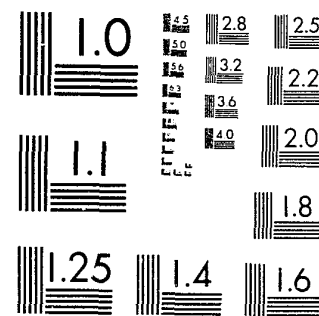


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6/12/84

# Federal Probation

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A. Comparison ..... *James R. Davis*

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# Federal Probation

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## This Issue in Brief

**ERRATA:** The volume number on the June and September 1983 issues of **FEDERAL PROBATION** is incorrectly shown as Volume XXXXVI (46) instead of Volume XXXXVII (47).

**Public Relations in Probation.**—U.S. Probation Officer Eugene Kelly outlines the need of probation offices for public relations so that the community can be more aware of the philosophy that motivates probation workers. He also examines the role of the media—television, press, radio, college—and advocates a specific program for developing interns in parole and probation.

**Academic and Practical Aspects of Probation: A Comparison.**—In the practical world of probation, probation officers emphasize logic or common sense, subjective criteria, rules and guidelines, a maximum caseload size, and processing defendants quickly and skillfully. The academic world of probation emphasizes knowledge for its own sake, objective data, theory, and empirical research. Dr. James R. Davis of the New York City Department of Probation concludes that it may be dysfunctional to mix the academic and practical worlds of probation since each has its own role in criminal justice.

**Profit in the Private Presentence Report.**—Four basic issues raise a question about the appropriateness of private presentence reports, according to U.S. Probation Officer Chester J. Kulis. They are: (1) whether the private sector has a legitimate role in a quasi-judicial function such as sentencing; (2) whether private presentence reports thwart needed reform of the probation function and sentencing; (3) whether private reports are truly cost-effective; and (4) whether the private practitioner has ethical dilemmas tending to compromise the sentencing process.

**Reducing the Cost and Complexity of Probation Evaluation.**—Professor Magnus Seng of Loyola University of Chicago believes that, while evaluation

is sometimes complex and expensive, it need not be. His article examines two misconceptions or myths

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about evaluation that lead to erroneous views about its methods and its cost and suggests ways in which meaningful evaluation of probation programs can be conducted without undue complexity or expense.

**The Lively Career of an Island Prison.**—The Federal penitentiary on McNeil Island began as a territorial prison over a century ago. Though it had an ill-advised location, the most primitive of accommodations, and no program except menial work, Paul Keve reports that it survived a half century of neglect to become one of the more dynamic of the Federal prisons. Its story is also the story of pioneers, the U.S. Marshals Service, the Puget Sound area, and the Federal Bureau of Prisons.

**Prison Industries in Transition: Private Sector or Multistate Involvements.**—Interviews with prison industry leadership in five states show that their problems are primarily organizational in nature. Authors Miller, Funke, and Grieser write that industry leadership was seen to have the necessary technical competencies to implement change, while inmate population increases have motivated correctional agencies to desire industries' expansion.

**The Incidence of Sex and Sexual Aggression in Federal Prisons.**—The first of two reports by Drs. Nacci and Kane establishes baselines of male in-

mates' involvement in sex and sexual aggression. Three hundred and thirty randomly selected inmates from 17 randomly chosen Federal prisons were interviewed by an ex-offender. Inmates were volunteers; confidentiality was maintained.

**Group Psychotherapy and Intensive Probation Supervision With Sex Offenders: A Comparative Study.**—This report by Joseph Romero and Linda Williams is based on a 10-year followup study of recidivism among 231 convicted sex offenders. The findings indicate that group psychotherapy in addition to probation does not significantly reduce sex offense recidivism when compared to intensive probation supervision alone. Issues in the evaluation of intervention techniques with sex offenders and implications of the findings are discussed.

**Counselling the Mentally Abnormal (Dangerous) Offender.**—Some aspects of social work counselling with the mentally abnormal (dangerous) offender are discussed from an English perspective by Herschel A. Prins of Leicester University. The need to have regard for the offender-patient's social milieu is stressed and some specific strategies for more successful work with this type of case are suggested.

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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## Public Relations in Probation

BY EUGENE KELLY

U.S. Probation Officer, Camden, New Jersey

THERE is no question that there is a great need for public relations in probation. Probation as a human service is a relatively new development in social services. It needs to be defined and identified, and its various services need to be explained. The community generally classifies probation with juvenile service. Little is known about the existence of even such a fundamental document as the presentence report. Editors of newspapers, as a general rule, eliminate reporting that a presentence investigation is being prepared. Some years ago one newspaper in Chicago used for its logo the slogan, "Abolish Parole." Frequently it has been said that probation officers are reluctant to discuss their job not because of confidentiality of reports but because of a feeling that theirs is not a socially acceptable profession in society. The probation officer as a member of the community is a second-class citizen. Moreover, probation is a public service and the community has a right to know what this office is doing just as they know about the role and function of the district attorney's office. Unless, therefore, he speaks out, all of the good that this service does will remain unknown.

Public relations is "developing reciprocal understanding and good will." It is also, "the conscious effort of an organization to explain itself to those with whom it has or would have dealings."<sup>1</sup> Public relations is a generally well understood concept in most social organizations. Normally a private agency could not function without good and ongoing public relations. Most businesses know that they would have no customers without full public relations and widespread knowledge of their product or services. Probation needs a special kind of public relations which differs with each "public" that is encountered. The first of the "publics" regularly contacted by probation officers is the clients. They may be called, "criminals," "offenders," a "caseload," or just "the cases," but they are the human beings who, for a wide variety of reasons, find themselves convicted of a state or Federal offense which brings them into contact with a probation officer, first as an investigator and

then, in many cases, as a regular counselor. Public relations begins with this first contact with the client. Projecting himself as an interested, efficient, competent and well-informed public official dealing with his client is the first public relations function of the probation officer.

In addition to this key role, a probation officer encounters a number of other persons in the court and correctional system. These include: judges, defense attorneys, prosecuting attorneys, secretaries, student interns, and jail personnel. Probation officers should as a matter of practice have an open door to all members of the "court family." This should incline him, for example, to give new judges and other lawyers a full explanation of the role of probation and the different duties of the position. This can be done formally by a full program outlining the probation officer's role or informally by office chats and exchanges of views. Both techniques serve a specific function.

Probation officers, more than any other agency officials in state or Federal Government, unite what are described as human service functions and police duties. Each of these has a somewhat different role and a different philosophy. In reality they both offer a social agency service that, like probation, is often misunderstood. Police, although often defined differently, function as helping persons in many situations. Social service agencies often investigate clients in situations that sometimes are more difficult than police making an arrest. Probation officers share both these roles. Most probation officers can share the frustration of both agencies and may be able to bring an understanding of each that is special to the probation function.<sup>2</sup>

Probation has a special role in addressing the problem of the development of new community agencies. This brings into the system a number of different "publics" which must be managed in different ways. The probation officer as an investigator often knocks on doors and interviews people of different classes in society. He encounters the very poor, the middle classes, and occasionally members of the upper classes. Perhaps, a Federal probation officer encounters more corporation heads than other probation officers because of the various offenses that are special to Federal courts; nevertheless, all probation officers interview employers, landlords, school officials and

<sup>1</sup>Guide to Community Relations for United States Probation Officers, Federal Judicial Center, Washington, D.C., 1975, p. 1.

<sup>2</sup>Ehlers, Walter H., et al., Administration for the Human Services, Harper & Row, 1970, p. 291 ff.

fascinating to the average newspaper reader. In fact, such an example of this kind of reporting is presented in *Federal Probation Quarterly* under the title "New Careers."<sup>7</sup>

Another usage of the newspaper that could be made by the management team is the Sunday supplement section. It has been the writer's observation that the Federal Bureau of Investigation seems to instruct their regional superiors to arrange for such media presentation about once or twice a year.

The contact person for this feature is the editor of the Sunday supplement. A telephone call to this person begins the process. Either the probation department, if they have talented staff, can supply the photos or the newspaper will arrange photos themselves. Interviews with rural probation officers and city probation officers and the presentation of the differences should illustrate the complexity of probation work. One must always be sensitive to the identity of individuals and the need for confidentiality, but with that caveat, a great deal can be done. It is, however, important that probation officers and the management team give the reporter only that information that is within the limits set by the court and approved by the chief probation officer.<sup>8</sup> On the other hand, we must be aware of the needs of the press. They are principally interested in the answers to the following questions in a news story: who, what, where, when, why, and how. The difficulty will be in balancing the two features of our work—the need for press relations and the need for confidentiality.

Another sort of story that often goes unreported in the probation system is the hiring of new staff. This would give a chief probation officer an excellent opportunity on an occasional basis for showing the public that his staff are educated, dedicated to helping their fellow man and experienced professionals. Moreover, each new change in probation work should be reported so that there will be a sense of development and progress.

Another mass media resource often neglected by the probation department is the radio. Just as television stations are handled by a program manager, the radio stations also have a program manager and often a public service manager. These are the persons that probation officers may contact for getting the information about probation to the public. Radio stations frequently offer "talk shows" and often the topic may be an aspect of the "crime problem." It is precisely in that sort of program that the successes of probation should be aired. There is no question that failures

of probation are currently often given undue time in such programs. Since most offices today are equipped with tape recorders, it would be simple enough for officers to practice with their machines in the presentation and development of radio shows.

The writer has discovered that an interesting feature of the use of the tape recorder that might aid in public relations is the use of the telephone wiretap. Few of us have deliberately cultivated a telephone presentation nor do we evaluate our telephone voice and attitude. With the use of wiretap equipment it might be helpful especially with the training of new probation officers to show them what they sound like when they speak on the telephone, and how they might improve that telephone style. Trainers might be obtained from the local phone company.

Another interesting usage of the tape recorder that could be serviceable to probation officers is what is known as "oral research." Columbia's Butler Library and other libraries have a division that specializes in developing historical research by interviewing people for their memories of historical events and their personal histories. Such an interesting research technique was used by the student to interview the judge who presided at the swearing in of Albert Einstein as a citizen of the United States.<sup>9</sup> Much of the history of the development of the court system in the United States could be preserved and could be an important training tool for young people in colleges. This tool has been very effectively used for research by Columbia since almost 75 percent of those engaging in that form of study have obtained their Ph.D's. Moreover, it provides the primary research for a great number of books.

This small paper has largely emphasized the role of public relations for probation, but it is equally true that state parole divisions are gravely in need of this service. This was one of the themes at a national workshop on parole and the following is directed at parole officials:

All personnel-parole board members, professional staff, and clerical staff must be completely oriented to the basic concepts of parole and the basic functions and responsibilities of the board and department. Each person must be considered as a potential interpreter of parole to the community. For example, a parole organization may create a favorable or unfavorable impression by the manners of an employee on the telephone. Moreover, everyone in a parole organization moves in a society where he or she has an opportunity to sell parole. The more informed he is, the more effective he can be.

Advocates of parole should be constantly on the alert for opportunities to inform the public of the entire parole program, and to interpret the objectives and advantages of parole. Acceptance of parole procedure will come when the taxpayer is convinced that he is adequately and economically protected.

Citizens must be convinced that proper parole release and supervision of parolees can only be established if parole agencies are adequately staffed with properly qualified personnel.

Civic groups and organizations should be approached in a program of public relations as they provide a channel for proper presentation of parole to the general public.<sup>10</sup>

Correctional internship in a probation or parole office may provide another avenue of public relations for an agency. Ten years ago this was a rare feature in a correctional agency. Possibly the only office in the Federal system that had internships was the Chicago office. Today more and more administrators of probation are seeing this teaching approach as a necessary function of their offices. However, there still is a gap and a basic misunderstanding between probation and colleges. Like other sorts of investigation this needs "field work." It is important that the professors who guide the students in the internship experience have frequent contact with the staff and administrators of probation. Critical to the development of this program is staff support and input. Staff meetings must be devoted to a discussion of the role of the interns, their functions in the agency and the role of the supervising probation officers. The interns must be screened and only qualified students invited to participate. A coordinator of interns must have a

fully developed program with a testing and evaluating procedure to assure the successful completion of the goals. Moreover, the student interns should have a daily activities procedure outlined from the beginning which incorporates the full gamut of various functions and exposes the student to a variety of agencies. It is important that the student prepare a self-evaluation of his or her experience in the probation internship program. This document can provide necessary input for improving the program in the future and correcting errors quickly.<sup>11</sup>

In this article we have attempted to outline the needs of the probation office for public relations. This is a two-way street bringing the probation officer and the public in contact with each other; but, moreover, it is a way of explaining the philosophy that motivates probation workers. We have tried to select areas in which improvements would be most useful to the busy probation official. We have suggested methods of implementing public information that may prove useful to officers in both large and small offices. We have examined the role of the different media—television, press, radio, college—and a specific program for developing interns in parole and probation.

These suggestions will only prove fruitful if they are carried out by every probation officer in the United States.

## Academic and Practical Aspects of Probation: A Comparison 92863

BY JAMES R. DAVIS, PH.D.

Probation Officer, New York City Department of Probation

IF ONE BELIEVES that what is learned in the academic world is relevant to the world of everyday work, he or she is naive and will experience disappointment or frustration. A good example is the case of probation. I have been employed as a probation officer for 13 years. I have also experienced the academic world for many years as a student in criminal justice. I have read extensively in the field. I have also done research in criminal justice for a number of years. Therefore, I believe that I have experienced both the academic world and the practical world of probation to offer a comparison of the two worlds.

<sup>10</sup>See James R. Davis, *The Sentencing Dispositions of New York City Lower Court Criminal Judges* (Washington: University Press of America, 1982).

### Presentence Investigation

As a probation officer in a lower-criminal court in New York City, my job has been mainly to investigate the background factors of defendants, e.g., family, social, educational, legal, etc., and incorporate these facts with a sentencing recommendation in a presentence report called PSI. Since I work in a lower-criminal court, these are mainly misdemeanors, although occasionally we investigate felonies. The recommendations written in our reports are usually followed by the judges.<sup>1</sup> This function of probation is called investigation, and the other major function of probation is called supervision. In supervision, defendants are counseled and supervised by probation of-

<sup>7</sup>*Federal Probation*, June 1975, p. 61.

<sup>8</sup>Guide, pp. 35-41.

<sup>9</sup>Eugene Kelly, *Oral History of the U. S. District Court in New Jersey and Trenton*, unpublished, 1975.



ficers for the remainder of their term on probation. This dual function of probation, namely investigation and supervision, is somewhat universal throughout probation offices, although sometimes these two functions are combined in one probation office.<sup>2</sup>

The quality of what is written in this one-and-a-half or two-page report is the object of constant attention and criticism by probation officers, supervisors, branch chiefs, and assistant directors. A probation officer can be in an office for years, but yet what he writes is constantly being evaluated. There is a manual of standards which is constantly being revised (issued from Central Office) but these standards act more as guidelines than definite rules. In addition, hardly anyone knows the manual or takes it seriously, although occasionally it is the subject of debate.

The emphasis in the report is on logic. Supervisors have insisted for years that the sentencing recommendations must logically flow from the body of the report. Logic in our probation office is equated with common sense. A defendant should not be recommended for probation if he has a heavy record, has done poorly on probation or parole in the past, is not employed or in school, doesn't keep his appointments either to see his probation officer or for referrals to social agencies, has one or more warrants, or has a pending felony in the courts. Either one or more of these factors are not conducive to probation, and the amount of emphasis on these and other factors is subjective. In our probation office, it is logical to recommend probation only on a selective basis, only if the defendant has some positives, e.g., the defendant is employed or is motivated for employment or training, cooperates with his investigating probation officer, doesn't get rearrested while under investigation, etc.

It is also logical to recommend a conditional discharge for a defendant who commits an isolated offense and to recommend a fine for someone who commits an isolated offense and is employed. It is also logical to recommend a conditional discharge or a fine when it is known that probation officers in supervision are overwhelmed with excessive caseloads.

The emphasis on what to recommend is a subject of much debate in our probation office. It involves very often consultation among probation officers, supervisors, and branch chiefs. This is one way in which defendants receive individual attention in their cases because a great deal of thought and work enter into sentencing recommendations.<sup>3</sup>

In the academic world, logic has a different meaning. In probation work, logic has a subjective meaning, and is equated with value judgments. In the academic world, the emphasis is on empirical evidence, and no attempt is made to judge whether actions and decisions are right or wrong as is true in the working world of probation. Academics simply report on their research findings, and if they evaluate certain programs, the emphasis is on objective data, facts, and norms, not on subjective meanings of right or wrong as is true in probation offices.<sup>4</sup>

In the practical world of probation, standards of "good" and "bad" are subjective and can vary from office to office, although very often all probation officers emphasize the same standards. In our office, a good worker is one who works very hard or writes a detailed report. He is also one who spends a great deal of time with each defendant. He is also one who talks about his work among fellow-workers. His report has to be wordy and detailed. The fact that probation officers spend a lot of time doing unnecessary work, or work long hours because they don't know shortcuts, or are slow, is irrelevant.

In the academic world, standards of "good" and "bad" conform to objective criteria. The term "good" is applied universally to something which is factually correct and conforms to theory and empirical research. Many of our reports would not conform to academic standards because they are subjective and are full of value-judgments. In addition, many of our reports don't conform to knowledge in criminal justice. The academic world would probably say that it doesn't take much skill to write a two-page report or to do our job, but in the practical world of probation, this is the crux of our happiness or misery at work.

The judge is made a powerful figure in our probation office. He is the one who is responsible for all decisions, e.g., charging, promise of a sentence, sentencing dispositions, approval of facts in a presentence report, etc. The literature in the academic world reveals that judges don't make all the decisions. Power is shared among legal actors; for example, prosecutors make sentencing recommendations which are followed a great deal of the time.<sup>5</sup> Probation officers' recommendations are also followed by judges a great percentage of the time.<sup>6</sup> Probation officers

either are unaware of or ignore the fact that judges share power, and that although formally judges are supposed to make decisions, informally decisions are made among various legal actors who impose norms in decisionmaking. In fact, there is evidence that either judges might be figureheads or have very little power in some jurisdictions.<sup>7</sup>

Caseload size is a constant subject of attention in our probation office. Twenty-eight cases a month seem to be the magic number. This is supposed to be State standards. At one time a maximum of 35 cases a month was the standard, but probation officers met with supervisors and our branch chief and settled for a maximum of 28 cases per month. The probation officers are very much conscious of this number. They count each case they receive to make sure that the maximum is not reached. Anything extra is credited toward the next month. One case with two different crimes is counted as one-and-a-half cases.

The argument used by the probation officers is that excessive caseloads prevent them from performing their job duties fully. In other words, probation officers cannot give individual attention to each case when caseloads are excessive. Many probation officers like to take their time and give a full interview, getting all the facts, with the purpose of making a suitable recommendation and making referrals to proper social agencies. In other words, some probation officers like to function as social workers. Also, excessive caseloads can prevent probation officers from completing their reports on time.

Evidence is presented in the academic world that caseload size doesn't really matter as far as probation effectiveness is concerned.<sup>8</sup> The literature generally concludes that probationers do as well in supervision regardless of caseload size. Although the literature is applicable to supervision, investigating probation officers also are concerned with caseload size because they have a lot of work to do in relation to each case.

### Supervision

There are many theories of probation supervision. For example, some believe that probationers should be resocialized into acceptable, legal ways of life. Some believe that theories of social work are applicable in supervision. Some believe that probation is a privilege, not a right. Some believe in the medical model, that probationers are sick members of society

and have to be cured, as in medicine. Some believe in therapy and rehabilitation, and some believe in punishment, or a combination of therapy and punishment.

The literature in the academic world tells us that the four functions of punishment are incapacitation, deterrence, retribution, and rehabilitation. All four functions of punishment are inherent in all forms of punishment. Yet probation officers, supervisors, and branch chiefs insist that the main function of probation is rehabilitation, not punishment. They can't equate rehabilitation with punishment. Rehabilitation is separate from punishment. However, probation officers believe that supervision may deter future crime.

I remember I once had a strong argument with my branch chief over the issue. He insisted that the manual stated that probation was strictly rehabilitation, not punishment. Whether the branch chief actually believed this or was just following orders is debatable. This issue can have serious implications because if one believes that probation is strictly rehabilitation, not punishment, then one believes that an offender on probation is getting away lightly for his crime; however, if one believes that rehabilitation is punishment, then one believes the offenders who receive probation are not getting away lightly and are being punished, although not as much as receiving a prison sentence.

The academic world talks about stigma and secondary deviance due to labeling theory,<sup>9</sup> and it talks about the conditions that probation imposes on defendants as a form of punishment, and the loss of self-worth, all due to the experience of being on probation. Probation officials do not seem to be aware of these things. These are complications nobody seems to worry about.

Probation officers seem to believe that probation success or failure can be gauged quickly during the period of supervision. If an offender is arrested during supervision, or fails to report, or refuses to cooperate, then probation is a failure.<sup>10</sup> In addition, the probationer himself is to blame for this. The academic world tells us that probation success or failure is difficult to evaluate and, in addition, it may take years after the probationer is off probation to evaluate its effects.

There are too many complications to evaluate probation. First, probation success has to be defined. Second, research criteria have to be imposed in order to evaluate probation effectiveness. Third, if a probationer completes probation successfully, it is difficult to prove success or failure due to supervision; other factors, e.g., outside forces might be responsible for success. Fourth, the conditions of probation and the

<sup>2</sup>In New York City, investigation and supervision are separated, although in some offices supervision of misdemeanors and supervision of felonies are combined. Investigations of misdemeanors and felonies are separated, although occasionally they are combined; occasionally, plea-bargaining investigations are done in our office.

<sup>3</sup>See Davis for factors which determine recommendations.

<sup>4</sup>Of course, academics may be interested in the subjective meanings probation officers attach to data, but no attempt is made to moralize these subjective meanings.

<sup>5</sup>See William J. Teitlebaum, "The Prosecutor's Role in the Sentencing Process: A National Survey," *American Journal of Criminal Law*, 1972, 1:75-95.

<sup>6</sup>See Davis, John Hagan, "The Social and Legal Construction of Criminal Justice—A Survey of Presentence Process," *Social Problems*, 1975, 38:620-637, and James Robison, Leslie Wilkins, Robert Carter and Albert Wahl, *The San Francisco Project—A Study of Federal Probation and Parole*, San Francisco: National Institute of Mental Health, 1969.

<sup>7</sup>Leonard R. Mellon, Joan C. Jacoby, and Marion A. Brewer, "The Prosecutor Constrained by His Environment—A New Look at Discretionary Justice in the United States," *Journal of Criminal Law and Criminology*, Spring, 1981, 72:52-81.

<sup>8</sup>See Robison, Wilkins, Carter and Wahl (footnote 6).

<sup>9</sup>Edwin Lemert, *Social Pathology*. New York: McGraw-Hill, Inc., 1951.

<sup>10</sup>This doesn't necessarily mean that any one of these factors alone will result in a violation of probation. A combination of factors is important.

type of probation officer might influence outcomes. For example, an offender may be successful with a therapeutic-type of officer but not with a punitive-type officer. Fifth, perhaps probation can never be successful because we don't know the causes of crime.

### Some Examples

There are other differences between the academic world and the working world of probation. In the academic world, knowledge is accumulated for the sake of knowledge. In the working world of probation, knowledge is accumulated only if it has some bearing to the work.

I remember one example. A few years ago probation officers believed that their recommendations were no longer followed because prosecutors made promises which were given preference to our recommendations. The probation officers believed that their recommendations were not followed because they found that isolated recommendations in their caseloads had not been followed by the judge. I did research on this and found that after controlling for many variables, and that although prosecutors' promises were followed to some extent, our recommendations were still followed in preference to prosecutors' promises. Yet probation officers still believe that our power has diminished because prosecutors' recommendations are followed more than our recommendations. They don't seem to realize that we have other power, such as the power to arrest, make suggestions to the judge, violate a probationer's probation, etc. This gives us a great deal of power.

For another example, many years ago I had an argument with our branch chief over the meaning of discretion; I insisted that much of what we did was guesswork. He became hostile and argumentative, stating that we were like doctors, that we didn't guess, but had to know for certain. He argued that our decisions affected people's lives. Yet the academic world reveals a lot of discretion in probation and in criminal justice.

### Conclusions

The differences between the academic world and the practical world of probation have to do with different goals of the two organizations. I don't believe that the

<sup>11</sup>Estimates vary on the number of probation officers, but some estimate that there are about 500 probation officers in New York City.

two worlds presently can mix very well. The goals of the academic world stress facts, theory, knowledge, and empirical research, not values or common sense, except as these are part of empirical research.

The practical world of probation is not academically oriented. The immediate goals of probation are adherence to guidelines in manuals, obedience to orders, listening to supervisors and higher officials' orders, even though they are disagreeable, and processing cases on time. The immediate goal is to handle the problem at hand, the offender himself. Probation officers must do a thorough investigation of each case and supervise fully without worrying about the goals or outputs of the academic world. The academic world of probation has no bearing on the practical world of probation.

In fact, the academic world probably believes that probation is a small and possibly unimportant part of the criminal justice system. Academics are interested in trends and generalizations, and they probably think much of our work is trivial. However, probation officers seem to believe that their work is essential for the maintenance of the system. Many years ago probation officers were going to strike because of heavy caseloads and low salaries, but the strike was averted. Some of the probation officers realized that we had no political power because of our relatively small numbers, but some still believed that the strike might deal a severe blow to the criminal justice system.<sup>11</sup>

It would be a major task to reorganize the practical world of probation to the world of academia. They are two different worlds. It is neither necessary nor desirable to do so. Each has its own place. No one can prove for certain that the world of academia will better serve the practical world of probation. It may be dysfunctional to the goals of probation to tell a defendant when he is placed on probation that he is being punished as well as being rehabilitated because this may have negative consequences for him. It may be dysfunctional to ask probation officers to handle excessive caseloads, since excessive caseloads don't affect outcomes; this may mean that probation officers would have to reorganize their work with negative consequences.

I believe that academics will have to stay in their world and practitioners in their world at this time. There are many ways of doing the job. Nobody has proven that either the academic world or the practical world is doing the right or wrong thing.

## Profit in the Private Presentence Report\*

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### The Forensic Criminologist: The Phoenix of the Criminal Justice System

Due to government fiscal crises and resulting cutbacks in social service programs, the private sector in corrections has been especially hard hit. Most threatened are halfway house programs. The International Halfway House Association had 30 agencies in 1964, mushroomed to 2,500 members in 1974, and has now dwindled to 1,500 members. (Taft, 1982:29-30). Yet out of the ashes of the private sector has emerged a new group of criminal justice professionals: forensic criminologists. Their primary service is the preparation of private presentence reports. G. Thomas Gitchoff, a San Diego State University criminology professor, has observed, "The number of people doing these private probation reports has just grown by leaps and bounds." (Granelli, 1983:1).

Sentencing is the critical area of the criminal court process most ignored by the legal profession. Two widely used legal texts, *Criminal Law and Procedure* (Rollin Perkins, 5th ed., 1977) and *Basic Criminal Procedure* (Yale Kamisar et al., 4th ed., 1974), devote no attention to it whatsoever. Even though defendants find the dispositional phase the most interesting and important part of the criminal proceeding, the art of sentencing advocacy has yet to be discovered or practiced by the majority of criminal defense attorneys. (Craven: 1981: 12). Given the well-documented correlation between probation officers' recommendations and sentences imposed (88 percent agreement in nonprison recommendations and 98 percent agreement in prison recommendations), it was inevitable that defense attorneys devote more interest to the presentence report. (Kingsnorth and Rizzo, 1979: 3-14). The interest of the defense bar and the entrepreneurship of former probation officers has spawned the private presentence report and the profession of forensic criminologist.

A case in point is Criminological Diagnostic Consultants, Inc., founded by brothers William Boscic (a former prison counselor and probation officer) and

Robert Boscic (a retired police officer). Their level of aspiration is suggested by their description of their Riverside, California, office as their "National Corporate Headquarters." Incorporated in February 1981, C.D.C.'s primary service is the preparation of privately commissioned presentence reports, usually through defense attorneys. However, the firm also prepares change of venue studies and conducts training seminars for criminal justice personnel. Three major reasons have been cited for the recent rise in private presentence report services: (1) budget cuts affecting probation departments' ability to formulate high quality reports; (2) overcrowded prisons which are forcing the criminal justice system to consider alternative sentencing for an ever-increasing percentage of offenders; and (3) an alleged institutional bias on the part of public probation officers who are susceptible to public pressure for more jail sentences. (Granelli, 1983: 8).

The Boscic brothers have proposed that California license under its Penal Code the "forensic criminologist," whose primary qualifications would be a bachelor's degree in criminology or a related science, 5 years of responsible diagnostic investigative experience, knowledge relating to criminal sentencing/penology/community services, and no felony record. Under their proposed change of section 1203(b) of the California Penal Code, the court before imposing sentence in a felony case would have to refer the defendant for a presentence report either to the probation officer or a state-licensed, forensic criminologist. Each of California's 58 counties would decide through its Board of Supervisors whether to refer its presentence reports to forensic criminologists or maintain presentence reports done by the probation department. Their scheme also envisions a new bureaucracy comprised of a state criminologist examiner and 58 county criminologist examiners to oversee licensing and regulation of forensic criminologists.

William Boscic maintains: "We don't do anything different than the probation department; we just do it better." (Granelli, 1983: 9). In a letter to the California legislature in October 1982, he further claims that "C.D.C. has not experienced any negative reaction to the introduction of privately commissioned P.S.I.

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**END**