



1952

The Court and Probation : A Survey of Informal Judicial Opinion Reflected in Articles of Federal Probation Quarterly, 1935-1950

Sheldon Engerman
Loyola University Chicago

Follow this and additional works at: https://ecommons.luc.edu/luc_theses

 Part of the [Social Work Commons](#)

Recommended Citation

Engerman, Sheldon, "The Court and Probation : A Survey of Informal Judicial Opinion Reflected in Articles of Federal Probation Quarterly, 1935-1950" (1952). *Master's Theses*. 991.
https://ecommons.luc.edu/luc_theses/991

This Thesis is brought to you for free and open access by the Theses and Dissertations at Loyola eCommons. It has been accepted for inclusion in Master's Theses by an authorized administrator of Loyola eCommons. For more information, please contact ecommons@luc.edu.



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 License](#).
Copyright © 1952 Sheldon Engerman

THE COURT AND PROBATION: A SURVEY OF INFORMAL
JUDICIAL OPINION REFLECTED IN ARTICLES OF
FEDERAL PROBATION QUARTERLY
1935-1950

by
Sheldon Engerman

A Thesis Submitted to the Faculty of the School of Social Work
of Loyola University in Partial Fulfillment of
the Requirements for the Degree of
Master of Social Work

June
1952

TABLE OF CONTENTS

INTRODUCTION.....	ii
Chapter	Page
I. FEDERAL PROBATION QUARTERLY.....	1
Short Outline History.	
II. THE NATURE OF PROBATION	15
Probation Defined -- Use Of Probation -- Sel- ection Of Offenders.	
III. THE COURT, THE OFFENDER, AND THE PUBLIC.....	28
Progress Reports -- The "Ideal Judge" -- The Probation Officer And The Public.	
IV. THE PROBATION OFFICER.....	33
Personnel Qualification -- Appointments -- The Pre-Sentence Report.	
SUMMARY AND CONCLUSION.....	48
BIBLIOGRAPHY.....	50

INTRODUCTION

In the sweeping words of the ancient Babylonian Talmud, the modern judge is reminded "to imagine that a sword hangs precariously pointed at his heart and that the gates of darkness yawn wide at his feet." It is perhaps on just such a precipice that we must view any judge whose duty is that of determining sentence in criminal procedure. Faced with the responsibility of meeting judicial expediency, militant public opinion, the ends of justice and the needs of individual offenders, any judge finds himself involved in a problem of no small magnitude. Those judges acting within this very spirit of human responsibility have attempted to bring to the courtroom those advances made in the science of human behavior which modern probation has certainly utilized. It is recognized by many judges that the use of modern techniques of social treatment in the courtroom has as its goal the eventual rehabilitation of the offender and, in finality, the strengthening of the social order.

It is needless to dwell here upon the advantages and disadvantages of probation as an instrument of treatment; however it now seems quite safe to assume that probation, with

prudent use, has been given ample, although uneven, opportunity to prove its worth. In reviewing the material used in the paper it becomes quite evident that by far the greater number of judges writing on the subject are favorably disposed toward probation. Despite such wide acceptance, none seek to claim that in practice probation is without fault and, in some cases, hampered by very definite limitations. Judges also realize that probation, as many other social work endeavors, is presently engaged in the critical examination of its own methodology, an examination which the limitations of time did not heretofore permit.

It is with probation techniques or methodology, from the particular viewpoint of the judge, that this paper deals. Since it seems probable that probation will remain essentially a tool of the courts for some time to come, special attention has been given to the expressed expectations of judges upon the federal probation system and upon probation officers. Such evaluations from the judiciary are of value in that they often provide us with a fresher, perhaps more critically forthright approach to this "America's most outstanding contribution to criminal jurisprudence."

This paper has drawn together some thirty-five articles written by both federal and state judges which have appeared in editions of Federal Probation Quarterly during the

period from 1935 to 1951. For the purpose of contrast, material by lay authors has been used from time to time. Federal Probation Quarterly was chosen because of the consistent excellence of its articles and in view of its position as the only well circulated journal devoted to the probation field. The judges whose articles have been utilized represent both wide geographical distribution and a variety of courtroom experience. In the attempt to survey what judges have said about probation, this paper has made the distinction between what is termed formal legal opinion and evaluation; opinion or constructive criticism. Such distinction is made in the effort to avoid legal entanglement and ascertain how probation may best serve the court.

CHAPTER I

FEDERAL PROBATION QUARTERLY

The present federal probation system, as reorganized and strengthened by the Congressional Act of June 6, 1930, began operation during the fiscal year of 1930 with ten district probation offices organized out of the total eighty-four United States Judicial Districts. During the first year under the new probation act there were seven probation offices, one clerk, and an appropriation of \$200,000.¹ As was provided for within the Congressional Act, the probation system remained a division of the United States Bureau Of Prisons within the Department of Justice. Primary credit for this revamping of the federal probation system may, in many instances, be given to forward looking members of Congress, The National Probation And Parole Association and personnel of the Department Of Justice who gave unending effort toward the forging of higher standards of operation. One of the very first steps in setting up the reorganized probation system was to secure a competent probation

1 "United States Probation System," Ye News Letter, Washington, February 28, 1931, 1.

supervisor in Washington. Joel R. Moore, whose experience in the Recorder's Court of Detroit, Michigan, had attracted the attention of Sanford Bates, at that time Director Of Prisons, was appointed to the office in June of 1930. Mr. Moore remained at this post until March of 1937, when he resigned to accept the post of Warden of State Prison Of Southern Michigan.²

In retrospect, Mr. Moore may be regarded as the "founding father" of the publication which was, after a time, to become Federal Probation Quarterly. From a historical view, the inception of Federal Probation Quarterly, "a journal of corrective philosophy and practice," may be directly traced to its parent publication, Ye News Letter.

The publication of Ye News Letter began in October of 1930 under sponsorship and determined direction of Joel R. Moore. By far the leading motive which led Mr. Moore to begin publication was the attempt to stimulate the interest of probation officers in the system and in their own professional roles.³ Such stimulation was provided through the medium of articles which utilized the following techniques: (1) keeping the probation officers and judges informed of the latest

² Statement of Eugene S. Zemans, Executive Director of John Howard Association, Chicago Office.

³ Ibid.

thoughts and methods in the correctional field; (2) developing common aims among the various probation officers; (3) raising the standards of performance of each individual officer; (4) developing a closer coordination of probation and other correctional services administered by the Bureau Of Prisons, the United States Parole Board, and the state probation and parole programs. Even with the advantages gained with the Probation Act of 1930, the probation system, perhaps probation philosophy to a greater degree, did not receive the instantaneous acceptance of the federal courts.⁴ The Deficiency Appropriation Act of 1930 provided \$175,000 to the Department Of Justice for the expressed purpose of expanding and improving the probation system. This very limited amount made it eventually impossible to appoint probation officers in all district courts that had requested such appointments be made. The Department Of Justice could, at first, only authorize such appointments in judicial districts where the need seemed to be most vital. It is now quite commonly admitted that the standards of the federal probation system were quite low considering the weight and the extreme complexity of the demand placed upon the probation officer. However, Mr. Moore felt that the most pressing job of

⁴ United States Department Of Justice, Circular Number 2116, Washington, July 5, 1930, 1.

the probation system was to "sell" probation to resistive judges and the public alike. (We do not wish to intimate that there were no judges who were favorably disposed to the probation system.) There may have even been a conscious desire to allow probation standards to remain at low ebb in order to refrain from the antagonism of those judges who had already accepted probation, but who were not clearly informed as to its merits and limitations.

A study made of the educational backgrounds of federal probation officers reveals that as of the year 1932 fourteen had not completed high school; fourteen were high school graduates; eleven had some college work; eleven had received bachelor degrees from colleges; nine others having completed some type of graduate work.⁵ From the results of this study it is clearly visible that the generally inadequate training of the probation officers, together with the uneven, half-hearted recognition of the judiciary combined to make Mr. Moore's fight on behalf of probation a most difficult one. Probation was seemingly the "step-child" of the federal courts. Many examples illustrating this contention may be drawn: in many jurisdictions the result of the low appropriations and the

5 Edwin B. Zeigler, "The United States Probation Officer," Ye News Letter, Washington, April, 1932, 11.

lethargy of the court was realized in lack of adequate office staff and facilities. It became obvious that the morale of the probation officers was being affected by the lack of even essential office necessities. It was not an uncommon practice in many jurisdictions for the probation officer to conduct his operations from his own home because the court had failed to provide office space. Mr. Moore has given the following account of the many limitations with which probation officers had to grope.

In those early days quarters and facilities for probation services were meager. Down in Mobile the probation officer kept office hours, between sessions of court, at a table for counsel in the courtroom. In Los Angeles the probation officer held down one end of a table in the reception room of the marshal's quarters. There was no opportunity for private counseling. In Macon, Georgia, the probation officer was given space, without charge, in the law office of a retired lawyer friend. In the middle District Of Pennsylvania the probation officer had a large printed sign nailed to the street side of his residence: "Office Of U. S. Probation Officer."⁶

Joel Moore spent some time in traveling from one federal court to another inspecting the probation offices and at the same time taking advantage of the opportunity to speak with federal judges. In reality Joel Moore's purpose in these visits was in all probability twofold: (1) to interest judges in the advantages of the probation system; (2) to aid the various probation officers in

6 Joel R. Moore, "Early Reminiscences," Federal Probation, Washington, XIV, June, 1950, 22.

standardizing probation procedures.⁷ Joel Moore gives an interesting account of his activities.

Restricted in my travels both as to time and funds I had to resort to all means of communications. In the limited visits I could make, I gained a better grasp of the probation officer's situation and an understanding of the temperament of the bench and the supporting personnel of the court..... Both sides gained from exchanges of letters. Aims were lifted, objectives defined, and procedures strengthened.⁸

Although Ye News Letter proved to be a hastily put together publication, its position as a vital instrument for inservice morale cannot be overlooked. Joel Moore, by his intimate knowledge of the probation system personnel and the dynamic force of his own personality, made Ye News Letter of positive value to the system. The publication brought to its readers news items concerning the personnel and staff within the system. Both officers and clerical workers were included in the reports of appointments, promotions, transfers, etc. Included were pages of inter-office communications, poems, announcements. Any over-all evaluation of Ye News Letter must take into account the publication's function as the "office-chat" type of bulletin. The nature of the material printed was

7 Zemans, Personal Statement.

8 Moore, "Early Reminiscences," Federal Probation, XIV, 23.

clearly intended to encourage the officer in his own work and to give him a feeling of kinship and relatedness to the system as a whole. While Ye News Letter could not, by any stretch of imagination, be considered an authoritative social work journal it must not be thought that the publication was without pertinent articles on case work techniques. Statistical reports from the Department Of Justice which often offered the probation officer factual, concrete evidence of progress served well the purpose of supporting an often weak self-estimate. In attempting to keep probation officers informed of events in the whole field of social work, reviews of new books, reports from the various national and regional conferences of social work, and significant commentaries by judges and social workers were given. On the basis of this aforementioned evidence it seems safe to assume that Joel Moore made constant efforts to make Ye News Letter more than just an inter-office communique; that there was a real effort to percolate information which could be gained from contact with a professional school of social work.⁹

From its inception Ye News Letter was issued on a monthly basis, although lapses were not infrequent. The layout of the publication was simple while the topical divisions of

9 Zemans, Personal Statement.

the material were not clearly defined, thus giving its pages a rambling appearance. The pages of Ye News Letter were printed by a mimeograph process on cheap, rough paper bound together by staples. The general appearance of the publication was unattractive, at least in terms of future editions, and the frequently poor quality of the print made reading difficult. The covers of Ye News Letter usually featured some native attempt at art work which was made to coordinate with the season of the year, commemorative birthday, or holiday.

During March of 1937, Mr. Moore left the federal service, at which time Richard A. Chappell and John F. Landis were appointed acting supervisors of the federal probation system. The desirability of continuing the publication begun by Joel Moore was realized. It was soon recognized, however, that it would be impossible to continue publishing Ye News Letter in its past form, as it had become too greatly bound to Joel Moore's own personality. Messrs. Chappell and Landis held a staff meeting together with Eugene S. Zemans, who at that time was appointed acting editor, to consider a plan for active reorganization of the publication. None of these men had had any preliminary experience in the publishing of such a work. Indeed, they even found themselves hampered by a lack of any definite appropriation for the publication. Funds for the various editions of Ye News Letter had to be drawn from the

general appropriation. During the staff meeting it was decided that in format Ye News Letter would continue to base its appeal on the interest of those members of the "court family." The contents of articles had to be of interest to probation officers, the federal judiciary, the United States Attorney, etc. Further, it was planned that the initial editions under the new editor would be distributed to a select group of no more than 350 persons.

While Ye News Letter continued to be published on this basis for some time, the staff recognized the need for a truly professional journal expressly devoted to the probation field. They had met tremendous difficulty in recruiting qualified persons to write for the publication and were not entirely satisfied with the quality of the articles, the layout or title of the Letter. After some deliberation, the staff had decided that Ye News Letter was not a properly descriptive title but they were unable to create one which they felt was more suitable. James V. Bennet, at that time Director of the Bureau Of Prisons, was asked for suggestions for the new title; James Bennet therefore suggested that, since the aims of the staff were to produce a journal centralized about the federal probation system, the most simple, logical and descriptive title would be "Federal Probation." It quickly followed that by May of 1937 Ye News Letter was being printed under the title

Federal Probation.

By the month of October, 1938, Federal Probation had broken with the tradition of Ye News Letter and commenced publication on a quarterly, rather than a monthly, basis. While the quarterly remained in mimeographed form until 1939, more attractive covers were printed by inmates of the National Training School For Boys, Washington, D. C., as part of that institution's vocational training program. Federal Probation, as did its parent, Ye News Letter, continued to experience difficulty in procuring contributions to its pages. A change in the staff was made during February of 1939 when Eugene S. Zemans, acting editor, was replaced by Victor H. Evjen. During that same year another significant change took place, when the quarterly reached a standard of excellence high enough to warrant its issue in printed form. The printing of the quarterly became a regular part of the vocational training program at such institutions as the United States Penitentiary at Leavenworth, Kansas.

It is readily admitted that there was no definite plan for any extended presentation of material. Rather, the quarterly seemingly took form from issue to issue. In part, the difficulty of securing contributions may have been responsible. It was felt, however, that an attempt should be made to broaden the base of distribution to those who might be

interested. In order to accomplish such a task it was found necessary to widen the scope of the material presented, so that it would cover divergent interests in the fields of criminology, psychiatry, law, social work, etc. The quarterly staff, who put together Federal Probation in addition to their regular positions within the probation system, began distributing "sample" copies to state probation and parole offices, municipale public libraries, university libraries and the libraries of schools of social service administration. The immediate response to the quarterly was quite favorable, so that additional requests soon followed from judges, governors, juvenile agencies and many private citizens. Current subscribers were placed on a mailing list and additions to the list were made by special request only. No charge was made for such subscriptions. This has remained the policy of the quarterly to date.

Within a short time the mailing list had grown in number from 350 names during 1937 to well over 2,500 by the end of 1940. According to a statement by Victor H. Evjen the circulation of the quarterly during the first half of the year 1952 has been placed at 7,500 copies.

On July 1, 1940, the Administrative Office of the United States Courts replaced the Bureau Of Prisons as the

administrative overlord of the probation system.¹⁰ Transfer of the system to the Administrative Office of the Courts was accomplished by a special session of the Judicial Conference of Senior Circuit Judges. The Judicial Conference serves as the board of directors for the Administrative Office, and, under the authority of Section 6, Public Act 299, 76th Congress, directed that:

The Conference therefore directs that the Director of the Administrative Office of the Court undertake his duties with regard to the administration of the probation system as soon as is practicable...and that the Director invite the suggestions of the Attorney General with reference to the administration in order that there be continued progress in that administration.¹¹

While the probation system had been removed from the Bureau Of Prisons, cooperation was still maintained so that the correction and parole function of the Bureau Of Prisons might be kept in step with the probation system. It was within this very spirit of cooperation that Federal Probation, from 1940 to date, has continued to be a joint undertaking of the United States Probation System and the Bureau Of Prisons. The true advantages of such coordination become clear when we consider the statement of J. V. Bennet, Director of the Prison Bureau.

10 Richard A. Chappell, "The Federal Probation System Today," Federal Probation, Washington, XIV, June, 1950, 31.

11 Attorney General, Annual Report, Washington, 1940, 16.

There is a close inter-relationship between probation, prisons, and parole. All are part of the same correctional process. The general principles which govern one govern all.¹²

Since 1940 the circulation and reputation of Federal Probation Quarterly have continued to grow, so that the publication now enjoys world wide distribution. Its special editions devoted to juvenile delinquency, drug addiction, and the 25th commemorative year of the federal system have certainly established its rank as the most outstanding journal devoted to probation.

Ye News Letter, parent publication of Federal Probation Quarterly, began distribution in October of 1930, under the sponsorship and direction of Joel R. Moore, Supervisor Of Probation, United States Department Of Justice. The motives underlying the issue of Ye News Letter were, in general, the uplifting of inservice morale and practices, and the fostering, within the ranks of the probation officers, of a feeling of relatedness to the system as a whole. Ye News Letter combined both the function of an inter-office communique and inservice training organ. The News Letter, however, proved to be hastily organized, poorly printed and unattractive. Mr. Moore's

¹² James V. Bennet, "Hail And Farewell," Federal Probation, Washington, IX, May, 1940, 5.

resignation from the probation system in 1937 prompted a total reorganization of the News Letter so that by May of 1937 it was being distributed under the title Federal Probation. In contrast to Ye News Letter the basic editorial policy of Federal Probation has been to enlarge its circulation and to attract the interest of those in all phases of the probation field. Federal Probation Quarterly is the result of the joint effort of the Administrative Office Of The United States Courts and the Prison Bureau, Department Of Justice.

CHAPTER II

THE NATURE OF PROBATION

The derivation of the word probation stems from the latin probare, meaning to prove or to test. The term probation has become so much a part of common usage that we find no statute has been provided to define its exact meaning.¹ In her work on social work and the courts, Sophonsiba Breckenridge has defined probation from the framework of our modern penal system as the "method by which our courts grant convicted offenders an opportunity, while under the supervision of a probation officer and while retaining their place in the community, to demonstrate that they are capable of so ordering their lives as to avoid further conflict with the law and to become reputable citizens."² Judge Joseph Ulmann has also given a similar social interpretation when he states that probation "is a method of supervised extra-mural discipline extended and designed to

1 Herbert Parsons, "Probation And Suspended Sentence," Journal Of Criminal Law, Boston, VIII, November, 1917, 695.

2 Sophonsiba Breckenridge, Social Work And The Courts, University Of Chicago Press, 1934, 468.

readjust the convicted offender to society and its laws."³

The United States Probation Officers' Manual defines probation as:

...not primarily a gesture of leniency. It is the application of a systematic and constructive method of correctional treatment without custody to certain offenders who are considered potentially capable of being restored to social usefulness without the stigma of imprisonment and the bitterness which generally follows such a separation from normal relationships.⁴

From any legal approach, probation involves the suspending of the imposition or the execution of the sentence. While the offender stands convicted, the sentence is not imposed but suspended. This does not mean however, that the offender is removed from all responsibility to the court. Should he, during any period of his prescribed probation supervision, violate his conditions of probation he may again be brought before the court whereupon the judge may impose the original sentence or, if no sentence had been given, the judge may impose one based upon the previous offense. Thus it is obvious that probation may be seen as the median of two equally opposite extremes: imprisonment or discharge without supervision of any

³ Sheldon Glueck (Editor), Probation And Criminal Justice, New York, 1933, 109.

⁴ United States Probation Officers' Manual, Administrative Office Of The United States Courts, Washington, 1949, 21.

kind.⁵ It is perhaps for just such a reason that probation has borne the brunt of much public misunderstanding. To the public probation seems to undermine the traditional forms of punishment, and in so doing destroy the mainstone of crime prevention. Such concepts have led the public to view probation as the only existing alternative to imprisonment. The aims of probation are, however, essentially preventive. In any final consideration of the advantages of probation its remedial quality becomes evident in that it:

...does not add to the individual's difficulties by raising a new series of issues in his life which have no place in ordinary existence; it does not distort the personality of the individual by exaggerating the significance of some single act and does not pull the personality out of the pattern of life which many years of living and association have developed. It uses this pattern as a source of strength in dealing with the individual delinquent. The community agents become aids rather than hindrances in the process of adjustment.⁶

Judge Smyth has defined probation as "denominated case work."⁷ That is the method, or art, by which offenders are brought back into harmony with the social environments. That the court, with its outright authoritarian setting, poses a

⁵ E. H. Sutherland, Principles Of Criminology, Lippincott, 1939, 328.

⁶ National Commission On Law Observance And Enforcement, Report Number 9, Washington, 1931, 149.

⁷ Judge George Smyth, "The Juvenile Court And Delinquent Parents," Federal Probation, Washington, XIII, March, 1949, 13.

problem to the probation officer is attested by Judge Smyth who feels that the probation officer qua caseworker must have the skill to meet demands far beyond those of any other social work setting.⁸ Judge Smyth's views are likewise supported by Judge McCormick who believes that the treatment of offenders poses weighty problems not found in other aspects of social work.⁹

In a review of articles used for this paper it is not uncommon to find several judges who now hold to the belief that the attitudes previously held by the courts concerning human behavior are no longer applicable to a complex society. The judiciary concedes that we must judge offenders in the light of current economic conditions, educational habits, cultural patterns, etc., rather than in the 19th century pattern of congenital defectives. Again, however, judges do not rule out the influence of heredity.

Judge Miller suggests that the most influential factor responsible for the slow progress which probation has made is the basic conflict in public philosophy between the relationships of man and his government.¹⁰ That is, the rights of

⁸ Judge Smyth, "The Juvenile Court And Delinquent Parents," Federal Probation, Washington, XIII, March, 1949, 13.

⁹ Judge Paul McCormick, "Probation As A Judge Sees It," Federal Probation, Washington, XIV, June, 1950, 50.

¹⁰ Judge Justin Miller, "The Place Of Probation In The Criminal Courts," Federal Probation, Washington, III, November, 1939, 7.

individuals are recognized until they violate the law. The public understanding of probation has, unfortunately, been ridden with such cliches as: "society is entitled to give the offender another chance." While probation, seeking a more fundamental interpretation, also takes into consideration the primary rights of the society, when it asks: "will society, and the offender, be better off if he is released on probation?"

Judge Holtzoff comments upon this very type of concept when he informs us that we can no longer consider crime "in vacuo" and be satisfied with the attempt to prove offenders guilty or innocent; rather, he believes that judges must consider the court's objectives in relation to each individual offender.¹¹ Each judge must ask himself if valid considerations are influencing his decisions: he must consider the rightful claim of society to self-protection and the important need for salvaging a human personality.

Joel Moore, in an address to the Judges' Section of the American Bar Association, gives an interesting, if somewhat exaggerated, exposition of this topic.

Judges go to great extremes to hold the scales of justice with meticulous care during the trial. The punctuation of an indictment; the phraseology of a statute;

¹¹ Judge Alexander Holtzoff, "The Judicial Process As Applied To Sentence In Criminal Cases," Federal Probation, Washington, XIV, June, 1950, 52.

the wording of a brief....the reaching back into early frontier American decisions and musty legal scrolls of feudal England for a precedent, a rule whereby to justify the exclusion of testimony of every convincing nature -- all this you do in the name of justice....Why...do you not...give the same meticulous, discerning, exhaustive study of the treatment of the offender as you do to the matter of guilt or innocence. Why spend...perhaps weeks of preparation for the trial of the individual and break hastily over the sentencing. How unscientific, how unbusinesslike to execute thus lightly the most important part of the process of criminal law.¹²

Five judges out of the total twenty-eight consulted for this paper have shown in no uncertain terms their displeasure with those who suggest that the judicial right of granting probation be given to "probation boards," or "experts" who would fix the granting and terms of probation. Such plans have been frequently suggested by professional journals and individuals in the field. Nothing seems to provoke the wrath of the judiciary as do these suggestions. Both Judge Levin and Judge Goodman insist the granting of probation must be an essentially judicial prerogative and that probation is "a judicial process and not a social one."¹³ It is quite evident that such "probation boards" would circumvent most of the authority which the judges now feel lies within their domain. It is noted, however, that judges are not altogether blind to the advantages

¹² Miriam Weller, The Development Of The Federal Probation System, University Of Chicago, (Unpublished) 1943, 6.

¹³ Judge Louis Goodman, "The Probation Officer And The Court," Federal Probation, Washington, XII, March, 1948, 9.

of such "probation boards." While there seems to be a natural fear that such boards will lessen the authority of the court in such matters, judges recognize that this is not an "organized plot" on the part of social workers and criminologists to subvert the authority of the court.¹⁴ Judge Otis, for example, understands the concern with which social workers view the seeming inequalities and inconsistencies in the sentencing of offenders that take place from court to court.¹⁵ The example is often cited of the two offenders, appearing before different courts, who are found guilty of the same offense and yet one will receive probation and the other a sentence of long term. It is natural that such "inequalities" should raise questions in the minds of those in the field. Yet Judge Otis feels that such arguments are not valid since these decisions are based on the individual needs, i. e. "individualization," of the offender and are not in conflict with the present theories of social treatment.¹⁶ In summary Judge Otis seems to say: are unequal sentences unjust sentences? This judge is unable to see enough advantages to warrant any of the aforementioned

14 Judge Merrill Otis, "The Proposed Federal Indeterminate Sentence Act," Federal Probation, Washington, V, October, 1941, 5.

15 Ibid., 3.

16 Ibid.

changes since he feels an efficient probation staff is as well qualified as any board or commission to screen probation prospects.

The objectives of the court in the use of probation and its subsequent value to the offender have been dealt with at some length by Judge Slick. Judge Slick believes that the use of probation preserves the personal integrity of those who are "amenable" to treatment and prevents them from being "crushed by a vengeful society."¹⁷ Since probation keeps the offender in "normal" social relationships, the offender avoids the stigma of prison. The offender builds self-resourcefulness through the opportunity to regulate his own life.¹⁸ Perhaps the ultimate in court objectives will someday be reached when, as Judge McCormick desires, the entire records of those offenders who successfully complete probation terms are removed.¹⁹

Since every revocation of probation hurts the system and tends to produce a multiplication of official duty, the judge must exercise discrimination and circumscription in the

¹⁷ Judge Thomas Slick, "A Judge Looks At Probation," Federal Probation, Washington, II, November, 1937, 10.

¹⁸ Judge Edgar Vaught, "Considerations In Imposition Of Sentence," Federal Probation, Washington, VII, July, 1943, 4.

¹⁹ Judge Paul McCormick, "Probation As A Judge Sees It," Federal Probation, Washington, XIV, June, 1950, 50.

selection of those offenders to be placed on probation. Judge McClintic comments:

In my opinion, it has been proven beyond question so far as the individual is concerned, that fear of prison, the fear of the name of having been in prison, the fear of the stigma upon the family of the person charged with a crime, is the greatest force that makes defendants want probation, and makes them keep the promises made when they are put on probation.²⁰

Six judges agree, however, that to make universal use of probation would serve only to destroy its essential value. Such wide use of probation would also arouse the hostility of the public. Judge McCormick supports the careful selection of offenders with the following opinion.

While individualized treatment is the polestar of modern penology and particularly the non-punitive process of probation, it is clear that there are many offenders and offenses that are so wilfully antisocial and atrocious as to put them wholly outside the pale of probation even under the widest discretionary process of the court.²¹

Probation as a form of treatment has little chance of success unless care is exercised in selecting offenders to whom it shall be applied. Yet the selection of offenders represents no set pattern or criteria and is as individual an affair as are those unique facets which make up the personality of each judge. Judge Levin, for example, is of the opinion that most criminal careers

²⁰ Judge George McClintic, "Probation," Federal Probation, Washington, II, September, 1937, 18.

²¹ Judge Paul McCormick, "Probation As A Judge Sees It," Federal Probation, Washington, XIV, June, 1950, 50.

begin with petty crimes and that early discernment of "criminal propensities" is of the utmost importance. He concludes that judges must attempt to recognize the incipient, habitual criminal from those appearing before him.

The ill considered release on probation, or otherwise premature release of persons starting on criminal careers, or those with emotional dislocations which prevent satisfactory adjustment to their fellows, is a potential menace to society; moreover, it represents an opportunity lost for deterrent or corrective measures.²²

Judge Levin evaluates the following factors in any analysis of the "treatability" of offenders. Has the offense been one against person or property; if against person, has it endangered or injured the life of the victim? Was the offense premeditated or impulsive? What is the nature of the offender's past record and does he understand its significance? Does the emotional and mental makeup of the offender offer hope for possible rehabilitation? Last, will placing the offender on probation deter others from crime? In contrast Judge McClintic and Judge Holtzoff believe one of the prime tests in granting probation is the consideration of the offender's work record. Judge McClintic believes...."that no idle man will keep probation." Judge Holtzoff takes the following factors into consideration in granting probation: that the offender not be unduly depraved; that he

²² Judge Theodore Levin, "Sentencing The Criminal Offender," Federal Probation, Washington, XIII, March, 1949, 3.

show repentance and remorse; that he be willing to cooperate; that his offense was one of impulse rather than deliberation; and that he not be the type of person who acts under the influence of others. Judge Holtzoff would definitely exclude from probation all "abnormals," and psychotics, alcoholics, and sex offenders. He would also consider carefully those offenders who have been placed on probation before, lest they come to regard probation as a sign of weakness on the part of society.²³ Both Judge Wham and Judge Hamilton agree that probation should be primarily directed toward first offenders. Judge Hamilton believes "that no person should be sent to prison for the commission of the first offense, unless of such character as to show a confirmed criminal tendency."²⁴ Judge Sibley, in contrast to other judges expressing views, represents the most unique and individual approach to the question. Judge Sibley would agree that "probation ought to be the exception and not the rule," granted for a reason, "not merely the judicial desire to be kindly." Yet he stresses what he calls the

²³ Judge Alexander Holtzoff, "The Judicial Process As Applied To Sentence In Criminal Cases," Federal Probation, Washington, XIV, June, 1950, 52.

²⁴ Judge J. B. Hamilton, "Judge Hamilton Expresses His Views Of Probation," Federal Probation, Washington, February, 1936, 11.

"spiritual elements" in probation.²⁵ He is correct when he asserts that this aspect of selection has been overlooked, for he is the only judge who has given written consideration to the matter. Only those offenders who are guided by an overpowering, "sacrificial" love are likely prospects for probation. Judge Sibley would rather extend probation to those offenders who are capable of loving someone else, as he believes they will be influenced toward more worthwhile life's decisions. It is the offenders who can evaluate and condemn their own acts who will profit from probation. This repentance hinges upon what is called the "religious outlook on life."

A religious outlook in life is important. I think of religion not necessarily as Christianity or any branch of it, but as recognition of a responsibility for conduct to an undeceivable God who will punish and reward. It is a common observation, notwithstanding the frequency of hypocrisy, that people who are active in their religious duties do not often commit crimes.²⁶

Probation, defined as "denominated casework," is believed by several judges to be the most demanding of the various social work activities. Many of the judges whose opinions have been utilized in this paper concede that courts may no longer afford to consider offenders, or the crimes they

²⁵ Judge Samuel Sibley, "Spiritual Elements in Probation," Federal Probation, Washington, III, November, 1939, 3.

²⁶ Ibid., 4.

commit, "in vacuo;" rather an effort must be made to evaluate offenders by utilizing the efforts of modern social science. The judges insist that the granting of probation should remain a function of the judiciary and that the problems raised by unequal sentences should not encourage the creation of "probation boards." The judges see the value inherent in probation because it tends to preserve the normal social relationships of those offenders who are amenable to treatment. The judges, in this paper, consistently agree that consideration and careful selection must be made of those offenders who are to be granted probation by the court. Having no set criteria for the selection of offenders, judges evaluate such items as employment history, environmental and social background, emotional makeup, previous offenses, and religious outlook.

CHAPTER III

THE OFFENDER, THE COURT, AND THE PUBLIC

In many of the federal courts the contact between offenders or probationers and the judge is of necessity limited. It would be desirable, although impractical, for most judges to give a courtroom or chamber interview to every offender coming before the court. It is noted that judges place reliance upon the probation officer's presentence report for an essential personality picture of the offender. Yet, in many courts the probationer becomes the so-called "lost man" where the knowledge of the judge is considered. Since the vast majority of judges have left the task of supervision to the probation officer, most probationers do not again come into actual contact with the court until there has been a violation of the conditions of probation. At this point the aforementioned situation would not seem to be alarming.

Since the court considers the probation officer to be a person well qualified in the skills of treatment, there seems to be little reason why the courts should not allow him free reign and complete individual freedom in the treatment plan. It is significant, then, to find two judges who evidence more

than a passing interest in the "progress" made by offenders on probation. Both Judge Graven and Judge Holtzoff believe that "progress" reports should be made at frequent intervals. According to these judges such reports serve a variety of purposes. First, as Judge Holtzoff has commented, progress reports aid the court which desires datum concerning the number of probationers who are returned to normal society upon the completion of their probation terms.¹ It is believed that such statistical reports are often more desirable than the individual type of "case study" narrative which is usually presented for public consumption. Judge Holtzoff contends that exact knowledge of persons on probation or in prison, who never again come in conflict with the law represent the best type of publicity for the probation system.²

Judge Graven further states that reports from the probation office should not be limited to accounts of violations but rather should give the court some reference to those probationers who are showing satisfactory progress.³ Such reports

1 Judge Alexander Holtzoff, "The Judicial Process As Applied To Sentence In Criminal Cases," Federal Probation, Washington, XIV, June, 1950, 55.

2 Ibid.

3 Judge Henry Graven, "Relations Of The Court To Probationers During The Period Of Probation," Federal Probation, Washington, XIII, December, 1949, 3.

are to be written by the probation officer who may utilize a summary of the running record, or process recording, in addition to any other pertinent information. The purpose of these reports is to give the court an insight into the special needs and problems of each offender. The court thus learns to evaluate the progress made by any one probationer against the background of existing conditions in that district. Judge Graven, however, neglects to consider the effects of the added responsibility of preparing such reports in districts where the probation officers are already overburdened with large case loads.

Few judges have been prone to evaluate the personal qualifications which are necessary to the effective functioning of their own group. Charles Boswell, for example, believes that judges must show promptness and consideration for the needs of all who come before the court.⁴ Judges must, especially in the case of juveniles, appear to be friendly, interested persons. In many courts judges, perhaps wishing to uphold the dignity of the court, have gone to the extremes of the disinterested and pompous.⁵ Judge Miller sets forth those qualities toward which

4 Charles Boswell, "If I Were A Judge," Federal Probation, Washington, XV, March, 1951, 26.

5 Ibid.

all judges should strive to reach the goal of the "ideal judge."⁶ First, a judge must possess an understanding of the procedural and administrative law governing the administration of criminal justice. Second, he must possess more than mere legal brilliance by demonstrating ability for human understanding.

The ideal judge possesses an intellect which is fortified and equipped by a working knowledge of the nature and purpose of probation, its possibilities and limitations, and must have the capacity for sympathy which is fortified and equipped by a practical working knowledge of the social sciences.⁷

Judges have shown little concern with the role of the probation officer in public education toward better understanding of probation. The United States Probation Officers' Manual states that probation officers are obligated as both leaders in the community and representatives of the court to increase the public understanding of probation and parole.⁸ Judge Stone would agree that part of the probation officer's function is the tactful, dignified attempt to inform the public.⁹ Because the

6 Judge Justin Miller, "The Place Of Probation In The Criminal Courts," Federal Probation, Washington, III, November, 1939, 5.

7 Ibid., 9.

8 United States Probation Officers' Manual, Administrative Office Of The Courts, Washington, 1949, 29.

9 Judge Patrick Stone, "The Public Is Very Much In The Dark About Probation And Parole," Federal Probation, Washington, XII, December, 1948, 7.

public has had little real understanding of the aims of probation, it has been willing to accept that publicity which has emphasized the failures of probation. Because public "interest" in offenders ends with their conviction, the probation officer, as the echelon of the court, must not fail to make use of radio, press, and other forms of communication which the community puts at his disposal.

In the federal courts, contact between the probationer and the court is of necessity limited. Therefore, several judges have suggested that "progress reports" be made in an attempt to give the court some concept of the progress made, problems and pressures faced by those on probation in the jurisdiction. The judges, whose articles were used in this paper, have further concluded that the "ideal judge" combines his astute legal ability with added ability for human understanding. The judges did not discuss, however, the role of the probation officer in interpreting probation practices to the public.

CHAPTER IV

THE PROBATION OFFICER

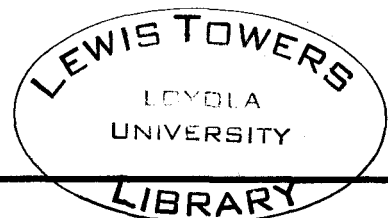
As a result of the Federal Probation Act of 1925, as amended by Act of Congress during June, 1930, the selection and appointment of probation officers remained at the discretion of the various district judges, although the approval of the Attorney General was then regarded as desirable. To the Attorney General was given the responsibility of setting personal standards for probation officers; however, this responsibility involved no more authority than the powers of suggestion:

Provided that no part of this or any other appropriation shall be used to defray the salary or expenses of probation officers who do not comply with the official orders, regulations, and probation standards promulgated by the Attorney General.¹

Immediately after the passage of the 1930 Act, the supervisor of probation, in conjunction with the Attorney General, circulated a letter dated July 31, 1930, requesting district judges to "comply" with these standards set down in that letter.² A

1 Sanford Bates, "The Establishment And Early Years Of The Federal Probation System," Federal Probation, Washington, XIV, June, 1950, 19.

2 Ibid.



brief summary of the qualifications which were set forth in the circular letter are as follows:

(1) Age: the ideal age of a probation officer is 30 to 45; it is improbable that persons under twenty-five will have acquired the kind of experience essential for success in probation work.

(2) Experience: it is commonly agreed that probation officers should have at least; (a) high school plus one year of paid experience in probation work, or (b) high school plus one year in college, or (c) high school plus two years successful experience in a probation or other social agency where instruction and guidance has been afforded by qualified administrators.

(3) Personal qualifications: maturity plus high native intelligence, moral character, understanding and sympathy, courtesy and discretion, patience and mental and physical energy.³

A further attempt was made to revise these rather low standards on January 18, 1938. In a report prepared by the office of the Attorney General a new set of qualifications for probation officers was set forth. A careful examination of these qualifications shows that greater demands were placed upon the academic achievements of applicants. The Attorney General suggested that applicants have (1) United States citizenship; (2) a degree from a college or university of recognized standing or equivalent training in an allied field; (3) at least two years of full-time experience as a caseworker in an accredited family agency or other casework agency; (4) a maximum age limit of fifty-three;

³ United States Department Of Justice, "Circular Letter To The United States District Judges," Washington, July 31, 1930, 3.

(5) a pleasing personality; (6) sufficient physical capacity to pass a physical examination given by a representative of the United States Health Service, meeting standards prescribed by the Health Service.⁴

The third, and perhaps most significant, change in the probation system's personnel standards came as a result of the efforts of the judiciary. In September of 1942 the Conference of Senior Circuit Judges recommended that probation officers should have (1) exemplary character; (2) good health; (3) an age at the time of appointment from 24 to 45 inclusive; (4) a liberal education of not less than collegiate grade, evidenced by a bachelor's degree from a college of recognized standing or its equivalent; (5) experience in personnel work for the welfare of others of not less than two years, or two years of specific training for welfare work (a) in a school of social service of recognized standing; or (b) in a professional course of a college or university of recognized standing.⁵ The standards promulgated in 1942 remain the standards of the court to date for they still represent the desired goal of the system.

4 United States Attorney General, "Minimum Standards For The Probation Service," Circular Number 3072, Washington, April, 1932.

5 Report Of The Judicial Conference, Senior Judges, September Session, 1942, Washington, 1942, 11-12.

In any contrast of the three aforementioned sets of personnel qualifications, it will be noted that the Judicial Conference had contributed the most forward looking set of qualifications. It is doubtful if the report of the Conference had any immediate influence upon the personnel qualifications of the system as a whole. However, since district judges would be certain to take notice of the recommendations of their superiors, the standards promulgated by the Conference were not without eventual influence. While the standards recommended by the Conference provided a more desirable foundation from which to recruit new probation officers, the willingness of the courts to utilize these recommendations was not uniform. It will be noted that within the Conference report there still exists the classic "loophole" which can be found in the two previous sets of qualifications. This "loophole" hinges upon the word "equivalent:" in reality such vague, subjective classification gives the judges the authority to select persons whom they feel, for example, do not have "a liberal college or university education," but who have "equivalent" experience or training. Miriam Weller, in her paper on the development of the federal system has commented on the implied danger in such practice.

While it is true that it would be unfair to both the applicant and the system if some well qualified persons in closely related fields (teaching, personnel, law, etc.) were not eligible for appointment, the undefined word "equivalent" opens the road to almost anyone. Good personnel gained by this means could by no means compensate

for the dangers involved in opening the door to anyone who, in the opinion of the appointing judges, had "equivalent" training and experience.⁶

The improvement which has taken place in the actual personnel standards of the system since 1942 must be examined in the light of previous appointments and must be tempered by the fact that gains made in the system have been uneven and do not apply in every district. In the period following the passage of the 1930 Act, 25.7 per cent of the probation officers had previous social work and correctional experience. By the year 1938 this percentage had increased to 38.5. During 1942, the year of the issue of the Judicial Conference standards, the percentage of probation officers having previous social work experience had risen to 45.8.⁷ Of the 108 probation officers appointed to the system during the period from January 1, 1943 through December 15, 1949 a total of 63, or 58.3 per cent, met the qualifications both as to education and experience as suggested by the Judicial Conference. Of those 108 appointed, 15, or 13 per cent, did not meet any of the specific qualifications.⁸

While in many cases the conclusion drawn that these

6 Miriam Weller, The Development Of The Federal Probation System, University Of Chicago, (Unpublished) 1943, 52.

7 Ibid., 57.

8 Henry P. Chandler, "The Future Of Federal Probation," Federal Probation, Washington, XIV, June, 1950, 42.

appointments were of a "political nature" is quite valid, one cannot overlook the natural lethargy of the courts as playing an equally responsible role. In many jurisdictions judges have given the chief probation officer authority to interview and appoint applicants subsequent to final approval by the courts. In no case after 1930 however, did judges permit appointments to be made by the Attorney General or applicants to be selected by a civil service system. In any review of articles written by the judiciary, it becomes quite evident that judges jealously guard their authority to make appointments and do not hesitate to look with disfavor on those who suggest that such authority rest with the Department Of Justice, the Civil Service Commission, or other administrative agent.

Opinion on the question of appointment of probation officers is forthcoming from Judge Goodman, Judge Miller, and Judge Hartshorne. Judge Hartshorne, in his article on judicial control of probation, stresses that probation and the appointment of probation officers must remain in the hands of judges since probation is essentially a judiciary function and will tend to remain so for some years to come.⁹ Judge Hartshorne supports his views with recall of the transfer of the probation system

⁹ Judge Richard Hartshorne, "Judicial Control Of Probation," Federal Probation, Washington, V, June, 1941, 10.

in 1940 to the Administrative Office of the United States Courts as evidence of the wide recognition of judicial responsibility. Critical of all so-called "probation authorities," he feels it is they who present the greatest danger of "political influence."¹⁰ Since one of the most basic functions of the probation officer is the preparation of the presentence report, his work cannot be structured out from the total judiciary process. Thus it follows that for any judge to be confident in the ability of his probation officers, those officers must be selected and appointed by the court, otherwise such a relationship cannot exist. Both Judge Hartshorne and Judge Goodman recognize that the probation officer has certain law enforcement powers inherent in his position which augment the necessity that he remain within the domain of the courts.¹¹ Judge Hartshorne's attitude can be summarized by the following remark:

.....with the control of appointment in the hands of non-judicial agencies, especially in centralized state departments, officials do not come into the same intimate contact with the problems of neighborhood and community life which the local officials must constantly face.¹²

¹⁰ Judge Richard Hartshorne, "Judicial Control Of Probation," Federal Probation, Washington, V, June, 1941, 11.

¹¹ Judge Louis E. Goodman, "The Probation Officer And The Court," Federal Probation, Washington, XII, March, 1948, 9.

¹² Judge Hartshorne, "Judicial Control Of Probation," Federal Probation, Washington, V, June, 1941, 12.

Judge Duffy stresses the dependence of any probation system on well integrated, trained staff members.¹³ Judge Atwell believes the greatest personal assets of the probation officer are the prime requisites of friendliness, consideration, and understanding. Possessing that rare ability of making the probationer feel at ease, the probation officer never gives the offender the feeling that he is a "spy:" rather he is a "conservator and friend."¹⁴ Judge Duffy gives his conception reinforced perhaps with a greater insight.

The personality of a probation officer is, of course, a very important factor. In a sense he must be a combination of a mental and moral physician. He must daily deal with maladjustment in personalities. Indeed many times those personalities are not only maladjusted, but to a considerable degree disintegrated.¹⁵

The probation officer must have the ability to discuss freely and sensitively the desires, shortcomings, and needs of each of his probationers.¹⁶ Judge Blessing shows recognition of the concepts of "individualization" and "non-judgmental" approach when he asks that probation officers strive to view the problems

13 Judge Ryan F. Duffy, "Probation As A Form Of Treatment," Federal Probation, Washington, XV, March, 1951, 25.

14 Judge William Atwell, "Guest Editorial," Federal Probation, Washington, IV, May, 1940, 3.

15 Judge Duffy, "Probation As A Form Of Treatment," Federal Probation, Washington, XV, March, 1951, 25.

16 Ibid.

of the offender intelligently, disregarding the offense in itself, but engaging in a never ending search into the causes underlying the nature of the offense.¹⁷ Realizing the essential nature of objectivity in the casework process, Judge Blessing warns against too close an identification between the officer and the offender. The officer must be "sympathetic without bending, understanding without yielding."¹⁸ Judge Miller, as does Judge Duffy, stresses the important factors of emotional maturity when he states:

A probation officer with training in law, sociology, criminology, penology, psychiatry, and social work, and other collateral branches, blessed with well-balanced mental and emotional equipment, and fortified by actual experience, can mold, develop and advance the cause of probation more than any other person.¹⁹

Judge Schwellenbach emphasizes the most essential qualifications of any probation officer as being the "ability" to properly evaluate the "human element" so important in dealing with offenders. In attempting to define the component parts of this "ability" he becomes vague.

I find it difficult to state in specific detail what the court expects of the probation officer. It is

¹⁷ Judge Leo B. Blessing, "If I Were A Probation Officer," Federal Probation, Washington, XV, March, 1951, 23.

¹⁸ Ibid., 24.

¹⁹ Judge Ryan F. Duffy, "Probation As A Form Of Treatment," Federal Probation, Washington, XV, March, 1951, 25.

very easy to state as does the statute, that the person appointed as probation officer should be 'suitable.' However, the degree of suitability depends upon many and varied attributes of character, training, and education.²⁰

Critical of those judges who feel they can sentence offenders by their ability to "size up" individuals, Judge Schwellenbach characterizes such practices as "blind-flying" justice.²¹ To the majority of judges expressing their views such gross subjectivity on the part of the court is now looked upon with disfavor. The judge can depend upon the factual datum supplied by the probation officer to fill in those gaps. It is thus the presentence investigation and report which assumes primacy in the eyes of judges whose contact with offenders is so limited. Judge Goodman asserts that the prime duty of any probation officer, serving as "an arm of the court," is the preparation of the presentence report.²² As a means to the final end of treatment, this belief is probably true, although it has not always been recognized by judges. It is the probation officer who tends to regard the treatment or rehabilitative aspect of his role as being of prime importance. The primacy from the

20 Judge Lewis B. Schwellenbach, "Information Versus Intuition In The Imposition Of Sentence," Federal Probation, Washington, VII, March, 1943, 4.

21 Ibid.

22 Judge Louis E. Goodman, "The Probation Officer And The Court," Federal Probation, Washington, XII, March, 1948, 9.

point of view of judges is to provide the court with the most concise, yet adequate, evaluation of all those various factors which the probation officer sees as possibly having influence on the life of the offender.²³ No set rule or form of regulation can be followed by the courts to determine what is to be the disposition of each criminal case. Thus a presentence report is indispensable to any judge who desires to base his decisions on broader foundations than the offense alone. No two criminal cases are alike, either in the circumstances of commission or in the personalities of the offenders. It follows that any responsible judge must make a careful analysis of all factors involved in the defendant's behavior. In the past many judges have all too frequently relied on intuition, information the offender had given the court on his own behalf, or superficial impressions which the court ascertained from his appearance. This does not mean to imply that many judges were not aware of the problems which such practices posed. Judge Kennedy states that before the passage of the Federal Probation Act courts paid little attention to social information. Often the only factual material which came before the court was that supplied from the file of the United States

²³ Ben S. Meeker, "Analysis Of A Presentence Report," Federal Probation, Washington, XIV, March, 1950, 42.

Attorney.²⁴ It then has become encouraging to note the frequency with which federal judges have used the presentence report to advantage. On March 21, 1946, under Rule 32-c, Federal Rules of Criminal Procedure, it is suggested, although not mandatory, in cases where offenders make a plea of guilty: "the probation service shall make a presentence investigation before the imposition of sentence or the granting of probation unless the court otherwise directs."

Judge Duffy, recognizing the necessity for "social inquiry and diagnosis," has made it a standard practice in his jurisdiction to order a presentence investigation for each offender, regardless if he as a judge initially believes the offender to be a good or bad probation risk.²⁵ The presentence investigation may often be a means whereby the court can reach out into the community for vital information necessary for the most adequate method of dealing with an offender. Seemingly, Judge Duffy's views were equally shared by the Judiciary Committee Hearing considering the Probation Act of 1930. At this hearing it was stated that "the greatest argument that can be urged for any probation system is not that you are going to put

²⁴ Judge T. Blake Kennedy, "The Presentence Investigation Report Is Indispensable," Federal Probation, Washington, II, November, 1937, 3.

²⁵ Judge Ryan F. Duffy, "Probation As A Form Of Treatment," Federal Probation, XV, March, 1951, 25.

a man on probation, but that you are able to give the court the background of the offender, whatever it may be."²⁶ Many probation officers view the function of the presentence report as something more than the mere rendering of service to the court; the presentence report serves as the solid foundation for the building of rapport between officer and probationer.

Judges have been quite specific in making known their desires in relation to those exact elements which go into the construction of an effective presentence report. Judge Goodman has listed the essentials for any presentence report as follows: the presentence report must be impartial; that is it must neither plead or prosecute the defendant's case. Judge Goodman, however, does not wish to imply that the probation officer must perform as a machine. Judge McClintic, in his jurisdiction, has required that in each presentence report there should be included some aspect of the probation officer's opinion regarding the possible probation risks.²⁷ Many officers, while incorporating a diagnostic summary in their reports, may be loath to give judges their opinions as to the desirability of placing the offender on probation. However, Judge McClintic, Judge Vaught,

26 Hearing On House Bill 11801, 70th Congress, 1929, 16.

27 Judge Edgar S. Vaught, "Considerations In The Imposition Of Sentence," Federal Probation, Washington, VII, July, 1943, 3.

and Judge Goodman feel that as aids to the court, probation officers are obliged to make known their opinion to the court. In so providing the court with his opinion any officer must understand the position of the court and not become offended if the judge does not utilize his recommendations.²⁸

The probation officer must be a harmonious element within the entire court group. Yet he must not consider himself the hub of all court activity. In his relationship with the judge the probation officer must "be courteous but never groveling, respectful but never subserviant."²⁹ Seemingly nothing less will command the respect of the court.

As a whole, the judges in this study recognize the necessity for well trained probation staffs. Yet there seems to be great feeling that the appointment of probation officers must remain in the hands of judges. There is further recognition of some of the basic case work principles as objectivity, non-judgmental attitude and individualization. The judges tend to view the preparation of the presentence report as the basic function of the probation officer, while to the officer treatment assumes

²⁸ Judge Louis E. Goodman, "The Probation Officer And The Court," Federal Probation, Washington, XII, March, 1948, 10.

²⁹ Judge Leo B. Blessing, "If I Were A Probation Officer," Federal Probation, Washington, XV, March, 1951, 23.

prime import. The judges suggest that probation officers are obligated to furnish the court with personal opinions concerning the desirability of placing certain offenders on probation and that probation officers should not be offended if their suggestions are not utilized.

SUMMARY AND CONCLUSION

In a final consideration of the thirty-five articles written by a total of twenty-eight judges the following summary can be drawn. Two judges have held that the probation officer faces problems of great difficulty not found in other social work settings. In general judges are critical of past methods used by the courts in judging offenders: two members of the judiciary state that courts can no longer consider the crimes committed by offenders as existing in themselves; rather, the offender must be understood as a unique personality and a member of a social group. A total of five judges have voiced their disapproval of probation boards or "experts." The granting of probation is to remain a judiciary function in which the probation officer has considerable voice in the selection of probation prospects. Two judges have stated the most outstanding advantage of probation to be its preservation of "normal" relationships in the life of offenders. One judge has suggested that the records of offenders completing successful probation terms be removed from court records.

Six judges agree that universal use of probation destroys its inherent value. It is quickly conceded that great

care must be taken in the selection of offenders. In granting probation most judges evaluate the nature of the offense, the mental and emotional makeup of the offender. Two judges have placed emphasis on the offender's work record, while one would place emphasis on his religious outlook. Two judges agree that probation should be directed in general to first offenders.

Two judges have suggested that periodic "progress reports" be made on probationers. One judge has evaluated the qualities necessary to the "ideal judge" as legal competence and an ability for human understanding. Judges have jealously guarded their prerogative to appoint probation officers. Three judges insist that such appointments remain in the hands of the court. Four judges show recognition of such fundamental case-work concepts as objectivity, non-judgmental attitude, and individualization of the client. Three judges feel that the probation officer should furnish the court with his personal opinion concerning the desirability of granting probation in individual cases.

BIBLIOGRAPHY

I. ARTICLES BY JUDGES

- Atwell, Judge William Hawley, "Guest Editorial," Federal Probation, Washington, IV, May, 1940, 3.
- Atwell, Judge William Hawley, "Probation: A Present And Not A Punishment," Federal Probation, Washington, XII, March, 1948, 16.
- Blessing, Judge Leo B., "If I Were A Probation Officer," Federal Probation, Washington, XV, March, 1951, 22-25.
- Clark, Judge Chase A., "The Court, The Home, And The Federal Juvenile Offender," Federal Probation, Washington, XI, April, 1947, 7-9.
- Duffy, Judge Ryan F., "The Value Of Presentence Investigation Reports To The Court," Federal Probation, Washington, V, July, 1941, 3-5.
- Duffy, Judge Ryan F., "Probation As A Form Of Treatment," Federal Probation, Washington, XV, March, 1951, 25.
- Goodman, Judge Louis E., "The Probation Officer And The Court," Federal Probation, Washington, XII, March, 1948, 9-10.
- Graven, Judge Henry N., "Relations Of The Court To Probationers During The Period Of Probation," Federal Probation, XIII, Washington, December, 1949, 3-5.
- Hamilton, Judge J. B., "Judge Hamilton Expresses His Views Of Probation," Federal Probation, (News Letter), Washington, February, 1936, 11.
- Hartshorne, Judge Richard, "Judicial Control Of Probation," Federal Probation, Washington, V, June, 1941, 10-13.

- Holtzoff, Judge Alexander, "The Judicial Process As Applied To Sentence In Criminal Cases," Federal Probation, Washington, XIV, June, 1950, 52-56.
- Hughes, Justice Charles Evans, "The System Of Probation Depends On The Character And Aptitude Of Probation Officers," Federal Probation, Washington, V, June, 1941, 9.
- Kennedy, Judge T. Blake, "The Pre-Sentence Investigation Report Is Indispensable To The Court," Federal Probation, Washington, V, June, 1941, 3-5.
- Kennedy, Judge T. Blake, Statement On Case Of U. S. vs. Samuel Levin, Federal Probation, Washington, II, November, 1937, 27-29.
- Levin, Judge Theodore, "Sentencing The Criminal Offender," Federal Probation, Washington, XIII, March, 1949, 3-6.
- McClintic, Judge George W., "Probation," Federal Probation, Washington, II, September, 1937, 17-25.
- McCormick, Judge Paul J., "Probation As A Judge Sees It," Federal Probation, Washington, XIV, June, 1950, 49-51.
- Miller, Judge Justin, "The Place Of Probation In The Criminal Courts," Federal Probation, Washington, III, November, 1939, 5-10.
- Mize, Judge Sidney C., "Some Legal Implications Of Federal Probation," Federal Probation, Washington, IV, May, 1940, 6-10.
- Moore, Judge George H., "The Narcotic Addict Before The Court: A Judge's Viewpoint," Federal Probation, Washington, IX, December, 1945, 3-8.
- Otis, Judge Merrill E., "The Proposed Federal Indeterminate Sentence Act: One Judge's Views," Federal Probation, Washington, V, October, 1941, 3-8.
- Page, Judge Edwin L., Statement On Probation, Federal Probation, Washington, August, 1935, 10.
- Porterie, Judge Gaston L., "Interstate Parole And Probation Supervision," Federal Probation, Washington, IV, August, 1940, 13.

- Russell, Judge Robert, Statement On Probation, Federal Probation, Washington, XV, December, 1951, 36.
- Schram, Judge Gustan L., "The Juvenile Court Idea," Federal Probation, Washington, XIII, September, 1949, 19-23.
- Schram, Judge Gustan L., "The Juvenile Court Is A Court Of Equity," Federal Probation, Washington, XI, January, 1947, 37-38.
- Schwellenbach, Judge Lewis B., "Information Versus Intuition In The Imposition Of Sentence," Federal Probation, Washington, VII, March, 1943, 3-6.
- Sibley, Judge Samuel H., "Spiritual Elements In Probation," Federal Probation, Washington, III, November, 1939, 3-4.
- Slick, Judge Thomas W., "A Judge Looks At Probation," Federal Probation, Washington, II, November, 1937, 10-12.
- Slick, Judge Thomas W., "Guest Editorial," Federal Probation, Washington, IV, November, 1940, 3-4.
- Smyth, Judge George W., "The Juvenile Court And Delinquent Parents," Federal Probation, Washington, XIII, March, 1949, 12-17.
- Stone, Judge Patrick T., "The Public Is Very Much In The Dark About Probation And Parole," Federal Probation, Washington, XII, December, 1948, 7-9.
- Vaught, Judge Edgar S., "Considerations In Imposition Of Sentence," Federal Probation, Washington, VII, July, 1943, 3-5.
- Wham, Judge Fred L., "Probation Selection," Federal Probation, Washington, II, January, 1938, 2.
- Wham, Judge Fred L., "Guest Editorial," Federal Probation, Washington, IV, August, 1940, 3.

II

A. ARTICLES

- Bailey, W. A., "A Layman Views The Courts," Federal Probation, Washington, XII, June, 1942, 24-31.
- Bates, Sanford, "The Establishment And Early Years Of The Federal Probation System," Federal Probation, Washington, XIV, June, 1950.
- Bennet, J. V., "Hail And Farewell," Federal Probation, Washington, IV, May, 1940, 5.
- Boswell, Charles H., "If I Were A Judge," Federal Probation, Washington, XV, March, 1951, 26-30.
- Chandler, Henry P., "The Future Of Federal Probation," Federal Probation, Washington, XIV, June, 1950, 42.
- Chappell, Richard, "The Federal Probation System Today," Federal Probation, Washington, XIV, June, 1950, 22.
- Eddy, Richard M., "The Investigation For The Court," Federal Probation, Washington, IV, August, 1940, 26-29.
- Gottshall, A. E., "Leading Court Decisions Effecting Federal Probation," Federal Probation, Washington, VII, March, 1948, 76-83.
- Master, J. M., "The Relation Of Judicial Selections To Successful Probation," Federal Probation, Washington, VII, March, 1948, 36-41.
- Meeker, Ben S., "Analysis Of A Pre-Sentence Report," Federal Probation, Washington, XIV, March, 1950, 41-46.
- Moore, Joel, "The United States Probation System," Journal Of Criminal Law, Boston, XXIII, November, 1932, 641-2.
- Moore, Joel, "Early Reminiscences," Federal Probation, Washington, XIV, June, 1950, 22.

Paisons, Herbert, "Probation And Suspended Sentence," Journal Of Criminal Law, Boston, VIII, November, 1917, 695.

Routzahn, Mary Swain and Wilson, Louisa, "Public Understanding Of Probation," Federal Probation, Washington, VII, July, 1943, 14-17.

"United States Probation System," Ye News Letter, Washington, February, 1931, 1.

York, James N., "Evaluating The Every Day Work Of A Probation Officer," Federal Probation, Washington, XII, September, 1948, 24-29.

B. REPORTS AND CIRCULARS

United States Attorney General, "Minimum Standards For Probation Officers," Circular Number 3072.

United States Attorney General, "Annual Report," Washington, 1940.

United States Department Of Justice, Circular Number 2116, Washington, July 5, 1930.

United States Department Of Justice, "Circular Letter To The United States District Judges," Washington, July 31, 1930.

Report Of The United States Judicial Conference, September Session, Washington, Government Printing Office, 1942.

United States Congress, Committee Hearing On House Bill 11801, 76th Congress, First Session, House Report 2666, 1929.

National Commission On Law Observance And Enforcement, Report Number 9, Washington, 1931.

C. BOOKS

Attorney General's Survey Of Release Procedure, Probation, Volume II, Washington, 1939.

- Breckenridge, S. P., Social Work And The Courts, University Of Chicago Press, Chicago, 1934.
- Dressler, David, Probation And Parole, Columbia University Press, New York, 1951.
- Glueck, Sheldon (Editor), Probation And Criminal Justice, New York, 1933.
- Sutherland, E. H., Principles Of Criminology, Lippincott, 1939.
- Timasheff, Nicholas, One Hundred Years Of Probation, Fordham University Press, New York, 1941.
- United States Probation Officers' Manual, Administrative Office Of The U. S. Courts, Washington, 1949.
- Weller, Miriam, The Development Of The Federal Probation System, University Of Chicago, (Unpublished), 1943,