

Federal Probation

Special Anniversary Issue

CELEBRATING 50 YEARS IN PRINT

1937-1987

The Establishment and Early Years of the Federal Probation System *Sanford Bates*

Latter-Day Procedures in the Sentencing and Treatment of Offenders in the Federal Courts *Henry P. Chandler*

Requirements for Probation Officers *Joseph P. Murphy*

Probation Workers: Counseling Con Men? *John Stratton*

The Life of a Federal Probation Officer *William C. Nau*

Probation and Probation *R. Margaret Cork*

Probation Objectives in Probation and Staff Accountability 106685-106692

Call It Control—And Probation and Felony Offenders

Probation in the Future: The Intensive Treatment

U.S. Department of Justice
National Institute of Justice

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106685-106692

JUNE 1987

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LI

JUNE 1987

NUMBER 2

This Issue in Brief

THIS SPECIAL ISSUE contains 10 outstanding articles from *Federal Probation's* 50-year past. During its lifetime, the journal has carried close to 2,000 articles on every conceivable criminal justice topic. Many of our articles have been among the first to express innovations—pretrial services, victim compensation, community service, and others—that went on to become accepted standard correctional programs. Our authors have included some of the most important practitioners and theoreticians in criminal justice and corrections.

The articles in this special issue were selected because they exemplify the flavor and substance of thought and practice in probation, particularly the Federal Probation System, at the time they were

authored. Selecting 10 articles from among the many excellent articles the journal has published was indeed a challenge. Our selections were based on recommendations from advisory committee members, frequent contributors, and editorial staff, past and present. The potpourri of articles here reflect ideas that were particularly bright or prophetic when written, or they were of such solid wisdom that they have endured. We believe you will enjoy reading them.

LORENE LAKE
EDITOR

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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 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

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

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 facilitating 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 in-

² As of April 1, 1950 there were 212 judges serving the 84 districts and the United States District Court for the District of Columbia.

dulged 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 subject. Congressman Charles Andrew Christopher 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 administra-

tion 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 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 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

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 \$87.53 and for federal prisoners, \$1,138.80.

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.

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.

Latter-Day Procedures in the Sentencing and Treatment of Offenders in the Federal Courts*

BY HENRY P. CHANDLER

Director, Administrative Office of the United States Courts

THIS ARTICLE about the sentencing and treatment of federal offenders is of a different nature from those which ordinarily appear in law reviews. Such articles usually trace the development of principles of law through precedents of statutes and judicial decisions. A judge in deciding what sentence to impose gets little help from such aids. Judge Alexander Holtzoff, who had long experience in the Department of Justice before becoming a judge of the District Court for the District of Columbia, has said:

The judge in imposing sentences is not guided nor aided by any principles or rules of law. His authority is circumscribed solely by the broad range of punishment prescribed by statutes for specific crimes. There are no controlling precedents. He must evolve his own ideas from his observations, experience, and sense of justice.¹

Such a process is quite different from the application of logic which is the judicial method in other fields. But it is becoming recognized that courts cannot fulfill their functions in this time without drawing on sources of knowledge other than law books. Justice Cardozo said:

The conviction is gaining ground that there can be no adaptation of means to ends without knowledge of many things that lawyers have at times neglected, without scrutiny of many forces, social, economic, ethical, as well as legalistic.²

Along the same line Dean Griswold of the Harvard University Law School, has written recently that in the second half of this century:

Scholars will concern themselves not merely with the traditional work of reconciliation and systematization of

legal principles, rules, standards, and doctrines as laid down bit by bit and day by day in the sprawling coral reef of case-law decisions found in the reports, but also, perhaps more so, with the transformations in social forms and the discoveries in the sciences of man that are relevant to the 'life of the law' in this extraordinarily exciting and dynamic age.³

The Place of Sentencing in the Business of the Federal Courts

Sir Henry Maine in his work on Ancient Law points out that the proportion of criminal to civil law varies greatly between primitive and mature societies. In the former the civil part of the law is slight compared with the criminal. As peoples become more highly organized the dimensions of the civil law grow.⁴ So, in the federal courts the number of civil cases brought annually much exceeds the number of criminal cases and the civil business bulks larger in the thought of the bar and the general citizens. But, after all, the administration of criminal justice concerns the maintenance of internal order which along with defense against external aggression is one of the primary purposes of government. The importance of it is emphasized at present by recent disclosures of the wide ramifications of organized crime in the United States.⁵

When the public gives attention to the work of courts on the criminal side, it ordinarily thinks of the trial of conspicuous cases. In the federal courts, trials in recent months for treason, espionage, and subversive activities come to mind. The fact is, however, that trials of accused persons for the purpose of determining their guilt or innocence form a very small part of the criminal business of the federal courts. In the fiscal year 1950, extending from July 1, 1949 to June 30, 1950, of 33,502 criminal defendants who were convicted and sentenced in the 86 districts in the states, Puerto Rico and Hawaii,⁶ 31,739, or more than 94 percent, were convicted on pleas of guilty or choice not to contest.⁷ The problem in all these cases was not to find out whether or not the defendant was guilty. He admitted his

* Reprinted, with permission, from the *Virginia Law Review*, October 1951.

¹ Holtzoff, "The Judicial Process as Applied to Sentences in Criminal Cases," *FEDERAL PROBATION*, 52 (June 1950).

² Address delivered by Justice Cardozo at the installation of Dean Hugh W. Jervey as head of the Columbia University Law School (1924).

³ Sheldon and Eleanor Glueck, *Unraveling Juvenile Delinquency*, vii (1950).

⁴ Maine, *Ancient Law* 353-357 (4th Am. ed. 1906).

⁵ See Reports of the Special Committee to Investigate Organized Crime in Interstate Commerce, pursuant to Senate Resolution 202 of the 81st Congress, popularly known as the Kefauver Committee; Interim Report, Sen. Rep. No. 2370, 81st Cong., 2d Sess. (Aug. 18, 1950); Second Interim Report, Sen. Rep. No. 141, 82nd Cong., 1st Sess. (Feb. 28, 1951); Third Interim Report, Sen. Rep. No. 307, 82nd Cong., 1st Sess. (May 1, 1951).

⁶ The District of Columbia is not included because the court there having local as well as federal jurisdiction is not typical.

⁷ Rep. Dir. Adm. Off. U.S. Cts. For the Fiscal Year 1950, 178, table D-4 (1950).

guilt, either affirmatively or by failing to deny. The problem was what to do with him in the way of sentence.

Anybody who is acquainted with federal judges knows how heavily this responsibility weighs upon them. The trial of a lawsuit by a judge is difficult. He has to consider conflicting lines of authority and decide where the case before him falls. But at least he has guides in the statutes, and in the decisions and reasoning of other courts bordering in nature on the one before him. The determination of the issues is to a large extent an intellectual problem. When, however, he comes to sentence an offender he needs to draw upon understanding of human nature, for which there are few guides outside of his own judgment, and such information about the defendant as he can get. Judges have a painful desire to do what is best in fixing sentence. But how to know what is best—there is the rub. Many a judge says that to decide this as well as he can, he gives more anxious thought than to any other judicial function that he performs.

Nearly a century ago the eminent scholar who has been mentioned, Sir Henry Maine, wrote this:

The modern administrator of justice has confessedly one of his hardest tasks before him when he undertakes to discriminate between the degrees of criminality which belong to offences falling within the same technical description. It is always easy to say that a man is guilty of manslaughter, larceny, or bigamy, but it is often most difficult to pronounce what extent of moral guilt he has incurred, and consequently what measure of punishment he has deserved. There is hardly any perplexity in casuistry, or in the analysis of motive, which we may not be called upon to confront, if we attempt to settle such a point with precision; and accordingly the law of our day shows an increasing tendency to abstain as much as possible from laying down positive rules on the subject.⁸

Since the first edition of Maine's work appeared in 1861, there has been a considerable change in the philosophy of sentencing, particularly on the part of the best judges who now give much thought to determining what type of sentence is most likely to be effective in preventing future crime. Further, since the effect of the sentence upon the offender has to be weighed, the problem thus becomes more intangible and complex than a mere assessment of the degree of guilt. Consequently what Maine said about the difficulty of the sentencing function applies even more today.

The Problem of a Judge in Determining Sentence

It is virtually undisputed at present that the ob-

jective in administering the criminal law is to protect society against crime. The old idea of meting out punishment as retribution or collective revenge for the wrong done by the offender, what United States Circuit Judge John J. Parker characterized as handling sentences "like awards of damages" proportioned to the prisoner's culpability,⁹ has generally been discarded. The disposition of courts today is to leave to an all wise Providence punishment as such, and to limit themselves to the practical concern of how best through the sentencing of persons who violate the criminal laws, to prevent future crime and safeguard society.

Broadly there are two ways in which the sentence imposed upon a convicted offender may safeguard the public against future crimes. The example set may deter other persons from wrongdoing, or the treatment prescribed, whether imprisonment or probation, may lead the offender to correct his way of life: bring about what is generally termed as rehabilitation. It is a vexed question among criminologists how far the punishment of one offender tends to deter other persons from crime; in other words what the example of a sentence amounts to. Most students in the field seem to consider that it does not amount to very much; that no matter what happens to another person, a man meditating an offense tends to think that he can be cleverer and avoid being caught, or he acts on an impulse of the moment without reasoning at all. Just the same there is a general body of opinion in which I confess I share, and which I believe most judges hold, that the punishment of offenders does have something to do with deterring other persons from crime. If, for instance, we can conceive that society retained all the present criminal laws but abolished penalties for breaking them, I think everybody would consider that the number of violations would go up and in a marked degree.

Consequently the deterrence of others is something that every judge has to consider in determining sentence. But the deterring effect of example is greatest in the case of conspicuous crimes which are widely known throughout the community. For every criminal about whom the public reads in the papers there are tens, hundreds, or even thousands of offenders throughout the nation who are unknown except to a limited group of their family, relatives and acquaintances. Whether one of them is committed to prison or for how long, or whether he is put on probation hardly crosses the consciousness of the general public. For such a person the federal courts, and I think most other courts, are

⁸ Maine, *Ancient Law* 367 (4th Am. ed. 1906).

⁹ Letter of May 31, 1943 to Honorable Hatton W. Sumners, Chairman of the Committee on the Judiciary of the House of Representatives, *Hearings before Subcommittee No. 3 of Committee on Judiciary on H.R. 2139 and H.R. 2140, 78th Cong., 1st Sess.* 170 (1943).

coming to consider that the best way to protect the public is to bring about in him a change of heart. The wisest sentence is the one that will offer the best prospect of accomplishing this.

So the judge sentencing a convicted offender has to decide in the first place whether, aside from the effect of the sentence on him, something in the way of an example is necessary as a deterrent to others. Often this makes it necessary when there is a breach of official trust or palpable violation of the duty owed by a citizen to his government, such as for the payment of taxes, rendering of military service, or most of all loyalty, for a court to impose a severe penalty even though it is satisfied that without it the individual would not commit another offense. These are only some of the offenses in which example may be an important element to be considered in the sentence. In the much greater proportion of cases in which the offenders are little known, and what happens to them is not a matter of public note, the controlling consideration with most judges, and it is believed rightly, is what treatment will be most likely to bring about the rehabilitation of the offender. To this one qualification must be added: that some offenders may present such a menace at the time if left at large, that a period of imprisonment is necessary even though the disadvantages of it are recognized.

The Origin and Extension of Presentence Investigations

Until within a generation a federal judge had to rely in sentencing an offender upon such understanding as he could gain from observation of the defendant at the trial if there was a trial, or from the briefest kind of an interview with him before the bench at the time of sentence, or occasionally from other quite biased sources like statements of counsel or relatives. The inadequacy of such guides is apparent. The outlook for correction of an offender depends upon many elements aside from the nature of the offense, which can be ascertained only from careful and intelligent inquiry in many places. The make-up of the defendant, physical, mental and spiritual, his vocational aptitude, his family life and neighborhood associations, all these and many other factors need to be known. The judge cannot find out about them in court. They can be learned only by competent investigation.

The personnel for such investigation came into existence when probation officers were appointed

by the federal courts following the enactment of the Federal Probation Law on March 4, 1925. The function originally contemplated for the probation officers, and the one which gave them their name, was the supervision of persons placed on probation. But the federal judges soon saw that here was a force of men who could be used to secure information, excelling in both quality and quantity any aid in fixing sentences which they had before had. So the courts began to use the probation officers generally for presentence investigations. One judge being told by another of the help gained from the practice followed it. The procedure was confirmed by Rule 32 (c) (1) of the Federal Rules of Criminal Procedure, effective March 21, 1946, which provides that:

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. . . .

From the various beginnings of presentence investigations, something like a pattern has been evolved through experience and exchange of ideas, which is followed with more or less variation in the different districts. Criminal Rule 32 (c) (2) prescribes that reports:

. . . 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.

Some years ago the Probation Division of the Administrative Office of the United States Courts issued a monograph on presentence reports.¹⁰ This suggests a framework into which information gained in investigations can be fitted to give something like a composite picture of a defendant and his associations and environment. The following are the titles of the different divisions of the report:

(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.

The degree of fullness of the report naturally depends somewhat upon the amount of time which the probation officer can give to the individual case. Not all of the topics listed appear in every report. But every report is designed to show the defendant in his setting, and the conditions affecting his conduct. The judge of course is in a position to weigh the relation of the offense to the community and to consider how far the element of example is

¹⁰ *Presentence Investigation Report*, Prob. Div. Adm. Off. U.S. Cts. (1943).

to be taken into account. The presentence report gives him the information requisite to forecast the effect of the sentence upon the individual. In the fiscal year 1951, 17,076 such reports were made by the federal probation officers.

The Question of the Public or Confidential Nature of Presentence Reports

There is some difference of opinion among federal judges in regard to the disclosure of presentence reports to the defendants. Some judges take the position that inasmuch as the sentence affects the defendant almost as vitally as the judgment of guilty, in fact in the great majority of cases as has been shown it is the only question open because the defendant admits his guilt, everything that the judge takes into account in arriving at the sentence should be publicly stated, and should be subject to the same right of cross-examination and rebuttal that exists on the trial. Other judges consider that the trial is ended when guilt is determined, and that a judge should be free to procure information to assist him in determining sentence from any source available, governed only by his sense of fairness. An experienced federal district judge who holds the latter view, Carroll C. Hincks of Connecticut, said this:

In my view, after conviction a case ceases to be an action at law and becomes a social problem. What treatment of the defendant is required for the good of the State? In the solution of that problem a vast field of discretion is conferred upon the judge. In my opinion the judge should not be hampered or restricted in the methods which he may select as best adapted to aid him in the exercise of that great responsibility.¹¹

Judges who share this attitude desire to secure all the facts in relation to the defendant. Many of them have to come from his wife, parents, brothers and sisters, employers, and friends. These persons are much more willing to talk and to give their real opinions if they are assured that what they say is for the information of the court only and will be treated as confidential, than if it is to be made public. In fact under any other practice the door would be closed on much of such vital information.

Judges who use their discretion in reference to disclosing presentence reports to defendants recognize that a defendant ought to have an opportunity to meet allegations that are likely to weigh against him in the sentence. But they devise ways of informing him of adverse factors in general

terms and in substance without disclosing the sources. It is believed that the federal judges who use their discretion in reference to the handling of presentence reports are in a majority.

As far as the law is concerned, the Supreme Court of the United States in 1949 sanctioned that practice. In the case of *Williams v. New York*,¹² the court on appeal reviewed a decision of the Court of Appeals of New York upholding a conviction of murder in the first degree. The jury had recommended life imprisonment but the trial judge imposed a death sentence. In explaining his course the trial judge indicated that he was influenced not only by the shocking nature of the crime as shown by evidence on the trial, but by the chronic criminality and degeneracy of the defendant, making him a "menace to society" as shown by a report of a presentence investigation of the court's probation department. Here if ever would seem to be a case where consideration by the judge in his sentence of a report not completely opened to the defendant might seem to violate his constitutional rights.

But the Supreme Court held not. In an opinion by Mr. Justice Black it said that historically both in the United States and in England, courts had been accustomed to consider in the matter of sentencing information obtained outside of court. It expressed the opinion that there are "sound practical reasons for the distinction" between the procedure on the trial and on sentence. Continuing it said:

Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. And modern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial.¹³

The court added that the fact that in the particular case a death sentence was imposed would not change the principle:

We cannot say that the due process clause renders a sentence void merely because a judge gets additional out-of-court information to assist him in the exercise of this awesome power of imposing the death sentence.¹⁴

The issue whether presentence reports should be made available to the defendants arose in the formulation of the Rules of Criminal Procedure. The Advisory Committee appointed by the Supreme Court included in the draft recommended to the Court the following sentence:

... After determination of the question of guilt the report shall be available, upon such conditions as the court may impose, to the attorneys for the parties and to such

¹¹ Hincks, "In Opposition to Rule 34 (e) (2), Proposed Federal Rules of Criminal Procedure," VIII FEDERAL PROBATION No. 4, p. 3, 7-8 (Oct.-Dec. 1944).

¹² 337 U.S. 241 (1949).

¹³ *Id.* at 247.

¹⁴ *Id.* at 252.

other persons or agencies having a legitimate interest therein as the court may designate.¹⁵

The sentence quoted obviously contemplated that the presentence report should be disclosed to the defendant through his counsel. While power was given to the court to impose conditions, it was the general view that this would not authorize the court to withhold knowledge of the report from the defendant. Much discussion of the effect of the provision upon the practice of presentence reports which was then in wide use in the federal courts ensued. Judges who were accustomed to treat the reports as confidential and disclose to the defendant only such information from them as they thought best, expressed serious apprehension that if the provision was adopted the value of presentence investigations would be greatly impaired.

Judge Hincks, to whom reference has been made, wrote a powerful article in opposition.¹⁶ He urged that the matter should be left as it was to the discretion of the individual judge, so that judges whose practice it was to have presentence reports produced in open court and treated like evidence at the trial could continue to do so, but that "those of us who feel that we can get better results through the fuller material which may be expected in confidential reports should be trusted to use that technique."¹⁷ This is what happened. The Supreme Court in adopting the Criminal Rules omitted the sentence which required presentence reports to be available to the attorneys for the parties.

Each district court is therefore free to use its discretion in this matter. The practice varies between making the reports public in some districts and treating them as confidential for the information of the court to be used in its discretion in others. The philosophy of the judges who follow the second practice is well stated in the words of Mr. Justice Black in the *Williams* case:

The due process clause should not be treated as a device for freezing the evidential procedure of sentencing in the mold of trial procedure. So to treat the due process clause would hinder if not preclude all courts—state and federal—from making progressive efforts to improve the administration of criminal justice.¹⁸

The Development of Federal Probation in the Last Quarter Century

One of the greatest changes in the administration of criminal justice in the federal courts in the

last generation has been the adoption of probation. A law approved March 4, 1925, provided that district courts, when it appeared to the satisfaction of the court that the ends of justice and the best interests of the public, as well as the defendant, would be subserved thereby, should have power, after conviction of offenses not punishable by death or life imprisonment, to suspend the imposition or execution of sentence and place the defendant upon probation for such period not exceeding five years and upon such conditions as the court might deem best.¹⁹

At an earlier period a number of federal district courts had suspended or deferred sentence and released defendants conditioned upon their good behavior. This was a kind of informal probation. But the Supreme Court of the United States, on December 4, 1916, held such practices illegal.²⁰

Federal probation as an accepted mode of treatment began only with the passage of the law of 1925. That law provided for the appointment by the district courts of probation officers and made it their duty to supervise persons released on probation. The function of presentence investigations is something that has developed on account of the obvious value of it, without any express provision in the statute. Unquestioned authority for it is now found in Rule 32 (c) of the Rules of Criminal Procedure which has been previously discussed. The probation law provided that the probation officers should also, if requested by the Attorney General, supervise federal prisoners on parole, and this is a regular part of their duties.

The statute provided that probation officers should serve without compensation except in instances in which it appeared to the judges that the service required salaried officers. Then compensation might be paid.²¹ In this respect the exception in the statute has become the rule and all federal probation officers now receive salaries. The salaries in the beginning were inadequate, but by the help of the Congress in appropriations over the years they have been substantially increased. Today particularly in the earlier stages of service they compare favorably with the salaries paid in state and local systems. However, there is need for further advance in the compensation of officers carrying the larger responsibilities and exercising the wider degrees of discretion.

No salaried probation officer was appointed until 1927. The first appropriation of \$50,000 for the fiscal year 1926 was reduced to \$30,000 for the next year and \$25,000 for each of the two years following because the full funds appropriated were

¹⁵ Rule 34 (c) (2) as recommended in Federal Rules of Criminal Procedure, Report of The Advisory Committee 24 (June 1944).

¹⁶ Hincks, *op. cit. supra* note 11 at pp. 3-9.

¹⁷ *Id.* at 9.

¹⁸ 337 U.S. 241, 251 (1949).

¹⁹ 18 U.S.C. 3651 (1948).

²⁰ *Ex Parte United States*, 242 U.S. 27 (1916).

²¹ 18 U.S.C. 3654 (1948).

not used. Until 1930 only eight officers' positions were filled. Since then the system has grown until in the fiscal year 1951 there was an appropriation of \$2,145,000, with provision for 310 probation officers and 208 probation clerks.

The probation officers, besides their duties as parole officers, have the two principal functions which have been mentioned: first to supervise offenders placed on probation, and second, to make presentence investigations of convicted offenders, whether they are later placed on probation or sent to prison. The percentage of convicted offenders who are awarded probation under supervision has been fairly stable for a number of years, being about thirty to thirty-five percent.²² The total number of probationers received by the probation officers for supervision in the fiscal year 1951 was 9,805.

The superintendence of probation differs from the typical functions of a judge. In deciding law suits he determines between opposing contentions which is right and renders judgment. There his responsibility ends. It is for somebody else to do what follows. When a court commits an offender to prison, the responsibility passes to the Bureau of Prisons under the Department of Justice. But the responsibility for treatment by probation remains in the court. In some state and local systems of correction, the conduct of probation is as much a function of the executive branch as the operation of prisons. But in the federal system probation is a concern of the district courts.

The Nature and Advantages of Probation

Probation may be defined as the treatment of an offender by personal guidance and assistance without custody. The theory is that in the offender there is a core of sound impulse which by an understanding person can be brought out and made effective. Probation is really the application of wise and compassionate friendship. It is astonishing how much, with good judgment, faith, and perseverance, it can accomplish.

Probation has two great advantages over imprisonment in cases in which it can be prudently used. First, probation avoids the contaminating effect of association with other criminals, many of them more confirmed, in prison. Through a system of classifying offenders and as far as possible separating the more confirmed and vicious from those

who are more amenable to correction, the Federal Bureau of Prisons does everything possible to avoid the contagious influence of contact with other criminals. But no way has been found of accomplishing this completely, and often prison inmates acquire schooling in crime during the service of their terms.

There is a second disadvantage of imprisonment which is believed to be equally if not more serious: that is that in prison the inmates are governed by strict rule, descending to the minute details of their daily lives, and they have little responsibility except to obey. In the world outside a man has to direct himself and rely upon his own will to conform with the moral order. The transition between the two worlds often proves too great a strain for model inmates when they come out of prison.

A probationer, on the other hand, exists in a normal social environment as a member of a family or community. By supervision he is assisted to make the necessary adjustment of his conduct in the situation under which he will continue to live. Supervision during probation, which may be close at the beginning, is gradually relaxed as the probationer demonstrates ability to control himself, and the removal of it at the end may be almost imperceptible. The probationer has learned under the ordinary conditions of life to go under his own control.

There are those who advocate severe penalties for crime and disparage probation. They argue that when a person has committed a serious offense he should be put behind prison walls where he cannot offend again. But except for those convicted of the most serious crimes, everybody who goes into prison sooner or later comes out. If by his associations there his criminal tendencies have been more deeply ingrained and he has become a more dangerous enemy of society than when he went in, society is not protected in the long run.

The truth is that the only lasting protection of society against the repetition of crimes by an offender is in a change of heart on his part; one which takes away his disposition to commit offenses and makes him willing to live at peace with his fellow men. In cases in which the court deems it necessary to set an example, or it appears that at the time custody of the wrongdoer is essential, probation may not be open. But in many cases of inconspicuous offenders where the element of example is not controlling, and the offender gives promise that with help he can be rehabilitated, federal judges are more and more coming to consider that probation is the most promising form of treatment.

²² Chandler, "The Future of Federal Probation," 14 FEDERAL PROBATION No. 2, p. 41, 48 (June 1950).

The Degree of Success of Probation

When the difficulty of foreseeing how an offender will respond to probation is taken into account, the proportion of those who succeed during the period of supervision is as high as could be reasonably expected. Of 10,977 probationers whose supervision was terminated during the fiscal year 1951, only 1,575, or 14.34 percent were reported as violators. More than 85 percent had a clean record. This percentage was slightly lower than in all but one of the previous years during the last decade.²³ The continuing record is certainly good enough to warrant continuance of the practice.

We do not yet have any extensive evidence of the lasting effects of probation after completion of the period of supervision. It seems only reasonable to suppose that when a probationer conducts himself as a law-abiding citizen during the period of supervision, which is ordinarily 2 years and may be longer, he will go in the same way after supervision ends. Inductive evidence on this matter is, however, desirable and at present studies are being carried on in a few districts by the probation staffs of the district courts under the planning and oversight of sociologists of approved universities.

The only study that has gone far enough as yet to enable conclusions to be drawn is one by the probation staff of the District Court for the Northern District of Alabama under the direction of Dr. Morris G. Caldwell, professor of sociology in the University of Alabama.²⁴ From the persons who had successfully completed probation in that court during a period ranging from 5½ to 11½ years prior to the study, 403 were chosen by a sampling process to give a fair representation of the total number. These 403 were investigated intensively both negatively for absence of subsequent crime shown by fingerprints and court records, and positively by personal interviews which were had with almost all. Of the 403 persons studied, 395 or 98 percent, were free from conviction of felonies in the 5½ to 11½ years after the ending of their probation. Three hundred and thirty-seven, or 83.6 percent, were free from subsequent convictions of any kind in that period, either felonies or misdemeanors. If offenses not involving moral turpitude, such as breach of traffic regulations, were subtracted, the proportion with clean records in the years following their probation would be higher.

The criterion of the courts in awarding probation is of course the interest of society. If however, on social grounds probation is justified there is a great economy in that method of treatment over imprisonment. The daily per capita cost of federal probation for persons supervised during the fiscal year 1951 was 22.5 cents, compared with a similar cost for inmates of federal prisons of \$3.271. The yearly cost of probation was \$81.99 per person, compared with a yearly cost for imprisonment of \$1,193.92 per person. This of course is not all. A person on probation if capable of employment may and usually does earn money for the support of himself and his family. During the fiscal year 1951 an average number of 14,554 probationers reported earnings each month. The total earned during the year was \$30,818,698.00, or an average for each probationer reporting of \$2,117.54.

Possibilities of Improvement in the Federal Probation Service

There are a number of ways in which the federal probation service can be improved, given the requisite action. First the case load of the federal probation officers, notwithstanding steady reduction since 1940, is still too high. The Congress from time to time in the appropriations has provided funds for increasing the number of probation officers, which has risen from 233 in 1940 to 310 at the present time. This, coupled with a decrease in the number of probationers under supervision due to a decrease in the general types of crime coming into the federal courts in the last decade, has brought down the average case load per officer from 148 in 1940 to 94.6 as of June 1951.²⁵ But even 94 persons are more than one probation officer can handle effectively and also make the presentence investigations which are required. Moreover the case load in some districts is much above the average. Nearly all authorities in the field of corrections consider that fifty probationers, and at the outside seventy-five, should be the maximum load for one officer.

Again and again in the discussion of actual cases of probation at conferences of probation officers it appears that at some critical time in the experience of a probationer, the probation officer was unable, because of the number of other cases which he was handling, to give attention that was needed, and there was a lapse back into crime. Conversely in cases in which probationers have succeeded against

²³ See Rep. Dir. Adm. Off. U.S. Cts. For the Fiscal Year 1950, p. 187, table E-3.

²⁴ Caldwell, "Preview of a New Type of Probation Study Made in Alabama," 15 FEDERAL PROBATION No. 2, pp. 3-11 (June 1951).

²⁵ See Rep. Dir. Adm. Off. U.S. Cts. for the Fiscal Year 1950, 61 (1950).

heavy odds it usually appears that the probation officer in some way was able to give to them an unusual amount of personal help and tide them over dangerous crises. On account of the small cost of probation compared with imprisonment it would obviously be economical for the government to provide adequate financial support for the probation system.

A second objective is observance of suitable qualifications in the appointment of probation officers by the courts. The Judicial Conference of the United States, consisting of the Chief Justice of the United States as Chairman, and the chief judges of the courts of appeals, has constituted, since its establishment in 1922, through the efforts of Chief Justice Taft, an advisory body with large influence in the administration of the federal courts. This body, in 1942, in accordance with the report of a committee of judges made after study, recommended to the district courts minimum qualifications for probation officers, including the following:

A liberal education of not less than collegiate grade, evidenced by a bachelor's degree (B.A. or B.S.) from a college of recognized standing, or its equivalent.

Experience in personnel work for the welfare of others of not less than two years, or two 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.²⁶

The task of a probation officer is a professional task of a highly difficult nature. It clearly calls, along with character above reproach and unselfish interest in people, for special education and training. The personal factors with which the probation officer has to deal are so intangible and elusive that unless he has the knowledge that a wide general education, study of psychology and sociology, and the aptitude that some experience in working with people to help them can give, he can hardly hope to succeed. It is therefore disappointing that 101 probation officers who were appointed in the federal system during the ten year period from June 30, 1940 to June 30, 1950 only 94, or 58.4 percent, fully met the recommended standards of both education and experience. On the other hand only 14.3 percent met neither standard.²⁷ By and large the federal probation officers are persons who through experience and education in the service have acquired a high degree of understanding. Their devotion is exceptional. I would quote the

observation made by Dr. Sheldon Glueck of the Harvard Law School concerning the federal probation officers whom he met at a regional conference at Harvard in June of 1942:

But one could not help being greatly encouraged in observing the Federal probation officers at the Conference. They gave an impression of dignified, mature, clear-headed and socially minded men.²⁸

Even so, it is most desirable that the standards of the Judicial Conference be followed uniformly in new appointments to the service.

A third means of increasing the efficiency of the probation service in the federal courts, in my opinion, would be periodic conferences between the judges and the probation officers concerning the conduct of probation in their respective courts. This practice is followed at present in a few courts. In one at least a judge from time to time meets the probationers, gives commendation and encouragement when deserved, and admonition when needed. In most of the district courts, however, when offenders are put on probation, the responsibility for dealing with them is delegated entirely to the probation officers. The judges rarely thereafter come into the situation unless there is a violation of probation and the probationer is brought before them on an application to revoke probation and commit him to prison as might have been done in the first place.

Naturally the probation officers must expect to do the work involved in the supervision of persons placed on probation and they do. That is their business. But in a task so hard as theirs, with inevitable disappointments, when some of the persons in their charge fail to make good, they would be much helped by occasional opportunities to discuss their difficult problems and general policies with the judges. The judges from their more detached position and seasoned judgment would be able to make helpful suggestions in many cases. The manifestation of their interest would give great encouragement to the probation officers.

The federal judges in many, perhaps most, districts are hard pressed at the present time to decide the cases coming before them. To suggest that they take any part in supervising the administration of probation in their courts may appear to be asking too much. But as I have previously pointed out, whether for better or worse, the district courts are responsible for the administration of probation as they are not responsible for the treatment of persons sentenced to prison. In the success or failure of the persons who are placed on probation there

²⁶ Report of the Annual Meeting of the Judicial Conference of Senior Circuit Judges p. 9 (now Judicial Conference of the United States) (1942).

²⁷ Rep. Dir. Adm. Off. U.S. Cts. for the Fiscal Year 1950, 62 (1950).

²⁸ Glueck, "Of Crime, Probation and Cognate Matters," 6 FEDERAL PROBATION No. 3, 60 (July-Sept. 1942).

are great potentialities for good order or crime in this country in the coming years. I am convinced that by well directed although limited attention on the part of the judges to the conduct of probation in their courts and more in the way of guidance to the probation officers, the efficiency of the probation service could be raised substantially. This would seem to be important enough in the administration of criminal justice to warrant the time and effort required, and I am hopeful that there may be a trend in this direction.

A fourth factor which the Probation Division of the Administrative Office and I consider would be beneficial is the complete discontinuance of the practice which is followed in a few districts of sentencing offenders to probation for an offense following a term of imprisonment on another count. This course tends to weaken probation for the persons without prison experience for whom it is most efficacious. Offenders who are given probation following a term in prison almost always resent it. They feel that they have already paid the penalty for their crime in their imprisonment and that putting probation on top of it is unjust. Probation in such cases takes the time and energy of the probation officers from those who receive simple probation and give more promise of rehabilitation. Parole is a more appropriate means of providing for the transition of an offender from prison to the world outside.

The contaminating effects of confinement and association with other offenders in even the best institutions are likely to be so serious that if a man is a fit subject for probation, it would seem to be better to give him probation alone and not run the risk of even a short term in jail or prison. Certainly the practice of imposing probation after a prison sentence in order to provide for checking up on the conduct of the offender is far removed from the primary concept of probation, which is through personal, friendly guidance to help him change his attitude and adapt himself to the society in which he lives.

A New Facility for the Treatment of Youthful Offenders

On September 30, 1950 a law was enacted which provided for an alternative method of treating offenders under the age of 22 years.²⁹ The act did not displace any existing means of treatment,

either imprisonment, probation or fine, nor did it affect the Federal Juvenile Delinquency Act: but it created within the Federal Board of Parole a Youth Correction Division. It empowered the district courts at their option, in lieu of probation or imprisonment, to sentence a convicted offender under the age of 22 years to the custody of the Attorney General for treatment and supervision. It provided for the treatment of offenders so committed either in types of institutions including training schools, farms, forestry and other camps that would provide considerable varieties of treatment, or on conditional release under supervision. It prescribed that youthful offenders should be segregated from other offenders and classified according to their needs for treatment.

The legislation grew out of a bill recommended by the Judicial Conference of the United States at its annual meeting in 1942 to change substantially the method of sentencing in the federal courts.³⁰ Title II of that bill provided for a procedure in the sentencing of adult offenders committed to prison which, while leaving the final decision of sentence to the court, nevertheless required a study of the offender to be made during the first months of his imprisonment by a Division on Adult Corrections under the Department of Justice and a recommendation for definite sentence to be submitted to the court. This provision encountered general objection from the district judges and the bill made no headway in the Congress.

Title III of the bill, however, provided for the treatment of offenders under the age of 24 years by a Youth Authority Division, with power to adopt methods of classification, segregation, and individualized treatment. This part of the measure, the use of which was made entirely optional with the district courts, did not encounter the objections which were raised to the other provisions, and from it, after eight years, came the recent law. That law, however, reduced the maximum age of offenders subject to it to 21 years.

An impelling reason for the legislation was the general knowledge that young persons are especially susceptible to crime in certain years, and that special attention needs to be given to offenders in that stage. The report of the Committee on the Judiciary of the House of Representatives on the bill emphasizes this. It shows that persons 16 to 23 years old constitute 20 percent of the population above the age of 15 (based on the 1940 census figures), but they are responsible for 47.3 percent of robberies and constitute 55.4 percent of appre-

²⁹ Pub. L. No. 865, 81st Cong., 2d Sess. (Sept. 30, 1950).

³⁰ H.R. Rep. No. 2140, 78th Cong.

hended burglars, and 63.1 percent of automobile thieves. The report goes on to state that 21-year-olds offend more frequently than persons of any other age; then 22-year-olds and then 23-year-olds. The report continues that statistics

demonstrate, with reasonable certainty, that existing methods of treatment of criminally inclined youths are not solving the problem. A large percentage of those released from our reformatories and penal institutions return to anti-social conduct and ultimately become hardened criminals.

Again the report says that,

The problem is to provide a successful method and means for treatment of young men between the ages of 16 and 22 who stand convicted in our Federal courts and are not fit subjects for supervised probation—a method and means that will effect rehabilitation and restore normality rather than develop recidivists.³¹

The report explains the plan of the act to provide for individualized treatment adapted to the personalities of youthful offenders with emphasis on vocational training. It is patterned after what is known as the Borstal System in England which has been in successful operation since 1894. Under that system every means is used of developing self-reliance in the youthful offenders treated under it and preparing them to supply their own direction when they are released into the world outside.

The operation of the new act has not yet begun. First the requisite personnel will have to be appointed and the organization set up. The system provided for may meet one serious difficulty in which a judge often finds himself at present in sentencing a youthful offender. He may see promise in a youth and be disposed to put him on probation, but he may hesitate because the offender's associations and environment are so bad that the judge fears they will continue to pull him down. So the judge may sentence him to prison as the lesser of two evils. The new Youth Correction Division, with its better facilities for segregation and individualized treatment, may supply a solution of that problem.

There is another provision of the bill which may be helpful to federal judges in deciding upon the sentence of youthful offenders: that is a provision under which, if the court desires more information preliminary to sentence than it can obtain from the presentence report of the probation office, the offender may be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency, after which its findings will be reported to the court for its information. The act contemplates that for

youthful offenders treatment within the institutions and supervision upon their release by the federal probation officers shall be closely coordinated to the end of a flexible treatment adapted to the conditions of each case.

Conclusion

By far the greater part of the work of the federal courts on the criminal side consists in deciding what sentence to adopt for convicted offenders, and then in treating by probation a considerable proportion of them. In deciding upon sentence the court has no published decisions, no rules or standards except within wide limits to guide it. The problem is not one of precedent or logic, but of understanding of human nature. At the same time the judicious exercise of the sentencing power and the effective use of probation are of the utmost importance for the prevention of crime, as well as the welfare of the persons directly concerned.

Frequently it is said at conferences on crime that there is little that the courts can do about it; that the cause lies far back in the offender's bringing up, in his associations, in his family and neighborhood in childhood. Perhaps the cause is traced back of his birth to the nature that he inherited from his parents or possibly more remote ancestors. All this may be true. Yet when an offender comes before the court, the court has to do the best it can with him where he is. The court cannot enable him to be born again. If his associations and environment in his formative years were bad, the court cannot roll time back and make them good. Fortunately the good that is in men and women will often take much suppression and punishment by themselves and others, and like a coal in the center of a fire that seems dead, may stay alive.

The judges of the federal courts at any rate are increasingly coming to a faith that persons apparently bad, springing from the most unpromising origins, may be sound at heart, and that by friendly supervision which combines sympathy with firmness, they may be reclaimed for useful lives. The judges know that in a large proportion of cases the best way to protect society against crime is to change the attitude of the offenders to bring about their rehabilitation. Toward this aim the judges and the probation officers in the courts, the Bureau of Prisons and the Board of Parole, with their staffs in the Department of Justice, are working together. It is a cause to command the highest effort of them all.

³¹ H.R. Rep. No. 2979, 81st Cong., 1st Sess. 2-3 (1949).

Some Axioms for Probation Officers

By JOSEPH P. MURPHY

Chief Probation Officer, Essex County, N. J.

ALL OF US have read and heard time and again what probation officers *should do*. Much less have we been told what we should *not do*. Perhaps this is an altogether desirable situation since we are told that emphasis should be placed on a positive approach (constructive things to be done in probation administration), rather than on the negative. Nevertheless, progress in any human activity is encouraged only when we have learned what should be *avoided* or *discarded*.

Edison toiled many long, weary hours, making experiment after experiment, constantly *discarding* or *rejecting* in his determination to invent or improve the creations of his amazing genius. Advance in medicine has been achieved only through laborious, painstaking research often characterized by "trial and error" processes. Success crowns the efforts of many earnest workers when once they have learned what should *not be done* in their particular pursuits.

In no field is this knowledge more important than in dealing with human beings. Here we are concerned with many variables, most of them unpredictable. Delinquents or criminals are out of adjustment with their environment. Environments differ; personalities differ. Consequently reactions to apparently similar situations will be totally different. Moreover, both environment and personality change with time and experience. Reactions to these changing situations will vary from day to day, and year to year. In such reactions and the manner in which they are met, guided, or directed, is found the answer to many of the problems involved in the probation officer's daily tasks.

From the time of John Augustus, first probation officer, down to the present day, probation officers slowly have been developing a technique of case work with persons in conflict with the law, out of harmony with their environment, in revolt against conventional standards of society, and objects of public vindictiveness and resentment. In the mind and in the files of every probation officer are buried the results of many experiments—some successful; others unsuccessful—

which would vastly illumine the way of other officers earnestly seeking light and diligently attempting to pursue a procedure as free from obstacles to successful achievement as it is humanly possible to follow. More and more we need the guidance found in the reports or expressions of practical workers whose struggles to change habit patterns, control and inspire probationers have borne fruitful results. These accomplishments and processes through which they have been achieved, make up the body of knowledge and skills which should be a part of the professional training and personality equipment of every probation officer.

From my long-time experience as a probation officer, and more recently as an executive in the probation field, I have gathered in my "notebook" a number of "DON'TS" which have proved their practical worth, and have served to guide the probation officer in his probation relationships. No claim is made to any unusual or distinct character in these suggestions. Any experienced, trained probation officer no doubt would concur in them. These "notes from my notebook" are presented for whatever help they may render to those who are dealing with what often may seem to be insurmountable problems in reconstructing personalities.

1. Don't Forget that Your Probationers are Human Beings

Every delinquent or criminal has a body, a mind, and soul. Fundamentally, they have the same hopes, aspirations and ambitions as other men and women, and they react to discourtesy, indifference, abuse and neglect very much the same as other human beings. Probation officers should always keep these facts in mind when planning with their probationers to change habit patterns and improve behavior. Avoid the use of sarcasm, ridicule and other language which humiliates or degrades. Injustice creates wounds which oftentimes never heal. Among other things which the Juvenile Delinquency Commission of New Jersey, upon inquiry, recently learned about the inmates of penal and reformatory institutions is their strong feeling that they have been un-

fairly treated by parents, teachers, police officers, attendance officers, judges, or probation officers. Always there is need for understanding in our relationships with those who react differently to normal standards.

2. *Don't Abuse the Confidences of Your Probationers*

Probation success depends primarily upon the personal relationships established by probation officers with their charges. These relationships must be built upon a foundation of respect and confidence. Regard as sacred all confidences volunteered to you in your official capacity. Keep your word. Make no promises unless you are certain that you can produce. Then keep those promises. Nothing disillusion a probationer more quickly than an unfulfilled promise.

3. *Don't Attempt to Do Your Job Alone*

Probation is a cooperative understanding. Your progress in case treatment is measured not only by the scope of your planning but the extent of participation secured from probationers, parents, friends, employers and community agencies and resources. Ascertain in each case to whom you may look for assistance. Clear all your cases with social service indexes if they exist. Then enlist the aid of appropriate agencies and individuals. Rehabilitation must be sought through the following channels: home life and training, employment, education, health, thrift, spiritual activity, leisure-time occupation, and discipline. In each of these phases of life activity, community resources are at your command. Your task is to work *with* him in determining his needs and persuade him to accept willingly such assistance and make use of available facilities.

4. *Don't Procrastinate*

Time is fleeting. Attitudes and conditions change. Today may be the opportune time to approach your probationer with a plan or a suggestion. Tomorrow his mood may change or the opportunity for help may disappear. Formulate your plan of treatment at the earliest opportunity. Persuade your probationer to participate. Secure his acceptance, and move to execute the plan. Do not wait on other people. Take the initiative yourself and follow through. Remember that timing is just as important in probation treatment as in golf, football, or any other game.

5. *Don't Forget that You Are an Agent of the Court and the Community*

To you is entrusted power and authority over your fellowmen. Consider carefully the obligation this creates. You are a part of the administration of justice, a unit in the far-flung correctional profession. Upon you rests the responsibility of executing the will and the policies of the community expressed through the court—an obligation to uphold the ideals of your profession. Let every act express those ideals.

6. *Don't Abuse Your Authority*

Too many probation officers forget that authority is merely a tool to be used *sparingly* and only when it will best promote the objects of probation treatment—the re-creation of attitudes and habits.

Exclusive reliance on authority is usually due to a lack of resourcefulness—or worse, ignorance of the established techniques of supervisory treatment. Coercion creates resistance and violence. Persuasion arouses desire and cooperation. It should be borne in mind that many probationers come from homes and circumstances in which they have received no proper disciplinary training. Lacking regularity in their lives, they need as a consequence, the benefits which come from strict observance of the rules and regulations of probation. Firmness on the part of probation is essential in such cases. This is, of course no contradiction of the fact that there is no substitute for kindness and understanding in dealing with human beings.

Perhaps the best illustration of this principle is the dramatic incident recently told at an American Prison Congress meeting in New York City, by Mr. Alexander Patterson, H. M. Commissioner of Prisons for England and Wales. Invited to the Orient by a Far East government to discuss penal policies, Mr. Patterson found prisoners closely confined under barbarous conditions, chained and constantly under the control of armed guards. After a brief survey of conditions, Mr. Patterson offered a plan to the governmental authority. He said, in substance: "Let me take 200 of these prisoners into the jungle to work and to establish a colony where they might live and work under less expensive and more productive conditions." The authorities agreed and asked what arms and other protective material Patterson would require. To the

amazement of the perplexed officials he said: "None." Instead, he exhibited a "whistle," an ordinary "football official's whistle." Despite the protestations of the authorities, he insisted that this would suffice and he was allowed to depart with his men and the whistle. Needless to say, that although the experiment was carried on for many months, no serious trouble was encountered with his formerly chained prisoners. He had demonstrated the value of kindness and understanding.

There is a moral in this story for all workers in the field of probation.

7. Don't Forget that Delinquency and Crime Are Expressions of Habit

Habit determines character; character determines conduct. Bad and good habits are formed in the same way. They develop out of impressions received from what we see, hear, feel, touch and smell. Changing habit patterns is a slow process of re-education. Be patient and persistent in this task. Expect discouraging set-backs. Regard them as opportunities for more resourceful planning and execution. Keep in mind that character is built upon ideals and that ideals must be spiritually inspired and motivated. Encourage your probationers to adopt a spiritual philosophy of life. Bring them into contact with spiritual influences.

8. Don't Forget that the Locale of the Delinquent or criminal Is the Neighborhood or community

Here is where the behavior of the probationer is expressed. Here is where the primary agencies of character development—home, school and church—exist. Knowledge of the neighborhood and community, therefore, is vitally necessary. Probation officers should have a complete and thorough knowledge of the social, economic, industrial, health, recreational, educational, religious resources and influences which condition personality and behavior. Frequent visits to homes and other places of interest in the neighborhood is the way to develop this knowledge and to enlist the needed cooperation.

9. Don't Forget that Probationers Are Social Entities

Probationers seek and find outlets for fundamental social needs. They require healthy mental and emotional interests to grow and develop

normally. When these satisfactions are not obtained under wholesome auspices, socially harmful behavior often results. Crime and delinquency is a spare-time problem. Idleness breeds mischief. Probationers need wholesome, active play and recreation. Every probation officer, therefore, should be a spare-time architect, planning wisely and resourcefully so that his probationers may be constructively and wholesomely occupied during the leisure hours. A useful guide to every probation officer is the publication: "Care and Feeding of Hobby Horses," issued by the Leisure League of America. This task, however, requires a thorough knowledge of the secondary agencies of character development (leisure-time organizations). Keep acquainted with the personalities, functions and facilities of such organizations. Relate yourself and your probationers to such community resources.

10. Don't Neglect to Practice What You Preach

Too many probation officers overlook the vital influence of personal integrity and rectitude in their public and private relationships.

Success in probation treatment results from the impact of personality upon personality. Accordingly, probation officers should be motivated by a set of ideals in their own lives. Particularly is it important in the supervision of juveniles to set a pattern which may be adopted by adolescent probationers. A large number of probationers come from homes where one or the other parent is absent. Such probationers need a paternal or maternal substitute. Let them follow you. From time to time all of us should make objective evaluations of our own personalities to determine whether or not we fulfill this need.

11. Don't Forget that Work without Record Is of Little Avail

Successful case work requires constant study and analysis of methods and results. No business prospers without frequent and detailed inventories, based upon complete records of all phases of the business. Business men must know the effectiveness of each process or policy of their organizations. Probation officers should be equally well fortified. Changes in approach, planning and execution of case treatment are all dependent upon such knowledge and procedure. The recording of treatment processes is an established technique, an art that must and can

be cultivated. Not only for yourself, but for those who follow you, must the obligation to keep records be discharged.

12. Don't Take Things for Granted

Develop scientific inquiry. Conditions may not always be what they seem. When you investigate, look for motives. If possible, detect bias, prejudice. Distinguish between gossip and facts. Keep your eyes and ears open for clues and follow them up. Know for what you are searching and stick to your task. Sharpen your powers of observation by recognizing significant evidence in homes, neighborhoods and personalities.

Similarly, keep informed regarding your probationers' behavior. Insist upon complete frankness in your relationships. Friendship is the essence of your relationship with probationers. Never let yourself be thrown off guard by lack of complaints or criticism. Be resourceful and find ways to keep informed.

13. Don't Resent Criticism

Persons who keep an open mind grow. Try to

be objective in your attitudes and policies at all times. Welcome criticism and accept it as an opportunity to correct, modify or change your methods or plans. Many probation officers react defensively to constructive advice. Frequently this is a manifestation of personal inadequacy and unconscious refusal to face reality. Overcome such handicaps by accepting advice and enlarging your service to others.

14. Don't Neglect to Keep Abreast of Current Developments

New laws, new economic policies, new social programs are constantly being adopted. In every field of social welfare activity, progress is being achieved. Keep informed regarding such progress. Read, study, confer, cooperate. In other words, increase your knowledge, broaden your horizon, raise your efficiency, widen your influence. Make your professional contribution both qualitatively and quantitatively worthwhile to your probationers and the community.

A Day in the Life of a Federal Probation Officer

BY WILLIAM C. NAU

Chief Probation Officer, United States District Court, Columbia, S. C.

ROBERT MONROE, chief probation officer for the District of Anywhere, U. S. A., entered the Federal Building at 8:15 a. m., walked up one flight for exercise and at the top of the stairs confronted Carl Simpson, leaning on the railing.

"When did you get in, Carl?"

"Last night, Mr. Monroe. It was too late to report in. I got my papers filled out."

"How did it go?"

"It was a nice prison, but I don't want to ever go back again. I've learned my lesson."

"Carl, you're on parole for six months. Mr. Sanders is going to be your probation officer. Go right in there. Good luck, Carl."

Simpson walked into Phil Sanders' office, handed him his arrival notice, and slumped into a chair.

"You're a new man here, aren't you?" he asked as he surveyed a wall partly covered with diplomas and a civic club citation entitled "Young Man of the Year."

"Yes, Mr. Simpson. I believe I came here just about the time you were starting your sentence."

"You gonna be my probation man?"

"Yes, I supervise the county where you live. I've already been to your house and talked with your wife about your parole plan. You have a fine family. I know your wife had it pretty tough while you were gone, but she kept the children in school and had a part-time job. I believe she did a good job of holding things together."

"Yeah, well, I sent some money home. I worked in the duck mill in Atlanta, and I made pretty good. I always look after my kids."

"Mr. Simpson, that job your wife lined up for you—it doesn't pay very much, but it will be a help until you can get something better."

"Yeah, I don't think I can make it on \$45 a week."

"Would you like us to call the employment service, or, better yet, I have a friend who's personnel manager in a textile mill. I can call him."

"No, sir. I'll go see about the job my wife got for me. If I want to make a change I'll get in

touch with you. I guess I better get on back now. The parking meter will be run out, and I'll have a ticket. Don't wanna violate parole the day I get home," he laughed.

"I'll be by to see you, Mr. Simpson, next time I'm up your way. Don't forget to send in your report on the first of the month."

"O. K. Glad to have met you."

A Call for Two Juvenile Investigations

Meanwhile in Monroe's office, he and Miss Withers, chief clerk, were going over the mail.

"There's a request for two juvenile presentences in New City," she said, "Mr. Spalding just got back from there yesterday."

"That's the way it goes. We'll have to see what we can do by telephone. I hope it's a case for diversion," said Mr. Monroe, exhibiting his first expression of frustration.

Art Spalding was standing at Monroe's desk when he walked in.

"How was your trip to the Mt. Lanier section yesterday?" Mr. Monroe asked.

"Boy, did I run into some problems. You remember Louis Turner, the boy who did so well in the National Training School and got an early parole?"

"I remember him well. His offense was running off from a detention home and driving a stolen car to Kentucky."

"Yes. Well, we got him into the Mary Drew Mountain School where he was making a fine record. He got homesick, started hitchhiking home, and 'borrowed' a car just off the school grounds."

"Where'd they catch him?"

"He didn't get far. The car ran out of gas and a patrolman came along. A local charge was made, but they let him out on his own bond and the school sent him home."

"What happened when he got home?"

"His father was furious. I got there just as the old man was tearing him up. I got him quieted down, and we had a long talk. I called his parole adviser, the Baptist minister. We had

quite a session. The family doctor came over, too. He's the one who got Louis in the mountain school."

"Any chance they'll take him back?" Monroe asked.

"We're all working on it. I hope so. That boy is college material if he can settle down. He has an IQ of 125. I don't want him to live at home. He and his parents just don't get along, and his codefendant is back in the community. I would rather keep them separated."

Staff Meeting Has Its Interruptions

Just as Spalding began to tell the chief some of his other supervision problems in the Mt. Lanier area, Miss Withers walked in.

"Don't we have a staff meeting this morning, Mr. Monroe?" asked Miss Withers.

"Yes, we ought to get together as soon as everyone is free."

The phone rang.

"It's long distance, Mr. Monroe. They're calling about the parole plan for Ralph Swanson. Mr. Southern dictated the letter yesterday afternoon. Here's the file."

Yes, the release plan had been approved. No, we had not completed the plan for psychiatric treatment upon release, but he is a good prospect for the Public Offender program. (The Public Offender program is directed by the Vocational Rehabilitation Office and accepts cases from the federal probation office where it appears that the client has a mental or emotional disability. A full team of psychiatrist, psychologist, social worker, and vocational rehabilitation counselor is brought into play.)

9:05 a.m.—The staff straggles in for the staff meeting, some with pencil and pad in hand.

"Miss Withers, will you make notes this morning?"

"I had hoped to go over the amendments to the Federal Rules of Criminal Procedure as they affect us, but I don't believe we have time to go into much discussion. Briefly, I want to call your attention to some important changes. From now on there will be no venue in the district. Prosecution can take place anywhere in the district. Along this line there has been a change in the rule applying to juveniles. A juvenile can be heard wherever apprehended, regardless of where the

offense was committed. Of course, he has to consent."

"You are familiar with Rule 32(c) which pertains to the content of a presentence investigation. The amended portion concerns the disclosure to the defendant or his counsel of all or part of the material in the report and affording to the defendant or his counsel an opportunity to comment on that material."

"How will this affect the confidentiality of our reports?" asked Mr. Jeffers, who had just dictated a sensitive report loaded with explosive family conflicts.

"Well, the judge doesn't have to let the defendant or his counsel see the report, and he doesn't have to say who said what. He can brief them in a general sort of way about reports of misconduct, improper treatment of his family . . ."

Of course, they can figure out where it came from," Mr. Jeffers contended.

"They might, but, as I've often said, it's a challenge to all of us. Be sure that everything that goes in the report is factual and that you have thoroughly investigated all aspects of the case. I've been with the court over 20 years and we haven't had any repercussions yet. Incidentally, you might be interested in the comments of one of the justices on Rule 32(c). He asserts that probation officers' reports are not infallible, and upholds the defendant's right to have the information of which he may be unaware and to which he has not had an opportunity to reply."

"We have just been lucky," contributed Joe Fortune, who was already making plans for retirement, having made perhaps some 1,500 presentence reports in 20 years, while supervising a caseload of about 100 probationers and parolees at all times.

"Rule 35 provides that the court can reduce a sentence within 60 days. This has been changed and now the court has 120 days within which a sentence can be reduced," said Chief Monroe in answer to a question by Officer Spalding.

A Parolee Violates!

"Enough for these rule changes for today. Perhaps we ought to ask someone from the United States attorney's office to meet with us one day and discuss these changes."

"Who is handling the Louis Raborn case? You are, Mr. Jeffers? The marshal called and said he

has him in custody as a parole violator."

"I'm glad they picked him up," said Joe Jeffers. "His wife called me twice in the middle of the night and I've had other complaints about him. He violated parole within 3 weeks after he got home."

"Joe, you'll have to go over to the jail to interview him. You know, fill out the Attorney-Witness Election Form. Joe, I don't know where you are planning to have lunch but we've been asked to send a representative to the organizational meeting of the new Prisoner's Aid Program. Would you mind going?"

"Is it free?"

"No it'll cost you a buck-fifty, but it's for a good cause."

"OK, I'll go. How about you, Mr. Monroe, aren't you planning to go?"

"No, I'm hoping to make a field trip this afternoon. I've got two presentences to make on Rt. 4, Glennville, and I've got some pressing supervision matters, too."

The phone rang. "It's Judge Smith's law clerk, Mr. Monroe."

"Hello, Frank, what can we do for you? The Bail Reform Act? Yes, we're familiar with it. It provides that all defendants shall not be detained needlessly in custody before trial unless the person is a poor bail risk. You say that Francis Spratton has written Judge Smith about being released without a bond? I'd say he's a poor risk. He's wanted by two other states. He's got an escape record, too. OK, Frank. Anytime. Goodbye."

A Probation Violator Is Picked Up

At 9:45 a.m., just after the staff meeting adjourned, a deputy marshal walked into Officer Sanders' office right past the receptionist.

"We picked up your boy up there in the mountains. You want to talk to him?"

"Yes, I'd like to see what he says about the charges in the petition. Is he in the cell block?"

"Yeah, come on around. But hurry up. We're taking him to jail in a few minutes."

Sanders entered the cell block where Albert Dennison sat on a wooden bench with his head in his hands.

"Albert, where'd they pick you up?"

"I was right there at the house. I wasn't hiding or nothing. Mr. Sanders, how about giving me one more chance. I promise not to take another drink if you'll just let me go this one time. They'll

never get me again for anything except singing too loud in church."

"I'd like to believe that, Albert, but I'm afraid you told me all that before, at least three times. The first two drunks we overlooked. But driving drunk and having a wreck, we can't overlook that. It's you and the judge now."

"Well, if I got to make my time the government will have to keep up my family."

"If the judge sends you off your wife can apply for welfare assistance."

"Aw, that's too slow."

Monroe, meanwhile, had started down the hall and was spotted by an assistant U. S. attorney.

"Bob, how about the Glennville court? Are we ready?"

"We're ready if you don't spring any surprises!"

"Come on up to the office. Let's go over the docket. Judge Smith wants some idea of how many trials we may have. He wants to give us one day for pleas and the rest of the week for trials."

"Well, you know how it is these days. It's hard to tell what they will do when they get in court, but it looks like about five trials."

10:30 a.m.—"Miss Withers, let me dictate my supervision visits for the chronological records, and I've got one full presentence to put on the belt for you, too. It looks as if things are pretty quiet right now. Maybe I can dictate a few letters."

12:33 p.m.—Chief Monroe told Miss Withers he was going home for lunch and would make a field trip in the afternoon.

12:55 p.m.—The phone rang just as Monroe reached for a glass of iced tea.

"Mr. Monroe, a deputy marshal just came in and said they have four jail cases. All of them want to plead as soon as possible. With court two weeks away, he wondered if you wouldn't want him to hold them for you in the marshal's office until you can interview them."

"How about Mr. Jeffers? He's the officer of the day."

"He's gone to the Prisoner's Aid meeting, remember? He won't be back until after 2 o'clock."

"All right, I'll come on down as soon as I grab a sandwich."

"By the way, Mr. Monroe, A Mr. Horton from the Kiwanis Club called to ask if you would talk to the Kiwanians at their next luncheon meeting."

"What does he want me to talk on?"

"He said they'd like a talk about your work. I

believe he said some Kiwanians don't know what a federal probation officer does. He may have called you a 'parole officer.' What shall I tell him?"

"Call him and tell him I'll be glad to accept the invitation."

Presentence Investigations Are Explained to an Attorney

"Incidentally, Miss Withers, find out if those four defendants have attorneys and call me back."

1:10 p.m.—The chief had consumed half a ham and cheese sandwich and was working on a second glass of iced tea when Miss Withers called back to say that all four had a court appointed attorney.

Monroe called the attorney, a young lawyer just out of law school.

"Mr. Spurgeon, I understand you represent those four defendants who were arrested yesterday in a stolen car."

"Yes, I haven't talked with those boys yet. Just what did they do?"

"I understand they are charged with transporting a stolen car from Muncie, Indiana, to Glennville."

"When will the case be heard?"

"Mr. Spurgeon, our court requires us to make a background investigation of each defendant before sentence is passed. Our procedure is to interview them here, provided they consent, and request the federal probation officer in Indiana to assist in the preparation of the reports for the court since they are residents of that state."

"How long will it take to do that?"

"Well, if we can get it in the mail this afternoon, I believe we can be ready for our next court. That's 2 weeks away."

"What all goes into the report?"

"The defendant's entire background is investigated. This includes his school and employment records and his family history. We also check his prior criminal record, military service, reputation in his community, and any other information that will enable us to evaluate the defendant and aid the court in deciding on an appropriate sentence."

"I didn't know you go into all that. Will I be able to read the report before court?"

"No, Mr. Spurgeon, I cannot let you do that. The Federal Rules of Criminal Procedure provide that the report must not be shown to anyone until the defendant has pleaded guilty or is found guilty. However, the judge can brief you on the contents."

"I see. Well, what are their chances for getting probation? Can you help me on that?"

"We do submit a recommendation as to sentence with the report. At this point, we would have no idea what sentences these boys might get."

"OK, I'll talk to them today. I'll tell you what, I'll go see them right now, and you can talk to them this afternoon."

"Thank you, Mr. Spurgeon. I may see you in the U. S. marshal's office."

1:36 p.m.—The chief walked into his office, picked up some work sheets and file folders, and headed for the marshal's office. Before leaving, he asked his secretary to have Mr. Jeffers come to his assistance as soon as he returned from the Prisoner's Aid meeting.

2:46 p.m.—Chief Monroe finished his interviews with two of the defendants, while Mr. Jeffers was still talking to one of the remaining two.

"Joe, would you mind dictating the letter of transmittal on all four of these? I'm still hoping to make a field trip this afternoon."

"Be glad to, Bob. See you tomorrow."

A Prisoner Has Illness in the Family

Monroe returned to his office and saw a yellow memo pierced by a pen resting on a stand.

The note read, "Mr. Monroe, please call Tallahassee. They're calling about Isaac Wood's coming home on a furlough."

"This is Monroe in Glennville."

"Hi, this is Armstrong, chief of classification and parole in Tallahassee. We've just gotten word that the wife of Isaac Wood is critically ill. We wondered if you would mind checking with the family doctor. We have no reason to doubt it, but we'd like verification."

"I'll contact the doctor right away."

"We plan to give Wood a furlough to go home to be with his wife and family. He goes up for parole next week."

"I'll get on it right away."

3:15 p.m.—Three phone calls finally produced contact with Dr. Jackson at the hospital where Mrs. Wood was a patient. Yes, her condition was critical. No, she might not make it until tomorrow. The call back. Confirmation.

"Would you mind informing the family that we're putting Wood on the bus at 4:05 p.m., and he will be in Glennville at 5:50 a.m. tomorrow?"

"Be glad to."

Inquiries of All Kinds Must Be Answered

3:32 p.m.—Miss Withers walked into the chief's office.

"Mr. Monroe, there's a young college student out here. He said he'd like to talk with you about being a probation officer. Shall I tell him you're busy and make an appointment for him?"

"No, Miss Withers, I'll talk to him."

A young man wearing a sport shirt and sweater was ushered into Monroe's office and introduced.

"Are you a student at Glennville College?"

"Yes, sir, I'm majoring in sociology. I'm taking a course in community organization, and we sign up for field work with an agency of our choice."

"Are you interested in the field of criminology?"

"Yes, in fact I'm seriously considering going into correctional work. What would you recommend I do to prepare for a position as a probation officer?"

"Well, I think you are on the right track majoring in sociology and getting in some field work with us. Are you planning on a master's degree?"

"Yes, if I can afford it. I've applied for a graduate fellowship at our state university school of social work."

"Good. Graduate work can be substituted for practical experience. It might help you to get some summer work with a juvenile court or a program for underprivileged youth. Any experience working for the welfare of others is valuable."

"I have to acquire 15 hours of field work this semester. Can I do that in your agency?"

"Yes, we'll schedule some field trips with the other officers. You can observe the procedures in supervising probationers and parolees, the community contacts made, and the techniques used to help these people become law-abiding citizens."

"I'd like that."

"Also, you can observe the office conducting presentence interviews and perhaps we can assign you some collateral duties such as checking records. We might even work out a plan so that you might have some contact with one of our juvenile offenders. To befriend one of our boys, you might consider taking him to one of the Glennville football games or something like that."

"It sure sounds interesting. When can I start?"

"Suppose you call us in a few days. Give us your schedule and meanwhile, I'll check with the other men to see how we can fit your schedule with theirs."

"Thanks, Mr. Monroe."

Tomorrow Is Another Day

4:05 p.m.—The office was quiet. The phone did not ring. The steady clacking noise of the typewriters filled the outer office. The girls were in high gear. Production was at peak level.

Mr. Monroe walked into Joe Jeffers' office.

"Well, Joe, I don't know what a time-activity study of my day would show, but I do know I had to move in a lot of unplanned directions, and I don't have any time left for a field trip. I believe I'll go up to the F.B.I. office and see if they can give us the information on those four defendants we interviewed this afternoon. They may have been involved in some breaking and entering along the way."

"Bob, let me take care of that. Why don't you make your field trip anyway? You know you can always charge time-and-a-half for overtime!" he said facetiously.

"No, I guess I'll just have to follow Scarlett O'Hara's philosophy and put it off until tomorrow. Tomorrow is another day."

Alcoholism and Probation

BY R. MARGARET CORK

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ALCOHOLISM IS AN ILLNESS affecting our whole community and doing so in a way that no other illness does. No other illness today has the same negative effect on family life, industry, or social relationships. It has been said that on an average the lives of at least two other people are seriously affected by every alcoholic. Unlike some other illnesses, alcoholism cannot be the responsibility of the medical profession alone. All the service professions, as well as individual citizens, must share the load.

With the advent of Alcoholics Anonymous and clinics, the community in general, and the service professions in particular, have tended to leave the greater part of the job, in fact to hand it over gratefully, to these two groups. Perhaps the groups themselves have played a part in this, in that A.A. members often say that only an alcoholic can help another alcoholic, and clinics with their research and their specialized body of knowledge and skills have, unwittingly perhaps, frightened off lay or other professional help. To be sure, we would not have today's large number of recovered alcoholics were it not for A.A. and the clinics, but the fact remains that neither of these groups has all the answers, and there are still thousands of alcoholics that neither A.A. nor clinics have been able to reach. I do not believe the entire answer lies in more and more A.A. groups or bigger and better clinics, though there may be room for improvement and growth in both. Instead I think of a community approach to the problem in which all those in the helping professions see themselves as members of a team, sharing their particular knowledge and skills as well as the responsibility for the alcoholic.

Just as the clinic team brings the best of each discipline to bear on the problem, and members of the team share in the relationship to a given patient, so can the professional members of a community. It is a way of sharing, in which one profession refers appropriately to others, where no one person has the entire responsibility for treatment, and the alcoholic is encouraged to relate to and get help from several people in his environment. This I know is contrary to a lot of our ideas

of therapy and also brings out the old bogey of a person "shopping around," which generations of service professions have berated and tried to stamp out by such impersonal institutions as the social service index.

This, therefore, is an attempt to present not another scientific theory of alcoholism but rather a very practical interpretation of the person suffering from this illness, which will hopefully enable probation officers to use their particular skills more effectively in rehabilitating the alcoholic probationer.

What Is He Like?

To most probation officers the alcoholic is readily recognizable, but how well do you really know him? On the understanding that through selection the severely damaged or deteriorated are not put on probation, you would, I suspect, see him as the likeable, friendly, imaginative, often intelligent and basically capable person who at the same time can be the most difficult, frustrating person on your caseload, and the one with whom you experience the most failure.

When I ask how well you really know him, I do not mean how does he appear to you, but rather to what extent do you know and understand his defensiveness, his hostility, his basic insecurity (even though well hidden), and, above all, his excessive dependency? Are you able, emotionally as well as intellectually, to accept his need to distort the truth, break promises, act impulsively, be easily frustrated, and test you so frequently? Do you know him as he is, not as you would like him to be, or feel he should be? Can you really accept that he is sick without making this an excuse to indulge him or yourself? Do you know, in spite of outward appearances and attitudes, that he has many fears? What do you know of the factors that helped to make him what he is today? The early deprivations or indulgences; the opportunities, or lack of such, to learn self-discipline, to face difficulties or troubles, to have positive growth-producing experiences, activities, and relationships? What do you know of his life as a so-called adult, before or after his problem drink-

The Dependency Factor

This, then, leads us to consider the second most difficult aspect of the helping relationship, namely, the alcoholic as a dependent person. In looking at this factor of dependency, it is important to recall that all of us must grow from complete dependency as an infant to a balance of dependency and independence if we are to mature. Growth varies with the quality of love, the consistent nurturing we receive from our parents or parent substitutes. Too much love, love that is overindulgent, is just as prohibitive to healthy growth as too little. Many alcoholics have suffered in relative degree from one extreme or another, and so have been arrested in their emotional growth; others have regressed to a state of immaturity (through their drinking) but in both cases there are very real dependency needs. Lolli has said that "alcoholism is a disorder of the love disposition . . . rooted in a disorder of the early mother-child relationship. It represents the abnormal survival in the adult of a need for the infantile experiences of unitary pleasures of body and mind."¹

What happens to dependent people (child or immature adult) when their dependency needs are not met? They become anxious, frightened, insecure. They have a tendency to give up easily and to deny responsibility. In the alcoholic we see dependency manifested in many different and individual ways. It is often seen in his denial of need for help, in his lack of trust or the belittling of dependency in others, in his overreaction to authority, in his overtalkativeness, in his over-demandingness, in his confused concept of his own worth (too great or too little), in the fact that his dominant emotions are destructive rather than constructive, in his need to blame others for his problems, in his sexual conflict, his inability to break physically or emotionally with his parents, and, finally, in his inability to face reality.

What does all this mean in terms of attitudes and your ability to work with an alcoholic? It means you must have achieved a degree of maturity yourselves (or be consciously aware of where you are in your growth toward independence) so that you may recognize the many expressions of dependency and cope comfortably with the dependency of others. If you have not a degree of balance in your own dependency-independency (the mature adult obtains satisfactions from adult activ-

ities as well as from persisting childhood ones), the adjustment you have made will tend to be threatened by the alcoholic's dependency and you may react in ways that will hinder the alcoholic from growing. You may, according to your own needs, overindulge him or minimize his needs; you may do too much or too little for him; you may expect him to give case histories, promises, good behaviour, in order to get your love and understanding; you may react negatively to playing a good father role to another adult and refuse him any dependency, or cut it off too quickly, or you may find it ego-satisfying to encourage his dependency. In either case, you deny him the chance to grow.

Screening

So far, we have stressed the importance of knowing the alcoholic as well as ourselves in this business of rehabilitating the alcoholic. At this point I would like to consider some of the ways and means of helping. First of all, there must be care in selecting those most likely to use help. While screening for probation is accepted procedure, it would seem to be doubly important in selecting alcoholics. One excessively disturbed or poorly selected alcoholic may readily upset or disturb the balance of a probation officer's work with other probationers. Most alcoholics, unless they are already fairly closely related to a clinic or to A.A., and can be readily referred back, will demand and need more of the probation officer's time and energy than most other probationers. Therefore, in the interests of all, the number of alcoholics who need direct help from the probation officer should be limited to a realistic number in relation to his total caseload.

Criteria for selecting those most likely to respond to the kind of help a probation officer can offer are several. It should be stressed, however, that no one criterion should be used solely nor without testing the alcoholic's verbalized concept of himself and his motivation, with certain reality factors. Perhaps the first criterion to apply is his ability to use a helping relationship. This may be tested by the extent and quality of other relationships he has had with family, neighbors, friends, fellow workers, employers, and treatment personnel.

While his drinking history can be another criterion, the length and extent of it is not nearly as important in considering him for probation as consideration of what there is to build on in terms

¹ Georgio Lolli, M.D., "Alcoholism as a Disorder of the Love Disposition," *Quarterly Journal of Studies on Alcohol*, March 1956.

ing began? What understanding have you gained about his past ability to handle life situations, to face reality, to find normal outlets for tension, to find satisfaction in social activities? What were his vulnerable areas, what factors increased tension, what provided stability? These and many other factors are important, not in and of themselves as facts, not to use directly as in formal therapy, but rather to help you understand the degree of damage, the strengths there are to build on, and to set a realistic goal for the particular alcoholic you are attempting to rehabilitate.

What About Causes?

Causes of what? The illness or the inability to help the person suffering from this illness? The literature is full of theories on the former and as yet there is little agreement on the subject except possibly on the concept that there is no single cause. While a study of causes is important, perhaps it is well to keep in mind that all the knowledge of causes that you may gain will not enable you to help an alcoholic if you have not the capacity to use what you know in relationship with the alcoholic. Of what value is it to know that instability in his childhood played a part in his alcoholism if you treat him as though he should not do some of the things which reflect his instability? Of what value is it to know that distorted parental relationships helped to make him an alcoholic if you act in no more positive way towards him than his parents did? What matter that you know he is a dependent person if you are fearful of adults who are excessively so? Is the fact that alcoholism is an illness only a theory to you, or can you work with the alcoholic as though you understood the pain and the limitations his illness causes? If you know why he is an immature person, can you accept him as such and not expect completely adult behaviour? Of what value is it if you gain more and more knowledge of alcoholism and you are unable to apply it to your way of helping him?

Attitudes of Importance

It is important—as has been pointed out earlier—to know the alcoholic as a person. It is equally if not more important to know ourselves in relation to certain aspects of this illness. I refer chiefly to the excessive use of alcohol and the immaturity of the alcoholic, two factors which can more readily threaten certain people trying to help the alcoholic than all other aspects put together. In

our society there are still more negative attitudes and feelings around these symptoms of alcoholism than toward any aspect of any other illness. Professional people are no more free of these than any member of the community, though perhaps less likely to recognize or admit such. Unless you can recognize the degree of negative feelings within yourself and learn what to do with them, how to control them, you will be limited in your ability to help the alcoholic.

Depending on your background and your life experiences, you will probably have grown up with some conflict and misconceptions and prejudices around the use of alcohol. By the time you begin to work with alcoholics, it is of primary importance that you have worked through some of these, and have made a decision as well about the place of alcohol in your life. This is not to say that a person has to be a teetotaler or a drinker in order to help an alcoholic, but rather that you must have come to grips with the meaning of alcohol in your own life.

If you have been able to lose some of your prejudices and have comfortably resolved your conflict around whether to drink or not to drink, you will be more able to be objective about other people's use of alcohol. If you have not, you will almost inevitably bring to your relationship with an alcoholic a variety of subjective attitudes and reactions which will get in the way of your efforts to help him. You may, for instance, consciously or otherwise, consider him stupid or weak-willed since he cannot drink as you do, or, if you are a nondrinker, you may be punitive or moralizing. You may find it relatively easy to help the alcoholic when he is sober, but when he is drinking you may react with feelings of disgust and anxiety which may cause you to hit out or to punish him by withdrawal of yourself or your understanding. While you cannot condone the excessive drinking, your dislike of it and the consequent behaviour may cause you to feel dislike for the person you are trying to help. You may, on the other hand, have difficulty in seeing the alcoholic as a sick person unless he is drinking. You will be able to empathize and help him then, but once he is over his bender, you will tend to say or imply that he must stand on his own feet. In these and many other ways, your negative reactions and feelings will be quickly sensed by the alcoholic, and weeks or months of successful treatment may be undone almost overnight.

of his adjustment to life experiences before he began drinking, or in spite of his drinking. What measure of success or positive, satisfying experiences has he had in his schooling, work, marriage, and home life? How great has been his break with accepted standards? By the same token, the briefest period of problem drinking of the younger alcoholic is not necessarily a positive indication for probation. It may, instead, indicate a person who is more severely damaged underneath his alcoholism, or the alcoholic who has not really begun to reach his personal "rock bottom"—usually a necessary factor in motivation.

A last criterion, but perhaps the most difficult to assess and to test, is motivation. The desperation of the very ill and the plausibility of the psychopath may often fool us into a diagnosis of "good motivation." The very immaturity of alcoholics makes it difficult, or at times impossible, to sustain even the most sincere motivation consistently or for any given period. Often those seemingly most poorly motivated at the first contact do far better in treatment than those who seem more strongly motivated. Frequently, those who seem most convincingly well motivated may only be seeking to get on probation in order to escape a period in jail. Testing the motivation in terms of the way help was used before may mean very little in and of itself and, unless assessed with other criteria, is least likely to help us decide whether an alcoholic is a good candidate for probation.

Thus, screening an alcoholic for probation means testing his story, his history, his concept of self, with certain reality factors in his past and his immediate present. A weighting in any particular direction should not necessarily discredit him for probation, but should serve to make treatment plans and goals more individual and more realistic for probationer and probation officer.

The Relationship

On the quality of the relationship between the probation officer and the probationer rests much of the potential for treatment. As indicated earlier, no truly helpful relationship is likely to be established if there is, on the part of the probation officer, too great an inability to control and handle his attitudes and feelings around the use of alcohol or around the excessively dependent nature of the alcoholic. It must be remembered, also, that a relationship implies a two-way process and unless he is able, or ready, to relate, and you are able to

bring certain essential qualities to the relationship, the experience will likely prove too frustrating and too discouraging for both alcoholic and probation officer.

What are some of the factors which the probation officer must bring to the relationship? It is important to remember that this may be the first time the alcoholic has been able to let himself trust, or begin to trust, another adult. The immature person, like the child, needs to see and to feel some of the steady, consistent, warm, loving qualities that the young child receives from its mother, and without which it cannot grow emotionally. *While in no sense should we treat the alcoholic as a child*, he must, like the child, be understood and accepted as an emotionally immature person, with an expectation for growth, dependent on or limited by where he is emotionally and what there is to build on, when you first meet him. At the same time, real recognition must be given to the remnants of maturity or the more adult parts of him.

This sense of caring may be spelt out in almost everything you do, the way you talk with him, your readiness to give before you get, to help him do things for himself as much as possible rather than doing for him, though at certain stages a sharing of responsibility is important. It is felt in the way you impose limits which may protect as well as lead toward self-discipline. It is seen in your ability to accept without too great threat to self, the constant testing, the hostility, the relapses and the frequent failures. It is felt in your ability to be firm but flexible. It is a way of caring which allows you to go on liking him in spite of his behaviour, to let him feel the liking and yet objectively and factually to help him face reality.

Such a relationship with the usually irresponsible, often defiant, impulsive person is far from easy. It demands a high degree of integrity and inner security on the part of the probation officer. It calls for infinite patience and a constant awareness of one's own feelings, so that they will not get in the way of what you are trying to do. To know and to feel his suffering, his fears, his loneliness, his discouragement, and yet not overidentify with these or be impatient with him because he does not do the obvious or so-called normal thing to get rid of these feelings. This does not imply that at times it will not be appropriate to show feelings of concern, disappointment, and even anger, so long as these are not directed against the alco-

holic nor used as an outlet for your own needs. At times, a more obvious sense of your caring may be needed, particularly around relapses when he temporarily needs comforting or nurturing. This may come directly from you (depending on the male probation officer's adjustment to our society's taboo on tenderness and gentleness) and through the assistance of some female figure, social worker or therapist, mother, wife or girl friend, or through a period of nursing care in hospital.

Important to your relationship with an alcoholic is the ever-constant awareness that he is not only having to learn or take on new ways of coping with life, but he is having to give up many relatively satisfying or protective attitudes and ways of behaving. Like many people who are not alcoholics, he has a strong resistance to change. When that change means giving up the known for the unknown, giving up the only means of escape from pain and hurt, it is infinitely harder and more frightening. The alcoholic can only begin to face the fear and begin to make the effort to change if, and as, someone is able to support him in it by constant, consistent understanding of what he is going through, and believe in his ability to achieve the change. The challenge to change must be tempered with warmth, reasonable and appropriate praise, and repetitious, realistic reassurance. Your support means that you may have to give him more time than other probationers, though for his sake and theirs there must be limits put on it. It means you will have to be more accessible. Often he cannot wait, particularly in the initial stages, from one weekly interview to another. Be less formal. Have fewer across-the-desk interviews. Involve him as much as possible in any plans, and never plan behind his back, even if you have to take steps on his behalf which he is not ready or able to take on his own.

Role of the Probation Officer

All this may sound very well, idealistically or therapeutically, but what does it mean in a practical sense? Where does it leave you as a probation officer with a particular role to fill? While you are helping the alcoholic face reality, are you losing sight of what is realistic for you? Obviously your role cannot, nor should it be, one of intensive therapy (though it will be therapeutic), nor of being all things to him. Your role should not be one of helping him to gain insight (though some may come in the helping process), but rather one of helping him to face and adjust to his real life

situation, helping him to function more adequately within the limits of his personality. At no time should the probation officer lose sight of the limits of probation, of his responsibility to the courts and the community, and he must constantly interpret these to the person he is trying to help. At the same time, your goal should be more than just keeping him sober or out of trouble while he is on probation. It should aim to fulfill the terms of probation as well as making a start on his adjustment to a more socially acceptable way of life.

It is evident from all that has been said so far that the probation officer has a particular job to do, and that there are certain ways and means of doing it that will be more effective in helping the alcoholic to be rehabilitated. It would seem obvious, then, that there are many parts of the job that cannot be done by the probation officer alone. Because the alcoholic has many problems and because these affect many or all parts of his being, he is going to need help from a variety of people and sources. Your ability to share in his rehabilitation and to help him use other community resources may make a very real difference, not only to his period of probation but also to his ongoing adjustment afterwards. It should be done as part of your relationship with him, not as something separate or that follows on where you leave off, or when he finishes his probation. If he is not ready to start on his basic problem as you first know him, do not try to push or pull him to a treatment centre or to A.A., but try to help him start, wherever he is best able, on some of his other problems. This does not mean that his alcoholism can be ignored or that it does not eventually have to be faced, but he may need to test you or learn to trust you a bit before he can face bringing his deeper problem out into the open. Let him know that you know he has a drinking problem, not by labeling him an alcoholic or not accepting his denial of being one, but rather by helping him to accept that his drinking is seriously affecting various aspects of his life, and that you are ready, whenever he is, to help him do something about this.

Teamwork

Using other service professions in the community to help you rehabilitate the alcoholic calls for more than a theoretical acceptance of the idea. It calls for a recognition of your own personal and professional limits and a freedom from that pos-

sessiveness expressed so often by the term "my patient, my client," and from that intolerance of the quality of help offered by other groups or individuals, particularly if they have more or less training or different training than your own. Just as the clinic team shares the responsibility and each member brings particular skills to the helping process, so can the probation officer, in relative degree, work with social workers, clergy, nurses, physicians, lawyers, employers, and A.A. and treatment centres. This calls for a real knowledge of the services available, not just the places or institutions to which an alcoholic may be referred, but the attitudes and feelings and the degree of acceptance with which he is likely to be met. While it will obviously be more helpful and the alcoholic will be able to use the service more readily if everyone trying to help him understands his problem and has a positive attitude, nonetheless that isn't always possible. We know that in spite of all our educational programs there are many people in the service professions who still, in relative degree, react to alcoholics with intolerance or a punitive and moralizing attitude. If the professional services in your community are limited, it is inevitable that the alcoholic will have to meet some of this negative feeling. He can often handle it if you prepare him beforehand, if you let him choose whether and when he feels ready to be referred, if you let him know you know that it is not easy but you believe he has the ability to see it through. Get his permission to talk over his problems with the person he is being referred to, and share with him the plans which you may have worked out on his behalf. Just as you have become able to accept and interpret relapses in his sobriety so must you accept and be able to interpret to these other services his resistance or failure to readily use the help they may be ready to give.

The Wife's Help

This paper would not be complete without a word about the wives of alcoholics. If you are like many, you will want to enlist them on your side to help you with the alcoholic. By and large, I would say very little of a permanent nature is accomplished by this. Not only does the alcoholic feel and resent their being "on your side," but the wives, in particular, resent, consciously or otherwise, being called upon to help their husbands when they have such great unmet needs of their own. By this I do not mean that you should ignore her, nor that some interpretation of alco-

holism is not valid, but that the best way of having her truly help the alcoholic is to recognize her need and try to get her to some social agency, Alanon group, or treatment centre where she may begin to get help with her own suffering and her own conflicts, which she either brought to the marriage or developed as a result of many years of living with an alcoholic. *If—and only if—she can find and use help for herself will she be realistically a source of help to her alcoholic husband.*

Often a man will blame his drinking on his wife's attitudes and behaviour, or will rationalize his need to drink because his wife has separated from him. You may, like hundreds before you, tend to feel that if you can only get her to understand him or persuade her to take him back, all will be well. To be sure, she does often play a part in his ongoing drinking, though rarely in his original alcoholism, and rarely does she really want to, or is independent enough to remain separated from him. But telling her how to behave in relation to him, or bringing the two back together, is as futile a way of helping the alcoholic as telling him he must stop drinking. Here, then, is another area for teamwork as you find and use the appropriate source of help in the community for the wife or family of an alcoholic.

In spite of the fact that much of what has been said in this paper appears to be generalizations, it is not meant to be taken as such. I cannot stress too strongly the need to see the alcoholic and to work with him as an individual—a sick individual, yes, but still an individual with the individual's right to your respect as a human being, the right to make his own decisions and to find a useful and satisfying place in our society.

Summary

In summary, then, we see that probation officers, as members of the community and in a particular way, may play a vital part in the rehabilitation of the alcoholic. We have seen that his ability to help in this process depends on and is limited by certain factors—on his attitudes towards alcohol, drunkenness, and the excessively dependent personality of the alcoholic; on his knowledge and understanding of alcoholism and the way in which he can use this in working with the person suffering from this illness; on his ability to form a relationship with the alcoholic which may help him to grow emotionally and to face life more adequately, a relationship which imposes limits on the probation

officer as well as on the alcoholic, which must have in it some of those elements of caring, of giving, of understanding, of trusting, that the child needs for emotional growth, and yet does not lose sight of the fact that he is an adult in many ways and that he has to cope with adult reality. It depends on his ability to accept his particular professional role and yet bring to it an additional quality without which the alcoholic may never accept probation,

let alone go on to work on his deeper problems. It depends on the probation officer's readiness to make use of many other community resources and other professional people to help in this tremendous, very well worth-while and much needed job of rehabilitating the alcoholic for his own sake and the sake of the many others whose lives may be affected by his illness.

News of the Future

RESEARCH AND DEVELOPMENT IN CORRECTIONS

BY JOHN P. CONRAD

*Davis, California**The Intensive Revolution*

READERS OF this column, if any, will not need to be reminded that I am an ardent advocate of intensive probation and parole. Even if I had never seen this innovation in practice, the basic idea would appeal to my common sense. The absurd choice we impose on courts at the time of sentencing violates both the means and ends of criminal justice. A judge may send the convicted criminal down the road to a slammer, where, things being as they are nearly everywhere, nothing good will happen to him. If that doesn't make sense to the judge and she has the option, she may put the poor fellow on probation and hope for the best. Things being as they are—again, nearly everywhere—nothing at all will happen. A probation officer may—or may not—make a meaningless monthly check, and the probationer will be left to his own devices, from which state of affairs he may draw his own conclusions. What kind of a system is this?

So, when the Supervised Intensive Restitution program got started in Alabama to reduce the intolerable prison overcrowding and the Intensive Probation Supervision program in Georgia produced similar results with similar methods, I saw a bandwagon moving down the street and cautiously climbed on. It looked as though common sense had at last arrived in American penology.

Between the impractical machos in our legislatures who eagerly jack up minimum sentences to demonstrate to angry and fearful constituents how tough on crime they can be, and their equally impractical colleagues on the appropriations committees, determined to please taxpayers by keeping costs down on the most unpopular of public institutions, there's no room for reasonableness. Conscientious wardens are caught in the middle. The newly committed "fish" stream in, the parole boards are queasy about releasing the aging thugs, and more space has to be improvised. Careers are built around ingenuity in finding room for prisoners where there was no room before—not around programs or industry.

The California legislator who declaimed that he didn't care if the warden had to pack 16 convicts into each cell in San Quentin was an extremist, of course; most his colleagues would stop considerably short of that physically impossible limit, but they'll follow him part of the way. (Don't remind me that there's a lot of prison building

going on out there. Good business for the construction industry, but where will it end? The potential supply of convicts to fill these state-of-the-art joints far exceeds the space that is gradually becoming available).

Common sense calls for criminal justice to make its simple point with the least possible permanent damage to the individual and at the least possible cost to the state. The simple point is easily put into words but much harder to get across to the law-breaker: *You can't do that anymore.* We make this point to gun-bearing thugs and knife-wielding rapists by locking them up at least until the juices of violence seem to have run dry. Nobody quarrels with such severity for such people and for a number of other rogues who deserve the same fate.

As all criminal justice professionals know, there are still too many men and women doing time the hard way who present no threat to anybody's life or limb. If you're a retributivist, they deserve punishment; if you prefer the utilitarian justifications for sentencing, they require control and deterrence. If you're an eclectic like me, both considerations should enter into the sentencing decision. Whatever your orientation, a common-sensical observation of the present criminal justice chaos must conclude that too much happens to too many while nothing happens to many more. This is the state of affairs that the intensive revolution may end. Hyperbole? Maybe so, but in spite of a career that's been checkered with disillusion and disappointments. I am an inveterate optimist. In what follows, I hope to justify my view that optimism is tenable if we think what we are doing.

To Think What We Are Doing

The phrase belonged to Hannah Arendt, the great political theorist who fled Nazi Germany where thinking did not accompany doing. I want to use it in the more modest context of contemporary penology. Tradition and custom decide action in penology. Rigorous but mostly sterile thought is left to academic seminars, as if to demonstrate Arendt's opinion "that thought and reality have parted company, that reality has become opaque to the light of thought, and that thought . . . is liable either to become altogether meaningless or to rehash old verities which have lost all concrete relevance."¹ To descend from the heights of abstraction, doers must think what they are doing—it is not enough to think about it while not doing.

¹ Hannah Arendt, *Between Past and Future*. (Cleveland and New York: World Publishing Company, 1963), p. 6.

I leave to the other contributors to this special issue of *Federal Probation* the anecdotal and statistical tasks of describing and evaluating the practice of intensive probation. I am concerned with how it should be used and what should be expected of it. Let us think what we are doing.

The definition first. So far as I am concerned the archetype is the Georgian innovation. Intensive probation is *offered* to convicted felons who would have been sentenced to prison but who, in the judgment of the court and the probation officer, may safely be assigned to probation on the special terms of intensive administration. That means a daily visitation by a surveillance officer who carries a caseload of no more than 25 and compliance with a program prescribed by the court on the advice of the probation officer, who shares the surveillance officer's caseload. The probationer must engage in full-time employment, comply with rigid restrictions as to movement in the community, abide by a curfew, and contribute a specified number of hours to unpaid community service. If he or she has been ordered to make restitution, regular payments must be made. Finally, the offender must pay a reasonable monthly fee to defray part of the costs of intensive supervision. Submission to this régime is optional. Those who prefer the rough and ready camaraderie of the prison yard are free to reject the rigors of intensive supervision that are on offer.

Two questions come immediately to mind. Is this punishment? Is this sufficient control? If it is not seen as punishment, it does not satisfy the retributivist model of criminal justice. And if it is not sufficient control, the community will not be protected.

We think of incarceration as punishment because it is the complete loss of liberty; the prisoner has become the slave of the state, as Immanuel Kant put it.² The status of the intensive probationer requires a partial loss of liberty—off to prison he goes if he violates the terms of probation, and the daily surveillance by an officer of the court makes this threat credible. For some intensive probationers the intrusions will be irksome if not intolerable; for others there will be ways of coming to terms with this condition, just as a lot of old cons manage to carve out a cozy niche for themselves while in the joint. As I suggested a while back when discussing Professor Newman's electric shock machines, human beings are much more adaptable than they think they are—they can learn to live with Dr. Newman's electric shocks, with years of maximum security confinement, and with daily visits by The Man. When it's over, it's over. Few will insist on protracting the painful or humiliating experience.

Sufficient control? A wise old administrator tried to dampen my enthusiasm for intensive supervision by

pointing out that a strategically adroit probationer inclined to continue his criminal career could time his exploits to occur immediately after The Man had seen him in the bosom of his family, perhaps deep in his study of the Bible. Maybe so, but so far as I know the data do not support this dark inference. Without a doubt intensive probationers will recidivate from time to time. The question for those who administer the program is whether the crimes they commit will be too frequent and too serious for the community to tolerate. A few bonehead assignments culminating in gory headlines will, of course, damage the program and perhaps destroy it. So far, that hasn't happened. Every Commissioner of Corrections in the land should pray that it won't.

What should be the goals of intensive probation? For the budget analyst and others of his impersonal ilk, the answer is easy; get as many people out of prison and off the taxpayers' backs as possible. What's possible depends on the perseverance of the officers who are out there every night doing the surveillance that intensive supervision demands and on the skill of the probation officer in seeing to it that his or her charges are working, appropriately housed, and in compliance with the other terms of probation. Neither task is easy, and the burnout point is in sight for all but the most selfless individuals. Organization of intensive supervision probably requires some rotation of personnel. Any program that is based on constructive personal relations must be carried out by normal people—not by saintly deviates who neither have nor want private lives of their own.

Intensive supervision should allow for incentives as well as intimidation. Good performance should be rewarded with relaxation of control. The probationer should never feel forgotten, but he should also feel that his good behavior is appreciated. The development of trust is a bilateral process. Only when trust is conferred will the trusted party make the effort to become more trustworthy. As every probation officer knows, the difficulty with that idea is that trust is not always reciprocated. To extend trust wisely and with discrimination is essential to the art of probation, an art which some people never acquire.

When intensive supervision was invented, a new form of punishment was being created, and it's no good covering up its nature with euphemisms. We must be strict in its administration. Serious violators should complete their terms in prison without question; halfway houses should be available for folks who don't take seriously the conditions to which they have agreed. We have to mean what we say.

The Potential

Penological veterans are accustomed to disappointment. We have seen our high hopes exploded too often

² Immanuel Kant. *The Metaphysical Elements of Justice*, tran. John Ladd. (Indianapolis: Bobbs-Merrill, 1965), p. 102.

to believe wholeheartedly in new remedies for old shortcomings. Psychiatric treatment, group therapy, group counseling, shock probation, base expectancy scores, probation subsidy, and statistical classification have all fallen short of their promised benefits, some of them abysmally so. Nevertheless, I am a believer; intensive supervision may be the great exception. The promise is the drastic reduction of incarceration; the strength lies in realism about the punitive nature of the experience of surveillance. We are no longer deceiving ourselves and attempting to deceive the probationers about the therapeutic benefits of the relationship between the officer and the offender. The officer's hot breath may be on the offender's neck; if the offender doesn't like it, he knows what the consequences will be if he strays too far from surveillance.

So far, administrators have been commendably cautious in the formulation of policy for intensive supervision. No violent offenders, no dedicated addicts, no multiple recidivists, no psychotics. There are enough burglars and thieves to be kept out of prison so that the program can have an adequate clientele. As the courts, the police, and the media gain confidence in the program, though, I hope that some risks will be taken. It makes no sense, really, to exclude violent offenders from intensive parole supervision; these are the fellows who need it the most. Narcotics addicts and small-time pushers

ought to be assigned to intensive supervision as a matter of choice. It should be understood by all concerned that there will be failures and sometimes the failures will hit the headlines. Those failures will be more than offset by success measured in men and women who have been kept out of prison or whose prison time has been reduced by assignment to supervision. That's the realistic goal; anything more will be a bonus on which we shouldn't count.

No matter how we organize a program like this, it will always be vulnerable to the personal inadequacies of people carrying it out. There are enough numbskulls, time-servers, and psychological cripples circulating around our penal and probation establishments so that managers will have to keep a wary eye on appointments if intensive supervision is not to go the way of so many other hopeful innovations.

If the program succeeds as it should, a year or so as an intensive supervisor should be a choice assignment for a promising young penologist, an essential step to advancement. If the best and the brightest can be brought into the program, if they think what they are doing—and their superiors as well—the potential for the intensive revolution may be enough to level some old prisons and depopulate some of the new joints. So says this unreconstructed optimist.

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News of the Future

RESEARCH AND DEVELOPMENT IN CORRECTIONS

BY JOHN P. CONRAD
Davis, California

"The Blasting of Hopes"

LET'S REVIEW the news of a past that's still within living memory. It hardly seems possible that it's 41 years since I was awarded a badge and a case-book with about 100 names and faces and began a short career as a "placement officer" for the California Youth Authority. The agency was young. In 1941, as part of Governor Earl Warren's reform of California criminal justice, the Youth Authority Act had consolidated a loose alliance of three jealously independent but ludicrously ineffective reform schools under legislation faithfully following the American Law Institute's Model Youth Authority Act.

World War II prevented a concerted development of the programs that that Model Act was intended to facilitate. With the war's end, the demobilization of the armed services brought into the system a lot of earnest young men like myself, certain that our talents and enthusiasm could transform a hidebound and aimless non-system into an agency that could redirect the lives of young thugs and thieves before they could become committed criminals.

Obviously the new agency had to have a New Philosophy. It certainly would not do to persist in the bureaucratically sterile ways of the three established reform schools¹ which had bumbled their way into legislative hearings and the headlines. Looking for a better way to conduct the reform of boys and girls in trouble, the Youth Authority seized on the English borstal institutions. I am not sure that any of our senior officials had ever visited a borstal, but they liked what they had read about classification, indeterminate sentences, and the involvement of counseling staff. The charismatic enthusiasm of Sir Alexander Paterson, the presiding aphorist of the

English borstals, was contagious enough to cross oceans and continents.

Years later, I visited a lot of borstals and became acquainted with many of Sir Alexander's acolytes. Whatever my superiors had heard about borstals, they had missed the point. This was an English system, based on the deferential characteristics of the English class structure as it existed then. To expect a successful transplantation was to ignore the conspicuous social differences between England and America. To an extent that says a lot about English class structure, the borstals were modeled after Eton, Rugby, Harrow, and the other "public schools" on the assumption that what was good for scions of the governing classes might be good for delinquents. With the decay of the traditional structure, as well as with the bureaucratization of the British prison system, the borstal institution is no longer nearly as effective as it apparently was during its heyday, nor does it still attract the youthful idealists from Oxford and Cambridge that once gave it an authentic glow of altruism.²

Whatever principles the Youth Authority's ideologists thought they were adapting from borstal, the practice at the schools was rooted in the old ways. Borstal institutions tried to group like with like. Dull boys were assigned to borstals designed to meet the needs of slow learners. Country boys were sent to institutions where farming occupations could be learned. Boys with aptitudes for skilled trades would go to borstals where an apprenticeship to a skilled trade could begin. And so on.

The Youth Authority institutions at first were classified for age. Older boys went to Preston, younger boys to Nelles. Girls of any committable age went to Ventura. As more schools were put into service, the variable of toughness was added to that of age. Preston continued to accept the older boys, but for those who were too tough and difficult to control within the programs available at Preston, the cooperation of the Department of Corrections was ar-

¹ That term was already discredited, but in practice all three institutions were indelibly characterized by the unlovely traits that led to its disuse.

² For a more complete review of the methods, achievements, and decline of borstal, see Roger Hood, *Borstal Re-assessed*, (London, Heinemann, 1965).

ranged, and custodial hospitality was extended at San Quentin to especially refractory Youth Authority wards.

The régime at the Youth Authority's schools in my time was uncompromisingly repressive. Wards were expected to behave themselves with dire consequences if they didn't. I vividly remember the tales told me by some of my parolees. Ray L.—, one of my more harum-scarum young men, spent a good deal of time in the Preston punishment unit, euphemistically designated as something else—I can't remember exactly what. He recalled one night when everyone in the unit agreed to tear up his cell. In the morning, Mr. Whitehead, a man of enormous height and girth who was the "Group Supervisor" in charge, went down the row of cells. Ray heard Mr. Whitehead stop before each cell and ask in a loud voice, "Son, did you do this to your room?" "Yes, sir, Mr. Whitehead." POW! And down went the boy. "When Mr. Whitehead reached my cell, I knew what was coming. He slugged me good, and, you know, I went down loving that man." Borstal was never like that.

Even more vividly I remember watching a cottage of 40 boys at morning ablutions in the Fred C. Nelles School for Boys. These early teenagers sat in silent rows while eight boys washed their hands and faces at the lavatories. As soon as they had completed their washing the next row silently took their places on the command of the group supervisor. The orderliness was as impeccable as the silence was unnatural.

Those were the days before race made a crucial difference in penology. Although I was assigned the entire city of San Francisco as my "territory," my caseload was almost entirely white, except for one insouciant Chinese (who filed monthly reports stating that he had been "bad all month"—although his name never came up in the police arrest reports) and a couple of well-assimilated Chicanos. No blacks. This was the delinquent world studied by the Gluecks and all those Chicago criminologists to whom I had been exposed in the thirties. The Youth Authority had devised a system of control that at the most delayed the entry of its wards into careers of crime, while

from time to time actually redirecting a few. We had hoped to do much better, but the secret of greater success eluded us, as it still eludes our successors.

Fear in the Dorms

There was fear in those days, of course, but it was the fear of Mr. Whitehead and a few dozen muscular group supervisors like him who used rough and ready methods to keep the boys in line. At Preston, the group supervisors' influence was supplemented by the cadet officers, the "dukes" who were in charge of cadet platoons.³ Chosen because they were handy with their fists, they often broke their hands in the administration of discipline, requiring plaster casts. That was said to make them even handier. Talking with Preston alumni, I heard a lot about violence, but it was violence that was administered under official auspices for cause. I never heard about violence between wards, although there must have been some going on.

All that has changed, as anyone familiar with contemporary youth institutions must be ruefully aware. In this column I want to run through the findings of Michael and Steve Lerner, a pair of social scientists who have studied the present state of affairs in the Youth Authority facilities.⁴ Beginning with the basic statistics, they show that intramural violence has consistently been reported at a level exceeding 2,000 incidents annually since 1982, involving 25-30 percent of the population. (P. 13) Beyond any doubt the real number of such incidents far exceeds the reported number; in such matters, victims usually find it best to keep the authorities in the dark.

What the Lerner's wanted to do, however, was to find out the realities behind the data. That results in a collection of interview excerpts that statistically criminologists tend to minimize as "anecdotal." But how else are we to understand?

Consider Sergio, a Preston gang member, previously in good standing:

On April 5, 1985, Sergio had some . . . indelible souvenirs of his year at Preston imprinted on his body. . . . As he came out of trade school one afternoon, he was jumped by three members of his own gang and stabbed six times in the arms and chest with a sharpened radio antenna and a pointed welding rod.

"They wanted me to stick a blade in somebody, but I refused," he said. "I had nothing against the guy they wanted me to stick." Another perhaps more potent reason for refusing was that he was "close to home" (had only a few more months to serve) and was eager to avoid trouble which might extend his sentence. . . .

[He] knew that by declining to follow orders his status would shift from the hunter to the hunted, and that gang "soldiers" would be dispatched to beat him up. . . . "It was hard go-

³ The only institution in which I have ever seen prisoners marched in lockstep was the Preston School of Industry. I have often wondered how this demeaning formation managed to survive in a juvenile facility for so long after it was abandoned in the adult prisons where it was invented.

⁴ I am drawing from Steve Lerner, *Bodily Harm: The Pattern of Fear and Violence at the California Youth Authority* (Bollinas, California, Common Knowledge Press, 1986).

ing to sleep at night in that dormitory because I sleep on my stomach and I was worried about someone hitting me over the head with a [sock full of batteries]," he remembers. He had not... expected to be set upon by three knife-wielding assailants.

While being "stuck" is still a reasonably unusual event at Preston, Sergio's dilemma is not. Having to cause harm to another person or fall victim oneself is not at all out of the ordinary. The open dorms at the Youth Authority have become so vicious with the increasingly dense overcrowding that many inmates feel they have to join a gang in order to purchase protection. (Pp. 16-17)

Consider the sociological implications of this incident, which can be reduced to a digit in a table of violent events occurring in April 1985. Aside from the physical and psychological damage to Sergio, how can the quantitative criminologist deal with the fear that is exacerbated among his mates? Or the effects on the "soldiers" after the successful completion of their mission?

The Lerner report is replete with interview excerpts of this kind. The conclusion is that "a young man convicted of a crime cannot pay his debt to society safely." (p. 12)

Unlike most critiques of penal institutions, the Lerner are lenient with the staff, from the apex on down to the guards on night duty in the dorms. They are seen as well motivated, reasonably well trained, well aware of the monstrous problems they face, and doing what they can to make their institutions safer. No sadists are brought on display, and it is clear that Mr. Whitehead, long since retired, has not been replaced. If the Lerner are to be believed—and I believe them—the main thing wrong with the staff is that there just aren't enough to do what should be done.

The problems are serious. They converge in the overriding problem of fear. Why are the Youth Authority wards fearful when they have been consigned to the protective care of the State of California? There are intramural and extramural reasons, all of which are thrown into sharp relief by this study. First, the intramural problems:

- Nearly all Youth Authority institutions are much too large. Several hundred boys milling around in one institution are difficult for the staff to keep sorted out, and even more difficult for the boys themselves to know. Here the Youth Authority has been hog-tied by the influence of a hard-headed panoply of legislative analysts, budget analysts, personnel technicians, fiscal comptrollers, and other headquarters types who know an economy of scale when they see one, and thereby justify their calling. Few of them will have had more than a few casual visits to an institution, but their views

on costs and management will take precedence over the practical problems of the men and women who must work in places like Preston. The borstal people have never allowed that kind of mistake to be made. Borstals are small, some of them less than a hundred in capacity. Their size is intended to facilitate the program's effectiveness. If the program falls short of expectations, the onus is on the staff carrying it out, not on grossly inappropriate architecture.

- Overcrowding. The design capacity of all Youth Authority institutions is 5,800. At the end of 1986, the total population was about 7,800. (Pp.12-13) The projection for 1990 is 8,800, which is probably conservative. Already newly received wards are sleeping on the gymnasium floor in the Northern Reception Center near Sacramento.

When too many boys are crowded into a facility that's too big to begin with troubles can be expected to increase. For example, at Preston the dormitories are designed to house 35 boys. Because of the bloating population, the dorms housed 60 at the time of the Lerner study. So far the incidence of violence has not kept pace with the dormitory crowding, but there have been perceptible increases, for example, 13.6 percent more batteries in 1985 than there were in 1984. (P. 13) Only those who have day-to-day opportunities to observe can speak to the actual effects of this kind of crowding on the quality of life. I haven't visited Preston for years, but if the boys were fearful in dorms at authorized capacity, it's a reasonable assumption that their fear will not be allayed when the numbers are nearly doubled. What are the causes of overcrowding? The Lerner list three. First, Youth Authority sentences are longer; a law-and-order administration wants violent youth locked up for as long as possible for public protection. Second, the Youth Authority receives a lot of property offenders under 21 who are considered too vulnerable for commitment to adult prisons. This may be a humane policy, but the Youth Authority has yet to work out satisfactory programs for them. Third, overcrowding tends to increase overcrowding. Violent incidents are punished with more time, and that increases man-years to be provided for in the institutions. Clearly something has to give and soon; either sentencing policy must be less rigorous—an unlikely prospect—or more institutions must be built for which no plans have been announced;

or we must face the continuing prospect of managing a network of violence from which nothing good can be expected.

- The dormitory idea. Here again I think I see the fingerprints of the "analyst." A dormitory for 35 young men is cheaper to build than a cottage for 35, or as might be preferable, *two* cottages for 18 each. But *why* are there dormitories in a place like Preston? When I was an active bureaucrat, it was an accepted doctrine that old prisoners should be in dormitories where they could socialize. Young prisoners should be in single cells to discourage antisocial socializing. How the Youth Authority was persuaded to install dormitories at Preston or, having done so, to house end-of-line wards in them is beyond my understanding. One can usually discover a rationalization for the most irrational policies and practices. Whatever the reasons here, the changes that must be made are obvious and should be undertaken with no further delay.
- The Lerner stress the need to phase out institutions that are situated in remote localities. While Preston and one or two other facilities fall into this category, most of the training schools are reasonably close to metropolitan centers. I think the Youth Authority faces much more urgent problems than the relocation of the two or three facilities in out of the way places.

So much in brief capsules for the intramural problems. The Director of the Youth Authority, James Rowland, has included a response to the Lerner's report in which he candidly acknowledges problems that are beyond the control or solution of the Youth Authority and claims that some of the intramural difficulties are being attacked with some probability of success. The tone of his response is in refreshing contrast to the surly denials usually evoked from high officials by a critique such as the Lerner's. Clearly, Rowland has welcomed an opportunity for public review of the Youth Authority's parlous condition. The more typical response of a correctional administrator to such a report is that its writers would be better occupied if they would just mind their own business.

Meanwhile, in the World Outside...

The extramural problems of the Youth Authority it shares with all states with metropolitan centers within their borders. Our great cities now produce populous underclasses in which the criminal ranks are nurtured and expected. These underclasses are

increasingly represented in prisons and youth training schools, as everyone knows. Their behavior, in prison or out, does not correspond to the typologies so neatly worked out by the classical criminologists such as Sykes, Schrag, or Clemmer, or to the descriptions of even more classical writers like the Gluecks or Sutherland. They coalesce in fighting and exploitative gangs, they control every inch of the institutional turf that they can, and they have so far resisted successfully plans to exterminate them or to co-opt them. They come to the institutions like Preston and create climates of fear that put into deep shadow the educational and training programs that the schools are supposed to impart. But who can concentrate on a welding course or get on with his remedial arithmetic when at the back of his mind is the explicit menace of a gang?

The Lerner's have a depressing story to tell, especially for an old-timer in the Youth Authority like myself with fond memories of heady optimism. Back in the forties, my colleagues and I thought that although today was tough, tomorrow would be better because we were learning how our jobs should be done by doing them. It seems to me that today's Youth Authority employees, as good as they seem to be, must think that at best they can handle today's problems but that there's no reason to believe that tomorrow's problems will be in the least easier.

The Lerner's certainly don't expect early improvement. They note that in the legislature there is little or no interest in the Youth Authority's difficulties, nor is there an active and vigorous constituency for change. Such a constituency can only result from active and vigorous leadership with practical plans to lay before the public.

But I'll let the Lerner's have the last word:

It is probably not possible to rehabilitate many of those who reach an institution like the California Youth Authority. But it is certainly possible to get more for our money, and to build institutions and juvenile justice systems that incapacitate without harming and that maximize the opportunities for inmates to elect rehabilitation for themselves. (Pp. 68-69)

An Appeal to My Readers

In an early offering in these pages, I want to discuss the privatization movement. Unfortunately, while this subject is long on impassioned argument, the arguments are not usually grounded in data. Anyone willing to share with me statistics on the relative effectiveness of the privatized correctional facility will have my grateful acknowledgement. Please direct any materials you can send to me by way of the Editor of *Federal Probation*.

Looking at the Law

BY DAVID N. ADAIR, JR.
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Restitution

A. Notice Prior to Guilty Plea

NOW THAT a number of courts have held that restitution may be ordered for amounts not specified in the count to which a defendant has pled,¹ it has become increasingly important to consider restitution in connection with the taking of a plea of guilty. This is so because Federal Rule of Criminal Procedure 11(c) requires the court, before accepting a guilty plea, to inform the defendant of the consequences of plea, including the potential sentence. As will be discussed in more detail below, restitution is one of the consequences of which defendants must be advised when restitution is appropriate and available under the circumstances.

Although probation officers are generally not actively involved in the colloquy during which the defendant is advised of these consequences, Federal Rule of Criminal Procedure 32(c)(1) permits the court, with the written consent of the defendant, to inspect the presentence report prior to the guilty plea. The purpose of this provision, of course, is to provide the court with access to sentencing information so that the court may be fully informed prior to accepting the guilty plea.

If the court is made aware by means of the presentence report of the possibility of restitution, the court will not only be in a better position to determine whether the plea bargain properly deals with restitution, but will be better able to advise the defendant regarding this possible consequence of the plea prior to the acceptance of the plea.

Unfortunately, the court's review of the presentence report will often take place after the court's advice to the defendant of the consequences of the guilty plea. It is still important, however, for the probation officer to understand the advice necessary with regard to restitution in order to know whether the court's options at sentencing have been affected by the notice actually given to the defendant and, if so, what options remain.

In 1985, Federal Rule of Criminal Procedure 11(c)(1) was amended to reflect the court's authority under the provisions of the Victim and Witness Protection Act (18 U.S.C. §§ 3579 and 3580) to order restitution. Now, among the matters of which the court must specifically inform the defendant is the possibility "that the court may also order the defendant to make restitution to any victim of the offense." This provision is explained in more detail by the Advisory Committee Notes accompanying the amendment that added the language:

Because this restitution is deemed an aspect of the defendant's sentence . . . it is a matter about which a defendant tendering a plea of guilty or nolo contendere should be advised.

Because this new legislation contemplates that the amount of restitution to be ordered will be ascertained later in the sentencing process, this amendment to Rule 11(c)(1) merely requires that the defendant be told of the court's power to order restitution. The exact amount or upper limit cannot and need not be stated at the time of the plea. Failure of a court to advise a defendant of the possibility of a restitution order would constitute harmless error under subdivision (h) if no restitution were thereafter ordered.

Even prior to this rule change, however, there was authority that restitution must have either been part of the plea negotiations or must have been discussed with defendant at the guilty plea hearing. If defendant were not apprised of the possibility of restitution at the Rule 11 proceeding, the court would be foreclosed from imposing restitution. See *United States v. Runck*, 601 F.2d 968 (8th Cir. 1979).

There is very little case law interpreting the new provision of Rule 11 or giving any insight into a possible remedy for failure to give the proper notice. It is not even entirely clear whether the notice must be given when restitution is imposed as a condition of probation under the provisions of 18 U.S.C. § 3651, as opposed to a sentence under the provisions of the Victim and Witness Protection Act. In *United States v. Hawthorne*, 806 F.2d 493 (3d Cir. 1986), the court had imposed restitution under section 3651 for amounts of loss associated with dismissed counts. Restitution for these amounts had not been part of the plea negotiations nor had the court given notice of the possibility of restitution in connection with the acceptance of the guilty plea. The Court of Appeals remanded the case for resentencing because of the lack of such notice.

¹ See, e.g., *United States v. Pivrotto*, 775 F.2d 82 (3d Cir. 1985), discussed in "Looking at the Law," 50 Fed. Prob. 79 (March 1986).

The court referred to the notice requirement contained in the 1985 amendment to Rule 11(c)(1). Although the amendment was made in reaction to the Victim and Witness Protection Act, the court stated that "the possibility of a restitution order under section 3651 requires no less." (806 F.2d at 498) Nonetheless, the court seemed to limit its requirement for notice to situations in which restitution was to be imposed for losses charged in dismissed counts. In remanding the case, the court indicated that restitution might be imposed, on resentencing, for the amount charged in the count to which the defendant pled guilty.²

Furthermore, the court's opinion provided only that in order to impose restitution in amounts exceeding that charged in the count of conviction, the defendant must be advised of the possibility of restitution by the government in the course of plea negotiations, or, failing that, by the court prior to accepting the guilty plea.

Although the Third Circuit seems to leave open the possibility that a warning as to restitution imposed under the provisions of section 3651 is required only when the amount exceeds the amount associated with the count of conviction, the safer practice, of course, would be to warn the defendant as to the possibility of restitution in every case in which restitution may be an issue. The amount of restitution, according to the Advisory Committee Notes, need not be specified prior to the guilty plea, but the possibility of restitution clearly should be.

If the court fails to advise the defendant about restitution when taking the guilty plea it is possible, at least technically, to correct the omission at the time of sentence. Prior to imposing sentence, the court could indicate to the defendant its consideration of restitution and offer the defendant the opportunity to move to withdraw the guilty plea under the provisions of Rule 32(d). See *United States v. Johnson*, 657 F. Supp. 358 (D. Conn. 1987). Rule 32(d) permits the withdrawal of the guilty plea for any fair and just reason. Otherwise, the imposition of restitution without having advised defendant of the possibility of restitution at the Rule 11 colloquy might be challenged by defendant on appeal or pursuant to a motion under 28 U.S.C. § 2255.

² In the course of its decision the court also referred to dictum in *United States v. Runch*, *supra*, that restitution in a small amount might be ordered without notice of the possibility of restitution prior to the acceptance of the guilty plea. That decision, however, predated the change to Rule 11(c)(1), which mandates notice. It would be unwise, therefore, to rely on that dictum, particularly with respect to restitution imposed as a sentence under the provisions of the Victim and Witness Protection Act. Although the dictum could apply when restitution is imposed as a condition of probation under authority of 18 U.S.C. § 3651, the safer practice would be to give the appropriate advice whenever restitution is a possibility. See also *United States v. Garcia*, 698 F.2d 31 (1st Cir. 1983).

B. Restitution of Lost Interest

It has never been clear whether an order of restitution could include amounts attributable to interest on losses to the victim. The issue most frequently arises in fraud cases, where the victim has provided a substantial amount of money intending to make a profit on his investment. Had the investment been legitimate and the offense not been committed, the victim would most likely have earned some return on the investment. The award of restitution in the amount of the initial investment would not, in such a case, fully recompense the victim for his loss. A recent Third Circuit case has held that interest is not awardable as restitution under the provisions of 18 U.S.C. § 3651. In *United States v. Sleight*, 808 F.2d 1012 (3d Cir. 1987), defendant was convicted of mail fraud, sentenced to 5 years probation, and ordered to make complete restitution to the defrauded company, including interest in the amount of 8 percent on the amount of money actually received by the defendant.

One of the defendant's grounds for appeal was that there is no authority for a court to order interest as part of the restitution order. The Court of Appeals agreed with defendant, holding that interest could not be awarded under the provisions of the Federal Probation Act since that Act did not specifically permit the award of interest. The Court recognized that, although the purpose of restitution is to make the victim whole, the general rule is that interest may not be assessed against a defendant as a penalty unless the statute specifically indicates that interest is part of the penalty.

This case is consistent with the holding in *United States v. Taylor*, 305 F.2d 183 (4th Cir. 1962), in which the court indicated that section 3651 limited a sentencing court in its imposition of restitution as a condition of probation. The court held that restitution was limited to unpaid Federal taxes in the amount of the basic tax, plus interest, only to the extent that the penalty statute authorized such interest. The implication of this holding, of course, is to the same effect as the holding in *Sleight*. Absent a specific authorization in the penalty statute for interest, it is not authorized.

On the other hand, the Seventh Circuit has impliedly affirmed interest as a part of restitution under section 3651. See *United States v. Roberts*, 619 F.2d 1 (7th Cir. 1979). The precedential value of that case is questionable, however, in light of the specific finding in *Sleight*.

Although these holdings apply to the Federal Probation Act, the reasoning seems to apply with equal force to restitution under the Victim and Witness

Protection Act. That is, since the restitution provisions of the Act do not specifically authorize interest, it apparently cannot be awarded as restitution. Since the congressional intent behind the Victim and Witness Protection Act was to make victims whole, it is still arguable that interest may be ordered under the provisions of that Act, but the holding in *Sleight* certainly makes that argument more difficult.

C. Preconviction Bankruptcy and Restitution

In *Kelly v. Robinson*, ___ U.S. ___, 107 S.Ct. 353 (1986), the Supreme Court reversed a Second Circuit decision³ that an order of restitution was discharge-

able in bankruptcy. It is now clear that restitution is a criminal judgment and is, therefore, not a debt subject to discharge under the provisions of the Bankruptcy Code. But, what about the situation in which a debt incurred in connection with an offense has been discharged in bankruptcy prior to sentence and conviction? The Court of Appeals for the Fifth Circuit has held that a court may order restitution regardless of the bankruptcy adjudication. See *United States v. Carson*, 669 F.2d 216 (5th Cir. 1982). See also *Barnette V. Evans*, 673 F.2d 1250 (11th Cir. 1982).

³ *In re Robinson*, 776 F.2d 30 (2d Cir. 1985), discussed in "Looking at the Law," 50 Fed. Prob. 79 (March 1986).