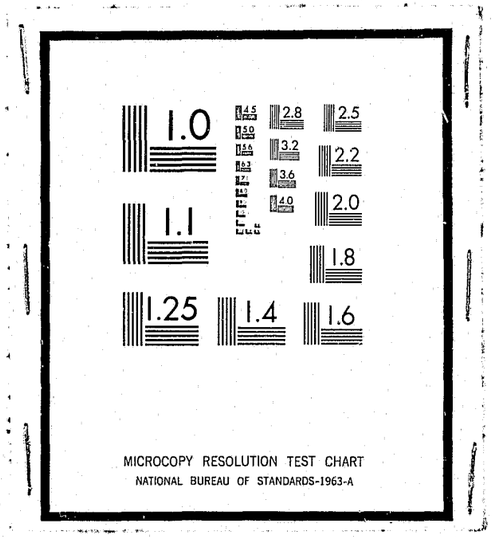

31346

A Differential Classification & Profile Of Adult Probationers In Suffolk County (NY)

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Classification is a process used to determine the needs and requirements of offenders and for assigning them to programs according to those needs and existing resources. Purportedly, classification systems are useful for assessing risk and for realizing the efficient management of offenders.[1] Under such a system, no offender receives more treatment or surveillance than he requires and each offender is afforded the optimal program of services possible for growth and adjustment in the community. A comprehensive classification system also has the beneficial effect of documenting type and intensity of needs of a population so that effective programs can be developed and implemented.

Differential Treatment categorization for the purpose of this report classifies adult probationers into two main categories: (IS) those requiring intensive supervision, and (NS) those requiring normal supervision. These categories have been developed according to two main considerations: A) the appraisal of service needs for adequate adjustment of offenders into the community, and b) the amount of accountability or control required for the adequate protection of the community.

Intensive Supervision (IS) are those probationers who pose a serious threat to themselves and/or community and need a delivery of multiple services. IS cases have a high probability of recidivism. The Normal Supervision (NS) population have generally adjusted to probation supervision although probation problems remain and probation services are still needed. Recidivism is a real possibility with this population but generally they do not pose a serious threat to themselves or the community. Current use of ACOD treatment, Conditional and Unconditional Discharges, and early release has greatly reduced the number of accidental or situational offenders on current caseloads. Therefore, those requiring (MS), Minimal Supervision, have been included in the (NS), Normal Supervision category assuming the number is relatively small and their discharge from probation shortly forthcoming.

The criteria used for classification is based on four major variables: 1) current offense, 2) prior record, 3) age, and 4) psychological stability.

The current offense is considered primarily in terms of final offense at the time of conviction rather than the indictment charges. However, when concrete documentation contained in the indictment is uncontested and valuable for analysis we consider these indicators as well. We would consider the indictment material when, for example, an individual charged with Driving While Intoxicated (with a high alcohol count) is allowed to plead guilty to Driving While Impaired, a less severe legal charge. In considering our purpose; appraisal of service need and amount of accountability required, all the relevant facts of the offense would be valuable. However, we cannot apply this practice to all indictment charges obviously.

Psychological stability is considered in terms of type and degree of emotional disturbance (i.e. depressive neurosis, drug dependent personality, etc.) and in terms of behavioral deficiencies devoid of or in combination with psychological disturbances. Prior hospitalization, C.C.U. evaluations, inability to function and cope with everyday problems and bizarre behavioral manifestations are all used to determine degree of psychological stability. Also included is the factor of neurological deficit or impairment.

The prior record variable must be considered in terms of quantity, severity of offense, time span, (that is, between last offense and current offense) and in order to determine if a recurring pattern is evident. For the present report, no convictions over ten (10) years old are considered unless a clear continuous pattern is apparent.

Age is considered as an indicator in relation to the other major variables in order to help determine type and degree of dysfunction. For example, two prior adult arrests at age seventeen (17) may be analyzed differently than the same prior of a 45 year old man.

The classification system briefly described is dynamic rather than mechanical.

There is an interaction effect between variables with an accompanying degree of subjectivity. This subjectivity is limited and must function within parameters defined by administrative considerations. For the purpose of this report, the effect of subjectivity is minimal and each case was appraised by the same criteria by the same examiner. In the section on procedure, specific characteristics of IS and NS are presented for analysis, accompanied by examples from each division.

For comparative purposes this report has utilized Narcotic and Non-Narcotic divisions in order to analyze offender profiles. Also, alcoholism and serious alcohol abuse has been documented for each division.

PROCEDURE:

A representative sample of 720 adults receiving probation supervision in Suffolk County was selected from each caseload comprising the total population of 3250 offenders. The pending and miscellaneous cases are not included in this study. The number of cases sampled from each caseload was contingent on the unit's percentage of the total population. The average (weighted) percentage of the sample population is 22% of the total offender population. Cases were analyzed according to the four variables of age, current offense, prior record, and psychological stability in order to determine whether they need intensive or normal supervision.

Diagnostic evaluations, recent urinalysis, current police arrest reports, investigations, etc. were considered in the classification process. The same procedure was used, and criteria applicable for all cases.

One obvious limitation of this study is that the probationer and probation officer are not interviewed at all. Therefore, the results have been obtained from the case material presented in the probation files. However, the overall effect of this limitation is not significant for our initial study.

MEASUREMENT:

Except in extreme cases, the variables of psychological stability, current offense and prior record are weighted equally and each receives one unit measure. Zero or one unit signifies (NS), Normal Supervision, and two and three (out of three) unit measure signifies (IS), Intensive Supervision. This objective measure is consistent in almost all cases. However, if one variable is extreme in degree it is weighted more. For example, an individual recently diagnosed paranoid schizophrenia with suicidal ideation, requiring immediate hospitalization would require Intensive and immediate attention and would be categorized reflecting this fact, even though he had no prior record and was placed on probation for a B misdemeanor. Age is not directly used in the classification point system, but indirectly, it solidifies the profile of the offender and is used in relation with the other variables.

A) Current Offense: The following types of offenses receive a negative mark in our classification system:

1. Felony convictions (not indictments).
2. Assaultative crimes including robbery, arson, resisting arrest, sexual abuse, possession of dangerous weapon. Does not include harassment or similar offenses.
3. Criminal sale or felony possession of dangerous drugs.
4. Driving While Intoxicated.

B) Psychological Stability: A negative mark is received on this variable if during the past five years an individual:

1. Has been hospitalized in a mental institution or committed to a therapeutic treatment community (residential) i.e. Daytop, N.A.C.C.
2. Has been appropriately diagnosed psychotic or severely emotionally disturbed. (Neurological dysfunction also included.)
3. Has been or is drug or alcohol dependent whether officially certified or not.
4. Has displayed a pattern of bizarre behavior (no an isolated occurrence) and an inability to function in and cope with everyday living.

C) Prior Record: Convictions over ten (10) years old are not considered when determining whether an individual should be considered multiple offender and given a negative mark for this variable. Also, if the client has only one conviction in his prior record which is not a felony and, is over five (5) years old, then he is not considered a multiple offender. Violations are not considered. Furthermore, convictions are our primary concern. Arrests not leading to convictions are only useful in extreme cases when they prove to be indicators of possible antisocial behavioral problems.

D) Age: As previously stated age is not used directly but as an indicator of types of service needs, etc. in relation to the other variables.

No totally objective classification system can successfully categorize 100% of the cases. The examples of extreme manifestations of one particular variable illustrate this fact quite well. We previously described a limitation of this report to be the fact that the clients were not interviewed personally.

The cues derived from an indepth interview that are quite often danger signals or cues for help are missing from the results. However, this is not the case in operating systems. Subjective skills (casework, etc.) and common sense minimize the limitation of an objective classification system quite effectively. The categorization process should be enhanced not crippled by the element of subjectivity.

Finally, it should be noted that the classification of offenders into a particular category is by no means static or final. In some systems, all new probationers are considered IS for the first three (3) months on probation and then re-evaluated. The process is a dynamic one and it is easy to realize that a client after treatment may no longer need intensive supervision and must be re-classified.

RESULTS:

The analysis of the data has been considered from two major perspectives. One of the main goals of this study has been to determine the number and concentration of probationers who require Intensive Supervision (IS) as opposed to Normal Supervision (NS). Also, this study has focused on determining the type and intensity of primary behavior dysfunctions in order to facilitate program planning and the results reflect this consideration. The percentage of individuals with serious drinking problems, serious drug abuse problems, assaultative personalities, acute psychological instability and/or serious criminal behavior patterns has been documented.

TABLE 1: ADULT SUPERVISION CLASSIFICATION ACCORDING TO DIFFERENTIAL TREATMENT CRITERIA *****

	ISLIP NARCO SUPER	ISLIP NON-NARCO SUPER	WEST-END NARCO SUPER	WEST-END NON-NARCO SUPER	BABYL NARCO SUPER	BABYL NON-NARCO SUPER	EAST-END NARCO SUPER	EAST-END NON-NARCO SUPER	WARR-ANT CASE-LOAD	TOTAL
SAMPLE POPULATION	89	102	74	113	62	80	76	84	40	720
TOTAL POPULATION	400	459	338	516	280	382	319	365	191	3250
% of SAMPLE POPULATION	22%	22%	22%	22%	22%	21%	24%	23%	21%	22%
INTENSIVE SUPERVISION	58	47	36	43	41	32	41	25	28	351
NORMAL SUPERVISION	31	55	38	70	21	48	35	59	12	369
% of (IS)	65%	46%	49%	38%	66%	40%	54%	30%	70%	49%*
% OF (NS)	35%	54%	51%	62%	34%	60%	46%	70%	30%	51%*
PROJECTED TOTAL (IS)	260	213	166	196	185	153	172	110	134	1589
PROJECTED TOTAL (NS)	140	246	172	320	95	229	147	255	57	1661

* - weighted averages.

** - exclusive of pending and miscellaneous cases.

*** - Differential Treatment for the purpose of this study means that the adult population of probationers is divided into two major categories: (IS) Intensive Supervision, and (NS) Normal Supervision.

The total sample population is 720 adults which represents 22% of the total population of 3,250 adult probationers. The definition of Intensive and Normal Supervision are included in the Introduction and the results indicate that 351 cases or 49% are categorized as (IS), while 369 cases or 51% are categorized as (NS). The projected total of IS cases computed according to weighted percentage is 1,589 (IS) cases and 1,661 (NS) cases. These results include the warrant caseload but are exclusive of the pending or miscellaneous cases.

Fifty-nine (59) percent of the Narcotic Caseload compared to thirty-nine (39) percent of the Non-Narcotic Caseload require Intensive Supervision. As indicated in Table #1, there is a wide discrepancy between Narcotic and Non-Narcotic cases according to geographic unit divisions. Comparison according to geographic divisions of cases requiring IS are as follows:

Islip Narco	- 65% IS	Islip Non-Narco	- 46% IS
Babylon Narco	- 66% IS	Babylon Non-Narco	- 40% IS
West End Narco	- 49% IS	West End Non-Narco	- 38% IS
East End Narco	- 54% IS	East End Non-Narco	- 30% IS

According to georgraphic comparisons, the largest range is 26% in the Babylon area, whereas the smallest range is 11% in the West End division. Islip is 21% and the East End is 24%. According to non-georgraphic comparison the largest range is 36% between Babylon Narco and the East End Non-Narco division. The smallest range is the West End Narco of 49% and the Islip Non-Narco of 46%, or 3%.

FIGURE #1

Comparative Illustration of (IS)

Narcotic VS. Non-Narcotic Caseloads

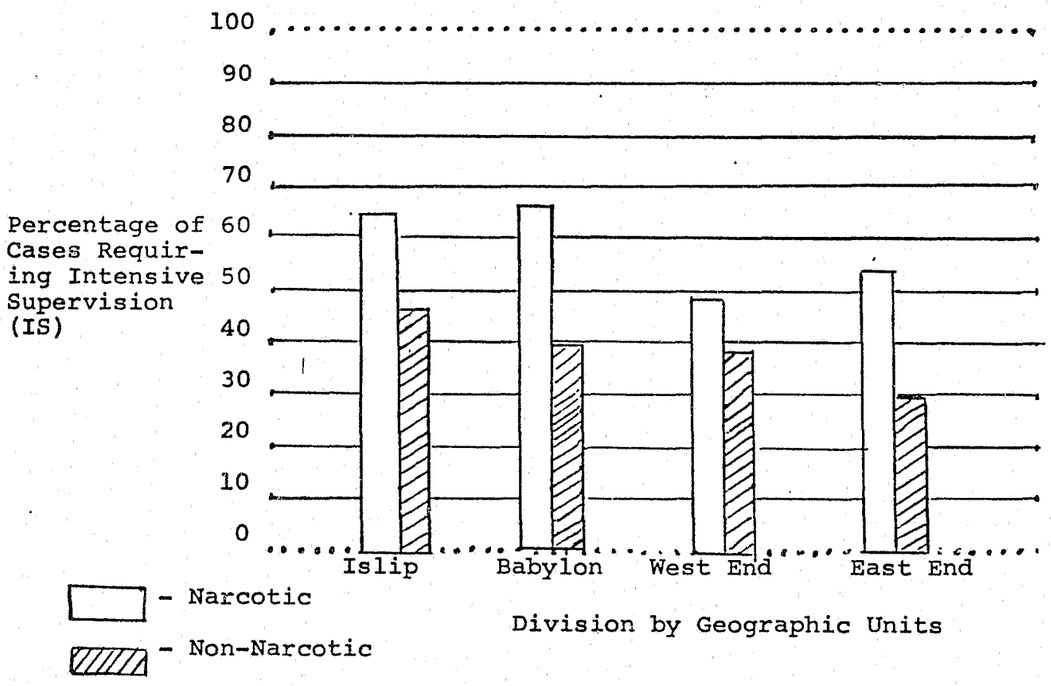


TABLE #2

Types of Caseloads*

	NARCOTIC		NON-NARCOTIC		
	%	Caseload Total	%	Caseload Total	
Islip	65%	400	46%	459	859
Babylon	66%	280	40%	382	662
West End	49%	338	38%	516	854
East End	54%	319	30%	365	684
TOTALS		1337		1722	3059
Weighted Average	59%		39%		

*Warrant Caseload Excluded.

TABLE #3

ANALYSIS OF SERIOUS ALCOHOL ABUSE OF ADULT PROBATIONERS

	Sample Pop.	Non-Narco Unit Pop.	% of IS	# of Alcohol Related IS Cases	% of IS Alcohol	# of NS Cases	# of Alcohol NS Cases	% of NS Alcohol Cases	Estimate Intens. Super. Pop.	Estimate NS Pop.	Estimate IS Alcohol Cases	Estimate NS Alcohol Case
Babylon	80	382	40%	18	56%	48	1	2%	153	230	86	5
East End	84	365	30%	18	72%	59	5	9%	110	256	79	23
West End	113	516	38%	30	70%	70	2	3%	196	320	137	10
Islip	102	459	46%	34	72%	55	6	11%	211	248	152	27
TOTAL	379	1722		100	69%	232	14	7%	670	1054	454	65

Composite Results:

A) Projected # of Current IS Alcohol Abuse Cases - 454

B) Projected # of Current NS Alcohol Abuse Cases - 65

C) Percentage of (IS) Alcohol Abuse Cases of Total Probation Pop. - 14.8%

D) Composite Percentage of (IS) & (NS) Alcohol Abuse Cases of Total Pop. - 16.9%

E) % of Non-Narcotic Cases Requiring Treatment for (IS) Alcohol Abuse - 26%

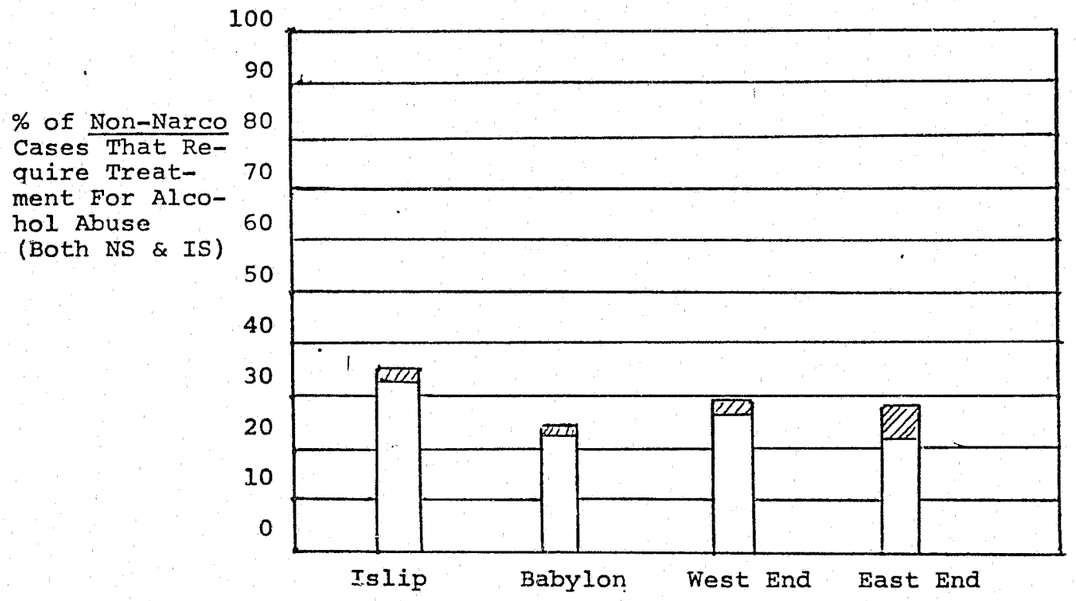
F) Composite % of Non-Narcotic Cases Requiring Treatment for (IS) and (NS) Alcohol Abuse - 30%

G) Weighted % of IS Cases Requiring Treatment for Alcohol Abuse - 69%

H) Weighted % of NS Cases Requiring Treatment for Alcohol Abuse - 7%

FIGURE #2

ANALYSIS OF NEED FOR TREATMENT OF ALCOHOL ABUSE OF (IS) & (NS)



▭ - IS Requiring Treatment

▨ - NS

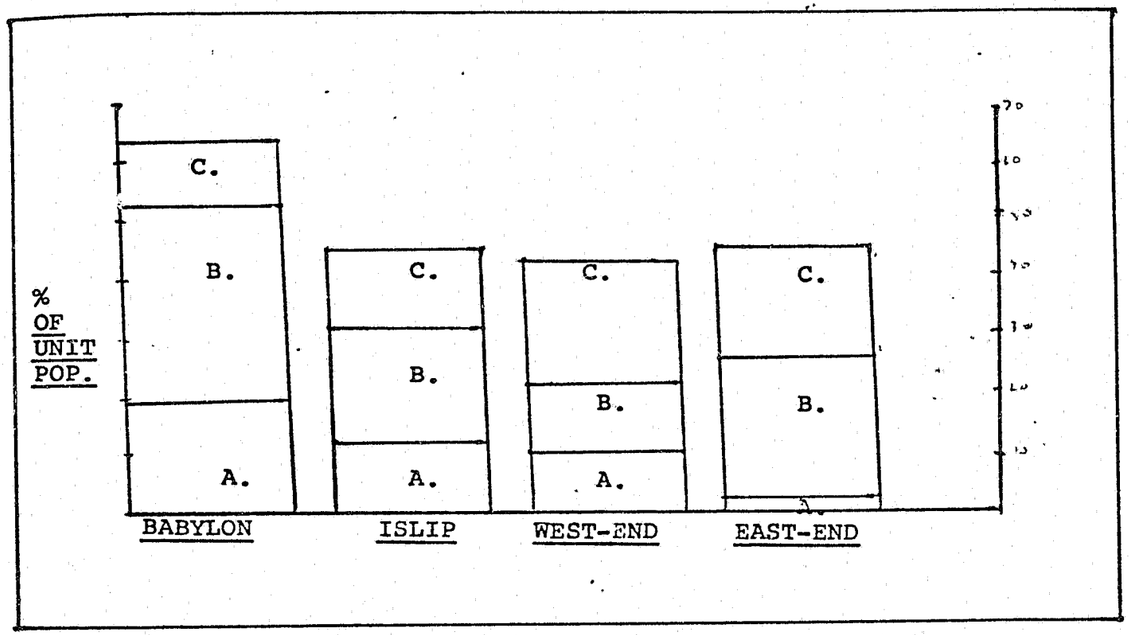
TABLE #4

Percentage of Non-Narcotic Cases Requiring Alcohol Treatment

	NS	IS	TOTAL
Babylon	1%	23%	24%
East End	6%	21%	27%
West End	2%	27%	29%
Islip	1%	33%	34%

FIGURE #3

TYPE AND CONCENTRATION OF DRUG DEPENDENCY ACCORDING TO PERCENTAGE OF UNIT POPULATION



A.- METHADONE
B.- OPIATE ABUSE
C.- ALCOHOL AND/OR OTHER 'HARD DRUGS'

TABLE #5

TYPE AND CONCENTRATION OF DRUG DEPENDENCY

GEOGRAPHIC UNITS	RAW SCORE				UNIT PERCENTAGE			
	METH-ADONE	OPIATE	ALCOH + OTHER	TOTAL	METH-ADONE	OPIATE	ALCOH ±	TOTAL
BABYLON	12	21	6	39	19%	34%	10%	63%
ISLIP	11	18	11	40	12%	20%	12%	44%
WEST-END	7	9	14	30	10%	12%	20%	42%
EAST-END	2	18	13	33	3%	24%	17%	43%
TOTAL	32	66	44	143				

Regarding Major Behavioral Dysfunctions in considering the results, the data have to be analyzed with emphasis on the major dysfunction. For the purposes of this study a priority scale of primary dysfunctions has been established, with the following scale of dysfunctions: 1) drug, 2) alcohol, 3) assaultative, 4) acute psychological instability and/or serious criminal behavior pattern, 5) normal supervision. Thus, if a person is a drug addict but also is assaultive he is categorized "drug dependent", rather than "assaultive" (3). Therefore, these categories are not mutually exclusive. This priority scale has been established for the purpose of categorization and identifying major behavioral dysfunctions and does not intend to establish treatment or accountability priorities.

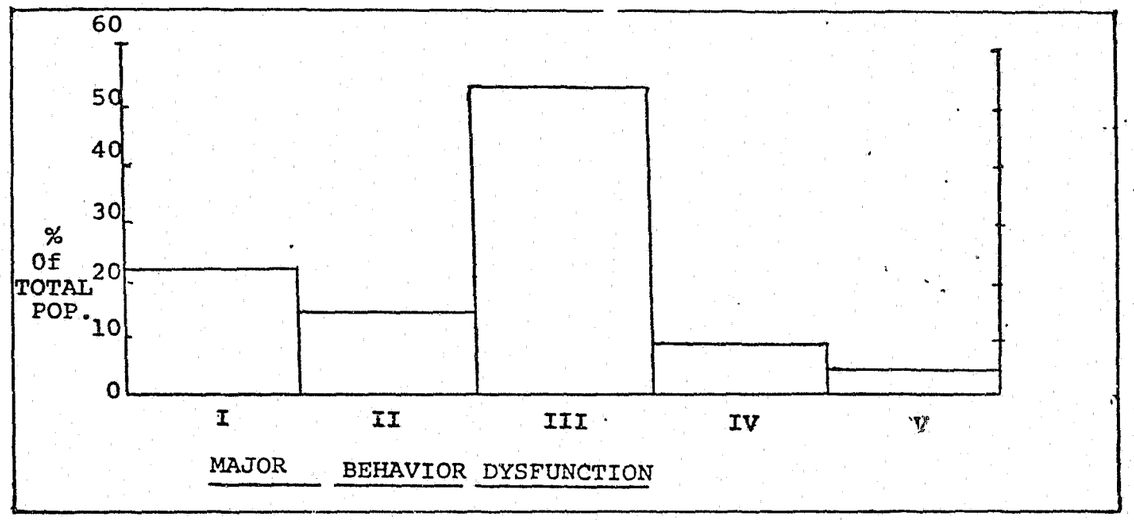
The projected number of (IS) Alcohol Abuse Cases is 454 individuals with an additional 65 (NS) cases that are potential (IS) Alcohol Abuse cases. According to Table 3 and 5, and Figure 3, approximately 15% of the total population are classified as (IS) Alcohol Abuse Cases. This represents 69% of the Non-Narcotic IS cases. The composite percentage of (IS) and (NS) Alcohol Abuse cases of the total population is 16.9% and 7% of the (NS) cases require some treatment consideration for Alcohol Abuse. Twenty-six (26) percent of the Non-Narcotic cases require treatment for (IS) Alcohol Abuse, whereas 30% are categorized (IS) and (NS) Alcohol Abuse. These results predicts that one out of every six individuals placed on probation require some form of treatment for Alcohol Abuse.

Figure #2 and Table #4 indicate according to geographic comparisons that of the IS Non-Narcotic cases 23% of the Babylon cases, 21% of the East End cases, 27% of the West End cases, and 33% of the Islip cases require treatment for serious alcoholic problems.

The drug dependent population, as illustrated in Figure 3 and Table 5 constitutes a sizable portion of the narcotic caseloads. Definition of drug dependency is also included in the Introduction and riefly defined means those probationers who have been institutionalized in a therapeutic treatment program for drug dependency in the past five years, have been certified drug dependent in that period, diagnosed as such or admit to a serious drug problem. Three main areas have been documented: methadone dependency, opiate addiction, and other hard drug and/or alcohol dependency. Of the sample population, total drug dependency according to geographic unit divisions was as follows: Islip - 44%, Babylon - 63%, West End - 42% East End -43%. Table 5 illustrates that 98 out of a total sample population of 301 are categorized under the methadone or opiate categories, and 143 cases are classified as drug dependent. This represents 48% of the narcotic sample population. It should be noted that the methadone and opiate divisions are more valid when considered as a combined category because the determination of clients participation in Methadone Maintenance is limited in this initial study. It should also be noted that the percentage of individuals dependent upon alcohol in combination with other hard drugs is significantly high and constitute a large percentage of ourdrug dependent population (see Table 5).

The assaultive personality and/or history category is exclusive of the drug and alcohol dependent categories and represents 16% of the IS category and 8% of the Total Population. Of course, there are numerous other assaultive individuals included in the drug and alcohol categories but it is not within the scope of this initial study to present a composite figure of potentially assaultive probationers. Inherent in the alcoholic profile for example is the assaultative potential. Nine (9) percent of the (IS) category and four (4) percent of the total population are considered in category V. - psychiatric instability and/or criminal behavior pattern. In addition, 51% of the total population are categorized (NS) requiring normal supervision according to the previously stated definitions.

FIGURE #4 PERCENTAGE PROFILE OF MAJOR BEHAVIOR DYSFUNCTIONS OF ADULT PROBATIONERS BASED ON TOTAL POPULATION + *



I. Serious drug involvement. (IS)
II. Serious alcoholic problem. (IS)
III. Normal Supervision (NS).
IV. Serious assaultive crimes and/or history. (IS)
V. Psychiatric instability and/or criminal behavior pattern. (IS)

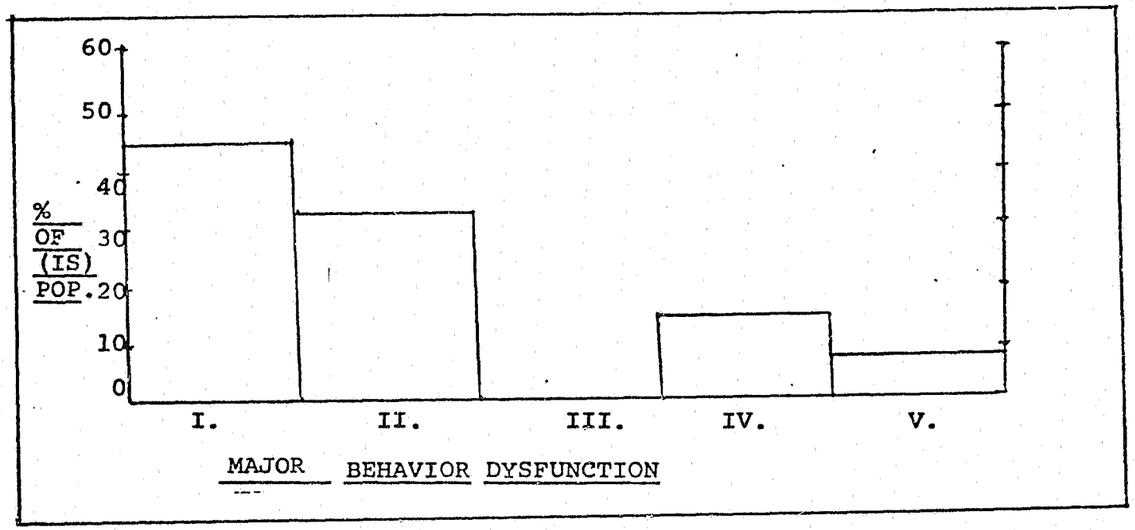
TABLE #6 PERCENTAGE PROFILE

TYPES OF MAJOR BEHAVIOR DYSFUNCTION	% of TOTAL POP.	% of (IS) CATEGORY
I.	22%	44%
II.	15%	31%
III.	51%	0%
IV.	8%	16%
V.	4%	9%
TOT.	100%	100%

* This population includes the warrant population.
* Behavior Dysfunction means behavior and/or psychological dysfunction.

FIGURE #5

PERCENTAGE PROFILE OF MAJOR BEHAVIOR DYSFUNCTIONS OF ADULT PROBATIONERS BASED ON % OF (IS) POPULATION



I. Serious drug involvement. (IS)
II. Serious alcoholic problem. (IS)
III. Normal Supervision. (NS)
IV. Serious assaultive crimes and/or history. (IS)
V. Psychiatric instability and/or criminal behavior pattern. (IS)

RESULTS: Part II

A) Approximately one out of six placed on adult probation need treatment and require close accountability for serious alcohol abuse. Serious Alcohol Abuse is defined as alcoholism (addiction to alcohol), or overindulgence and serious drinking habits that result in recurring arrest, or a self-admitted problem that is affecting an individual's ability to function.

B) Approximately three out of ten non-narcotic cases need some kind of alcohol treatment. This includes the less severe client as well as those reported in Section A.

C) Approximately three out of ten cases on the narco caseload are either
   1) Enrolled in a program and addicted to Methadone, or
   2) Have been addicted to opiates during the last five years. (This is determined by prior certification, self-admission, or psychiatric diagnosis in addition to positive urinalysis.

D) Another two out of ten clients are currently or during the last five years have been drug dependent on other hard drugs, i.e. amphetamines and/or alcohol.

ANALYSIS:

When analyzing the results, several factors are especially noteworthy. The first important consideration is that the classification of probationers is based on four major variables: age, prior record, current offense, and psychological instability and does not include the variables of motivation or current level of functioning. These variables would have required interviews with the probationer and probation officer. However, in order to compensate for this limitation and the possible lack of precision in making fine distinctions between categories, only two major categories are considered, (IS) Intensive Supervision and (NS) Normal Supervision. In addition, the criteria for the four major variables has been narrowed, i.e. prior record is within last ten (10) years in order to minimize the number of questionable cases. In an operational, ongoing classification system the addition of the variables of motivation and the present level of functioning, i.e. employment record, would allow us to refine and increase the number of categories.

Another important consideration is that the profile of behavioral and character dysfunctions is meant to classify but not exclusive dysfunctions. A priority scale has been established for the purpose of categorization or description and not as an attempt to establish treatment or control priorities.

An important result that requires administrative consideration is that the percentage of cases requiring Intensive Supervision (IS) is not equally dispersed between narcotic and non-narcotic caseloads. Narcotic units consistently supervise a significantly larger percentage of (IS) probationers than do non-narcotic units according to geographic division, although caseload size is not always smaller. The extreme non-geographic range is 36%, and the extreme geographic range is 26%. The use of an efficient differential classification system would enable a more efficient use of resources.

Alcohol abuse has been tentatively identified as an important contributing factor in overall behavior and the recidivism rate of probationers. Sixty-nine (69) percent of the non-narcotic (IS) cases are identified as needing some form of alcohol treatment and this represents 31% of the Total IS Population and 15% of the Total Probation Population. This population contains a large percentage of multiple offenders and the probability of recidivism is greater than the NS Population. Probation treatment programs for this population that are realistic and that are administratively feasible must be designed and operationalized. These finding quite clearly document the need for a comprehensive alcoholic treatment program.

The additional effects realized by the families of this population are also significant and quite possibly contribute to juvenile delinquency, truancy, runaways, and subsequent criminal activity. In addition, most of the present efforts designed to help an individual reintegrate into, and become a contributing

member of the community are negated when the probationer is unable to free himself from a drug or alcohol dependency. The overall combined effects of this dependency is greatly dishabillitating.

According to the results, at least two types of alcohol-abuse programs should be designed and implemented. One program should treat the chronic alcoholic and would include access to an in-resident facility, and another program would treat the serious problem drinker. A third program for the less serious but still potentially dangerous probationer should also be considered, and could be included in the Department's overall groupwork program.

There are two other areas that will be presented for consideration. The first is the extremely large percentage of cases classified as requiring Intensive Supervision (IS). There are several possible explanations for this result. The most obvious is that perhaps the parameters are not strict enough in the classification system and that actually many people who are classified (IS) are not really a serious threat to the community and in need of multiple services. Arguments to the contrary are more likely. That is, it is highly possible that a greater number of probationers should be categorized IS when we fully consider our objectives of reintegration and accountability (control).

The most probable explanation for the high percentage of IS cases is that the types of individuals placed on probation in terms of severity of behavior and need for services has increased considerably. Seemingly, less and less people are being incarcerated and probation being used as a dispositional alternative in a wider range of cases. A recent departmental study supports this assertion. The report, "Analysis of Felon And Misdemeanant Population Places On Probation (1966-1973)"[2] shows a consistent increase in the percentage of felony cases received by Probation each year in Suffolk County.

Thoughout the years 1966-1969 only five (5) out of every 100 individuals placed on Probation were convicted felons sentenced to Probation. However, this percentage almost doubled in 1970 and has averaged well over 10% of all new cases during 1971-72-73. In 1969, thirty-eight (38) individuals were placed on Probation because of felony convictions whereas in 1973, two hundred forty-one (241) new probationers were convicted of felonies. In 1972, the total felony population represented 12.5% of the total population received by Probation as compared to 5.2% in 1969. In 1973, the total number and percentage of felony cases leveled off somewhat but 1973's overall rate represented a 115% increase over 1969. Thus, in 1973, 11 out of every 100 cases received were placed on Probation as disposition to felony convictions as compared to 5 out of every 100 cases in 1969.

At the same time, the greater use of ACOD, Unconditional Discharge, Conditional Discharge and plea bargaining result in the elimination of the less severe cases from probation. This reduces the percentage of individuals requiring minimal or normal supervision and increases the overall percentage of IS cases. Therefore, the large percentage of cases requiring (IS) Intensive Supervision services (49%) is supported by independent departmental studies. Clearly, the current population of probationers requires more varied services and greater accountability than previously documented.

OPERATIONAL FEASIBILITY

The results show that the number of cases requiring (IS) Intensive Supervision in Suffolk County is quite large and diverse requiring a variety of services. Also, the percentage of (IS) and (NS) Normal Supervision cases are not equally dispersed according to resource allocation under the present system. A differential classification system seems warranted for

for the most efficient utilitzation of Probation resources. However, there is disagreement regarding the operational feasibility of any differential classification system for the supervision of Probationers.

No one seems to dispute the conceptual desirability of differential classification system but some administrative as well as line personnel question the amount of flexibility actually possible under an operational design.

One commonly expressed opinion is that most operational designs currently being proposed involve quantitative control measures, such as number of contacts per month rather than measures assessing quality of services. It is suggested that the proposed approaches stressing numbers, that is, quantity of contacts deemphasize the need for quality of services and has an overall debilitating effect on program development.

Those favoring quantitative measures insist that objective criteria such as number of contacts per month, etc., is necessary in order to insure the quality of service needed. Without quantitative administrative control and accountability, many claim that Probation runs the risk of providing inadequate, inconsistent services. Subjective and discretionary program interpretation program development and service delivery would result in inconsistent programs of questionable value, they argue.

The results of the San Francisco Project[3] reveal that the mere reduction of caseload size or increase in monthly case contacts is of little relative importance in reducing anti-social behavior. However, results from the Community Treatment Project (CTP) of the California Youth Authority,[4] illustrate that qualitative program improvement can produce significant changes in behavior. Thus, it appears that the development and implementation of comprehensive service programs is the most important consideration and not number of supervision contacts.

The need for accountability and insuring consistency of probation services in undisputable. However, a differential treatment classification system can only be effective if it is a dynamic flexible system completely responsive to the needs of the client population. Therefore, quantitative requirements and control measures must yield to the qualitative assessment of the supervision process. Assessment of the appropriateness of a treatment plan, goal establishment and achievement, use of appropriate resources, effectiveness of a particular program within time limitations are all more difficult to quantify as an objective measure of performance but are considerably more valuable in terms of accountability and program standardization.

SUMMARY

This paper reports the results and analyzes the implications of a study conducted in Suffolk County that documents the major behavioral dysfunctions of adult Probationers according to a differential treatment classification system. The highlights include the identification of an "alcohol-abuse" Probation population almost as large as the "narcotics-abuse" population. Both dysfunctions require comprehensive programs including immediate access to detoxification facilities for the alcohol-abuse population.

The study also identifies an extremely large number of Probationers in need of multiple services and intensive supervision. This finding is supported by an independent departmental study which reveals that the number of felons sentenced to probation has increased dramatically since 1969. The need for more comprehensive programs, more efficient use of probation resources and greater accountability of probationers is fully recognized.

Finally, opposing views regarding the feasibility of an operational differential classification system are presented. It is suggested that program accountability and administrative control must now be realized through qualitative measures of type, intensity and effectiveness of programs rather than by quantitative controls.

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Probation Revocations: The Law and The Decision
An Aspect of Supervision Effectiveness

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I. INTRODUCTORY STATEMENT

The Supervisory Probation Officer,[1] as a practitioner in the Criminal Justice System, has ample opportunity and responsibility to exercise discretion in the performance of his duties. Regardless of the statutory requirements, probation is not always automatically revoked upon a violation of the law or probation rules by an offender. Similar to the invocation of the criminal process (arrest) role of a police patrolman, the probation officer in effect decides whether or not to reinvoke criminal proceedings.

The primary factors warranting and often necessitating such discretion are the probation clientele, the institutional goals and demands, plus the probation officer's working environment. Politics and the community are also related and influential.

A probation officer's discretionary nature, as to performance of duty, is functionally related to equalized allocation of justice, negative law-making, systems maintenance, and the American Judiciary System.

II. A CRIMINAL JUSTICE DILEMMA

A central recommendation of the President's Commission on Law Enforcement and the Administration of Justice emphasizes the value of community-based treatment of offenders. The experts agree that, "The task of corrections therefore includes building or rebuilding solid ties between offender and community, integrating or reintegrating the offender into community life -- restoring family ties, obtaining employment and education, securing in the larger sense a place for the offender in the routine functioning of society."[2]

Only this consensus is recent however. The concept of community corrections in America has existed since the innovation of probation in 1841 and parole in 1876. The widespread use of probation and other community-based programs may be viewed as a dilemma. The public quite obviously does not see the role of corrections in the same vein as do the criminal justice experts.

The public, even though perhaps concerned about correcting offenders, demands and fears for its protection from criminals. Such an attitude is not unfounded. One must simply look up the recidivism rates or read most any daily newspaper. Expecially people residing in urban areas are not unjustified in their apprehensions.

How is this dilemma of criminal correction and public protection resolved? Who is the client; the probationer or the community? It must be remembered that the probationer is a peace officer, as responsible to the maintenance of the law as is a police officer.[3]

The Federal Probation Officers' Association has endorsed the following two-fold function of the Probation and Parole Officer: "The primary objective is the protection of society through the rehabilitation of the offender."[4] It can readily be seen that the probation officer is charged with the responsibility of protecting society and helping the offender. This is perhaps the most common rationale, yet it is not the only professional view. In a fairly recent study for the U.S. Department of Health, Education, and Welfare, the preceding ideal is regarded as "tired rhetoric." The probation officer is to serve as a social worker who is committed to an ideal of service to the offender. His function is to focus on the needs and problems of the probationer in an effort to help

the offender better understand and deal with himself and his troubles. The rationale here is that, "Service for the offender in the present is regarded as service to the community in the long run in that a socially and psychologically adjusted individual better assures a productive and law abiding citizen."[5]

Despite these professional ideals and standards, the probation officer in reality has a difficult task in providing service or protection for the individual offender and/or the community. This is so because of heavy caseloads in the probation field. The National Council on Crime and Delinquency has recommended that the caseload size be controlled at 50,[6] yet in many jurisdictions the caseloads double and triple that figure. In 1966 the average size of probation caseloads was 103.8.[7] As a consequence, most probation officers have time only for crisis intervention. Service most often depends upon the implied presence of the probation officer rather than actual supervision.[8] This is very much akin the situation management role engaged in by policemen. The probationer, like John Q. Citizen, is aware of the implied presence. An officer, be he police or probation, can appear at any time, and this, at least theoretically, provides restraints on deviant behavior. For the probationer, this implied presence is helpful in either direction as it likewise offers supportive authority.[9]

Simply taking into consideration the probation officer's professional ideals and workload, one can determine that the officer functions under a significant amount of pressure in an often paradoxical situation. Ideals sometimes cannot be strictly maintained in reality settings. Bringing probationers and society into mutual accommodation under generally strenuous circumstances is not an easy matter. This task cannot be accomplished to the extent of effectively serving both the client and the community without responsible discretion of the probation officer in his performance of duty.

III. THE REVOCATION OF PROBATION

There are two sets of criteria upon which revocation of probation is initiated. If a probationer commits a new offense,[10] revocation is warranted and is usually automatic.[11]

Revocation can also be recommended by a probation officer when a probationer is out of control and violates his conditions. These conditions are rules set by the court in addition to the legal statutes. The professional ideal of differential treatment requires that these rules be tailored to the needs of the case and of the particular offender.[12] Often the procedure followed is judicial acceptance of the pre-sentence investigating probation officer's recommendation[13] concerning the conditions which seem indicated in a specific case. Certain general guidelines are routinely imposed[14] and are augmented by the specific rules.

Even though subjected to certain conditions in addition to the law, probationers are not without legal safeguards. In the majority of states, a hearing is mandatory or recommended before probation is revoked.[15] Such is indeed the law in New York State.[16] The U.S. Supreme Court decision in the case of Mempa vs. Rhay provides that the probationer must have counsel at the revocation hearing.[17]

In some jurisdictions the offender loses no civil rights if he is sentenced to probation. In others, if civil rights are lost, restoration is granted upon the successful completion of the term of probation.[18]

Actually, the question of the conditions that may properly be attached to supervision has been accorded relatively little attention by the courts. The requirements that a probationer should remain in the jurisdiction, retain employment, support his dependents, avoid associations with criminals, report to his officer, and obey the law all seem reasonable enough. Yet restrictions such as

a prohibition on marriage and installment purchases without the consent of the probation officer, total abstinence or of avoidance of places where alcoholic beverages are sold, of attendance at church and other unnecessary and excessive intrusions[19] upon the probationer's private life may be unreasonable and undesirable. Such rules may be questionable as effective or beneficial correctional treatment. A final consideration of the validity of the probation rule is whether they are just in accordance with our society's concept of fair play.

The law does not stipulate that discretion be employed by probation officers regarding application of the law or probation rules. Probation officers have informed this student that the rules are to be used as a tool to help control and rehabilitate the offender.[20] The conditions of probation are not meant to be utilized as a threat or punishment. Rather, they serve a purpose similar to that of a policeman's arrest power. They are available for societal maintenance and situation management if the case so requires.

The implications of such an application thus presents us with a probation rules - law enforcement model like that designed and explained by Joseph Goldstein.[21] As in police work, within an area of potential full enforcement (of the probation conditions), there is an area of no enforcement. To the extent that full enforcement is feasible, decisions are made not to enforce certain violations, leaving the subsequent rather small area of actual enforcement. Therefore, an outer limit of probation rules enforcement exists, and this depends largely upon the probation officer's visibility of his charges. The implied presence of the probation officer cannot insure law or rules enforcement. Consequently, behavior perhaps making revocation desirable often simply goes unseen by the probation officer.

IV. THE PROBATION OFFICER'S DISCRETION

Now that the rules and regulations governing the revocation of probation have been discussed, we can proceed to the more central issues of when and under what circumstances should probation be revoked. If we take but a few moments to consider the multitude of laws, plus often several special rules per client, and multiply this times a probation officer's caseload number, we can see the impossibility of supervision from an enforcement position. I again draw a parallel with the police; full enforcement of the law is unrealistic and in fact impossible. So too with the probation officer, who, in addition to seeing that his client obeys the laws and conditions of probation, must counsel on personal planning and assist with employment. The probation officer must work with the offender's family and usually in co-operation with other community services. Therefore, surveillance is not the primary function. Casework and counseling are the most important aspects of probation work.[22]

Probation officers, as mentioned earlier, work on a crisis intervention[23] basis because of heavy caseloads. This fact also mandates the employment of discretion in most situations and cases.

What in effect influences this discretion and decision-making? This author suggests that it is more complex and consequential than it might seem. Mistakes in probation, as do errors in other criminal justice agencies, encourage criticism and even verbal abuse from the public and other authorities.

Insofar as we believe humans are unique individuals and deserve differential treatment, the foremost critical decision influences the entire probation relationship. Do we provide service to or control the client? Or do we attempt to provide a happy medium if such is feasible? This decision originally hinges on the probation officer's resolution of the problem of self-determinism in his work with

offenders. Extreme types of probation officers have been identified: the punitive officer and the "sympathetic slob."[24] The punitive officer is control oriented and has been referred to as a policeman. He protects society against the criminal and constructs an authoritarian relationship which demands overt respect from the probationer.[25] It can be seen that at this extreme the officer restricts interaction between himself and the offender to "areas specifically relevant to his supervisory objectives in controlling the offender's behavior."[26]

At the other extreme, the "sympathetic slob" officer vehemently denounces the use of authority. This officer "passionately pleads the cause of client self-determinism and often, consciously or unconsciously, becomes a co-conspirator with the client against the sanctions of society. This officer fails to accept reality, which results in the blind leading the blind and both falling into the ditch."[27]

Amid these two extremes is the elusive idea. Professionally defined as the Protective Agent,[28] this is an officer who is concerned with the quality of the relationship he establishes with the offender. At times he assumes the role of the policeman. At other times he takes the role of a friend, brother, or father and extends sympathy and help to a man in trouble.[29] The important aspect here is that the Protective Agent does not cling to one or another pole of activity. He is flexible and capable of joining sides with the client if the offender is in the right. He can also respond with discipline and disapproval if the probationer's behavior requires such. To sum up in terms of service to or control of the client, the discussed roles are ideal types (models). Each is as difficult to define as is what constitutes the average or typical probation officer. Yet these typologies are factors to be aware of when we evaluate any particular officer's behavior in a given case. Likewise, the importance of an officer's awareness of his own role definition should not be overlooked or understated.

Although generally not visible or of great concern to the public, a probation officer has institutional forces influencing his decisions. The working relationship that a probation officer maintains with other actors in the criminal justice system is vital to the successful completion of his assignment. George F. Cole has stressed the important notion that criminal justice is determined though bargains and exchanges among the practitioners in the criminal justice system.[30] The criminal justice professional bureaucracy is designed such that any particular practitioner, despite his ideals and ethics, cannot accomplish his goals without co-operation with other participants in the process. The police and probation agencies often depend upon each other in the gathering of information about an offender.[31] At the prosecution stage, probation officers are very frequently part of the group decision in the plea bargaining transaction. Furthermore, as agents of the court, probation officers work closely with judges by recommending sentences of and conditions for probation. A breakdown in these relationships obviously hampers probation service. Beyond the courtroom, probation services work with both corrections and parole authorities by supplying reports and recommendations.[32] Related to, but not part of the formal criminal justice structure, are the community social services. Co-operation is mandatory here as specialized service may be required in various cases (i.e. mental illness, welfare, juvenile, physically handicapped, among others). In short, a probation officer has to work with a professional caseload as well as a client caseload in order to achieve successful probation.

A related consideration to the above is the probation officer's role in systems maintenance. A probation agency needs clients. Probation officers recommend probation. Sentencing is the judges' discretion and responsibility. The probation officer who supervises clients must not make the system drag or fail because of excessive revocations. This tends to make the system look bad and might cause judges to demonstrate a decline in probation sentencing. To maintain probation itself as well as its role in the larger criminal justice system, cases must be worked through to a successful conclusion. Probation failures

invite criticism and non-legitimation of the system. Needless to say, the entire criminal justice process then suffers. Therefore, probation officers desire to preserve their jobs and status in addition to providing service to their clients and the community.

The equalized allocation of justice is and/or should be the purpose of every practitioner in the system. Probation officers must be aware of this ideal when deciding to initiate revocation proceedings. The professional supervision ideal again is differential treatment. In other words one offender's probation could be revoked for a given violation while another's is not. Clearly, it is here we have the most obvious situation in which discretion is employed. The other variables in the case, plus progress made to date serve as the major determinants of this decision. This notion of equal allocation of justice must be resolved by each officer as it must also be by the judges. Justice has no clear-cut defined guidelines that are applicable in every single case situation. In effect, it often comes down to the personal and professional ethics and conscience of the man making the decision. He pledges his allegiance to the system but at the same time must also be true unto himself.

In conclusion, the discretion of the probation officer turns on several variables. All are either consciously or unconsciously considered in the decision-making process. The sad fact may be that the institutional consideration carry greater weight in most circumstances than do the needs of the offender and the goal of his rehabilitation.

V. REVOCATION DECISION-MAKING

Probation, as do other agencies in the Criminal Justice System, employs decision-making guidelines. These ideal types are based on the popular public administration theories and models.[33] The bureaucratic administrative needs may be solved in addition to the making of solid personal decisions while in an organizational context.

For the most part, literature discussing decision-making in probation was relevant to the pre-sentence investigation and the decision as to whether to recommend probation for a particular offender. However, this writer's concern is with revocation decisions and little has apparently been written on this specific function.

In an article on probation revocation, a chief probation officer speaks about the disparities in revocation decisions.[34] Critical variables such as whether or not the violation was a minor infraction of the rules, a felony, or a misdemeanor are considered. The reality of the conditions of the probation as well as whether the violation was deliberate must be taken into account. The point is that revocation should serve a constructive purpose. To quote the article: "A plan should be formulated that is in the best interests of the probationer, his family, and the community. Little is gained where the court disposition is for the sake of punishment only."[35] To set forth criteria for determining when and under which circumstances to revoke probation, and to assist the officer in making recommendations to the court when a probationer has violated his trust, summary of the guidelines for revocation is presented.[36]

Many items in a 1965 study[37] survey questionnaire are relevant to revocation decisions. This material was beneficial in that it concentrated on the desirable location of practice decisions in a probation agency. The advocates of these decision locations are executives, branch chiefs, supervisors, and training leaders in the New York City Office of Probation. Briefly, the study findings indicate

that in 70% of the practice situations and work relationships posed by the questionnaire items, a majority of respondents advocated that the probation officer be free to make case decisions in accord with his own judgment of the case situation. In 25% of the case situations the respondents advocated that the probation officer be bound primarily by the direction of his superiors or other officials, rather than his own case judgment. In only 5% of the case situations was there extreme disagreement among agency respondents on the appropriate location of case decisions.[38]

The data from the above study along with other literature on probation decisions suggest that the probation officer enjoys a high degree of autonomy as a practitioner. The author's conclusion here is that, despite numerable influences and pressures on his working behavior, the individual probation officer's discretion is largely legitimated by the courts and the probation organizations themselves.

VI. CONCLUDING COMMENTS

The probation officer's discretionary function has a significant impact not only on the probationer, but the entire American Judiciary System as well. If and when a decision to revoke probation is made, the offender returns to the court. The police may be involved for custodial purposes or perhaps as initiators of the criminal process if new crimes were committed. The district attorney's office again becomes involved either to prosecute a new case or participate in the probation hearing. Eventually, the court, and the probation agency may pass the offender over to the responsibility of the corrections officials. Ultimately, the offender may have contact with the parole authorities.

Consider the implications of this potential impact. It need not be documented that penal facilities in America are full to overcrowded. Were not probation services functioning and achieving success, the housing of offenders would be a sheer impossibility. More than half of the adult offenders in correctional caseloads are on probation. In 1965, there were 684,088 (53%) persons on adult probation as compared with combined adult institutional and parole caseloads of 598,298 (47%).[39] Approximately 75% of all convictions result in probation.[40] It costs ten to thirteen times more to maintain a person in an institution than it does to supervise him in the community.[41] The cost of probation here in New York State averages about $600.00 per offender per year whereas incarceration in a penal institution costs in the vicinity of $9,000.00. These figures alone demonstrate the vitality of sound decision-making in probation practice. Revocation may be the only choice an officer has in certain cases, but actually, as a practice, it defeats the purposes of probation. In short, a large amount of probation revocations would more effectively knot up the already congested courts and correctional facilities.

A second major observation that might be drawn from this paper is that probation officers, like policemen who overlook or decide not to arrest for a certain offense, engage in negative law-making. Each time an officer decides not to revoke probation even though the law or conditions have been violated, negative law-making occurs. This writer is not contending that this is improper behavior; only that it exists. In effect, the officer takes the law into his own hands, deciding what applies and what does not to a particular offender. This informal power is related to the American Judiciary System because, when it occurs, the probation officer is assuming the role of the policeman, the prosecutor, and the judge in addition to his own specified function.

Furthermore, the probation officer's revocation discretion reaches outside the formal Criminal Justice System. In addition to the exchange relationships and institutional needs within the system, politics are involved. It is here where funding gets appropriated for correctional services. Probation again costs about one-tenth that of incarceration. If probation works, costs are less, and the politicians have to answer less often to the public regarding taxation. In sum, revocations result in greater costs. Therefore, the politicians have a stake in probation other than their legislative responsibilities.

The community also is often subject to the impact of the probation officer's decision. It is true that there are situations when revocation benefits the community. Generally speaking, however, the total social situation can better be handled in the community. Working with the offender and his family is more easily accomplished here. Vernon Fox points out that it is more effective to work with social relationships than to sever them when the objective is to assist the offender to adjust to his social environment.[42]

The ultimate conclusion drawn from researching this paper is that without the informal discretion availability and utilization on the part of the supervisory officer, probation could not effectively function. This student has little doubt in his mind that decisions not to revoke probation are responsible for its 60% plus success rate.[43]

Even though probation has been said to be the most successful phase of the correctional process,[44] this author believes that in the final analysis, objective criteria for making revocation decisions are difficult to pinpoint and evaluate. Perhaps it all comes down to the rather simple matter of the probation officer deciding whether or not he thinks he can work with the particular offender. Notwithstanding all of the internal and external factors discussed, the human relationship may be the variable most crucial to the accomplishment of probation goals.

In view of all the above findings we must now question ourselves as to how we can best utilize and benefit from that information which has been gathered and digested. Are there innovations or implementations that may be feasible and productive for all parties involved with probation services?

This student believes that one of the answers lies with the recruiting of new personnel. Possession of a college degree or the capacity to pass a civil service examination do not necessarily guarantee that the prospective probation officer is a qualified, or capable of learning to become, a skilled decision-maker. It is respectfully suggested that methods of screening, testing, or other types of evaluation might be developed which could filter out candidates who appear to lack basic decision-making capabilities.

Beyond recruiting, perhaps the most realistic method of developing desirable probation officer ideals and attitudes would be via an initial and on-going training program. The existing in-service education, if necessary, could be restructured to include the role and responsibility of sound decision-making. The function and far reaching implications of discretion sould be thoroughly stressed by the instructors and well understood by the trainees. The topic of revocation might also be accorded more regard than the available literature indicates it has been given in the past.

A further beneficial implementation might be a review of both exceptionally good and bad decision if criteria for determining such can be established. The whys and wherefores of significant decisions could be provided for all probation officers through printed materials from the training officer or relayed through discussions during staff meetings.

Finally, provisions for requesting up-to-date research would certainly be in order. Merely this brief study has demonstrated to this student that this topic has room for academic investigation which would likely yield additional rewards.

The above suggestions certainly do not constitute a program which would

eliminate mistakes of judgment and erroneous decisions. However, with an increased focus on these topics during training, along with practice, review, and research, it appears hopeful that probation officers can be upgraded and offer even better services to their client, community, and organization than currently exists.

APPENDIX I

UNITED STATES COURTS CONDITIONS OF PROBATION[45]

It is the order of the Court that you shall comply with the following conditions of probation:

(1) You shall refrain from violation of any law (federal, state and local). You shall get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer.

(2) You shall associate only with law-abiding persons and maintain reasonable hours.

(3) You shall work regularly at a lawful occupation and support your legal dependants, if any, to the best of your ability. When out of work you shall notify your probation officer at once. You shall consult him prior to job changes.

(4) You shall not leave the judicial district without permission of the probation officer.

(5) You shall notify your probation officer immediately of any change in your place of residence.

(6) You shall follow the probation officer's instructions and advice.

(7) You shall report to the probation officer as directed.

The special conditions ordered by the Court are as follows:

APPENDIX II

COURTS OF NEW YORK CITY CONDITIONS OF PROBATION[46]

A person on probation may be required to observe any one or more of the following terms and conditions:

a. obey the lawful commands of his parents or other person legally responsible for his care;
b. keep all appointments with his probation officer;
c. attend school regularly or be suitably employed;
d. be home at night by the hour set by his parents or other person legally responsible for his care;
e. notify the probation officer immediately of any change in residence, school or employment;
f. remain within the county of residence and obtain permission from the probation service of the Court for any absence from the county in excess of two weeks;
g. answer all reasonable inquiries on the part of the probation officer;
h. avoid known criminals and persons of known disreputable or harmful character;
i. cooperate with the auxiliary services of the Court, including the probation service, in seeking and accepting medical/and/or psychiatric diagnosis and treatment, including family casework or child guidance;
j. submit records and reports of earnings and expenses;
k. contribute to his own support when financially able to do so;
l. spend such part of the probation period as the Court may direct in a Division of Youth facility, or other facility suitable and available to the Court and authorized by law for such placement;
m. attend a non-residential program of youth rehabilitation designated or approved by the Court or by the probation service;
n. take clinic or similar treatment for narcotic addiction at a hospital or other facility where such treatment is available if there is a record, report or other evidence satisfactory to the Court that he is addicted to the use of drugs;
o. refrain from driving a motor vehicle;
p. abstain from the use of intoxicating liquors.

Other conditions:

VIOLATIONS OF ANY OF THESE CONDITIONS MAY RESULT IN YOUR RETURN TO THE COURT FOR FURTHER ACTION.

APPENDIX III

SUMMARY OF GUIDELINES FOR REVOCATION[47]

1. Conditions of probation should be realistic and purposive and geared to help the probationer develop into a law-abiding, self-respecting person. They must be flexible in their application. Each case should be judged on its own merits - on the basis of the problems, needs, and capacity of the individual offender.

2. The probation officer should make certain that the probationer fully understands the limitations placed on him in the general and special conditions imposed by the court. Merely signing the "Conditions of Probation" form does not mean he has correctly interpreted each condition.

3. Violations of the conditions of probation do not necessarily reflect a poor probation adjustment. The conditions imposed may have been unrealisitc. Perhaps too much was expected in requiring some probationers to live up to certain conditions. The customs, feelings, attitudes, habit patterns, and moral and social values of the cultural group of which a probationer is a part should be considered in assessing his nonconformity of the conditions. Probationers differ in their ability to comply or conform. It is entirely possible we are imposing a standard of conduct which is realisitc for us but not for the probationer.

4. In offenses where a fine and/or restitution are being considered by the Court, the probation officer should explain in detail the defendant's financial obligations and resources in order that the fine or restitution imposed will be commensurate with the defendant's ability to pay. In too many instances an automatic fine or restitution is imposed without knowledge of the financial burden it places on the probationer and his family.

5. While I do not advocate revocation of probation merely for failure to keep appointments, to submit monthly reports, to observe a curfew, to remain within the district, I do believe that a generally unfavorable attitude and deliberate noncompliance with the conditions of probation and the instructions of the probation officer are grounds for revocation.

6. Although I believe that all convictions for new offenses should be brought to the Court's attention, it does not follow that probation should be automatically revoked. No violation should result in automatic revocation. It may be more beneficial to society, and also to the probationer and his family, to have him continue on probation than to sentence him to imprisonment.

7. Where a probationer is arrested on a new charge and is held in jail, I do not believe he should be regarded as a violator until he has been convicted. There is always the possibility of an acquittal. And we must keep in mind that in some local jurisdictions considerable time elapses between arrest and trial.

8. Lest the probation officer be guilty of usurping the power of the court, all unfilled conditions of probation - for example, not paying a fine or restitution in full by the terminal date - should be brought to the court's attention in advance of the termination date. Recommendations for a course of action should be included in the report.

9. To assist the Court at the revocation hearing, the probation officer should prepare a formal report containing details of the alleged violation, factors underlying the violation, the probationer's attitude toward his violation, a summary of his conduct during supervision, and his general attitude and outlook.

10. The probationer should be present at the revocation hearing. It would seem that the United States attorney and also counsel for the probationer should be present. But it must be remembered that the revocation hearing is not a new trial.

11. Where it is necessary to revoke probation, imprisonment should serve a constructive purpose and not be used merely for punishment's sake. In certain cases, particularly where an indifferent probationer deliberately fails to comply with the conditions of probation, it may be necessary to revoke probation so that the public - and other probationers too - will have a fuller appreciation for probation, and realize that the primary purpose of probation is the protection of the public, that the court means what is says, and that the conditions of probation are not to be flouted.

APPENDIX IV

STUDY QUESTIONAIRE ITEMS AND FINDINGS[48]

A. Advocacy of Autonomy for the Practitioner - 14 items

Item #1 - How often the probation officer should have to take into account the intense feelings of the District Attorney when preparing a pre-sentence or revocation recommendation (Great Consensus - 74 of 87 respondents said "Never" or "Occasionally").

#2 - How often the probation officer should have to seriously weigh the probable reaction of his supervisor before making a case decision, although he himself is convinced of what the case requires (Moderate Consensus - 63 of 87 respondents said "Never" or Occasionally").

#3 - How often the agency should encourage revocation in "borderline adjustment" cases when there is a good chance of publicity in the event of another offense (Great Consensus - 70 of 87 respondents said "Never" or Occasionally").

#5 - How often the frequency of case contacts should be determined by agency policy rather than the worker's conception of case needs (Moderate Consensus - 47 or 87 respondents said "Never" or "Occasionally").

#6 - How often the worker's case plans should consider what the newspapers could make of the case if it should blow up (Great Consensus - 74 of 87 respondents said "Never" or "Occasionally").

#8 - How often it is for the probation worker to find it necessary to get the opinion of his supervisor before making a touchy case decision so that he will be protected if anything happens (Moderate Consensus - 45 of 87 responsents said "Never" or "Occasionally").

#10 - How often the probation worker should have to take into account the informal wishes of agency administration as he works out a case (Great Consensus - 70 of 87 respondents said "Never" or "Occasionally").

#11 - How often the agency should expect that workers' decisions about a case be affected by the anticipated reaction of other probationers. (Great Consensus - 79 of 87 respondents said "Never" or "Ocasionally").

#12 - How often the probation agency should expect its workers to accomodate somewhat to the views of the Housing Authority on how a case should be handled when the Authority is involved (Great Consensus - 77 of 87 respondents said "Never" or "Occasionally").

#14 - How often the strong demands of the police should have to be taken into account by the worker when he is considering the possible return of a probation case to court (Moderate Consensus - 59 of 87 respondents said "Never" or "Occasionally").

#16 - How often the worker should be free to pursue that course of action which in his judgment is most likely to meet the probationer's needs even though the action may meet some opposition from community groups (Moderate Consensus - 54 of 87 respondents said "Always" or "Very Frequently").

#17 - How often the worker should have to consider the effect of bad publicity on the governing body which appropriates money to his agency when he is making day-to-day decisions (Great Consensus - 67 of 87 respondents said "Never or "Occasionally").

#18 - How often the worker should have somewhat less freedom than usual to conduct the case as he thinks is appropriate when school authorities become involved in the case (Great Consensus - 83 of 87 respondents said "Never" or "Occasionally").

#19 - How often the probation worker should be obliged by his agency to consider the reaction of institutional authorities while deciding whether or not to instigate commitment proceedings (Great Consensus - 72 of 87 respondents said "Never" or "Occasionally").

B. Advocacy to Restrict the Practitioner - 5 items

Item #4 - How often the worker should be allowed the freedom to advise his clients to reject or stall the claims of creditors when the worker's judgment indicates that it is advisable to do so (Great Consensus - 83 of 87 respondents said "Never" or "Occasionally").

#7 - How often the worker should be allowed to advise his client that, as far as the worker is concerned, the client is free to lie about his criminal background to a prospective employer if he chooses to do so - when the worker thinks the offender would have a better chance of getting and keeping a job (Great Consensus - 81 of 87 respondents said "Never" or "Occasionally").

#9 - How often the worker's decisions with clients should be determined by the agency's rules of probation when these rules are pertinent to the case (Great Consensus - 81 of 87 respondents said "Always" or "Very Frequently").

#15 - How often the probation worker should expect quite a bit of "heat" from his superiors if a sex or drug case blows up and the worker hasn't seen the client in two months (Moderate Consensus - 48 of 87 respondents said "Always" or "Very Frequently").

#20 - How often the probation staff should find it necessary to carry out all the special rules laid down by the judge on a case, regardless of whether the staff thinks the rules are right or wrong (Moderate Consensus - 64 of 87 respondents said "Always" or "Very Frequently").

pp. 175-198.

[16]See the State of New York, op. cit., 410.70/1ab, p. 121.

[17]Mempa vs. Rhay, 389 U. S. 128 (1967).

[18]The American Correctional Association, Manual of Correctional Standards (Washington: The American Correctional Association, 1966), pp. 276-277.

[19]Such as the condition that the defendant donate a pint of blood to the Red Cross as in Springer vs. United States, 148 F. 2d 411 (9th Cir. 1845). See Judah Best and Paul I. Birzon, "Conditions of Probation: An Analysis" in Carter and Wilkens, op. cit., p. 430.

[20]This student discovered no empirical evidence to support this contention. It is therefore suggested that such is reasonable informal practice.

[21]Joseph Goldstein, "Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice" in George F. Cole, Criminal Justice: Law and Politics (Belmont, California: Duxbury Press, 1972), pp. 59-80.

[22]This is a probation institutional point of view. See Fox, op. cit, p. 111.

[23]Supra, p. 4.

[24]Charles C. Lee, "The Concept of Authority in the Field of Probation and Parole," American Journal of Correction, March-April 1966, pp.26-27.

[25]See Piven and Alcabes, op. cit., pp.39-40.

[26]Ibid.

[27]See Lee, op. cit., p. 26.

[28]See Piven and Alcabes, op. cit., p. 40.

[29]Ibid.

[30]See Cole, op. cit., p. vii.

[31]This is primarily the case of the pre-sentence investigation function of probation. The police request information about offenders on probation suspected of further criminal activity. There is an on-going controversy concerning whether probation files should be accessible to the police in revocation cases.

[32]See Fox, op. cit., p. 110.

[33]This student has applied public administration decision-making criteria to the probation decision-making suggestions for relevance. Source: Felix A. Nigro, Modern Public Administration, 2d ed., (New York: Harper and Row, 1970), pp. 169-185.

[34]Eugene C. DiCerbo, "When Should Probation Be Revoked?" Federal Probation, June 1966, pp. 11-13.

[35]Ibid.

[36]Ibid., pp. 16-17. This summary is reprinted in Appendix III.

[37]Herman Piven and Abraham Alcabes, A Structural Model for Decision-Making In A Probation Agency, New York, 1965. (Mimeographed).

[38]Ibid., pp. 2-4. Since the majority of the questionnaire items are relevant to or indicative of revocation decisions, the author has reprinted them in Appendix IV.

[39]See U. S. Task Force on Corrections, op. cit., p. 27. Of the number on probation, 257,755 were felons.

[40]See Fox, op. cit., p. 104. Since probation is most frequently a one-time disposition and institutional caseloads are cumulative, with 63 to 68 percent repeaters in prisons, the actual count of the case load on probation at any given time would drop to about 53%.

[41]Ibid.

[42]Ibid., pp 104-105.

[43]Ibid., p. 105. Some jurisdictions claim up to a 90% success rate.

[44]Ibid., p. 119.

[45]United States Courts, "Conditions of Probation" in Carter and Wilkens, op. cit., p. 406.

[46]Office of Probation for the Courts of New York City, Form 20-6, Conditions of Probation, Reporting Instructions, and Reporting Schedule. For comparative purposes, note that these conditions are set for juvenile probationers.

[47]See DiCerbo, op. cit., pp. 16-17. This summary is a direct reprint from the article.

[48]Herman Piven and Abraham Alcabes, A Structural Model For Decision-Making In a Probation Agency, New York, 1965, pp. 2-4, (mimeographed).

An Examination of Manpower and Recruitment Problems in Probation and Parole

James M. Fleming

In the late 1960's, as the nation seemed to be erupting in riots, assassinations, and other mainifestations of violent crime, and when "law and order" had become as certain a campaign slogan as "motherhood and apple pie," obvious stress began to show in the criminal justice system. It soon became apparent that increasing the manpower and the firepower of the police was a very short term solution to the problem, which created more serious problems for the stages of prosecution and rehabilitation which were supposed to follow arrest. Systems which for decades were not very much in the public eye, and had "gotten along" were actually in danger of breaking down, due to a manpower shortage, and due to decades of benign neglect in terms of budget priorities and national disinterest. Agencies of probation and parole were far from exempt from these problems. In 1970, the Joint Commission on Correctional Manpower made the following announcement: "On the basis of published worklead standards the field of corrections is at present deficient to the extent of about 25,000 parole and probation officers and institutional caseworkers and classification personnel."[1] Since the responsibilities of these positions demand high professional standards in terms of ecuation and experience there have been no instant solutions. Despite a willingness on the part of the government to provide funds for staff, the shortages remain.

> More than half of the 94 agencies reported having difficulty in recruiting probation and parole officers. Twenty-five cited difficulty in being able to attract competent managerial and supervising personnel; ten percent noted it was difficult to recruit trained research personnel. Significantly, only 20 of 94 agencies claimed to have no recruitment problem.[2]

One of the basic problems is in the recruitment standards. "Social work is the formal training that probation/parole executives strongly advocate as qualification for probation/parole practice."[3] In terms of supply and demand, the demand for social workers, not just in corrections, but in the entire field of human services far exceeds the supply. If probation and parole agencies expect to meet their needs they will not only have to become more competitive with all of the other agencies seeking social workers, but they will have to take steps to increase the manpower pool by encouraging more parole to study social work. They must also face up to the statistics which predict that there will never be enough social workers to satisfy their needs. Eventually they must re-evaluate their needs and investigate the possibility of using other manpower sources.

In probation and parole, as in any other phase of government or industry, it is necessary to define the qualifications needed for a job before any segment of the population can be nominated as a manpower resource. "The process of matching individuals with organizations typically begins with the organization's definition of its needs in the form of job description and job requirements."[4] The National Council on Crime and Delinquency provides the following list of minimal requirements:

> The following are basic and irreplacable requirements for work in the probation and parole field: emotional maturity; integrity; ability to establish effective interpersonal relationships; a firm conviction of the dignity and value of the individual; belief in the capacity of people to change; genuine interest in helping people; intellectual depth; mature judgment

> wide experience and the ability to learn from it; continuing interest in improving professionally; and a basic respect for the legal base upon which our society rests.[5]

These standards, while important, are very difficult to indentify in an individual. For the purpose of identification and standardization, the council provides these additional guidelines as preferred qualifications: a Bachelor's degree with a major in social or behavioral science and courses in deliquency and crime; and a Master's degree in social work, or social or behavioral science.[6]

The standards of the Masters in Social Work degree for probation and parole officers is well established, but I have already referred to the problem of scarcity that this standard entails. Some 1969 statistics lend focus to this problem.

> The National Center of Education Statistics in the Office of Education [reports] that there [were] 3,880 Master's degrees in psychology and 4,280 Master's degrees in social work conferred in 1969. If corrections had recruited all of the master's degree psychologists and social workers graduating from colleges and universitites throughout the United States in 1969, it would still [have been] 8,423 persons short of the numbers recommended by The National Council on Crime and Delinquency study.[7]

Of course, if corrections were to recruit all of the graduating MSW's we would be working under "best case" conditions. This is not what is happenning in reality, however. Based on a study of 1968 and 1969 MSW graduates, probation and parole recruit only 6.8 percent, which is the vast majority of those social workers who enter the corrections field. If this rate of recruitment remains constant, and the demands for P.O.'s continues to grow at the present rate, probation and parole can expect to fill only five percent of their projected manpower needs with MSW graduates.[9]

Probation and parole must face some harsh realities if they expect to compete for qualified social workers. The first is the number of areas of employment open to social workers: public assistance; family services; noninstitutional child welfare; schools; social work; rehabilitation services; medical social work in hospitals; medical social work in other settings; psychological social work in hospitals; psychological social work in other settings; services to the aged; group work; community organization; social work and recreation.[10] Secondly, virtually all of these areas rank higher than corrections as a preferred work setting. Thirdly, the majority of graduating social workers are women, or members of minority groups who have been discriminated against in the field.[11] Finally, not all of the graduating social workers can be considered qualified, since very few have done field placements in a correctional setting.[12]

Some of the solutions for dealing with the competition for social workers are more obvious than others. If the MSW degree is truly the most critical qualification, positive steps should be taken to recruit women and minority group members. This is being accomplished by other government agencies, and in industry. Additionally, efforts should be increased to attract those social workers who have experience in the areas organizationally similar to corrections— public assistance and welfare.[13] This technique can present problems however. Besides the question of ethics involved in robbing other agencies of their professionals, there is no guarantee that these people will function as well in a new setting.[14] One effective alternative is to recruit people with an interest in corrections, and later sponsor their advanced university training.[15]

Other solutions cannot be attempted by individual agencies, but call for large scale committment by state and federal governments working in cooperation. The first of these is the provision of funds to universitites, to provide expanded faculty

and facilities, and provide scholarships to individuals, as an incentive to pursue social work. Under this plan, even if corrections continued to recruit only 6.8 percent of the graduates, it would recruit an increasing number. The second plan would be to distribute funds in such a way that only programs likely to produce probation and parole officers would expand, thus increasing the percentage and the number of expected new recruits. The third possible plan would involve blatant intervention in university affairs, and personal choice. It would call for setting "fair share" quotas in the distribution of placements and training concentrations, to assure the needs of corrections would be met. In fact, this would solve the problem of competition in the social work market, by inflicting strict controls on the supply factor. This plan assumes that people who chose social work would resolve themselves to working in any phase of social work, even though not in a preferred setting.[16] This theory also assumes that government can plan a demanding role in educational policy, and that the result would be more fair than the present pattern of distribution under which probation and parole agencies are forced to accept such a small percentage of annual graduating classes.

> Training patterns have direct consequences for recruitment. Social work education should therefore be expected either to establish rational priorities of training need or to produce an approximate fair share of graduates for each practice field. Those who influence educational policy through funds and other means should take into account the maldistribution of professionals now available to the various fields.[17]

In the face of the severe shortages of manpower now facing some agencies it is likely that even if the circumstances involved in recruiting MSW's improved, the entire problem would not be solved. Although it may seem logical to attempt to find other sources of manpower, this course cannot be pursued without anticipating criticism from knowledgeable and powerful sources. The groups which endorse the degree of Master's in Social Work as ideal training for P.O.'s include: The NCCD; The Special Task Force on Correction Standards; The United States Children's Bureau; The Federal Probation Officers' Association.[18] A poll of each of the following groups revealed that a majority of each endorsed social work training for probation and parole officers, as well: college presidents and department chairmen; directors of clinical psychology; directors of psychiatric residency; directors of crime and delinquency centers; executives of correctional institutions; and executives of law enforcement agencies.[19] When these groups call the MSW ideal training, what are they saying? Actually they are calling for someone whose education completely prepares him for all phases of his job. The effects, in terms of "selection ratio," are these. "With very high requirement levels and unfavorable selection ratios, high recruiting costs may lead to the selection of "ready-made" (candidates) with little further effort required in testing, training, or performance appraisal."[20] Despite all the endorsements, there is reason to suspect that present standards are not only unrealistic in terms of numbers, but they may also have no basis in fact.

> In corrections, the problem is not that there are no standards or too few, rather the problem is that there may be too many standards, established by different standard-setting agencies without reference to objective criteria. Furthermore, standards set many years ago are not now geared to a radically changed manpower market.[21]

The possibility of hiring people with training in areas other than social work changes the perspective of recruitment completely. First of all, even those who subscribe to the strictest of standards are willing to concede that there are other Master's degrees that might be of comparable value in probation and parole. These include the Master's of Public Administration for those in administrative rather than client service; also the new and expanding areas of corrections and

criminal justice degrees as well as those in psychology. However, again referring to projected manpower needs and projected graduations in these fields, use of graduates with these degrees will probably fulfill ten percent of the need.[22]

This seems to suggest that requirements will have to be lowered even further; and indeed, that is what is happening.[23] If the hiring standards are lowered, the problems of effectiveness and professionalism must again be considered.

> Recruitment has an impact on the quality and effectiveness of any organization. If selection leaves the initial quality of the lower participants "low" (very different from that required by the organizational roles they are expected to carry out, or very different from the end-state the organization is supposed to produce in them), then the effectiveness of the organization tends to be low.[24]

Rather than accept low standards and lose effectiveness, probation and parole must rely more heavily on their ability to train. This may, in the long run, proove more effective and less expensive than relying on the attainment of the MSW degree to provide ideal training.[25] Training provided by the agencies will probably be more relevant to the specific job area. "Because correctional personnel will continue to come from a wide variety of educational and occupational backgrounds, corrections must take responsibility for the in-service training of new employees. In addition, changing perceptions of the function will necessitate the 'up-dating' of experienced personnel."[26]

The fact that the MSW graduate remains the publicly preferred degree has several negative ramifications on effective recruitment. First, it is slowing the development of effective training for the many people being hired with less than an MSW education, because these hiring practices are still regarded as temporary. Secondly, it has prevented agencies from considering other possible sources for their manpower pool, and possibly from developing adequate training on the university level with programs less demanding than and perhaps more relevant than the MSW.

> The preferred standards are not being met in the vast majority of correctional agencies today, and the projected output of graduate schools indicates that there is no possible way for them to be met in the forseeable future. Their continued existence, however, tends to have a dampening effect upon the whole correctional system and the educational programs which do supply manpower for the field. The widespread circulation of such currently unattainable standards detracts from the systematic growth and development of undergraduate programs in social science fields from which come the bulk of correctional personnel. While professing to prefer graduate degree holders who, in reality are not available, corrections has inadvertantly fostered and perpetuated a system where all manner of degrees have become equally acceptable.[27]

Thirdly, it has created the impression among those seeking Bachelor degrees, who might have an interest in the field, that there is no place for them; consequently they go elsewhere.

> The potential pool of correctional practioners is likely to be drawn from B.A. rather than M.A. graduates especially for positions in probation and parole agencies. (Persons with advanced degrees are more likely to seek research and technical positions.) Yet while this pool of undergraduate manpower does exist, many faculty members feel its potential is not being realized. These persons are being discouraged from entering correctional work by the published preferences for the graduate degree as an entering field level pre-requisite in probation and parole. All too often the master's

> degree is thought to be the only key that will open the door to the correctional field. The student with a B.A. then looks elsewhere.[28]

If college graduates are to be accepted into probation and parole agencies on a large scale, there should be some evaluation of how their contribution can best be utilized and how they can be used to compliment the available MSW's. By accepting people of differing educational fields and competencies, the wide range of tasks being performed by all P.O.'s must be reassigned differentially, according to demand. When only MSW's were being recruited, agencies could assume that all agents would be equal to any task. They may no longer have that freedom.

> "Task analysis of some degree of sophistication must precede decisions about educational level. Serious analysis done in systems similar to corrections suggests that work organizations tend to over recruit; that is, they tend to recruit at higher educational levels than necessary."[29]

The implication should not be that college graduates would be handicapped. In fact, if the role of the P.O. could be defined in terms of the "casework" approach, so that the amount of psychological sophistication required could be identified, the entire field would benefit whether this evaluation were linked to a reduction in the educational requirements, or not.

> If the probation officer is not called upon by definition to be a junior grade psychotherapist, he does not have to have a special education background in social work for full accreditation as a qualified probation officer. A broad understanding of the society, a thorough knowledge of available community resources, and above all, the inclination and ability to interpret his client's problems and enlist the aid of these resources, become the hallmarks of a good probation officer. A college degree or an A.A. after two years of college work are satisfactory as academic preparation provided the personal characteristics are present in the individual.[30]

If the role of the P.O. were examined and redefined to accommodate college graduates, it could be further redefined to accommodate paraprofessionals and volunteers as well, so each of these manpower pools could be used and the efficiency of the entire organization could be increased. This would necessitate the identification of each groups' responsibility by the agency, and the understanding and cooperation of each group.[31]

Under such a system, those holding Master's degrees, which we earlier predicted would be 10% of the work force, would pursue training and supervisory positions. They would also provide direct client supervision in the cases appropriate for their specialized training.[32] College graduates would assume the entry-level field positions. They could also provide some counselling and some supervision. More importantly, in a team system, they could deal with the other bureaucracies which so often confuse the lives of clients. In this way he could help the client find job referrals; file for welfare, if necessary; obtain health services; supplement his education; etc.[33]

Those with less education, the paraprofessionals, or community workers, would assume some of the counselling and personal support roles. They have been found to be more effective in these roles than those with more sophisticated educations.

> "The Manhattan Court Employment Project and many other projects within the field of delinquency and outside it, have found that counsel and assistance at this level can best be done by someone who has had the same experiences and been subject to the same pressures and who speaks the same language as the immediate client. Ghetto residents, including ex-offenders, who are selected and trained,

> have proved to have the capacity to relate to and motivate those who are still experiencing the stultification and alienation from the dominant society."[34]

This system could have positive effects on all levels of recruitment if a "career ladder" were part of the system. The agency and the workers would benefit from the structure.

> Also, it is possible and indeed desirable to structure "career ladders" in most of the fields which would be so stratified. This would not only provide career opportunities for staff but would insure that they are constantly upgraded through additional training and would help to provide a built-in manpower supply of persons with correctional experience moving into higher positions.[35]

Some of the problems in recruitment of probation and parole officers stem from the fact that these are not positions in the public eye. Many people are not aware they exist; many more are unsure of their responsibilities. In a public survey very few people stated they would recommend such a job to a young person because of the low pay, the danger involved, and also because of a basic distrust of the criminal justice system.[36] Efforts have been made to increase salaries and improve working conditions. Efforts can be made to increase public awareness, just as VISTA has undertaken a very successful education campaign. Overcoming the distrust that is based on the lack of success is a far reaching problem that cannot be swept under the rug. It calls for issuing a challenge to those who wish to see changes, and an atmosphere that will allow them to succeed.

If there is to be a national media campaign, it should be designed to influence those most likely to accept the challenge. It should be aimed at those whose interests match successful correctional workers; those who are interested in working with people and get a feeling of accomplishment out of service.[37] It should also take into consideration the time in a person's life when a career choice is made.

> Much effort and resources are probably wasted by directing appeals toward people at the inappropriate time or through ineffective channels. Existing studies show frequent changes of vocational interest between high school graduation and college graduation, and even subsequently ... In those professions with high visibility and rigid preparation, such as medicine, career decisions are made at a somewhat earlier stage. Among counsellors and social workers, it was found that theirs was a second career choice for the majority of the recent graduates and practitioners.[38]

Some agency policies are suspected of imposing barriers against people who could make a contribution in the field. Discrimination against women and minority groups has already been mentioned. There are additional barriers such as age, physical requirements, and some civil service criteria which have no basis in fact in determining the potential success of an individual as a P.O.

The requirement of many agencies that applicants be over twenty-five has greater ramifications than the obvious one of screening out those twenty-four and younger.

> Requiring that the individual be twenty-five or older is virtually certain to guarantee that the candidate will have tried another occupational area first and found that he is unsuited to it. More important, such policies automatically exclude from immediate appointment those persons who have been specifically trained for the correctional area as part of their university work.[39]

It affects the efficiency of the agency in another way. It makes offices of probation and parole subject to a large number of "generation gap" problems. As a large number of the clients are now young people, their hope of finding someone with whom they can

successfully relate will not only be diminished by the differences of race, class background, and education, but also by the fact that "only 26 percent of all correctional employees are under 34 years of age."[40]

Civil Service, while it provides protection from the problem of political patronage, brings with it another set of problems. Civil Service requirements sometimes disqualify people not because of lack of ability, but because of residence, physical description, examinations which are not always relevant, and because of the promotional patterns it imposes.[41]

Although creativity is important in a human service such as probation or parole, creativity is difficult to identify. There is some suspicion that creative people to poorly on standardized tests because of their reaction to the structured setting.[42] The use of the face to face interview as a hiring guide also tends to screen out the most creative people, in addition to introducing the biases of the interviewer into the evaluation. This practice permits undo consideration of such factors as personal appearance and the "intuitive sense of the interviewer."[43]

It would seem that the most reliable screening device is the probationary evaluation period. In this way, neither the employee nor the agency need be concerned about the differences between simulated and actual experiences. Both may be expected to make a decision with realistic expectations.[44]

One of the greatest barriers to upper-level as well as general recruitment is the lack of provision for lateral entry in the criminal justice system. The obstacles to lateral entry are the lack of uniform job titles and descriptions among agencies and across jurisdictional lines,[45] and the fact that by transferring from one jurisdiction to another a person has to sacrifice his accrued pension benefits.[46] Not only does this situation make the transfer of experience between systems difficult, it also discourages people who would normally expect to advance quickly through a system by allowing different agencies to compete for their services by offers of promotion or higher salary.[47]

The problem of retention is too closely allied to that of recruitment to be ignored in this discussion. In fact, there would not be so great a need to hire new personnel if so many did not leave. "Turnover among probation and parole officers and other specialists is excessively high. Nearly fifty percent of the persons working in these positions have worked in correctional agencies for less than five years."[48] Some of the solutions to the problem of turnover would make the job more attractive to new people as well as long-termers. The most obvious problem is salary. Among professionals "economic reasons" and low pay were cited by sixty-three percent of those responding to a Harris survey.[49] The other most often cited reason for leaving was the lack of opportunity for advancement, which can be linked to the earlier mention of "lateral entry."[50]

The area which I believe holds the greatest promise for solving most of the problems of probation and parole is the attempt by some agencies to work more closely with universities. Presently, universities and professional schools do not encourage students to pursue careers in probation and parole. Many schools do not have programs which would adequately prepare, or even acquaint students with correctional procedures. Ironically, universities and agencies could each gain enormously from cooperation. Among the greatest benefits for probation and parole would be an increased manpower pool.[51]

The best vehicle for forging this alliance would be the work study program, which could be patterned upon the WICHE program now in use in the Northwest. In that program, a dozen colleges and universities provide students with an opportunity to work for ten weeks during their summer vacations, receiving relevant instruction and experience working in hospitals and correctional agencies. The students are also provided with salary and/or credit hours.[52] One of the factors limiting the number of MSW's qualified to work in probation or parole is that less than 15 percent were able to do a field placement in a suitable agency.[53]

Universities, constantly in search of "relevancy" should welcome the opportunity, if more agencies made the offer. Both students and professors are aware of the shortcomings of the classroom and the textbook. Laboratory experiences are just as important to the social sciences as they are to the natural sciences. The agencies and the universities would share in the prestige that would accompany success in the application of the theories of behavior modification,[54] for instance. Probation and parole have long been chastised as maintaining practice without theory.

Students, in addition to earning salary or credit hours, would gain exposure to the realities of the situation that those in the field face regularly. This would decrease the problem of the frustration of new P.O.'s, fresh off the campuses, equipped with overly optimistic expectations and inappropriate sympathies without proper support and supervision. The agencies, on the other hand, would have the opportunity to observe and evaluate potential future career officers under actual field conditions.

In closing, I would say that this problem, like all of the others facing probation and parole today, cannot be solved until the agencies face inward to determine what they are doing, what they are supposed to be doing, and how goals can better be accomplished.

FOOTNOTES

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6) Ibid. pp.45-46
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10) Ibid. p.14
11) Newman, op. cit. p.44
12) Piven and Alcabes, Education op. cit. p.14
13) Piven and Alcabes, The Crises op. cit. pp.30 &ff.
14) The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Corrections (Washington, D.C. U.S. Government Printing Office, 1967) p.102
15) Ibid p.102
16) Piven and Alcabes, Education op. cit. pp.23 &ff
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18) Ibid. pp.20-21
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20) Bass and Barrett, op. cit. p.313
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22) Piven and Alcabes, The Crisis op. cit. pp.29 &ff.
23) Piven and Alcabes, Education op. cit. p.13
24) Newman, op. cit. pp.37038

25) Bass and Barrett, op. cit. p.313
26) Joint Commission, Perspectives, op. cit. p.113
27) Joint Commission on Correctional Manpower and Training, A Time to Act (Washington, D.C. U.S. Government Printing Office, 1969) pp.27-28
28) Ibid. pp.25-26
29) Joint Commission, Perspectives op. cit. p.49
30) Ibid. p.72
31) Ibid. pp.27-28
32) Ibid. p.43 Wallace, John A. "A Frank Look at Old Probation Standards" in Crime and Delinquency, 1o:42 (April, 1964)p.129
33) Joint Commission, Perspectives, op. cit. p.43, p.137
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34) Joint Commission, Perspectives, op. cit. p.72
35) Ibid. p.28
36) Ibid. p.121
37) Joint Commission, A Time, op. cit. pp. 14-15
38) Joint Commission, Perspectives op. cit. p.122
39) Newman, op. cit. p.40
40) Joint Commission, A Time op. cit. p.13
41) Joint Commission, Perspectives, op. cit. pp. 122 &ff.
42) Newman, op. cit. p.50
43) Ibid. pp.49-50
44) The President's Commission, op. cit. p.94
45) Joint Commission, A Time, op. cit. p.17
46) Ibid. p.17
47) The President's Commission, op. cit. p.94
48) Joint Commission, Perspectives op. cit. p.17
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The Juvenile Offenders Right To Bail

by

Charles Lindner and Nina Duchaine

Statutes governing juveniles provide for pretrial and predispositional detention under special circumstances. Case law, statutes and general correctional philosophy are fairly consistent in electing parole over remand to detention facilities in all but the most extreme circumstances. Judicial reluctance to make greater use of detention facilities is based on a sordid history of institutional abuses. In many jurisdictions, the mistreatment of children in detention has become chronic. Worse, however, is the experience of those juveniles incarcerated in adult detention facilities for lack of adequate juvenile facilities. Nevertheless, "...in the United States 93 percent of the juvenile jurisdictions have no place to detain delinquent or allegedly delinquent children except in a jail or a jail-like facility."[1]

To mitigate the impact of detention on certain children and to provide the court with alternatives, programs have been developed which allow for intensive supervision of the child in the community while awaiting court action. In New York City, for example, the Alternatives to Detention program of the Department of Probation and the Non-Secure Detention program of the Department of Social Services are instrumental to this goal. The Alternatives to Detention program enables the court to permit the child to continue to reside at home pending further court action while he receives intensive supervision provided through one of three programs. The day program provides a comprehensive supervision program from 9a.m. to 5p.m. for five days a week at a designated center. The night program is similar except that it is in operation from 5p.m. to 10p.m. The third program allows the child to continue at home but with daily contacts with a representative of the probation staff. Selection is individualized to professionally determined case needs.

The Non-Secure Detention program enables selected children to be housed in foster care and group homes as an alternative to institutionalization is diminished.

Concern for the detained juvenile is attributed to a number of factors. In addition to concern generated by the failings of detention facilities, there is general acceptance of a less punitive attitude in corrections to those of tender years. Furthermore, there is widespread recognition in New York State that the law provides greater latitude in detaining a juvenile than it does an adult. Although currently being tested by the courts, the statute allows preventive detention for juveniles.[2] While an adult may only be held to insure future court appearance, a juvenile may be detained:

1) when there is a substantial probability that he will not appear in court on the return date; or
2) when there is a serious risk that he may before the return date do an act which if committed by an adult would constitute a crime.[3]

The preventive detention section of the statute is generally challenged on the constitutional grounds of failing to provide equal protection of the law, and of violating the Fourteenth Amendment right to due process. In brief, the argument would suggest that there is "no rational basis for prohibiting preventive detention for adults while allowing it for juveniles."[4] Regardless of the final decision on the issue of preventive detention, juveniles will continue to be detained on the "substantial probability that (they) will not appear in court on the return date."[5]

Once the decision to place the child in a detention facility is made by the judge, the question of the juvenile's right to bail emerges. Bail may be defined as a measure designed "to procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court."[6] The American Bar Association Project on Standards for Criminal Justice points out that:

> (t)he law favors the release of defendants pending determination of guilt or innocence. Deprivation of liberty pending trial is harsh and oppresive in that it subjects persons whose guilt has not yet been judicially established to ... hardships...[7]

The United States Constitution does not provide an express right to bail although the Eighth Amendment does provide that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[8] Federal statutes and case law have established that one accused of a crime has an absolute right to bail in all but capital cases and the Constitutions of the overwhelming majority of states provide the same guarantee.[9] Do these same rights apply to juveniles in view of their unique status of being removed from criminal courts into the jurisdiction of juvenile court?

The United States Supreme Court had the opportunity to answer this question in the case of In re Whittington in 1968 but failed to rule on the juvenile right to bail under the federal Constitution.[10] Varied legal arguments have been offered to refute the right of bail to juveniles. For example, it has been stated that the juvenile court is not a criminal court and therefore juveniles are not entitled to bail since bail applies only to criminal proceedings.

Although Gault failed to declare the juvenile court as civil, criminal or quasicriminal, it unequivocally established the juveniles right "to the essentials of due process and fair treatment."[11] Subsequent decisions, however, have clearly limited the Gault case by refusing to provide the juvenile with all of the legal rights of an adult in a criminal prosecution. In McKeiver v. Pennsylvania, for example, the Court refused to grant juveniles the right to a jury trial stating that the "juvenile proceeding has not yet been held to be a "criminal prosecution" within the meaning and reach of the Sixth Amendment..."[12] This reasoning was followed and extended in a case allowing incarceration for up to three years of certain juvenile offenders without the right to a jury trial.

Another argument against the right of bail for juveniles is based on their need for greater protection because of their age. This would be consistent with the general philosophy and purpose of the juvenile court. In reviewing this argument, Professor Davis notes that "the child may be in need of care, supervision, or protection that might be denied him without proper inquiry into the conditions and environment into which he will be released."[13]

A most convincing argument, both in terms of legal authority and common sense practicality is that the right to bail is justifiably denied when alternate release procedures, fairly applied, are substituted. The alternate release procedures, liberally construed and fairly administered, serve as the quid pro quo to satisfy due process and equal protection guarantees. At the same time it provides a release which is relevant and meaningful to a child. Unlike bail, which for many children of poor families would be a legal fiction, alternate release procedures allow appropriate children, regardless of the financial circumstances of their family, to be returned to the community pending trial.

The theory of comprehensive alternate release procedures in lieu of bail for juveniles has been set forth in several cases. In Fulwood v. Stone the court held that adequate alternate release procedures, "if faithfully observed in practice, ... are more than an adequate substitute for bail."[14] The court reviewed the Juvenile Court Act of the District of Columbia which provides for pretrial release of a juvenile by various non-judicial personnel such as the officer taking the child into custody, the probation officer and/or other persons designated by the court. Furthermore, it was noted that, if there were no pre-trial release, a petition would be filed and"... the court (might),pending final disposition of the case" release the child. Following the review of the Juvenile Court Act as well as the guidelines for detention set by Congress, the court held that "We find it unnecessary to reach the question whether there is a constitutional right to bail in juvenile proceedings, since we

believe an adequate substitute for bail is provided by the Juvenile Court Act itself".[15]

Similar reasoning can be found in the case of In re William M., which dealt with the minor's right to an individualized detention hearing.[16] Following an exhaustive review of pertinent California statutes and cases, the court ruled that a detention hearing required "elementary requirements of individualized justice and due process" as opposed to "mechanical policies for automatic detention".[17] In a most significant note the court stated that "The California Juvenile Court Law, as properly administered, provides an adequate system for the prehearing release of juveniles without the requirement of posting bail. (Cases cited) Hence, we decline to consider whether juveniles are constitutionally entitled to bail".[18] In a most learned discussion of this case, Professor Davis comments that "The Supreme Court might find... that fairness and due process do not necessarily require that juveniles be accorded a constitutional right to bail. Such a finding might well be warranted in evaluating a system of release like Californias',for it could be sustained on the grounds that a system so replete with safeguards affords an adequate alternative to release on bail."[19]

A similar conclusion was reached in Baldwin v. Lewis on the issue of a juvenile's constitutional right to bail.[20] The court rejected petitioner's claim that the failure to have bail set was a violation of his rights under the Eighth Amendment to the United States Constitution. The court cited the Fulwood v. Stone decision and noted the similarity of juvenile statutes between the District of Columbia and Wisconsin. They concluded the "the Wisconsin Children's Code, when applied in a manner consistent with due process, affords a juvenile an adequate substitute for bail."[21]

Doe v. State also considered the juvenile's right to bail among other issues.[22] While holding that a child should be held in detention only when no other alternative exists, the court unequivocally rejected the right of a juvenile to bail. "...because of the pecularities of children's proceedings,...the present adult bail system would be practically unsuitable as a device for securing the child's future appearance before the court, and would not necessarily result in the child's release." After reviewing the financial disadvantages of children, the court concluded that "...the often criticized injustices of the adult bail system as applied to indigents would be visited upon the child."[23] Many states have developed comprehensive systems of release for juveniles in lieu of bail; the New York system is an excellent example. Under New York statute, a child may be released from the state's custody prior to his or her appearance in court. The earliest release decision makers are, therefore, non-judicial personnel such as police, probation officers and detention administrators. The language of the act in providing non-judicial personnel with broad powers of release clearly indicates the intent of the lawmakers to release children pending court appearance in all but special circumstances. Moreover, the spirit of the statute has been carried out in practice as the vast majority of children are released on recognizance prior to court appearance.

The initial decision as to whether to release the child is made by the law enforcement agency placing the child in custody. The discretionary powers of the agency are severely circumscribed by the statutory mandate that:

> (i)n the absence of special circumstances, the peace officer shall release the child to the custody of his parent or other person legally responsible for his care upon the written promise, without security, of the person to whose custody the child is released that he will produce the child before the family court in that county at the time and place specified in writing.[24]

Should the child nevertheless be held because of the existence of "special circumstances" a strong possibility exists of his subsequent release prior to court appearance. The act further provides that the probation service or the administration responsible for operating the detention facility may release the child to his parent, relative, or other legally responsible party without security prior to the filing of a petition. In this instance the probation service or the administrator responsible for operating the detention facility can release a child to certain legally

responsible parties if it appears to involve a petition of a person in need of supervision rather than a petition of delinquency or if jurisdictional requirements do not appear to be satisfied.[25] In this instance release is not conditional upon the absence of special circumstances requiring detention. The same act also provides for the release of a child in court intake on what might involve a petition of juvenile delinquency, "unless there are special circumstances requiring his detention."[26] In both instances, unlike the previously mentioned release by a peace officer, release may, but need not, be conditional upon a written promise by the adult to whom the child is released to return the child to court on a specified date and place.[27] To further protect the rights of the child the statute provides that detention be time fixed. Limitations are specifically placed on the time the court may detain a child at various stages of the proceedings.[28]

Unlike his adult counterpart in criminal court, the juvenile may have his case terminated by non-judicial personnel before ever reaching a court hearing. By virtue of the unique "preliminary procedure" in juvenile court the probation service may be authorized to adjust suitable cases before a petition is filed.[29] While this decision-making is conditional upon the agreement of the complainant and the suitability of the case, nevertheless approximately one half of the cases are adjusted[30] before ever reaching court. This is especially significant in that the detained child may be released by having his case adjusted prior to appearing in court, an advantage which is unknown to the criminal court.

In effect, the act provides a number of points and a variety of non-judical decision makers to insure release for children in all but "special circumstances." The intent of the law is clearly seen in the text of the Committee Comments in which it is stated that detention "is rarely desirable before adjudication and rarely is needed to avoid a grave risk to the community or the child."[31]

It would appear, therefore, that the statutory provisions for extensive alternate release procedures were designed as a quid pro quo for the juvenile's right to bail. It can be surmised that the legislature deemed this to be a more appropriate response to the issue of juveniles in detention. While the New York State Family Court Act does not prohibit the setting of bail for juveniles, neither does it expressly provide this right, although it does do so for adults within the Family Court jurisdiction.[32] It would appear that the failure to provide the court with the right to set bail in Article 7, while allowing it in other sections, was deliberate and in conjuction with alternate release procedures and demonstrates the intent of the legislature to not allow bail for juveniles.

The rationale for the distinction between the right to bail for an adult in criminal court and a juvenile offender in family court is indeed sound. The majority of juveniles who come before the court lack sufficient finances to raise bail. In effect, their freedom would depend upon their family's relationship toward them and/or the monetary resources of the family itself. Families would experience the additional burden incurred in paying the fees of bail bondsmen, as well as the guilt of being unable to post bail and obtain freedom. Welfare families would be especially burdened which is especially significant as so large a number of juvenile offenders in urban areas are from families receiving assistance. The possibility of abuse of detention would be significantly increased for by setting an unrealistic bail; and, under such circumstances, liberty could be effectively denied. In essence, the distinction between the child released and the child detained would often be determined by the wealth and/or disposition of the family toward the child, rather than on the merits of safely releasing him or her. If this be true, the child offender may be better protected by alternate release procedures, fairly applied, than the discretionary practices and abuses prevalent in an imperfect bail system.

FOOTNOTES

1) Sherwood Norman, Juvenile Detention and Community Responsibility, pamphlet (Denton, Texas: Texas Woman's University, 1968), p.1
2) People ex rel. Wayburn v. Schupf, Misc. 2d, 365 N.Y.S. 2d 110, (1974).
3) N.Y. Judiciary-Court Acts §739 (McKinney 1968).
4) People ex rel. Wayburn v. Schupf, Ibid at 112.
5) N.Y. Judiciary-Court Acts §739(a) (McKinney 1968).
6) Black, Law Dictionary (4th ed. rev; St. Paul, Minnesota: West Publishing Company, 1968), p. 177.
7) ABA Standards Relating to the Administration of Criminal Justice, Pretrial Release §1.1 (1968).
8) U.S., Constitution, amend. XIII.
9) "The Right to Bail and the Pre-Trial Detention of Juveniles Accused of Crime", 18 Vanderbilt Law Review 2098 (1965).
10) In re Whittington, 391 U.S. 341, (1968).
11) In re Gault, 387 U.S. 1, (1967)
12) McKeiver v. Pennsylvania, 403 U.S., 528 (1971)
13) Samuel M. Davis, Rights of Juveniles: The Juvenile Justice System, (Clark Boardman Co., Ltd. N.Y. N.Y. 1974) p.76
14) Fulevood v. Stone, 129 U.S. App. D.C. 314 (1967)
15) Ibid.
16) In re William M., 3 Cal. 3d 16 (1970)
17) Ibid.
18) Ibid.
19) Davis, op. cit., p.79
20) Baldwin v. Lewis, 300 F. Supp. 1220 (1969).
21) Ibid.
22) Doe v. State, 487 p. 2d 47 (1971).
23) Ibid.
24) N.Y. Judiciary-Court Acts 724(c) (McKinney 1968).
25) N.Y. Judiciary-Court acts 727 (a) (McKinney 1968).
26) N.Y. Judiciary-Court Acts 727 (b) (McKinney 1968).
27) N.Y. Judiciary-Court Acts 727 (c) (McKinney 1968).
28) N.Y. Judiciary-Court Acts 729,747 (McKinney 1968).
29) N.Y. Judiciary-Court Acts 734 (McKinney 1968).
30) Statistics from the New York City Department of Probation, for example, show that during the period of January through June of 1974 of 15,823 cases opened in in-take, 6,928 were sent to Judiciary Court.
31) N.Y. Judiciary-Court Acts 727 (2) (McKinney 1968).
32) N.Y. Judiciary-Court Acts 155 (McKinney 1968).

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