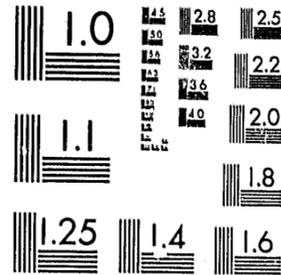


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JUNE 1984

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# Federal Probation

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## This Issue in Brief ACQUISITIONS

**The Evolution of Probation: The Historical Contributions of the Volunteer.**—In the second of a series of four articles on the evolution of probation, Lindner and Savarese trace the volunteer/professional conflict which emerged shortly after the birth of probation. The authors reveal that volunteers provided the courts with probation-like services even before the existence of statutory probation. Volunteers were also primarily responsible for the enactment of early probation laws. With the appointment of salaried officers, however, a movement towards professionalism emerged, signaling the end of volunteerism as a significant force in probation.

**Don't throw the Parole Baby Out With the Justice Bath Water.**—Allen Breed, former director of the National Institute of Corrections, reviews the question of parole abolition in light of the experience with determinate sentencing legislation in California, the current crisis of prison overcrowding, and the improvements that have been made in parole procedures in recent years. He concludes that the parole board—while it may currently not be politically fashionable—serves important "safety net" functions and retention of parole provides the fairest, most humane, and most cost-effective way of managing the convicted offender that is protective of public safety.

**LEAA's Impact on a Nonurban County.**—LEAA provided funds for the purpose of improving the justice system for 15 years. To date, relatively little effort has been made to evaluate the impact of LEAA on the delivery of justice. In this article, Professor Robert Sigler and Police Officer Rick Singleton evaluate the impact of LEAA funds on one nonurban county in Northwestern Alabama. Distribution of funds, retention and impact are assessed. While no attempt has been made to assess the dollar value of the change, the data indicate that the more than one million dollars spent in Lauderdale County did change the system.

**Developments in Shock Probation.**—Focusing on a widely used and frequently researched probation program, this paper by Professor Gennaro Vito examines research findings in an attempt to clearly identify the policy implications surrounding its continued use.

**Family Therapy and the Drug-Using Offender: The Organization of Disability and Treatment in**

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**a Criminal Justice Context.**—The paper describes offenders' behaviors which exacerbate conflict between probation professionals to protect a fragile interpersonal situation within the offender's family. The mirroring of familial conflict by professionals leads to high rates of recidivism whereas the professional's ability to work collaboratively with the offender's family frequently enhances autonomy and more responsible behavior, assert the authors, David T. Mowatt, John M. VanDeusen, and David Wilson. Three modes of interaction characterizing the interface between probation professionals and the offenders' families are described.

**Toward an Alternate Direction in Correctional Counseling.**—While examining some of the problems in correctional counseling, e.g., authority, resistance to change, etc., this article calls for an alternative to traditional therapies. Dr. Ronald Holmes recognizes the need to move toward a model of counseling which reduces the importance of traditional therapeutic values and stresses the need for humane relationships. This model encourages an equal relationship between the counselor and the client, an examination of conscious determinants of behavior, and a belief in the client's ability to change.

**Victim Services on a Shoestring.**—The criminal justice system is currently demonstrating more concern about the victims of crime. Robert M. Smith, probation and parole officer for the State of Vermont, writes that although we in corrections oftentimes do not become involved with offenders until long after some crimes were committed, we still can play a significant role with regard to victims. Furthermore, some of these interventions do not require additional resources; rather, it is a matter of rethinking our own attitudes.

**Medical Services in the Prisons: A Discriminatory Practice.**—This article by Professor James T. Ziegenfuss reviews the provision of medical services in prisons and the growing involvement of the courts. Studies reported in the literature raise

serious questions as to the quality and quantity of such care. Traditional approaches would suggest amelioration of the situation by providing more and better care. However, the consideration of alternatives to the present delivery system is examined in this article, as exemplified by the developing drug and alcohol treatment system. Importantly, the resolution of the problem is defined in terms of service system design and redesign. Additional needed research and analytical studies are identified.

**Legal Assistance to Federal Prisoners.**—Legal Aid Attorney Arthur R. Goussy describes the duties of the visiting attorney to the Federal Correctional Institution, Milan, Michigan from February through October 1981. Commencing in April, a total of 136 interviews were conducted with 126 inmates during visits taking a total of 71 hours. Prison authorities felt this service would assist inmates in: (1) pursuing their criminal cases; (2) coping with prison grievances; and (3) resolving private legal matters. This paper addresses, experientially, these problems and the merits of legal consultation.

**Love Canal Six Years Later: The Legal Legacy.**—It was August 1978 when the New York State Health Commissioner declared a health emergency at the Love Canal site on the outskirts of Niagara Falls, which ultimately led to the evacuation of nearly 1,000 families. For 5 years, Hooker Chemical and Plastics Corporation had used the 15-acre site to dump 21,800 tons of toxic chemicals until it sold the property to the Niagara School Board in 1953. Since 1978 the Justice Department has initiated a \$124.5 million lawsuit against Hooker and New York State has filed suits totalling \$835 million, charging Hooker with responsibility for the Love Canal disaster and other illegal dumping in the area. Issues remain, however, in the assessment of legal responsibility in this case. In this paper by Professor Jay Albanese questions of causation, prosecution, sentencing, and prevention are examined to illustrate the difficulty in doing justice in cases involving the scientific and legal issues raised by exposure to hazardous waste.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought but their publication is not to be taken as an endorsement by the editors or the Federal probation office of the views set forth. The editors may or may not agree with the articles appearing in the magazine, but believe them in any case to be deserving of consideration.

# The Evolution of Probation

*The Historical Contributions of the Volunteer\**

BY CHARLES LINDNER AND MARGARET R. SAVARESE\*\*

AS MOST of us already know, probation was brought into existence in this country by a relatively small number of dedicated individuals, most of whom were volunteers. Of course, the very first name that comes to mind is that of John Augustus whose pioneering work in and around Boston during the mid-1800's earned for him the title, "father of probation." But there were other volunteers, both in Massachusetts and other jurisdictions such as New York and Chicago, who followed Augustus and who continued his work, still on a voluntary basis, winning acceptance for probation, in the process and, thus, laying the groundwork for passage of the first official probation laws.

Whereas volunteers had been the undisputed leaders and pioneers during the early stages of the evolution of probation, their role changed radically very shortly after the enactment of probation legislation. Almost inevitably, the advent of publicly paid professional probation officers led to an eventual diminution of both the volunteers' functions and status within the system. In most jurisdictions, a consistent pattern emerged following the creation of a formal, official probation system; as paid probation officers were hired, increased in numbers, and became professionalized, they often concentrated their organizational efforts on the removal of volunteers from the system or, at the very least, on severely limiting the role and functions of volunteers.

In New York State, for example, the trend toward professionalism was evident during the first decade of statutory probation services and, in many instances, publicly paid probation officers were simply substituted for volunteers. Elsewhere, volunteers were subjected to supervision by professional, salaried probation officers, limited in the scope of their duties and responsibilities, and assigned reduced caseloads. Most importantly, a number of attacks on the quality of volunteer work served as a stigma and tarnished the credibility of volunteers as a whole. So

strong was the anti-volunteer feeling, as a result, that it would not be until the 1960's that a revival of volunteer services in probation would occur.

Whereas the contributions made by the early volunteers to the development of probation have received considerable attention, the later struggle between volunteers and professionals has been overlooked for the most part. This article is an attempt to explore the various roles played by volunteers at different stages in the evolution of probation culminating in the volunteer/professional conflict and the eventual outcome of that struggle.

## THE ROLE OF VOLUNTEERS PRIOR TO THE PASSAGE OF PROBATION LEGISLATION

The years prior to the passage of the statutes legally authorizing probation and the appointment of probation officers could very well be called the "golden years" of voluntary probation services for it was during this period of time that volunteers played their most prominent, fruitful role in both initiating and then developing probation until it became an accepted, well-established practice. Indeed, in many jurisdictions, long before probation received the official sanction of law, volunteers were active in the courts where they provided, on a strictly informal, unofficial basis, a type of assistance which would, much later, be recognized and accepted as the essential core of professional probation practice. The services provided by these early volunteers included both investigations of defendants and informal supervision, for although the courts lacked the ability, at this time, to place an offender under formal probation supervision, the combination of a suspended sentence plus informal supervision was often used as an alternative and served essentially the same purpose.

### The Premier Volunteer

Of course, the first and foremost volunteer was John Augustus and his accomplishments in launching probation in this country overshadow the efforts of all other volunteers who labored during this period prior to the existence of a formal probation system. Appropriately credited with being the "father of probation," Augustus was the "first to invent a system, which he termed probation, of selection and supervi-

\*This is the second in a series of four articles on the evolution of probation.

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sion of reformable offenders in the criminal courts and he labored in their behalf for eighteen years until his death in Boston in 1859 at the age of seventy-five.<sup>11</sup> The seminal contribution of John Augustus to the development of probation is too well known to be repeated here in any great detail. However, it should be pointed out that not only can the roots of probation be traced back to Augustus but so can the roots of the volunteer movement in probation for, in fact, in the very beginning, they were synonymous. Even now, more than a century after his death, volunteer groups in probation continue to cite Augustus and his work as proof of the importance of their own role as volunteers.

It was not until 1841, when he was in his mid-fifties, that Augustus, appearing in the Boston Police Court, had his first defendant "bailed on probation," apparently, as a result of his involvement in the temperance movement of the day. A bootmaker by trade, up until this point, Augustus had spent his adult years building up a prosperous business and had, in fact, achieved a substantial degree of affluence for himself and his family. Although he began his voluntary probation work in 1841 with a single male defendant charged with being a common drunkard, within only 2 years, he had expanded his efforts to include not just men but, in addition, women and children charged with a variety of offenses.

As Augustus was called upon more frequently and the enormous need for the type of work he was doing became more readily apparent to him, his involvement continued to expand until it had turned into an all consuming passion. He became a man with a mission and his labors on behalf of those he termed "poor unfortunates" took on truly heroic proportions. In the process, of course, he sacrificed his profitable business and was, ultimately, financially ruined. In addition, he met with bitter opposition, as do all pioneers, on the part of those who had a vested interest in maintaining the status quo, especially, the court officers who were paid a fee for every defendant who was committed to jail. He was also attacked by those who had difficulty accepting the purity of his motives and who accused him, sometimes in print, of hypocrisy, greed, and profiteering.

Augustus responded to the fierce attacks leveled against him by stressing the strictly voluntary nature of his work. In an all too brief autobiographical account of his labors during the period from 1841 to 1852, Augustus was very explicit about his status as

<sup>11</sup>John Augustus, *First Probation Officer* (reprint of *A Report of the Labors of John Augustus*, Boston, 1852) (New York: National Probation Association, 1939): V. <sup>12</sup>*Ibid.*, : 4. <sup>13</sup>*Ibid.*, : 103-104.

an unsalaried, unaffiliated volunteer stating, "I devote my time daily, and often a large portion of the night, in the performance of the various labors which fall into my province. I am no agent for any sect, society, or association whatever. I receive no salary, neither have I received a dollar for any service as a salary . . ." <sup>12</sup> At the very end of this same report, published at the request of his friends some 7 years before his death, Augustus painfully tried to justify and to defend his expenditures of money against the attacks of his critics and accusers ending with a pathetic plea to the general public for financial assistance in the form of donations:

. . . as there are persons who believe, or affect to believe that I make money by such acts: . . . it drains my pockets, instead of enriching me. To attempt to make money by bailing poor people would prove an impossibility.

The first year and the three or four years following, I worked hard at my business in my shop. Sometimes I worked all night to make up for the time I had spent in court . . .

I have kept an account for the last six years, of the amount I have expended, and for what purpose it has been applied. If I had more, I would have expended more, for I have not had enough to render my labors so easy or so efficient as they would have been, had I more money . . .

If there are any who wish to render me assistance by pecuniary aid or otherwise, or any who desire information or assistance which I can render, in my field of labor, I should be happy to see them at my residence, No. 65 Chamber Street.<sup>13</sup>

Not only did Augustus provide direct services to the courts and to hundreds of individuals but, apparently, he was also a very articulate and effective spokesman for probation. Besides demonstrating the value of this new approach through his own work, he also became a tireless and very visible probation advocate, writing, speaking to groups, and gradually winning over the judiciary, the press, and other influential individuals. Thus, by convincing others of the benefits and usefulness of probation, he insured its continued existence even after his own death.

Augustus was also successful in terms of inspiring others to carry on the work to which he had so wholeheartedly devoted the last 18 years of his life. In the years that followed, other volunteers would continue and, in fact, expand the work he had begun and Massachusetts would serve as a model to be emulated in jurisdictions in other states. Although the contributions of many of the volunteers who followed in Augustus' footsteps have been all but obliterated by the passage of time, we do know of the work of some of them, most notably, a small band of his immediate successors in Massachusetts several of whom worked with him prior to his death.

#### John Augustus' Successors

Of the immediate followers of Augustus, the name of John Murray Spear was most often coupled with that of Augustus in the reports of the day. As describ-

ed by Moreland in his article tracing the line of succession that followed Augustus: "The next significant figure in the development of probation was John Murray Spear who was for a time a voluntary worker with Augustus in the courts."<sup>14</sup> Augustus considered Spear to be his heir apparent, stating in his autobiographical work:

My age and general health will doubtless prevent in a measure, my usefulness in this department of labor and I most sincerely hope that some person will come forth and enter upon the work. I hope also, that Mr. Spear will continue his labors and prosper abundantly, and be well supported in his labors of saving the fallen.<sup>15</sup>

Spear, however, never assumed the central position in the developing probation movement that had been held by Augustus, for, among other reasons, he lacked the single-mindedness of purpose which had enabled Augustus to labor with an almost fanatical zeal for so many years. Although he was involved in an equally super-human effort, Spear diffused his energies among an incredible number of different charitable and reform activities. For example, during the 4 years that he was active in the Boston courts, along with Augustus, he was also serving as " . . . a voluntary public defender, lecturer and traveler in the cause of the court and prison reform, a prison worker, preacher and teacher, a tract distributor, and a worker with discharged prisoners. It was all voluntary work on his part; he was the agent of no society."<sup>16</sup>

Somewhat similar work was performed by the Reverend George F. Haskins who, in 1851, founded the first Catholic asylum for boys in New England. By virtue of his position as rector of this facility, Father Haskins frequently appeared in the courts of Boston on behalf of the children who were on trial there with youngsters often being placed under his supervision as an alternative to their being committed to a penal institution. He served in this capacity for some 21 years and although his charges were supervised in an asylum rather than in the community, his work was a further step in the development of probation and illustrates the early use of probation as an alternative to either a jail or prison commitment.<sup>17</sup>

With the founding of the Boston Children's Aid Society in 1863, a number of agents attached to this

association also became involved in the performance of these probation-like activities. The best known of this group was Rufus R. Cook, affectionately known as "Father" or "Uncle" Cook. Cook, who also served as chaplain of the Suffolk County jail, would provide supervision of juveniles, as well as a small number of adults, released by the courts in his care. Depending upon the court, the duration of the period of supervision was 6 months or less during which time those who had been released on probation were required to report every week or two to Cook at his home or in the court.<sup>18</sup> This practice of reporting to the agent at his home was commonplace in the early years and, in fact, continued right into the beginning years of statutory probation.

Cook's contributions were graphically detailed in the contemporary reports of the Executive Committee of the Boston Children's Aid Society. The 21st Report for the years of 1884-5, for example, noted that although he was continuing his work in the courthouse, increasing infirmities were slowing him down and his work was becoming diminished. Cook's work, however, continued well after the enactment of the first probation law in 1878 although, ironically, upon his death in 1889, no mention of this was made in the Society's reports. Subsequent reports, however, noted that a new agent had been brought on staff to resume and continue the work performed by Cook.<sup>19</sup>

Miss L. P. Burnham, one of Rufus Cook's fellow workers at the Boston Children's Aid Society, is credited by Moreland with being "the first career woman in the probation field." She collaborated with Cook, primarily, in terms of screening the youngsters who were on trial in order to select those candidates most suitable for probation supervision. She also worked with Cook after probation had been imposed in terms of helping him supervise his charges.<sup>20</sup>

#### Volunteers in Other Jurisdictions

In addition to Augustus and his immediate successors who labored in and around Boston, there were volunteers in other jurisdictions who performed a very similar type of function and who thus advanced the development of probation and its acceptance as a well-established practice prior to the passage of probation legislation. For example, in Chicago, the early residents of Hull House, the famous settlement house founded in 1889 by Jane Addams, became very much involved in this type of work. Jane Addams, in her autobiographical account of the first 20 years at Hull House, noted that this type of involvement was a very natural and perhaps inevitable outgrowth of the settlement workers' day-to-day presence in the neighborhood and their determination to improve con-

<sup>14</sup>Donald W. Moreland, "John Augustus and His Successors," in Marjorie Bell, *Probation and Parole Progress: Yearbook* (New York: The National Probation Association, 1941): 14.

<sup>15</sup>Augustus, *op. cit.*, : 100.

<sup>16</sup>Moreland, *op. cit.*, : 14-15.

<sup>17</sup>*Ibid.*, : 15-16.

<sup>18</sup>*Ibid.*, : 17.

<sup>19</sup>N.S. Timasheff, *One Hundred Years of Probation: 1841-1941, Part I* (New York: Fordham University Press, 1941): 9-11.

<sup>20</sup>Moreland, *op. cit.*, : 17-18.

ditions for the people living there. As she further explained, "From our earliest days, we saw many boys constantly arrested" adding, "we were distressed by the gangs of very little boys who would sally forth with an enterprising leader in search of old brass and iron, sometimes breaking into empty houses for the sake of faucets or lead pipe which they would sell for a good price to a junk dealer."<sup>11</sup>

These and similar observations convinced Jane Addams and her fellow settlement workers of the need to reach out and help those children who were in trouble with the law. As a result, "From the third year of Hull House, one of the residents held a semi-official position in the nearest police station; at least, the sergeant agreed to give her provisional charge of every boy and girl under arrest for a trivial offense."<sup>12</sup> The resident who performed this work for a number of years was a woman by the name of Alzina P. Stevens who, years before as a young girl of 13, had lost the index finger of her right hand while laboring in a New England cotton mill. Much later, she was described as being deeply interested in the protection of working children, perhaps, as a result of her own early experiences.

Mrs. Stevens worked on a purely voluntary, informal basis until the passage of legislation in 1899 authorizing both the establishment of the first juvenile court in this country and the appointment of probation officers to service this specialized court. She then became the very first probation officer appointed as a result of this bill but died, very tragically, only a year later, in 1900. In an article published in 1905, describing the development of the probation system in Chicago, Julia C. Lathrop, one of the most influential women in that city, who had helped to bring the first juvenile court into existence, paid tribute to Alzina Stevens in the following words: "Her ripe wisdom, her recognition of the profounder causes of juvenile delinquency and their interdependence, as well as her tact and simple goodness, made her an ideal probation officer, and her untimely death, after a year's service in the court, was a deplorable loss."<sup>13</sup>

In New York, also, just as in Chicago, there were a number of volunteers performing similar functions, thus, laying the groundwork for the passage of the

probation legislation which was to come later. Samuel J. Barrows himself, the man responsible for the drafting of the first probation law in New York in 1901, fully acknowledged the vital role played by the early volunteers when he wrote:

The enactment of a probation law in New York is the outcome rather than the beginning of probation work in this State. As in Massachusetts, so in New York, a few individuals who had secured the confidence of the judges demonstrated the value and necessity of probation work before legislation was invoked.<sup>14</sup>

The individuals referred to by Barrows in the passage above provided the courts with both investigative and supervision services prior to the passage of any formal probation legislation. For example, a report for the year 1901 noted that a "Mr. David Williard has devoted himself to work at the Court of Special Sessions, investigating and taking into custody boys committed to him by the judges."<sup>15</sup> Also mentioned was Mr. D.E. Kimball who was affiliated with the Prison Association of New York and who, for 17 years prior to the passage of the first probation law, visited the Tombs to interview "those under accusation, to investigate cases when deemed necessary and to furnish information to the judges when desired."<sup>16</sup> A third individual, Mr. Erastus Backus, while not strictly a volunteer as he was the county detective of Brooklyn, was cited for his "excellent work in the courts of that borough, especially in looking after boys before and after trial."<sup>17</sup>

In addition to those cited above, there were other volunteers, too numerous to mention, who were also actively involved in the New York courts prior to the existence of a formal, statutory probation system. One of the most memorable was a woman by the name of Rebecca Salome Foster whose work earned for her the honorary title, "Angel of the Tombs." A Southerner by birth, Mrs. Foster's father was an Englishman while her mother was a resident of Mobile. In 1865, she married General John A. Foster who was described as a "gallant soldier and an able lawyer." Although Mrs. Foster had made some earlier casual visits to the Tombs, the city prison of New York, it was not until after her husband's death in 1890 that she became totally absorbed in volunteer activities on behalf of these prison inmates. An official report, published shortly after her death, provides us with a description of her work:

Though there was no probation law in operation at that time, she practically fulfilled all the duties of such officer. She secured the confidence of the prison officials and of the judges. She was entrusted by the latter with the investigations of cases, mainly of girls and women committed for various offenses. The greatest reliance was placed in her judgment, and under the power of the judges to suspend sentence, many cases were practically placed in her custody. She gave as freely of her money as of her time and strength to help needy prisoners.<sup>18</sup>

Very tragically, her life was cut short when she was trapped in a fire in the Park Avenue Hotel on February 21, 1902. In a rare tribute, a beautifully sculptured monument, which became known as "The Foster Memorial," was erected and placed in the city court building in her honor. In addition, another unusual tribute was paid to her in the Court of Special Sessions which, on a motion made by the District Attorney, adjourned in respect to her memory. District Attorney James, however, specifically asked that the court not adjourn until it had disposed of its calendar explaining that this "noble and saintly woman — Mrs. Foster — not inaptly called and known as 'The Tombs Angel'" would not have wished the court to do anything which would increase the sorrow and suffering of those who stood before it.<sup>19</sup>

As we have described, volunteers, first in Massachusetts and later in other jurisdictions, were actively involved in the courts prior to the passage of any formal probation statutes. These remarkable individuals, from a variety of different backgrounds, somehow succeeded in enshrining the essential elements of probation in custom and practice long before they were engraved in the law and thus paved the way for the next step in the development of probation, namely, the enactment of probation legislation.

#### *The Role of Volunteers in the Enactment of Probation Legislation*

Volunteers continued to be important during the next stage in the evolution of probation with several of them playing very influential roles in having probation legislation enacted in their respective jurisdictions. The role played by these later volunteers was very different, in many ways, from the role played by the earlier volunteers who had been very much involved in providing direct client services on a case-by-case basis. In contrast, the most notable of the later volunteers were social reformers and political activists who functioned on a much larger, more visible stage. Well-educated and, in many cases, well-connected, these later volunteers were expert organizers and lobbyists who became deeply involved in a variety of reform and charitable organizations and who achieved their goals working in and through these groups. The volunteers who made the most significant contributions to the development of probation during this later period were certainly

animated by the same sort of humanitarian motives and concerns as had propelled the earlier ones but their commitment simply found expression in a different type of involvement.

#### *Lucy Flower in Chicago*

One such volunteer was Lucy L. Flower who, along with a small group of like-minded women, was primarily responsible for the establishment of the first juvenile court in Chicago in 1899 and the creation of a probation service which would serve the particular needs of the children appearing before this specialized court. Mrs. Flower's concern for children went back long before the first juvenile court was established. As president of the influential Chicago's Women's Club, she had been instrumental in assuming responsibility for the financial costs of maintaining a school for boys who were confined in the county jail awaiting trial or action of the grand jury. Mrs. Flower, who was married to a prominent Chicago attorney, continued to be a very active member of the Chicago Women's Club and played a leading role in securing the crucial support and help of the Chicago Bar Association in drafting the juvenile court bill and then getting the bill passed by the legislature. In recognition of her efforts, she was present at the very first session of the court when the law went into effect on July 1, 1899.<sup>20</sup>

There are very few individuals who demonstrated the kind of intense commitment to probation, both in terms of its proven benefits and its potential, that was shown by Lucy Flower. In silent but eloquent testimony to the far-reaching influence of John Augustus, she actually made a pilgrimage to Massachusetts while in the process of designing the first juvenile court and its probation service. Julia C. Lathrop, one of her contemporaries, wrote of Flower that, convinced of the need for probation officers for juveniles, she "went to Massachusetts and carefully studied the work of a Boston probation officer."<sup>21</sup>

Mrs. Flower was also instrumental in securing the appointment of Mrs. Alzina P. Stevens as the first probation officer of the juvenile court. Not only did she introduce Mrs. Stevens to Judge Richard Tuthill and suggest the appointment but, in the absence of any provision for payment of probation officers in the original juvenile court law, she further assured Judge Tuthill that Mrs. Stevens would be paid for her services.<sup>22</sup> To Lucy Flower, the creation of a specialized court for juveniles was inextricably linked with the development of a probation system for it was the probation officer who would give life to the concept of treatment in lieu of punishment. We are told, for example, that she ". . . thought that probation

<sup>11</sup>Jane Addams, *Twenty Years at Hull-House* (New York: The Macmillan Company, 1910) : 226.

<sup>12</sup>*Ibid.*, : 227.

<sup>13</sup>Julia C. Lathrop, "The Development of the Probation System in a Large City," *Charities* (January 1906) : 345.

<sup>14</sup>*Fifty-Seventh Annual Report of the Prison Association of New York for the Year of 1901* (Albany: James B. Lyon, 1902) : 49.

<sup>15</sup>*Ibid.*, : 49.

<sup>16</sup>*Ibid.*, : 49.

<sup>17</sup>*Ibid.*, : 49.

<sup>18</sup>*Fifty-Ninth Annual Report of the Prison Association of New York for the Year of 1903* (Albany: Oliver A. Quayle, 1904) : 90-91.

<sup>19</sup>*Ibid.*, : 91.

<sup>20</sup>Lathrop, *op. cit.*, : 345.

<sup>21</sup>*Ibid.*, : 344.

<sup>22</sup>Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago: University of Chicago Press, 1977) : 129 f.n.

was clearly the most important concrete feature of the reform, an element directly borrowed from Massachusetts.<sup>223</sup> Many others who were prominent in the juvenile court movement felt likewise as can be seen from the following statement of the time proclaiming that "the success of the system would depend principally on the character of the probation work."<sup>24</sup>

Despite the professed importance of a probation service, ironically, the law creating the first juvenile court failed to make any provision whatsoever for the payment of salaries to probation officers. This omission was not an accidental oversight on the part of the framers of this bill but had been done very deliberately so as to insure that probation officer appointments would not become political patronage plums. In addition, a second reason was the fear that including the costs of probation salaries in the juvenile court bill would have led to its defeat. Interestingly, it was the failure of government to accept responsibility for the cost of probation, at least, initially, a practice which would be replicated in a number of other jurisdictions, which further contributed to the important role that volunteers played in the early years of probation, for pending government assumption of probation costs, services were, of necessity, almost completely dependent upon the citizen volunteer.

In Chicago, in the absence of publicly paid officers, volunteers and the members of several other groups were primarily responsible for providing probation services for several years after the passage of the original juvenile court law. These included representatives of private social service agencies and, at the direction of the Mayor of Chicago, "one policeman in each police district was recruited to spend part of his on-duty time as a probation officer."<sup>25</sup> Mrs. Flower, with her customary zeal and her belief in probation, immediately assumed responsibility for insuring that the court was adequately staffed with civilian probation officers. She was instrumental in the formation of the Juvenile Court Committee, a citizens group created to support the work of the court. In the words of a contemporary:

The Juvenile Court Committee then raised the money for the salaries of the probation officers, beginning with five and ending with twenty-two. It called an educator of note, Henry W. Thurston, to be chief probation officer; . . . During this time the probation officers were most carefully selected by the Juvenile

<sup>223</sup>J. Lawrence Schultz, "The Cycle of Juvenile Court History," *Crime and Delinquency* (October 1973): 462 f.n.

<sup>224</sup>*Ibid.*, : 464 f.n.

<sup>225</sup>*Ibid.*, : 465.

<sup>226</sup>Mary M. Bartelme, "Twenty-Five Years Ago and Since," *The Year Book* (New York: The National Probation Association, 1931): 14-15.

<sup>227</sup>Isabel Chapin Barrows, *A Sunny Life: The Biography of Samuel June Barrows* (Boston: Little, Brown and Co., 1913): 167.

Court Committee. They met frequently with members of the committee at Hull House and we talked to them on their duties. We really knew absolutely nothing about such duties. There was no literature on juvenile courts at that time, nor on probation officers, and those of us who had the training of these officers had to fall back on our knowledge of human nature and on our best thoughts as to their duties.<sup>228</sup>

#### Samuel Barrows in New York

The work of Dr. Samuel June Barrows in New York was very similar, in many ways, to the work of Lucy Flower in Chicago for just as she had played a very influential role in having juvenile court and probation legislation passed in Chicago, Barrows was primarily responsible for the passage of the first probation law in New York in 1901. A year before that, when he was in his mid-fifties, Barrows had been appointed corresponding secretary of the Prison Association of New York.

Up until his move to New York and his work with the Prison Association, Barrows had had a varied career. Forced to go to work before the age of 9 because of the death of his father, he had become a professional stenographer by the age of 18. Three years later, he became a reporter for the New York Tribune. In 1868, Barrows acted as private secretary to William H. Seward who was then Secretary of State. He, subsequently, graduated from the Harvard Divinity School, served as editor of the *Christian Register*, the Unitarian national weekly, from 1880 to 1896, and also traveled widely during these same years. In 1889, Barrows became one of the founders of the Massachusetts Prison Association which took an active part in extending probation in that State. In 1896, he was elected to the United States Congress from the 10th district in Boston and completed one full term in this office.

Very soon after he was appointed corresponding secretary of the Prison Association of New York, which had been chartered in 1846 to inspect penal institutions and submit reports to the legislature, Barrows began working for the passage of a probation law in New York. His earlier experience as a writer and legislator served him well and he not only drafted the probation bill but lobbied on its behalf with such intensity and effectiveness that the bill was passed on April 18, 1901. The zeal and incredible energy with which Barrows pursued and achieved his goal are evident in the following brief account of his efforts:

. . . he made eleven trips to the capital that winter, interviewed personally every member of the committees having the bill in his charge, convinced each one individually of the importance of the measure, converted the governor to the same way of thinking, wrote editorials week after week for the leading papers in New York, and so directed public intelligence and sympathy that the bill was passed without a dissenting vote in either house.<sup>229</sup>

Even after the passage of the first probation law in New York, Samuel Barrows continued to be a staunch

advocate for probation. With seemingly inexhaustible energy, he went on promoting the probation system through his prolific writings and peripatetic speeches at meetings ranging from women's clubs in Brooklyn to international conferences on criminal justice reform. His wife noted that:

Schools and colleges, universities and churches, called upon him constantly for addresses, and he never refused, though his services were usually unpaid. . . . Every year he gave a course of ten lectures before the School of Philanthropy in New York.<sup>230</sup>

Barrows spoke at such prestigious schools as Yale, Wells, Cooper Union, and Columbia and his views were also widely disseminated as an editor of *Charities and the Commons*, a periodical later to be known as *the Survey*. In 1905, he was appointed a member of the New York State Probation Commission by the Governor of the State, a position which allowed him to further shape the nature of probation services. Underlying all this work and activity was his belief that probation could serve, in many cases, as an alternative to incarceration for ". . . a very large number whose reformation without imprisonment may be reasonably expected."<sup>231</sup> As related by his wife, he also firmly believed that "Imprisonment should not be first, but the last resort in dealing with offenders."<sup>232</sup>

#### THE TRIUMPH OF THE PROFESSIONAL

The possibility of a volunteer probation service in New York State, or even a dual system of volunteer and professional service, was virtually destroyed as a result of a series of attacks on the quality of volunteer work. Although much of this criticism was not without merit, in many instances it diminished the contributions of dedicated citizen-volunteers who had nurtured and advanced the concept of a probation service. A substantial degree of criticism relating to inadequate training and supervision of volunteers reflected organizational deficiencies more than individual inadequacies.

A review of the reports of the day, however, reveals serious problems in the quality of volunteer work. The absence of training, supervision, and peer group supports led to widely divergent practices. The volunteer was virtually unaccountable for his activities, for he generally functioned independently of the organization. The irregularity of his work schedule often

<sup>228</sup>*Ibid.*, : 184-185.

<sup>229</sup>Fifty-Sixth Annual Report of the Prison Association of New York for the Year of 1900 (Albany: James B. Lyon, 1901): 112.

<sup>230</sup>Barrows, *op. cit.*, : 177.

<sup>231</sup>Homer Folke, "Juvenile Probation in New York," *The Survey* (February 6, 1910): 669.

<sup>232</sup>*Ibid.*, : 670.

<sup>233</sup>First Annual Report of the New York State Probation Commission for the Year of 1907 (Albany: James B. Lyon 1908): 84.

<sup>234</sup>Maurice Parmelee, *Criminology* (New York: MacMillan Co., 1918): 403.

wrought havoc with both the probation organization and the court. Most important, continuity of service was almost nonexistent, for in many cases volunteer services were periodic or of short duration.

Investigations by the Temporary New York State Probation Commission in 1905 proved to be highly critical of much of the volunteer services throughout the State. In Buffalo, for example, the Commission reported that the volunteer system had broken down. A member of the commission stated:

. . . that probation had largely become meaningless and without value; that it lacked the elements of dignity and authority. While some children had doubtless benefited by kindly treatment at the hands of friendly probation officers, the system had utterly failed to exercise a restraining influence over children disposed to continue in evil ways.<sup>235</sup>

The Commission found similar faults with probation-volunteer services in other cities. In Rochester, the volunteers were allegedly functioning without supervision:

In some instances the work done was undoubtedly very efficient and valuable; in others the reports seem to leave little doubt that the homes of the children had been visited infrequently (if at all) and that the actual information gained by the probation officer was inadequate, even if reported to the court (and it was not always so reported) to enable the court to form any satisfactory judgment of the child's behavior.<sup>236</sup>

Nor was the Commission's evaluation of volunteer services in Yonkers, New York, any better:

It is to be regretted, however, that the operation of the volunteer service has not been kept under the direction of the chief probation officer so that there might have been more uniformity in methods. Some conspicuous mistakes have been made by inexperienced volunteers which might easily have been avoided had their activities been properly guided.<sup>237</sup>

Even Parmelee, an early volunteer probation officer who later became a distinguished criminologist, expressed skepticism regarding the effectiveness of probation services when provided by volunteers. He wrote as follows in his treatise on criminology published in 1918:

Much of this probation work has been done by volunteer workers who have been well-meaning, but many of whom, on account of lack of special training and experience and a sentimental point of view, have not been very efficient.<sup>238</sup>

Inasmuch as there was great similarity in the criticisms directed at volunteer services, it is not at all surprising that similar recommendations were offered in virtually all of the official reports. These included increased work controls, formal training, and increased supervision by the chief probation officer.

Although there definitely was some merit to the criticisms leveled at volunteer services, it is extremely doubtful that such services could have been made any more effective at the time given the circumstances of an emerging probation system that was just starting to develop and mature. The irregular nature of

volunteer services requires a strong organizational framework so as to insure continuity, interrelationship with professional services, and the supports required for effective service. In addition, it is essential that there be a clear role distinction between the volunteer and professional probation officer. These conditions were simply not present during the early days of statutory probation.

Within only a few years after the enactment of probation legislation, the volunteers' glory as the founding fathers of this innovative system was gone and they were now viewed as outsiders whose time had passed. Flexner, consistently a voice of professionalism, warned in 1910 against the "indiscriminate use of volunteers" and suggested that they be limited to two probation cases at any one time. Following a lengthy evaluation of the use of volunteers on a nationwide basis, he concluded:

If volunteers are used, the number of probationers such an officer can oversee becomes important; the fewer children given to a volunteer the better. One child, if the system can be held down to it, is better than two, and few volunteers can be found whose time will permit them to look after more than two.<sup>11</sup>

Flexner's criticism, while harsh on the surface, is quite understandable in light of the times. Like other

<sup>11</sup>Bernard Flexner, "The Juvenile Court as a Social Institution," *The Survey* (February 5, 1910): 620.

<sup>12</sup>Harold L. Wilensky and Charles N. Lebeaux, *Industrial Society and Social Welfare* (New York: The Free Press, 1965): 304.

advocates of professionalization, he viewed this process as a vehicle for improved client services, improved worker status, higher income, and greater occupational autonomy. At the same time, volunteers possessing lesser skills, different goals, and often a less intense and less permanent occupational commitment, were seen as a threat and an obstacle to the attainment of professional recognition and status. While the animosity on the part of the professional probation officers toward volunteers was very real and the efforts to eliminate or, at least, diminish the latter were equally real, these attitudes and actions can hardly be viewed as unique to the field of probation. On the contrary, they are common to most fields especially as they go through the process of becoming a distinct, specialized occupation. As Wilensky and Lebeaux state, "All professions are also anti-amateur. Competing practitioners who are not regarded as professionally qualified are condemned."<sup>12</sup>

With increased hiring of salaried probation officers, the fate of the volunteer in probation became apparent. Although they would continue to serve in smaller cities and rural areas for a considerable period of time, their overall influence in probation would rapidly diminish. Ironically, the principal architects of the probation system would not be permitted to worship in the temple of their own creation.

## "Don't Throw the Parole Baby Out With the Justice Bath Water"

BY ALLEN F. BREED

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FOR OVER a decade American legislators have been busily attempting to cure the crime problem by enhancing penalties for the convicted transgressors. The increased incidence of crime, particularly violent crime, has left substantial portions of the citizenry increasingly fearful for their personal safety, and generally supportive of measures that promise to increase the punishment for law violations. In spite of considerable evidence to the contrary, the judiciary is popularly perceived as too lenient, as being "soft on crime." The public's fear and concern has provided the opportunity for some legislators to bolster political careers by loudly espousing a "tough on crime" crusade that typically translates into increased penalties and mandatory imprisonment for the offenses most feared. Those legislative moderates who question the effectiveness of attempting to reduce crime by locking up more people for longer terms are understandably fearful of overtly resisting the rush to incarceration, lest they, too, be seen as "soft on crime."

Having increased penalties, the tough-on-crime crusaders further scanned the justice apparatus and concluded that those in decisionmaking roles, namely the courts and parole boards, were too lenient in their exercise of the discretion allowed by law, and so moved to reduce or eliminate that discretion. The result has been a national trend toward mandatory and determinate sentencing of statutorily fixed terms that leave little discretion to the sentencing judge and none for parole board members. Interestingly, little attention has been paid to prosecutorial discretion, perhaps because the prosecutors have been generally supportive of the "get tough" stance. It is estimated that 90 to 95 percent of criminal dispositions are determined in the plea bargaining process, and that no more than 5 to 10 percent go to trial. Even in career criminal cases, prosecutorial discretion has allowed over 50 percent of the cases to be screened out prior to trial. Thus, such discretion as has not been preempted by the legislature largely rests with the prosecution. With the effective disposition having been made before the case reaches the probation officer, the significance of his role in making recommendations to the court is drastically reduced, indeed almost eliminated.

A current Bulletin of the Bureau of Justice Statistics reports—"that 46 states have mandatory sentencing laws and 12 states have passed some form of determinate sentencing laws, both of which frequently result in a longer average time served than indeterminate sentences." Under the determinate sentencing statutes in these states, prisoners are now given presumptive or flat sentences which they must serve in full.

From the standpoint of release decisionmaking, parole has been more or less abolished in Arizona, California, Colorado, Connecticut, Florida, Illinois, Indiana, Maine, Minnesota, New Mexico, and North Carolina. With regard to postrelease supervision, parole has only been abolished in Maine but other states are eagerly looking at the cessation of such services as being a way to save money.

With the crime rate unabated, in spite of the tougher penalties, and with more people going to prison for determinate periods that allow for no adjustment by paroling authorities, the inevitable result was easily predictable. Prison population has mushroomed at an increasing rate and 1982 saw the total imprisoned population increase by 11.6 percent after a record increase in 1981 of 12.1 percent. On March 30, 1983, there were 425,678 inmates in Federal and state prisons and some 10,000 prisoners were backed up in local jails awaiting the opening of bed space in the prisons. Forty states are currently under court order or involved in litigation to reduce prison populations.

### *Crisis in the Largest System*

The near catastrophic predicament that can evolve in the rush to incarcerate for longer mandatory terms is perhaps best illustrated in the crisis currently facing the California system. Throughout the seventies the State prison population varied between 20 and 24 thousand, and stood at the high figure at the end of 1980, which incidentally approximates the design capacity of the system. Some 5 years ago the State legislature moved from an indeterminate sentencing pattern to a determinate one; prison terms were mandated for certain offenses; and terms generally were lengthened. In the past 5 years the inmate popula-

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