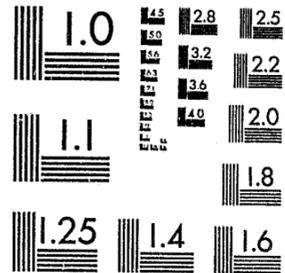


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11/27/85

# Federal Probation

The Evolution of Probation, Its Development, Settlement, and Its Present Status  
 The Probation Officer, Role in Probation Work  
 Probation, Social Control, Civil Service, and Administration of the Probation Department  
 Six Principles and One Objective of Probation  
 Sentencing and Probation  
 The Juvenile Justice System: A History of Probation  
 An Act of Congress on the Probation Department by Charles C. Johnson

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# Federal Probation

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## This Issue In Brief

*The Evolution of Probation: University Settlement and Its Pioneering Role in Probation Work.*—In the final article of a series of four on the evolution of probation, authors Charles Lindner and Margaret Savarese further explore the link between the settlement movement and the beginnings of probation in this country by focusing on one particular settlement, the University Settlement Society of New York City. Close examination of the University Settlement papers revealed that this settlement, during the late 1890's and early 1900's, expanded its programs and activities to meet the growing needs of the people of the Lower East Side and became very much involved in probation work at the same time. This involvement included experimentation with an informal version of probation prior to the passage of the first probation law in New York State, the appointment of a settlement resident as the first civilian probation officer immediately following passage of this law, the creation of a "probation fellowship" sponsored by one of the settlement benefactors, and the description of this probation work in various publications of the day.

*Professionals or Judicial Civil Servants? An Examination of the Probation Officer's Role.*—A major issue and question in the probation field is whether probation officers are professionals. In this study, Richard Lawrence examines whether probation officers see themselves as professionals and the extent to which they experience role conflict and job dissatisfaction. The study also looks at how probation officers perceive their roles in relation to the judicial process and the services provided to probationers. Three factors were found to make a difference in officers' role preference and whether they experience role conflict: size of their department (and city), age, and years of experience. A number of recommendations are offered to give probation of-

ficers equal professional status with judicial personnel and more autonomy to exercise their professional skills in the court organization.

*Six Principles and One Precaution for Efficient Sentencing and Correction.*—According to author Daniel Glaser, more crime prevention per dollar in sentencing and correction calls for: (1) an economy principle of maximizing fines and minimizing in-

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carceration; (2) noncriminalization of offenders who have strong stakes in conformity; (3) crime-spree interruption; (4) selective incapacitation; (5) reducing inmate pressures from other inmates and increasing staff and outsider influences; (6) appropriate vocational training of offenders. These goals require avoidance of sentences based purely on just deserts.

*The Juvenile Justice System: A Legacy of Failure?*—In a follow-up to his previous article, "Juvenile Court: An Endangered Species" (*Federal Probation*, March 1983), author Roger B. McNally expands the notion that the juvenile justice system is on the brink of extinction. The author identifies five contemporary themes which are jeopardizing the very existence of juvenile justice and strongly suggests that if the present course of events goes unabated, this system—by the turn of the century—may be recorded in the annals of history as a legacy of failure and a system that self-destructed. The article identifies the need for a separate system of justice by citing examples of failure when the adversarial model is applied to juvenile matters. The author maintains that the juvenile justice system is at a crossroad which requires an affirmation rather than a condemnation of the notion that youth are more than "short adults" necessitating incapacitation until they "grow-up."

*An Assessment of Treatment Effectiveness By Case Classifications.*—Authors James M. Robertson and J. Vernon Blackburn studied the effects of treatment upon probationers by formulating three questions which asked if court-ordered treatment had any effect on the revocation percentage of probationers in the minimum, medium, and maximum supervision categories as established by four major base expectancy scales. Summarized, the treatment group had lower revocation percentages in 10 out of 12 supervision categories. These results led to positive conclusions regarding the effects of treatment in reducing probation failures.

*Forecasting Federal Probation Statistics.*—The procedures used in forecasting Federal probation population totals are explained with the intention of making these techniques available to the individual probation office. Author Steven C. Suddaby discusses long- and short-term projections and difficulties which are peculiar to probation forecasting.

*The Armed Urban Bank Robber: A Profile.*—An analysis of 500 armed bank robbers revealed that they do not fit the stereotype of sophisticated professional criminals, say authors James F. Haran and

John M. Martin. Rather, these robbers are a cohort of young adult, unattached, socially disorganized males, predominately black, poorly educated, and lacking vocational skills; most are unemployed, previously arrested property offenders. Twenty-five percent are drug addicts. They make little profit from their crimes, are swiftly arrested, and receive long jail sentences. A fourfold typology of offenders is developed based on career patterns of prior property crime offenses. The authors propose that selective sentencing, focused more on the career pattern rather than the crime, might render a more effective sentencing formula.

*Female Employees in All-Male Correctional Facilities.*—Court decisions have opened the doors for women to work in male corrections, but the real struggle to find acceptance and promotion within the system is just beginning. According to authors Rose Etheridge, Cynthia Hale, and Margaret Hambrick, this struggle takes place within the parameters established by inmate, staff, and community attitudes and the attitudes and motivations of the woman herself. Images of women developed long before the working relationships color her interactions with inmates and staff. The authors stress that the woman must understand what is happening and use specific coping strategies if she wants to succeed.

*Juvenile Delinquency Prevention and Control in Israel.*—The number of youth committing serious crimes in Israel is reaching alarming proportions. After discussing the scope and dimensions of the delinquency problem in Israel, author Gad J. Bensing describes the Israeli juvenile justice system and explains the prevention and control strategies of the police, the courts, and the juvenile probation department. Although law enforcement and delinquency prevention was never a national priority in Israel, a reallocation of resources may be required to meet the new domestic needs.

*I Didn't Know The Gun Was Loaded.*—The judgment of criminal intent has become formalized in Western law as a way of appreciating more fully the nature and quality of an unlawful act and, implicitly, assessing the character and social fitness of the accused. However desirable in theory, the evidential determination of intent, a subjective phenomenon, may pose complex problems. Author James D. Stanfiel proposes a revised concept of criminal intent, one less heavily dependent upon rational choice as a precondition of legal accountability.

## The Evolution of Probation

### University Settlement and its Pioneering Role in Probation Work\*

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

ALTHOUGH THE settlement movement originated in England with the founding of Toynbee hall in 1884, the underlying settlement idea was quickly appropriated by a small band of young, energetic Americans and transported to the United States. Here, it took hold and spread so rapidly that by the turn of the century, there were more than 100 settlement houses, of all types and descriptions, most of them located in the largest, most heavily populated urban centers.

There were many similarities between the English social settlement movement and its American cousin. Both had come about as a response to the ever-growing tide of urbanization and industrialization, and both were envisioned as one possible remedy for the social rifts and disorganization which inevitably accompanied these two processes. Thus, the settlement movement on both sides of the Atlantic attempted to repair these rifts and "sought to reconcile class to class, race to race, and religion to religion."<sup>1</sup> The English and American settlement movements were also very much alike in that both tended to attract clergymen, professors, writers, and, more than anyone else, young men and women eager to serve their fellow man in some socially useful way. In America, the pioneering settlement residents were, invariably, not only young but also well-educated, usually with some post-graduate training, from solidly middle or upper-class backgrounds, and of old, Anglo-Saxon, Protestant stock.

In addition to the similarities, there were also differences between the English and American versions of the settlement movement. Unlike their English counterparts which were often church-affiliated, most of the American settlements were deliberately nonsectarian and devoid of any formal adherence to doctrine or ritual, although the individual founders and leaders were often deeply

religious themselves. An even more significant difference was the involvement of many of the American settlements in a wide variety of reform measures designed to improve the lot of the thousands of impoverished immigrants who were pouring into the already congested, tenement neighborhoods. Their continuous day-to-day presence in these neighborhoods brought the early settlement residents face-to-face with a bewildering array of problems that cried out for attention and amelioration and turned many of them into political activists. Jane Addams, of Hull House, touched on just a few of the problems which galvanized settlement residents into fighting for social change when she wrote:

Insanity housing, poisonous sewage, contaminated water, infant mortality, the spread of contagion, adulterated food, impure milk, smoke-laden air, ill-ventilated factories, dangerous occupations, juvenile crime, unwholesome crowding, prostitution, and drunkenness are the enemies which the modern city must face and overcome would it survive.<sup>2</sup>

Thus, settlement workers became deeply involved in a broad range of reform activities aimed at eliminating these conditions, and one of the many reform measures which attracted their support was an innovation known as probation. The active role played by a number of very influential settlement leaders in helping probation become an accepted practice has been virtually ignored, although the part they played was a truly critical one. This article continues to explore the link between the settlement movement and the beginning probation movement by focusing on one particular settlement, University Settlement of New York City, and by examining its active involvement and support of probation during its infancy around the turn of the century.

#### The Early Years of University Settlement

University Settlement, which went on to become one of the most influential of all the settlements, began rather inauspiciously, as the Neighborhood Guild, in a dilapidated tenement on the Lower East Side of Manhattan. The founder was Stanton Coit, a moody, idealistic intellectual who had spent some

\*This is the final article in a series of four.

\*\*Charles Lindner is associate professor, Department of Law, Police Science and Criminal Justice, John Jay College of Criminal Justice, New York City. Margaret R. Savarese is supervising probation officer, New York City Department of Probation, Bronx. The authors wish to thank Professor Eileen Rowland, Chief Librarian, John Jay College of Criminal Justice, and her staff for their support and assistance.

<sup>1</sup> Clarke Chambers, *Seedtime of Reform: American Social Service and Social Action, 1918-1933*. Minneapolis: University of Minnesota Press, 1963, p. 14.

<sup>2</sup> *Ibid.*, p. 16.

## Juvenile Delinquency Prevention and Control in Israel\*

BY GAD J. BENSINGER, PH.D.  
Associate Professor of Criminal Justice,  
Loyola University of Chicago

### *The Scope of Delinquency in Israel*

LIKE MOST countries after World War II, Israel has experienced a rising problem of crime and delinquency, which has especially intensified during the last 20 years. Since 1963, at least 16 separate bills to curb juvenile delinquency have been introduced in the Israeli Parliament (Knesset), resulting in several important legislative changes and numerous recommendations. The most far-reaching and comprehensive legislation enacted was the Youth Law of 1971 which, among other things, raised the maximum age limit within which a male is subject to the delinquency jurisdiction of a juvenile court from 16 to 18 (the upper age limit for females was already 18). In 1978, the Knesset passed yet another law raising the minimum age of criminal responsibility from 9 years of age to 13 years of age. Consequently, under Israeli law, juvenile delinquents are minors aged 13 to 18 years who commit criminal offenses. (There are no status offenses in Israel.)

There are no reliable statistics on the exact number of juveniles who commit crimes in Israel because, as in the United States, many offenses are not reported to the police, and the police do not automatically open a criminal file for every juvenile suspect arrested. However, police officials and others involved in matters of juvenile delinquency prevention and control agree that the scope of delinquency in Israel has reached alarming proportions. Available statistics tend to confirm this perception. Thus, for example, in 1981 crimes committed by juveniles between the ages of 13 and 18 years increased 10.5 percent over 1980, while criminal offenses committed by adults showed a decline of 5.8 percent over the previous year.<sup>1</sup> The majority of offenses committed by juveniles are offenses against property, especially burglaries. Approximately one half of all juveniles charged in 1977-1980 were accused of burglary, and it was estimated that, in Tel Aviv alone, more than 50 percent of the burglars

were boys aged 16 to 18 years. Police statistics also indicate that there has been an increase in offenses against property committed by females. In 1980, 42.8 percent of young female offenders were charged with burglary. Of this number, 58.1 percent were 16 to 18 years old.<sup>2</sup>

More striking than these statistics are the many news items in the Israeli press that illustrate the nation's growing problem of crime and delinquency.

- The popular Hebrew newspaper *Maariv* reported that three boys aged 12, 13, and 14 went on a 3-week crime binge, during which time they burglarized 15 businesses, stole 15 cars, and raped a 15-year-old girl. The three had escaped from a juvenile detention center.
- In an incident in Jerusalem that involved a number of teenagers suspected of stealing a car, a 17-year-old boy was shot in the leg by police after he had already been handcuffed by plainclothes officers. The shooting triggered a violent demonstration in the boy's neighborhood in which more than 100 youth were involved.
- While no one seems to know the extent of drug abuse in Israel, a controversy erupted when the head of the Israel Police narcotics section told the Knesset Education Committee that more than 50 percent of high school pupils had smoked hashish at least once at parties.
- Most recently, the mutilated body of a 15-year-old-boy was found outside a remote cave; this was the ninth juvenile to be murdered or to disappear in Israel in 1983. According to the newspaper *Yediot Achronot*, there have been 200 unsolved murders and disappearances in recent years.

### *Prevention and Control Strategies: The Role of the Police*

Israel has a national police force with statutory functions that include such conventional police

responsibilities as the prevention and detection of crime, the apprehension of offenders, the maintenance of public order, and the safety of persons and property. Special police units to investigate juveniles were established in Israel in the early 1960's. Organizationally, the youth units are subordinated to the investigative branch of the police. A Juvenile Delinquency Section at national police headquarters in Jerusalem is attached to the Criminal Investigation Division. It issues procedures and directives to youth officers in field units, who also are attached to the investigation structure. They are plainclothed, drive unmarked police cars, and usually are housed separately from other police units. The Juvenile Delinquency Section also collects delinquency statistics, prepares surveys, and conducts research projects to improve the ability of the police to handle juvenile offenders.

The primary responsibility of the youth officers is to investigate and prosecute young offenders. However, the police also are active in noncriminal matters concerning the welfare of minors. Such activities include the locating of minors in distress, counseling, referral to appropriate treatment services, and the monitoring of same. The police also share responsibility in locating missing minors and supervising their adjustment to normal living conditions. In all noncriminal cases the police must, of course, cooperate and work closely with the welfare and educational authorities who under Israeli law exercise jurisdiction over minors engaged in activities generally described as "status offenses."

Police personnel are utilized in preventive activities as well. Some of the delinquency prevention activities initiated include the formation of police scout clubs, summer camps, boxing and sport clubs, beach patrols, and special "school guards" in which student-volunteers guard school property during and after school hours.<sup>3</sup> Police delinquency prevention activities must be coordinated with other agencies involved in delinquency prevention: The Division of Youth Development and Corrections in the Ministry of Labor and Social Affairs, which includes the Youth Probation Service and other social services; the Youth Division of the Ministry of Education; street corner workers employed by the social services departments of various municipalities; the Ministry of Health; and others. Because so many different and diverse bodies are involved in the at-

tempt to prevent delinquency, a bureaucratic maze that stifles many such activities has developed. The need for a more coordinated approach to the problem of delinquency was pointed out several years ago by a national commission appointed to investigate the topic of crime in Israel.<sup>4</sup> However, little attention, if any, has been paid by the responsible authorities to the commission's recommendations.

When investigating crimes committed by minors, youth officers are prohibited (except in special cases) from conducting investigations in the schools, places of work, or at night. They can search and arrest minors when necessary, but they must notify the child's parents or guardians as soon as possible. No minor 14 years of age or older may be detained for a period exceeding 24 hours without a warrant from a judge. If it is impossible to bring the minor before a judge within the prescribed time, the officer in charge of the police station may direct the continuance of the minor's detention for an additional 24 hours. A written explanation for such action is required. Similar procedures apply to minors under age 14, except that the period of detention may not exceed 12 hours, and only if this is deemed essential for the public's or the minor's own safety.<sup>5</sup> The period of detention that is ordered by a judge is also restricted. In certain instances it cannot exceed 10 days and in other instances it cannot exceed 20 days. Under no circumstances may a minor be held in custody in the same cell as an adult.

As noted above, the age of criminal responsibility in Israel is 13. Consequently, when minors under 13 years of age suspected of committing an offense are arrested, they must be referred by the police to an appropriate welfare agency. Under the Care and Supervision Law of 1960, the welfare agency can decide whether the minor is in need of care and if so, what kind of care to prescribe. (This law provides for four different types of care. Among these are provisions for the minor's education or mental rehabilitation, appointment of a court custodian, placement under the supervision of a welfare officer, and institutionalization.)

When a criminal investigation shows that a young offender between 13-18 years of age committed a minor offense, or that he or she is a first offender, the youth officer may station-adjust the case. In all other instances, the offender may be interrogated and a criminal file opened. If the investigation shows that there are sufficient grounds to bring the offender to trial, the police must refer the case to the Youth Probation Service of the Ministry of Labor and Social Affairs. Once a referral from the police is

<sup>3</sup> *Ibid.*

<sup>4</sup> Erwin Shimron et al., *Report of the Commission to Examine the Topic of Crime in Israel*. Jerusalem: Segal Press, 1978, p. 18.

<sup>5</sup> Youth (Trial, Punishment and Modes of Treatment) Law, 5731-1971, C. 3, Section 10, in *Laws of State of Israel* henceforth to be referred to as *LSI*.

<sup>1</sup> *Maariv*, March 19, 1982.

<sup>2</sup> *Israel Police Annual Report for 1980*. Jerusalem: Israel Police, August 1981, p. 9.

\*Presented at the 1984 Academy of Criminal Justice Sciences Meeting in Chicago, Illinois, March 27-30, 1984.

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received and a social investigation completed, the probation department recommends whether or not to file a petition with the court. Although the legal authority to charge a minor with a criminal offense rests with the police or the district attorney (in felony cases), in most instances, they abide by the recommendation of the probation department. When a case is closed by the police, the probation department must decide whether or not to pursue any treatment services. In any event, the minor whose case was closed receives an official police notification and warning.<sup>6</sup>

It should be noted that during the last few years in particular, many minors apprehended by the police have been diverted to agencies outside the justice system. In 1980, for example, 4,596 minors (33 percent of the total apprehended by the police) were either station-adjusted or referred to other agencies. Thus, only 9,373 minors were charged with delinquency in 1980.<sup>7</sup>

#### *The Role of the Courts*

Juveniles charged with serious crimes (murder, rape, robbery, and violations of national security) are remanded to the adult courts, a practice objected to by advocates of juvenile reform in Israel.

A juvenile court in Israel (there is no one national juvenile court) has two areas of jurisdiction. It adjudicates juvenile offenders as well as minors brought to its attention under the Youth Care and Supervision Law of 1960.

As in the United States, juveniles are processed differently than adults. Juvenile proceedings are not public, and the names of minors tried in juvenile court may not be publicized. The great majority of juvenile offenders in Israel are released on bail pending trial. A juvenile court may, however, order that the minor be kept in a detention home for observation for a period not exceeding 90 days, or placed under temporary supervision of a probation officer.<sup>8</sup>

When deciding a case, a juvenile court may acquit or convict the offender. If the judge finds the defendant guilty, he must request a written social investigation report from a probation officer, and he may order an examination of the juvenile by a physician or another expert. The report submitted by the probation officer generally includes information on

the defendant's criminal record, his or her cultural background and home conditions, educational achievements, and whatever circumstances may have contributed to the criminal offense. The probation officer must include in his report to the court a recommendation concerning the nature of the sentence that ought to be imposed. Such a recommendation is not binding on the court.

After these requirements have been satisfied, the court either can sentence or discharge the defendant. When sentencing the judge has a range of alternatives that are prescribed by law and include probation, confinement to institutional care, imprisonment, payment of fine and/or restitution, conditional discharge, and committal to a custodian.<sup>9</sup> Several of these alternatives are discussed below.

#### *Probation*

Israel's probation services are an integral part of the nation's social services delivery system—an arrangement initiated by the British when they ruled Palestine. At the present time, administrative responsibility for probation lies with the Ministry of Labor and Social Affairs. Separate adult and juvenile probation departments exist within the ministry's Division of Youth Development and Corrections. The juvenile probation department is referred to as the Youth Probation Service. It is organized nationally in six geographic districts, with approximately 150 probation officers. The stated goal of the department is to treat, rehabilitate, and assist the resocialization of juveniles referred by the police and the courts. A probation order is made for a period not less than 6 months and not more than 3 years. In 1980, 1,780 juveniles were under the department's supervision.<sup>10</sup>

#### *Institutional Care*

Until 1971, Israel's correctional institutions for juveniles (referred to as "homes") were governed under the provisions of the British-enacted Juvenile Offenders' Ordinance of 1937 and the Youth Authority Rules of 1955 by which the Youth Protection Authority had been established. The Juvenile Offenders' Ordinance was repealed and replaced by the Youth Law of 1971. At the present time, the Youth Protection Authority is part of the Division of Youth Development and Corrections of the Ministry of Labor and Social Affairs.

The Youth Protection Authority is responsible for juveniles who are referred by court orders for placement in a home. (The legal definition of a "home" is a place of residence or custody of minors outside their families.<sup>11</sup> Homes include government institu-

tions as well as other public and private institutions or even foster homes.) In 1980, 549 convicted juveniles were under this kind of institutional care.<sup>12</sup>

When an offender is committed to a home, a probation officer must coordinate the placement with the Youth Protection Authority and deliver the juvenile to it. While the court fixes the period of institutionalization and may differentiate in its order between an open or closed home, it does not specify the place of residence. That decision is left to the discretion of the Youth Protection Authority. Consequently, following a classification process, the juvenile is sent to a home which serves offenders exclusively, to one of the homes with a more diversified population, or to a foster home. When a juvenile court orders that a minor should be kept in a closed home, the Youth Protection Authority may transfer him/her to an open home provided that the minor had been kept in the closed facility for "a reasonable period and circumstances exist that justify the transfer." Furthermore, a minor cannot be placed in a closed home without the approval of the court, unless special circumstances justify a brief transfer.<sup>13</sup>

The goals of the Youth Protection Authority are based on the principles of rehabilitation. Consequently juveniles in these institutions must attend school, engage in vocational training, and participate in different treatment activities, either individually or in small groups.

Juvenile offenders committed to the Youth Protection Authority are eligible for early release. The law provides that any minor who has been kept in a home for over 1 year is eligible for release upon the recommendation of a release board. After a hearing, the release board may recommend early release with or without conditions. If conditions are attached, the juvenile is referred to the probation department for aftercare services. Such services are provided for 1 year or until the termination of the sentence, whichever is the longer period.

A minor released from a home after the expiration of the sentence also is placed under the supervision of an aftercare officer for 1 year from the date of release.<sup>14</sup>

#### *Imprisonment*

Any minor over 14 years of age may be sentenced to prison, but a minor cannot be incarcerated with adults. The law explicitly prohibits the imposition

of the death penalty or a life term on minors, and no mandatory imprisonment or minimum penalty applies to minors.<sup>15</sup>

Minors are sentenced to prison usually only after earlier attempts at rehabilitation have failed. Some were on probation, and most spent time in the correctional institutions discussed above.

There are two Israeli prisons housing juvenile offenders. The Tel Mond prison is a medium-security institution that houses approximately 300 Jewish inmates. Arab youth accused of committing either criminal or security offenses are housed in the Damon prison, which also is a medium-security institution. Most of these juveniles serve sentences under 6 months. During their stay in prison they are required to attend remedial and special education classes offered by the Ministry of Education inside the prisons. Inmates also attend vocational training courses sponsored by the Ministry of Labor and Social Affairs. Graduates receive certificates of completion which do not indicate where the training took place, and these certificates entitle the holder to apply for membership in Israel's trade union. Inmates also receive help from trained social workers; there are group sessions as well as individual counseling for those who seek assistance. Despite these efforts, the recidivist rate is very high because most of the "graduates" return to society better schooled in crime than before.

#### *Conclusion*

Many Israelis are concerned and shocked over their nation's rising crime problem, for Israel today is not the kind of nation they had envisioned. In recent years, especially, more and more people have started to ask, "What is our country coming to?" An analysis of Israel's crime problem indicates that, like in other industrialized countries, complex economic, social, cultural, and political factors are involved.

As shown above, Israel has established a juvenile justice system that is based on modern legal and social principles and precepts characteristic of Western societies. However, given Israel's other national priorities, it is not surprising that the country's "War on Crime" has lacked the adequate resources to cope more successfully with crime in general and juvenile delinquency in particular.

Law enforcement and delinquency prevention was never a national priority in Israel. The country has been preoccupied with defense and immigrant absorption ever since it declared its independence in 1948. Because of the constant danger to its physical survival, many of the country's critically limited

<sup>6</sup> *The Police and Juvenile Delinquency*. Jerusalem: Israel Police Training Section, n.d., pp. 10-11.

<sup>7</sup> *Police Report*, p. 9.

<sup>8</sup> Youth Law, C. 4, Section 20, in *LSI*.

<sup>9</sup> *Ibid.*, C. 5, Section 25-26.

<sup>10</sup> *Statistical Abstract of Israel for 1980*. Jerusalem: Central Bureau of Statistics, 1981, p. 567.

<sup>11</sup> Youth Law, C. 1, Section 1, in *LSI*.

<sup>12</sup> *Statistical Abstract*, p. 569.

<sup>13</sup> Youth Law, C. 5, Section 31, in *LSI*.

<sup>14</sup> *Ibid.*, C. 7, Section 38.

<sup>15</sup> *Ibid.*, C. 5, Section 25.

resources have been allocated for defense. At the same time, the country has been obliged to absorb an enormous influx of immigrants, a process that has entailed an additional heavy strain on the economy and the nation's social fabric. Due to these circumstances many internal needs, including delinquency prevention and better law enforcement, have been neglected.

Moreover, Israel's present deep financial crisis has further exasperated the nation's internal needs and problems. During the current fiscal year (FY 1984-85), there has been an \$800 million budget reduction and cutbacks in many spheres of activity including education, criminal justice, and social services. These budgetary reductions are making what was a bad situation even worse. Already before this latest crisis, the Israel Education Ministry announced that there were 10,000 "hard core" problem youth who neither worked nor studied, and that most were left without any systematic attention from the authorities.<sup>16</sup> In Jerusalem, for example, there were at least 4,000 such youths, yet only 1,500 were being helped by the 65 street corner workers employed by the municipality. As soon as the

budgetary cuts were announced, two of the workers were laid off and an additional nine received termination notices.<sup>17</sup>

Another report, this one by the Ministry of Labor and Social Affairs, concerned the high rate of unemployment among young people in Israel. It showed that the national average unemployment rate among teenagers (14-17) and those aged 18-24 had been about 15 percent for the previous 3 years. However, in the "development towns," where most young people are from disadvantaged backgrounds, the teenage unemployment rate was 33 percent, and for the 18-24 group, it was 23 percent.<sup>18</sup> The overall unemployment rate in Israel was expected to further increase in 1984 and so, too, the rate among teenagers.

The deteriorating socioeconomic conditions will, of course, further aggravate the problem of crime and delinquency in Israel. Under these circumstances, it is imperative that the nation's social planners adopt a more comprehensive and coordinated strategy of delinquency prevention and control—an idea that had been recommended long ago.

## I Didn't Know The Gun Was Loaded

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**I**F CONFRONTED with my ignorance of the law which may be displayed in this article, I will probably admit the facts but deny guilty intent. Honestly, it's not that I *mean* to remain steeped in ignorance—it's just that life has not afforded me the opportunity for a fine legal education. Pleading "not guilty" of deliberate ignorance by reason of diminished mental capacity will be a defense of last resort.

The facetious pleading above points to the concept of intentionality, a concept of such practical utility that most of us use it countless times in our daily lives to "understand" the behavior of others. If my neighbor "accidentally" smashes into my priceless and irreplaceable 1937 Zeppelin 8 touring sedan because he turned his head at a critical moment to look at an attractive woman, I will understand and perhaps grudgingly forgive because I also have succumbed to similar aesthetic distractions at the wrong moment and have narrowly averted automotive disaster on occasion. However, if I come to believe that my neighbor is simply a nasty sort, consumed with envy, who *deliberately* crunched my beloved Zeppelin 8, I will rank him with the arch villains of history.

As the rule of law developed in Western society, the concept of intentionality became embedded in the law in the form of *mens rea*, or guilty mind. Did the accused culprit *mean* to do the dastardly deed? It might make all the difference—if his peers can figure out whether he "really" meant to do it. Aye, there's the rub! It is one thing to make informal judgments to facilitate social relations in daily life and quite another matter to achieve strict standards of proof in judging intent, an often complex and always intangible mental process.

As a forensic psychologist, I have been privy to some creative if not always persuasive denials of criminal intent on the part of defendants.<sup>1</sup> One convicted burglar referred for a presentence evaluation explained to me that he had by no means intended to burglarize the residence where he was nabbed, *in flagrante delicto*, by police officers. With earnest mein, the subject explained to me that he was very active in community affairs, especially concerned

with suppressing crime, and that he had actually *prevented* a group of misguided youths from carrying out a burglary during the early morning hours. What he claimed he had been doing when the police arrived on the scene was carrying the stolen items back *into* the burglarized residence, unfortunately creating a "mistaken" impression. The police and the court ultimately failed to appreciate the true intent of his public-spirited act and the defendant was sentenced to prison, perhaps dampening his enthusiasm for being a Good Samaritan.

On its face, the Good Samaritan's story appears ludicrous, especially if it is also known that he had distinctly dubious credentials in the area of dogooding. Yet, can anyone except perhaps a direct eyewitness claim with zero probability of error that he was actually lying? Absolutely not! In this case, however, a probability statement can be made with a high level of confidence that a criminal *act* was committed but intent can only be inferred, not laid out on a laboratory table like a dried specimen.

However, to illustrate that the issue of intent does not go away easily, suppose that the Good Samaritan's story had come from a different source, a known and highly respected community leader who in fact had an established record of intervening in crimes. Then the probabilities would shift in a different direction, and the seemingly absurd might be judged to be in the realm of the plausible.

In simpler times, a cattle rustler was fit to be hanged if he was caught with somebody else's cows. The niceties of "intent" received short shrift. Why then has the law of modern Western society become so concerned, at least in theory, with the thorny issue of intent? From my observation and study, I would judge that the concern with intent stems from a humanitarian evolution in the administration of law. In short, society through its legal agencies endeavors to avoid serious and possibly grievous errors in passing judgment upon accused persons, certainly a highly civilized ideal, by assessing motivation—state of mind—as well as overt behavior. The concept seems sophisticated, but the practice may be roughhewn if not downright metaphysical.

Certainly it is desirable in theory to sort out accused offenders according to presumed intent because an act in itself may not adequately define

<sup>16</sup> *Jerusalem Post*, July 15, 1983.

<sup>17</sup> M. Golan, "Time Bomb on the Street," *Maariv*, December 16, 1983.

<sup>18</sup> *Jerusalem Post*, September 12, 1983.

<sup>1</sup> The views expressed in this article are the author's own and do not necessarily represent the official position of the California Department of Corrections.

**END**