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This Issue in Brief

Community Service: A Review of the Basic Issues.—Triggered by the Federal Comprehensive Crime Control Act of 1984, the evolution of community service as a formal condition of probation has caused judges and probation officers to pay increased attention to the requirements of community service programs. Authors Robert M. Carter, Jack Cocks, and Daniel Glaser state that as various options are considered, basic issues must be identified, related to a system of judicial and correctional philosophy, and implemented in an atmosphere in which citizens have ambiguous feelings about community service as a sentencing option. In this article, the authors attempt to identify the basic issues and to place them in a frame of reference for practitioners.

The Alcoholic, the Probation Officer, and AA: A Viable Team Approach to Supervision.—Probation officers are encountering increasing numbers of problem drinkers and alcoholics on their caseloads. Most officers are not specifically trained to work with the alcoholic, and author Edward M. Read advances a practical treatment model for use in the probation supervision setting. The author stresses the necessity for an important re-education process which includes full acceptance of the disease model of alcoholism and an accompanying renunciation of several damaging myths still all too prevalent. Several techniques of countering the alcoholic denial system are discussed, and the author highlights the appropriate use of Alcoholics Anonymous in the supervision process.

The Perceptions and Attitudes of Judges and Attorneys Toward Intensive Probation Supervision.—In recent years the spectrum of criminal justice sanctions has widened to accommodate an intermediate sentencing alternative known as intensive probation supervision (IPS). In his study of the perceptions and attitudes of court personnel toward IPS in Cook County, Illinois, author Arthur J. Lurigio found that, overall, judges and public defenders viewed IPS favorably, whereas state's attorneys were essentially unwilling

to accept IPS as a viable option to prison. According to the author, the success of IPS programs often hinges on developing effective strategies to promote the program so that it appeals to the various elements in the criminal justice system.

The Role of Defense Counsel at Sentencing.—This article establishes the duties and obligations of defense

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105789

Community Service: A Review of the Basic Issues

BY ROBERT M. CARTER, JACK COCKS, AND DANIEL GLASER*

Introduction

IT IS clear that the use of community service as a sentencing alternative is a major judicial and correctional trend in the United States. In part driven by tax-limiting initiatives such as Propositions 13 in California and 2.5 in Massachusetts, community service seemingly has high potential in the continued search for more effective and less costly methods of dealing with offenders. The trend toward community service also is driven by economic considerations brought about by the efforts to balance the Federal budget. These efforts forecast that there will be a reduction in Federal funds available to states, counties, and municipalities that will impact the criminal justice systems generally and correctional systems specifically.

In addition to these economic influences, the prospects for community service were significantly bolstered by enactment of the Federal Comprehensive Crime Control Act of 1984, effective November 1, 1987, which states:

If sentenced to probation, the defendant must also be ordered to pay a fine, make restitution, and/or work in community service.¹

Changes and directions in the Federal correctional system—probation, parole, and institutions—have often established trends for corrections at state and local levels.

The definition of community service varies in the professional literature, but for purposes of this commentary it is a court order that an offender perform a specified number of hours of uncompensated work or service within a given time period for a nonprofit community organization or tax-supported agency. It clearly is distinguished from monetary *restitution* to the victim or payment of a *fine* to a political jurisdiction: restitution and fine, as in the Federal legislation noted above, also may be part of a court order. In a generic sense, community service has been labeled as "restitution"—a sanction imposed by an official of the criminal justice system requiring an offender to make a payment of money or service to either the direct or substitute crime victim. Community service has had

other labels, among them court referral, reparation, volunteer work, symbolic restitution, service restitution, and, for those individuals who perform community service without an adjudication of guilt, pretrial diversion and pretrial intervention.

More pragmatically, however, the specific use of community sanctions is of recent origin, emerging conceptually in England in the late 1960's and operationally in 1972 with Parliament granting the courts authority to order convicted offenders to perform community service. Within just a few years, the program was expanded in England and introduced into the United States and Canada.

Considerable literature on this sentencing and correctional alternative has been generated since that time, and at least two major bibliographies are now available which reflect that growing interest.²

There are several issues which should be carefully reviewed prior to the decision to begin community service as a sentencing alternative or enhancement. The purpose of this article is to review the more significant issues and the options available to the judicial and correctional decision-makers as each issue is examined. The issues include, but are not limited to, judicial and correctional philosophy, offender eligibility, criteria for selection, organizational models for community service, community service investigations, sentencing considerations, assignments to community service programs, supervision, and evaluation.

Judicial and Correctional Philosophy

Community service, as with any other sanction, should support the overall philosophical orientation of the criminal justice system and its judicial and correctional decisionmakers specifically. That philosophical orientation—whether it be rehabilitation, restitution, deterrence, retribution, punishment, or something else, singly or in combination—should be translated into community service program goals, objectives, and

¹ 18 U.S.C. 3563 (a) (2) (p.157, 98 Stat. 1993). As quoted in Anthony Partridge, "The Crime Control and Fine Enforcement Acts of 1984: A Synopsis," Federal Justice Center, Washington, D.C., January 1985, p. 8.

² See, for example, Burt Galaway, Joe Hudson, and Steve Novack, "Restitution and Community Service: An Annotated Bibliography," National Institute for Sentencing Alternatives, Brandeis University, Waltham, Massachusetts, September 1983, 132 pp. and "Community Service: Custom Search," U.S. Department of Justice, National Institute of Justice/NCJRS, Washington, D.C., 1986, 266 pp.

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greater confidence than they currently enjoy. They are: 1) interventions targeted to social institutions and groups such as the family and the peer group, 2) differential treatment, and 3) discontinued use of traditional archetypal training schools and reformatories for youth. The article discusses the convergence of research findings supporting these policies as well as the high costs of minimizing their importance.

A Vision for Probation and Court Services—Forensic Social Work: Practice and Vision.—Providing a vision for probation and court services

agencies, authors Thomas P. Brennan, Amy E. Gedrich, Susan E. Jacoby, Michael J. Tardy, and Katherine B. Tyson maintain that forensic social work can bridge the gap between the criminal justice and mental health systems, serving clients who "fall between the cracks." By addressing theoretical and clinical issues, presenting case examples, and reviewing the literature from both correctional and mental health viewpoints, the authors present a paradigm for the role of court social workers, probation officers, and other court service workers.

orientation. Simply stated, operational decisions should be developed from some shared understandings about community service as a sentencing alternative—an alternative to confinement, to fines, to restitution, and/or to other traditional penalties, with special attention focused upon the offender and the community. Operationally, a community service program developed to increase the penalty to an appropriate level of deterrence or just desert may be significantly different from one established to repay the community for damages that the offenders have done or to help the community meet its needs for unpaid workers.

It is not our purpose to argue here what the purposes for community service should be, but it is important to emphasize the need for decision-makers to specify why community service would be a useful sentencing alternative for them. If they state the goals that they seek with community service, they can design programs to achieve these goals.

Offender Eligibility

Community service has been utilized mostly by the lower courts for individuals convicted of offenses considered less serious, especially misdemeanors, including traffic violations. An option to be considered is the use of community service for more serious offenders. Within the Federal system, even apart from the Comprehensive Crime Control Act requirements, community service has been ordered for white collar and corporate offenders, and even for corporations. The inclusion of felons, in addition to misdemeanants, appears a rational expansion of community service, providing that the threat to community safety is always considered and minimized. The issue of dangerousness clearly is a critical correctional issue.

Concerns about dangerousness may be reflected in mandated exceptions to the utilization of community service for persons (1) committing certain types of offenses, (2) exhibiting particular traits or characteristics in their background, such as drug addiction, or (3) committing offenses with weapons or violence. Indeed, as the question of offender eligibility is considered, it may be appropriate to consider whether there is any reason why individuals entering into or being processed through the criminal justice system, who otherwise are deemed appropriate for a judicial or correctional release to the community, should be barred from community service. This would include adults and juveniles, felons and misdemeanants, probationers and parolees, individuals and corporations, and those convicted of offenses as well as those diverted from the justice system.

Selection for Community Service

Selection for community service requires a dual focus: on the offender and on the community. In considering individuals, explicit and objective criteria are necessary to prevent in community service the sentencing disparities which have been so well documented nationwide in other sentencing options. It has been noted that

(t)he lack of standards or guidelines means that similar offenders can receive very different community service sentences for the same offense from a given judge, from two judges in the same jurisdiction, or from judges in different jurisdictions.³

Allegations that community service sentences are applied in an unfair or discriminatory fashion also flow from a lack of criteria. The question of equity assuredly will surface if the community service sanction is applied only to the poor and the minorities or, contrastingly, only to middle- or upper-income offenders.

In determining selection criteria, the assignment of an offender to community service requires attention to community safety, to the offender's attitude and special skills or talents, to the seriousness of the offense, the availability of a suitable community service placement, and the wisdom of selecting other sentencing alternatives. As the community is examined, several other important issues emerge, including the public's attitude toward specific offenses and offenders, as well as the impact of community service on perceptions of the justice system by the citizenry. It is important that the public see community service as both a benefit to the community and a reasonable judicial disposition of the offender.

The process by which the criteria are established may be as important as the criteria themselves. It has been suggested that a "core group of advocates"—consisting perhaps of members of the judiciary, corrections, and the community—join together to establish the standards for selection to community service.⁴

Organizational Issue:

A community service program of any size requires some administrative structure. The two most common administrative entities are the probation agency or a volunteer bureau. There may also be a combined effort in which the probation agency has some oversight of those functions which are uniquely offender-connected within the volunteer bureau. In this case, the

³M. Kay Harris, "Community Service by Offenders," U.S. Department of Justice, National Institute of Corrections, Washington, D.C., January 1979, p. 45.

⁴*Ibid.*, p. 11.

probation office and the private organization have mutually supportive and compatible roles. A third type of administrative entity is the private organization created solely for the purpose of overseeing community service activities. An example of this third type is the Foundation for People, a nonprofit corporation established in Los Angeles under the aegis of the Probation Office of the U.S. District Court for the Central District of California. One of its several activities is to work with Federal courts to arrange as community service for white-collar offenders their assistance in the vocational training, counseling, and job-placement of blue-collar offenders.

There are several important distinctions which enter into the issue of the probation agency, volunteer bureau, or other entity providing the organizational structure for community service.⁵ The probation agency and the volunteer bureau are established in the community and have important connections with other organizations that already play a role in community-based corrections which could serve as the foundation for the community service function. Probation, as an established part of the criminal justice system, can provide a legitimacy and stability to a community service program and affect both judicial and community acceptance. Volunteer bureaus long have been involved in identifying and matching community needs with individuals able to offer a variety of services.

Regardless of the agency charged with the community service function, it is assumed in this writing that the order to community service is usually a condition of probation. However, it may be appropriate for community service to be ordered by the court without probation, particularly for less serious offenses, and in those smaller jurisdictions in which the court has continuous firsthand contact with the agency providing the community service function. The organization with the administrative responsibility must be able to provide some form of community service investigation, discussed below, as well as to supervise community service. Therefore, it must have the authority to insure compliance with the court order.

In making an organizational decision, there is a need to focus upon two basic functions—the development of some type of plan for joining offenders with community service and for supervision of these offenders in that service obligation. These functions parallel the traditional investigation and supervision functions of probation, but this similarity is not to be interpreted as a preference for the probation agency option. Let us examine these functions separately.

The Community Service Investigation

A number of important issues surface in a community service investigation and report, especially in the development of a plan for community service. Some of the issues are:

- What constitutes an appropriate community service investigation?
- What is an appropriate format for a community service report?
- Should there be an investigation and report on all individuals eligible to receive a community service sentence or only on specific individuals? If the latter, is it at the direction of the court, the discretion of the probation agency or volunteer bureau, or upon request by the prosecutor or the defendant or the defense attorney?
- Should a community service investigation and report be separate from, an adjunct to, or part of the formal presentence investigation and report? Indeed, for some minor offenses, would a community service investigation and report be an appropriate substitute for a presentence investigation and report?
- How much (additional) time should be allowed for the investigation, the preparation of a report, and the development of an appropriate plan?
- Does the community service investigation and report require a "specialist" familiar with the community and its needs and able to connect offender and community?
- Should the community service investigation and report be conducted before or after the imposition of a community service requirement?
- Should the agency responsible for the investigation and report also be charged with supervision of the community service?
- From an administrative perspective, how many community service investigations and reports are the equivalent of a presentence investigation and report?

Some Sentencing Considerations

The addition of community service as a sentencing alternative creates several unique issues for the court. Obviously, traditional considerations relating to the imposition of sentence remain, such as the concern for justice, equity, protection of the community, and rehabilitation. If there is an order of community service in lieu of confinement in a local custodial facility, a question of equivalence arises. At bottom, and as a question—how many hours of community service are the equivalent of a day in custody? Is it a day for a day,

⁵ *Ibid.*, pp. 14-15.

two for one, three for one, or some other ratio? If it is a day for a day, then is the equivalent of a 30-day jail sentence 30 8-hour days of community service, or 90 8-hour days? In the interests of fairness and equity, these ratios need to be established.

If on the other hand, the court wishes to impose community service instead of a fine—perhaps because the offender simply will be unable to pay a fine—what is the dollar equivalent of an hour of community service work? Is it the minimum wage, the prevailing wage in the community, or is it equal to the offender's normal hourly rate—perhaps \$4 an hour for one offender and \$25 an hour for another? Is it more equitable to have a uniform "equivalency" or to have equivalence individualized? If the latter, one of these offenders could work off a \$1,000 community service obligation with 250 hours of service; the other could accomplish the same in 100 hours.

Community service can be thought of as providing some of the equity that is credited to the day-fine principle pioneered in Scandinavia and now found in several other nations, including Austria and West Germany.⁶ Under this principle, an offender is sentenced to a fine of his or her earnings for a given number of days, so that the amount of money involved varies with the size of the earnings. As administered in Sweden, the fine is collected by that country's equivalent of our Internal Revenue Service, which collects all taxes or other money owed to the government. This agency determines the amount of the fine from its records of the offender's past taxable earnings, deducts an amount for necessities and dependents, but imposes some fine per day of the penalty even on those whose only income is from welfare. They collect almost every fine without jailing by allowing installment payments with interest for those who cannot pay immediately, but attaching salaries and even seizing possessions if there is a persistent failure to pay. Our courts, by imposing a penalty of a specified number of days of community service, are getting the same amount of service from each offender punished in this way, regardless of contrasts in the price that the services of different persons command per day when compensated in the free market.

It seems essential that the court fix both the precise number of hours of community service to be performed and the period of time during which the obligation is to be completed. Regardless of whether the number of hours was determined by the nature of the offense or the background of the offender, some other "arithmetic" needs to be completed. That arithmetic focuses

on the balance between the number of hours to be performed and the length of time given for completion of community service. An order for 400 hours of community service approximately equals 1 day or perhaps two evenings of service per week for a year. Is that a reasonable assessment when examining all of the factors—the offense, the offender, the offender's family and employment obligations, the community's needs for the service to be performed, and the feeling that "justice was done"? Or would 400 hours of community service over 2 years be more appropriate considering all of the variables?

One last numeric item—there seemingly should be both a minimum and maximum number of hours which can be ordered. It is assumed that there is some number of hours below which the administrative burden to the agencies involved in the delivery of community services would be inefficient and ineffective, and a number above which the offender could not hope to comply with the order. While we do not intend to be prescriptive here, the courts need to establish a meaningful range; perhaps from a 30-hour minimum, equivalent to 1 day a week for 1 month for a minor offense or offender, to as much as perhaps 400 hours per year for 5 years, a total of 2,000 hours of service, for the most serious offense or offender that still would permit imposition of a community-based correctional alternative.

Community Service Assignments

Following an investigation and report, and an order by the court for community service, there is a requirement to assign the offender to a specific community activity. As noted, this assignment may be made through a probation agency, volunteer bureau, or other organization designated to administer the community service effort. There are two basic perspectives about the assignment issue. The first argues for a matching of offender and community service on the basis of the skills or talents of the offender and the documented needs within the community. An often cited example is the assignment of a physician ordered to perform community service to a program in which medical skills may be utilized, such as a public health or "free" medical clinic of some sort. This kind of matching of abilities and needs may or may not seem as appropriate as a second type of matching: attempts to connect the community service assignment to the offense committed. For example, the assignment of an offender without medical service skills convicted of driving under the influence to a hospital emergency room—where there is considerable opportunity to see the harm done by drinking drivers—may not provide much relevant service.

⁶See, for example, Hans J. Albrecht, "Recidivism after Fines, Suspended Sentences, and Imprisonment," *International Journal of Comparative and Applied Criminal Justice*, 8, (Winter 1984), pp. 199-207 and Robert W. Gillespie, "Fines as an Alternative to Incarceration: The German Experience," *Federal Probation*, 44, (December 1980), pp. 20-26.

An alternative to either of these two types of matching is the more-or-less random assignment of offenders to community activities as offenders become available through the system and community needs are identified. Simply put, if two or three projects are identified as valid community needs requiring the services of 25 individuals, one assigns to these projects the next 25 offenders ordered to community service by the court, regardless of the number of hours ordered or the special abilities of the offender. The offender may be allowed to request participation in one or the other of the community services identified. This method has the advantage of simplicity, and perhaps some basic equity, although it is clear that the hypothetical physician mentioned above is not providing the most meaningful service to the community, particularly if the community service project at that time is clearing trash from the side of the road.

All approaches require basic data about the offense, offender, and the community service requirements, but the matching approach—in contrast to randomness—requires considerably more data about these matters. Personal data about skills and abilities are needed, as is related information about employment schedules, indicating hours of the day and days of the week which are available for service, and special clothing or other needed equipment. Indeed, systems involved in matching also require considerable specificity about the nature of the tasks to be accomplished and the skills required of the offender for their accomplishment. A large matching system most likely would be computer-based, whereas a smaller system might simply use 3-by 5-inch index cards.

A number of other related issues surface about the assignment phenomena: what agencies are eligible to receive community service? Agencies with a religious orientation or involvement might be ineligible because of perceived violations of the doctrine of separation of church and state, while assignments to political organizations, public interest or pressure groups, or controversial collectivities of citizens create other problems. Then, too, there are special problems associated with organized labor and with some citizen perceptions that community service deprives "honest citizens" of employment opportunities. Even apart from the issue of legitimacy of organizations to receive services, there are questions as to whether such community services should be provided to *individuals* as opposed to *organizations* . . . for example, to individual victims of crime.

Supervision of Community Service

The supervision function, whether performed by a probation agency, volunteer bureau, or other organiza-

tion, also raises some significant issues. Among them are questions which focus upon *disclosure* about the offender, the offense, and personal background to the community organization receiving the offender's service. Is there a reverse side of that coin which assures the offender at least a minimum right to *privacy*? And during the time that the offender is performing community service, does the community service sponsoring agency—the volunteer bureau, for example—have some degree of *liability* for the offender's behavior? Or if the offender is injured while performing community service, are there *disability* rights vested in that service? And should individuals sponsoring community service activities have *personal insurance* to protect them against a variety of potential legal actions which may grow from the connection to community service? While the *charging of fees* to offenders for probation services has been emerging nationwide, would it be appropriate for similar charges to be extended for community service investigations and supervision? Finally, would it be appropriate for the tax-supported agencies or the nonprofit community organizations receiving community services to pay the court for the services received?

Apart from these issues, there are more traditional questions about community service supervision ranging from the identification of those who provide it, frequency of contact with the offender and the community service supervisor or agency, the nature and schedule of reports, reassignment determinations, and the overall relationship between probation supervision and community service supervision, particularly if two separate agencies are involved.

Under some circumstances, there may be important questions raised about compliance with the community service court order. What constitutes a violation: would it be a failure to complete all of the assigned hours in the prescribed time or, in the shorter time-frame, a failure to appear to perform service on one or more occasions? Would a belligerent or disruptive attitude warrant cessation of a community service order? Probation and parole supervision long have had explicit conditions or standards of behavior: is there a need for a parallel series of community service guidelines for those involved in both the supervision and performance of community service?

Evaluation of Community Service

At a minimum, two areas of community service need assessment. The first centers upon measures of offender success and failure; the second upon some determination of cost-benefits. The cost-benefit analyses must consider both the criminal justice system *and* the

community. In short, effectiveness and efficiency are required targets for analysis.

Definitions of success and failure for offenders involved in the many varieties of community corrections long have been troublesome. Although we do not address that conflicted arena here, we note that community service does not make those assessments simpler, but rather more complex. An overall evaluation should go beyond that which could be generated by data as to whether or not the offender completed the required number of hours of community service within the court-ordered period of time.

Several examples may illustrate the complexity. The first focuses upon the definition of success and failure by asking about how the two are related in probation and community service. As an example: consider an offender who successfully completes a court-ordered community service obligation but is declared in violation of probation for behavior that is not related to the community service. How is that overall offender performance to be assessed?

It costs are the focus of evaluation, two quite different sets of cost data may be examined. The first may be the value of services provided the community—these calculated at some arbitrary hourly or daily rate such as the national minimum wage or an average local wage. The overall dollar value of the services provided are the number of hours of service multiplied by the value of those hours for a given period of time.

A second set of data may be derived from the "savings" obtained by having offenders provide community service instead of being in local custody. This may be calculated as the daily custodial rate multiplied by the number of confinement days not served. It is quite probable that estimates of monies saved by the justice system from non-incarceration of offenders who are performing community service may be markedly different from estimates of the value of the community service developed from hourly or daily wage comparisons, and that the two might be added. This difference would grow if calculated to include welfare assistance given to families of confined offenders. If community service serves as an alternative to the capital costs of constructing a custodial facility, the savings—even when prorated in some fashion—become enormous. And if these community services generate activities and projects which otherwise might not have been accomplished—that is, things which the community could not have done without these court-ordered services—perhaps some other dollar equivalents would be justified.

Finally, improvements in community feelings about "justice" generally and the criminal justice system

specifically on one hand or the improvement of the offender's personal feelings of self-worth which may be generated from performing a service to the community on the other, cannot be measured readily, but nevertheless need assessment.

Some other issues

Clearly, the issues identified above are not a complete listing, not only because of space limitations, but also because issues are emerging as the utilization of community service expands and new concerns evolve. At this point, we simply would identify some other questions.

- Because of the rapid growth of the community service sentencing option nationwide, is there now a need for professional community service associations at the national, state, and local levels?
- Is there a need for the development of prescriptions about the use of the community service option and, if prescriptions are appropriate, what organizations and agencies should be involved in standard-setting?
- Should there be statutory authority for the use of community service, or is the use of that option clearly inherent in the sentencing powers of the courts?
- What is the appropriate priority for insuring compliance with court orders that direct two or more actions, for example, a fine, restitution, and performance of community service?
- As related to the very complicated issue of "what" constitutes community service, should offender involvement in education and training programs be credited to the community service obligation?
- Would it be appropriate to order completion of a *project* (an attorney, for example, ordered to prepare a specific number of wills for the elderly poor) instead of a *specified number of hours*?
- And a host of other issues; including the appropriate location for community service offices; whether to focus upon one or two large agencies to receive community service (example: a Veterans Administration hospital and the Red Cross) or divide the available service among many community agencies; how to minimize reporting requirements that might be placed on agencies receiving the service, which are time-consuming and generally considered onerous; the selection, composition, and utilization of local advisory committees; methods for obtaining public understanding and support of community service; and so on.

Summary

Community service as a sentencing option has an operational history of about 15 years. There is every reason to believe that its utilization in America and elsewhere will expand significantly during the next decade. Because it has evolved and grown so rapidly, there has not yet been adequate time or attention given to identification of the issues that surround its usage or to develop standards for that usage. Indeed, there is some evidence of a failure to understand that the many issues which have been or yet may be identified are completely interrelated, one with the other.

The authors have not been prescriptive but would argue that there is a mandate to examine carefully a number of issues about community service. Some of these have been identified—judicial and correctional philosophies, offender eligibility and selection criteria, organizational arrangements, community service investigations and supervision, sentencing considerations, community service assignments, and evaluation. If community service is to become a truly viable sentencing option, these areas need thoughtful consideration by those academicians, administrators, practitioners, and researchers concerned with criminal justice.