAL BY JURY.** Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government.

(b) **JURY OF LESS THAN TWELVE.** Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12.

(c) **TRIAL WITHOUT A JURY.** In a case tried without a jury the court shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein. (As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 24. Trial Jurors.

(a) **EXAMINATION.** The court may permit the defendant or his attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or his attorney and the attorney for the government to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

(b) **PEREMPTORY CHALLENGES.** If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

(c) **ALTERNATE JURORS.** The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror.
(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 25. Judge; Disability.

(a) **DURING TRIAL.** If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying that he has familiarized himself with the record of the trial, may proceed with and finish the trial.

(b) **AFTER VERDICT OR FINDING OF GUILT.** If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.
(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 26. Evidence. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an act of Congress or by these rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.

Rule 26.1. Determination of Foreign Law. A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 26. The court's determination shall be treated as a ruling on a question of law.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 27. Proof of Official Record. An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions

Rule 28. Expert Witnesses and Interpreters.

(a) **EXPERT WITNESSES.** The court may order the defendant or the government or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the court or by any party. He shall be subject to cross-examination by each party. The court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

(b) **INTERPRETERS.** The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 29. Motion for Judgment of Acquittal.

(a) **MOTION BEFORE SUBMISSION TO JURY.** Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) **RESERVATION OF DECISION ON MOTION.** If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) **MOTION AFTER DISCHARGE OF JURY.** If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 30. Instructions. At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as

set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 31. Verdict.

(a) **RETURN.** The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) **SEVERAL DEFENDANTS.** If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) **CONVICTION OF LESS OFFENSE.** The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) **POLL OF JURY.** When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(e) **CRIMINAL FORFEITURE.** If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972.)

VII. JUDGMENT

Rule 32. Sentence and Judgment.

(a) **SENTENCE.**

(1) *Imposition of Sentence.* Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

(2) *Notification of Right To Appeal.* After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in *forma pauperis*. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(b) JUDGMENT.

(1) *In General.* A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(2) *Criminal Forfeiture.* When a verdict contains a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the Attorney General to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

(c) PRESENTENCE INVESTIGATION.

(1) *When Made.* The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless the court otherwise directs. The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or has been found guilty.

(2) *Report.* The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court. 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.

(d) WITHDRAWAL OF PLEA OF GUILTY. A motion to withdraw a plea of guilty of *nolo contendere* may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

(e) PROBATION. After conviction of an offense not punishable by death or by life imprisonment, the defendant may be placed on probation as provided by law.

(f) REVOCATION OF PROBATION. The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 33. New Trial. The court on motion of a defendant may grant a new trial to him if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may

be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period. (As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 34. Arrest of Judgment. The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or *nolo contendere*, or within such further time as the court may fix during the 7-day period. (As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 35. Correction or Reduction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law. (As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 36. Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

[TITLE VIII. APPEAL]

(Abrogated Dec. 4, 1967, eff. July 1, 1968)

[Rule 37. Taking Appeal; and Petition for Writ of Certiorari.]
(Abrogated Dec. 4, 1967, eff. July 1, 1968.)

Rule 38. Stay of Execution, and Relief Pending Review.

(a) STAY OF EXECUTION.

(1) *Death.* A sentence of death shall be stayed if an appeal is taken.

(2) *Imprisonment.* A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to Rule 9(b) of the Federal Rules of Appellate Procedure. If not stayed, the court may recommend to the Attorney General that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where his appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of his appeal to the court of appeals.

(3) *Fine.* A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the district court or by the court of appeals upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any

part of the fine and costs in the registry of the district court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.

(4) *Probation*. An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed the court shall fix the terms of the stay.

[(b) BAIL.] (Abrogated)

[(c) APPLICATION FOR RELIEF PENDING REVIEW.] (Abrogated)

(As amended Dec. 27, 1948, eff. Jan. 1, 1949; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Apr. 24, 1972, eff. Oct. 1, 1972.)

[Rule 39. Supervision of Appeal.] (Abrogated Dec. 4, 1967, eff. July 1, 1968.)

TITLE IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40. Commitment to Another District; Removal.

(a) *ARREST IN NEARBY DISTRICT*. If a person is arrested on a warrant issued upon a complaint in a district other than the district of the arrest but in the same state, or on a warrant issued upon a complaint in another state but at a place less than 100 miles from the place of arrest, or without a warrant for an offense committed in another district in the same state or in another state but at a place less than 100 miles from the place of the arrest, he shall be taken without unnecessary delay before the nearest available federal magistrate; preliminary proceedings shall be conducted in accordance with Rules 5 and 5.1; and if held to answer, he shall be held to answer to the district court for the district in which the prosecution is pending, or if the arrest was without a warrant, for the district in which the offense was committed. If such an arrest is made on a warrant issued on an indictment or information, the person arrested shall be taken before the district court in which the prosecution is pending or, for the purpose of admission to bail, before a federal magistrate in the district of the arrest in accordance with provisions of Rule 9(c) (1).

(b) *ARREST IN DISTANT DISTRICT*.

(1) *Appearance Before Federal Magistrate*. If a person is arrested upon a warrant issued in another state at a place 100 miles or more from the place of arrest, or without a warrant for an offense committed in another state at a place 100 miles or more from the place of arrest, he shall be taken without unnecessary delay before the nearest available federal magistrate in the district in which the arrest was made.

(2) *Statement by Federal Magistrate*. The federal magistrate shall inform the defendant of the rights specified in Rule 5(c), of his right to have a hearing or to waive a hearing by signing a waiver before the federal magistrate, of the provisions of Rule 20, and shall authorize his release under the terms provided for by these rules and by 18 U.S.C. § 3146 and § 3148.

(3) *Hearing; Warrant of Removal or Discharge*. The defendant shall not be called upon to plead. If the defendant waives hearing, a judge of the United States shall issue a warrant of re-

removal to the district where the prosecution is pending. If the defendant does not waive hearing, the federal magistrate shall hear the evidence. At the hearing the defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If a United States magistrate hears the evidence he shall report his findings and recommendations to a judge of the United States. If it appears from the United States magistrate's report or from the evidence adduced before the judge of the United States that sufficient ground has been shown for ordering the removal of the defendant, the judge shall issue a warrant of removal to the district where the prosecution is pending. Otherwise he shall discharge the defendant. There is "sufficient grounds" for ordering removal under the following circumstances:

(A) If the prosecution is by indictment, a warrant of removal shall issue upon production of a certified copy of the indictment and upon proof that the defendant is the person named in the indictment.

(B) If the prosecution is by information or complaint, a warrant of removal shall issue upon the production of a certified copy of the information or complaint and upon proof that there is probable cause to believe that the defendant is guilty of the offense charged.

(C) If a person is arrested without a warrant, the hearing may be continued for a reasonable time, upon a showing of probable cause to believe that he is guilty of the offense charged; but he may not be removed as herein provided unless a warrant issued in the district in which the offense is alleged to have been committed is presented.

(4) *Bail.* If a warrant of removal is issued, the defendant shall be admitted to bail for appearance in the district in which the prosecution is pending under the terms provided for by these rules and by 18 U.S.C. § 3146 and § 3148. After a defendant is held for removal or is discharged, the papers in the proceeding and any bail taken shall be transmitted to the clerk of the district court in which the prosecution is pending.

(5) *Authority of United States Magistrate.* When authorized by a rule of the district court, adopted in accordance with 28 U.S.C. § 636(b), a United States magistrate may issue a warrant of removal under subdivision (b) (3) of this rule.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 41. Search and Seizure.

(a) **AUTHORITY TO ISSUE WARRANT.** A search warrant authorized by this rule may be issued by a federal magistrate or a judge of a state within the district wherein the property sought is located, upon request of a federal law enforcement officer or an attorney for the government.

(b) **PROPERTY WHICH MAY BE SEIZED WITH A WARRANT.** A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or

which is or has been used as the means of committing a criminal offense.

(c) **ISSUANCE AND CONTENTS.** A warrant shall issue only on an affidavit or affidavits sworn to before the federal magistrate or state judge and establishing the grounds for issuing the warrant. If the federal magistrate or state judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the federal magistrate or state judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate a federal magistrate to whom it shall be returned.

(d) **EXECUTION AND RETURN WITH INVENTORY.** The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The federal magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) **MOTION FOR RETURN OF PROPERTY.** A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) **MOTION TO SUPPRESS.** A motion to suppress evidence may be made in the court of the district of trial as provided in Rule 12.

(g) **RETURN OF PAPERS TO CLERK.** The federal magistrate before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the district in which the property was seized.

(h) **SCOPE AND DEFINITION.** This rule does not modify any act, inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 6:00 a.m. to 10:00 p.m. according to local time. The phrase "federal law enforcement officer" is used in this rule to mean any government agent, other than an attorney for the government as defined in Rule 54(c), who is engaged in the enforcement of the criminal laws and is within any category of officers authorized by the Attorney General to request the issuance of a search warrant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Apr. 9, 1956, eff. July 8, 1956; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 42. Criminal Contempt.

(a) **SUMMARY DISPOSITION.** A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) **DISPOSITION UPON NOTICE AND HEARING.** A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

TITLE X. GENERAL PROVISIONS

Rule 43. Presence of the Defendant. The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules. In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine or by imprisonment

for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence. The defendant's presence is not required at a reduction of sentence under Rule 35.

Rule 44. Right to and Assignment of Counsel.

(a) **RIGHT TO ASSIGNED COUNSEL.** Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the federal magistrate or the court through appeal, unless he waives such appointment.

(b) **ASSIGNMENT PROCEDURE.** The procedures for implementing the right set out in subdivision (a) shall be those provided by law and by local rules of court established pursuant thereto.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 45. Time.

(a) **COMPUTATION.** In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) **ENLARGEMENT.** When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34, and 35, except to the extent and under the conditions stated in them.

(c) **[UNAFFECTED BY EXPIRATION OF TERM.]** Rescinded, February 28, 1966.

(d) **FOR MOTIONS; AFFIDAVITS.** A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

(e) **ADDITIONAL TIME AFTER SERVICE BY MAIL.** Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, 3 days shall be added to the prescribed period.

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971.)

Rule 46. Release From Custody.

(a) **RELEASE PRIOR TO TRIAL.** Eligibility for release prior to trial shall be in accordance with 18 U.S.C. § 3146, § 3148, or § 3149.

(b) **RELEASE DURING TRIAL.** A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure his presence during the trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

(c) **PENDING SENTENCE AND NOTICE OF APPEAL.** Eligibility for release pending sentence or pending notice of appeal or expiration of the time allowed for filing notice of appeal, shall be in accordance with 18 U.S.C. § 3148. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(d) **JUSTIFICATION OF SURETIES.** Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified.

(e) **FORFEITURE.**

(1) *Declaration.* If there is a breach of condition of a bond, the district court shall declare a forfeiture of the bail.

(2) *Setting Aside.* The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the district court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) *Remission.* After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) **EXONERATION.** When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be

exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) **SUPERVISION OF DETENTION PENDING TRIAL.** The court shall exercise supervision over the detention of defendants and witnesses within the district pending trial for the purpose of eliminating all unnecessary detention. The attorney for the government shall make a biweekly report to the court listing each defendant and witness who has been held in custody pending indictment, arraignment or trial for a period in excess of ten days. As to each witness so listed the attorney for the government shall make a statement of the reasons why such witness should not be released with or without the taking of his deposition pursuant to Rule 15(a). As to each defendant so listed the attorney for the government shall make a statement of the reasons why the defendant is still held in custody.

(As amended Apr. 9, 1956, eff. July 8, 1956; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 47. Motions. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

Rule 48. Dismissal.

(a) **BY ATTORNEY FOR GOVERNMENT.** The Attorney General or the United States attorney may by leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) **BY COURT.** If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint.

Rule 49. Service and Filing of Papers.

(a) **SERVICE: WHEN REQUIRED.** Written motions other than those which are heard *ex parte*, written notices, designations of record on appeal and similar papers shall be served upon each of the parties.

(b) **SERVICE: HOW MADE.** Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) **NOTICE OF ORDERS.** Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 4(b) of the Federal Rules of Appellate Procedure.

(d) **FILING.** Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions. (As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968.)

Rule 50. Calendars; Plan for Prompt Disposition.

(a)¹ **CALENDARS.** The district courts may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

(b) **PLAN FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES.** To minimize undue delay and to further the prompt disposition of criminal cases, each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall prepare a plan for the prompt disposition of criminal cases which shall include rules relating to time limits within which procedures prior to trial, the trial itself, and sentencing must take place, means of reporting the status of cases, and such other matters as are necessary or proper to minimize delay and facilitate the prompt disposition of such cases. The district plan shall include special provision for the prompt disposition of any case in which it appears to the court that there is reason to believe that the pretrial liberty of a particular defendant who is in custody or released pursuant to Rule 46, poses a danger to himself, to any other person, or to the community. The district plan shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of the district court may designate. If approved the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually on the operation of such plans to the Judicial Conference of the United States. The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan when directed to do so by the reviewing panel or the Judicial Conference of the United States. Each district court shall submit its plan to the reviewing panel not later than 90 days from the effective date of this rule.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 51. Exceptions Unnecessary. Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 52. Harmless Error and Plain Error.

(a) **HARMLESS ERROR.** Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) **PLAIN ERROR.** Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

¹ Subparagraph heading and the designation (a) supplied by compiler.

Rule 53. Regulation of Conduct in the Court Room. The taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court.

Rule 54. Application and Exception.

(a) **COURTS.** These rules apply to all criminal proceedings in the United States District Courts; in the District Court of Guam; in the District Court of the Virgin Islands; and (except as otherwise provided in the Canal Zone Code) in the United States District Court for the District of the Canal Zone; in the United States Courts of Appeals; and in the Supreme Court of the United States; except that all offenses shall continue to be prosecuted in the District Court of Guam and in the District Court of the Virgin Islands by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury.

(b) **PROCEEDINGS.**

(1) *Removed Proceedings.* These rules apply to criminal prosecutions removed to the United States district courts from state courts and govern all procedure after removal, except that dismissal by the attorney for the prosecution shall be governed by state law.

(2) *Offenses Outside a District or State.* These rules apply to proceedings for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, except that such proceedings may be had in any district authorized by Title 18, U.S.C., § 3238.

(3) *Peace Bonds.* These rules do not alter the power of judges of the United States or of United States magistrates to hold to security of the peace and for good behavior under Title 18, U.S.C., § 3043, and under Revised Statutes, § 4069, 50 U.S.C., § 23, but in such cases the procedure shall conform to these rules so far as they are applicable.

(4) *Proceedings Before United States Magistrates.* Proceedings involving minor offenses before United States magistrates, as defined in subdivision (c) of this rule, are governed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates.

(5) *Other Proceedings.* These rules are not applicable to extradition and rendition of fugitives; civil forfeiture of property for violation of a statute of the United States; or the collection of fines and penalties. Except as provided in Rule 20(d) they do not apply to proceedings under Title 18, U.S.C., Chapter 403—Juvenile Delinquency—so far as they are inconsistent with that Chapter. They do not apply to summary trials for offenses against the navigation laws under Revised Statutes §§ 4300—4305, 33 U.S.C., §§ 391—396, or to proceedings involving disputes between seamen under Revised Statutes, §§ 4079—4081, as amended, 22 U.S.C., §§ 256—258, or to proceedings for fishery offenses under the Act of June 28, 1937, ch. 392, 50 Stat. 325—327, 16 U.S.C., §§ 772—772i, or to proceedings against a witness in a foreign country under Title 28, U.S.C., § 1784.

(c) **APPLICATION OF TERMS.** As used in these rules the following terms have the designated meanings.

"Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession.

"Attorney for the government" means the Attorney General, an authorized assistant of the Attorney General, a United States Attorney, an authorized assistant of a United States Attorney and when applicable to cases arising under the laws of Guam means the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

"Civil action" refers to a civil action in a district court.

The words "demurrer," "motion to quash," "plea in abatement," "plea in bar" and "special plea in bar," or words to the same effect, in any act of Congress shall be construed to mean the motion raising a defense or objection provided in Rule 12.

"District court" includes all district courts named in subdivision (a) of this rule.

"Federal magistrate" means a United States magistrate as defined in 28 U.S.C. §§ 631-639, a judge of the United States or another judge or judicial officer specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates.

"Judge of the United States" includes a judge of a district court, court of appeals, or the Supreme Court.

"Law" includes statutes and judicial decisions.

"Magistrate" includes a United States magistrate as defined in 28 U.S.C. §§ 631-639, a judge of the United States, another judge or judicial officer specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates, and a state or local judicial officer, authorized by 18 U.S.C. § 3041 to perform the functions prescribed in Rules 3, 4, and 5.

"Minor offense" is defined in 18 U.S.C. § 3401.

"Oath" includes affirmations.

"Petty offense" is defined in 18 U.S.C. § 1(3).

"State" includes District of Columbia, Puerto Rico, territory and insular possession.

"United States magistrate" means the officer authorized by 28 U.S.C. §§ 631-639.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Apr. 9, 1956, eff. July 8, 1956; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 55. Records. The clerk of the district court and each United States magistrate shall keep such records in criminal proceedings as the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, may prescribe. Among the records required to be kept by the clerk shall be a book known as the "criminal docket" in which, among other things, shall be entered, each order or judgment of the court. The entry of an order or judgment shall show the date the entry is made.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 56. Courts and Clerks. The district court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971.)

Rule 57. Rules of Court.

(a) **RULES BY DISTRICT COURTS.** Rules made by district courts for the conduct of criminal proceedings shall not be inconsistent with these rules. Copies of all rules made by a district court shall upon their promulgation be furnished to the Administrative Office of the United States Courts. The clerk shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, to the end that all rules made as provided herein be published promptly and that copies of them be available to the public.

(b) **PROCEDURE NOT OTHERWISE SPECIFIED.** If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or with any applicable statute. (As amended Dec. 27, 1948, eff. Oct. 20, 1949; Dec. 4, 1967, eff. July 1, 1968.)

Rule 58. Forms. The forms contained in the Appendix of Forms are illustrative and not mandatory.

Rule 59. Effective Date. These rules take effect on the day which is 3 months subsequent to the adjournment of the first regular session of the 79th Congress, but if that day is prior to September 1, 1945, then they take effect on September 1, 1945. They govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending. [Amendments are effective as indicated.]

Rule 60. Title. These rules may be known and cited as the Federal Rules of Criminal Procedure.

APPENDIX OF FORMS

(See Rule 58)

Form 1.—INDICTMENT FOR MURDER IN THE FIRST DEGREE OF FEDERAL OFFICER

In the United States District Court for the _____ District of _____, _____ Division.

UNITED STATES OF AMERICA }
 v. } No. _____
 JOHN DOE } (18 U.S.C. §§ 1111, 1114)

The grand jury charges:

On or about the _____ day of _____, 19____, in the _____ District of _____, John Doe with premeditation and by means of shooting murdered John Roe, who was then an officer of the Federal Bureau of Investigation of the Department of Justice engaged in the performance of his official duties.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 2.—INDICTMENT FOR MURDER IN THE FIRST DEGREE ON FEDERAL RESERVATION

In the United States District Court for the _____ District of _____, _____ Division.

UNITED STATES OF AMERICA }
 v. } No. _____
 JOHN DOE } (18 U.S.C. § 1111)

The grand jury charges:

On or about the _____ day of _____, 19____, in the _____ District of _____, and on lands acquired for the use of the United States and under the (exclusive) (concurrent) jurisdiction of the United States, John Doe with premeditation shot and murdered John Roe.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

In the United States District Court for the _____ District of
_____, _____ Division.

V.
JOHN DOE ET AL.

1. Prior to the _____ day of _____, 19____, and continuing to the _____ day of _____, 19____,¹ the defendants John Doe, Richard Roe, John Stiles and Richard Miles devised and intended to devise a scheme and artifice to defraud purchasers of stock of XY Company, a California corporation, and to obtain money and property by means of the following false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be false when made: That the XY Company owned a mine at or near San Bernardino, California; that the mine was in actual operation; that gold ore was being obtained at the mine and sold at a profit; that the current earnings of the company would be sufficient to pay dividends on its stock at the rate of six percent per annum.

Second Count

2. On the _____ day of _____, 19____, in the _____ District of _____, the defendants, for the purpose of executing the afore-said scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mr. John J. Jones, 220 First Street, Batavia, New York, to be sent or delivered by the Post Office Establishment of the United States.

Foreman.

¹ Insert last mailing date alleged.

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Form 4.—INDICTMENT FOR SABOTAGE

In the United States District Court for the _____
District of _____, _____ Division.

UNITED STATES OF AMERICA	}	No. _____
v.		(50 U.S.C. § 103)
JOHN DOE		

The grand jury charges:

On or about the _____ day of _____, 19____, within the _____
District of _____, while the United States was at war, John Doe,
with reason to believe that his act might injure, interfere with or
obstruct the United States in preparing for or carrying on the war,
wilfully made and caused to be made in a defective manner certain
war material consisting of shells, in that he placed and caused to be
placed certain material in a cavity of the shells so as to make them
appear to be solid metal, whereas in fact the shells were hollow.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 5.—INDICTMENT FOR INTERNAL REVENUE VIOLATION

In the United States District Court for the _____
District of _____, _____ Division.

UNITED STATES OF AMERICA	}	No. _____
v.		(26 U.S.C. § 2833)
JOHN DOE		

The grand jury charges:

On or about the _____ day of _____, 19____, in the _____
District of _____, John Doe carried on the business
of a distiller without having given bond as required by law.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 6.—INDICTMENT FOR INTERSTATE TRANSPORTATION OF STOLEN MOTOR VEHICLE

In the United States District Court for the _____
 District of _____, _____ Division.

UNITED STATES OF AMERICA	}	No. _____
v.		(18 U.S.C. § 2312)
JOHN DOE		

The grand jury charges:

On or about the _____ day of _____, 19____, John Doe transported a stolen motor vehicle from _____, State of _____, to _____, State of _____, in _____ District of _____, and he then knew the motor vehicle to have been stolen.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 7.—INDICTMENT FOR RECEIVING STOLEN MOTOR VEHICLE

In the United States District Court for the _____
 District of _____, _____ Division.

UNITED STATES OF AMERICA	}	No. _____
v.		(18 U.S.C. § 2313)
JOHN DOE		

The grand jury charges:

On or about the _____ day of _____, 19____, in the _____ District of _____, John Doe received and concealed a stolen motor vehicle, which was moving as interstate commerce, and he then knew the motor vehicle to have been stolen.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 8.—INDICTMENT FOR IMPERSONATION OF FEDERAL OFFICER

In the United States District Court for the _____
District of _____, _____ Division.

UNITED STATES OF AMERICA }
v. } No. _____
JOHN DOE } (18 U.S.C. § 912)

The grand jury charges:

On or about the _____ day of _____, 19____, in the
_____ District of _____, John Doe with intent
to defraud the United States and Mary Major falsely pretended to be
an officer and employee acting under the authority of the United
States, namely, an agent of the Federal Bureau of Investigation, and
falsely took upon himself to act as such, in that he falsely stated that
he was a special agent of the Federal Bureau of Investigation engaged
in pursuit of a person charged with an offense against the United
States.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

**Form 9.—INDICTMENT FOR OBTAINING MONEY BY IMPERSONATION OF
FEDERAL OFFICER**

In the United States District Court for the _____
District of _____, _____ Division.

UNITED STATES OF AMERICA }
v. } No. _____
JOHN DOE } (18 U.S.C. § 912)

The grand jury charges:

On or about the _____ day of _____, 19____, in the
_____ District of _____, John Doe with intent
to defraud the United States and Mary Major falsely pretended to
be an officer and employee acting under the authority of the United
States, namely, an agent of the Alcohol Tax Unit of the Department
of the Treasury, and in such pretended character demanded and
obtained from Mary Major the sum of \$100.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 10.—INDICTMENT FOR PRESENTING FRAUDULENT CLAIM AGAINST THE UNITED STATES

In the United States District Court for the _____
 District of _____, _____ Division.

UNITED STATES OF AMERICA }
 v. } No. _____
 JOHN DOE } (18 U.S.C. § 287)

The grand jury charges:

On or about the _____ day of _____, 19____, in the _____
 District of _____, John Doe presented to the War Department of the United States for payment a claim against the Government of the United States for having delivered to the Government 100,000 lineal feet of No. 1 white pine lumber, and he then knew the claim to be fraudulent in that he had not delivered the lumber to the Government.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 11.—INFORMATION FOR FOOD AND DRUG VIOLATION

In the United States District Court for the _____ District
 of _____, _____ Division.

UNITED STATES OF AMERICA }
 v. } No. _____
 JOHN DOE } (21 U.S.C. §§ 331, 333, 342)

The United States Attorney charges:

On or about the _____ day of _____, 19____, in the _____
 District of _____, John Doe unlawfully caused to be introduced into interstate commerce by delivery for shipment from the city ¹ of _____ (State), to the city ¹ of _____ (State), a consignment of cans containing articles of food which were adulterated in that they consisted in whole or in part of decomposed vegetable substance.

_____,
United States Attorney.

¹ Name of city is stated only to preclude a motion for a bill of particulars and not because such a statement is an essential fact to be alleged.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 12.—WARRANT FOR ARREST OF DEFENDANT

In the United States District Court for the _____, District
of _____, _____ Division.

UNITED STATES OF AMERICA	}	No. _____
v.		
JOHN DOE		

To _____: ¹

*You are hereby commanded to arrest John Doe and bring him forth-
with before the District Court for the _____ District of
_____ in the city of _____ to answer to an
indictment charging him with robbery of property of the First Na-
tional Bank of _____, in violation of 12 U.S.C. § 588b.**

By _____, *Clerk.*
_____, *Deputy Clerk*

¹ Insert designation of officer to whom warrant is issued, e.g., "any United States Marshal or any other authorized officer"; or "United States Marshal for _____ District of _____"; or "any United States Marshal"; or "any Special Agent of the Federal Bureau of Investigation"; or "any United States Marshal or any Special Agent of the Federal Bureau of Investigation"; or "any agent of the Alcohol Tax Unit."

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 13.—SUMMONS

In the United States District Court for the _____
District of _____, _____ Division.

UNITED STATES OF AMERICA	}	No. _____
v.		
JOHN DOE		

To JOHN DOE:

*You are hereby summoned to appear before the District Court for
the District of _____ at the Post Office Building in
the city of _____ on the _____ day of _____,
19__, at 10 o'clock A.M. to answer to an information charging you
with unlawful transportation of intoxicating liquor on which the
internal revenue tax had not been paid.*

By _____, *Clerk.*
_____, *Deputy Clerk.*

This summons was received by me at _____ on _____
_____, *Defendant.*

* So in original. Probably should be "12 U.S.C. § 2113".

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 14.—WARRANT OF REMOVAL

In the United States District Court for the _____
 District of _____, _____ Division.
 To _____:

The grand jury of the United States for the _____
 District of _____ having indicted John Doe on a charge
 of murder in the first degree, and John Doe having been arrested in
 this District and, after (waiving) hearing, having been committed
 by a United States Commissioner to your custody pending his re-
 moval to that district,

You are hereby commanded to remove John Doe forthwith to the
 _____ District of _____ and there deliver him to the
 United States Marshal for that District or to some other officer au-
 thorized to receive him.

United States District Judge.

Dated at _____ this _____ day of _____,
 19__.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 15.—SEARCH WARRANT (UNDER RULE 41)

To _____:

Affidavit having been made before me by John Doe that he has
 reason to believe that on the premises known as _____
 Street, in the city of _____, in the District of _____,
 there is now being concealed certain property,
 namely, certain dies, hubs, molds and plates, fitted and intended to be
 used for the manufacture of counterfeit coins of the United States,
 and as I am satisfied that there is probable cause to believe that the
 property so fitted and intended to be used is being concealed on the
 premises above described,

You are hereby commanded to search the place named for the prop-
 erty specified, serving this warrant and making the search in the day-
 time, and if the property be found there to seize it, prepare a written
 inventory of the property seized and bring the property before me.

Dated this _____ day of _____.

U.S. Commissioner for the _____
District of _____

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 16.—MOTION FOR THE RETURN OF SEIZED PROPERTY AND THE SUPPRESSION OF EVIDENCE

In the United States District Court for the _____ District
 of _____, _____ Division.

No. _____

John Doe hereby moves this Court to direct that certain property of
 which he is the owner, a schedule of which is annexed hereto, and
 which on the night of _____, 19__, at the premises known as

----- Street, in the city of -----, in the District of -----, was unlawfully seized and taken from him by two deputies of the United States Marshal for this District, whose true names are unknown to the petitioner, be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

The petitioner further states that the property was seized against his will and without a search warrant.

-----,
Attorney for Petitioner.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 17.—APPEARANCE BOND

In the United States District Court for the ----- District of -----, ----- Division.

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the United States of America the sum of ----- Dollars (\$-----).

The condition of this bond is that the defendant ----- is to appear in the United States District Court ¹ for the ----- District of ----- at ----- ² in accordance with all orders and directions of the Court ³ relating to the appearance of the defendant before the Court ³ in the case of *United States v. -----*, File number -----; and if the defendant appears as ordered, then this bond is to be void, but if the defendant fails to perform this condition payment of the amount of the bond shall be due forthwith. If the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in the United States District Court for the ----- District of ----- against each debtor jointly and severally for the amount above stated together with interest and costs, and execution may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

This bond is signed on this ----- day of -----, 19--, at -----.

-----,	-----,
<i>Name of Defendant.</i>	<i>Address.</i>
-----,	-----,
<i>Name of Surety.</i>	<i>Address.</i>
-----,	-----,
<i>Name of Surety.</i>	<i>Address.</i>

Signed and acknowledged before me this ----- day of -----, 19--.

Approved: -----

¹ If appearance is to be before a commissioner, change the words following "appear" to "before -----, United States Commissioner."

² Insert place.

³ Change "Court" to "Commissioner" if necessary. See Note 1.

I, the undersigned surety, on oath say that I reside at _____;
and that my net worth is the sum of _____ Dollars
(\$_____).

I further say that _____

Surety.

Sworn to and subscribed before me this _____ day of _____, 19____, at _____.

⁴ These lines are to provide for additional justification if the Commissioner or Court so directs.

Form 18.—WAIVER OF INDICTMENT

In the United States District Court for the _____
District of _____, _____ Division.

UNITED STATES OF AMERICA } No. _____
v. }
JOHN DOE } (18 U.S.C. § 408)*

John Doe, the above named defendant, who is accused of violating the National Motor Vehicle Theft Act, being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

Defendant.

Witness.

-----,
Counsel for Defendant.

* So in original. Probably should be "§ 2313".

Form 19.—MOTION BY DEFENDANT TO DISMISS THE INDICTMENT

In the United States District Court for the _____ District of _____,
_____, _____ Division.

UNITED STATES OF AMERICA }
v. } No. _____
JOHN DOE }

The defendant moves that the indictment be dismissed on the following grounds:

1. The court is without jurisdiction because the offense if any is cognizable only in the _____ Division of the _____ District of _____.

2. The indictment does not state facts sufficient to constitute an offense against the United States.

3. The defendant has been acquitted (convicted, in jeopardy of conviction) of the offense charged therein in the case of *United States v.* _____ in the District Court for the _____ District of _____, Case No. _____ terminated on _____.

4. The offense charged is the same offense for which the defendant was pardoned by the President of the United States on _____ day of _____, 19__.

5. The indictment was not found within three years next after the alleged offense was committed.

Signed: _____,

Address

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 20.—SUBPOENA TO TESTIFY

In the United States District Court for the _____ District of _____, _____ Division.

To _____:

You are hereby commanded to appear in the United States District Court for the _____ District of _____ at the Courthouse, in the city of _____, on the _____ day of _____, 19__, at 10 o'clock A.M. to testify in the case of *United States v. John Doe*.

This subpoena is issued on application of the (United States) (defendant).

Clerk.

By _____
Deputy Clerk.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 21.—SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

In the United States District Court for the _____ District of _____, _____ Division.

To _____:

You are hereby commanded to appear in the United States District Court for the _____ District of _____ at the Courthouse, in the city of _____, on the _____ day of _____, 19__, at 10 o'clock A.M. to testify in the case of *United States v. John Doe* and bring with you _____

This subpoena is issued upon application of the (United States) (defendant).

By _____, Clerk.
 _____, Deputy Clerk.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 22.—WARRANT FOR ARREST OF WITNESS

In the United States District Court for the _____ District of
 _____, _____ Division.

_____ }
 v. _____ } No. _____
 _____ }

To _____:

You are hereby commanded to arrest John Doe and bring him forthwith before the District Court for the _____ District of _____ in the city of _____, for the reason that he willfully failed to appear after having been served with subpoena to appear at the trial of the case of *United States v. Roe* on the _____ day of _____, 19...

You are further commanded to detain him in your custody until he is discharged by the Court.

Upon order of Honorable _____, United States District Judge at _____ this _____ day of _____, 19...

By _____, Clerk.
 _____, Deputy Clerk.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 23.—MOTION FOR NEW TRIAL

In the United States District Court for the _____ District of
 _____, _____ Division.

UNITED STATES OF AMERICA }
 v. _____ } No. _____
 JOHN DOE }

The defendant moves the court to grant him a new trial for the following reasons:

1. The court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The court erred in sustaining objections to questions addressed to the witness Richard Roe.
5. The court erred in admitting testimony of the witness Richard Roe to which objections were made.

6. The court erred in charging the jury and in refusing to charge the jury as requested.

7. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances: the attorney for the government stated in his argument that the defendant had not taken the witness stand and that the defendant had been convicted of crime.

8. The court erred in denying the defendant's motion for a mistrial.

-----,
Attorney for Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 24.—MOTION IN ARREST OF JUDGMENT

In the United States District Court for the ----- District
of -----, ----- Division.

UNITED STATES OF AMERICA	} No. -----
v.	
JOHN DOE	

The defendant moves the court to arrest the judgment for the following reasons:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. This court is without jurisdiction of the offense, in that the offense if any was not committed in this district.

-----,
Attorney for Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 25.—JUDGMENT AND COMMITMENT

In the United States District Court for the ----- District
of -----, ----- Division.

UNITED STATES OF AMERICA	} No. -----
v.	

Judgment and Commitment

On this ----- day of -----, 19--, came the attorney for the government and the defendant appeared in person and¹

It is Adjudged that the defendant has been convicted upon his plea of² ----- of the offense of ----- as charged³ -----; and the court having asked the

¹ Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

² Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or

(4) "nolo contendere," as the case may be.

³ Insert "in count(s) number -----" if required.

defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ⁴ -----

It is Adjudged that ⁵ -----

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

-----,
United States District Judge.

The Court recommends commitment to: ⁶ -----

-----,
Clerk.

[Endorsemen[†]]

Return

I have executed the within Judgment and Commitment as follows:

Defendant delivered on ----- to -----

Defendant noted appeal on -----

Defendant released on -----

Defendant elected, on -----, not to commence service of the sentence.

Defendant's appeal determined on -----

Defendant delivered on ----- to -----
at -----, the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

-----,
United States Marshal.

⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of fine or fine and costs, or until he is otherwise discharged as provided by law.

⁵ Enter any order with respect to suspension and probation.

⁶ For use of Court wishing to recommend a particular institution.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

[Form 26.—NOTICE OF APPEAL]

(Abrogated Dec. 4, 1967, eff. July 1, 1968.)

[Form 27.—STATEMENT OF DOCKET ENTRIES]

(Abrogated Dec. 4, 1967, eff. July 1, 1968.)

○

JUVENILE OFFENDER
(Under age 18)

DISPOSITION BEFORE ADJUDICATION
(Applicable to any offender
under age 21) (5001)

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

OTHER APPLICABLE PROCEDURES

If the juvenile refuses to consent to FJDA proceedings or, notwithstanding his consent, the U. S. attorney secures the authorization of the Attorney General and proceeds against the juvenile as an adult, the case may be disposed of under provisions of Y.C.A. or under regular criminal procedure.

FEDERAL JUVENILE DELINQUENCY ACT

With consent of juvenile.
Proceedings by information
(5031-5033)

Disposition: (5034)

1. Probation
2. Commitment to custody of Attorney General
 - a. To age 21.
 - b. For definite term

(Neither commitment to exceed majority nor maximum allowable under adult procedure.)

S T U D Y

M E N T A L C O M P E T E N C Y
P R O C E D U R E S

(Not applicable to Juvenile Offenders)

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

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.

DISPOSITION DEFERRED

Court orders study and report
within 60 days. (5034)

1. Discharge to local authorities.
 2. Probation
 3. Commitment to custody of A.G.
 - a. To age 21
 - b. For definite term
- (Neither commitment to exceed majority nor maximum allowable under adult procedure.)

SENTENCING ALTERN

ADULT 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)

FEDERAL JUVENILE DELINQUENCY ACT

With consent of juvenile.
Proceedings by information
(5031-5033)

Disposition: (5034)

1. Probation
2. Commitment to custody of Attorney General
 - a. To age 21.
 - b. For definite term

(Neither commitment to exceed majority nor maximum allowable under adult procedure.)

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.

1. Def...
with...
a.
b.
c.

2. Inde...
a.

b.

3. Fine

S T U D Y

A N D

O B S E R V A T I O N

DISPOSITION DEFERRED

Court orders study and report within 60 days. (5034)

1. Discharge to local authorities.
 2. Probation
 3. Commitment to custody of A.G.
 - a. To age 21
 - b. For definite term
- (Neither commitment to exceed majority nor maximum allowable under adult procedure.)

DISPOSITION DEFERRED

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

- Defendant returned to court for;
1. Probation
 2. Indeterminate Y.C.A.
 3. Definite or indeterminate Commitment under any applicable provision.

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ALTERNATIVES OF U.S. COURTS

ADULT OFFENDER
(Any age)

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. 848)
2. One-year probation without entry of conviction for first time possessors of controlled substances, with provisions for dismissal of proceedings if successful also expungement of record for those under 21 at time of offense.
3. Community supervision for addicts as condition of regular probation or parole. U.S.C. 3651, 4203, as amended by P.L. 293)
4. More severe penalties for person engaged in continuing criminal enterprise plus forfeiture of profits and property used. U.S.C. 848)
5. Dangerous special drug offender sentencing procedures include harsher penalties and special sentencing hearing. (21 U.S.C. 849)
6. Certain offenders can be sentenced to commitment in lieu of prosecution under (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)

ON

PROCEDURES

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)

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)

ADULT OFFENDER
(Any age)

NARCOTICS PROCEDURE

- Special parole terms of 2 - 6 year minimum built into sentence. (21 U.S.C. 841)
- 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.
- Community supervision for addicts as condition of regular probation or parole. (18 U.S.C. 3651, 4203, as amended by P.L. 92-293)
- More severe penalties for person engaged in a continuing criminal enterprise plus forfeiture of profits and property used. (21 U.S.C. 848)

Dangerous special drug offender sentencing procedures include harsher penalties after special sentencing hearing. (21 U.S.C. 849)

Certain offenders can be sentenced to civil commitment in lieu of prosecution under NARA. (28 U.S.C. 2901-6)

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)

DISPOSITION DEFERRED (NARA)

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

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)

Court may impose any other authorized sentence. (Ibid)

Provision for conditional release under supervision after 6 months treatment. (18 U.S.C. 4254-5)

SENTENCING PHILOSOPHY

By Walter E. Hoffman
Chief Judge, United States District Court,
Eastern District of Virginia

As Revised December 30, 1969

SENTENCING PHILOSOPHY

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SENTENCING PHILOSOPHY

Chief Judge Walter E. Hoffman
Eastern District of Virginia

The problems presented in sentencing, often the subject of sentencing institutes convened for two or three days, have also been assigned to the 1970 seminars for new judges solely because of the importance of demonstrating to our new colleagues at the earliest possible moment the vital aspects which concern us all as we approach the awesome task of saying "what next" after affording the criminal defendant the right of allocution. It is at that point we realize that the judge must have decided in his own mind what disposition he will make of the case and, more important, chart the course of the defendant's life for a period of time.

Some few of the new judges have had prior experience on the state court bench. If so, you already know of the problems in sentencing. Nevertheless, you must realize by now 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. Save and except those who have served as United States Attorneys or state court 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 that borderline decision as to 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 will become more unified as the years roll on and, in the final analysis, will defeat the criticism directed against federal judges on the issue of disparity.

THE PROBLEM OF DISPARITY

In preparing a similar program for the 1968 seminars, 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., Sections 4208(a)(2) and (b) have done much to correct the gross inequities we saw earlier."

The foregoing statement, 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 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 1012 cases tried for this offense during fiscal 1969, nearly double the number of cases tried in fiscal 1965. While the sentences ranged from one to twenty-five years, the average sentence was approximately twelve 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 section 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 will 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 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. 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 have 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 has been approved by a one or two vote margin, but at the last 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 such offenders, but only after referral to a diagnostic center. The principal difficulty with this definition lies in the ability to pinpoint 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 non-dangerous offenders, the Act recommends a maximum of five years,

including parole time. It is argued that not many non-dangerous offenders require commitment, save and except the repetitive criminal and white collar criminals 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 deemed inadequate to meet all situations involving the habitual non-dangerous 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.

When a defendant is received at a federal penal institution, the initial task is to attempt to identify the "dangerous offender." 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 prior institution 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 there is an apparent psychosis 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, 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 as the local psychiatrist would probably not be able to render such 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. This requires 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 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 "dangerousness." 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 an inherent problem 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 such a 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, yet 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.

As we know, 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; short-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, Milan, Petersburg, and Seagoville, where the optimum capacity is 550 or less at each institution. A new institution for juveniles is at Morgantown, West Virginia, and opened in November, 1968. At this latter institution there is an intensive research program contemplated.

Community treatment centers, or halfway houses as they are sometimes called, are relatively new adjuncts to the correctional program. They are viewed as a valuable assist to selective individuals in their transition into the community. At the present time there are approximately 250 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. Legislation is also pending to provide for "live-in" centers where individuals, deemed inappropriate for total confinement, may be directed to live as a condition of probation and permitted to work at their normal legitimate occupation or be otherwise assigned compulsory labor. The problem here is that such centers are not justified except in larger cities and, in addition, state and federal cooperation is sorely needed to develop successful programs.

The contract work-release programs are also an innovation. A daily average of 500 federal offenders are participating.

It is true that programs of this nature give rise to other incidents and frequent escapes. Approximately

three of every ten individuals either escape, attempt to escape, or commit a crime. Nevertheless, the other seven successfully complete the program and are then released on parole -- generally with the job where they have already been working.

The employment placement officers offer services in nearly every major city. An estimate of 8,000 job placements per calendar year is deemed to be approximately correct.

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 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

Judges should be cautious in sentencing individuals to periods of approximately six months. §4161 provides that "if the sentence is not less than six months and not more than one year," the five days per month good-time computation is appropriate. The Board of Parole and Bureau of Prisons are not in agreement as to a sentence of 181 or 182 days. The Board treats a month as 30 days (18 U.S.C. § 4202); the Bureau does not. If judges desire to make the good-time provisions applicable, they should impose a sentence of at least six months, or at least 183 days. If judges do not desire to make the good-time allowance applicable, they should impose a sentence of not more than 179 days.

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.

One exception exists as to the foregoing. Under Executive Order 11325, persons sentenced for violations of the Universal Military Training and Service Act may apply and be considered for parole at any time, but the parole must be to regular or noncombatant service or to

alternative civilian work, and the type of service must be in accordance with the defendant's pre-conviction classification by his draft board. Thus, a defendant classified as 1-A must be paroled to regular military service; a 1-A-0 classification permits parole to non-combatant service. It follows that the draft evaders and conscientious objectors hold the "key" to their release. From experience, where this type of offender is sentenced to a term of four or five years, under 4208(a)(2), the offender is generally released on parole, without other restriction, after serving 15 months.

Some judges have adopted the practice, with draft evaders and conscientious objectors, to place the defendant on probation and, as a condition of probation, require the defendant to report to his draft board for military duty or, as to conscientious objectors, to require them to report for civilian work as previously ordered. The theory back of this arrangement is grounded upon the Jehovah Witness faith which declines to recognize the Universal Military Training and Service Act, but does acknowledge the particular order of the judge. As the draft law is undoubtedly the most compelling of all laws calling for deterrence, the majority of the judges do not feel that devices described above should be generally adopted. Certainly it has no merit in cases other than Jehovah Witness defendants.

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 will now be 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. 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. Even the Policy Statement referred to above runs counter to some of the decisions and it remains to be seen whether the courts will accept the same in its entirety. As the Policy Statement is liberally interpreted in favor of the inmate, we can only hope that the courts will approve it as uniformity is assuredly necessary in this field. 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.

SENTENCING ALTERNATIVES --
SOME SUGGESTIONS AND PITFALLS

(1) Juvenile Delinquency Act
 (18 U.S.C. §§ 5031-5037)

It should be noted that 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 is the age of the person at the time he commits the crime which is controlling. It is not the age at the time he is actually tried, or at the time the criminal information is filed.

The "juvenile" -- unless the offense is punishable by death or life imprisonment -- has an absolute right to be proceeded against under the Juvenile Delinquency Act, unless the Attorney General has directed otherwise. Thus, an indictment against a "juvenile" who commits a crime, not punishable by death or life imprisonment, is subject to a dismissal unless the Attorney General has expressly directed that he be proceeded against as an adult. It is the practice of the Attorney General not to issue such a direction except in the most serious cases.

We all know that the "juvenile" must consent to being proceeded against under the Juvenile Delinquency Act. This requires a full explanation of his rights and the consequences of signing the requisite consent form, including the fact that the execution of the consent form is tantamount to a waiver of trial by jury. Recent decisions have expressed some doubt as to the constitutionality of requiring a "juvenile" to abandon his right to trial by jury, but we believe that the right exists as the "juvenile" need not elect to be tried under the Juvenile Delinquency Act. See: Nieves v. United States, 280 F. Supp. 994 (S.D.N.Y., March 5, 1968); United States v. Jackson, 390 U.S. 570; United States v. Costanzo, 395 F. 2d 441 (4 Cir., 1968), cert. den. 393 U.S. 883. If a person can knowingly and intelligently waive 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 form are properly explained to him

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 (1967), 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, supra.

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. § 5034. The report must be made within sixty 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.

While presumably a "juvenile" may knowingly and intelligently waive his right to counsel, it invites a post-conviction attack to permit a juvenile not represented by counsel to be tried without the services of an attorney.

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. 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 as to 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.

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" as contained in § 5010(b) manifestly demonstrate 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).

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 same. These major defects, unless corrected by appropriate amendment, may tend to defeat the purpose of the Act. For example:

(1) The 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 Correction 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. § 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.

§ 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 an 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. § 5034. 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.

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 longshoremen 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. When the split-sentence statute

was initially enacted, it was thought that good time allowances could not be granted, but in later years this policy was reversed. 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 not 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 twelve 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 their mandatory release dates.

(6) Probation
(18 U.S.C. § 3651)

Slightly 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 twelve 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. New York, 337 U.S. 241, 248 (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 has temporarily withstood the attack upon Rule 32(c), Federal Rules of Criminal Procedure. When the rule was liberalized effective July 1, 1966, the Advisory Committee notes stated, in part, as follows:

"It is hoped the courts will make increasing use of their discretion to disclose so that defendants generally may be given full opportunity to rebut or explain facts in presentence reports which will be material factors in determining sentences."

These words of warning should be sufficient. It is rather apparent that, unless judges make broader use of their discretionary power of disclosure, at least in part, we will eventually reach the point where the Supreme Court will reverse its prior decisions in Williams v. New York, 337 U.S. 241 (1949), and Williams v. Oklahoma, 358 U.S. 576 (1959). Encroachments are already being made upon the right of the defendant to be advised as to the contents of certain portions of the report. Baker v. United States, 388 F. 2d 931 (4 Cir., 1968). In Verdugo v. United States, 402 F. 2d 599, 608-9 (9 Cir., 1968), the court reserved the question of mandatory disclosure, but intimated rather definitely that there should be access to presentence reports. The concurring opinion of Circuit Judge Browning goes further and holds that due process "may require some form of disclosure." In United States v. Holder, 412 F. 2d 212, 215 (2 Cir., 1969), it is said that "it would have been preferable for the court to have revealed its contents to defendant," but it was not reversible error to refuse to do so. Circuit Judge Blackmun in United States v. Gross, 416 F. 2d 1205, 1214 (8 Cir., 1969), pointed out, quite correctly we think, that Rule 32(c) is permissive. Nevertheless, the trend is definitely leaning toward some form of mandatory disclosure.

The Advisory Committee on Criminal Rules now has for further consideration the matter of compulsory disclosure of presentence reports, subject to certain safeguards. There is every reason to believe that changes will be made in Rule 32(c) within the foreseeable future, and it is better that these modifications be forthcoming through a rule than by judicial decisions due to the many problems which arise. Trial judges already accustomed to permitting voluntary disclosure of presentence reports have encountered no insurmountable difficulties in providing safeguards and protecting the probation system.

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, the probationary period is stayed pending appeal under 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. 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 as to 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. § 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. A condition that a defendant donate a pint of blood is void as invading 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 (9 Cir., 1963), cert. den. 376 U.S. 911; 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.

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 reputable 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. United States v. Taylor, 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. If the offender was a juvenile at the time of the commission of the offense, he must be proceeded against under the Juvenile Delinquency Act unless the Attorney General expressly directs to the contrary.

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.

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. These problems are now the subject of study by the Federal Judicial Center pursuant to the request of the Judicial Conference of the United States. 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, in order to avoid the issue of speedy trial and perhaps other constitutional questions. 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 U.S. 569 (4 Cir., 1967), holding that the original statute, 18 U.S.C. § 76, which included the words "with intent to defraud", had been effectively amended by the revision and codification in 1948, together with the reviser'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 and Chicago 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, will undoubtedly 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 § 4203 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 pre-sentence 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 recent case involving two stock brokers 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. Under 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; 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. Greenaus, 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.

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.

DETAINERS - RIGHT TO SPEEDY TRIALSentencing 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. In Smith v. Hooey, 393 U. S. 374 (1969), the Supreme Court held, in effect, 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. 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, and the burden rests upon the demanding jurisdiction, to show lack of prejudice. Pitts v. North Carolina, 395 F. 2d 182 (4 Cir., 1968), and authorities therein cited. At the same time these requests for a speedy trial become 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 automatically release the detainer 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 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 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.

The success of NARA cannot be predicted at such an early date. Experience thus far indicates that persons confronted with a criminal charge or already convicted are agreeable to treatment under NARA. However, with respect to the voluntary commitment proceeding, reports are coming back to the court that the patient, although an addict, is uncooperative and will not be rehabilitated through treatment. 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 a prior session of this seminar. 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 of 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.

CONCLUSION

The author of this article on Sentencing Philosophy 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 sixteen 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.

The Federal Bureau of Prisons Treatment Program for Narcotic Addicts

By DAVID M. PETERSEN, PH.D., RICHARD M. YARVIS, M.D., AND GERALD M. FARKAS*

FOLLOWING PASSAGE of the Narcotic Addict Rehabilitation Act (NARA) of 1966 by the 89th Congress, responsibility for the evaluation and treatment of selected narcotic addicts convicted of federal offenses (Title II of the Act) was delegated to the Attorney General.¹ The Bureau of Prisons of the Department of Justice was charged with the responsibility for implementing the Act and developing a treatment program.

The purpose of this article is to discuss the general philosophy and overall organization of the treatment program and to provide federal and state courts, probation authorities, federal state, and local administrators, and professionals working in the area of narcotics addiction with information about the program.

Previous Treatment of Prisoner Addicts

Prior to the passage of the Narcotic Addict Rehabilitation Act of 1966, federal prisoner addicts who required treatment for addiction were sent either to the U.S. Public Health Service Hospital at Lexington, Kentucky, or Fort Worth, Texas.² O'Donnell reports in 1962 that federal prisoner addicts represented about half of the total patient population at the Lexington hospital on any given day.³ Only a small percentage of the total federal prisoner addict population was at any given time selected for commitment to U.S. Public Health Service hospitals. Most federal prisoner addicts were committed to one of 27 federal correctional facilities for any of several reasons: failure of the staff to recognize the addiction; refusal of treatment by an inmate; and ineligibility based on security restrictions related to the nature of the offense or to prior criminal record. Inmates deemed insufficiently motivated for treatment were excluded.

In the main, the federal prisoner addict committed to one of the Bureau's institutions received no special treatment for his drug problem. No

special programs existed either to identify or treat addicts committed to federal custody.⁴ Withdrawal problems were rarely encountered since most of those persons committed to federal institutions usually had been withdrawn from drugs prior to arrival. Although there were no specific addiction treatment programs in the federal institutions, addicts were, as all federal prisoners are, eligible for the general treatment programs provided by the various institutions, including group therapy, long-term individual therapy, and vocational and educational training programs. But because of the inadequate staff-to-inmate ratios, resources could not meet overall treatment needs. Therefore, no specialized treatment program for narcotics addiction existed in the federal correctional system prior to the implementation of the Narcotic Addict Rehabilitation Act of 1966.

Treatment Units in the New Program

To provide direct services for selected narcotic addicts in the custody of the Attorney General, three institutions, initially, are receiving addicts. Each of these institutions is programmed to accept a maximum treatment population of 100 to 150. The institutions presently accepting addicts for treatment include the Federal Correctional Institution at Danbury, Connecticut (100 men from eastern areas), Terminal Island, California (100 men and 50 women from western areas), and the Federal Reformatory for Women at Alderson, West Virginia (100 women from eastern areas).

The NARA unit at Danbury began accepting patients on March 15, 1968, while the Terminal

¹ Public Law 89-793, 89th Congress, H.R. 9167, November 8, 1966.

² The treatment programs at the U.S. Public Health Service hospitals at Lexington and Ft. Worth have previously been described. See James V. Lowry, "Hospital Treatment of the Narcotic Addict," *FEDERAL PROBATION*, December 1956, pp. 42-51; John A. O'Donnell, "The Lexington Program for Narcotic Addicts," *FEDERAL PROBATION*, March 1962, pp. 55-60; and Arthur K. Berliner, "The Helping Process in a Hospital for Narcotic Addicts," *FEDERAL PROBATION*, September 1962, pp. 57-62.

³ *Ibid.*, p. 55.

⁴ For example, during the fiscal year 1964, out of a total of 1,297 narcotic addict prisoners committed to federal institutions, 858 remained under the custody of the Bureau of Prisons and the remainder were sent to Ft. Worth and Lexington. During 1968 sentenced narcotic drug offenders confined in federal institutions made up 13.9 percent of the total inmate population.

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Island and Alderson units became operational in August of the same year. Unit staffing at each institution includes psychiatrists and psychologists, as well as social workers, correctional officers, medical technical assistants, and clerical personnel. The assistance of regular prison staff augments the staff of each NARA unit.

At present the Danbury unit is staffed by one psychiatrist, one psychologist, two social workers, four correctional counselors, one medical technical assistant, and clerical help. At Terminal Island the unit consists of one psychiatrist, one psychologist, three social workers, six correctional counselors, one medical technical assistant, and clerical help. The unit at Alderson includes one psychiatrist, two social workers, four correctional counselors, one medical technical assistant and clerical help.

The social worker-to-patient ratio at each unit institution is 1 to 50, and the correctional officer-to-patient ratio is 1 to 25 (considerably more favorable than usual ratios). All personnel assigned to the NARA treatment teams work exclusively within the NARA program, although psychiatrists and psychologists may provide some general consultation to their institutions. Each unit functions as a screening center for court referrals and also serves the function of a treatment unit.

Admission Policies

Not all addicted individuals are eligible for treatment in the NARA program. Under the provisions of the Act, a person is to be committed to the custody of the Attorney General for an examination to determine whether he is a narcotic addict and is likely to be rehabilitated through treatment. This examination is to be completed within 30 days.

To be eligible for treatment under the provisions of NARA, a person must be habitually addicted to narcotic drugs as defined in federal law by section 4731 of the Internal Revenue Code of 1954. This definition of narcotic drugs includes opium and opium derivatives, both synthetic and natural. The selection of patients for treatment in the program is, in part, also determined by statutory requirement. Persons *not* eligible for

treatment under the provisions of the NARA Act include:

(1) Those charged with a crime of violence,

(2) Those charged with unlawfully importing, selling, or conspiring to import or sell a narcotic drug unless the court determines that such sale was for the primary purpose of enabling the offender to obtain a narcotic drug which he requires for his personal use because of his addiction to such drug,

(3) Those against whom there is pending a prior charge of a felony which has not been finally determined,

(4) Those who have been convicted of a felony on two or more prior occasions, and

(5) Those who have been civilly committed under the Act because of narcotic addiction on three or more occasions.

Looking beyond statutory requirements, there remains a need for adequate criteria for patient selection and disposition. It is clearly wasteful to select patients for whom treatment bears no promise of success. Such patients consume program resources which could otherwise be utilized by others. Moreover, they can have deleterious effects on other patients adequately selected for a program. Prior research has not given us the tools with which to determine which patients are most likely to be benefitted by treatment programs, nor are we adequately able to match specific program elements to particular patient needs.⁵ Initially, individuals who are designated as addicted will be included in our treatment program except for the following:

(1) Those whose sentences are determined to be too short to encompass the necessary treatment program envisioned,

(2) Those whose physical or mental disability is such as to preclude their participation in a treatment program,

(3) Those whose necessary treatment needs are not available and cannot be obtained, and

(4) Those whose alien status would preclude their participation in an aftercare program.

Discretion in the determination of eligibility in these areas is left to the NARA staff at the examining institution. No attempt is made at this time to make selections based on criteria such as motivation, insight, and so on. All patients, except those excluded above, will be assumed to be equally treatable. Experience gathered from the administration of this program should help to establish specific criteria impor-

⁵ Promising research in differential treatment with juvenile and youth offenders utilizing typological approaches to differentiate inmates, staff, and correctional programs has been conducted by Marguerite Q. Warren, et al., *Interpersonal Maturity Classification: Juvenile Diagnosis and Treatment of Low, Middle and High Maturity Delinquents*, 1966 Edition, Community Treatment Project, California Youth Authority, Sacramento (Mimeographed); and Herbert C. Quay, "Personality and Delinquency," *Juvenile Delinquency: Research and Theory* (ed.) Herbert C. Quay (Princeton, N. J.: Van Nostrand, 1965), pp. 139-169.

tant to the selection of persons who will benefit most from treatment.

Length of Treatment

Under the provisions of the Narcotic Addict Rehabilitation Act, commitment for treatment of addiction provides that a prisoner may be kept under treatment for the full length of his sentence. However, adequate measurement of treatment success will generally require a period of posttreatment observation which will be facilitated where the period of treatment is shorter than the sentence. We estimate that the institutional phase of treatment will require about 1 year to 18 months. A minimum of 6 months of institutional care is required by the statute. Release under supervision to the community requires an assessment of readiness by the institutional staff and approval of this recommendation by the U.S. Board of Parole.

Criteria governing release of the patient from the institution must also be developed. Readiness for release from the institutional setting will reflect staff assessments of each patient's progress according to the following tentative guidelines:

- (1) Day-to-day institutional function,
- (2) Progress within the treatment program,
- (3) Freedom from addiction,
- (4) The development of an adequate aftercare plan, and
- (5) The subjective evaluations by the patient of his readiness for release, as well as the evaluation of staff and fellow patients.

These parameters will be studied to evaluate their real effectiveness in assessing readiness and will be modified and given weighted emphasis as future experience dictates. The period necessary for adequate postinstitutional treatment (aftercare) cannot yet be estimated accurately. By law, such care must cease at the time of expiration of sentence. Ideally, it will cease earlier to allow a period of posttreatment observation.

The Treatment Program

The first phase of the treatment program at the institution begins with the evaluation period. Upon determination that treatment for withdrawal is unnecessary,⁶ the patient is placed in an Admission and Orientation Unit. The time he will spend in this unit will vary from 2 weeks to a

month. Once in this unit, he is required to participate in the institutional A&O activities along with regular institutional commitments. During this time he is seen by the NARA staff social worker, psychologist, and psychiatrist for purposes of beginning compilation of information relating to his past and current life. This information will be used to assess his current treatment needs and also as research data. Recommendations to the court relating to the status of the addiction and the patient's suitability for treatment are prepared. At the same time, through a series of introductory lectures, the patient is familiarized with the NARA program, its aims, and is objectives.

Following release from the A&O unit, each patient is housed within a special dormitory group, an arrangement in which a number of NARA program patients live together among a larger group of nonprogram institutional commitments. During the remainder of the observation period, the patient participates in regular NARA group activities and is assigned to a temporary job pending the court's response to the recommendations of the evaluating staff. Patients found to be addicted and to be suitable for treatment begin treatment after the treatment program is formulated but prior to final court disposition.

The postevaluation treatment phase contains within it three program elements. The first of these is the involvement of the patient in the general institutional program. This aspect of treatment emphasizes vocational training as one of its major treatment thrust. The patient is assigned to a job that is consistent with his current ability to handle tasks. Of central importance to his treatment is the working relationship between the patient's work supervisor and members of the NARA staff. Continuous feedback from the job supervisor about the patient's progress allows the staff to effect changes and work out problems when necessary or suitable. As each patient's level of functioning improves, he may graduate to increasingly more sophisticated tasks until finally work-release programs, furloughs, and parole are employed in his treatment program. Programs of specialized vocational training will be employed within the institution and in conjunction with work release.

An important part of the general institutional program is in the area of education where major stress is placed on literacy and fluency in English. Attempts are made to provide education leading

⁶ Previous experience at the U.S. Public Health Service hospitals has indicated that withdrawal of prisoner patients is seldom a problem. It is not expected that significant numbers of our patients will require medical treatment for withdrawal. See O'Donnell, *op. cit.*, p. 56.

to a high school equivalency diploma, or at least improvement of the patient's educational level so that he can achieve his high school diploma following release under aftercare supervision.

All institutional facilities are available to each patient committed under the NARA. In addition to the specialized NARA staff, the patient has access to the regular hospital staff, including specialists in medicine and dentistry. Other facilities include recreational pursuits, religious activities, and special ongoing groups such as Alcoholics Anonymous and Addicts Anonymous.

The foregoing description of the treatment program is applicable to all NARA units. For convenience we shall later discuss the specialized treatment at the Danbury unit. Specialized treatment elements in the other two units parallel the Danbury program in scope but differ in some specifics.

The second major focus of the treatment program is the specialized treatment provided patients by NARA staff members. The patient is placed in an ongoing psychotherapy group following evaluation. These groups meet twice weekly for 1½ hours. Each group has a maximum of 10 members. The groups meet once weekly without a therapist. The focus of group interaction and inquiry is on the nature of the maladaptive behavior of the group members.

Once placed in a group a patient generally is not transferred to another group. Provision for individual therapy can be made if necessary, but usually will not be employed. The possibility of individual psychotherapy is not totally excluded, but is not given special emphasis. However, where a patient feels that he has something of concern to him that he does not believe he can discuss in the group, he may seek a member of the staff if his dormitory group approves this measure. In the main, group psychotherapy techniques are emphasized.

The third major thrust in the overall treatment program is the activities centered around the patient's dormitory group. The dormitory group is arranged to confront the patient with a situation or hierarchy of ascending responsibilities and status. This includes such aspects of group life as task assignment, distribution of information, liaison with staff, and therapeutic assistant functions. Group living stresses the need of each

group member to be concerned about all other group members and to be mutually responsible for all group behavior. Patients must not only behave in an acceptable manner, but also are expected to feel responsible for the behavior and progress of others.

On arrival at the institution, each new patient is greeted by those group members responsible for the greeting task and is assigned to a more senior member of the group who will function to help acquaint the new patient with the procedures and values of the group and to act generally in a "big brother" capacity. As a new patient progresses through the program, he gradually assumes similar responsibilities for other newly arriving patients.

Each group holds meetings 7 days weekly. Meetings include encounters similar to those employed at Synanon meetings,⁷ group meetings to discuss group business, and seminars. The latter are of three general types:

(1) Seminars dealing with the outside world which include such things as discussions of news, speeches by guest speakers, and so on,

(2) Debates and public speaking exercises, both prepared and extemporaneous, and

(3) Socialization seminars in which members are taught how to eat, dress for a job, and how to behave in social situations.

Group meetings are also held which include all NARA patients and all NARA staff. These meetings are generally concerned with the passage of information from staff to the group (staff policy announcements), from patients to staff, as well as exchanges of information between patients. The meetings are generally held weekly.

The treatment program is not a single program for all patients. Rather, there are a number of possible programs to meet the various needs of patients. The determination of which program a patient will follow depends partly on his needs, partly on his desire to participate in a program, and partly on the availability of resources.

Aftercare

After release from the institutional phase of treatment, the patient is provided with any additional treatment he will require in the community. Separation of aftercare from other aspects of treatment reflects the tremendous importance of aftercare in the total treatment program. Aftercare remains a key element upon which the treatment program is based. To be successful

⁷ Lewis Yablonsky, *The Tunnel Back: Synanon* (New York: The Macmillan Co., 1965); and Rita Volkman and Donald R. Cressey, "Differential Association and the Rehabilitation of Drug Addicts," *American Journal of Sociology*, September 1963, pp. 129-142.

the program must possess the following qualities:

- (1) Intensity of service,
- (2) Continuity of service linking institutional and aftercare phases closely together, and
- (3) Individuality of service, that is, an aftercare arrangement capable of encouraging and nurturing individual relationships between counselor and patient.

The Attorney General has delegated to the Bureau of Prisons the authority to contract with community agencies and private individuals to provide specialized aftercare treatment services for those released to community supervision. The scope of these aftercare services includes counseling, group and individual psychotherapy, self-help ex-addict coordinated groups, emergency medical care for conditions arising from or related to addiction, urine testing surveillance, temporary housing assistance, and transportation, and where deemed appropriate, vocational and educational training.

At the present time all NARA patients released from the Bureau's institutions to community supervision are supervised by the Federal Probation Service. This plan calls for the supervision of patients by the probation officers, supplemented by whatever corrective counseling and other specialized services are needed by the patient and are available in the community. The responsibility for locating and evaluating potential participating aftercare agencies is shared by the Bureau of Prisons, the Board of Parole, and federal probation officers.

Since released patients are under the jurisdiction of the Board of Parole, the probation officer as the Attorney General's agent in matters pertaining to parole has responsibility for liaison with the agencies with whom contracts have been made and for determining that all of the conditions of release are met. The probation officer is the key person in the implementation of the aftercare program. Both he and members of the contract agency staff work as a team to achieve the congressional mandate for supervised aftercare.

The probation officers involved in this program are using different approaches to implement aftercare. As one example, the Los Angeles probation office is using a treatment team approach augmented by consultation services from the University of Southern California Institute of Psychiatry and Law. The team has six members,

four of whom are probation officers. One probation officer conducts individual and group counseling for Title II releasees. This is his sole responsibility as an officer. He is assisted by a second probation officer who, in addition to his regular caseload, has the administrative responsibility for these cases and sees to it that all of the conditions of release are met. A third probation officer assumes the dual role of research consultant and family counselor. A fourth officer is a trained psychometrist. Additional members of the team include a psychiatrist and a Bureau of Prisons employment placement officer.

Each case received is assigned by the treatment team to one of four treatment groups, depending on the type and intensity of service needed. As the program progresses, comparative studies will be made to determine the effects of treatment.

Need for Research

There have been no definitive studies to date that have provided satisfactory answers why some addicts are successfully treated while with others treatment fails. For this reason, the Bureau of Prisons program includes extensive systematic research to acquire "hard" data about all aspects of addiction. Present data about addiction are incomplete and are based primarily on clinical impressions and inadequately controlled studies. The research plans are designed to provide information about the addict group in the custody of the Bureau of Prisons which can be considered a controlled study group within which hypotheses and assumptions about all aspects of addiction can be evaluated. Efforts will be made to develop profiles of addict patients, to develop a typology based on such profiles, and to attempt to identify social, psychological, cultural, and situational factors which influence the genesis of the addictive process. Each treatment unit will provide an adequate setting within which to evaluate treatment approaches to addiction.

As indicated above, differences in specialized treatment elements have been built into each NARA unit in the hope of isolating and identifying effective treatment approaches. The research protocol will attempt to measure, for example, which forms of institutional and aftercare treatment will be most effective with different kinds of patients. There are limited data to suggest that supervision of patients after release produces lower relapse rates than does release with-

out supervision.⁸ However, what *kinds* of after-care supervision and treatment work best with narcotic addicts largely remain unresearched. To provide basic data about drug addiction it is believed necessary that research proceed concomitantly with the ongoing treatment program. Certain decisions regarding treatment have been based at this stage on educated guesses. It is anticipated that information from the research thrust of the program will provide more reliable data on which to base program modifications.

Varying definitions of addiction will influence estimates of ultimate success. Dole and Nyswanger measure success in terms of social performance, Lindesmith in terms of disappear-

ance of feelings of craving, and so on.⁹ Abstinence from drugs as a measure of successful treatment must be employed with care. A person who used drugs during the first 2 weeks after release, but never thereafter, would be reflected as having failed in treatment if total abstinence is the sole measure of success. The pattern of abstinence and drug use, then, is the more fruitful area of exploration. Abstinence alone represents only one possible measure of success and not necessarily the best one at that. If the individual remains abstinent, but at the same time makes no adequate marital or job adjustment and continues to engage in criminal activity, we have accomplished little. If addiction is replaced by incapacitating psychiatric symptomatology, we have likewise gained nothing. With this in mind, community adjustment, internal adjustment, and abstinence from narcotics (measured along a continuum) will be considered in the evaluation of treatment outcome.

⁸ Michael J. Pescor, "Follow-Up Study of Treated Narcotic Drug Addicts," Public Health Reports, Supplement No. 170, 1943, and Meyer H. Diskind, "New Horizons in the Treatment of Narcotic Addiction," FEDERAL PROBATION, December 1960, pp. 55-63.

⁹ V. P. Dole and M. Nyswanger, "A Medical Treatment for Diacetylmorphine (heroin) Addiction," *Journal of American Medical Association*, August 1965, pp. 646-650; and A. R. Lindesmith, *Opiate Addiction* (Bloomington, Ind.: Principia Press, 1947), Pp 46.

New Developments in the Federal Bureau of Prisons Addict Treatment Program

BY GERALD M. FARKAS, DAVID M. PETERSEN, PH.D., AND NORMAN I. BARR, M.D.*

PURSUANT to passage of the Narcotic Addict Rehabilitation Act (NARA) of 1966, responsibility for treatment of federal prisoner addicts was placed with the Bureau of Prisons of the U.S. Department of Justice. The general philosophy and organization of the NARA treatment program for narcotic addicts was presented in the June 1969 issue of *FEDERAL PROBATION*.¹ The purpose of this article is to report on the current status of the program.

As of July 31, 1970, the existing NARA units were located at Alderson, West Virginia (100 females), Danbury, Connecticut (100 males), Milan, Michigan (50 males), and Terminal Island, California (100 males and 50 females). The newest unit at Milan was officially opened in November 1969. The three original NARA units have been accepting patients since 1968. Expansion plans were completed during the summer of 1970 to include the doubling of the present patient capacity at Danbury. There are also plans for a new unit at La Tuna, Texas (100 males) in the near future. Thus, the overall patient capacity will increase from 350 in 1968 to 600 in 1970 (450 men and 150 women). The present inmate population as of July 31, 1970, included 312 patients in treatment and 69 study cases submitted by the courts for consideration to determine if they were eligible for treatment in the NARA program.

The programmed staff-patient ratio has remained essentially unchanged since the inception of the program in 1968. The caseworker-patient ratio remains at 1 to 50 and the correctional officer-patient ratio is 1 to 25. The correctional institutions at Terminal Island, California, and La Tuna, Texas, are directed by Ph.D. psychologists, that at Milan, Michigan, by a social worker, and the institutions at Alderson, West Virginia, and Danbury, Connecticut, by Public Health Service

psychiatrists. This staffing pattern represents a departure from the original philosophy of using only psychiatrists as program directors.

During the first year of the NARA program living arrangements within the institutions were determined locally. However, the advantages of patients living together in their own dormitories proved so effective at Terminal Island, that Milan and La Tuna were both planned to open with the concept of the NARA living unit as part of the total treatment program. Danbury and Alderson converted to the dormitory arrangement in the Spring of 1970. The major advantage of the NARA patients living together is the extension of the treatment concept to a 24-hour day. Although this is not specifically patterned after Synanon, it nevertheless repeats one of its most successful contributions to the treatment of drug addiction, namely community living.²

A major emphasis of the NARA treatment program is directed toward the development of improved socialization among patients. The primary technique utilized to this end is the development of a comprehensive therapeutic community.³ All units have structured their program to include elements of this treatment approach. Group encounter is the essential tool, and emphasis is on the here-and-now. Attention is focused upon behavior rather than on thoughts and feelings. It is the patient's behavior which is ultimately responsible for his becoming addicted and engaging in criminal activity. Also, his behavior is most accessible to self-control.

Beyond the above general directions, each NARA unit has developed its own specific treatment modality. We turn now to some brief highlights of the four established programs at Alderson, Danbury, Terminal Island, and Milan.

Description of Institution Programs

Alderson.—The therapeutic community at Al-

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¹ David M. Petersen, Richard M. Yarvis, and Gerald M. Farkas, "The Federal Bureau of Prisons Treatment Program for Narcotic Addicts," *FEDERAL PROBATION*, June 1969, pp. 35-40.

² Lewis Yablonsky, *The Tunnel Back: Synanon*. New York: The MacMillan Co., 1965. Also see "The Anticriminal Society: Synanon," *FEDERAL PROBATION*, September 1962.

³ Maxwell Jones, *The Therapeutic Community: A New Treatment Method in Psychiatry*. New York: Basic Books, 1953.

derson contains three basic components: the daily community life, the daily community meeting, and the committee structure. The dormitory housing arrangement (daily community life) fosters interaction between members of therapy groups, committees, and community members. Interactions between staff and patients also are emphasized. Moreover, the traditional power structure and hierarchy of the correctional setting have been discarded and replaced by this system of small groups, committees, and community meetings. The attempt is to create a new social system which provides for the development of individual responsibility and initiative among the addict-patients.

The daily community meeting is held for 1 hour, five times a week, and involves the total community, including staff. Moreover, every patient is required to participate weekly in at least one ongoing therapy group. Individual counseling is also available, but not specifically encouraged.

An important innovation is the use of the committee system for involvement of patients in the treatment program as well as in the decision-making process. This system has replaced the old structure which was composed only of professional staff. Committee structure is designed to conduct all business except discipline. All committees, except Programming, consist of five members, three of whom are patients. One patient serves as chairman to insure that patients will have substantial responsibility on the committees. Only the Programming Committee, which among other responsibilities makes recommendations for parole, is arranged so that professional staff can outvote the patient members (seven professional staff members and three patients). Patients head seven other committees having responsibility for upkeep of living quarters, coordinating special events, reviewing new admissions, room assignments, airing patient complaints, and coordination of community aftercare agency information.

Danbury.—The major focus of the treatment program is its relationship to Daytop Village, a narcotic addict self-help program modeled after Synanon. It is located at Seymour, Connecticut, about 20 miles from Danbury. Daytop sends two of its ex-addict staff members to Danbury four days a week to train selected patients in the Daytop technique and to help develop and implement

the therapeutic community. This core of trained patients is largely responsible for introducing the Daytop concept to the remaining members of the community. This model is used in the group interaction as well as in the living unit, and is modified only in the sense of adapting it to the correctional setting. Emphasis is placed upon positive behavior; the criminal role model is discouraged. The resocialization process is directed toward improving social maturity, work ability, and mental health among the communities' members. In order to facilitate staff involvement, various members of the professional treatment team participate in a weekly evening meeting at the Daytop facility.

Terminal Island.—A unique concept at this unit is the development of the "linker," an addict-patient who receives a 4-month, 14-hour-per-day intensive training program in therapeutic techniques. He then functions as a quasi-staff member and cotherapist who serves the primary role of linking relationships between staff and inmates.⁴ Linkers attend all NARA staff meetings, participate in therapy groups as assistant therapists, and assume minor administrative responsibilities. Upon completing the program and being granted parole, some NARA "graduates" have become ex-addict workers in the community.

The "primer" groups are another unique Terminal Island innovation. Nearly 50 percent of the patient population is Mexican-American. There is reluctance on the part of these patients to participate in verbally active groups. This is as much a result of the language barrier as of their cultural background which emphasizes suppression of feelings rather than their verbalization. The primer groups, which meet in the evenings, consist only of these Mexican-American patients on the theory that in a homogeneous group they can develop better verbal abilities.

Other valuable techniques include the use of a one-way mirror for observation of group therapy. Often, after one group has observed another, they will switch rooms and the second group will discuss what it observed in the first group's meeting, while simultaneously being watched by that group. The employment of videotape feedback therapy has been particularly useful in equalizing staff and patients as individuals during playback of the tape. This provides staff and patients with the opportunity to review their behavior and interactions with others. Another treatment tool is the marathon group. A marathon is a group therapy

⁴ For an excellent discussion of the use of nonprofessionals (inmates) as intermediaries between clients and professionals, see Hans Toch, "The Study of Man, The Convict as Researcher," *Trans-action*, September 1967, pp. 72-75.

session that is extended over a rather long period of time in which group pressure lowers the defenses of the participants and accelerates the therapeutic experience. Such groups are generally held on Saturdays for 8 to 12 hours, and have on occasion lasted 2 days.

Also important is the creation of a four-stage tier system among patients. New commitments enter at stage one and possess the fewest privileges, while stage four patients are the only ones recommended for parole and have the most responsibility. A patient can advance to a higher stage only if those already at that level recommend his advance. This is monitored by the professional staff. Finally, there is the Town Hall meeting, a weekly evening event in which the total NARA population meets to discuss issues of community interest.

Milan.—The theoretical basis for the program is derived from the concept of reality therapy.⁵ Involvement between staff and patients is emphasized, as is genuine concern by the former for the latter. Focus is on the patient's behavior, particularly the manner in which he assumes responsibility.

Utilizing crisis theory, which states that a person is more amenable to change during an acute crisis, and assuming that a patient's first day in prison is a crisis for him, the staff makes every effort to insure that he will be seen on his first day by his caseworker, his counselor, and at least one linker. All patients are required to join a "Quartet" soon after entering the Community. Quartets are composed of four members and function as a family unit. New commitments select Quartets with available openings, but the older members may invite into, or reject from, their group any new man. Once joining a Quartet, however, it becomes difficult administratively for him to leave. A close relationship is fostered between the group's members. Quartet's beds are arranged in groups of four, task-oriented assignments are often delegated to a Quartet, and the members may participate as a team within a larger group meeting.

Small therapy groups, called T-groups, are the basic interacting unit. Each group is composed of one staff person, one linker, and four pairs of patients from different Quartets. Thus, each T-group participant-patient has one member of his Quartet present. T-groups meet a minimum of

twice a week for 1½ hours. Group sanctions, or discipline, are utilized in several ways, including "bail," which the staff sets as the "price" that an inmate's Quartet or T-group must pay in order to secure his so-called "probation." This might include TV or commissary privileges, and can be forfeited by the group if it fails to help the patient maintain the requirements for his "probation." If the group refuses to put up the bail for a man, this may prove quite meaningful to him. Another disciplinary device involves weekend confinement in the control unit. This is a harsh penalty, but allows the individual to keep abreast of his midweek industrial, educational, and therapy responsibilities; and because the weekends are periods of leisure, segregation is particularly unpleasant though humane.

New Developments in Aftercare

Aftercare is a key element upon which the NARA program is based. Because of the built-in constraints of incarceration, the institutional phase of the program can prepare a patient only in part to function in the community. It is the community care phase that determines the success or failure of the program. Here in the "real world," he must be able to withstand the pressures of community living without the type of support provided by the use of narcotics.

Continuity between incare and aftercare must be maintained. The inmate does not change instantly when he begins parole, and for incare and aftercare not to work in close harmony would be detrimental to the goals of the program as well as to the patient. Viewing the addict's rehabilitation program with perspective, incare and aftercare are merely separate divisions of the same whole. A close working relationship has been developed between the Bureau of Prisons, the Board of Parole, and the Federal Probation Service. As a result, rehabilitation efforts have been directed to the whole person, a major stride toward bridging the gap between the incare treatment and aftercare.

Orientation Meetings

It is important that persons who provide aftercare services or who serve as community treatment resources be familiar with the philosophies, operations, and the practices of the correctional programs. The most desirable place to conduct this orientation is in the institutional setting where the NARA programs can be observed. In-

⁵ William Glasser, *Reality Therapy, A New Approach to Psychiatry*. New York: Harper and Row, 1965.

visitations to observe and participate in these programs have been extended to staff from the Parole Board, the Federal Probation Service, and contract aftercare agencies. Ex-addict workers and graduates from the incare program who are successfully participating in aftercare treatment have also been invited to participate.

The program is divided into two parts. The initial visit is for orientation to both the general institution program and to the NARA program. This visit is for 3 days and includes the following areas:

1. Philosophy and operation of the NARA program;
2. Observation and participation in patient treatment sessions and NARA staff meetings;
3. Discussion and implementation of procedures designed to effect better communication between institution NARA staff, probation officers, and aftercare agencies;
4. Discussion of specific cases and interviews of patients (individually or in groups) who will be released to the geographic area that the aftercare counselors and probation officers represent; and
5. Observation of Parole Board hearings and conferences with Parole Board members or examiners at their discretion.

The second visit and all subsequent visits serve as a followup to the first encounter. It is now presumed that the level of experience and knowledge of the NARA program has increased and the program emphasis is shifted from one of orientation to more direct involvement in the treatment program. Followup visits, therefore, include discussions of new programs and modifications of present programs. The major emphasis, however, is devoted to interviewing new commitments and those about to be released to communities that the visitors represent.

Aftercare Services

Since the inception of the program, NARA patients have been released to aftercare and parole supervision in over 30 states. More than 45 contracts have been made with community agencies to meet the postrelease needs of these cases. Contracts have been made with family service agencies, community mental health clinics, medical schools, ex-addict self-help agencies, and private individuals. Currently, the Bureau of Prisons is expanding its program to include contracts with several agencies in one community. Inasmuch as different agencies specialize in specific approaches

to treatment, in the larger metropolitan areas we are attempting to match the treatment needs of specific cases with agencies that can best meet their needs.

The services for which the Bureau of Prisons contracts are funded on a cost-reimbursement basis. In all aftercare contracts, the services of a professional counselor are funded to coordinate, in conjunction with the supervising probation officer, all of the patients' intra- and extra-agency treatment needs. In order to assure intensive individual care, the counselor is expected to handle personal, marital, family, educational, vocational, and emotional crisis situations as they arise. He is the primary resource of the aftercare agency and he is responsible for coordinating closely with the supervising probation officer and staffs of institutions where NARA units are located.

Vocational guidance, education, training, and job placement are integral parts of the aftercare program. In the main, the Bureau of Prisons uses its own institution resources for on-the-job and vocational training. Further, through the coordinated efforts of the institution staffs, aftercare counselors, probation officers, and Bureau of Prisons trained employment placement officers, local and state vocational rehabilitation and educational and employment programs are utilized for all eligible patients to the extent feasible. For those who present unique employment and educational problems, where state and local resources cannot adequately handle the particular needs of an individual, the aftercare agencies are provided with funds to secure the necessary services.

In addition to funding basic counseling and maintenance services, major emphasis has been placed on assisting contract agencies to develop self-help groups lead by ex-addicts. This departure from the traditional use of psychiatric counseling and psychotherapy has proven successful.

In order to continue the concept of the therapeutic community as established in the institutional phase of the program, the Bureau of Prisons has taken steps to use "graduates" from these programs and has arranged for their employment with some of the contract aftercare agencies. As the program progresses, it is further planned to utilize more of these individuals to assist in the development of other community self-help programs. By so using the talents and insights of its own graduates, NARA demonstrates its faith in their abilities to function as productive members of the community.

The ex-addict worker possesses communications expertise through identification with his peers. Furthermore, as a member of the aftercare treatment team, which includes the aftercare counselor and probation officer, he reduces the social distance between the professional and the client. He participates in prelease and postrelease planning, family counseling, and conducts self-help groups using similar treatment techniques that have been established during the incare phase of the program. It is not unusual for him to service clients who at one time were receiving treatment with him in the institution. Inasmuch as these self-help workers are also under parole supervision and must comply with the same conditions of release as their peers, this reduces the possibility of collusion.

In several contract aftercare agencies, different approaches to increase communications between the institution and the community phases of the program have been tried to further bridge the gap between the constraints of institutional programs and the realities of community living. For example, between the aftercare agency in San Antonio, Texas, and the NARA Unit at Terminal Island, a speaker telephone system has been developed making it possible for both the institution and the aftercare agency to conduct group counseling, family counseling, and therapy sessions via the telephone. This has also proved to be an effective method of handling family crisis situations. Plans have been developed by the San Antonio aftercare agency to form a long-distance group counseling program. In this plan, a group of patients at the institution at Terminal Island is able to participate in a group counseling situation that includes their wives in a similar group in San Antonio. Prerelease telephone conferences between the staff at the institution and the supervising probation officer and aftercare counselor have also been an effective way of developing realistic release plans.

In the District of Columbia a contract has been established with a private research corporation which has an ex-addict drug addiction specialist on its staff. This person has developed training programs in group process for the staffs and patients of the contract aftercare agencies. The training design is aimed specifically at confronting those negative attitudes present in the drug addict which reinforce his destructive behavior and facilitate his choice to remain a part of the drug subculture. This dynamic is called "attitudi-

nal skills training." The goal of the program is to train the staff to help the patients identify for themselves and others the attitude which leads to nonproductive or destructive behavior. Moreover, it teaches them how to confront and deal with attitudes in a socially acceptable manner. The training consists of two all-day meetings followed by seven followup sessions where both staff and patients participate. The sessions are organized as follows:

1. *Conceptual exploration* of the idea of the value system, the idea of attitudes, both positive and negative, the concept of personal responsibility for one's attitudes and the necessity to examine, modify, change, or reinforce personal attitudes as a basis for action.

2. *Biographical sketch* by each individual as a means of establishing rapport among members of the group.

3. *Exercise in group productivity* by the selection of an issue, topic, theme, that has interest for all and the development of that theme by discussion. Feedback and summary of the discussion by the interaction of the group.

4. *Identification of negative attitudes in others* by each individual based solely on their interaction and self-expression in the group.

5. *Identification of negative attitudes in one's self* in response to perceptions of other members.

6. *Encounter* through dialogue, challenge, exploration, and response relating to common experiences as a group.

7. *Feedback* is a way of evaluating the entire process and its meaning for one's self; commitments concerning what the individual has learned. Should this training program prove to be effective, it will be extended to other aftercare agencies which have had little or no experience in the use of ex-addict self-help groups.

Inasmuch as return to drug use is the primary reason for parole violations, urine testing is a condition of release for all NARA patients. While minimum requirements call for urine testing at least once a week, the aftercare agencies have been encouraged to require it at least every three days. After a reasonable period of negative urine samples, the aftercare counselor and probation officer may agree to reduce the frequency of urine testing. All positive urine tests are reported immediately to the supervising probation officer. Should there be two positive urine tests in succession, it is the probation officer's responsibility to report this to the Board of Parole. Upon noti-

fying the Board, the probation officer either recommends continuation under community supervision or revocation of parole.

The aftercare agency counselor also submits a report to the probation officer which he forwards to the Parole Board with his letter. This report from the agency counselor outlines the releasee's progress or lack of progress, problems that need to be resolved, specific treatment needs, and changes in program planning. In this report, the agency counselor makes a recommendation as to whether the releasee should be considered a violator or continued under parole supervision. Should the counselor recommend continuation under supervision, he states what changes would be made in the community treatment program to more effectively meet the patient's needs. Should the recommendation be made that the patient be returned to the institution for further treatment, he indicates what treatment areas the institution should concentrate on in preparing him for his eventual return to the community and an appraisal of the time needed to accomplish the treatment objectives.

It should be noted that parole violation warrant is not recommended or issued automatically when a NARA case has two positive urine tests in succession. Much depends upon the individual case in question. In order to enable the Parole Board to thoroughly and effectively evaluate continuing a patient under supervision or revoking his parole, both the agency's and probation officer's reports are vitally important. Where a patient has had two positive urine tests and both the probation officer and counselor recommend continuation under supervision, and the Board of Paroles concurs, funds are available for emergency medical aid during withdrawal symptoms.

Most of the NARA patients and their families fall within a low socioeconomic stratum. Due to the multiplicity of eligibility requirements for public assistance, the availability of emergency financial resources has been found to be a very helpful tool in the counseling process. Such financial assistance for clothing and subsistence is provided for in each of the aftercare contracts.

In many of the aftercare contracts, funds for social and recreational services also have been provided. Agencies have been encouraged to develop these activities which are designed to provide acceptable outlets through which the patients and their families may learn, improve, and develop patterns of constructive use of leisure time.

It has been the experience of several aftercare agencies that patients who do not make proper use of leisure time frequently resort to the use of narcotics. In some agencies, funds have been provided for resocialization services. These agencies have begun to provide services in accordance with the patient's cultural values that would be conducive to strengthening family ties. Services have included hints on homemaking, cosmetics, general grooming, budgeting, and consumer planning. This assistance is considered to be an important part of the total aftercare program as it focuses primarily on improving the confidence and social functioning of the family as a unit.

Role of the Probation Officer

While the probation officer has ultimate responsibility for all NARA cases released under parole supervision, his role is that of a member of the aftercare treatment team. To be effective in this program, supervision cannot be separated from treatment. In order to effect close working relationships, many of the probation offices have provided one officer to handle the NARA caseload.

The first formal meeting between the probation officer and the aftercare counselor occurs approximately 90 days prior to the patient's release. At that time, the institution sends complete classification material, as well as the proposed release plan outlining the patient's aftercare treatment needs, to both the probation officer and the aftercare counselor. Upon receipt of these materials the probation officer and the counselor confer to formulate the release plan. Once the release plan is approved by the Board of Parole, and the patient is released to aftercare, he meets with his supervising probation officer within the first 48 hours of release. At that time, the probation officer explains the conditions of release. As a means of strengthening the team approach to aftercare, the aftercare counselor is encouraged to be present at this time. The team approach serves to make it clear to the parolee, from the very beginning, that the aftercare counselor and probation officer are working together; therefore, one cannot be manipulated against the other.

The aftercare agency must keep the probation officer advised of all aspects of the case. The agency cannot withhold any information from the probation officer and must submit any reports that he may request. Both the counselor and the probation officer have frequent staff conferences

to review patient progress and attend each other's staff meetings. This working relationship between the aftercare agency and the probation officer has, in some cases, produced such positive results that the probation officers and aftercare counselors have attended each other's staff meetings even when NARA cases were not under discussion. This has broadened their experience and has helped to make them more effective in their respective professions.

The Los Angeles Experiment

The United States Probation Office at Los Angeles, California, has been designated to handle the entire aftercare program for that metropolitan area. Specific probation officers have been assigned to handle the clinical and supervision portion of the program. Moreover, consultation services have been provided by graduate fellows from the University of Southern California Institute of Psychiatry and Law. An ex-inmate from the Federal Correctional Institution at Terminal Island, who was involved in developing their self-help program, has been employed via a contract with the Bureau of Prisons to work as a case aide in the probation office. His role is to assist in developing and implementing the program and to act as a liaison between those under parole supervision and the probation office staff. The result of this approach to aftercare is being compared to that of private aftercare agencies with whom we have the majority of our contracts.

Bureau of Prisons Aftercare Field Specialists

Aftercare field specialists have been placed in regional offices in strategic locations to assist and to serve as liaison between the contract aftercare agencies and the probation officers for decisions pertaining to day-to-day operations. Their primary role, however, is to monitor contracts in terms of quality and quantity of aftercare services provided. In addition, they conduct community surveys to promote and identify acceptable aftercare resources, participate in negotiation of con-

tracts, and conduct training seminars for aftercare agency staff.

Research and Followup

During the period from March 15, 1968, through July 31, 1970, the courts committed 764 persons to the Bureau of Prisons for examination to determine whether they were addicted to narcotics and likely to be rehabilitated through treatment. Of this number, 494, or 65 percent, were subsequently accepted for treatment. Persons not accepted for treatment were found, for the most part, to be narcotic addicts as defined by law, but were not considered likely to be rehabilitated for a variety of reasons, including aggressive behavior, psychotic disorder, and excessive prior offenses (felonies).

Although several diverse patterns of narcotic addiction have been identified in the United States, statistical descriptions of *known* addict populations indicate an "average" or "typical" pattern of addiction existing today.⁶ In terms of selected social characteristics, those patients admitted to the Bureau of Prisons for treatment of their addiction are similar to this general pattern.

The NARA population has a high proportion of male patients. Male patients outnumber females almost 5 to 1. Also, the majority of the commitments are young adults. Over 60 percent of these patients are under 30 years of age, and less than 5 percent are over 40 years of age.

Ethnic composition of the population indicates a large number of these patients are Negro Americans, Puerto Ricans, and Mexican-Americans. Over 65 percent of all admissions were members of these minority groups.

These patients came predominantly from large cities in the United States, particularly from Standard Metropolitan Statistical Areas (SMSA's). Over 80 percent of those committed resided in SMSA's prior to admission to treatment.

Most of these patients were unemployed, were engaged in lower status jobs, or were involved in illegal activities prior to admission. By definition, all have been involved in some violation of federal law. About 70 percent of them have violated federal narcotic laws, while the remaining 30 percent have been involved in other nondrug-related violations.

The first NARA patient was released to aftercare supervision in the community on August 1, 1968, and a total of 194 have been released during the 2-year period ending July 31, 1970.⁷ Of those

⁶ John C. Ball, John A. O'Donnell, and Emily S. Cottrell, "Selected Social Characteristics of Consecutive Admissions to Lexington in 1965," *Criminologica*, August 1966, pp. 13-16; J.C. Ball, W.M. Bates, and J.A. O'Donnell, "Characteristics of Hospitalized Narcotic Addicts," *Health, Education and Welfare Indicators*, March 1966, pp. 17-26; John C. Ball and Emily S. Cottrell, "Admissions of Narcotic Drug Addicts to Public Health Service Hospitals, 1935-63," *Public Health Reports*, June 1965, pp. 471-475; Charles Winick, "Epidemiology of Narcotics Use," *Narcotics* (eds.) Daniel M. Wilner and Gene G. Kassebaum. New York: McGraw-Hill Book Company, 1963, pp. 3-18.

⁷ These figures are based solely on cases committed to Bureau of Prisons facilities. Those cases committed to Lexington and Fort Worth prior to the opening of the NARA treatment units are not included here.

released to aftercare supervision in the community, 49, or 25 percent, have been returned to one of the NARA treatment units or have otherwise "failed" in postinstitutional adjustment. On the basis of urinalysis testing and upon the recommendation of the supervising probation officer, 44 narcotic-using patients had paroles revoked and were returned to Bureau facilities, three died due to an overdose of narcotics, and two absconded from supervision.

Of the 145 patients currently remaining in aftercare supervision, 83, or 57 percent, have been in the community for a period of 6 months or longer, and 13, or 9 percent, have been in the community for 1 year or longer. The average length of time that they have spent in the community is 6.4 months, compared to 4.3 months for those who "failed." However, those who are presently out in the community have not all abstained from drug use. Results from urinalysis testing of the patients indicate that many have reverted to "chipping" or occasional drug use. The data show that 85 persons, or 59 percent of those patients on aftercare status, have had at least one "positive" urinalysis test for opiates, barbiturates, or amphetamines; nine of the 13 patients out for more than 1 year have had positive urinalysis results.⁸

How does one interpret the above figures?

⁸ Followup studies of addicts are subject to a number of theoretical and methodological problems. We have not attempted here to deal with the problems inherent in this type of research, such as the use of urinalysis test as a narcotic detection device. Rather, we have attempted to present preliminary data indicating admissions, releases, and readmissions for the NARA population. For further information on problems in drug addiction research see John A. O'Donnell, "The Relapse Rate in Narcotic Addiction: A Critique of Follow-up Studies," Wilner and Kassebaum, *op. cit.*, pp. 226-246.

⁹ Yablonsky, *op. cit.*; Rita Volkman and Donald R. Cressey, "Differential Association and the Rehabilitation of Drug Addicts," *American Journal of Sociology*, September 1963, pp. 129-142.

¹⁰ V.P. Dole and M. Nyswander, "A Medical Treatment for Diacetylmorphine (heroin) Addiction," *Journal of American Medical Association*, August 1965, pp. 646-650; Vincent P. Dole, Marie E. Nyswander, and Alan Warner, "Successful Treatment of 750 Criminal Addicts," *Journal of American Medical Association*, December 1968, pp. 2708-2711.

¹¹ Because of the mandate of the Narcotic Addict Rehabilitation Act, which calls for indeterminate commitment up to 10 years, sufficient time for followup study in the community is insured. Patients released from Bureau facilities to date have spent on the average 13 months in institutional care.

Does the fact that a number of patients have used drugs indicate that the NARA program has been a "failure"? If the amount of drug usage among these subjects increases, as it very likely might, has the program failed? These are, of course, important questions.

In the first place, the data at this time are preliminary and are not intended to measure the effectiveness of the NARA program. Secondly, when the possible objectives for any narcotic treatment program are examined, major alternatives emerge to determine which ex-addicts have been helped by the respective treatment programs. One such position identifies abstinence from further drug use as the essential aim to be pursued, and a successful treatment program is one which achieves that aim.⁹ The antithetical alternative to this position is the major aim of improvement of the functional status of the individual, even if such improvement is accompanied by drug usage.¹⁰ Success here is measured in terms of improvements in social, familial, educational, and occupational functioning, and in an observable diminution in criminal activity as well.

Abstinence is, of course, a highly desirable goal. However, abstinence alone is only one possible measure of improvement. In our research efforts, we do not consider the fact of reversion to drug usage as the only success-failure parameter. Information on postinstitutional adjustment is presently being collected monthly on each patient both from probation officers and community aftercare agency personnel.¹¹ Data is being collected on employment history (days worked), drug use (drug-free days), educational improvement, arrests, and incarcerations, and so on. From this data we are attempting to determine which patients make a successful community adjustment. In short, we believe community adjustment, as well as abstinence from narcotic usage, is important to our assessment of treatment outcome.

It is generally recognized that loss of control over the use of a drug—often called addiction where there is both physical and psychological dependence, and habituation where there is psychological dependence without physical dependence—is, regardless of the particular drug involved, a disease. Both chronic alcoholism and narcotics addiction are usually recognized as diseases.—MICHAEL P. ROSENTHAL in *Task Force Report on Narcotics and Drug Abuse*.

**“YOU
and the
PAROLE
BOARD”**

January 1, 1971

FOREWORD

It is my hope that this booklet on parole will give you personally some insight concerning the Parole Board's operation, its function, its attitude and your role within this framework. Because the Board is now completing a reorganization of its policies, procedures and programs, this booklet is most timely. Our primary objective under the new rules and procedures is to improve our parole decision-making processes.

The questions on the following pages are the most frequently asked by you, your families and interested persons.

If in some small measure, we have been able to develop a basic understanding of our objectives, methods and procedures then this booklet has served its purpose.

GEORGE J. REED, *Chairman*
U. S. Board of Parole

1. What Is Parole?

Parole is serving part of your sentence under supervision in the free community. The law says the Parole Board *may* grant parole if: (a) The inmate has observed the rules of the institution, (b) There is a reasonable probability that such inmate will, if released, live and remain at liberty without again violating the laws, and (c) In the opinion of the Board such release is not incompatible with the welfare of society. Parole is like probation except that a parolee has been committed to prison and has successfully completed a part of his sentence in an institution.

2. What Is The Purpose Of Parole?

Parole has a dual purpose: 1. Through the help of the supervising U. S. Probation Officer, every parolee may obtain assistance with his problems—employment, residence, finances, as well as the personal problems which often trouble a man trying to adjust once more to life “on the streets”. 2. Parole protects society because it helps former prisoners get established in the free community and thus prevents many situations in which they might commit a new offense.

3. When Do I Become Eligible For Parole?

That depends on the type of sentence the court imposed. Except in cases where the court used Section 4208 of Title 18, or the Youth Corrections Act, the Federal Juvenile Delinquency Act, or The Narcotic Addict Rehabilitation Act, parole eligibility occurs at completion of one-third of the term. An individual serving a life sentence or a sentence longer than 45 years becomes eligible at the end of 15 years.

If the court used sub-paragraph (a) (1) of Section 4208, the court stated what your minimum sentence shall be. If this is true in your case, you are eligible for parole after you have served the minimum.

If the court used sub-paragraph (a) (2) of Section 4208, the Board of Parole is authorized to set your parole eligibility date. Under current policy, you are eligible at the time of your first appearance before the Board and that takes place as soon as possible after your commitment.

If you received a commitment under the Narcotic Addict Rehabilitation Act, you are eligible for parole after six months in treatment. The treatment period begins after the court sentences following the study period. Also, a doctor at the institution must certify that you have progressed to the point where parole is indicated.

If you have been sentenced under either the Youth Corrections Act or the Federal Juvenile Delinquency Act, you are also eligible for parole from the time you first appear before the Board.

Remember that becoming ELIGIBLE for parole and actually receiving a parole GRANT are not the same thing. If you received an indeterminate sentence (4208(a)(2), or YCA, or FJDA) you should not usually expect to be granted parole at the time of your initial hearing; ordinarily serious consideration is not given until your second personal appearance before the Board, your "review hearing".

4. How Do I Apply For Parole?

If you have a YCA, FJDA or NARA sentence, you need not make formal application. If you have a regular sentence or were committed under Section 4208, you fill out and sign one of the parole applications which are distributed to everyone who is eligible for parole and scheduled for a hearing. Your caseworker can give you instructions about completing the form.

5. May I Write Directly To The U.S. Parole Board Before My Hearing?

You may write the Parole Board at any time as long as you do not break institution rules regarding correspondence. However, a letter before your hearing is not likely to affect either the date or nature of the hearing and the subject of the letter might better be discussed during the hearing itself.

6. What If I Do Not Wish To Apply For Parole?

You should sign a waiver instead of a parole application. Whenever you change your mind you may apply for parole, and you will have your hearing at the next regularly

scheduled meeting of the Board, provided the list of those to be heard that month has not yet been sent to Washington. Since applications are not required in YCA, FJDA, or NARA commitments, waivers are not used in those cases, and hearings take place as scheduled.

7. When Will I Be Given A Parole Hearing?

Your first or initial hearing will take place whenever you become eligible for parole (see answers to Question 3). However, if you are serving a sentence of one year or less, your case will be reviewed at Parole Board headquarters in Washington, D. C. on the basis of the material in the file, and you will not be given a personal interview. Occasionally "special hearings" are scheduled but these are rare and are initiated by the Board of Parole.

8. Who Will Be Present At The Hearing?

Present at the usual hearing are a Member of the U. S. Board of Parole or an Examiner appointed by the Board, your own caseworker at the institution, and perhaps a secretary for the Board. Observers come in to Board hearings occasionally, usually members of the institution staff, and always by special permission of the Board Member or Examiner. At a parole violation hearing you are entitled to be represented by your own attorney and to call your own witnesses at your own expense.

9. What Goes On At A Hearing?

This is an opportunity to tell your own story and to express your own thoughts as to why you feel you should be paroled. Many subjects may come up during the course of the conversation between you and the Board Member or Examiner, such as your accomplishments in the institution, the details of your release plan, problems you've had to meet in the past or are likely to face in the future, but just as you are not exactly like any other inmate of this institution, your hearing will not be just like anyone else's. The Board is interested in you as an individual human being, and there are no hard and fast rules about the content or length of the hearing.

10. How Is A Decision Made Concerning My Parole?

The Board Member or Examiner dictates a summary of your interview, which includes his recommended decision and the reasons for it. His recommendation is considered and your case is reviewed by the Members of the Board. A majority of a voting quorum established by the Board is required for each final decision. An Examiner cannot vote, but his recommendation is considered by the Members as they arrive at a decision.

11. What Factors Are Considered By The Board In Making Its Decisions?

Since no man's situation is just like another man's, factors of importance in one case won't even be considered in another. In other words, *many* factors are considered in every case, but in no case must *every* factor be considered. The following are *some* factors which a Board Member weighs: Type of offense, length and seriousness of prior record, family history, marital situation, emotional stability, vocational and professional skills, education, age and physical condition, living habits in the free community, community resources, behaviour and progress during confinement.

12. What Effect Does A Long Prior Criminal Record Have On The Board's Decision?

Though this is a negative factor, it is only one of many which the Board considers. Changes in the individual's family situation, his personal attitude, his age, newly acquired skills and the like are also given appropriate weight. The amount of time which has elapsed between past offenses and the nature of the offenses are also studied before the Board comes to a decision.

13. What Effect Does The Nature Of My Offense Have?

Your offense is only one of many considerations. The nature of your offense, especially if you have committed the same offense repeatedly, may supply important clues to your character, and your character and attitudes certainly have

a lot to do with your possible conduct on parole. But the Board's primary interest is in your future and the past is reviewed only as it is necessary or helpful in predicting what that future may be.

14. What Effect Does Publicity About My Offense Have?

If the community to which you hope to be paroled has become hostile to you because of publicity surrounding your offense, your chances of success on parole are diminished and the Board may well inquire into paroling you to a different locality. However, adverse publicity or notoriety is only one issue. It is considered in its relationship to the total picture, and parole may be granted when notoriety is outweighed by other positive factors.

15. How Do Any Of The Following Conditions Affect My Parole?

A. *Forfeited good time.* The law requires that a prisoner "observe the rules of the institution in which he is confined" in order to be eligible for parole. Forfeited good time indicates that institution rules have not been observed and the Board's policy is to postpone its decision until such time as the statutory good time has been restored; the Board usually asks for a special progress report whenever restoration has been made. However forfeited good time does not preclude you from a parole hearing when eligible. *Withheld* good time is a poor argument for parole, but does not automatically disqualify the applicant from Board consideration.

B. *Psychotic status.* Persons judged to be psychotic are of course poor parole risks. A statement by medical authorities that the inmate is no longer psychotic may be enough to reverse an earlier Board denial, provided there is reason to believe that the individual's release will not pose a threat to society.

C. *Detainer.* The presence of a detainer does not of itself constitute a reason to deny parole. The Board focuses its attention on the individual's parole plan in the community, and if this and other considerations are favorable, parole is

granted "To detainer or plan". Thus, the man will be released to state, local or military authorities or, should the detainer be dropped, to his approved parole plan. In other cases, the Board paroles "To detainer only". In those cases, should the detainer be dropped, the individual will not be released—pending further review.

D. *Alien subject to deportation.* In some cases, the Board grants parole on condition that the alien be deported and remain outside of the United States. In other cases, the Board grants parole to the immigration detainer. In all such instances the individual does not leave the institution until immigration officials are ready to receive him.

E. *Case on appeal.* All persons have the right by law to appeal their cases. The Parole Board recognizes this right and the existence of an appeal has no bearing whatever on parole decisions.

F. *Education or vocational training program not finished at the time of the hearing.* The man who has obtained more education and acquired a new job skill can present two good reasons for his release on parole; if he has finished his courses, these arguments are even stronger. The needs of the individual are the deciding factor; in other words, a man whose past failures have been directly related to his lack of education and/or vocational skill may be required to complete a course which a better-educated and more skilled individual does not need as much. However, release dates are seldom determined on this basis alone and when completion of a course does not affect that date, the adjustment in time is usually slight.

G. *What effect does a divorce during my incarceration have on my chances?* The marital situation is a positive reason for parole if the marriage is healthy, a negative factor if it is stormy or unstable. Such personal matters become Board of Parole business insofar as they either threaten or strengthen a man's chances on parole; divorce while he is incarcerated does not automatically argue for or against parole.

16. When Will I Be Notified Of The Board's Decision?

As soon as the Hearing Member or Examiner's recommendation has been reviewed by Members in the Washington office and a majority vote has been obtained. This may be done in a short time in some cases, but may require several weeks in other cases.

17. Why Do Some Inmates Get "Set Off" To Another Hearing And Others To A Progress Report?

If the particular information the Board wants at the time of the review is the kind easily included in a written report from the institution, a Progress Report will be requested. If the Board believes that an individual's progress can be judged best by talking to him personally, another hearing will be ordered.

18. If Parole Is Granted, When Will I Be Released?

If your parole plan is complete and has been approved by the Parole Board following a report of an investigation by the U. S. Probation office to which you will report, you will be released on the date set by the Parole Board. However, if your plan has not been approved, release will be delayed regardless of the effective date on the Board order.

19. What Type Of Release Plan Must I Have?

Your release plan should include a suitable residence, a verified offer of employment, and usually an approved parole advisor. There are exceptions. For example, a definite job is sometimes neither necessary nor possible; the Board always considers the individual applicant's situation and may waive this or any other standard requirement if it sees fit to do so. On the other hand, special conditions may be *added* to the usual requirements regarding residence, employment, and advisor, and the release plan may not be approved by the Board if such special conditions cannot be met. In many cases, the requirement for an advisor is waived, especially when the probation officer feels one is not necessary.

20. How Can I Obtain A Job While I Am Still In The Institution?

Relatives, friends, social agencies in the community you wish to live in, sometimes former employers—these are the ones to contact with the advice and help of your own case-worker. Employment Placement Officers in the field may be able to help you prior to release and afterwards as well. Job offers are investigated by the U. S. Probation Office to which you will report, and that office reports back to the institution and the Parole Board.

21. What Types Of Employment Are Suitable For A Parolee?

In a particular case the Parole Board may rule specifically against a certain occupation (for example, alcoholics are not encouraged to work as bartenders) but otherwise any legitimate employment is acceptable. Full-time work is preferable to part-time; work done continuously at one location is better than work which makes travel necessary; and, of course, a good job calls for the skills you have and provides enough income for yourself and your dependents.

22. What Can I Do If I Have No Home To Go To?

The Board is interested in your having *suitable* residence. Sometimes this is with family or relatives but in other cases the Board may consider an apartment, hotel, or rooming house more suitable. There is no rigid rule which requires that you be paroled to your home if you have one, or that you cannot be paroled if you do not.

23. Must I Return To The Community From Which I Came?

No, if the Board believes your chance of success on parole is greater in some other community. Sometimes your "old home town" is a poor prospect for any of several reasons—jobs may be lacking, or former undesirable associates may be numerous, to give two examples. In such cases the Board may refuse to allow release to your home community and will insist on a different plan. However, in most cases, your former community offers the best opportunity for the assistance and support you will need.

24. What Do I Do If There Is No One To Obtain An Advisor For Me?

The U. S. Probation Officer may obtain an advisor for you, or may act in that capacity himself.

25. Who May Act As An Advisor?

An advisor should be a responsible citizen living in or near the community in which you intend to live. He should not be a relative, a law enforcement officer, an employer, or a person of the opposite sex. Exceptions are made only with the approval of the Parole Board.

26. Do The Police Or The FBI Make Recommendations To The Parole Board Regarding Parole?

The U. S. Attorney who prosecuted your case and the Federal judge who sentenced you are invited to make recommendations regarding parole; these recommendations are submitted to the Board prior to your first hearing and are part of the material the Board considers at that time.

27. Can A Man Get A Parole Grant At His Initial Hearing On An Indeterminate Sentence?

Yes. With indeterminate sentences, the law gives the Parole Board authority to grant parole at any time prior to mandatory release.

28. How Often Does The Parole Board Follow The Recommendation Made By The Institution Staff?

The recommendation is always given thoughtful consideration, but no study has been made to determine how often it is followed.

29. If The Board Denies Me Parole The First Time I Apply:

1. *Can I appeal the denial?* There is no formal appeal such as may be filed regarding court decisions, but you may write to the Board asking for an appellate review by the Board.

2. *Will my parole application be considered at a later date?* If the Board's decision is "Continue to expiration," no further consideration is planned. All other decisions carry with them the date for future consideration, either by progress report or another personal hearing.

30. After I Am Released, To Whom And When Do I Report?

Unless you are released to a detainer, you go to your approved residence and report to your approved parole advisor on the day you arrive. After the arrival notice is filled out and signed by the advisor, you take it in person to the United States Probation Officer (if he is in the same city or within a reasonable distance) or you mail it to him (if you are paroled to a rural area some distance from his office). You continue to report to your advisor and your Probation Officer as instructed by them; monthly written reports are required, but in some circumstances, the United States Probation Officer may ask that you report more frequently.

31. Upon What Conditions Am I Released On Parole?

They are printed on the back of the parole certificate presented to you when you are released; a copy can be found near the end of this booklet. Special conditions, if any, will be typed on the back of the certificate.

32. What Happens If I Violate The Conditions Of Parole?

Your United States Probation Officer reports the violations to the Parole Board, and the Board decides whether to issue a warrant. The Probation Officer is required to report violations, but may recommend that you be continued under supervision, and his recommendation (either for or against a warrant) is one of the factors in the Board's decision.

33. Who Issues A Warrant If I Violate Parole?

The United States Board of Parole has sole authority to issue warrants for parole violation. Of course any law enforcement officer may make an arrest for a new offense committed while on parole.

34. After The Warrant Is Issued, What Is The Next Step?

You are taken into custody (often in the nearest Government approved county jail) and a United States Probation Officer will visit you. You will be advised of your rights, the charges against you will be discussed, and the Probation Officer's questions and your answers will go into what is termed a "Preliminary Summary or Digest", which is mailed to the Board of Parole. Unless there are grounds for granting you a local revocation hearing, you will then be returned to a Federal institution.

35. What Are The Grounds For A Local Revocation Hearing?

If you have committed no offense since your release on parole—whether misdemeanor, traffic offense, or felony—and can also sign a statement to the effect that you have not violated parole in any way whatsoever, you may be interviewed in the community where the parole violation warrant was served, if you wish such a hearing in order to obtain an attorney or witnesses.

36. What Happens If I Am Returned To A Federal Institution?

You will be granted a parole violation hearing the next time the Parole Board visits the institution. Your private attorney may represent you, and you may call witnesses in your own behalf. Information gathered at that hearing will be weighed by the Board, and the Board will take one of the following actions: (a) revoke parole, (b) reinstate on parole, (c) revoke and continue to a progress report or personal interview at a later date.

37. If My Parole Is Revoked, How Long Must I Stay At The Institution?

You cannot be detained after the expiration of your sentence; release at any time prior to that is at the discretion of the Board. Occasionally a re-parole date is set at the time of the revocation hearing, but more often the question of re-parole is considered at a later date by progress report or personal hearing.

38. How Many Persons Have Their Paroles Revoked?

Statistics on Federal parolees show that about 75 percent complete their paroles successfully, and the other 25 percent violate and are returned to the institution. These rates vary according to type of commitment, offense, age, and many other factors.

39. If My Parole Is Never Revoked, How Long Will I Be Under Supervision?

That depends on your conduct while on parole. If you have lived up to the rules and the spirit of your parole agreement, the Board may discharge you from supervision any time after the first year on parole. If you are not discharged, you remain on parole until the expiration of your maximum term.

40. If There Is A Committed Fine Against Me, When Must I Pay It?

A committed fine is part of the sentence and must be paid before supervision can be terminated. If the fine is still not paid when your maximum term comes to an end, you will have to continue reporting to your Probation Officer either until it is paid in full or the court order has been satisfied in some other way. If you are financially unable to pay the fine, you may take a pauper's oath; get the details from your own caseworker at the institution or from your United States Probation Officer after you are released.

41. If Parole Is Not Granted, When Do I Go Out?

You will go out on Mandatory Release, and the date is computed according to how much statutory good time accompanies your sentence and how much extra good time you have earned in the Institution. The law states that a mandatory releasee "shall upon release be treated as if released on parole and shall be subject to all provisions of the law relating to the parole of United States prisoners until the expiration of the maximum term or terms for which he was sentenced, less 180 days". This means you must have a release plan as if you were going out on parole, and you will

be supervised by a United States Probation Officer as if you were a parolee. However, if you have not accumulated more than 180 days good time, you will be released without supervision.

42. Can Someone Released On Mandatory Release Be Revoked As If Released On Parole?

Yes, the same procedures are followed up to the beginning of the last 180 days of your maximum term. At that point, however, supervision ends and the Board of Parole has no authority to revoke.

43. May I Own Or Use Firearms After My Release?

Under the provisions of Federal statutes, no parolee or mandatory releasee who has ever been convicted of a crime punishable by imprisonment for a term exceeding one year may possess firearms or ammunition. This law does not apply to juveniles and the Act provides for certain rare exceptions, but the exceptions will apply to you only if you also have the approval of the Parole Board. This issue is covered by conditions of parole listed on the back of the parole certificate.

44. If I Have More Questions About Parole, Whom Do I Ask?

While you are in the institution, talk with your own caseworker. When you are released, your questions will be answered by the Probation Officer who supervises you.

* * *

Below are the regulations which will appear on the back of your parole certificate:

CONDITIONS OF PAROLE

1. You shall go directly to the district shown on this CERTIFICATE OF PAROLE (unless released to the custody of other authorities). Within three days after your arrival, you shall report to your parole advisor if you have one, and to the United States Probation Officer whose name appears on this Certificate. If in any emergency you are unable to get in touch with your parole advisor, or your probation officer or his office, you shall communicate with the United States Board of Parole, Department of Justice, Washington, D. C. 20537.

2. If you are released to the custody of other authorities, and after your release from physical custody of such authorities, you are unable to report to the United States Probation Officer to whom you are assigned within three days, you shall report instead to the nearest United States Probation Officer.

3. You shall not leave the limits fixed by this CERTIFICATE OF PAROLE without written permission from the probation officer.

4. You shall notify your probation officer immediately of any change in your place of residence.

5. You shall make a complete and truthful written report (on a form provided for that purpose) to your probation officer between the first and third day of each month, and on the final day of parole. You shall also report to your probation officer at other times as he directs.

6. You shall not violate any law. Nor shall you associate with persons engaged in criminal activity. You shall get in touch immediately with your probation officer or his office if you are arrested or questioned by a law-enforcement officer.

7. You shall not enter into any agreement to act as an "informer" or special agent for any law-enforcement agency.

8. You shall work regularly unless excused by your probation officer, and support your legal dependents, if any, to the best of your ability. You shall report immediately to your probation officer any changes in employment.

9. You shall not drink alcoholic beverages to excess. You shall not purchase, possess, use, or administer marihuana or narcotic or other habit-forming or dangerous drugs, unless prescribed or advised by a physician. You shall not frequent places where such drugs are illegally sold, dispensed, used or given away.

10. You shall not associate with persons who have a criminal record unless you have permission of your probation officer.

11. You shall not have firearms (or other dangerous weapons) in your possession without the written permission of your probation officer, following prior approval of the United States Board of Parole.

GUIDELINES FOR PAROLE SUPERVISION*

OBJECTIVE:

The primary objectives of parole supervision as an integral part of the correctional process are:

- (1) To protect society from further criminal activities by the parolee, and
- (2) To assist the parolee in becoming a law-abiding, self-sustaining, responsible member of society

To achieve these objectives the probation officer (1) counsels with the parolee and renders specific services to help him resolve his problems and needs; (2) utilizes and coordinates the resources and facilities of the community; (3) attempts to instill a public understanding of the meaning of parole and encourages the community's participation in the parole program; and (4) assesses systematically the results of his efforts.

GUIDELINES:

Preliminary Prerelease Planning - Prerelease planning - the cooperative effort of the institution, the Board of Parole, the probation office, and the community is the basis for case analysis, evaluation, and determination of a suitable parole plan to assure adequate protection to the community and to meet the problems, needs and concerns of the parolee. In specific cases the Board may require special conditions of supervision and shall order specific levels of supervision up to six months. The institution will send a parole plan to the probation officer for investigation, evaluation and recommendation, and any recommended modification. The plan will cover the essential elements set forth below and will be a part of or a supplement to the parole progress report.

Release Plan --

1. Attitude (caseworker's evaluation of inmate's attitude toward parole/mandatory release conditions).

* Applies also to persons on mandatory release.

2. Residence (specify plan and indicate attitude of inmate toward those he will be living with or near; where known, specify attitude of family or friends involved in residence plan).

3. Education (specify plans regarding continuing education as it relates to release employment, future employability, and vocational interests or activities).

4. Employment (specify immediate employment plans and capability regarding same and state relationship to vocational training or industrial training; where indicated, specify assistance planned or needed to obtain employment).

5. Community services (specify, as appropriate, participation in community service programs, i.e., family counseling, AA, psychiatric/psychological counseling, anti-narcotic testing, etc.).

6. Avocational/leisure interests and activities (specify interests and plans, and as related to past experience).

7. Special condition (recommend any special condition for Board approval).

Initial Interview --

Prior to the initial interview, the probation officer should review the case file and re-acquaint himself with the parole plan. The initial interview should be held at the earliest possible time following release to explain the supervision plan to the parolee and to offer him guidance and instruction.

Review of Supervision Plan --

Based upon prerelease planning, the approved parole plan, and the initial interview, the probation officer should record in the case file the initial plan of supervision for each case and indicate the level of supervision. The Board recommends that the chief probation officer, or the supervisor, immediately review the case file; and where the problems and needs of the case warrant, discuss the plan of supervision with the probation officer; that he also establish a date for the first regular case review (see "Case Review," p. 5).

Types of Contacts --

The types of supervision contacts are the following:

1. Personal contact. A personal contact is a face-to-face contact between the probation officer and the parolee.

The contact should serve to establish constructive relationship with the releasee, assist and evaluate current activities, discover and counsel regarding current problems.

2. Collateral contact. A collateral contact is a telephone or personal contact about the parolee with a person other than the parolee, for example, a family member, friend, adviser, or employer.

These contacts may be with family members, friends, employer, community services personnel, community treatment center staff, law enforcement officers, etc. These contacts should serve to obtain information regarding the parolee's present attitude, activities and problems.

3. Group contact. This is a contact with the parolee as a member of a regularly scheduled counseling or discussion group.

The contact should serve to utilize peer influence and to observe the individual's response, as well as to evaluate current attitudes and prospective behavior.

4. Monthly supervision report. Prompt review of information in the monthly supervision report (Form 8) is an essential part of supervision.

Information contained in the monthly supervision report may serve to assist the probation officer in determining supervision requirements.

Criteria for Maximum Supervision --

The following criteria will serve as a guideline to help determine whether a parolee is in need of maximum supervision:

1. Type of Offense

- (a) Crimes of violence (robbery, assault, sex with force, homicide, kidnapping)
- (b) Organized crime offenses

(c) Crimes with high violation rates (by
recidivists):

- (1) Burglary
- (2) Theft, auto
- (3) Narcotics, excluding marihuana

2. Prior record

Extensive or serious criminal history.

3. Social and personal factors

- (a) Instability of residence
- (b) Instability of employment
- (c) Instability of marriage
- (d) Submarginal income
- (e) History of mental illness
- (f) Narcotic and drug abuse
- (g) Excessive use of alcohol
- (h) Lack of community ties
- (i) Inadequate occupational skills
- (j) Chronic health problems
- (k) Functional illiteracy
- (l) Negative attitude toward authority

Criteria for Minimum Supervision --

1. Type of Offense (subject to further verification)

- (a) Liquor laws
- (b) Selective Service laws, excluding those
persons who advocate or engage in violence
or anarchy.
- (c) Embezzlement, fraud, income tax laws

2. Prior record

Absence of extensive or serious criminal history,
or absence of physical violence

3. Social and personal factors

- (a) Stability as reflected in employment,
residence and marriage
- (b) Absence of drug use or excessive use of
alcohol

Criteria for Medium Supervision --

Cases which do not meet the criteria for maximum or minimum supervision are classified to receive medium supervision.

Frequency of Contacts --

The frequency of personal and collateral contacts recommended for parole supervision is as follows:

1. Maximum supervision

No less than four contacts per month, at least three of which are personal, plus review of each supervision report (Form 8).

2. Medium supervision

No less than two contacts per month, at least one of which is personal, plus review of each written supervision report (Form 8).

3. Minimum supervision

No less than two contacts per quarter, at least one of which is personal, plus review of each supervision report (Form 8).

Whenever the geographical area makes the number of recommended personal contacts impossible, the probation officer may substitute an appropriate number of collateral contacts. The number of personal contacts should be not less than half of the required number of contacts.

Case Review --

On a scheduled basis and also in special situations, it is recommended that the chief probation officer or the supervisor review with the probation officer his supervision of his cases, assess the quality of supervision rendered, and evaluate and modify, if necessary, the supervision plan, which may include a change in degree of supervision. Such review will determine whether the case recording is up-to-date and correctly reflects the problems and needs of the parolee, how he is meeting them, the substance of the action taken by the probation officer together with the parolee, the progress or success achieved as the result of previous meetings

together and actions taken, the problems that still remain, and the probation officer's relationship with the parolee.

Minimum supervision cases should be considered for possible termination.

Field Supervision Evaluation --

Periodically the chief probation officer or the supervisor may find it helpful to accompany the probation officer for observation of personal and collateral contacts in the field.

Reporting of Arrests --

Arrests of parolees must be reported to the Board of Parole as outlined in the Probation Officers Manual, paragraph 8.32.

Evaluation of Parole Supervision Plan --

At least annually, a review of this over-all parole supervision plan will be made, jointly, by the Chief of Probation and the Board of Parole. Such review should consider the extent to which the plan has been carried out; results obtained; suggestions for revision; adequacy of budgetary resources; and future plan of operation.

Group Procedures in Sentencing: A Decade of Practice

BY CHARLES T. HOSNER

Chief Probation Officer, United States District Court, Detroit

SENTENCING HISTORY was made in the United States District Court for the Eastern District of Michigan on November 21, 1960, with the creation of a Sentencing Council. There originated that day a series of weekly meetings with several judges studying together sentences to be imposed on a group of defendants.¹ The main objective was to eliminate inequities in the length and type of sentences imposed in its judicial district. The Council has proved to be an effective means in this effort to achieve "Equal Justice Under Law." During the 10 years of its existence, 5,734 criminal defendants have received the benefits of this group approach to the sentencing problem.

Prior to formation of the Sentencing Council one of our judges attended the Pilot Institute on Sentencing held in July 1959 at the University of Colorado.² Upon his return he told his brother judges how impressed he was with the group discussion of sentencing problems and concerns. At this Institute Mr. James V. Bennett, then director of the Federal Bureau of Prisons, had presented statistics which revealed a wide disparity in sentences in the various federal districts in 1958. For example, the length of sentence imposed for forgery varied from an average of 4½ years in one district to an average of only 10 months in an adjoining one. For auto theft there was a variance from a 4-year average to that of 14 months in two adjacent districts. In many cases the defendants involved in these two crimes were similar as to age, prior record, and background. Mr. Bennett also pointed out startling differences in the use of probation in 1958, ranging from 67 percent in

one district to only 10 percent in an adjacent district.

The Sentencing Institute made the judges of the Eastern District of Michigan more aware of disparity problems existing within their district. With an average of 600 convicted defendants a year they were finding it increasingly difficult to compare sentences and prevent inequities. After several meetings on sentencing problems the judges, by unanimous agreement, established what is believed to be the first Sentencing Council in a federal court.

In the early part of 1960 there occurred in this district two thefts from interstate shipments involving cigarettes having a total retail value of \$200,000. The crime was carefully planned by a group of professional thieves. Several defendants were involved. Two pleaded guilty when arraigned before one judge and the others were convicted by trial before a different judge. The practice in the district was to have the chief probation officer consult with the sentencing judge after the presentence report had been submitted. In this particular case defendant A, one of the principals and the first to be convicted, received an 18-month prison sentence. Several weeks later codefendant B was convicted before another judge and his case was referred for a presentence report. The chief probation officer conferred with the second judge who indicated that he was thinking of imposing a 5-year prison term.

In view of the magnitude of this offense, and taking into account that codefendant B was also a principal with an extensive prior record, a 5-year sentence seemed warranted. However, in discussing the offense in its totality the chief probation officer told the second judge of the striking similarity of defendants A and B, including age, prior record, and degree of culpability. There could hardly be two cases more alike in the sig-

The quality of sentencing must concern us no less than the quality of the entire judicial process which precedes it. As a direct result of our Sentencing Council, the sentence any defendant receives in the federal courthouse in Detroit depends much less than it did on the courtroom in which he happens by chance to find himself. Regardless of the courtroom he enters, the defendant is more likely to receive a sentence which conforms to the goals of correctional theory, for the sentencing council does not merely reduce disparity or inequitable treatment; it also tends to raise the quality of all sentencing.

—Former Chief Judge Theodore Levin

¹ Former Chief Judge Theodore Levin, Judges Thomas P. Thornton, Ralph M. Freeman, Fred W. Kaess, and John Feikens composed the first panel. Richard F. Doyle, then chief probation officer, also participated in the meeting.

² Sponsored by the Judicial Conference of the United States and the U.S. Department of Justice.

nificant factors bearing on disposition. The judge who was to sentence codefendant B examined the other presentence report and in comparing the two cases concluded that their respective sentences should be substantially the same. While the second judge could not change the sentence imposed on defendant A, the judge in the case of defendant B found an acceptable alternative by imposing a 3-year prison term to narrow the disparity.

It is a fact that prisoners compare their sentences and that unjustified differences affect their morale and attitude while in prison. Further, disparities adversely affect the welfare of their families and make the rehabilitative process more difficult for all concerned.

The Sentencing Council

Three excellent articles have presented the underlying philosophy, guiding principles, and operation of the Sentencing Council.³ This article, however, will focus more on the benefits that have accrued to the probation office through its close relationships with the court in the sentencing process.

From the beginning the chief probation officer was designated by the court to select cases and arrange the panels, now consisting of three judges, for the various Sentencing Council meetings. He was asked to alternate the judges, whenever possible, to give a broader exchange of experience, thought, and sentencing philosophy. The Council meetings are held in the chambers of the various judges on a rotating basis.

At first the chief was the only member of the probation staff to attend the Council meetings. Since 1963 two other probation officers, on a rotation basis, have regularly attended with him. Under the former system the investigating probation officer seldom talked with the judge before imposition of sentence. Unless there was some specific problem, the chief probation officer alone, in most cases, consulted with the court. Under the present system the probation officers meet all judges and the judges have an opportunity to know the probation officers individually. These face to face meetings between judges and probation staff have improved communications and teamwork.

At a typical Council meeting the cases of 12

defendants, usually four cases for each of the three participating judges, are discussed. The presentence reports will have been furnished the judges 1 week in advance. The judge in whose chambers the meeting is held presides and begins the discussion with the first of his four cases. He gives a brief summation of the case and relates to the group his recommendation as to disposition. Judge B then makes his comments and gives his recommendation, followed by Judge C. Judges B and C follow the same procedure in presenting their cases.

Unless requested, the probation officers in attendance do not enter into the discussion until the judges have completed their remarks. In the interim there may be some item in the presentence report such as prior offense, family support, employment, etc., which a judge wants clarified. The judge may ask the probation officer a direct question about the current offense or another matter bearing on the disposition. The chief probation officer will answer the question unless the investigating officer is present. When the judges have completed their discussion of a case, the probation officers are given an opportunity to make any relevant comments. In difficult cases where there is some disagreement by the judges as to the length of a prison sentence, the sentencing judge often will ask the chief probation officer, and in turn the other two officers, for their thinking as to the length of the term.

The Council meetings are informal and flexible with a spirit of friendliness and harmony.

By participating in the Council the probation officers see firsthand the importance of the presentence report to the court and how it is used in arriving at a decision. As we find need for improvement in our reports, they are discussed at staff meetings. For example, at one meeting the judges were discussing fines for several defendants involved in an alcohol tax violation. In one case we had recommended an "adequate" fine; in another an "appropriate" fine. The judges asked what was meant by such label terms as "adequate" and "appropriate." Now at the request of the court, we show in the recommendation section of the presentence report the range of fines suggested by the respective officers, e.g., "a fine from \$700 to \$1,000."

We also learned that where a fine or restitution is recommended, it is important to furnish information on the defendant's ability to pay. Fines in hardship cases tend to compound the

³ "A Sentencing Council in Operation," by Richard F. Doyle, *FEDERAL PROBATION*, September 1961; "The Sentencing Council and the Problem of Disproportionate Sentences," by Judge Talbot Smith, *FEDERAL PROBATION*, June 1963; and "Toward a More Enlightened Sentencing Procedure," by Judge Theodore Levin, *Nebraska Law Review*, Volume 45, Number 3, 1966.

defendant's problems and make it difficult for him to become a respectable member of society. Accordingly, more complete data on a defendant's ability to pay are now presented under the employment and financial sections of the report.

On another occasion there was before the Council a case involving several defendants involved in a check-passing ring. One of the probation officers had prepared reports on three of the seven defendants. However, neither in the offense section nor in the evaluative summary of the presentence report did he clearly define their degree of culpability, whether they were principals or minor participants, or the extent to which each had benefited financially.

The staff has also learned that where the defendant is serving another federal sentence or a state sentence, it is helpful to give specific information as to the parole eligibility date and the estimated date of release. This is relevant when the court is considering whether to impose a concurrent or consecutive sentence.

The officers also have observed firsthand the exceedingly busy schedule of the judges and the limited time they have to read presentence reports. To be helpful, the reports must not only be accurate and complete, but also brief and free of extraneous information. There is no better learning method for preparing meaningful and helpful presentence reports than to get direct comments and reactions from the judges.

The judges of this District have always been cognizant of the human values and financial savings which accrue where probation can be justified. The Sentencing Council has been a factor in the increased use of probation. With three judges rather than one studying the presentence report, the advantages of probation are more readily observed. Also, with three probation officers staffing a case, the positives are more likely to be recognized and presented in the recommendation.

In July 1965 Sol Rubin, legal counsel for the National Council on Crime and Delinquency, made inquiry of our court on sentencing changes resulting from the Sentencing Council system. We found that the proportion of defendants granted probation increased from 47.2 percent in 1962 to 61.6 percent in 1965. During the same period the grant of probation in all federal district courts increased from 42.2 percent to 50.2 percent. With this greater use of probation there was no corresponding increase in the violation rate in the Eastern District of Michigan.

Another interesting Sentencing Council observation is the change the sentencing judge made in what he, before participating in the Council meeting, thought would be an appropriate sentence.

From November 21, 1960, to November 21, 1964, there was some change effected by the sentencing judge in an average of 30 percent of all cases following study in the Council. This could be a change from custody to probation or a split sentence, or from probation to custody, an increase or decrease in the amount of fine, etc. Also, in most years there were as many instances of increases in the length of prison sentences as there were decreases. For example, from 1960 to 1961 commitment to an institution was increased by the sentencing judge in 47 cases following study in Council and decreased in 51; from 1961 to 1962, 38 sentences were increased and 39 were decreased. From 1960 to 1964 there was a yearly average of 21 changes from custody to probation and an average of 8 changes from probation to custody during this same period. These figures show the leveling and balancing effect of the Council in the type and length of sentences imposed.

The equalizing effect of the Sentencing Council has continued over the years. From December 1, 1968, to December 1, 1969, in 39 instances the judges imposing sentence in a given case increased the length of prison sentence as a result of Council consultation; in 35 instances the length of prison sentence was decreased. In four cases a contemplated prison sentence was changed to probation and in two cases probation was changed to imprisonment. From December 1, 1967, to December 1, 1968, custody was increased in 47 cases and decreased in 28. During that year, custody was changed to probation in 11 cases and probation was changed to custody in one case. It is noteworthy that some change was effected by the judges imposing sentence in 42 percent of the total cases during the period December 1967 to December 1969.

Disparity in Probation Officer Recommendations

In 1963, after the investigating probation officers began participating in the Sentencing Council together with the chief probation officer, the judges observed that quite often there was disagreement among the probation staff as to the recommended disposition. There is nothing unusual about probation officers not always agreeing in their recommendations. After all, there is a difference in the experience, training, personality,

and even correctional philosophy of probation officers. Some lean toward imprisonment in certain offense categories and for certain offender types and others are disposed more toward probation and other community treatment programs.

Since the court was interested in a majority judgment of the probation staff, it requested that the probation office present any differences as to recommendations. Prior to 1963 the presentence report was prepared and signed by the investigating officer and then read by the chief probation officer who countersigned the report "Approved." This meant he approved the general content and method in which the report was presented, but it did not necessarily mean he approved the probation officer's recommendation. Where there was disagreement with the recommendation, the chief would discuss the differences with the sentencing judge. Incidentally, our presentence reports have never indicated a specific term when imprisonment is recommended.

To carry out the court's request for varying recommendations in a specific case we designed a Probation Recommendation Form for our own use. In section one of the form the investigating officer records his recommendation and his reasons. His supervising officer fills out section two, and the chief probation officer completes section three. This is the basis for the group recommendation. The form shows whether there is a unanimous or a majority recommendation.

At the request of the judges the three probation staff members do not try to "iron out" differences in the recommendation. Each officer fills out his section of the form separately and records his reasons independently. The investigating officer usually indicates in the Evaluative Summary of the presentence report his thinking on a given case. Where the chief probation officer is the dissenter in a majority recommendation, he delineates his reasons in an addendum to the report. Since the chief probation officer reads most of the presentence reports and attends most of the Council meetings, he is in a position to assimilate recommendations in the respective cases.

There has been no formal effort at Detroit to bring about more uniformity in the probation staff's recommendations to the court. Through regular participation in the Council, however, and hearing the exchange of thought and sentencing philosophy of the various judges, their analysis and discussion of varying cases, and their views as to disposition—e.g., probation versus prison—

we have gained a broader and clearer understanding and perspective in our work and have achieved greater uniformity in our recommendations as to sentence. Out of 168 recommendations for probation during a 12-month period ending April 1, 1970, there were only 13 majority recommendations—less than 10 percent. In other words, 155 were unanimous recommendations.

As to recommendations for imprisonment during the same period, only 16 out of 255 recommendations (a little over 8 percent) were majority recommendations; the remaining 239 were unanimous. This trend toward greater consistency in recommendations is noteworthy in the light of comparable studies made in other districts. There is reason to believe that disparity in the recommendations of probation officers is a contributing factor to disparity in sentences.

A Forum for Exchange of Experience

The Sentencing Council has served as a forum for the exchange of experience in the legal and correctional fields. At different times there have been visitors and participants from the Law School and Department of Sociology at Wayne State University and from the School of Social Work and Department of Psychiatry of the Medical School at the University of Michigan. On other occasions members of the United States Board of Parole and the Federal Bureau of Prisons have participated. In January 1970 the warden of the Federal Youth Center at Milan, Michigan, and the psychiatrist, clinical psychologist and director of the Narcotic Addict Rehabilitation Unit at Milan attended Council meetings. In May 1970 a group of caseworkers from the Kennedy Youth Center at Morgantown, West Virginia, participated. Often the professional visitors have been furnished copies of the presentence report in advance and have taken part in the deliberations. This exchange of correctional thought and philosophy has been mutually advantageous. Busy as they are, the judges have taken time during these meetings, and often after the meetings, to discuss sentencing problems and concerns and explain Council procedures. The visitors are impressed with the understanding and compassion shown by the judges and the attention they give to each case.

The Bureau of Prisons Community Treatment Center at Detroit was opened in 1963. From the start there has been a close relationship between the Center's personnel and the court and proba-

tion staff. The director and caseworker at the Center periodically attend Council meetings and have been of considerable help to the Court in difficult cases. Over the years there have been a number of instances where the presentence report indicated that a defendant could be helped at the Center without having to be sentenced to prison, but initially needed closer supervision than could be received from probation.

At times the judges have been confronted with a number of similar offenses indicative of a community problem. For instance, in 1963 there was a large number of alcohol tax violations in the Detroit area. To better understand the sentencing needs, consultation was held at a Council meeting with the head of the Alcohol and Firearms Enforcement Division and the U.S. District Attorney.

In 1965 there was an upsurge of counterfeit passing and mail thefts in the District. The Special Agent in Charge of Secret Service, along with a member of the Postal Inspector's Office, participated in a special Council meeting to discuss the overall problem. These federal agencies have appreciated the help of the court with law-enforcement problems of mutual concern.

In 1969 the court had an influx of selective service violators from nearby campuses. These youths were not members of a formal religious or pacifist group, but had moral objections to military service. They were for the most part classified 1-A by their local boards but stated they would do work of national importance if ordered by the court, but would not do so for Selective Service. These defendants were usually without a prior criminal record and appeared sincere in their beliefs. In previous years the court had encountered a group of selective service violators affiliated with a religious organization who were much alike in character, background, and sincerity of belief. They were usually classified 1-O by their draft boards but refused to do work of national importance ordered by the board. In 1968 several in the latter group stated to the court that they would do work of national importance if ordered by the court. Since the design of the Council was to prevent unnecessary differences in sentencing, Chief Judge Ralph M. Freeman convened a special meeting of the judges. The state director of Selective Service, together with the chief probation officer and the deputy chief, was invited to this meeting. The Council system proved helpful in handling with dispatch sen-

tencing problems in selective service cases. The purpose of the Council is not to seek uniform sentences for offenders but rather to have uniform sentencing standards.

All Judges Enthusiastic With Council's Work

Since 1960 a total of 13 judges have served on the federal bench at Detroit. All have fully supported the Sentencing Council and attested to its help in their difficult task of sentencing. The criminal docket at Detroit is rotated weekly among the eight judges which means that on an average each judge will have criminal arraignments 1 week out of 8 and will usually have 12 convicted defendants during this period. On an average, each judge will participate in three Council meetings over a 2-month period. To discourage "judge shopping," the information as to which judge has criminal work for a given week is closely guarded. When a defendant pleads not guilty at arraignment there is then a blind assignment for trial on a rotation basis, and the judge "getting the draw" keeps the case throughout the remaining proceedings.

The new judges have found the Sentencing Council a helpful learning tool. In his 1967 article (see footnote 3), Judge Levin said: "The Council has proved to be particularly important to newly appointed judges. It has imparted to such judges in a much shorter time than otherwise would be possible, a developed knowledge of the several statutory sentencing alternatives as well as some of the factors involved in their application."

It is most encouraging to observe how the judges, after their many meetings together, can usually (in 30 to 40 minutes) go through the 12 cases under consideration and extract the salient factors vital to a sentencing decision. They have learned through experience how to focus on the key elements of the individual cases. It is also gratifying to observe how frequently the three judges on a particular panel, when relating their separate recommendations on a given case, will be unanimous as to the specific term of imprisonment. In most instances they are at variance 6 months or less as to the length of imprisonment.

During the 10-year period the Sentencing Council has been in existence, the judges have developed a set of sound and workable sentencing standards. The application of these standards now makes a grossly inequitable disposition an exception in this District.

A Case Before the Council

During March 1970 a group of seven defendants were convicted of theft from an interstate shipment. Dollarwise the offense was almost as great as the \$200,000 theft of cigarettes, mentioned earlier. Quite unlike the practice in 1959, the Council now studies all defendants in a related case at one meeting. This affords a more equitable consideration of sentences based on the individual's background, prior record, degree of culpability, etc. In this 1970 multidefendant interstate shipment case we were able to follow this practice with six of the seven defendants. The seventh defendant, also a principal in the offense, "jumped bond" the day before his trial was concluded. In the meantime, the cases of two other principals were studied by the Council and each received prison sentences of 4 years by judge A. When the defendant who had absconded was re-arrested about 2 months later, his case, pending sentence before judge B, was scheduled for study at a Council meeting. Judge A, who had sentenced the other codefendants, was not available for this meeting. However, copies of the presentence reports on the other two principal defendants were given to Judge B and the other two judges on the panel, along with information as to the length of prison terms imposed. Judge B then imposed a 4-year term. The complications and disparities in sentencing which occurred in the 1959 case were thereby avoided. The other four defendants were given lesser sentences because of their less serious prior records and their more stable family and work situations.

Sentencing Council on Solid Legal Ground

From all indications the Sentencing Council System is on sound legal ground. No defendant or his counsel in the Eastern District of Michigan has ever contended, during the 10 years the Council has been operating, that this procedure is contrary to law or the Rules of Criminal Procedure. It should be pointed out that this consultation by the sentencing judge with his colleagues is merely advisory and that the recommendations of the two other judges are in no way binding on the final decision of the sentencing judge. No defendant or counsel has ever complained that the Council was against his best interests. I should add that most sentences in this District are imposed under the indeterminate sentence provis-

ions of 18 U.S.C. 4208 (a) (2). This precludes a possible objection that the Council procedure has resulted in a fixed policy as to length of sentence for a specific offense or a certain category of offenders.

The Sentencing Council procedure has been endorsed by legal and correctional authorities and bodies. For example, the House of Delegates of the American Bar Association approved on August 6, 1968, a draft of *Standards Relating to Sentencing Alternatives and Procedures*⁴ where the following statement appears in Part VII, Section 7.1, relating to Sentencing Councils, page 298:

In all courts where more than one judge sits regularly at the same place, and wherever else it is feasible, it is desirable that meetings of sentencing judges be held prior to the imposition of sentence in as many cases as is practical. The meeting should be preceded by distribution of the presentence report and any other documentary information about the defendant to each of the judges who will participate. The purpose of the meeting should be to discuss the appropriate disposition of the defendants who are then awaiting sentence and to assist the judge who will impose the sentence in reaching a decision. Choice of the sentence should nevertheless remain the responsibility of the judge who will actually impose it.

In the Commentary on Section 7.1 the following statement on sentencing responsibility is made in 7.2 (e), also on page 298:

Although it is to be expected that the judge who is to sentence a particular defendant will be influenced by the opinions of his colleagues, it should be made clear that the responsibility still remains with the sentencing judge. The council is operating for his benefit, not as a device to control his conduct. The last sentence of the section accordingly provides that the council is not intended to usurp the function of the sentencing judge.

In 1969 a defendant was sentenced by the U.S. District Court for the Eastern District of New York which also has a Sentencing Council. An appeal was filed. The defendant had been convicted through trial by court on five counts of wilful failure to file income taxes. Judge Joseph C. Zavatt imposed the maximum 1-year prison sentence on counts one and two, suspended sentence, and placed the defendant on probation on the other three counts. When imposing sentence Judge Zavatt remarked that all three members on the Sentencing Council had agreed that the defendant should be committed to prison.

In September 1969 the defendant petitioned the United States Supreme Court for a writ of certiorari to the U.S. Court of Appeals for the Second Circuit, which had affirmed the above judgment in the Eastern District of New York. The petitioner claimed that the Sentencing Council de-

⁴ *Standards Relating to Sentencing Alternatives and Procedures*, Approved Draft, 1968, published by the American Bar Association.

prived him of his right to effective and meaningful allocution under Rule 32(a). Further, he contended that it had deprived him of his right to be present and represented at all critical stages of the proceeding. It was alleged that a defendant should have the opportunity of presenting, personally and through his attorney, arguments in mitigation of sentence at a time and place when it can "count." It was argued that the time and place that "counts" is at the Sentencing Council meeting.

The Solicitor General for the United States filed a memorandum in opposition to the petition for a writ of certiorari. He set forth that the defendant was found guilty by the court and received the usual presentence investigation. Further, in accordance with the local procedure of the U.S. District Court at Brooklyn, a three-judge sentencing panel had considered the appropriate sentence. The Solicitor General cited *Williams v. New York*, 337 U.S. 241, wherein it was held that the sentencing judge may properly inform himself by out-of-court information. He pointed out that the *Williams* case was reaffirmed in *Specht v. Patterson*, 386 U.S. 605, 608, where the court said (386 U.S. at 606): "We held in *Williams v. New York*, 337 U.S. 241, that the due process clause of the Fourteenth Amendment did not require a judge to have hearings and to give a convicted person an opportunity to participate in those hearings when he came to determine the sentence to be imposed." The Solicitor General also submitted that the grave penological problems caused by disparity in sentences received legislative recognition and the Sentencing Council had been devised as one means of minimizing unjustifiable disparity. He argued that the petitioner had his rights of allocution and representation by counsel before the trial judge, who bears and exercises the sole responsibility of applying the background information and recommendations gleaned from Sentencing Councils, probation reports, and all other permissible sources of data. On January 12, 1970, the Supreme Court denied the defendant's petition for a writ of certiorari.

Disparities in Sentencing Still a Nationwide Problem

There continues to be an urgent need to improve the judicial sentencing process in our country and to come to grips with disparities in sentencing. Part of the problem may be the increasingly larger number of cases and the more complex

cases before both federal and state courts. During the fiscal year 1969 there continued to be wide disparities in sentences. For example, the length of sentence imposed for bank robbery varied from an average of 14½ years in District K to an average of 8⅔ years in adjoining District L. (See Table 1.)

TABLE 1.—*Examples of disparity in prison sentences in U. S. District Courts (fiscal year 1969)*

Adjoining districts	Offense	Average term of imprisonment
District A	Auto theft	43.5 months
District B	" "	26.9 "
District C	Liquor (Int. Rev.)	14.9 months
District D	" " "	5.6 "
District E	Forgery	35.7 months
District F	"	26.5 "
District G	Selective Service	33.4 months
District H	" "	19.9 "
District I	Narcotics	96.6 months
District J	"	57.3 "
District K	Bank robbery	171.6 months
District L	" "	105.4 "

SOURCE: Administrative Office of the United States Courts, Washington, D.C.

There is also a marked disparity in the extent to which probation is used in the federal courts, not only in adjoining districts but also by judges of the same court. The proportionate use of probation for all district courts during 1969 was 49.1 percent, ranging from a low of 22.1 percent to a high of 79.2 percent. Table 2 reflects the dispro-

TABLE 2.—*Examples of disparity in the use of probation in U.S. District Courts (fiscal year 1969)*

Adjoining Districts	Percentage Use of Probation
District A	73.4
District B	38.2
District C	73.5
District D	45.2
District E	60.6
District F	50.0
District G	39.7
District H	22.9
District I	79.2
District J	55.7
District K	53.1
District L	31.8

NOTE: The percentage use of probation in all district courts of the United States was 49.1 percent, ranging from 22.1 percent to 79.2 percent.

SOURCE: *Federal Offenders in the United States District Courts, 1969*, published by the Administrative Office of the United States Courts, Washington, D.C.

portionate use of probation in contiguous district courts in four different areas of the country.

In Conclusion

When the Sentencing Council was created in the Eastern District of Michigan in 1959, one of the judges was skeptical whether the group sentencing procedure, much as it was needed, would be readily or widely adopted on a voluntary basis. He pointed out that judges would resist a conference system, believing it would deprive them of their judicial prerogatives and responsibilities. It was something new, he expressed, and for one reason or another judges would find ways to resist any change in traditional sentencing practices. The judge predicted that legislation would be required to establish group procedures in sentencing in the various district courts. In the light of developments within the last 10 years his words were prophetic.

In the September 1961 issue of *FEDERAL PROBATION*, James V. Bennett, then director of the Federal Bureau of Prisons, wrote an article, "Countdown for Judicial Sentencing." He called attention to a number of inconsistent and grossly disparate sentences occurring in various federal district courts which resulted in problems for the prison administrator and others connected with the administration of justice. In his recent book, *I Chose Prison*,⁵ Mr. Bennett tells of the large number of cases going to the United States Court of Appeals, not so much on the issue of guilt or innocence, but more in the attempt to overcome "unnecessarily harsh sentences." He quotes the late Chief Judge Simon Sobeloff of the Fourth Circuit Court of Appeals who, in speaking of unnecessarily harsh and unfair sentences, said:

These fantastic vagaries tear down the mightiest sanctions of the law—respect for courts. In our country, we have good and wise men on the benches, but not all are wise and good, and even the best and most prudent, being human, like Homer, are sometimes inclined to nod. The truth is that passing sentence is too delicate and too powerful a function to lodge in any man's hands entirely unsupervised.⁶

The sentencing of criminal defendants poses just as many problems in state and local juris-

dictions as it does in the federal courts. There is growing public awareness of and concern about deficiencies in judicial sentencing, particularly in the area of disproportionate sentences. Douglas Bradford, a reporter for the *Detroit News*, relates in an article in the May 9, 1970, issue, "Sentences Are Agonizing for Judges, Too," what he found in interviewing five Circuit Court judges in the Detroit area and attorneys and laymen. He observed that some state judges are known as "hanging judges" because of their severe sentencing practices, while others are known as "sob-sisters" because of leniency in their sentences. He wrote: "For the prisoner it is often the luck of the draw. He may get four to fifteen years from a judge in one county for breaking and entering, and probation for a like offense in the same or an adjacent county."

The sentencing problem increases with the growing number of criminal defendants before the courts. The freedom and welfare of many thousands of persons and their families are vitally affected each day by the sentencing practices that prevail in the various jurisdictions—federal, state, and local. It may be that legislation will be necessary to achieve needed improvement and reform in sentencing practices. The Sentencing Council has demonstrated during these 10 years that group procedure is an effective way to minimize disparity and improve the quality of sentencing. It is no longer an experiment and is operating more effectively than ever.

The judges at Detroit are fully convinced of the practicability and effectiveness of the group approach to sentencing. The Sentencing Council is, of course, not the ideal or ultimate solution to disproportionate sentences, but its goal is admirably expressed in the title of Judge Levin's 1967 article, "Toward a More Enlightened Sentencing Procedure."⁷ The Sentencing Council was created primarily to avoid disparity in sentences within this District and it has demonstrated that it is an effective method of accomplishing this objective. Hopefully the torch which the dedicated judges of the Eastern District of Michigan lighted in November 1960 will guide man further along the way to "Equal Justice Under Law."

⁵ James V. Bennet, *I Chose Prison*, New York: Alfred A. Knopf, 1970.

⁶ *Ibid.*, p. 183.

⁷ See footnote 3.

Justice is everybody's business. It affects every man's fireside; it passes on his property, his reputation, his liberty, his life; yes, his all. We must therefore build our courts on solid ground, for if the judicial power fails, good government is at an end.

—Justice Tom C. Clark.

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).

The San Francisco Project: A Critique

BY WILLIAM P. ADAMS, PAUL M. CHANDLER, AND M.G. NEITHERCUTT, D. CRIM.*

IT HAS NOT BEEN established that the rise in reported crime reflects basic changes in American people. It is apparent, however, that seldom in the history of our country has such a majority of law-abiding citizens been so acutely aware of crime and so concerned with its remediation. It is a concern that embraces our political system, increasing our interest in the effectiveness of crime control approaches. In view of heightened public concern, research in probation and parole can no longer be regarded as a luxury; it is essential to improve program effectiveness and to increase public confidence in these processes.

Research is costly and funds for research in probation and parole have been limited. It is

important, therefore, that we make our research investments wisely. In 1964 a major research effort, the *San Francisco Project*¹ was undertaken. Because the final project report revealed methodological uncertainties and equivocal results, a critique might reveal some valuable lessons for guidance in future research investments.

On June 1, 1964, the National Institute of Mental Health awarded a \$275,000 grant to the School of Criminology, University of California, Berkeley, for research in probation and parole. Funded for four years, the project began September 1, 1964. As then conceived, the main goals of the project were:

1. Develop discriminating criteria for the classification of federal offenders.
2. Study the effects of varied intensities and types of supervision and caseload sizes.

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¹ Joseph V. Lohman, G. Albert Wahl and Robert M. Carter, *The San Francisco Project*. Berkeley: University of California, April 1965.

3. Develop a prediction table for supervision adjustment.

4. Examine decision making in presentence recommendations.

Despite its unique aspects, the San Francisco Project was more replicative than innovative. As early as 1952, for example, the California Department of Corrections commenced research with variations in caseload size and supervision.

The San Francisco Project was carried out in the U.S. probation office of the Northern District of California with headquarters in San Francisco and offices in Sacramento and Oakland. Study population problems arose during the research when the Eastern District of California was created, removing a large number of cases from the original project.

During Phase I of the research, data were gathered on almost all offenders received for presentence investigation and released for supervision from federal institutions. Data collection forms were key punched for machine tabulating. While data gathering was proceeding, extensive changes were made in caseload assignments. Based on the 50-unit workload concept,² four levels of supervision were established.

There were two *Ideal* caseloads, each containing about 40 supervision cases and two presentence investigations per month, approximating the 50-unit concept. The *Intensive* caseload represented half that standard, with two officers assigned to it, each having a supervision load of 20 and one presentence investigation per month. The *Ideal* cases were to receive supervision on the basis of at least two contacts per individual per month while the *Intensive* caseloads required contacts once weekly.

The *Normal* caseloads consisted of the usual workload in the Northern District of California which had been averaging about 100 work units per month. Since some cases were syphoned off to the other caseloads, and one *Minimum* supervision load was established (consisting of approximately 350 cases and no presentence investiga-

tions), the *Normal* caseloads were diminished in size.³

In Phase I of the project, clients for the various caseloads were chosen from the existing loads and from newly received probationers and parolees randomly. These random assignments to all caseloads were made from September 1964 to June 1967 with a few exceptions representing special problems.⁴

In Phase II, beginning June 1, 1967, the policy on case assignment was changed from randomness to selection based on four factors.

Probation Supervision

A variety of activities is included in "probation supervision," ranging from surveillance through group counseling to psychoanalysis. In the San Francisco Project reference is made, interchangeably, to *types*, *kinds*, and *intensities* of supervision. At no point, however, were the characteristics of differing types of supervision identified. During the period of research no extraordinary treatment programs were in progress. Types or kinds of supervision remained dependent upon the styles of individual officers. With one exception, to be discussed later, no qualitative distinction was made among the styles of individual officers. To the contrary, anonymity was ensured and an effort was limited to measurement of different intensities of supervision.

In dealing with these different intensities the number of contacts the officer had with each client was approximately⁵ documented. The quality of these contacts was ignored. In keeping with the methodological components of the research, an officer maintaining *Intensive* supervision might see a person four times each month, for 10 minutes per contact. An officer providing *Ideal* supervision might see the individual twice each month, for an hour each time. The measurement used, therefore, not only failed to deal with quality but provided a poor "measure" of quantity (simple time exposure to supervision).⁶

The Selection Phase

As the shift was made from the random phase to the selection phase of the research, individuals were assigned on the basis of a four-factor profile to the four levels of supervision—*Intensive*, *Ideal*, *Normal*, and *Minimum*. Because data from the earlier phase of the project were not definitive, selection of the four factors was based upon knowledge derived from other sources.

² See *Manual of Correctional Standards*. New York: The American Correctional Association, 1962, p. 510. For a different standard consult *The Challenge of Crime in a Free Society*. Washington: U.S. Government Printing Office, 1967, p. 167.

³ Normal caseload sizes were quite variable. For instance, during the study one of the authors determined the range to be 70 to 130 supervision cases plus an unknown number of investigations.

⁴ No substantive estimate of the number and characteristics of these cases appears to be available.

⁵ The word "approximately" is used here because this documentation depended on entries in records maintained by several different persons. No reliability checks, audits, etc., were used so the data depended almost exclusively on officer attention to detail.

⁶ Note that time exposure to an officer is an illusive index too. For instance, some officers spend half the time a client is in the office talking to someone else on the telephone.

Individual offenders were given profile numbers of 1, 2, or 3, in each of the categories *type of offense, age, and prior record*, and 1 or 3 on the basis of the Socialization Scale (CPI-SO) from the *California Psychological Inventory*. There were 54 possible profiles ranging from 1-1-1-1 to 3-3-3-3, the higher numbers representing those believed to have a higher recidivism probability.

In deciding which of the profile groups should be assigned to the various levels of supervision the "expert-judge" technique was employed. This technique is accepted in social science research, but loss of precision is inherent in its use. Generally the "expert-judge" technique employs a minimum of three "judges" making independent choices and some method to integrate their decisions. In the San Francisco Project only one such "judge" was used. One can speculate endlessly on what characteristics such a judge should have—long, successful, and recent field experience, finely tuned administrative skills, extensive familiarity with correctional research practices, etc. The point is: No one man is likely to be an adequate "judge."

To explore what losses might be experienced because of the application of the "expert-judge" technique, consider for a moment, a familiar federal offender, the postal employee embezzler. If over 40 years of age and scoring within an arbitrary range on the CPI-SO, this offender would have a profile of 1-1-1-1, the lowest recidivism probability.

Such offenders frequently fall into the "ritualist" category in Merton's classification of deviant behavior.⁷ On the basis of the "expert-judge" decision, and with conformity as a singular measure, such offenders were placed on minimum supervision. True, in most instances they continued to conform and complete probation "successfully." Not known, however, is how many of these offenders returned to tight patterns of conformity with no increased realization of personal freedom. How many became mental health casualties? With existing criteria they were regarded simply as probation successes.

Minimum Supervision: Random Phase

Minimum supervision has, de facto, been the rule in probation for years, a byproduct of limited appropriations. The San Francisco Project estab-

lished minimum supervision caseloads by design and much of its evaluative effort focused on this caseload.

During the random phase a representative group of clients were assigned to a single, large caseload. They were not told the nature of the supervision they were to have, but were encouraged to contact the probation office if they wished assistance. During an initial interview they received instructions regarding travel limitations and required written monthly reports. Following the initial interview no contact was initiated by the probation office unless monthly reports were absent or certain events, such as an arrest, came to the attention of the probation office. In such cases contacts were assigned to a staff probation officer on the basis of availability. If assistance with a specific problem was sought, that matter was assigned to a staff officer in like manner. Many persons on minimum supervision did take the initiative in making contact.

Excluding technical violations, the violation rate for the minimum supervision caseload was reported as not significantly different from that of other caseloads. The inherent weaknesses of the violation index as a measure of probation success preclude any conclusions, however. Whether this group did or did not do any better than the others is unknown, but an inference worthy of closer attention emerges from the data.

The probability that the talents and time of probation officers might be more efficiently trained on specific needs, as opposed to making routine contacts, awaits verification or rejection through future research efforts. If, at the outset of supervision, a climate of trust and confidence is established, it seems more likely that clients will seek the assistance of a probation officer before permitting their personal adjustment to deteriorate to the point of probation or parole violation. No available evidence documents that routine contacts without goals will increase such a possibility. Clearly needed is closer attention to understanding and measuring the quality, not the quantity, of supervision.

Minimum Supervision: Select Phase

During the select phase of research a large minimum supervision caseload was formed with individuals having a low violation probability. The four-factor profile was used. This caseload was assigned to an officer who developed his own management techniques. After the select phase

⁷ Robert K. Merton, "Social Structure and Anomie," *Sociological Analysis*. New York: Harcourt, Brace and Company, 1949, p. 775.

commenced, individuals with other than low profile scores were transferred to this caseload as a result of judgments made by officers who, until such transfers, provided them with other levels of attention.⁸

Considerable information was lost during the evaluation of the select phase of minimum supervision, due, in part, to the fact that much of the collected data had not been stored properly. It appears that the loss of such documentation led, to some extent, to fantasy levels of evaluation such as reference to the "Superman" qualities needed in an officer handling such a caseload.

If the violation index were valid and reliable, the reported 11.5 percent rate of violation for this group, compared to higher rates of violation for other groups, would, nevertheless, be meaningless because no control group of comparable selectivity receiving other levels of attention existed. The possibility remains that a group with a high recidivism probability might do best under minimum supervision or that persons with low recidivism probability might have even lower violation rates with closer attention.

The violation rate reported for the select group under minimum supervision becomes further suspect when it is noted, in the final report, that the officer periodically reviewed the individual cases, moving for early termination of supervision when he deemed appropriate. No criteria are provided to show under what circumstances early termination was considered appropriate. It is obvious that violation rates can be reduced to nil by terminating cases soon enough. They can also be influenced by computation techniques.¹⁰

In contrast to the effort made to avoid identification of individual supervision techniques in other aspects of the research project, attention was given to the approach developed by "Mr. X," the officer handling select phase minimum supervision. He attempted to establish clearly the "ground rules" for supervision. His intent was to create a "contract" detailing appropriate performance for the individual under supervision

and reciprocal assistance from the probation officer. One purpose was to eliminate a sense of manipulation and shift some responsibility to the client. This could be important because it emphasizes one of the essential ingredients in a reintegration process—that of experiencing responsibility. In reviewing reports on this phase of the research one wonders, however, how consistent intent and practice were when "Mr. X" refers to knowledge not shared by the probationer/parolee as his "hole card," and says "I'll use every bloody tool I have available to get them to meet the contract."

It remains a distinct possibility, as suggested by the San Francisco Project design, that probation supervision caseloads can be organized to improve the use by well trained and highly educated probation officers of their effort and concern. In the process it might be determined that through appropriate selectivity many persons can safely be assigned to large, minimally supervised caseloads, and benefit from infrequent attention. One cannot infer, however, that meaningful selection can be made upon age, type of offense, prior record, or results from a psychological test that were not delivered to the computer for evaluation.

Violation Index as a Measure of Success

To become definitive, social research, like research in the physical sciences, requires criteria for measurement. The complex processes of probation and parole are so poorly understood that methods for evaluation often are illusive. The tendency is to focus upon the obvious, the believed level of subsequent law violations, as a measure of success.

A violation index was developed for the San Francisco Project relating the number of persons with unfavorable terminations to the number of persons with favorable terminations and during the second phase of the research, lumping all persons still active on supervision and having completed 24 months of supervision, with the favorable termination group. Therefore, completion of 24 months on supervision became equivalent to success. No information provided indicated the 24-month period has a relationship to successful community adjustment. It is an arbitrary figure, probably determined more by sample size needs than by the social phenomena.

Use of the violation index established conformity as a measure of success. Probation and

⁸ Separating these persons to control for possible contaminating effect evidently is not possible. The type of outcome distortion likely through this transfer procedure is obvious: clients transferred to minimum supervision likely would be a highly selected (for "success") group compared to the general population.

⁹ James L. Robison, Leslie T. Wilkins, Robert M. Carter, and G. Albert Wahl. *The San Francisco Project Final Report*. Berkeley: University of California, April 1969, p. 60.

¹⁰ An example of this is apparent on page 63 of the *Final Report* (Robison, *loc. cit.*). There the "11½ percent" violation rate is computed by dividing number of cases permanently removed from minimum supervision as successes (124) into number of cases in which warrants were issued or where the closing was "by violation" (14). However 17 of the permanent removals were by transfer, so these were neither success nor failure cases. A transfer is not a termination. This makes the "violation rate" 13.1 percent without any change in client performance.

parole embrace many complexities; they span human personality interacting with society. If the rate of subsequent law violations were a valid measure of these complex processes, controlled, scientific application of such an index would be essential for the development of reliable information. With the application of the outcome rate, several variables came into play without sufficient control, interfering seriously with the credibility of the findings.

During the random phase of research, with the technical violations excluded, the violation rates reported for the *Minimum* and *Ideal* caseloads were 22.2 percent and for the *Intensive* caseload, 20.0 percent. This represented no significant difference.¹¹ Including technical violations the violation rate for the *Intensive* group was 37.5 percent, for the *Minimum* group, 22.2 percent and *Ideal* group, 24.3 percent. Persons under supervision at the time of this evaluation had been exposed to the possibility of unfavorable terminations for significantly different periods of time. The project evaluation approach was supported with the statement, "It is believed that the first six to twelve months of supervision are generally the most critical in terms of violation rates." That appears a potentially hazardous assumption, especially since it is not tested in the project.¹²

The first 6, or the first 12 months of supervision might be the most critical in terms of violations but the use of a generalized assumption, without clearer statistical distinctions, to include in the computations persons with significantly different periods of time under supervision, and the failure to deal statistically with the violation potentials beyond a 12-month period for those persons, causes a loss of confidence in the results of those computations.

The various caseloads, during the random selections phase, were comparable initially in some respects such as *age*, *prior record*, and *type of offense* but significantly different in other areas, such as *family criminality*, *occupational skills*, *sex*, and *education*. The implication here is that violation rates were compared across groups dissimilar in some characteristics which may have substantial impact upon community adjustment.

¹¹ Robison, *loc. cit.*, p. 6.

¹² For an assessment of by-month violation rates during the first year of parole supervision in a heterogeneous parole population consult *Uniform Parole Reports Newsletter*: Davis, California. National Council on Crime and Delinquency Research Center, April 1970, pp. 3-4.

¹³ The reader is cautioned to take these analyses cautiously. The comparisons on outcome are based on a total of 87 cases (18 from the minimum group, 37 from the ideal, and 32 from the intensive).

¹⁴ See "The Decision Making Process" which follows.

The existence of some of the differences has been acknowledged in report form but these differences are described as unsystematic. In fact, if one scrutinizes the six variables in which the three caseloads differ significantly, four of them indicate the intensive caseloads to be disadvantaged and on only one is the minimum caseload prejudiced.

Two important factors affecting violation rates were *early terminations*, representing success, and *termination by warrant*, representing failure. Successful termination is usually the product of agency machinery, whereas unsuccessful termination is likely the result of specific behavior on the part of individuals under supervision. Had the violation index been applied to groups with comparable percentages of favorable terminations (holding number of violators constant), the adjusted violation rates would have been 10.5 percent for the *Minimum* group and 20.9 percent for the *Ideal* group compared to 37.5 percent for the *Intensive* group. Apparently, then, during the random phase the caseloads differed significantly on outcome, albeit not in the direction that might have been anticipated.¹³ This difference devolves mainly from the fact that the various modes of supervision differed very significantly on number of cases terminated successfully as well as unsuccessfully.

Termination by issuance of a warrant occurs most often from the commission of new offenses. The second most frequent cause is failure to meet the conditions of probation or parole. Since probation officers differ significantly in recommendations on judgments and the courts are influenced by officer recommendations, decisions concerning the issuance of warrants may be influenced by a variety of supervision philosophies.¹⁴ Deliberate effort to avoid identification of particular officer styles in the research fostered loss of control over this potentially important variable.

Early termination of supervision results largely from an officer's awareness and evaluation of an individual's community adjustment. Except in cases with special conditions, no criteria have been established for early termination so such actions depend largely upon the initiative of the individual officer. Two clients making similar adjustments might have had substantially different chances to be terminated from supervision early, particularly if one had close attention under *Intensive* supervision, and the other had little attention under *Minimum* supervision.

Again, inadequate accounting of an important variable raises serious questions about the reliability of the violation index.

The final report, perhaps the most useful of the series, suggested that the high rate of technical violations for persons under *Intensive* supervision probably resulted from officer awareness of activities. Further investigation might unearth some entirely different reasons. Consider at least another possibility. Traditionally in America, imposition of authority is not assimilated easily, even by the essentially law-abiding. Understanding this, entertain the possibility that the higher number of technical violations for persons under *Intensive* supervision resulted as expressions of defiance in response to the frequent authoritative intrusions into their lives. Such a possibility applies to all violations, not technical violations alone.

Emile Durkheim, the 19th century sociologist, suggested that crime serves a social function. If this is so, perhaps by encouraging new violations our correctional processes have assured society of a criminal population. This might appear preposterous, but the efficiency with which our institutional programs have functioned in that direction remains. The "revolving door" jail treatment of skid row alcoholics intensifies rather than interrupts losses of self-respect. Such "treatment" has virtually guaranteed a supply of drunks for our city streets. Many persons are employed revolving the doors and, by offering objects for comparison, these inebriates have given many persons reason to feel better about themselves.

The Decision-Making Process

Probation officers make decisions affecting clients and communities. A goal of the San Francisco Project was to examine the practice of officers making sentencing recommendations to the court. In the Northern District of California, probation officers recommend criminal case disposition and the courts "follow" these suggestions in about nine of 10 cases.

The "decision game" described by Wilkins¹⁵ was used with 14 United States probation officers stationed in San Francisco. Five cases in which presentence reports had been prepared were analyzed and classified under 24 subject headings.

The information was typed on 4" by 6" cards with a title on the lower edge, the cards being arranged in a binder for each case so that only the title showed. Each officer was asked to "conduct" the presentence investigation by selecting the information he wished to use. After each selection the officer was asked if he could make a recommendation. The researcher encouraged an early decision and recorded the selections and recommendations. After a decision was made the officer was asked to select three more cards and state whether he wanted to change his recommendation.

On the average, these probation officers selected 4.7 cards prior to decision. *Offense* and *Prior Record* were selected in every case. Six other categories, *Psychological/Psychiatric*, *Defendant's Statement*, *Defendant's Attitude*, *Employment History*, *Age*, and *Family History* being selected more than half of the time.¹⁶ Decisions, therefore, were based on but few of the 24 factors contained in the presentence report and the additional information seldom changed recommendations. The researchers concluded that much of the information gathered in the investigation was not used in arriving at a recommendation.

The research failed to recognize that the eight categories most often chosen were likely to include information which the investigators indicated was little used. For example, the three separate categories of drug use, homosexuality, and alcoholic involvement were chosen by the officers less than 20 percent of the time, but these are items which are usually found, if present, in the psychological/psychiatric section which was chosen in the 80 percent range. The *Family History* category, chosen more than half the time, could conceivably contain almost all of the pertinent data about the offender. Nearly one-third of the 24 items were selected in the less than 10 percent range but included are such facts as race, religion, and place of birth. While these may be important for identification, or for other reasons, it is hoped and expected that they would have little or no relevance to sentencing. Thus even a casual inspection of the distribution of the information items indicates that the suggestion that a small amount of information is used in decision making is misleading.

There are other uses of the presentence report besides determination of the sentence barely acknowledged in the research reports. Presentence reports may be used both as a guide for super-

¹⁵ Leslie T. Wilkins, *Social Deviance: Social Policy, Action and Research*, Englewood Cliffs, N.J.: Prentice Hall, 1965, pp. 294-304.

¹⁶ Joseph D. Lohman, G. Albert Wahl, and Robert M. Carter, *Decision Making and the Probation Officer*, Berkeley: University of California, June 1966, pp. 7, 10.

vision and a basis for classification and treatment by institutions. For example, the Bureau of Prisons would perhaps find an evaluation of the individual's educational adjustment very significant in its attempts to develop a meaningful treatment program, although this item was rated, according to the study, at about the midpoint in decision making for sentencing. Obviously the importance of the data relates to the use to which it is to be put. While some of the data collected and recorded by the probation officer may not have significant immediate use in sentencing, he is usually in the best position to glean that information which may be of significance in the correctional process.

Two of the five cases were chosen as being clear-cut, one leading to probation, the other to confinement. In these cases there was perfect agreement among all 14 officers. The other three cases generated a wide range of opinion. In case four, for example, five officers recommended imprisonment, two probation, four split-sentence, and two county jail terms.¹⁷ Given the evidence that there is substantial agreement among probation officers' recommendations and the actual sentence imposed, these data were interpreted as suggesting that disparity in sentencing, usually attributed to judges, may be influenced considerably by probation officers.

Because two of the cases were of the "open and shut" variety, decisions using limited categories of information were invited. To generalize about levels of information usage on the basis of five cases from a universe of thousands is indefensible; to do so when two of the five have been chosen to drive information usage down is worse. Further, officers were instructed to make decisions on as little information as possible; this constraint being the opposite of working conditions.

Minimum documentation needed here is a separate tabulation of the number of factors considered in cases really requiring a decision. Also, it is not wise to imply that because, on the average, only a few factors are used in making most decisions no data beyond those are needed.¹⁸ Rather, one is better advised to look at the most demanding cases decision-wise and see what they require. This would mean looking at the top of

the range of factors. Here that number is 13, suggesting that the "efficiency level" may be rather high.

The statement, ". . . it appears certain that the data most significant (for decision) are the items of information most often initially collected by probation officers . . . as well as being information which serves as the basis for presentence report recommendations,"¹⁹ is unrealistic. Those items initially collected depend on what is in the case folder at assignment. The referral sheet has the name, address, offense, possible sentence, names of codefendants, custody status, sentencing judge, plea, date of plea, date of judgment, court officer's initials, and miscellaneous comments. Sometimes there is an arrest record; often there is not. These items initially collected mostly seem to have little or no bearing on judgment. Also, because the fact gathering process is fairly routinized at referral, what an officer asks for first or second may be more a matter of habit than anything else. The fact that "confinement status," though highly correlated with sentence, is seldom asked for in the decision game setting suggests pitfalls inherent in this sort of analysis.

While the authors of the San Francisco Project intimate that these findings document inefficiency in the presentence process, the data presented hardly support a dogmatic stance. The relationship between playing at decision making and actually confronting problems in the field remains a mystery. For example, "Research Report Number Seven" notes that in the decision game officers ". . . did not have to go into the field to verify information such as employment . . ." ²⁰ Apparent is the potential value of such verification, though, because official employment reports are notoriously misleading. That report also states ". . . participants were allowed to 'gather' information or 'conduct' the presentence investigation in any way they desired . . ." ²¹ As the report unfolds, however, it becomes apparent that the only latitude in the decision game was freedom to choose cards in any preferred order.

What does one do when two pieces of information conflict? What happens when the official version of the offense and the defendant's version are not reconcilable? There are no victims in the cards to be contacted and cryptic paper entries give few clues to their veracity. Who judges the

¹⁷ *Ibid.*, p. 14. The total is less than 14, for one officer who recognized his own work was excluded.

¹⁸ *Ibid.*, p. 16.

¹⁹ *Ibid.*, pp. 18-19.

²⁰ *Ibid.*, p. 5.

²¹ *Ibid.*, p. 5.

"defendant's attitude"? Is he truly hostile or terribly frightened?

If the implications of this research are correct, presentence investigations could be conducted by case aides and computers at greatly reduced cost and with increased efficiency. If that be true, though, what of the vital relationships—often established between probation officer and offender during the presentence process—that are difficult to establish afterward? What if efforts to get the offender moving in a positive direction at the time when he seems susceptible to change are delayed? The "evidence" presented suggesting that probation decision making is a simple mechanical process is less than overwhelming. It fails to account for the personal "chemistry" between client and officer, the intuitive process that each officer uses to evaluate his cases, and the fitting of pieces together in understanding the offender.

Impact of Supervision

A valuable contribution to the San Francisco Project has been provided by Arthur E. Elliot, then supervisor of social work students training at the San Francisco probation office. Mr. Elliot wished to sample the effects of the project from the clients' point of view. His work on supervision impact was primarily intuitive and interpretive, but employed a systematic approach.

The aims of the study included:

1. Ascertaining the offender's view of probation or parole.
2. Determining the probation officer's concept of his role in supervision.
3. Obtaining information about supervision from persons close to offenders.

Standardized interviews were held in cases terminated successfully between September 1, 1966, and June 1, 1967. The sample contained 100 offenders, 71 of them probationers.²²

While attitudes and experiences of successful cases may differ from those of failures, other characteristics of the sample generally paralleled the project population. It should be noted, however, that more than 40 percent of Mr. Elliot's sample had no prior record, a circumstance suggesting the group had fewer negative experiences with law enforcement than a general sample of offenders. An earlier report in the project series

indicated that 26.6 percent of a sample of 500 had no prior records.²³

There are some highly suggestive findings in Mr. Elliot's work which may be of use to the probation officer. First, there was a high degree of consensus between offender and officer regarding offender problems and available pertinent resources. This would seem a good omen for a favorable counseling relationship. The study indicated, however, that seldom was there a long-range, well-developed plan of supervision. Counseling generally focused on specific assistance requested by the client and was, of course, limited by the time and skill of the officer. In addition, much time was spent in general contact which was of questionable use to the client. Perhaps these factors explain why only 10 percent of the offenders said probation officers contributed significantly to their supervision success.

Of those who received *Intensive* treatment, not one named the probation officer as important in his adjustment. To the offenders the most important aspect of successful adjustment was assistance from family or friends, followed by having a basically noncriminal orientation. Employment and emotional growth also received priority consideration. Fear of further legal action was considered less important by the study group in preventing further criminal activity.

The results were in close agreement with the probation officer's analysis of his own work. Here is a clue, it appears, to explain why intensive supervision did not seem to reduce the rate of violation. Perhaps it is not the number of contacts but rather the *quality* of work that is vital.

Despite pessimistic evaluations of the supervision process, most offenders and their families agreed that positive changes occurred during supervision. However, 15 percent felt there were no changes while another 10 percent believed they had more problems than before. Some improvements were noted in the fields of emotional maturity, family relationships, and employment.

Despite the low regard offenders voiced for their probation officers' contributions to their success, it is interesting to note that 60 percent of the clients rated supervision as "helpful." Some reported specific activity of the probation officer which was helpful while others saw the probation structure itself as assisting in their good adjustment.

Among those who indicated they had not benefited from supervision there was a tendency to

²² Joseph D. Lohman, G. Albert Wahl, Robert M. Carter, and Arthur E. Elliot, *The Impact of Supervision: Officer and Offender Assessment*. Berkeley: University of California, September 1967, pp. 7 & 10.

²³ *Ibid.*, p. 27.

claim competence to manage one's own affairs and to see probation as interference. There was a general feeling that the shock of apprehension and court appearances was a specific deterrent.

Of particular interest to line officers is the relationship between the offender and the probation officer. Many social caseworkers feel positive relationships in corrections are difficult or impossible to attain because of the authoritarian setting. In this study more than two-thirds of the offenders had negative ideas about the probation officers prior to contact with the agency. Officers were assumed to be harsh, punitive, critical, moralistic, and enforcement minded. Sixty-seven of the 70 offenders (96 percent) with this view, however, changed their minds after actual contact with their supervising officers. Most offenders reported forming a satisfactory relationship.

It is unfortunate that this part of the research was not extended to persons receiving minimum supervision. Views of the supervision experience from those persons compared to individuals receiving other levels of attention might provide clues to meaningful changes in the administration of probation. Offenders are capable of insights into correctional processes, and, by virtue of their experiences, can teach much with their observations and evaluations.

A Theoretical Framework Needed

Review of the San Francisco Project reveals that method and direction were sought after the research was initiated. In the final report it is suggested that the original design was too ambitious. The absence of a well-developed theoretic-

cal framework resulted in lack of orientation and loss of efficiency.

There is yet no integrated theory of corrections.²⁴ Lacking such, difficulty in evaluating correctional processes, including the process of probation and parole, continues. Corrections embraces many complexities, yet in the San Francisco Project, a relatively simple concept of conformity, never clearly defined, is the focal measure of supervision outcome.²⁵

The San Francisco Project found early inspiration from some provocative questions posed by the late sociologist and lawyer Paul Tappan, who asked, "What part of our probation caseloads could have done as well merely on a suspended sentence without any supervision?"²⁶ He suggested the need for developing discriminating criteria for classifying offenders into categories: those who do not require probation, those who require differing degrees of supervision, and those who require highly professionalized services.²⁷

Robert K. Merton, a contemporary sociologist noted for having attained an unusual balance between theory construction and empirical research, recalls that a 17th century columnist, John Aubrey, reported "Dr. Pell was wont to say that in the Solution of Questions, the Main Matter was the well-stating of them; which requires mother-witt and logic . . . for let the question be but well-stated, it will work almost of itself."²⁸ In responding to the questions posed by Professor Tappan, the San Francisco Project moved too rapidly from speculation to attempted experimentation, and failed to state well the problems to be solved. There was insufficient clarity in exploring doing "as well." No definition was given to the "requirements" which might be met through differing types and degrees of supervision. In future probation research we must endeavor to identify and state well the problems to be solved; this will require a good measure of mother wit and logic.

²⁴ T.C. Esselstyn, "The Social System of Correctional Workers," *Crime and Delinquency*, April 1966, p. 117.

²⁵ Items on which the alleged randomly assigned cases differed significantly by supervision level have been enumerated. Outcome factors on which they were significantly different include prior convictions, persons returned to federal custody as violators, time under supervision and monthly earnings under supervision. Any (or all) of these serves as an alternate outcome index. The clear tendency here, too, is for the intensive cases to fare poorly consistently.

²⁶ Paul W. Tappan, *Crime, Justice and Correction*. New York: McGraw-Hill, 1960, p. 534.

²⁷ *Ibid.*

²⁸ Robert K. Merton, "Notes on Problem-Finding in Sociology," *Sociology Today*. New York: Basic Books Inc., 1959, p. IX.

Because of the importance of research, the Commission recommends that major criminal justice agencies—such as State court and correctional systems and big-city police departments—organize operational research as integral parts of their structures.—From *The Challenge of Crime in a Free Society* (1967), p. x.

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 eightfold. In actual numbers, probation and parole could have absorbed 20,000 additional workers in

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 have . . .³

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.

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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. 337-343.

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."

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 re-focused, 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*, 1955, 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.

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.²³ 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

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

²³ While it was recognized that such judgments were highly subjective, there was a high degree of agreement between judges on the independent ratings.

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.

College as a Parole Plan

BY MELVIN L. MURPHY AND MARIBETH MURPHY, PH.D*

IN ONE EVENING we attended two parties, one the celebration of the end of parole, and the other the first birthday party a 40-year-old man ever had. Each, in itself, was exceedingly meaningful; to us, these events symbolized the potential of a program of parole based upon college attendance.

Four years earlier, the concept of college as a parole plan had grown out of getting acquainted with the staff and leaders among the inmates at the California Correctional Institution at Tehachapi, California. Superintendent G. P. Lloyd, with his typical forward vision, had made possible the on-site participation of Professor Murphy's class of social welfare students from San Diego State College. These students and the inmates shared in group discussions. It became obvious that the goals and aspirations of students and inmates were more alike than different. That is, with one major exception: The students could look forward to the kind of life work which would be emotionally and intellectually satisfying and financially rewarding. The inmates could look forward to parole and probable employment, the satisfactions and rewards of which would be markedly less because they would be destined to the kinds of jobs available to "uneducated" men with prison records.

Some of these men had been imprisoned as a result of acting out their frustration over inability to make productive use of their high intellectual capacity. They could look forward to more of the same frustration and anger. Those in touch with prisons know this is a prime factor in the high recidivism rate of capable men.

After the students' 1966 session at Tehachapi, Professor Murphy's dream took substance. Through the cooperation of the State Board of Parole, the San Diego State College administration, and the staff at the Tehachapi institution, with the full encouragement of Mr. Lloyd, the first man was paroled with the understanding that he would attend college. From the start this was no easy

route for Ken: His release came 2 weeks too late for him to enroll in the fall semester, and he had to face the problems of earning his living until the next semester. At age 26, Ken started college as a freshman in February 1967. His parole period ended in November 1969. He is now in his junior year and has maintained approximately a 2.5 grade point average, and has been productively employed and active as a leader in social causes.

Ken, and the 21 who followed him, have proved that this could be a tremendous forward step in the rehabilitation program of the correctional institutions.

Social Implications

In a period of international awareness of the problems of deprived peoples, and especially in the United States where it has been possible to develop opportunities for these groups, there has been consideration of the potential intellectual capabilities of these peoples. Educational programs have been developed from the elementary grades through college for the culturally deprived, gifted students. Society must also concern itself with another deprived minority, the parolees and prison inmates whose educational opportunities were prematurely curtailed.

There is a high recidivism rate among parolees in spite of the facts that: (1) The parolee has served the length sentence deemed necessary after careful study by the parole board and is ready for the next step; (2) the intent of parole is continuation of the rehabilitation program; and (3) the parole agent is in a supervisory role with the goal of providing the supportive service necessary for the parolee to make a successful readjustment to society.

It would appear that in some way either the rehabilitation program or the parole criteria are not filling the need and might be modified.

If an assumption is made that the parole board's criteria for the inmate's readiness for parole, based upon his record of progress in the institution, is an accurate assessment, then it would seem that the parole situation is not providing the needed factors for rehabilitation.

The current parole plan assigns a parole agent to help with job placement and counseling, if in-

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icated, give assistance in finding adequate housing, and in some cases to provide a minimal financial loan. The high recidivism rate seems to indicate that for some parolees this plan is not adequate.

If one assumes that rehabilitation for parolees should include (a) developing the potential of the individual and (b) providing training for living in a new situation, then educational intervention becomes an essential consideration.

Many of these individuals are academically capable, but unqualified for college by previous poor grades, lack of finances, or cultural and social inertia in their early lives. Prison educational services both permit and encourage this group to achieve a high school education. With only a few exceptions, as first instituted at San Quentin where a limited number of college courses have been made available in the institution, and through correspondence courses, there has been no opportunity for an inmate to educate himself beyond the high school level. It has been nearly impossible for an ex-convict, even released, to gain a college education, without which his productive life is limited to manual or, at best, technical employment.

This can be changed. Paul Cossette, district administrator of the Parole and Community Services Division, San Diego, concluded in a September 1969 paper describing the educational program: "We have a start. College as a Parole Plan can be a meaningful statewide resource to help people reconstruct their lives into worthwhile productive experiences."

S. A. Whiteside, regional parole administrator, sent the article with this memorandum to Dr. H. J. Hastings, supervisor of education for the California Department of Corrections:

Since 1967, by reason of a three-way cooperative effort—San Diego State College, California Correctional Institution at Tehachapi, and Parole and Community Service Division, San Diego—we have instituted a program known as College as a Parole Plan.

Our experience to date would indicate this may prove to be an excellent program for a select group of students. Mr. Cossette has indicated step-by-step as to how this can be initiated

On October 14, 1969, Dr. Hastings sent a memorandum to all superintendents of education in California's Department of Corrections:

I concur with Mr. Whiteside that this may prove to be an excellent program for a select group of inmates and feel that San Diego State College, the California Correctional Institution at Tehachapi, and the Parole and Community Services Division, San Diego, are to be commended for the development of this forward-looking program.

Thus, the dream became actuality and was given official sanction.

The College Plan

The first step for an inmate interested in the college program upon parole, if he has completed high school, is to discuss his interest with one of the institution's educational counselors. If the plan seems feasible and in accordance with the inmate's ability, and if the counselor believes the individual is sincere, according to Mr. Cossette's outline, the counselor will

. . . direct the inmate to communicate directly with Professor Melvin Murphy, School of Social Work, San Diego State College, either by letter or by personal contact If, after contacting the inmate, Professor Murphy believes the inmate is qualified and capable of entering college, he will advise the inmate to direct a letter . . . to the Educational Opportunities Program, San Diego State College

The responsibility for deciding whether a person is "qualified and capable" is hardly a comfortable one. How does one assess intangibles: motivation, emotional stamina, resourcefulness, ability to maintain the necessary better-than-average conduct? There is no proved method; each must be screened as an individual human being, on the basis of personal interviews and letters of recommendation, in terms of his own unique strengths and weaknesses.

There are tests to assess ability: the American College Test (ACT), the College Aptitude Test (CQT), and the Writing Competency Test. Then comes the "admissions ordeal" which every student must go through, followed by the wait for notice of admission from the college—and the wait for the granting of parole.

With admission to college, the parolee receives an identification card. From this time on, he follows the established student program. In addition, he must inform the Community Services and Parole Division of the State Department of Corrections of his date of release, the fact that his parole plan includes college, when he will arrive in San Diego, and by what means. He must report to his parole agent within 24 hours.

Each parolee must arrange for his own arrival in San Diego. If he arrives in advance of the semester's start, he must house and support himself until he can be on campus. If he arrives within appropriate time, he can go directly into campus dormitory housing. If married, or if he has a family locally, he can live with his family.

Financial Arrangements

Since no parolee to date has been financially self-sufficient, and it is not likely that any will be, living expenses have been a major problem. In the first place, the imprisonment itself has removed the man from financial responsibility. In actuality, few prison inmates have a history of financial responsibility, and this becomes an area of difficulty from the beginning for most.

Arrangements have been made for most parolees to work on campus under the work-study program of the Educational Opportunities Program. The money earned is disbursed through the Financial Aids Office. The parolee must assume responsibility for making arrangements for his own allocation, and is expected to set up an account at any of the banks within walking distance of the campus. Usually he is "walked through" this process by a parolee who has preceded him on campus, and who also helps him through the registration procedure, including the payment of fees and registration for a minimum of 12 units.

Each month the parolee-student must be responsible for submitting his work-study time card, and for reporting to get his pay check. At the end of each semester he must reapply for financial aid and work out a budget for the coming semester.

The Parolee's Student Responsibilities

Parolees melt into the educational institution program with less difficulty than they adapt to unregulated living patterns. They are students, friendly and participating with other students, and must attend their classes and meet the course requirements. Some have difficulty with certain classes and must seek tutoring. All must learn the study habits so necessary for successful achievement.

The first semester is a period of contrast—the joy of freedom and the adventures of rediscovering the "world outside" with recreation and companionship and social life, contrasted with the frustration of coping with unfamiliar academic jargon, remembering the content of daily lectures, and overcoming test panic at exam time.

The financial stress of the first semester exceeds the parolee-student's expectations: movies, concerts, dates, and social activities are all freely available—and a strain on his meager budget. Transportation becomes a problem; most try to find "wheels" of their own: a bike, motorcycle,

or old car. Even the commodities in the local supermarket, or the articles available in the overstocked drug stores, or the stereos and tape decks, provide a temptation which a newly released parolee finds almost irresistible. All of these interests, and many more, keep crowding into the study time.

The first semester is an ordeal; yet of the total group who have chosen and been selected for this plan of parole, all but one have "made it"—and that one, despite his high intelligence, was not as motivated toward college as were we who selected him. He dropped out before the end of the first week of classes, but has had three-and-a-half successful years "on the outside."

The parolees' orientation group is a means of keeping contact with each other, a place for sharing problems and concerns, and hopefully for finding solutions. In addition to the parolee-students, Professor and Mrs. Murphy and Dr. Gwen Onstead of the San Diego State College Counseling Department have served as regular facilitator-participants. When special problems arise, such as summer employment or legal questions, resource people are invited to discuss the situation.

At the end of the school year a major problem for discussion, in addition to employment and summer classes, is the problem of housing after the dormitories close in June.

Administrative Assistants

During the 1969-70 school year an innovation under the work-study program provided for the employment of two administrative assistants to Professor Murphy. These two parolee-students serve a liaison function, handling correspondence with inmate applicants, seeing that all necessary forms are received, meeting parolees upon arrival in town, arranging for the first meal and for housing, "walking" the newcomer through registration, Financial Aids, banking procedures, and seeing that he gets to the first parolee orientation meeting. In addition, they act in a supportive role during the early adjustment period, seeing that problems are communicated to the proper person—program administrator, parole agent, counseling office, the professor, social worker, etc.

Current Status of the Program

After 3½ academic years, 41 people have participated in the San Diego State College program.

Two students have completed their period of parole and are now free citizens continuing their education. No paroles have been completely violated, although two men have returned for brief (45-day) periods following temporary difficulty.

Twenty-three are pursuing studies at San Diego State College; of the other 18, all but two completed at least one full year of college, and all are "making it" as citizens in the community.

Among the employment responsibilities held by parolee-students are:

- Research assistant in a federally funded educational grant;
- Community organization agent for the Educational Opportunities Program;
- Recruiter of trainees for Philco-Ford Job Development Department;
- Associate Director of New Careers;
- Assistant Manager for five men's clothing stores.

If we measure the efficacy of the program in terms of the recidivism rate—the California State Department of Corrections sets the percent of returnees at 80 percent in the first year—we would consider the program a success.

If we consider the cost of maintaining a man in prison for a year (\$3,200) compared to maintaining a man in college on this minimal financial

basis (\$2,600), we would consider the program a success.

If we consider the feasibility of college as a parole plan for those who are intellectually capable and motivated toward college, we would consider these 41 men to have at least substantiated the feasibility. We cannot, however, overlook a possible "halo" effect related to the newness of the venture.

We believe that a major consideration of the program's effectiveness must also be the level of productivity attained in society over a period of years by parolees who attend college compared to those who do not. This must be dealt with at a future date.

Meanwhile, last week, we . . .

. . . sang "Happy Birthday" to a tall, handsome black man and danced till dawn at his first real birthday party.

. . . went to a swimming party and buffet supper in celebration of the end of a family man's parole.

. . . heard a man say in despair, "Let me stay with you for 3 days—I'm afraid I'll louse up if I'm alone."

. . . rejoiced because one of "our fellows" who had to go back for a brief time would be out in time for the fall semester.

Improved Parole Decision-Making

BY GEORGE J. REED AND WILLIAM E. AMOS*

FEDERAL PAROLE STATUTES, as interpreted by the Federal Courts over a period of many years, make it plain that parole is a matter of "grace" and not of "right." The courts thus have indicated that parole is left to the informed discretion of the parole board.¹ It is therefore imperative that parole board decisions, with the broad discretion granted under the statutes, be arrived at by quasi-judicial bodies who are fully informed.

In that parole boards are a multidisciplinary body, it is important that our goals be better defined and our definitions of terms clarified. Further, channels of clearer communication and dialogue between parole decision-makers who actually confer and deliberate before arriving at a majority opinion of the board need developing. These common objectives in parole have made a great deal of progress during the past 15 years.

In 1958 the Advisory Council on Parole of the National Council on Crime and Delinquency began the preparation of a set of guides for parole selection. The final draft represented the best thinking of the leading parole authorities of the Nation and was published in 1963 as *Guides for Parole Selection*. This project was followed in 1963 by a program of National Parole Institutes cosponsored by the Association of Paroling Authorities, the United States Board of Parole, the National Council on Crime and Delinquency, and the Probation and Parole Inter-state Compact Administrators Association for the Council of State Governments. The institutes were funded during the fiscal year largely from a grant by the President's Committee on Juvenile and Youth Crime and then by the National Institute of Mental Health at which time probation officials were included.

As an adjunct of the Institutes, the Uniform Parole Report organization within the National Council on Crime and Delinquency was developed in 1966. The goals of the Parole Institutes and the Uniform reporting methods developed were the development and improvement in board

members' ability to make parole decisions. To date, more than a dozen National Parole Institutes have been conducted, and all 50 states and the Federal Government actively participate in the Uniform Parole Reports program.

In 1970 the United States Board of Parole, in cooperation with the Uniform Parole Reports section, developed an application and applied to the Law Enforcement Assistance Administration for a grant to develop and demonstrate a model procedure for making use of the state and federal experience in the parole decision-making process. This information development program will be built upon the Uniform Parole Reports system and augmented by data concerning Federal offenders.

The Project

A grant of more than \$500,000 covering a 3-year study was granted by the Law Enforcement Assistance Administration in July of 1970 to the National Council on Crime and Delinquency. The project is being directed by Dr. Donald M. Gottfredson, director, Research Center, National Council on Crime and Delinquency, in Davis, California. His codirector is Professor Leslie Wilkins of the State University of New York at Albany. They have recruited an outstanding research staff.

In addition to the United States Board of Parole, three groups are advisory to the project.

1. The National Advisory Committee of the National Probation and Parole Institutes. This group has representation from the United States Board of Parole, the Parole Council of the National Council on Crime and Delinquency, the Association of Paroling Authorities, the Inter-state Probation and Parole Compact Administrators Association, and the Administrative Office of the United States Courts.

2. The Research Committee of the United States Board of Parole. This committee consists of the chairman of the Board and two members. It provides an advisory function particularly focused upon parole policy and administration and

*George J. Reed is chairman of the United States Board of Parole and William E. Amos is a member of the Board.

¹ *Hyser v. Reed*, 31 8F. 2d 225 (C.A.D.C. 1963); *Certiorari denied sub nom.; Thompson v. United States*, No. 29416 (C.A.5), decided 6-15-70; *U.S. v. Frederick*, 405 F. 2d 129 (C.A.3, 1968); *Brest v. Ciccone*, 371 F. 2d 981 (C.A.3, 1967); *Walker v. Taylor*, 338 F. 2d 945 (C.A.10, 1964).

offers an opportunity for collaborative work additional to that involving the entire Board.

3. A Scientific Advisory Group, comprised of outstanding professional persons nominated by the Law Enforcement Assistance Administration, the United States Board of Parole, and the Uniform Parole Reports section. This committee provides an advisory service especially focused upon the scientific aspects of the program.

The primary goals of this study are to improve parole decision-making to the end that (a) the Board will release from prison inmates who have arrived at the psychologically right period of maturation to be able to make a satisfactory community adjustment under parole supervision and that (b) the Board will better protect society by continuing to provide institutionalized treatment for the inmate who is not yet ready even under supervision to provide self-direction in an open society.

Other goals include (1) definition of paroling decision objectives, alternatives, and information needs; (2) measurement of relationships between offender information and parole objectives; (3) development and testing of "experience tables"; (4) development and demonstration of procedures for rapid retrieval of relevant objective information; and (5) assessment of the utility of the procedures developed.

This project is unique because, for the first time, it provides the ability, through the miracle of modern computers, to update the old parole prediction tables data with current sociological factors relevant to our rapidly changing culture of 1971. The "base expectancy scores" stored in the master computer in Palo Alto, California, will be available to the Federal Board of Parole almost immediately by an on-line computer terminal located in the Board's Washington office. Thus, live Federal cases in the experimental group will have this added scientific data available to Board members prior to voting on a particular case.

It should be emphasized that the "base expectancy score" is *only* an added tool to assist the Board members in the decision-making process. The Board member continues to be guided by statutory requirements for parole and his own professional experience in the parole decision-making process.

Another first in this project that no other research program has been able to achieve is case by case followup over a 5-year period. The

Federal Bureau of Investigation has agreed to furnish the Federal Parole Board and the project a Record of Arrest form that will inform the Board exactly what has happened to every parolee in the study for a period of 5 years after release on parole.

Objectives

The specific objectives for the project, and the methods to be used to achieve them, may be summarized as follows:

1. Define, through a series of meetings between research staff of the National Council on Crime and Delinquency and the United States Board of Parole, decision objectives, available alternatives and constraints, information presumed relevant, and decision consequences to be included within the scope of the study.

2. Collect the necessary offender data and then measure the relationships among offender attributes, decision outcomes, and decision consequences. This includes the development and validation of base expectancy "experience tables." It includes the study of all methods of prison release, rather than only of parole, in order to permit examination of the major decision alternatives which are discretionary to the Board and the consequences to the major forms of prison release (parole, mandatory release, and discharge).

3. Develop and demonstrate procedures for rapid retrieval of both numerical data and case history abstract information pertinent to individual case decisions. This includes the development and demonstration of models and assessment of their probable utility. Provision of such a system for retrieval of this information for all parole decisions in the Federal system, however, would be beyond the scope of the project.

4. Develop procedures for assessing the degree to which the information provided by the models is utilized in individual case decisions and also for assessing the consequences of the use of the model versus its nonuse. An aspect of the latter study is the estimated cost and utility of full use of the models for all parole decisions.

5. Develop monitoring or "policy control" procedures to advise the Board, periodically and on short notice, concerning general trends in their decision-making, significant deviations in trends, deviations from established policy, and simulated consequences to policy modifications which might be considered by the Board.

6. Develop program for the dissemination of

the information gained to parole authorities throughout the United States. This program has two aspects: national meetings for parole officials and a publication describing the project after completion. During both the second and third years of the project, representatives of each of the 55 parole systems in the United States (those responsible for parole of adults from prison) will be invited to a 2- to 3-day seminar for full discussion and demonstration of the program. The first of these conferences was held in Washington, D.C., June 23 to 25, 1971. Representatives of approximately 40 state paroling authorities attended, as well as officials of the various Federal agencies and departments. The 3-day conference included a general orientation session, various small group workshops concerning the decision-making process, and a demonstration of the computer system that has been installed in the offices of the United States Board of Parole. A number of suggestions were offered by various participants for improving the project's design. Most of them have been accepted.

Concluding Comments

Since the program is essentially a research and development effort aimed at improvement of practically useful objective information for parole decision-making, the major evaluation methods to be employed will be those intended to guide the project as it proceeds. Thus, procedures will be devised for assessment of the decision-making

tools developed by the "users" of the tools, that is, the parole decision-makers themselves. At each stage in the development of a specific procedure, arrangements will be made for critique and computer feedback to the project staff concerning the utility of the proposed tool. This will allow early correction of obvious errors and miscalculations in the original design.

Still, the "proof of the pudding" is to be found in the actual use of the tools developed. Since the information will be presented by means of a computer terminal, the opportunity exists for a complete record of all use of the information by the Board. If possible, such a record will be prepared automatically by means of a subroutine to each program used. That is, certain analyses will be called for by the Board, a record of these will be kept, and the project staff will analyze these analyses to determine the extent of use of the system.

It is hoped that the project will contribute to the study of rational decision-making in the criminal justice system, to knowledge of the offender and of the impact of criminal justice operations on his subsequent behavior, to a methodology concerning improvement of information for decisions, especially parole experience tables, and to the study of parole as a method of releasing inmates from prison when they are ready for community living under adequate parole supervision.

IT SEEMS especially important that research and experimentation should be undertaken to develop improved information for use in making parole decisions and to discover better ways of presenting that information. There should be a flow of information on the performance in the community of offenders previously released, so that parole officials will know who succeeded and who failed to adopt law abiding ways.—THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE in *The Challenge of Crime in a Free Society*, 1967.

Volunteers and Professionals: A Team in the Correctional Process

BY IRA M. SCHWARTZ

Director of Volunteer Services, Hennepin County Department of Court Services, Minneapolis

THE USE of volunteers in the field of corrections is no longer an issue to be debated by professionals. Today, citizen volunteers are being recruited and trained to provide direct and indirect services to offenders in increasingly greater numbers and are serving in many corrections agencies throughout the country.

Despite this widespread acceptance, it appears that the field of corrections is not completely benefitting from the contributions that can be made by this valuable resource. In their efforts to cope with the potential "dangers and threats" in using volunteers, professionals have narrowly defined the role of the corrections volunteer and have placed undue restrictions on the functions they are allowed to perform.

The recent experiences of the Hennepin County Department of Court Services in Minneapolis indicate that volunteers are capable of assuming a great deal of responsibility and, in many instances, can be taught to provide essentially the same services to offenders as those provided by paid professional staff. This article describes how volunteers are being utilized within the Department of Court Services and suggests a new and more substantive role for the corrections volunteer and, hopefully, will encourage professionals to take more effective advantage of this valuable resource.

Role of the Volunteer: A Brief Review

The need for more staff, more resources, and greater community understanding paved the way for the use of the volunteer in corrections. However, as with most other program innovations, the involvement of the community in improving the correctional process generated much anxiety. The most important problem centered around the need to define the role of the volunteer while, at the same time, preserving the role and importance of the paid professional. A related problem is the

traditional skepticism and suspicion toward any new concept or program on the part of corrections agencies.

These problems led to the development of a narrow definition of the role of the corrections volunteer and have hindered professionals from taking full advantage of this resource. Corrections literature explicitly reveals that no volunteers are seen as providing "professional" services. The role of the volunteer is limited to that of complementing or supplementing the work of the professional staff.¹ Usually the volunteer has been seen as one who simply relieves the professional of routine, nonprofessional tasks so that the professional's time can be freed to devote his attention to where it is needed most. This implies that the service which all volunteers provide to offenders is in some way different from that which is made available by professional staff. It means that the services of all volunteers are of a lesser quality than those which could be delivered by a paid professional and that all volunteers are lacking in their knowledge of helping skills.

The experiences of the Hennepin County Department of Court Services in the use of volunteers indicate that the distinction between many of the services provided offenders by volunteers compared with those provided by paid professionals, who in most instances lacked advanced academic training themselves, is more imagined than real.² This is not to say that the volunteer is a replacement for professional staff. On the contrary, the role of the paid professional becomes even more important because it is he who must harness this valuable resource, provide adequate training and supervision, and assign responsibilities in ways which will yield the greatest benefits.

The Hennepin County Volunteer Program

Within approximately a 2-year period, Court Services volunteers have proved to be a vital part of the agency's overall service delivery system. There are now more than 325 Court Services

¹ Ivan H. Scheier and Leroy P. Goter, *Using Volunteers in Court Settings: A Manual for Volunteer Probation Programs*. Washington, D.C.: U.S. Government Printing Office, 1968, p. 7. See also Keith J. Leenhouts, "Royal Oak's Experience With Professionals and Volunteers in Probation," *FEDERAL PROBATION*, December 1970, pp. 45-51.

² Joint Commission on Correctional Manpower and Training, *A Time to Act*. Washington, D.C.: Sowers Printing Company, 1969, p. 22.

volunteers who provide a variety of direct and indirect services to adult and juvenile offenders of all ages. The program has proved to be so successful that the use of volunteers has become a focal point for ongoing planning within the Department.

As has been the case with other agencies which use volunteers, it was discovered that the average person who gives of his time to help others possesses many of the qualities which are desired in professional staff. The typical volunteer is a sensitive and concerned person who has demonstrated maturity in his ability to solve his own problems and in adjusting to society. He is able to relate well to others and, primarily in an intuitive way, implements basic social work principles and values which are important in the establishment of any helping relationship. Many volunteers would better be referred to as "unpaid staff" because they have the credentials and experience which would qualify them for employment as paid staff. Also, the average volunteer appears to have been somewhat frustrated by his awareness of society's ills (particularly in the area of juvenile delinquency and adult crime) and desires to become involved in implementing change, but he lacks the opportunity to participate and contribute.

Equally important, the Department learned that volunteers will not become discouraged and drop out of the program if made to feel that they are sincerely needed and are provided with an experience that is intrinsically rewarding, such as that of helping another human being. Court Services volunteers are told during a screening interview that they will be expected to serve for at least a 12-month period and that they will be expected to see a probationer at least once a week. Less than 5 percent of all Court Services volunteers have dropped out during their first year and over 85 percent of those who have completed a full year of service have continued in the program.

The use of newspaper ads and other "mass media" techniques have been an effective means for the recruitment of volunteer staff. The vast majority of citizens who respond to these recruitment efforts are of the same quality as those whom an agency would seek out on a selective basis. Those who respond and who appear to be unsuitable are few in number. If they do apply, however, they tend to screen themselves out at the time of the application interview or are

screened out during the interview by a professional staff person.

The initial efforts of the Department in utilizing volunteers were limited to assigning them to work on a one-to-one basis with offenders. The volunteers worked under the general supervision of probation staff and assisted in implementing treatment goals. More often than not, once a volunteer was assigned to a case, he was the only agency person who saw the probationer.

Working on a one-to-one basis, the volunteers demonstrated a remarkable ability in helping offenders and in assuming a high level of responsibility. An example of a typical performance is reflected in the case of Audrey M.:

Audrey M., a 27-year-old married woman with no prior criminal record, appeared in Municipal Court on June 3, 1970, for shoplifting. She pleaded guilty to the charges and was referred to the probation department for a presentence investigation.

The police report indicated that she made no attempt to hide the fact that she was shoplifting and stated that it appeared as if "she wanted to get caught." Also, she had more than enough money in her possession to pay for the articles she had taken.

An interview with the probation officer revealed that Audrey was married to a truck driver and that they had recently purchased a new home in the suburbs. Her husband made an adequate living and there were no apparent financial problems. It was learned, however, that Mr. M.'s work demanded that he be absent from the home an average of 6 days a week. Also, Audrey had three children who were all under the age of five. She appeared to be a nervous and anxious person and was concerned whether her husband really loved her. She stated that if he loved her as much as he said he did, he would not be away from the home so often.

She was also worried about her adequacy as a mother and wondered if she was providing appropriate care for her children. Audrey was not the kind of person who made friends easily and she kept to herself. As a result, she knew none of her neighbors and felt they "really didn't care much about her."

Recognizing that Audrey needed a great deal of support and help in understanding her problems, and because she needed someone who could act as a mother figure and provide her with feedback regarding the quality of care she was giving to her children, the probation officer assigned her to a volunteer. The volunteer selected was a middle-aged married woman who had the time to devote to a case. She had experience in rearing five children of her own, with whom she felt she had developed meaningful relationships. She was not only a sensitive mother, but a warm, likeable person with whom an adult female could freely trust and relate.

After discussing Audrey's problems and needs with the probation officer and learning the treatment goals to be accomplished, the volunteer visited regularly with Audrey and was supportive in helping her realize that she was doing a good

job in rearing her children. Audrey was also assisted in meeting some of her neighbors whom she eventually found to be quite accepting and friendly. She is now off probation and will probably never be seen again in criminal court.

Another case:

David, a 14-year-old boy with no previous court record, stole an automobile and became uncontrollable. His parents were divorced after a long period of conflict. David was noticeably affected by this experience and felt that his acting out and delinquent behavior would somehow bring his parents back together.

David was assigned a volunteer because it was believed he needed a great deal of attention, more attention than a probation officer with a caseload of 50 could give him. Most important, however, he needed someone who could help him recognize the meaning of his behavior and learn to cope with the family crisis situation. David believed he was inadequate as a person—a “bad” boy—because he equated coming from a broken home with failure.

The volunteer chosen for David was a young man who was skillful in establishing relationships with adolescents and was easy to talk with. As a youth, he had experienced similar problems as David in that he, too, had a stressful home life that eventually ended in divorce. He was interested in the same kinds of activities as was David and was able to help David recognize and work through his problems. Since being assigned a volunteer, David has ceased his delinquent activities and is making significant progress toward thinking of himself as a worthwhile person and an important member of our society.

In another instance:

Wayne, an 18-year-old black youth who had been known to juvenile authorities and had been on probation previously, appeared in District Court for auto theft. He pleaded guilty to the charge and was given a sentence of 3 years' probation.

A white female probation officer was assigned to work with Wayne. The probation officer found him to be extremely hostile toward whites and difficult to communicate with. It was suspected that he had been involved in militant activities and that, as a result of his hostility and hatred, would not respond to the probation officer's efforts to help. It was also discovered that Wayne was easily led by his peer group and that they had a decidedly negative influence upon him.

The probation officer consulted with her supervisor and decided to assign Wayne to a black volunteer. The volunteer selected was a young adult male who had experience in relating to and working with youth. He was particularly sensitive to the needs and feelings of youth like Wayne and appeared capable of dealing constructively with this type of behavior.

The volunteer was assigned only 5 months ago and already there are signs that progress has been made. He has established a close working relationship with Wayne and has aided him in being

receptive to help. Wayne's hostility has clearly diminished and he is now being encouraged to return to school and complete his high school education, since he had dropped out of school his senior year. In addition, the volunteer is helping Wayne relinquish his ties with his present peer group and establish new friends that will prove to be more positive.

The skills that volunteers demonstrated in working on a one-to-one basis helped Court Services staff realize that many volunteers could be called upon to provide essentially the same services as those which could be delivered by agency professionals. This process stimulated staff to develop new functions to be performed by volunteers and to take more effective advantage of this resource. It was quickly realized that there were few functions for which volunteer staff could not be recruited and trained to perform.

For example, probation officers in the juvenile division seemed to be experiencing difficulties in obtaining foster homes for teenagers. The welfare agencies reported that most people who applied to be foster parents desired to have infants or young children in their homes and did not want to take care of teenagers. This “service void” led the Court Services volunteer program to initiate efforts designed to recruit volunteer foster parents. The agency had no funds available with which to pay those serving as foster parents and, consequently, expected applicants who were suitable to be able to accept a teenager at any time of the day or night, to keep them for either a short or long period of time, and to absorb the costs themselves (except for medical, dental, and emergency clothing costs).

Twelve couples responded to the initial recruitment effort, and today there are 30 volunteer foster homes providing shelter and treatment care for delinquent children in Hennepin County. More than 50 children were placed in these homes during their first 6 months in existence. Most of the children who were placed had run away from their own homes, but only two children have run away from volunteer foster homes.

Volunteers in the Department of Court Services also serve as juvenile marriage counselors, adult marriage counselors, tutors, therapy group leaders, activity group leaders, face sheet interviewers, supervisors of parent-child visitation in custody cases, and as assistant volunteer coordinators who are responsible for the recruitment, screening, and training of other volunteers. Approx-

mately 20 volunteers are serving in an advisory board capacity. These volunteers are assisting the Department in implementing a federal project to develop training materials specifically designed to teach corrections volunteers to provide more effective direct services to offenders. The advisory board members are helping staff in identifying the training needs for corrections volunteers, the goals for training, and are outlining the general content of the materials. Upon completion of the project, the training materials—both audio visual and written—will be made available for duplication to other court and corrections agencies throughout the country.

Volunteer Program Techniques

Successful volunteer programs do not develop in a haphazard way. An appropriate blend of planning, organizing, implementing, and evaluation are of crucial importance.

Other guidelines which appear to be helpful in insuring success in the use of volunteers are the following:

1. Be sincere in wanting to use volunteers and realize that they are competent and have many natural skills that can be utilized in forming a helping relationship.

2. Screen all volunteers in an effort to assess the *general level* at which a volunteer can best function and to determine the skills, experiences, interests, problem solving ability, and attitudes they bring to the situation.

3. Provide them with the confidence they need to be helpful by helping them to recognize the skills they already have and by helping them gain the knowledge and skill they need to have a positive impact on other human beings.

4. Do not get "hung up" on the feeling that volunteers must possess college degrees or other symbols signifying their accomplishments in order to be qualified to help. Everyone has something to contribute. One's education in the social services may simply enrich the qualities that he already has. Some of the best Court Services volunteer staff are people who have not completed their high school education. However, they have had many experiences and have developed a fund of knowledge that cannot be duplicated by formal education. Also, the use of ex-offenders and former clients has proved to be a highly successful experience and they should not be overlooked as a source of volunteer personnel.

5. Provide adequate training and other oppor-

tunities for volunteers so that they may increase and improve their skills. Volunteers are interested in upgrading their ability to provide direct services to clients and are eager to learn.

6. Be certain that volunteers receive effective supervision. The guidance, expertise, and support that volunteers need from professionals are of utmost importance.

7. Insofar as possible, try to "match" the skills and capabilities of the volunteer with the needs and treatment goals of the client.

8. Treat volunteers the same as you would staff because that is exactly what they are. Often the main difference between volunteers and professionals is that the volunteers are not paid.

9. Show appreciation for the efforts of volunteers and do not hesitate to point out the contributions they make.

10. Recognize that the role of the professional broadens and becomes even more important as volunteers are utilized. The needs of volunteers make it mandatory that professionals develop skills in such areas as teaching, supervision, management, program planning, and coordination.

11. Secure the involvement and commitment of professional staff in all aspects of volunteer program planning and implementation. Professional staff need and want to be included in the recruitment, screening, training, placement, inservice training, and ongoing planning of the volunteer program and can serve as a built-in pool of resources from which to draw upon.

Summary

The experiences of the Hennepin County Department of Court Services indicate that many volunteers are capable of providing essentially the same services to offenders as those which would normally be made available by professional staff. This means that many volunteers, with appropriate training and supervision, can serve as a "substitute" for the professional and should no longer be viewed in the context of simply augmenting or complementing the work of agency staff.

By utilizing volunteers in this capacity, the field of corrections will take more effective advantage of this vast resource, will do much toward reducing the current shortage of correctional manpower, will significantly increase the quality of services being provided, and will promote greater community understanding and support. Also, the professionals will be called upon to perform roles

that are likely to make better use of their talents.

Indeed, as it was recently stated by Dr. Ivan Scheier:

. . . the problem of modern volunteerism differs crucially from the problem of early volunteerism in

³ Ivan H. Scheier, "The Professional and the Volunteer in Probation: Perspectives on an Emerging Relationship," *FEDERAL PROBATION*, June 1970, pp. 12-18.

corrections, for it becomes an issue of relationship between volunteer and paid professional, a problem of defining optimum roles for each in a productive partnership.³

It is this type of relationship that will combat discouragement and hopelessness within corrections and will move the correctional system in the direction of reaching its goals.

Civil Disabilities: The Forgotten Punishment

BY NEIL P. COHEN AND DEAN HILL RIVKIN*

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

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 \$2.50, 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.

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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 13, 1970).

⁴ Ark. Stat. Ann. § 27-833 (1962).

⁵ E.g., Pa. Stat. Ann., tit. 17, §§ 1252(c), 1279(c), & 1333 (1962).

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 the 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).

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).

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).

The Man With a Record: A Civil Rights Problem

BY SOL RUBIN

Counsel, National Council on Crime and Delinquency

AMERICAN PENOLOGY prides itself that it has entered the era when criminals are treated and rehabilitated, having left the terrible and immoral time when the concept of an eye for an eye prevailed. Alas, it is not so. Quite the contrary prevails. Nowadays, after a man has completed the sentence of the courts—presumably a rehabilitative sentence—the law is not through punishing him. He suffers one deprivation after another for the rest of his life, and nothing we have in our law can entirely undo the record that dogs him. Even a pardon—even a pardon for innocence—does not. The record that dogs him may not be a conviction of crime at all, but a record of an arrest; and the arrest may be an improper one. Something like three out of four arrests are illegal.¹

With this picture of the reality of American “correction” (a word that may need replacement), eye-for-eye has a certain appeal. If one reads the 18th century criminological essay of Beccaria, the important message it had—and has—is that punishment should not exceed the needs of public protection; and that there should be a limit on punishments.² The publication of Beccaria’s essay (1764) coincides with our Revolution. But since the founding of this country, although certain brutal or calloused practices (some well intended) have disappeared (although not all), sentences in the United States have steadily become longer, and they continue to lengthen. Statutes requiring criminals to register are added in some places. But everywhere, let a former criminal look for a job and if he is honest enough to admit to a record, chances are he will not get it—either in government or in private industry—without great difficulty, or he will get a job at a level reflecting a degraded status. He may lose out on housing (especially public housing), insurance, etc.

Modern Disabilities

We have forbidden some punishments that existed in ancient times such as attainder, producing forfeiture of estates, corruption of blood, and civil death (though the last still remains in a minority of states). These things were not carried over

into colonial jurisprudence. But once this was done, the situation of the man with a record has worsened in modern times. The discovery of fingerprinting has led to its use against non-criminals as well as criminals, and as time goes on more and more job applicants or employees are being required to submit to fingerprinting to discover a criminal record. The assumption is that the criminal record should be enough to disqualify the individual and usually it does disqualify him.

The device of licensing more and more kinds of work or enterprises is easily adaptable to scrutinizing applicants for any criminal record; and willy-nilly, it is done. In California approximately 60 occupations require state licenses. Thirty-nine of these laws permit denial, revocation, or suspension of a license for conviction of a felony or of an offense involving moral turpitude.³ Most states have similar laws, usually supplemented by local ordinances using the same device.

If these things protected the public, a reasonable argument (but not an irrefutable one) could be made for their existence and use. But in most instances they are either obviously not protective, or the inquiry as to the degree of protection afforded or needed is not made. Indeed, they may be counterprotective, for, aside from the damage they do to individuals, in doing that damage they help keep a certain number of people in the underworld, since no other choice is open to them.

So far, the law upholds all the statutes and practically all practices in depriving people of rights. An 1898 case, recently relied on, said that the state “may require both qualifications of learning and of good character, and, if it deems that one who has violated the criminal laws of the state is not possessed of sufficient good character, it can deny to such a one the right to practice . . . , and, further, it may make the record of a conviction conclusive evidence of the fact of the violation of the criminal law and of the absence of the requisite good character.”⁴ Citing this and other cases, the current attitude of the courts appears to be that statutes and administrative authorities may classify all former offenders as

unfit for any type of employment because of "character."⁵

To undo such a line of thought may be difficult, but it must be done, because the outrage it does not only to due process of law but to human beings as well, is inconsistent with the federal constitution's concept of "liberty."⁶ What if we retrogressed to the 18th century rationalist idea that needless punishment—punishment not exceeding the needs of public protection—would be excluded from sentences or the consequences of conviction. It would mean that when a convicted defendant is *not* sentenced to commitment, but is placed on probation, and receives a suspended sentence, he should lose no civil rights. This is a recommendation of the Standard Probation and Parole Act published as long ago as 1955.⁷

It is a contradiction of the purposes of probation and parole that this view does not prevail. A California case cites the following instruction to a new parolee: "Your civil rights have been suspended. Therefore you may not enter into any contract, marry, engage in business or execute a contract without the restoration of such civil rights by the Adult Authority." A look at the rights restored by the Adult Authority at the time of release on parole is just as sad, hardly more than that on release he may be at large. He may rent a habitation, he is told, buy food, clothing, and transportation, and tools for a job; and he is advised that he has the benefit of rights under Workman's Compensation, Unemployment Insurance, etc.⁸

When the sentence is commitment, the principle of *Coffin v. Reichard*⁹ ought to apply, that a prisoner retains (or should retain) all rights of an ordinary citizen except those expressly or by necessary implication taken away by law. With the Supreme Court sympathetic to allowing prisoners to vote,¹⁰ with the current fashion in correctional legislation to allow committed prisoners to leave the institution to work, it is difficult to understand what civil rights should be lost, other than liberty itself (such custody as the state wishes to retain). The "implications" of custody are no more than securing and supervising containment in the institution. The sudden sweep through the legislatures of work release, by which committed prisoners may be released into the community for work during the day, ought to have its own implications. One of the striking things about the program is that prisoners—who when discharged, could not get

jobs—are suddenly welcomed by employers while still prisoners.

Legislative Remedies

Despite the repressive elements on the American scene, liberating forces also are at work. Certainly that is true in penal law. Both supporters and critics of the Supreme Court in the period of Chief Justice Warren speak of its activist role in forging rules to protect citizens against police abuse.¹¹ It is striking that the death penalty has dwindled in its application in the last 10 years, and not as a result of legislation or any startling breakthrough in court decisions. It is striking that prison populations in three-quarters of the states have gone down, rather than up, in the last half dozen years.¹²

Suddenly the legislatures have at last expanded procedural and substantive due process in sentencing, probation, and parole. The legislative output in 1969 was unprecedented in this regard. There has not been anything comparable in a single year for the entire period since the end of World War II, and perhaps not for years before then. In 1969 several state legislatures provided for counsel at public expense for probationers. On revocation procedure, one state calls for competent evidence (i.e. not heresay). Two states grant the right to be confronted by witnesses, and impliedly the right to cross-examine the witnesses. More states give defendants access to the presentence report as a right. Similar developments are beginning to be made in parole legislation.¹³

But what about the loss of civil rights by a convicted or arrested defendant? The legislatures have not begun; but at least legislative proposals are beginning to be made and talked about.¹⁴ I am glad to see one writer suggesting that "legislation prohibiting most discrimination because of a criminal record may be a solution," as Barry M. Portnoy does in an article entitled "Employment of Former Criminals," in which he discusses the proposal in detail.¹⁵ Some years ago I had noted that although statutes protect persons against discrimination in employment because of race, color, or religion, no such statute protects persons with a criminal record against discrimination. "It would have a sound basis in social need," I said, but I was very pessimistic about its being adopted.¹⁶

A nondiscrimination statute would imply—perhaps some day mean—that we recognized that a criminal act did not necessarily stamp the

offender as a permanent miscreant, but, rather, one who, except as limited by the sentence, is aided to be a well member of society by *allowing* him to be.

Perhaps the intermediate step before that is a statute that, meanwhile, would protect the man with a record from discrimination by affording a means for the record to be annulled, so that questions about it would not be permitted. This is the approach taken by the National Council on Crime and Delinquency in its Model Act for Annulment of Conviction of Crime.¹⁷ It provides:

The court in which a conviction of crime has been had may, at the time of discharge of a convicted person from its control, or upon his discharge from imprisonment or parole, or at any time thereafter, enter an order annulling, canceling, and rescinding the record of conviction and disposition, when in the opinion of the court the order would assist in rehabilitation and be consistent with the public welfare. Upon the entry of such order the person against whom the conviction had been entered shall be restored to all civil rights lost or suspended by virtue of the arrest, conviction, or sentence, unless otherwise provided in the order, and shall be treated in all respects as not having been convicted, except that upon conviction of any subsequent crime the prior conviction may be considered by the court in determining the sentence to be imposed.

In any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person may be questioned about previous criminal record only in language such as the following: "Have you ever been arrested for or convicted of a crime which has not been annulled by a court?"

Upon entry of the order of annulment of conviction, the court shall issue to the person in whose favor the order has been entered a certificate stating that his behavior after conviction has warranted the issuance of the order, and that its effect is to annul, cancel, and rescind the record of conviction and disposition.

Nothing in this act shall affect any right of the offender to appeal from his conviction or to rely on it in bar of any subsequent proceedings for the same offense.

The proposal has received a certain amount of support in writing and in studies, but little legislative recognition. Meanwhile, some courts have proceeded (by rule, or less formal arrangements) to avoid some of the consequences of a record by avoiding entrance of the conviction.¹⁸ But the basic provision, protecting a man against questions about his record, probably can be achieved only by legislation (unless the courts go further than they have so far in establishing rights of privacy).

It would appear that protection against using an arrest record not resulting in a conviction would be more easily amenable to remedy than a conviction record, but it has not worked that way. In other countries the arrest record not resulting in a conviction generally cannot be used against one; but few United States jurisdictions provide any such protection.¹⁹ A bill in the New York

legislature would have made it a misdemeanor for an employer to inquire about arrests, but it failed to pass.²⁰

The curative effect of a pardon is very limited.²¹ To improve the effect of a pardon would probably be best done in state constitutions, but statutes could also do it. Pardon boards that have power to make commendations regarding clemency are extremely parsimonious in giving favorable recommendations.

Other changes in state constitutions may be needed. The Louisiana constitution forbids public employment of convicted offenders. Under it, a Louisiana court found that a 25-year-old conviction required a school bus driver to be fired from his job that he had held for 10 years because of it.²²

Challenge in The Courts

But the legislation and constitutional revision will come with difficulty. Constitutional challenges are needed meanwhile, both for what they can accomplish, and for the guidance they (and any success—or even failure—in the courts), can give the legislatures.

What are the grounds of challenge? Probably the one most readily thought of, and the one most attempted, is procedural due process in the denial or revocation of licenses. It has not been very successful, but the highhandedness of the procedures and the vagueness of criteria guarantee ultimate success. The New York statute under which the world prizefighting champion Muhammed Ali was denied a license to fight in New York after a conviction for draft evasion, contains such grounds of revocation as associating with any person who has been convicted of a crime.²³

We ought to use the principle, beginning to be developed, at least, in sentencing, that consideration must be given to the individual, i.e., no mandatory or automatic deprivation of rights. The issue of equal protection of the laws is another ground. Our system of criminal justice is hardly a balanced one. The system of prisons is principally for the poor; so is the loss of civil rights. Corporations or white collar criminals, often proceeded against in administrative proceedings, do not suffer comparable deprivations. An employer with a criminal record is free to reject applicants for employment who have a criminal record. Discrimination is clearly practiced in the kinds of employment or services affected by the

statutes—entertainers, especially in “night life categories,” taxicab drivers, barbers, etc.

One source that has hardly been tried is to challenge a needless deprivation on the ground that it is cruel and unusual punishment. There is one precedent of great excellence, a Michigan Supreme Court case that declared that punishing a druggist who violated a liquor sale statute by preventing him from conducting his business for 5 years after conviction constituted cruel and unusual punishment.²⁴ The court said, “It is safe to say that throughout the United States any fine or forfeiture is unusual which has not some limitation of value and any punishment is unusual which forfeits any civil rights. Duelling and conviction on an impeachment are the only two things in most states which involve civil incapacities of a public nature, and both of these are provided for by the constitution. Disability to transact business is almost or quite unheard of in this country.” Presumably as a result of this decision, today Michigan is the only state in which no civil rights are lost by reason of a conviction except that the right to vote is suspended during any period of confinement in penal institutions or county jails.²⁵

Aside from the cruel and unusual punishment argument, there is the question to be raised as to whether certain deprivations do not exceed the police power of the state, or whether one’s having a criminal record is a justifiable classification on which to base adverse discrimination. For years, women defendants were subject to longer prison terms than men, under the pretext of “indeterminacy” of their sentences being a foundation for “treatment.” Finally—suddenly—two cases have said that the perfunctory dismissal of the charge of discrimination is not warranted. On examination, as one case said, “The state has failed to carry its burden in support of the proposition that a greater period of imprisonment is necessary for the deterrence of women than for men.”²⁶ And another court said—“The Act . . . is devoid of reasonable grounds of differences and is arbitrary, discriminatory and invalid under the Fourteenth Amendment of the Constitution of the United States.”²⁷ In these jurisdictions the statutes were invalidated.

No invidious analogy is to be implied between women and those with a criminal record; but the analogy is apt in that each situation cannot be perfunctorily dismissed on the ground that a longer term is “treatment,” or that deprivation

of civil rights of offenders is “protection to the public” (police power). Let the courts begin to stop and examine whether, and which, deprivations and discrimination actually meet the test of being needful for public protection, actually, as the courts examined it in the women’s sentencing cases. Let litigants require the courts to stop and examine these laws and practices. There is already a fair amount of evidence that many of the deprivations will not stand the test.

There are other rights involved: The right of privacy, for example, today becoming more viable as the intrusions of government and nongovernment become greater. Is it not a right involved in a person with an arrest record but no conviction being subjected to disclosure and penalty for it? The telephone company cannot deny service to a man with a record.²⁸ It is an application of the principle that no private organization shall punish an individual for his crime. It is a principle that has hardly been used.

The courts have to be tried. Doing so will undoubtedly stimulate legislators to respond better than the courts can. The courts have to be tried, but they have not been. Only in recent years has discrimination against Negroes emerged with success in the courts. After decades of repudiation and failure, once *Brown v. Board of Education* was decided in 1954, writes Associate Supreme Court Justice Thurgood Marshall, “law after law has been struck down and the tactics of delay are now being met head-on. New life has been breathed into the Civil War amendments and enactments.”²⁹

Why did it not happen earlier? The times were against it; but it is also true, as Justice Marshall points out, that “challenges were few and sporadic; and when they succeeded, the states reenacted the same scheme in different forms. Their ingenuity was certainly not taxed.”

It is a truism that we find hard to accept that the protections of the Bill of Rights against police and other official abuse are for all of us, the criminals and the noncriminals. But when we consider the tens of millions who have criminal records, the even greater number with a record of arrest, perhaps as many as 50 million,³⁰ it is clear that the civil rights of those who are in conflict with the law are, indeed, in the most pragmatic way, the interest of all. We are in an era of struggle for civil rights, for blacks, for women, for the mentally ill, for the young, even the delinquent young. Perhaps we are in a period of civil rights

for homosexuals and others whose sexual practices are unreasonably subject to legal condemnation.

It is timely, indeed, that we awake to the excesses in punishing those in conflict with the law. It is a field of great discrimination, and must be remedied, just as much as other discriminations must be remedied. Not all people with a criminal record are vicious or degraded to begin with, or if their crime was vicious, are they doomed to remain as they were; unless, of course, we strive, by discrimination and rejection, to make them so.

NOTES

1. Houts, *From Arrest to Release: An Analysis of the Administration of Criminal Justice* (1958), at 24.
2. Phillipson, *Three Criminal Law Reformers*, Beccaria, Bentham, Romilly (1923).
3. Portnoy, "Employment of Former Criminals," 55 Cornell L. Rev. 306, at 308 (1970).
4. *Hawker v. New York*, 170 U.S. 189 (1898), cited *DeVeau v. Braisted*, 363 U.S. 144 (1960).
5. *Op. cit.* n. 3, at 312.
6. Note, "Civil Rights in Wyoming," 13 Wyo. L. J. 76 at 81 (1958).
7. National Council on Crime and Delinquency. Section 12 provides, "Dispositions other than commitment to an institution, and such commitments which are revoked within sixty days, shall not entail the loss by the defendant of any civil rights." And section 27 provides that when a prisoner is discharged at the end of his term, or discharged from parole, such discharge "shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification of discharge shall so state."
8. *People v. Denne*, 297 P.2d 451 (1956).
9. 143 F.2d 443, 155 A.L.R. 143 (1944).
10. *McDonald v. Board of Election Commissioners*, 89 S. Ct. 1404 (1969). See also *Harper v. Virginia Board of Elections*, 338 U.S. 663 (1966). But a U.S. District Court has gone further, holding that the Illinois Statute depriving inmates of absentee ballots "effectively deprives the plaintiff [in jail awaiting trial] of the equal protection of the laws." *Bonds v. Board of Election Commissioners*, No. 66 c 2012, Nov. 4, 1966, U.S. District Court, Northern District of Illinois, Eastern Division.
11. Cox, *The Warren Court, Constitutional Decision as an Instrument of Reform* (1968); Sayler, Boyer, Gooding, Jr., eds., *The Warren Court, A Critical Analysis* (1969). However, the Court was less activist in protection of the rights of persons convicted; Rubin, book review of the two works cited, 16 *Crime and Delinquency* 112 (Jan. 1970).
12. See National Prisoner Statistics, *Prisoners in State and Federal Prisons for Adult Felons, 1966* (NPS Bulletin, No. 43, August 1968; U.S. Bureau of Prisons).
13. Rubin, "Developments in Correctional Law," 16 *Crime and Delinquency* 197 (April, 1970).
14. A comprehensive legislative report in California recommends that it be made unlawful for any application form used by the state to ask whether the applicant had ever been detained or arrested. Among other recommendations is one calling for legislation prohibiting divulgence of records of arrest to any person other than a law enforcement officer. Assembly Interim Committee Reports, Vol. 22, No. 1, 1959-61, Report of Assembly Interim Committee on Criminal Procedure. See, Comment, "Criminal Records of Arrest and Conviction: Expungement From The General Public Access," 3 *California Western L. Rev.* 121 (1967).
15. *Op. cit.* n. 3. The suggestion there made is for federal legislation; but there is no reason why a state legislature should not do this; and, in fact, it is more likely to be initiated in a state.
16. Rubin, *Crime and Juvenile Delinquency, A Rational Approach to Penal Problems*, at 156 (2nd ed. 1961).
17. *Annulment of a Conviction of Crime, A Model Act* (National Council on Crime and Delinquency, 1962).
18. Several jurisdictions that have done this are cited, *op. cit.* n. 16. The Model Sentencing Act has a provision for deferring conviction, on consent of the defendant to probation supervision. If probation is completed successfully, the conviction is never entered; Model Sentencing Act sec. 9 (National Council on Crime and Delinquency, 1963).
19. Hess and Le Poole, "Abuse of the Record of Arrest Not Leading to Conviction," Vol. 13, No. 4, *Crime and Delinquency* 494 (1967).
20. *Ibid.* at 497.
21. Rubin, Weihs, Edwards and Rosenzweig, *The Law of Criminal Correction*, ch. 16, Pardon, at 605 et seq. (1963); *op. cit.* n. 3 at 313-314.
22. *Thomas v. Evangeline Parish School Board*, 138 S.2d 658.
23. Laws of 1920, chapter 912, reentitled by laws of 1921 ch. 714.
24. *People ex rel. Robinson v. Haug*, 78 Mich. 549, 37 N.W. 21 (1888).
25. A Compilation of State and Federal Statutes Relating to Civil Rights of Persons Convicted of Crime, by Federal Probation Officers Association (mimeo, 1960).
26. *United States ex re. Robinson v. York*, 281 F. Supp. 8 (1968; appeal dismissed).
27. *Commonwealth v. Daniel*, 430 Pa. 642, 243 A.2d 400 (1968).
28. *Cyprus v. N.Y. Telephone Co.*, 192 Misc. 671, 84 N.Y.S.2d 114 (1948).
29. "Group Action in the Pursuit of Justice," 44 N.Y.U. L. Rev. 661, at 667 (1969).
30. *Op. cit.* n. 3 at 306.

The ex-prisoner reenters a world vastly different from the one he experienced in prison. Although correctional personnel have attempted to prepare the inmate for his release, the community has not been so educated. The community initially reacts to the releasee with distrust, suspicion, and hostility. Civil disabilities play a significant role in fostering these attitudes by affixing an additional stigma on the offender's already inferior status. These disabilities trigger a societal response that groups all offenders together and ostracizes them, despite personal differences and all attempts to reintegrate them into the community.—*Vanderbilt Law Review*, October 1970

RECOMMENDED READING LIST

Annual Report, Administrative Office of the United States Courts

Annual Report, Federal Bureau of Prisons

Annual Report, United States Board of Parole

Carter, Robert M. and Leslie T. Wilkins, Probation and Parole: Selected Readings, Wiley, 1970

Corrections, Task Force Report, The President's Commission on Law Enforcement and Administration of Justice, 1967

Downie, Leonard Jr., Justice Denied, Praeger, 1971

Dressler, David, Practice and Theory of Probation and Parole, Columbia University Press, 1969

Federal Offenders in the United States Courts (Annual), Administrative Office of the United States Courts

Glaser, Daniel, The Effectiveness of a Prison and Parole System, Bobbs-Merrill, 1969

Kassebaum, Gene, David A. Ward, and Daniel M. Wilner, Prison Treatment and Parole Survival: An Empirical Assessment, Wiley, 1971

Lohman, Joseph D., Albert Wahl, Robert M. Carter, Arthur E. Elliott, and James L. Robinson, The San Francisco Project (14 volumes), University of California at Berkeley, 1965-1969

Manual of Correctional Standards, American Correctional Association, 1966

Menninger, Karl, The Crime of Punishment, Viking, 1968

Morris, Norval and Gordon Hawkins, The Honest Politician's Guide to Crime Control, University of Chicago Press, 1970

Packer, Herbert L., The Limits of Criminal Sanction, Stanford University, 1968

Persons Under the Supervision of the Federal Probation
System (Annual), Administrative Office of the United
States Courts

Rubin, Sol, The Law of Criminal Correction, West, 1963

Standards Relating to Probation, American Bar Association,
1970

Standards Relating to Sentencing Alternatives and Pro-
cedures, American Bar Association, 1968

Studdt, Elliott, People in the Parole Action System: Their
Tasks and Dilemmas, Institute of Government and Public
Affairs, University of California at Los Angeles, 1971

The Challenge of Crime in a Free Society, The President's
Commission on Law Enforcement and Administration of
Justice, 1967

The Courts, Task Force Report, The President's Commission
on Law Enforcement and Administration of Justice, 1967

Several hundred volumes relating to human behavior, criminal justice, probation, correctional institutions, parole, and other areas of interest to probation officers are available from the libraries of the Administrative Office of the United States Courts and the Federal Judicial Center. Requests for further information and withdrawals may be addressed to the Division of Probation. The Federal Judicial Center also maintains a good selection of training and public information films and slide presentations which are available on request.



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