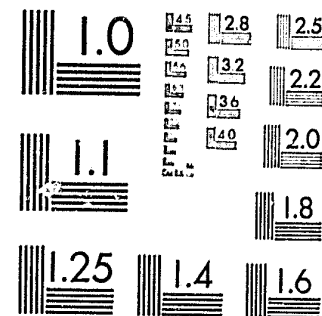


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National Institute of Justice  
United States Department of Justice  
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JAN. 3, 1984

# Federal Probation

The "Effectiveness" Issue Today: An Overview ..... *Ted Palmer*

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Preventing Inmate Suicides: A Case Study ..... *Jay S. Albanese*

A "Desperate Alternative" ..... *John A. Moccia*

**JUNE 1983**

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# Federal Probation

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## This Issue in Brief

**The "Effectiveness" Issue Today: An Overview.**—An unsettled atmosphere exists regarding the effectiveness of rehabilitation or habilitation, asserts California researcher Ted Palmer. Neither the global optimism of the 1960's nor the extreme pessimism of the middle and later 1970's seem justified, and neither view in fact prevails. The author describes two slightly more moderate "camps" which have replaced them, and underscores the substantial but far from complete disagreement which exists between these two.

**Targeting Federal Resources on Recidivists: An Empirical View.**—INSLAW researchers report results of a study of recidivism among Federal offenders and Federal policy for dealing with repeat offenders. The central question examined is whether Federal prison populations or crime rates, or both, can be reduced through the use of a strategy of increased focus by U.S. attorneys on cases involving recidivists. Analysis of Federal recidivism patterns indicates substantial opportunity to identify dangerous, repeat offenders prospectively using a simple statistical assessment procedure; analysis of survey data on current Federal prosecution policy reveals an absence of any explicit prosecutorial guidelines that attempt to do so.

**A Radical/Marxist Interpretation of Juvenile Justice in the United States.**—This article by Catherine M. Sinclair reflects the history and development of the juvenile justice system tracing the growth, nature, and perspective of radical/Marxist criminology. According to the views of the radical/Marxist criminologists, although youthful misconduct is extremely widespread throughout society, a vast amount of behavior that is defined as delinquent is strictly the result of social labeling—differentially applied to those youths from the lowest socio-economic classes who are caught and formally processed through the juvenile justice system.

**The Emergence of Determinate Sentencing.**—Besides exploring some of the prominent

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All phases of preventive and correctional activities in delinquency and crime come within the fields of interest of FEDERAL PROBATION. The Quarterly wishes to share with its readers all constructively worthwhile points of view and welcomes the contributions of those engaged in the study of juvenile and adult offenders. Federal, state, and local organizations, institutions, and agencies—both public and private—are invited to submit any significant experience and findings related to the prevention and control of delinquency and crime.

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### FEDERAL PROBATION QUARTERLY

Administrative Office of the United States Courts, Washington, D.C. 20544

# Community Service: A Developing Concept

BY THOMAS P. BRENNAN AND LEONARD MASON\*

COMMUNITY service programs have been developed in England (Beha, *et al.*, 1977; Bergman, 1975; Kaufman, 1973), Canada (Lewis, 1978; Roe, 1981), and the United States (Beha, *et al.*, 1977; Brown, 1977; and Harris, 1979). With authorization provided by Chief Judge Harry G. Comerford, the Sixth Municipal District, under the direction of Presiding Judge Paul F. Gerrity, has utilized the services of the Social Service Department<sup>1</sup>, Circuit Court of Cook County, to implement such a program effective October 1981. The program organization provides clarification on several issues that seemed to remain unclear in other programs studied: authorization of participation, criteria of eligibility, number of hours assigned, and liability. It is our intent to present the program so that others may learn from our experience.

This presentation is divided into five major sections; first, general objectives; second, program dimensions which offer clarification; third, other program dimensions; fourth, present status; and fifth, summary.

## General Objectives

The objectives of the program are:

- (1) To offer the defendants an alternative means whereby they can repay their debts to society through useful services to the community.

- (2) To offer public and private not-for-profit organizations within the community:

- (a) Additional volunteer workers to provide services which are not available through the use of paid employees.
- (b) An opportunity to work with these volunteers to the mutual benefit of the individual and the organization using their services.

- (3) To offer the Court an additional alternative to incorporate in the dispositions it finds appropriate. In this instance, community service is to be a condition of the order of supervision or the sentence of conditional discharge. It is not to be seen as an alternative to jail. To present the program in such a fashion would be a misrepresentation in our opinion. Those defendants toward whom the program is targeted will be charged with lesser offenses for which a jail sentence would either be an unlikely possibility or unavailable as an alternative to the judge.

The Program was limited to the Sixth Municipal District because of its more comprehensive, yet balanced, racial and socioeconomic distribution and because sufficient resources, private not-for-profit organizations, existed within the District's geographical boundaries. It is believed that a more equitable distribution of white/nonwhite referrals will be possible. It is the Social Service Department's intent to avoid any practice which might identify the program with a set of values associated with a specific socioeconomic class or which might identify it as discriminatory. This would limit the possibility of discrimination as pointed out by Harris (1979) as a legitimate issue. In addition, referrals to the Department from this District approximately reflected the overall general population of referrals to the Department in regard to age, sex, and race. With respect to the court order, a greater percentage are placed on supervision (as opposed to conditional

\*Thomas P. Brennan is assistant director and Leonard Mason is program coordinator of Community Services Program, Social Service Department, Circuit Court of Cook County, State of Illinois.

**Authors' Note:** Special recognition is to be given to the Honorable Harry G. Comerford, chief judge, Circuit Court of Cook County, under whose direction this program was developed, as well as to the Honorable Paul F. Gerrity, presiding judge, Sixth Municipal District, Circuit Court of Cook County. Further recognition for the implementation and continuing development of the program is to be given to Mr. James D. Wilson, court systems manager, and to Mr. Chelsea A. Pollock, Jr., director, Social Service Department of the Circuit Court, for their interest and support of this program. In addition, recognition is to be given to Mr. Robert Repel, attorney and representative of the Young Lawyers Section, Chicago Bar Association, and to Mr. Rodney G. Law, business representative, International Union of Operating Engineers, for their support and guidance of the program. Recognition is also to be given to the administrators of each municipality and township in the Sixth Municipal District for the time and energy invested in the program.

<sup>1</sup>The Social Service Department, Circuit Court of Cook County, State of Illinois, provides correctional social services to misdemeanor cases referred to it by the courts. Cases are referred either because defendants are placed on supervision or sentenced to conditional discharge, usually for a period of 1 year. Defendants, whether placed on supervision or sentenced to conditional discharge, are found guilty. If the conditions are fulfilled, the supervision order will not result in a conviction and consequent criminal record. On the other hand, the conditional discharge sentence is a conviction and does result in a criminal record. Community service is ordered as a condition of conditional discharge or supervision.

discharge) than is true for the Department as a whole. This was seen as an advantage for the program because it was expected that possible participants would be placed on supervision. As a result, there would be a greater number of possible referrals.

The program was established to be a "pilot project," initially designed to handle a small number of defendants, to be limited to public municipalities, and to be limited to one geographical area of the County. The limited application of the program was designed to: first, aid the Court and the Department in the determination of the validity of the program in terms of its usefulness and effectiveness as a sentencing option; and second, allow the program to be implemented without the immediate employment of additional staff at added expense to the Court and the community.

#### Program Dimensions—Clarification

Developing this particular program forced the planners to think through three issues which were unclear from the available literature<sup>2</sup> at the time. These issues comprise approval for participation and criteria of eligibility, number of hours assigned, and liability.

#### Approval—Criteria

Final approval for participation in the program is given by any one judge in any particular court from which the Department receives referrals. What is believed to be unique about this program, as opposed to other programs studied, is the service provided to the Court by this Department in aiding the judge in decisionmaking.

Our understanding of other programs is that judges are frequently saddled with the entire burden of decisionmaking with no guidelines or consultation. This type of decisionmaking, in our minds, presumed to be the practice in other programs, can easily lend itself to arbitrariness, fatigue, or impulsiveness. In addition, a judge is unable to discover all the essential social factors about a particular defendant from the bench. His task is to administer justice and, in our opinion, to ensure that social service is provided, but not to provide social service from the bench. It is the role<sup>3</sup> of this Department to serve the Court by developing and main-

taining programs which provide social service to defendants and to make recommendations to the court based on its expertise. As a result, this Department set up criteria for eligibility with the understanding that it is the court that provides final approval for participation.

The criteria of eligibility comprise the following:

- (1) The defendant must be a resident of the Sixth Municipal District.
- (2) The defendant is to have appeared in a court of the same District.
- (3) The defendant is to have been charged with a nonperson oriented offense (e.g. Criminal Damage to Property, Criminal Damage to Vehicle, Theft, etc.).
- (4) The defendant is to have been placed on supervision or sentenced to conditional discharge and referred to the Social Service Department.
- (5) The defendant is to be assessed as "minimal risk" to the community. The Department has developed a Caseload Management Assessment tool comprising 13 factors which are thought to be factors that measure the risk of people re-entering the criminal justice system. Depending on score, a defendant is assigned a maximum, medium, or low level of supervision. Defendants are to be assigned a low level of supervision in order to participate in the program. The factors comprise charge, attitude, skills, substance, abuse, mental health, stability of residence and employment, criminal history, etc.
- (6) The defendant is to consent voluntarily to participate in the program. Voluntary participation is to be maintained and is an appropriate issue (Harris, 1979).
- (7) The defendant's acceptance of agreement is to be authorized by the originally sentencing judge.

There are special sets of circumstances that make acceptance into the program appropriate even though all the above criteria are not fulfilled.

Harris (1979, pp. 70-71) cautioned against "adding on conditions." Initially, the Department recommended that restitution be the only other condition ordered other than community service. In other words, inperson contact and/or mental health treatment, in addition to community service were not recommended. We still agree with these initial recommendations, but we are realizing that participants still have issues to deal with, such as employment, parenting, substance abuse, etc. It is

our intent to provide service on a consultation basis rather than by court order. It is our opinion that inperson contact is essential and the possibility for a participant to discuss his/her situation freely presents itself. It is speculation but worthy of consideration to think that successful completion of community service enhances self-esteem to a sufficient degree to enable a participant to enter into a casework relationship in a vulnerable fashion.

Although there are three sources of referral (existing Department caseloads, direct referral by court for confirmation, and defendants before the court on violations), the general practice is that both the Social Service Department and the Court/judge provide approval. However, final authorization rests with the Court, and there have been a few cases where a judge has specifically ordered community service when a defendant has not fulfilled all eligibility criteria. These defendants have been accepted into the program. Certainly, the statute allows for this. Again, our role is to establish criteria and uniformity and to provide consultation and guidelines to the Court or judge.

#### Hours Assigned

It was decided that the program was to begin cautiously with a small number of referrals in order to determine the feasibility of such a program. As a result, we placed ourselves in a position that necessitated thinking through criteria of eligibility and assignment of hours. We gathered information about seven existing programs; and, from this information we determined the number of hours for our population. Below is presented program information, summary observations, our determination, and a point of view relative to fines/costs and jail sentences.

The seven programs surveyed, relative to number of hours assigned, are developed below.

**South Bronx:** 70 hours are assigned across the board. The progress, however, is set up to hit the jail population, and it comprises highly structured work crews (Harris, 1980).

**Alameda County, California:** During the time period from 1974-1976, 75 percent of the participants were assigned 4-80 hours, and 25 percent were assigned 81-161+ hours. The charges were traffic and parking violations, although roughly one-third were penal code offenses. Forty percent of the latter comprised disorderly conduct, petty theft, or malicious mischief. A more detailed integration/breakdown of data was not provided (Beha, et al., 1977, pp. 5-10).

**Solano County, California:** During 1976, approximately 80 percent sentenced to perform less than

240 hours of service. The mean felony sentence length was 585 hours. The mode of sentence for felony offenses was 800 hours, which would require 5 months of 40-hour weeks to complete, or almost 2 years of working 8 hours every Saturday (Harris, 1979, p.40).

**Multnomah County, Oregon:** This program assigns anywhere from 24 to 80 hours. They contend that sentences longer than 80 hours are inconsistent with program goals. Their determination is as follows:

- (1) first offense, 24-40 hours;
- (2) minor in possession of liquor, 24 hours;
- (3) possession of less than one ounce of marijuana, 24 hours; and
- (4) certain charges for driving under the influence of intoxicating liquor, 40 hours (Beha, et al., 1977, pp. 11-15).

**McClean County, Illinois (McHenry County, Illinois program is modeled after this program):** Program is for juveniles, 30-100 hours are assigned for one offense; there exists a gradation relative to the number of hours based on the seriousness of the charge. For example, 30 hours are assigned for a Class A Misdemeanor Theft under \$150, 50-60 hours are assigned to a Class 3 Felony Theft over \$150, 50 hours are assigned to a Class 2 Felony Burglary, 100 hours are assigned to a Class X felony Armed Robbery, etc. For two offenses, add recommended number of hours for each; for three offenses, take offenses with largest number of recommended hours and double it. The original determination was arbitrary (McClean County Court Services, 1980).

**Ogle County, Illinois:** Has a point system based on sentence, charge, status, prior convictions, and additional considerations. Each of these factors is weighted, and then the total number of points determines the number of hours based on a scale. The scale yields a very low number of hours. For example, an unemployed person, found guilty of a misdemeanor, with no prior convictions could be assigned as few as 2 hours (Marzec, 1978).

**Canada:** The number of hours assigned in the past ranged from 10-400 hours. A recommendation for the future was provided: 30-150 hours. No other rationale or guidelines were provided (Lewis, 1978).

**Great Britain (three sources of information):**

- (1) Forty to one hundred and twenty hours are assigned for nonjail sentence cases, and 121-240 hours are assigned to jail sentence cases (Harris, 1980).
- (2) Forty to two hundred and forty hours are assigned to adults. This source does not provide information in terms of how extensive

<sup>2</sup>Our intent is not to criticize other programs; it is these programs that have offered us initial direction. Our intent is to provide additional clarity based on our own probing questions as well as the information we acquired which was most probably incomplete.

<sup>3</sup>The role of this Department is to serve the Court by serving the community and by serving the defendant which involves a care and control dimension simultaneously. More technically, the Department assists the Court by providing correctional casework service (comprising management, control, and treatment) for the prevention of future criminal activity.



the program is used. The program is designed as a substitute for crimes as robbery, organized crime, or manslaughter. A more detailed rationale is not available (Bergman, 1975).

- (3) Over an unknown specified length of time, 16.3 percent of cases were assigned between 40-99 hours from two different levels of courts (Crown or Higher Courts — 4.1 percent; Magistrates Courts — 12.2 percent) and 83.6 percent of cases were assigned between 100 and 200+ hours (Crown or Higher Courts — 23.3 percent; Magistrates Courts — 60.3 percent). Further breakdown of the types of charges is not provided (Beha, *et al.*, pp., 15-20).

Based on the above data about several existing programs, the following summary observations seem appropriate:

- (1) There is some gradation in terms of the number of hours and type of offense and/or sentence imposed.
- (2) There appears to be no detailed rationale why a specific number of hours is chosen for a specific offense/sentence. Decisions in this regard appear to have been arbitrary.
- (3) There is a wide range of assigned hours, but there appear to be some programs in which 30-40 hours are assigned as minimum for misdemeanors and lesser offenses.

One program (for lesser offenses) puts a limit on 80 hours; two other programs set 130 hours (nonjail) and 150 hours as maximum.

The Social Service Department has arbitrarily chosen to assign hours in line with the Caseload Management Assessment tool as follows:

Low: 8-40 hours  
Medium: 40-60 hours  
Maximum: 61-80 hours

The above determination seems consistent with the summary provided above in the summary observations. It is consistent in that 30-40 hours will be assigned as minimum for misdemeanors and lesser offenses. The cutoff is 80 hours because this Department, as a rule, does not handle felonies. Consideration of the seriousness of the charge is built into this instrument. In addition, the criteria prohibit consideration of defendants charged with person-oriented crimes. The determination above provides a wide range of hours to be assigned, graded according to the "risk" of re-entering the criminal justice system. One other program (Ogle County, Illinois) is similar in the determination of hours by factors other than the charges before the court (at least,

based on the information provided in the literature). As few as 8 hours is allotted for those defendants referred on very minor traffic charges.

It has been decided to initially assign only 8-40 hours (preferably 30-40 hours) and deal with participants assigned to low level of supervision. However, the program has been advertised as assigning a range of 8-80 hours of community service.

The assignment of hours is again under consideration for specific circumstances: first, the amount of restitution owed may increase the number of hours assigned; and second, the assignment of a low number of hours may be discontinued (e.g. as low as 8 hours) because the investment of time and energy on the part of a municipality is not compensated adequately.

Regarding fines and costs, Beha, *et al.* (1977, pp. 37-42), present a discussion relative to equal protection concerns. As I understand their presentation they suggest that the court not order indigents, in place of fines/costs, to perform community service.

This line of cases appears to be particularly instructive for those programs that require community service by indigents unable to pay fines. Once again, we face the question of consent and waiver as they relate to the true voluntary nature of the defendant's consent and thus the possible abrogation of the Equal Protection Clause of the Fourteenth Amendment. (p. 41)

As a result, it is the Department's recommendation that community service not be provided as an alternative to fines/costs for a defendant who is indigent.

Our recommendation in the program proposal was:

Total fine and cost is to be divided by the minimum wage of \$3.10 to arrive at number of hours of community service. Caution is to be a guide. If a defendant is unable to pay a fine because of indigency, then it is recommended that community service not be ordered as a condition to substitute for a fine.

Relative to jail sentences, the rationale of substituting community service hours for a jail sentence is even more ambiguous than the rationale presented above. As a result, we presented the following statement in the program proposal.

Total number of days multiplied by eight (8) hour day and divided by two to arrive at number of hours of community service. The caseworker, program coordinator, defendant, and judge are encouraged to negotiate what appears to be an equitable number of hours in place of a jail sentence.

#### Liability

Liability has been a concern for community service programs; and Harris (1979) and Beha, *et al.* (1977), cite it as an issue. This Department was

placed in a position where it was advantageous to develop more clarity than what was presently available. It was determined that there were two dimensions of liability: the County or the Department and the defendant or third party.

Regarding the first dimension, the County or Department, Illinois Revised Statutes provides immunity: Ch. 38 Sec. 204a-1(d), Ch. 38 Sec. 1005-6-3.1(g), and Ch. 38 Sec. 1005-6-3(g). Immunity from tortious actions is provided except for "wilful misconduct or gross negligence." All three references use almost the same language. Ill. Rev. Stat. Ch. 38 Sec. 1005-6-3.1(g) states:

Neither the State, any unit of local government, nor any official or employee thereof acting in the course of his official duties shall be liable for any tortious acts of any person placed on supervision who is given any public service work as a condition of supervision, except for wilful misconduct or gross negligence on the part of such governmental unit, official, or employee.

Regarding the second dimension, the defendant or third party, the central issue comprises liability should the defendant (volunteer) become injured or should defendant (volunteer) injure a third party. If there is "wanton negligence" or "wilful misconduct" on part of the County (above), Social Service Department (above), or on the part of the participating agency, then that entity is liable. To provide some direction, the Department requested an opinion from the Young Lawyers Section of the Chicago Bar Association. Their memorandum provided the following statement:

If the defendant/volunteer were injured while performing public service work for a participating agency, e.g. by reason of intentional tortious conduct or negligence of a fellow employee, the participating agency's liability would depend upon applicable common law or statutory provisions. Generally, the participating agency would be able to guard against or most likely would already be covered for this kind of risk under an insurance policy. In any event, it is recommended that the agency be advised to discuss the issue with its insurer.

In a situation where a third party, e.g. an agency employee is injured as a result of the conduct of the defendant/volunteer, other than by reason of an intentional injury caused by the defendant/volunteer for strictly personal reasons, the injured agency employee would be protected under the Workmen's Compensation Act. If, however, the injured third party were not an employee of the agency, again the common law and statutory principles would apply, e.g. negligence on the part of the agency in permitting the defendant/volunteer to perform a particular task. Again, this risk should be discussed with the agency's insurer. (Young Lawyers Section, 1980, p. 5)

The Attorney General of Illinois (O.P. Atty. Gen. S-1339 [15th March, 1978], p. 2) provides a statement in support of same.

\*PACT: Prisoner and Community Together, Inc., Michigan City, Indiana, is a program "Building Community Models of Justice and Reconciliation for Offenders and Victims in Indiana and Illinois."

If the "wanton negligence" and "wilful misconduct" belong to the defendant (volunteer) solely and if the defendant (volunteer) is injured, he/she is responsible for him/her self. If a third party is injured due to behavior (i.e., with "wanton negligence" and "wilful misconduct") on part of the defendant (volunteer) solely, then it would seem logical that the defendant (volunteer) is liable. The above two incidents can be understood as the responsibility of the defendant/volunteer. Certainly, with proper screening of candidates, this probability/possibility is greatly minimized. The PACT<sup>4</sup> program in the State of Indiana has instituted an insurance program for the protection of defendants (volunteers). Because the eventuality of incidents occurring would be greatly minimized in our program, the Department chose not to institute a similar dimension.

In setting up contracts with participating municipalities, the program coordinator has encouraged their respective administrators to consult with their own corporation counsel while supplying them with the information that we have compiled relative to this issue. Legal consultation by the Young Lawyer's Section, Chicago Bar Association, has also been provided. Related to the above two dimensions, the volunteer status of a defendant involved one possible (relative to third party) and one definite (relative to defendant) implication. First, within Cook County,

A volunteer, acting as an agent of the county, would be protected under the same insurance coverage if he was guilty of wrongful or negligent behavior causing loss or liability to a third person (Lavorci, 1973).

The insurance coverage referred to is that covered elsewhere in Rev. Stat. Ch. 38 Sec. 429.7. We have suggested that participating municipalities might have a similar coverage.

Second, as defendant (volunteer) cannot be eligible for coverage under Workmen's Compensation Act. First, Ill. Rev. Stat. Ch. 28 Sec. 204a-1(e) states:

No person assigned to a public service employment program shall be considered an employee for any purpose, nor shall the county board be obligated to provide any compensation to such person.

It is because the defendants (volunteers) are not considered an employee that they are not eligible for coverage. The Attorney General of Illinois (File No. S-1339, 1978) states such in reference to juveniles, and the Young Lawyers Section, Chicago Bar Association (1980), supports the above statement in the Statute.

### Other Program Dimensions

As part of the program proposal, the Department outlined several other dimensions. These dimensions comprised an articulation of its legal authorization, the scope of community service work, an advisory committee, a set of criteria for participating organizations, the place of the Young Lawyers Section — Chicago Bar Association, public relations, and evaluation.

### Authorization

Legal authorization is provided primarily by statute. However, because this Department is not directly referred to in the statute, it acquires its authorization from the County Board of Commissioners through acceptance and approval of its budgetary proposal. Although the title of such a program is referred to as "Public Service Employment Program" in Ill. Rev. Stat. Ch. 38 Sec. 204a-1, it does not prohibit the use of the name "Community Service Program." The opinion obtained from the Young Lawyers Division, Chicago Bar Association (1980), stated:

... the term "Public Service Employment Program" in our opinion is intended only to be descriptive of the type of program which the legislature thought to encourage by the enactment of the statute. The statute itself does not mandate that the name "Public..." be used and it does not prohibit the use of any particular name.

### Scope

The "Scope of 'Public Service Work'" has been defined by the Illinois Attorney General (O. P. Atty. Gen. S-1369 [29 June, 1978]). On this document, "Not-for-profit organization" has been clarified to include (from a Federal regulation):

- (a) Employment by the U. S. Government, or by a State, Territory, or possession of the United States or by a political subdivision thereof, or by the District of Columbia;
- (b) Employment by a nonprofit organization, association, or corporation which is primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health or welfare, including educational and scientific activities in support thereof, when such activity or program is not principally for the benefit of the members of such organization, association, or corporation, or for increasing the membership thereof; or
- (c) Employment in an activity of an organization, association or corporation which is either charitable in nature performed for the benefit of the general public or is for the improvement of the public health or welfare, including educational and scientific activities in support thereof, and when such activity or program is not for profit. (32 C.F.R. S 1660.5 (1977).)

The Attorney General states that the above does "not necessarily exhaust the category." The At-

torney General goes on to state that work in hospitals is permitted:

... such as in hospitals. Such work obviously has the advantage of requiring little or no supervision by governmental bodies since it fits into an existing private work situation. It is also generally considered to be work that serves the public.

The Attorney General then states more generally:

Thus the county board and circuit court could establish a program either limited to work for governmental units, or also including work for private nonprofit agencies.

He also cautions that:

... should not be assigned to work for an organization whose religious nature or affiliations violate the (defendant's) beliefs. (substitution in parenthesis.)

### Advisory Committee

An advisory committee was established at the request of the chief judge to provide direction and consultation, and to set parameters, for the program. Besides Department administrators and the program coordinator, the Advisory Committee comprised a representative of the chief judge, the presiding judge of the Sixth Municipal District, a representative of the Young Lawyers Section, Chicago Bar Association, and a representative of the Labor Union. The Young Lawyers Section has been supportive of the program from the very beginning and has taken a special interest in the development and implementation of the program. Harris (1979) suggested that the labor unions be provided with information and asked to participate in setting direction regarding establishment of jobs. The intent of this program is not to substitute volunteer work for paid union employment; and this contact was undertaken to prevent misunderstanding concerning possible and unintentional infringement upon the rights of unions.

### Criteria—Agencies

Six criteria were established for participating agencies or organizations: must be willing to work with persons who have had conflict with the law, must have sufficient amount of meaningful work to be done, must be willing to provide direction and supervision of defendants performing community service work, must be willing to provide feedback on and to evaluate defendants participating, must be willing to sign an agreement with the Social Service Department, and must be located in the Sixth Municipal District. The participating agencies or organizations are asked to sign an agreement comprising four aspects: to provide job assignments as agreed with the program coordinator, to provide supervision of volunteers while on the job, to provide

necessary information for evaluation of the volunteer's work performance to the program coordinator, and to bring issues of conflict around job duties or time to the attention of the program coordinator when the normal manner of resolving them fails.

### Young Lawyers Section—Chicago Bar Association

The program is fortunate to have the support of the Young Lawyers Section of the Chicago Bar Association. It was proposed that their contribution, besides being supportive of the program, comprise several functions: provide public relations backup in a coordinated effort as guided by the direction of the Advisory Committee, act as liaison to the legal profession in coordination with the chief judge's office, aid program coordinator in setting parameters for various interest groups, provide legal consultation and reports to specific requests, and work in coordination with the program coordinator to make contact with an AFL/CIO representative within the parameters set by the Advisory Committee.

### Public Relations

The intent of the Department was to initiate this program in an unobtrusive fashion while building cautiously and solidly. As a result, promotion of the program has been kept to the essential minimum as authorized by the Advisory Committee. The program coordinator was authorized to contact the public municipalities and townships in the Sixth Municipal District (after an introductory letter sent by the presiding judge) regarding participation and to contact and work with the various court related groups (judges, assistant state's attorneys, assistant public defenders).

The Department has been fortunate to receive positive publicity. Besides several news articles published in local newspapers, the Chicago Sun-Times (Green, 1982), the *Judicature* (Abrahams, 1982), and a major TV station (WBBM, CBS, 1982) covered the program.

### Evaluation

Although the objective of the Department has been to develop a quality program, the intent has not been to develop a strict systematic research design using quantitative methods at this time. Exploration into the feasibility of evaluative efforts (e.g. establishing goals and objectives, etc.) did take place but there was no definitive determination regarding such. Evaluating the effectiveness of any human service endeavor is difficult and precarious by reason of the fact human subjects are involved (Hasenfeld and English, 1977). What has developed is a series

of quarterly status reports submitted to the advisory committee. These reports have provided information relative to the status of participating municipalities, number and status of referrals, referring judges, reasons for rejection, charges, hours assigned, types of work, recruitment of resources, incidents, considerations for expansion, and projections.

### Present Status

This aspect of our presentation is divided into four parts: first, participating municipalities; second, referrals to date; third, hours and jobs assigned; and fourth, projections and unanswered questions. This report is based on the first 11 months of operation.

### Participating Municipalities

Thirty of the thirty-four municipalities have chosen to participate in the program during the first 11 months of the program. One municipality has decided that the risk of liability is too high. A second municipality has been unable to locate specific jobs because of other programs presently in operation. Negotiations are presently underway with the remaining two municipalities.

The issues that have delayed decisionmaking for municipalities and thus delayed a more immediate implementation continue to be:

- (1) generation of jobs,
- (2) providing adequate supervision,
- (3) residence of volunteers within the geographic boundaries of the specific municipalities,
- (4) liabilities,
- (5) involvement in other job programs (several municipalities are involved with Work Fare Programs that provide a labor source that our Program participants could fill), and
- (6) other pressing issues relative to the running of the government involved.

### Referrals

One hundred twenty-seven referrals have been made to the program during its first 11 months: 68 from the courts or judges and 59 from Department caseloads. Of the 68 referred from the courts or judges, 42 have been accepted (32 within guidelines and 10 outside of guidelines) and 26 have been rejected. Of the 59 referred from Department caseloads, 25 have been accepted within the guidelines and 34 have been rejected. To date, 52 have completed the program, 7 are working, and 8 are soon to begin working. No defendants have been unsuccessful in completing the program which is in-

dication that the screening process has been successful.

The reasons for rejecting 26 defendants referred by the courts and judges have been the following:

- (1) defendant lives in nonparticipating community,
- (2) defendant charged with unacceptable charge (i.e. Battery, Aggravated Assault),
- (3) defendant has prior arrest record,
- (4) defendant has poor state of health,
- (5) inability to set up a schedule during work hours,
- (6) refusal of a receiving agency to participate,
- (7) defendant choosing to pay court fine, and
- (8) inappropriate attitude on part of defendant.

For the most part, the consequent dispositions for rejected referrals have been an order of supervision or sentence to conditional discharge and subsequent referral to the Social Service Department.

The reasons for rejecting the 34 from the Department's caseload have been the following:

- (1) lack of interest,
- (2) lack of transportation,
- (3) other responsibilities,
- (4) other conditions of court order,
- (5) new arrests, and
- (6) unable to manage work schedule with supervision.

The charges against those defendants accepted within the guidelines have been:

- (1) Theft,
- (2) Criminal Damage to Property,
- (3) Retail Theft,
- (4) Driving Under the Influence of Alcohol, and
- (5) Filing a False Police Report.

The 10 individuals accepted outside the guidelines have been charged with Aggravated Assault and Battery.

The Department is presently trying to develop new ways to expand the program to accommodate those defendants who are working or going to school fulltime. At least 20 individuals were unable to participate for these reasons.

#### Hours and Jobs Assigned

The hours assigned have ranged from 10 to 80 hours. The general rule has been 30 to 40 hours. The total number of hours performed by the 52 defendants who have completed the program amounts to 2,210 hours.

The work performed by the defendants has included:

- (1) collecting garbage,
- (2) street repair,

- (3) painting lines on the street.
- (4) putting up and repairing traffic signs,
- (5) maintenance of sewers,
- (6) sweeping/mopping,
- (7) mowing lawns,
- (8) general painting,
- (9) repair of refuse cans,
- (10) picking up debris, and
- (11) working with children in day care setting.

Adequate supervision continues to be provided in all cases as does the provision of special equipment when it is necessary.

#### Projection

The program continues to expand with a gradual increase in referrals. It is anticipated that this trend will continue. The factors affecting growth are:

- (1) as municipalities have continued to have positive experience with the program, it has been demonstrated that other municipalities will follow;
- (2) as judges find the program functional and become more familiar with the guidelines, more referrals from the courts are anticipated; due to the periodic shifting of judges, state's attorneys, and public defenders, continual dissemination of information about the program is necessary;
- (3) as caseworkers in the Department continue to find the program functional and observe clients having a positive experience, more referrals from our existing caseloads are anticipated; overwhelming workloads initially slowed down review of caseloads;
- (4) publicity has been such that information about the program has been disseminated nationally as well as locally; and
- (5) the addition of a new staff member provides more time for recruitment of resources, for interaction with the court personnel, and involvement with defendants.

#### Summary

The development and implementation of this program has been a slow, gradual process. The conceptual parameters as presented in the first part of this paper have added some clarity to the issues involved in such endeavors—specifically with the issues of approval with corresponding criteria and consultation to the court, rationale for hours assigned, and liability. A solid foundation has been laid which will allow for further expansion. Presently, the Department is seeking new ways to expand the program to accommodate those defendants who are working or going to school full-time and, on a selected basis, to accommodate defendants charged with violations other than nonperson oriented offenses. The program has received positive coverage by the newspaper and television media, projecting a positive image for the criminal justice system in Cook County, Illinois.

#### BIBLIOGRAPHY

- Abrahams, S. Community sentencing lets offenders repay society, *Judicature*, 65 (7), 1982, 378-380.
- Beha, J., Carlson, K., and Rosenblum, R. H. *Sentencing to community service*. Prepared for the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U. S. Department of Justice, by Abt Associates, Inc., under control number J-LEAA-030-76.
- Bergman, H. S. Community service in England: an alternative to custodial sentence, *Federal Probation*, 39 (1), 1975, 43-46.
- Brown, G. Community service as a condition of probation, *Federal Probation*, 41 (4), 1977, 7-9.
- Green, L. Experiment lets lawbreakers pay debt with sweat, *Chicago Sun-Times*, February 28th, 1982.
- Harris, M. K. *Community service by offenders*. Carlton, G. A. and Siebens, R. A. are contributors. Prepared by the National Council on Crime and Delinquency pursuant to contract with the American Bar Association's BASICS (Bar Association Support to Improve Correctional Services) Program. Washington, D.C.: American Bar Association, 1979.
- Harris, M. K. (Director, National Council on Crime and Delinquency) — Personal communication, 1980.
- Hasenfeld, Y. and English, R. A. (Editors). *Human service organizations: a book of readings*. Ann Arbor: University of Michigan Press, 1977.
- Illinois Revised Statutes. In *Illinois criminal law and procedure for 1981*, St. Paul: West Publishing Co., 1981.
- Kaufman, C. L. Community service volunteers: a British approach to delinquency prevention, *Federal Probation*, 37 (4), 1973, 35-41.
- Lavorci, J. T. Opinion in letter form provided by J. T. Lavorci, Deputy Chief of the Civil Division, Office of the State's Attorney, Cook County, State of Illinois, to Mr. Max Berg, Safety Program, August 23rd, 1973.
- Lewis, M. Progress report #1, community service order project, the Elizabeth Fry society — Peel Halton Branch, November 1st, 1978. In Marzec, J. M. (Editor), *Public service employment as a condition of probation*. Manual compiled for workshops sponsored by the Center for Legal Studies, Sangamon State University, Springfield, Illinois, 1978.
- Marzec, J. M. (Editor) *Public service employment as a condition of probation*. Manual compiled for workshops sponsored by the Center for Legal Studies, Sangamon State University, Springfield, Illinois, 1978.
- McClean County Court Services, Bloomington, Illinois. Written communication, 1980.
- O. P. Attorney General, State of Illinois. Criminal law and procedure: scope of "public service work" which may be assigned to probationers, S-1369, June 29th, 1978.
- O. P. Attorney General, State of Illinois. Tort liability: liability of a governmental entity to a juvenile performing public service work as a condition of probation. S-1339, March 15th, 1978.
- Roe, J. Involving the private sector in administering the Ontario community service program, *Perspectives* (news and notes of interest to probation and parole personnel) 5 (1), Winter, 1981.
- WBBM, CBS, Channel Two, Chicago, Illinois, 6:00 p.m. News, September 14th, 1982.
- Young Lawyers Section, Chicago Bar Association. Legal issues relative to proposed "community service program." A memorandum directed to the Social Service Department, Circuit Court of Cook County, December 8th, 1980.

**END**