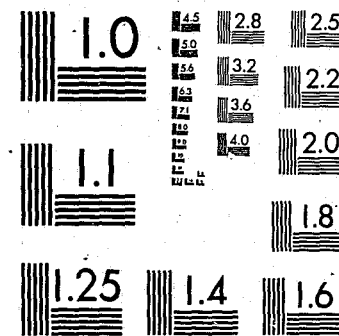


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Federal Probation

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- Assessing Parole Violation Rates by Means of the Survivor Cohort Method 76994 George F. Davis
- Providing Services in a Community-Based Juvenile Corrections System: The Ohio Experience 76995 Don G. Skolnik
- The Day in Court 76996 Frederick Greenwald
- Patterns of Probation and Parole Organization 76997 Charles L. Johnson
Barry D. Smith
- Practical Probation: A Skills Course
Understanding Alcoholism and the Alcoholic Offender 76998 Gloria Cunningham

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This Issue in Brief ACQUISITIONS

Prisoners' Rights Litigation: A Look at the Past Decade, and a Look at the Coming Decade.--A number of startling changes have occurred in the prisons during the 1970's, according to Richard G. Singer, professor of law at Rutgers University. The question he explores in the first part of his article is whether these changes are attributable, in whole or in part, to the prisoners' rights movement, and specifically the litigation arm of that movement. In the second part he discusses the impact the recent Supreme Court case of *Bell v. Wolfish* will have on prison litigation in the future.

Children of the Holocaust and Their Relevancy to Probation: Presentence Investigations and Case Planning.--Federal Probation Officer Stephen L. Wishny of Los Angeles suggests that a social history of parent or parents as survivors of the Holocaust, or survivors of like social trauma, might provide an additional element in explaining defendant behavior and developing treatment plans. His article reexamines a presentence investigation in the light of recent research in the field of Holocaust survivor psychology and discusses casework planning from the same perspective.

Managing the Interorganizational Environment in Corrections.--In the face of declining governmental and public support for human service programs, correctional administrators will be required to do more with fewer resources, asserts Dr. Ronald I. Weiner, associate dean of The American University School of Justice. One approach for becoming more competent in the management of scarce resources is the necessity for understanding interorganizational problems in corrections and designing effective strategies to overcome them, he maintains. Management training in corrections would be wise to expand its knowledge base beyond concern for the administration of personnel and programs internal to the organization. Future training needs will require

both knowledge and strategies for more effectively negotiating favorable relationships with other organizations in the task-environment, he concludes.

Fines as an Alternative to Incarceration: The German Experience.--Although many issues of correctional reform have been discussed and debated in the United States during the last decade, the potential role of financial penalties (fines) is not among the issues raised. This omission, according to Professor Robert W. Gillespie of the University of Illinois, stands in sharp contrast to similar discussions and policy innovations in Europe regarding fines. The innovations in recent German penal policy and practice in the use of fines is reviewed and contrasted to the role accorded fines in selected United States courts.

CONTENTS

Prisoners' Rights Litigation: A Look at the Past Decade and a Look at the Coming Decade	Richard G. Singer	3
Children of the Holocaust and Their Relevancy to Probation: Presentence Investigations and Case Planning	Stephen L. Wishny	12
Managing the Interorganizational Environment in Corrections	Ronald I. Weiner	16
Fines as an Alternative to Incarceration: The German Experience	Robert W. Gillespie	20
Assessing Parole Violation Rates Means of the Survivor Cohort Method	George F. Davis	26
Purchasing Services in a Community-Based Juvenile Corrections System: The Ohio Experience	Don G. Shkolnik	33
His Day in Court	Frederick Greenwald	39
Patterns of Probation and Parole Organization	Charles L. Johnson	43
Practical Probation: A Skills Course--Understanding Alcoholism and the Alcoholic Offender	Barry D. Smith	52
Departments:		
News of the Future		56
Looking at the Law		59
Reviews of Professional Periodicals		62
Your Bookshelf on Review		67
It Has Come to Our Attention		75
Indexes of Articles and Book Reviews		77

Assessing Parole Violation Rates by Means of the Survivor Cohort Method.--The examination of parole violation statistics will invariably show a larger number of parole violators each month during the first year or so of parole as compared to the number of violators during the latter parole periods. Two reasons could account for this. Either the probability of violation is highest during the immediate postrelease period, or the number of parolees "at risk" is greater thus providing a larger pool of possible violators. The purpose of this article by George F. Davis, supervisor of information systems for the California Youth Authority, is to present additional data relating to the issue of whether the early months on parole are the most risk-prone.

Purchasing Services in a Community-Based Juvenile Corrections System: The Ohio Experience.--Despite the widespread practice of state juvenile corrections agencies contracting with private agencies to provide residential and social services, there is little in the literature concerning what is needed to develop and maintain a successful purchase of service system, writes Don G. Shkolnik, community residential services administrator for the Ohio Youth Commission. A review of the strengths and weaknesses of such a system is the backdrop against which the Ohio Experience is examined.

His Day in Court.--Frederick Greenwald, executive director of International Probation and Parole Practice, believes that sentencing the alien offender is as vital a part of the judicial process as the sentencing of a citizen or long-time resident. It may have far-reaching effects both on the individual and the na-

tions, not to mention the families involved. He states that when economic and social costs and values are weighed, the balance favors providing equal rights to the alien offender and an equal opportunity to the court to have benefit of full and complete knowledge of the offender when considering the sentence to be imposed.

Patterns of Probation and Parole Organization.--Organizational relationships between programs providing services to mutual clients have a critical impact on the timeliness and quality of those services, according to authors Charles L. Johnson and Barry D. Smith. Their article discusses the impact on services of organizational relationships among probation, parole, and correctional functions. At issue is the compliance of each state with specific portions of standards recommended by the National Advisory Commission on Criminal Justice Standards and Goals.

Understanding Alcoholism and the Alcoholic Offender.--Alcoholism is a major national health problem in the United States. Its costs to American society in terms of mortality, economic loss, and social and emotional disturbance are escalating. Current research evidence indicates that there is a basis for optimism in treating the alcoholic when the focus of treatment is on alcoholism as a primary disease entity rather than as a symptom of an underlying emotional disturbance or inter-personal problem. This article by Professor Gloria Cunningham of Loyola University of Chicago discusses the implications of emerging knowledge about alcoholism for criminal justice practice.

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

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His Day in Court

BY FREDERICK GREENWALD, Ph.D.*

ALTHOUGH the alien offender is given all the rights and privileges of the citizen offender with respect to arrest, trial, and opportunities for defense, and is provided with the services of an interpreter to insure his understanding of the proceedings and the opportunity to present his thoughts, more frequently than not he is denied that which to him may be the most critical phase of the procedure if he is found guilty: the presentence investigation report. Where such a report is provided, it will very often be a perfunctory effort consisting of a record check, a review of the details of the offense, the defendant's statement, and the information he provides about himself. This is necessarily self-limiting because the official records rarely if ever provide verified social history, particularly where it is not essential to the successful prosecution of the case. Still, the presentence report is acknowledged to be the single most valuable item available to the court in making its decision regarding sentence to be imposed. Should imprisonment be the ultimate decision it is vital to the institutional authorities in planning the program during confinement and to the probation officer during the period of supervision either on probation or parole should deportation proceedings be delayed or avoided.

A survey made during the summer of 1979 by the Alliance of Non-Governmental Organizations' Crime Prevention and Criminal Justice Branch found more than 2,000 alien offenders serving

sentences in Federal and state correctional institutions in the United States. How many aliens are confined in prisons throughout the world? To be nationalistic, how many Americans are imprisoned in other nations? How many aliens now serving time might have been granted probation had the court been in possession of well-prepared, fully documented presentence reports? The numbers involved are not limited to those currently incarcerated. How many sentences were suspended and the defendants ordered or permitted to leave the country without supervision because of favorable impressions and the eloquence of the defense attorneys? Many of these defendants, rather than being granted probation equivalent to "sunset parole," should have been incarcerated for the protection of society.

Why Should We Be Concerned? Let's Just Get Rid of the Problem!--There are a number of reasons for concern. The United States justifiably prides itself on its system of justice. The rights of the defendant are carefully preserved throughout the judicial procedure. The alien should not be deprived of the privilege of equal opportunity for full consideration of his background prior to sentencing, nor should the court be hampered in its efforts by the fact that information is not available to it. The information in many cases can be made available.

Caseloads are high enough--we don't need any more. The numbers involved might add to the caseload in small measure, but the percentages would be minute. The numbers are bound to increase. True, but considering the fact that aliens would be transferred out as well as in (American citizens convicted in courts of other nations return-

*Dr. Greenwald is executive director of International Probation and Parole Practice and for 22 years was a United States probation officer in the Eastern District of Pennsylvania.

ed under the same type of "courtesy supervision") the increase would not be great.

Do we get rid of the problem by "shipping them out"? Let us look at the question. _____ was arrested on charges of armed robbery. When it was found he was a citizen of another country it was agreed that upon his promise to leave and not return to this country he would be deported, but not prosecuted. This was done. Six months later he was back and arrested on a new charge of armed robbery. This time to insure that he would not return if permitted deportation rather than prosecution he was required to sign a written agreement to this effect. A short time later he was again on his way home. Six months later he was back, arrested a third time on new charges of armed robbery. This time he was prosecuted. At no time during this procedure was a presentence investigation made, nor was there a pretrial investigation. Such investigations might have disclosed prior records, or other information mitigating against deportation without either incarceration or probation. Certainly, if referral and transfer had been made to the probation services of the receiving nation the authorities in the nation of jurisdiction would have been told he had failed to report and might have been on the alert for possible return. Possibly the probation services in the nation of residence might have been able to provide such services as were essential to meeting the offender's needs without return to criminal activity.

There are values to be achieved through the transfer of sanctions in addition to those mentioned above. Prison superintendents have spoken of the difficulties of integrating alien offenders into the population because of language and cultural differences as well as inadequate information about anything other than the offense.

Even where the language is understood, the primary educational source for the alien inmate will be other inmates. Is this a way to assure a more adequate adjustment to society in a strange country? Far better that the alien be returned to his own nation where the re-educational process can take place in a language and under circumstances to which he is accustomed. We are assuming, here, that the court wishes to exclude this individual from the country. This may not necessarily be the case.

The question of violations comes up inevitably. Consider the offender who has been granted probation with return to the nation of residence as a special condition and with courtesy supervision arranged with the receiving nation's probation office. What if he violates the conditions of probation through a new offense; a violation which if it took place in the nation of jurisdiction would have

resulted in a hearing for violation of probation? There is no treaty and, therefore, he cannot be returned to the court of jurisdiction. Let us consider this matter. When the deportation takes place (or if the defendant is merely excluded as a condition of probation) it is unlikely that the deporting or excluding nation wants him back under any circumstances. Should there be a new arrest and conviction, however, action should be taken. What I propose is that the new conviction result in a new sentencing before a judge of the new court of jurisdiction. The presentence report prepared for the original court on the earlier offense would be made available to the new judge as a part of the presentence report prepared for him. He would be made aware of the fact that the offender not only had a previous conviction in another country but had abused the privilege granted him by that court. This should be taken into consideration in the determination of the sentence to be imposed on the new offense; thus the violation procedure would take place without the need for returning the offender to the original court.

I've Got a Heavy Caseload. It Would Be a Waste of Time And Effort To Go to All This Trouble for a Single Case.—Such an argument goes against the philosophy of probation and parole despite the fact that the element of time is a truly practical problem. It is a problem, however, that can be resolved. The Foundation for the Development of International Probation and Parole Practice has the facilitation of such service as one of the main reasons for its existence. A request for service accompanied by the appropriate papers will start a process which will include: communication with the appropriate authorities in the nations from which essential information must be derived; the return of the response(s) from the nation's agency with recommendations for or against probation, community service, special conditions, etc.; and an agreement to offer courtesy supervision should such action be requested by the court. A network of such contacts is in the process of development. Where such an agency does not exist efforts will be made to either develop one or find an acceptable alternative service. Where this is impossible or where, because of legal technicalities such an investigation or supervision cannot be arranged the court will be notified.

To preserve the rights of the offender as well as to meet legal requirements of the various courts and to prevent the abuse of the process the following papers would be required to accompany a request for service:

(1) An order of the court certifying the date and place of conviction, and violation of the specific criminal act by title, statute and section numbers.

(2) An order of the court requesting a presentence report and authorizing the Foundation to act in its behalf for this purpose.

(3) A statement by the defendant and his attorney (both must sign) authorizing the release of confidential information and agreeing to the presentence investigation.

(4) An outline of basic information such as the data completed on Form 1 used by the U.S. Probation System.

(5) A copy of the indictment and the details of the offense.

As for the "single case" issue, I believe it is unnecessary to remind the readers of our concern for the rights of our citizens while in other countries. Can we offer less to the alien while he is here?

Why Should a Foundation Be Organized for This Purpose When We Can Do It Ourselves?—As a matter of efficiency. The time required to locate the essential resources, establish the lines of communication, determine the requirements of different nations for information or for the release of information makes it impractical for each office to do the work for the few cases involved. With one office specializing in such operations, willing and able to establish the essential lines of communication, and able to take the time to research resources without depriving other cases of essential attention, such presentence investigations and arrangements for courtesy supervision become practical. While it is true that universal cooperation does not exist at this time, the number of nations willing to participate is increasing. Part of the work of the Foundation is educational, providing information, lecturers, arranging conferences, etc., in order to broaden the understanding of the values of probation and of such investigations and transfers. The Foundation, however, does no lobbying nor does it seek to influence legislators. This is the responsibility of the local organizations.

Such a Process Is Costly in Time and Money. Is It Practical When These Are Considered?—The Foundation is a nonprofit corporation and services are provided at cost. In terms of values to be derived let us consider a number of factors:

(1) If the alien offender is to be taught to resolve his problems in a socially acceptable fashion, his problems must be recognized, motivations must be explored, and he may also need re-education regarding the customs and traditions of the nation of jurisdiction. The staff involved in treatment must be made aware of such differences as may exist and the confusion that the defendant may feel trying to

cope with the problems evolving from such situations.

(2) Imprisonment in the nation of jurisdiction may not offer the best milieu for treatment, particularly if there are distinct language and cultural differences. It makes little sense to commit a person to prison if this would not ordinarily be the sentence imposed if he were a citizen or long time resident; particularly, if the court has deportation or exclusion as a special condition of consecutively imposed probation in mind. Courtesy supervision by the agency of the receiving nation would be far more useful under the circumstances.

(3) The cost factor in moving an individual back to his own country under courtesy supervision compares more than favorably with either the social or economic costs of imprisonment, while the selective use of imprisonment offers a more favorable prognosis.

(4) The "grass roots" implications of such investigations and returns rather than imprisonment can have a positive impact on the families and friends concerned for the offender's welfare.

Reciprocity.—A vital element in international probation is reciprocity. Request for information and referral to sources of assistance to alien offenders have been received from several governments and more may be expected. Requests for assistance with investigations and transfers have been received, assigned, and depending upon the laws of the nation involved, completed in varying degrees, most to the satisfaction of the court. As the numbers increase there will be greater recognition of the effort and its values and cooperation will also increase. The need for a central organization or assigned officer in each nation to make assignments and followup on results becomes increasingly evident. In the future as criminal justice broadens its functions and international criminal court becomes a reality such national representatives or agencies may well become the nucleus of an international probation system.

Summary

Sentencing the alien offender is as vital a part of the judicial process as the sentencing of a citizen or long-time resident. It may have far-reaching effects both on the individual and the nations, not to mention the families involved. When economic and social costs and values are weighed, the balance favors providing equal rights to the alien offender and an equal opportunity to the court to have benefit of as full and complete knowledge of the offender as possible when considering the sentence to

be imposed. In addition, the alien offender can derive benefit from the sentence to be imposed and society can receive the additional protections and benefits of intelligent and knowledgeable sentencing and treatment processes.

The courts of the United States are not alone in needing such information. The assistance of the probation offices of the United States is not sufficient. The Foundation is working through the Ministries of Justice of the various nations to obtain reciprocal cooperation. The need and value of such services have been recognized by the courts and other officials of a number of nations and the number is expected to increase. A prison warden in Germany is agreeing to the value of such information mentioned that in his institution alone there were inmates from 15 different nations; most of them did not speak German and knew little of the laws or customs of Germany. Nevertheless they had to be integrated into the general population and provided with both re-educational services and protection from those who might try to take advantage of them. There are many alternatives to imprisonment; many community resources available and others to be developed. The courts must be made aware of them in order to plan appropriately for the individual whose sentence is under consideration. Regardless of the nations involved, regardless of the cultures and traditions to which the defendant has been acculturated or to which he has been newly exposed, the problem of criminality is the same throughout the world. The objectives of the correctional process, i.e., to prevent recurrence of criminal behavior

and to motivate the individual toward socially acceptable behavior are common in every nation.

The voluntary effort for a court in Massachusetts, later legislated into existence as an arm of the court, spread throughout the United States and to many other countries. Probation now has the opportunity, the responsibility for further expansion through international cooperation. Conversations with members of the judiciary, officials of ministries of justice, probation officers and prison wardens of some 30 nations representing every settled continent, from both sides of the "iron curtain," large, small, old, and newly developing, lead to the belief that the time has come when such a concept will find general acceptance once the initiative is taken. Now, when the numbers of offenders are relatively small, is the time to develop the procedures to meet such needs. The groundwork for such concerted efforts is being laid by both the International Probation Organization, and the Foundation for the Development of International Probation Practice. Other organizations are also actively engaged in the effort. Among them the Foundation for the Development of an International Criminal Court. The United Nations has taken the subject under consideration at the 6th U.N. Congress on Crime Prevention and Treatment of Offenders. A number of groups of nations are in the process of formulating treaties and conventions to facilitate the exchange of information and transfer of supervision, but such negotiations have just begun and may take years to complete.

END

TO UNDERSTAND the problem of crime in any but human terms is to hide from it.

—DAVID L. BAZELON