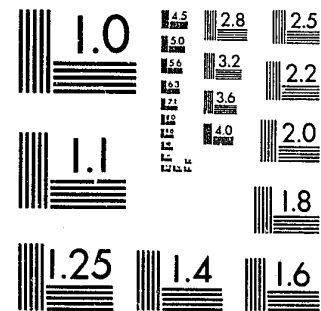


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SEPTEMBER 1983

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

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This Issue in Brief ACQUISITIONS

ERRATUM: In Ted Palmer's article, "The 'Effectiveness' Issue Today: An Overview" (June 1983, pp. 5-10), the sentence on page 5, column 2, line 2, beginning with the words, "In contrast," and ending with "are also implied," should have read as follows: In contrast, the differential intervention view suggests that some offenders (BTA's amenable included) will respond positively to given approaches under certain conditions only, and that these individuals may respond *negatively* to other approaches under very similar conditions; other combinations of offender, approach, setting—and resulting outcome—are also implied.

The editors regret that the important missing words, "certain conditions only, and that these individuals may respond *negatively* to other approaches under," were inadvertently omitted.

Writing About Justice: An Essay Review.—This essay review by Dr. Benjamin Frank deals with what are generally considered the three most influential books on political and moral philosophy published in the past decade. They are, in effect, three competing theories of justice for contemporary liberal society. The focus of Dr. Frank's review is on the implications of each of these theories for penal policy.

Probation as a Reparative Sentence.—Probation as a reparative sentence should become the penalty of choice for property offenders, asserts Professor Burt Galaway of the University of Minnesota at Duluth. The reparative sentence requires offenders to restore victim losses either through monetary restitution or personal service. If there are no victim losses or the nature of the offense requires a more severe penalty, additional reparations can be made to the community in the form of unpaid service.

Selective Incapacitation: An Idea Whose Time Has Come?—Selective incapacitation is a popular, yet controversial new idea for dealing simultaneously with overpopulated prisons and jails and with the problem of high crime rates. Brian Forst of INSLAW, Inc., considers the pros and cons of the idea. His arti-

cle focuses primarily on two issues: the compatibility of selective incapacitation with other strategies for determining criminal sanctions, and the problem of errors in predicting which offenders are the most dangerous.

Recent Case Law on Overcrowded Conditions of Confinement: An Assessment of Its Impact on Facility Decisionmaking.—Crowded prisons and

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Probation as a Reparative Sentence

BY BURT GALAWAY, PH.D.*

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Crime is a rupture in the fabric of society—an act by which the offender sets himself apart from the prevailing norms. Unfortunately imprisonment as the *sine qua non* of punishment further isolates the offender, absorbs large amounts of public funds which are, thus, not available for more useful public causes, and denies crime victims opportunities for restoration.

Probation is frequently advanced as an alternative to imprisonment although a recent study of incarceration rates in the United States for the first half of this century (the period of time in which probation has become fully developed) indicates that incarceration rates have steadily risen during the period of rapid expansion of probation services.¹ Probation, at best, is a muddled concept. Is probation a sentence or the withholding of some other sentence? Is probation a punishment or the mitigation of punishment? Is probation care or control or therapy or supervision? Probation, however, has rested on the notion that some offenders can be diverted to community care or supervision as an alternative to the use of imprisonment. But imprisonment remains the *sine qua non*; there is a vast difference in think-

ing of probation as an alternative to imprisonment and thinking of probation as a replacement for imprisonment.

Regardless of the concept, the hopes of probation seem largely unfulfilled. Perhaps the acceptance of utilitarian goals—to rehabilitate the offender or to protect society—was unrealistic. The goals of offender rehabilitation and protection of public safety, the problem of crime itself, are too massive and nefarious in their roots to be accomplished by a single social system. The justice system, and its various components, might well adopt a more focused and limited mission. Responding to offenders and victims in a reasonably humane and restorative manner is a more sensible purpose than attempting to solve the problem of crime.

This article will provide broad outlines for a reparative model of probation. The aims of such a model are straightforward. Crime has resulted in loss to the victim and to the community; the object of punishment is to first restore the victim (who has experienced the most immediate loss) and, second, to provide restoration to the community; the punishment is to be administered in a manner which will provide the offender with opportunity for reconciliation to the community. Such a reparative model of probation should replace imprisonment as the sentence of choice for property offenders.

*Dr. Galaway prepared this article while serving with the New Zealand Justice Department as a senior research fellow sponsored by the New Zealand National Research Advisory Council. The points of view and opinions expressed are those of the author and do not represent official positions or policies of either the New Zealand Justice Department or the National Research Advisory Council.

¹Margaret Calahan, "Trends in Incarceration in the United States since 1880," *Crime and Delinquency* 25:1 (January 1979), 9-41.

The Reparative Requirements

Crime victims stand as the community members most damaged by property offenders; thus the first element of a reparative sentence is to require offenders to restore victim losses—to make restitution. While this may involve different degrees of harshness for offenders who have committed similar acts, damage caused to victims is a reasonable element in assessing the seriousness of an offense. A burglary in which a \$1,000 damage has occurred is a more serious offense than a burglary resulting in only \$100 damage. The first burglary can reasonably be expected to restore \$1,000 and the second \$100 even though they have committed similar acts. For many offenses restoration of victim losses may be a sufficient penalty especially considering that the process of determining guilt and imposing sentence will have performed a denunciation function and, further, the offender seldom receives full value of stolen property thus offenders will typically be making restitution for more than the amount received as a result of the fruits of their crime.

Some property offenses may require penalties in addition to victim restitution either because the offense is serious or because of prior criminal history of the offender. (Criminal history may be considered an element in defining offense seriousness; thus a burglary committed by a person who has no prior felony convictions is a less serious offense than a burglary committed by a person with prior felony convictions). Additionally, victims of some property offenders experience no loss. In each of these situations an additional reparative penalty may be required in the form of unpaid service to the community (community service restitution). Some discretion must be available to judges to impose community service in addition to a sentence of victim restitution although discretion should be structured by providing guidelines as to the types of offenses and offender history for which an additional penalty of unpaid service is appropriate as well as the number of hours of unpaid service to be required.

Victim restitution and community service restitution are the aims of a reparative sentence; the effectiveness of such a sentence is to be determined in

terms of the extent to which these aims are accomplished and, further, the extent to which the offender, victims, and wider community consider that the offender was handled fairly. While the reparative sentence will restore victim losses and, when appropriate, community losses it should also be administered in a form to maximize offender opportunity for reconciliation to the community. Reconciliation is not the purpose or basis for assessing effectiveness, any penalty however can be administered in a variety of ways and we would be foolish to miss the opportunity to provide offenders with an opportunity to effect some reconciliation between themselves, their victims, and the communities they have harmed.

There are two clear dimensions of reconciliation. First to the victim as a representative of the wider community. Reconciliation is most likely to occur if victims are actively involved with offenders in both determining and implementing the restorative requirements. Victims should have an opportunity for full participation both in determining the amount of restitution and in determining the form in which the restitution will be paid. Consideration may be given to offenders making restitution in service (personal service restitution) as well as in money (monetary restitution). The experiences of a series of Victim Offender Reconciliation Projects (VORP)² as well as recent exploratory research³ suggest the feasibility of victim offender involvement as part of restitution programs.

A second dimension is to provide offenders with opportunities for reconciliation to their communities. This is most likely to occur if, in the administration of sanctions, the offender comes into contact with members of the wider community. Community service restitution should be in offenders' immediate communities; recipients of the service may be organizations and agencies in the offenders' communities and supervision of the community service will be by staff or volunteers of these organizations who have ties to the communities from which the offenders come. Further opportunities for offender reconciliation to the community will be provided to each offender through use of community sponsors. The sponsor should be a person selected by the offender; the probation agency could, of course, set minimum standards but major responsibility for identifying and securing a community sponsor will rest with the offender. Duties of the community sponsor will be to provide support and encouragement to the offender and to assist the probation office in overseeing completion of the reparative sentence requirements.

¹Howard Zehr, *Mediating the Victim-Offender Conflict* (Akron, Pennsylvania: Menonite Central Committee, 1981); Dorothy McNight, "Victim Offender Reconciliation Project," B. Galaway and J. Hudson (eds.), *Perspectives on Crime Victims* (St. Louis: C.V. Mosby Press, 1980).

²John Gandy and Burt Galaway, "Restitution as a Sanction for Offenders: A Public View," J. Hudson and B. Galaway (eds.), *Victims, Offenders, and Alternative Sanctions* (Lexington: D.C. Heath/Lexington Books, 1980); Steve Novack, Burt Galaway, Joe Hudson, "An Exploratory Study of Victim and Offender Perceptions of the Fairness of Restitution and Community Service Sanctions," J. Hudson and B. Galaway (eds.), *op. cit.*; Robert Kigin and Steve Novack, "A Rural Restitution Program for Juvenile Offenders and Victims," J. Hudson and B. Galaway (eds.) *op. cit.*; Richard Hofrichter, "Techniques of Victim Involvement in Restitution," J. Hudson and B. Galaway (eds.), *op. cit.*

But will there be situations in which the notion of providing offenders with opportunities for reconciliation and the expectation that offenders restore victim losses may be in conflict? Will the amount of restitution required by offenders be so far beyond their means to foreclose upon any opportunity for reconciliation? While available information regarding victim losses⁴ and the experiences of restitution programs to date⁵ suggest that in the vast majority of cases restitution ordered is within the ability of offenders to pay, there will certainly be unusual cases in which the expectation that an offender fully restore victim losses may be unrealistic. Probation officers may, however, fall into a trap by assuming that they must decide what is realistic in a reparative plan; the interest of the state is in arriving at a plan for reparation which is acceptable to both the offender and victim. If the offender and victim agreed to something less than full restitution such a plan is acceptable. Determining the reparation amounts is a matter for negotiation between offenders and victims—negotiation which can most efficiently be conducted person to person. In most cases a reasonable plan will be negotiated—most victims will be reasonable in their requests especially as they come to know the offender, most offenders will be willing to take on responsibility for repaying the damages they have caused especially if they sense goodwill in working out a plan that has some reasonable hope of success. But there will be recalcitrant victims and some offenders will try to shirk responsibilities. What happens if the two parties cannot arrive at an agreement? The facts of the matter as best they can be ascertained will be reported to the court which must resolve the issue at the time of sentencing. Courts have a great deal of experience at resolving these types of disputes (admittedly more often in a civil rather than a criminal setting) and will be able to arrive at a resolution based on past experience.

The reparative sentence, will, then, involve first offender reparations to the victim in money or service and, second, offender reparations to the community when this is required because of the

seriousness of the offense or because of no victim losses. Reparations are to be carried out in a way that maximizes opportunity for offender reconciliation with the community. Operationally this means encouraging victim offender contacts in the victim restitution scheme, ensuring contacts with community organizations when community service restitution is used, and involving a community sponsor with each offender to assist in overseeing the reparative program.

Probation Practice and the Reparative Sentence

The basic structure of probation tasks—preparation of probation reports to aid in sentencing and supervision of the offender placed under probation supervision—will be retained but the way in which these two broad functions are implemented will be markedly changed in keeping with the reparative intent.

Developing the Reparative Plan. The reparative plan will be developed after a determination of guilt but prior to sentencing. Since an assumption has been made that the sentence will be reparative (and will certainly not be imprisonment) the report will not be directed towards determining what the sentence should be; rather the report will be a plan by which the offender can restore victim losses and, if warranted, will make reparation to the community. Further, since there is no intent to do counseling with the probationer, social history and diagnostic material, unless immediately related to the reparative plan, are unnecessary. The process of developing a reparative plan has three objectives:

- (1) To arrive at a plan for victim reparation which is acceptable to the offender and victim.
- (2) When indicated by guidelines, to develop a plan for community reparation.
- (3) To assist the offender in securing a community sponsor.

The probation officer's initial contact will occur after a determination of guilt and will be with the crime victim rather than the offender. The probation officer will telephone the victim to let him or her know of the determination of guilt and will arrange a visit to discuss the victim's view of appropriate reparative steps which might be taken by the offender. The initial visit will be at a location convenient for the victim—possibly in the victim's home or work site, or the probation office. The visit has two purposes—to permit the victim to ventilate feelings regarding the victimization and, if necessary, regarding the way he or she has been dealt with by the

⁴Alan T. Harland, *Restitution to Victims of Personal and Household Crimes* (Washington: U.S. Government Printing Office, 1981); United States Department of Justice, Bureau of Justice Statistics, *Criminal Victimization in the United States, 1978* (Washington: U.S. Government Printing Office, 1980) pp. 11-12; 64-65.

⁵Peter R. Schneider, et al., "Two-Year Report on the National Evaluation of the Juvenile Restitution Initiative," Eugene, Oregon: Institute of Policy Analysis, 1982, pp. 25-43; Planning and Development Division, "Reparation: An Analysis of the Use of Existing Provisions" (Wellington: New Zealand Department of Justice, 1979); Kigin and Novack, *op. cit.* ^{supra} note 3; Robert Mowett, "The Minnesota Restitution Center: and Novack, *op. cit.* ^{supra} note 3; J. Hudson (ed.), *Restitution in Criminal Justice* (St. Paul: Minnesota Department of Corrections, n.d.); Steven Chesney, "The Assessment of Restitution in the Minnesota Probation Services," St. Paul: Minnesota Department of Corrections, 1976; Paul Softley, *Compensation Orders in Magistrates Courts*, Home Office Research Study #43 (London: HMSO, 1977).

criminal justice system and, second, to enlist the assistance of the victim in developing a reparative plan. This will be done by providing information regarding the process by which a plan is normally developed, the purposes of sentencing and by frankly inviting the victim to meet with the offender. If the victim agrees to such a meeting, issues of loss assessment and plan formulation will be left to that meeting although the probation officer will have preliminary conversations with the victim regarding the extent of loss and may need to prepare the victim for the meeting with the offender. Should the victim decline the opportunity to meet with the offender, the probation officer will then need to make more detailed inquiries into matters of victim loss to complete a loss assessment, and to discuss procedures for the probation officer to get back to the victim after interviewing the offender.

The second meeting will be with the offender. The offender should be given an opportunity to also ventilate feelings regarding experiences in the criminal justice system; this will come about as the probation officer clarifies with the offender the present situation to be sure the offender understands that guilt has been determined and that the purpose for the next contacts will be to develop a plan whereby the offender can restore the damage he or she has caused. There may be preliminary discussions of the offender's view of the amount of damage done. If a meeting with the victim is to occur then the offender should be prepared for this meeting. Victims have the right to accept or reject the opportunity to meet with their offenders; offenders, because of their behavior, have forfeited this right. If the victim chooses to meet with the offender, however, the offender should be prepared for the meeting. This can occur through careful explanation of what is likely to occur and, when appropriate, through role play. Offenders are likely to come from disadvantaged segments of society, may be fearful and anxious in terms of the possibility of confronting victims, and in many cases may not be articulate. Time spent preparing offenders for the meetings with victims is essential. If there is not to be a meeting with the victim, then the probation officer should simply explain that the negotiations will be through the probation officer and should discuss the victim's reported losses. If the offender challenges any of the loss items or estimates, the probation officer must make a decision as to whether to communicate these questions back to the victim or to assist the offender to make some independent inquiries. Offenders, for example, may be unaware of the costs of repairs or the value of property which they admitted stealing; in-

structing an offender to make inquiries at a repair service or to make inquiries regarding the costs of replacing a stolen television is an appropriate procedure for the probation officer when offender's challenge of a victim's estimate is thought to be based on lack of information available to the offender.

During the meeting with the offender issues of community service restitution (if required) and community sponsor will be introduced. If community reparation is to be required this should be indicated and the offender told of the approximate number of hours that are likely to be imposed. The offender's ideas as to how this requirement might best be fulfilled should be explored and if the offender has ideas as to what he or she might be able to do or organizations with which he or she might affiliate in order to complete the community service requirement, the offender should be assigned the task of contacting these organizations and reporting back to the probation officer in a very few days with the results of the inquiry. The purpose of reparative sentences is to repair the damage the offender caused and to provide an opportunity for offender restoration to the community; the latter is more likely to occur if offenders are actively involved in selecting and developing their own plan for community restoration rather than simply being slotted into some available site the worker has developed. This latter may occasionally need to occur but the ideal is to help offenders develop their own ties with their communities and their own plan for community restoration.

The concept of offender responsibility for community ties becomes clearer in the selection of a community sponsor. During the initial interview the probation officer will explain the need for a community sponsor, the responsibilities of a community sponsor, and any minimum requirements which may have been established by the probation service. Inquiries should then be made of the offender as to who he or she thinks might provide this service. If the offender can identify one or two people he or she should then be instructed to go talk with these people and make inquiries as to whether they would be willing to take on the responsibilities. The offender may need some preparation (including role playing) but the duty of the probation officer is clearly to prepare an offender to carry out the task rather than to assume this responsibility for the offender. A definite timetable should be established for the offender to contact the potential community sponsor and report back to the probation officer regarding the contact (the reporting back should be in a very few days to ensure the task is implemented without

unnecessary delay). Occasionally an offender will say that he or she cannot think of anybody that might serve as a community sponsor; at this point the overly helpful probation officer will be tempted to take on the responsibility of finding an appropriate sponsor. The temptation should be resisted and the offender sent home to think and to make informal inquiries of friends or relatives as to persons they might consider appropriate. The offender can come back the next day to further discuss the issue with the probation officer; if at that point there is still a stalemate the probation officer may offer some suggestions to the offender. The offender, however, should be assigned responsibility for following up on these suggestions. If the people suggested are people who are not known to the offender, the probation officer may, with the offender's consent, telephone a potential community sponsor for purposes of introducing the person to the offender and establishing a time when the offender might call.

The next step will be a joint meeting between offender and victim in the presence of the probation officer. The location of the meeting is appropriate for discussion between the victim and probation officer; most likely the meetings will be held at the probation office. The meeting will start by giving the victim an opportunity to say anything he or she would like to say in regard to the victimization, including raising questions with the offender. The offender should also have a chance to make a statement and make inquiries of the victim. The probation officer will then focus the meeting around the issue of victim losses and a plan for reparation. The probation officer is an expert in managing a process by which the offender and victim may come to an agreement and should not be perceived or act as an expert regarding the substance of that agreement. The duty of the probation officer is to assist the victim and offender in arriving at an acceptable plan; thus the probation officer will attempt to be sure that both parties are expressing their points of view and that ambiguous issues are clarified. Issues around which the negotiation will occur are amount of loss the victim sustained, the proportion of this loss which the offender should repay, the form which the repayment will take (money or service), and the repayment schedule. Once a victim and offender reach agreement the probation officer should assume responsibility for reducing the agreement to writing and securing signatures of both parties. If the victim declines to meet with the offender but still desires restitution then the negotiations will be conducted through the probation officer. This will be a bit more cumbersome but the probation officer

may be able to handle most of the communications and transactions by telephone. The probation officer is to facilitate the development of an agreement between the victim and offender; the officer will take great efforts to avoid being trapped into the position of assuming responsibility for deciding what is a proper agreement. If an agreement cannot be reached, the probation officer should then report to the court as a part of the probation report areas in which agreement has occurred, the unresolved issues, and the positions of both the offender and victim on the unresolved issues. The court will make the final determination.

The probation officer will need to assist the offender in completing any plan for community service (where this is required) and a plan for a community sponsor. Proposals made by the offender need to be confirmed and both the community sponsor and the organization to receive the community service contacted by the probation officer to provide these people with an orientation regarding their duties. Ideally a total reparative plan can be presented to the court including the plan for restitution to the victim, for restitution to the community (where necessary), and the identification of the community sponsor. The victim, community sponsor, and a representative of the agency to receive the community service are to be invited and encouraged to appear in court with the offender at the time of sentencing. This will provide the court an opportunity to make inquiries of any of these parties and will symbolize the community support being provided to the offender and for a reparative sentence.

Monitoring Completion of the Reparative Plan. With court acceptance of the reparative plan and sentencing of the offender, the probation officer's major responsibility will be to monitor completion of the plan. The monitoring will involve the probation officer in regular, planned contacts (frequently by telephone) to the community sponsor, the victim, and the representative of the agency receiving community service. The community sponsor will be maintaining regular contact with the offender and should be aware of any problems in implementing the plan; as a double check, however, the probation officer may also be maintaining contacts with the victim and community agency so that problems, when they occur, can be identified quickly. The probation officer will be available for contacts from the probationer although these will probably be infrequent.

The probation officer will provide consultation, supervision, and support to the community sponsor and will provide overall direction for the sponsor's

work with the offender. When offenders fail to follow through on their plan, this matter should be first discussed with the community sponsor; if the community sponsor cannot produce a change, the probation officer will then need to make contact with the offender. If breach proceedings must be implemented or the case taken back to court for review, the probation officer will be responsible for this aspect of the work.

From time to time the community sponsor or probation officer may become aware of problems such as alcohol or other chemical abuse, marital discord, and so forth, with which the offender may require assistance. These should be frankly discussed with the offender and a referral made to an appropriate community agency; the offender, however, is not to be required to receive treatment as a condition of receiving a reparative sentence. Discussion and referral may be by either the community sponsor or probation officer (or both) with the decision being largely a matter of the skills and ability of the community sponsor to handle confrontation with the offender and the subsequent referral.

The role of the probation officer in this model is clearly that of planner and orchestrator. The work is front loaded in the sense that the bulk of the probation officer's time might well go towards development of the reparative plan. This is desirable; one of the measures of effective probation practice may well be the amount of time required to enforce a plan—the less time required, the more effective the plan. A second aspect of practice is that the probation officer is an orchestrator of community resources. This is in the best tradition of assisting people to do for themselves; the process of restoration—offender to community and community to offender—is more likely to occur if the probation officer orchestrates the process rather than attempting to play all the instruments.

Issues

Probation as a reparative sentence raises several issues, some of which may be addressed at this point, others of which must wait more experience even for definition.

Offender means. Offenders are often unemployed; how can they make restitution without means? This is a complex issue, one which has a series of responses. The best available evidence, both research and program experience,⁴ suggests that the restitution amounts will be modest. While even modest amounts may present a hardship for an

unemployed offender, there is nothing in principle wrong with punishment imposing a hardship and certainly restitution as less of a hardship than imprisonment. Further, the issue is not the amount of restitution but, rather, that a satisfactory plan be worked out between offender and victim; victims and offenders can weigh unique circumstances and come up with a reasonably acceptable plan. In many cases victims may settle for less than full restitution when they recognize the circumstances of the offender. The official position, however, should be that offenders have incurred obligations to repay victims fully for losses but that victims may, if they choose, forgive a portion of the obligation.

Insurance companies. Should restitution be made to insurance companies? The offender should be responsible for full restitution paid directly to the victim without regard for insurance settlements. Offenders should not receive a reduced penalty because their victims had the foresight (or means) to be insured but neither should insurance companies receive a windfall from penal programs. The relationship between crime victims and insurance companies is not a matter that need concern the criminal court. Some victims may receive double recovery but if anyone is to benefit from the sanction, this should be the victim rather than either insurance company or offender. Any extra recovery may be considered reimbursement for past premiums paid and future premium increases because of the claim.

Backup sanctions. What about the offender who won't pay? Some offenders do make agreements which they fail to complete. What is the appropriate backup sanction for a reparative sentence? The backup sanction may involve partial restriction on liberty, such as weekend house arrest or periodic detention. The backup sanction is imposed because of failure to complete the original sanction; it does not replace the original sanction which will remain in force, just as escaping from prison may lead to an additional prison term but does not replace the original sentence which remains in effect. Failure to complete the reparative sentence may be a separate charge (although this may be more cumbersome than necessary). Backup sanctions should be imposed for an indeterminate period and until implementation of the reparative plan is current.

Quality of victim participation. Will victims participate constructively with offender? Issues of willingness of the victim to participate and the danger that the participation may be vengeful are both questions which require further study and for which no definitive conclusions can be drawn although the

available evidence suggests substantial portions of victims will agree to participate with offenders and that the participation of the victim will be constructive.⁷ Further the model allows for negotiation through the probation officer when necessary. The constructive nature of the victim participation will be enhanced by the initial contact of the probation officer which gives the victim an opportunity to ventilate.

Public acceptance. Will the general public accept a reparative sentence as an alternative to imprisonment for property offenders? While the evidence, again, is not definitive it does suggest that, for property offenders, the public prefers that victims receive restitution rather than offenders being imprisoned (a caveat is that the public will probably prefer both sentences and may need information regarding incompatibility of the two).⁸ A reparative sentence is likely to appeal to the public because of its inmate fairness, imposition of definite requirements on offenders, and responsiveness to crime victims.

Probation acceptance. Will the probation bureaucracy accept a changed role? The reparative model of probation requires significant shifts in the task assignment and role of probation officers. Probation is the agency, however, with staff most equipped through training and experience to take on responsibility for administering a reparative sentence. While some bureaucracies move slowly, the clarity of the model, opportunity for community work, possibility of serving victims, and excitement of trying something different, may appeal to many offices and staff. Rather than making assumptions about willingness or resistance, the best strategy is to seek out some officers or agencies willing to try the reparative model.

Public interest. Is the reparative sentence penal policy in the public interest? This, of course, is a question of values and an issue about which in-

formed and well intentioned persons will disagree. The high cost of imprisonment and the many legitimate demands on the public treasury suggest that the public interest can best be served by using less costly penalties with property offenders. Public interest will also be served by imposing penalties on property offenders which improve the condition of the community and some victims (those victims whose offender has been apprehended). Complicating the question, however, is the net widening effect which the reparative sentence will likely have. While the majority of people who go to prison are in fact property offenders, most property convictions do not result in a prison sentence. Thus the reparative sentence will also be used for offenders who might previously have received probation or even a fine. The sentence can be justified, however, on the grounds that it is proper to require offenders to repair their victims, that the sentence relates to the harm done, will be perceived as fair by both offenders and the community at large, and is a sentence which is constructive in the sense of bringing immediate benefits to the community.

Summary

Probation as a reparative sentence should become the penalty of choice for property offenders. The reparative sentence requires offenders to restore victim losses either through monetary restitution or personal service. If there are no victim losses or the nature of the offense requires a more severe penalty, additional reparations can be made to the community in the form of unpaid service. The reparative sentence should be carried out in a manner which maximizes the possibility of reconciliation of the offender to the community. This requires, whenever possible, active victim involvement in all phases of the sentence, involving the offender in the local community for community service restitution, and use of a community sponsor selected by the offender for monitoring implementation of the sentences. Probation functions will be developed of reparative plans for individual offenders and orchestrating plan implementation.

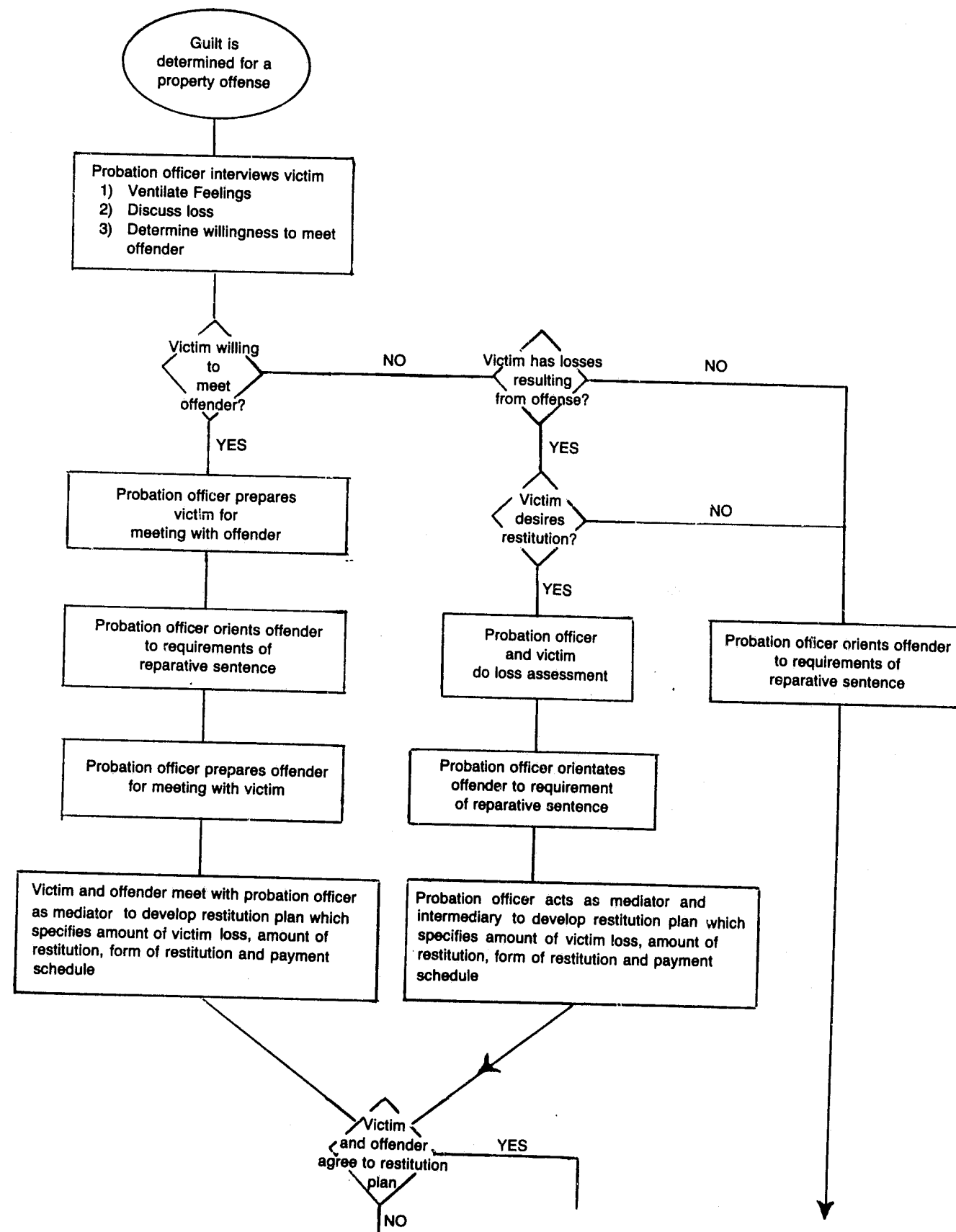
A model of probation as a reparative sentence follows.

⁷Zehr, *op. cit. supra* note 2; McNight, *op. cit. supra* note 2; Novack, Galaway, Hudson, *op. cit. supra* note 3; Kigin and Novack, *op. cit. supra* note 3.

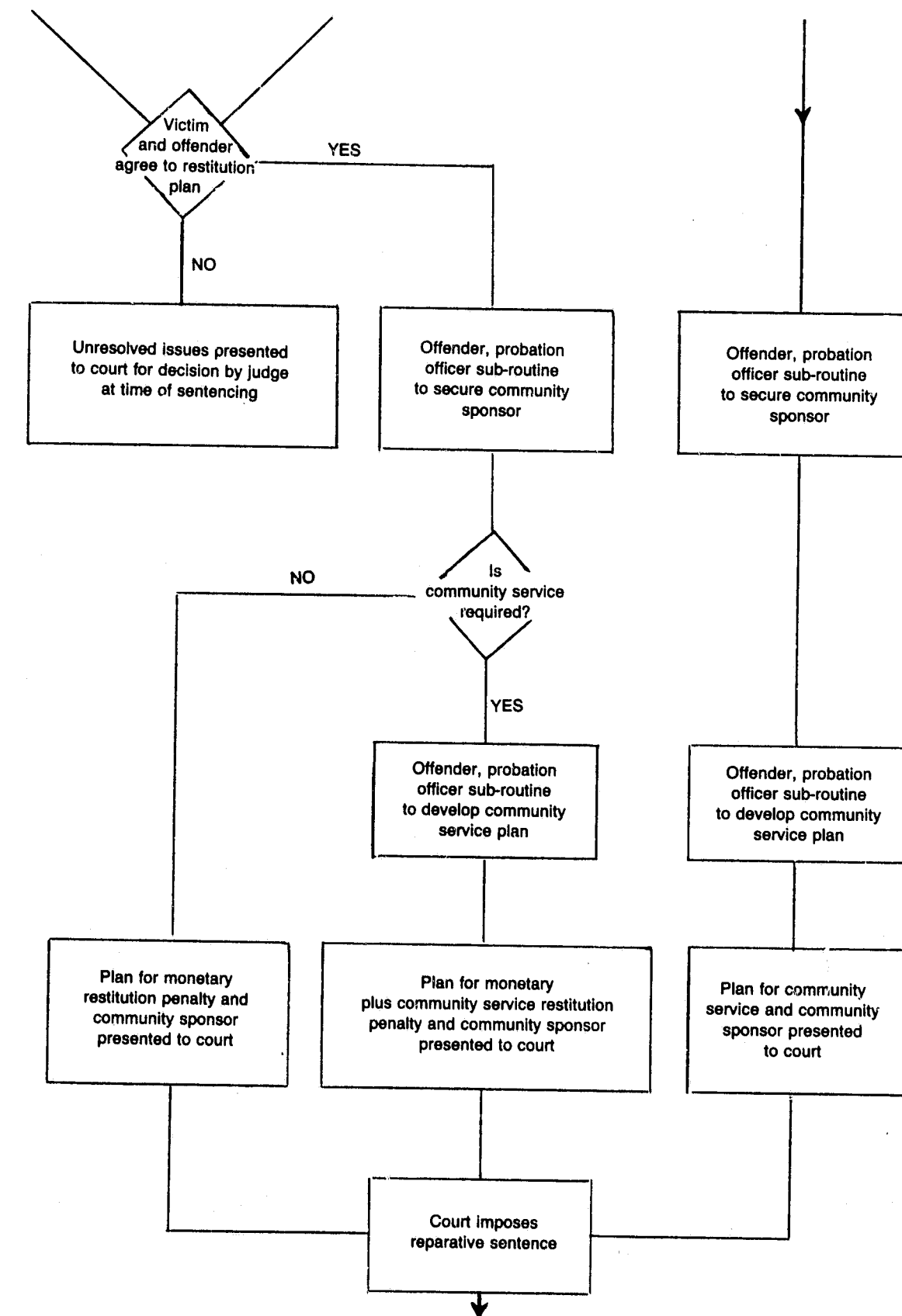
⁸John Gandy, "Attitudes Towards the Use of Restitution," B. Galaway and J. Hudson (eds.), *Offender Restitution in Theory and Action* (Lexington: D.C. Heath/Lexington Books, 1978); John Gandy and Burt Galaway, *op. cit. supra* note 3; Minnesota Poll, Minneapolis Star.

⁴See notes 4 and 5.

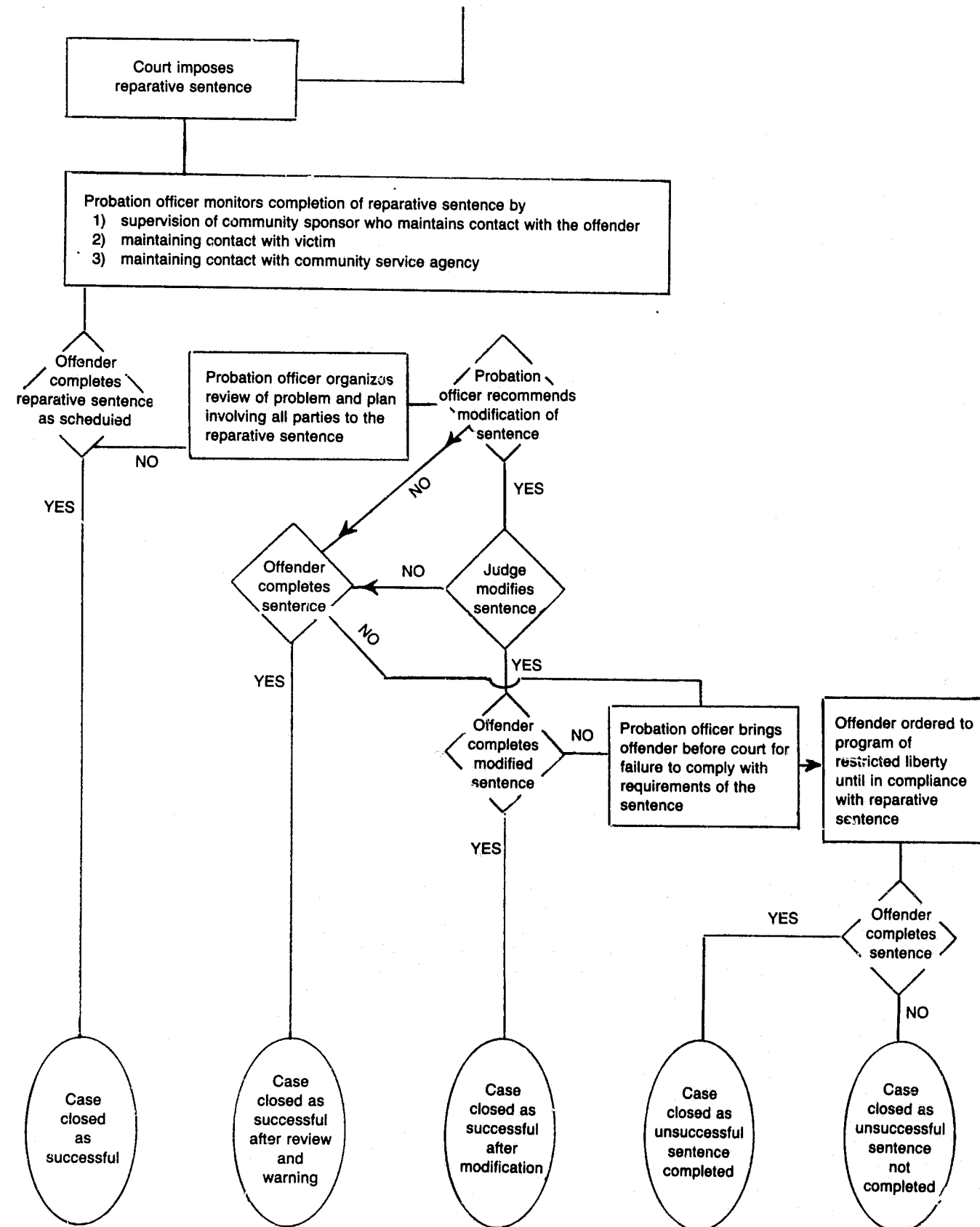
MODEL OF PROBATION AS A REPARATIVE SENTENCE



MODEL OF PROBATION AS A REPARATIVE SENTENCE



MODEL OF PROBATION AS A REPARATIVE SENTENCE



END