



Volume 6 | Issue 4

Article 2

1961

Probation: A Sensible but Sensitive Approach to Delinquency

Theodore A. Borrillo

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>



Part of the [Law Commons](#)

Recommended Citation

Theodore A. Borrillo, *Probation: A Sensible but Sensitive Approach to Delinquency*, 6 Vill. L. Rev. 480 (1961).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol6/iss4/2>

This Article is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

PROBATION: A SENSIBLE BUT SENSITIVE APPROACH TO DELINQUENCY.

THEODORE A. BORRILLO*

I.

INTRODUCTION.

The saddest and most alarming feature of the present crime situation is . . . the fact that youth plays such an outstanding role in the gruesome drama.¹

THE MALADJUSTED AND DELINQUENT youngster has been the target of considerable and gradually increasing study during twentieth century push-button "age of anxiety." His case history has been bandied from test tube to test tube in efforts to scientifically delineate the etiological undercurrents of delinquent behavior in order to plan more effective preventive and curative programs toward the Nirvana of criminal law, the prevention of crime.² A plurality of causes — whose nature, exact number and combination differ from one individual to another —³ have been unveiled to provide administrators of criminal justice with a reservoir of insight into delinquent behavior to enable them to prescribe potentially efficacious measures of treatment for adjudicated offenders in accordance with one of the basic principles of modern penology, the individualization of punishment.⁴ Probation embodies this principle and is a frequently em-

* Assistant Professor of Law, University of Denver College of Law. LL.B. 1954, St. John's University; B.B.A. 1958, City College of New York; LL.M. 1959, Harvard University.

1. COOLEY, *PROBATION AND DELINQUENCY* 3 (1927). During 1957 an estimated 740,000 youngsters in the United States under the age of 18 were arrested. Boston Herald, October 26, 1958, (Magazine), p. 9.

2. The following are a few of the notable works in the study of delinquency causation: BURT, *THE YOUNG DELINQUENT* (4th ed. 1944); S. & E.T. GLUECK, *UNRAVELLING JUVENILE DELINQUENCY* (1950); HEALY, *THE INDIVIDUAL DELINQUENT* (1915); SHAW, *DELINQUENCY AREAS* (1929).

3. S. & E.T. GLUECK, *DELINQUENTS IN THE MAKING* 166-69 (1952).

4. "[T]o 'individualize' the sentence in the case of any specific offender means, first, to differentiate him from other offenders in personality, character, socio-economic background, the motivations of his crime and his particular potentialities for reform or recidivism, and, secondly, to determine exactly which punitive, corrective and medical measures are most adapted to solve the individualized set of problems presented by that offender in such a way that he will no longer commit crimes." See S. Glueck, *Pre-Sentence Examination of Offenders to Aid in Choosing a Method of Treatment*, 41 J. CRIM. L. & CRIMINOLOGY 717, 722 (1951).

ployed formula in disposing of juvenile court cases.⁵ Alternative juvenile court dispositions include commitment to a correctional institution and foster home placement.⁶

Confusion is extant as to the meaning and philosophy of probation.⁷ When placed on probation the delinquent is allowed to return at liberty to his environment safe from the rigors and dangers of reformatory walls.⁸ In return, he promises to abide by conditions of behavior⁹ usually imposed by the court and to regulate his life under the supervision and guidance of a probation officer. The latter's hope is to reorient and heighten the delinquent's sense of values and to regenerate him into becoming a social asset, or at least no longer a liability. A refusal by the probationer to adhere to the terms of probation may result in his re-arrest and commitment. On the other hand, a satisfactory adjustment during the period of probation will result in his discharge therefrom.

Parole, though similar in its aims to probation, differs in that the delinquent's resumption of community life follows a period of institutional treatment, while probation is an alternative thereto. Also, parole functions administratively as an adjunct of institutional care while probation is an arm of the judiciary.¹⁰

5. See U.N. DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, COMPARATIVE SURVEY OF JUVENILE DELINQUENCY, pt. 1, at 61 (ST/SOA/SD.1/Rev. 1) (U.N. Pub. Sales No. 58.IV.2).

6. BARRON, *THE JUVENILE IN DELINQUENT SOCIETY* 283-84 (1954).

7. For some representative and authoritative definitions of probation see U.N. DEP'T OF SOCIAL AFFAIRS, PROBATION AND RELATED MEASURES, app. A, at 287-93 (E/CN.5/230) (U.N. Pub. Sales No. 1951.IV.2).

8. Punitive disciplinary practices that have been encountered in juvenile "training" schools by Albert Deutsch in his study, *OUR REJECTED CHILDREN*, have been summarized in TETERS & REINEMANN, *THE CHALLENGE OF DELINQUENCY* 461-62 (1950). They include:

"Rice polishing. Boys crawl in their knees across a floor strewn with rice grains until bleeding starts or until suffering is intense enough to satisfy the disciplinarian that justice has been done.

"The slicks. Shaving the head of runaways or other offenders.

"Runaway pills. Dosing captured runaways with laxative to 'help them run.'

"The cold tub. Disciplinary hydrotherapy wherein violators are thrown into tubs filled with ice water."

9. For a general treatment of probation conditions and the dangers that attend the imposition of unrealistic conditions see NPPA, *GUIDES FOR JUVENILE COURT JUDGES* 89-92 (1957); Doyle, *Conditions of Probation: Their Imposition and Application*, 17 *FED. PROB.* 18 (Sept. 1953).

10. Pardon and commutation should also be distinguished. Unlike probation, these measures are not decisions for the judiciary but rather for the executive, although commutation is sometimes exercised by the courts. A pardon absolves the offender from punishment. Probation conditionally suspends punishment. A pardon may be granted before, after, or during the period of punishment while probation is a disposition made before punishment takes effect. Commutation consists in a lessening of punishment imposed, usually in cases where new evidence and circumstances appear which render the original sentence too severe. See U.S. DEP'T OF JUSTICE, *ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES*, vol. II, at 2-3 (1939).

It has been written that "in the barren soil of penology, probation gives promise of developing into the flower among the weeds."¹¹ While probation has progressed considerably since John Augustus "imposed" the value of the idea on a Boston judge a little more than one hundred years ago, like most humanitarian reforms, its development has been slow and gradual, but steady and encouraging. The public's deeply-rooted retributive sentiment, distrust of judicial discretion, oppressive case loads, and poorly trained personnel are but a few of the obstacles that have impeded its growth and which, to a large extent, still remain an albatross about its neck and shoulders.

A great deal has been written on the subject of probation.¹² But it is a growing phenomenon. It must be nursed, coddled, and watched lest "the twig be bent." Permit me, then, to take another look at probation and to point up and suggest measures for surmounting a few of its hurdles if it is to strive forward as a champion in the arena of correction and ultimately achieve the maximum within its scope of potential accomplishment.

II.

HISTORICAL EVOLUTION OF PROBATION.

While probation is frequently discussed as a relatively recent penological innovation, the idea behind probation kindled for centuries amid the embers of the criminal law's struggle for individualized justice.¹³ The taproots of probation marked the pages of history and paved a trail for John Augustus, the now famous Boston cobbler, to "discover" it in its modern sense¹⁴ in 1841, a discovery which has since been accepted by many countries and regions of the world.¹⁵ In the

11. S. Glueck, *The Significance and Promise of Probation*, in PROBATION AND CRIMINAL JUSTICE 3 (S. Glueck ed. 1933).

12. An abundance of literature on the subject of probation can be found in the following publications: NPPA YEARBOOK, FEDERAL PROBATION, AND FOCUS.

13. "If we do not restrict the term probation to the well-developed institution of today, but take it to cover all cases where an offender, without being immediately punished, is given another chance in the hope that leniency [sic] may reform him, then the history of probation may be traced back as far as the later Middle Ages. . . ." See Timasheff, *Probation and Imposed Peace*, 16 THOUGHT 275 (1941).

14. John Augustus gave probation its contemporary form and philosophy by demonstrating the value of *personal supervision and guidance* in rehabilitating released offenders. For a concise history of Augustus and the work of his early successors see Moreland, *John Augustus and his Successors*, NPPA YEARBOOK 1 (1941).

15. Timasheff, *Forward to TIMASHEFF, ONE HUNDRED YEARS OF PROBATION*, pt. 1, at v (1941). See generally *id.* pts. 1 and 2 (a detailed history); PROBATION AND RELATED MEASURES, *op. cit. supra* note 7, at 51-181.

United States, all states and the federal government provide for probation services in their juvenile court laws.¹⁶

A variety of Anglo-Saxon techniques designed to chip away at the all too well known ancient, arbitrary, and retributive structure of criminal policy that dominated the early common law are often cited as the forerunners of probation in that they represented non-punitive humanitarian approaches to the problems of crime. Offenders worthy of risk were rescued from the severity of the law. Benefit of clergy, judicial reprieve, and recognizance were a few of the devices that mitigated the common law's quest for a "pound of flesh."¹⁷

During the Middle Ages criminal jurisprudence was re-examined and deterrence replaced retribution as its dominant aim. Punishment of the actual offender was no longer an end in itself but only a means to a further end in the deterrence of potential offenders. However, the "rose" by another name did not smell sweeter. The new label did not remove the old "errors" and abusive penal practices in vogue. Capital punishment remained the prescription for over two hundred offenses, some as venial as pocket-picking, housebreaking, and stealing five shillings of goods from a shop. Indeed, the stage remained set for one of the most pivotal eras in the history of penological reforms, the Age of the Enlightenment, an era which was to swing the pendulum of criminal policy closer to individualized justice and probation.

The prevailing administrations of criminal justice became the subject of bitter attack during the broad humanitarian movement of the Enlightenment. Cesare Beccaria's famous essay, *Dei Delitti e Delle Pene* (On Crimes and Punishment),¹⁸ stirred the souls of men like Howard, Bentham, and Romilly to seek reform of outmoded laws and practices.¹⁹ Capital punishment was denounced. The certainty and swiftness of punishment, and not its severity, was advocated as the key to deterrence. The need for preventive measures against crime and the improvement of social institutions was brought to the fore. And the idea of the worth of the individual which began with the

16. YOUNG, SOCIAL TREATMENT IN PROBATION AND DELINQUENCY 47 (2d ed. 1952).

17. CHUTE & BELL, CRIME, COURTS, AND PROBATION 12-17 (1956). For a discussion of the devices of "technical defenses" and "compassionate verdicts" see Grinnel, *The Common Law History of Probation*, 32 J. CRIM. L. & CRIMINOLOGY 15, 19 (1941).

18. Beccaria was twenty-six years of age when his essay was first published in 1764. The fact that it appeared anonymously suggests the revolutionary nature of its contents. For a brief account of Beccaria and his work see BARNES, THE STORY OF PUNISHMENT 95-99 (1930); Monachesi, *Pioneers in Criminology IX — Cesare Beccaria*, 46 J. CRIM. L., C. & P.S. 439 (1955).

19. It is stated in Monachesi, *supra* note 18, at 449 that Beccaria's essay contains ". . . practically all of the important reforms in the administration of criminal justice and penology which have been achieved in the civilized world since 1764."

Italian Renaissance was again emphasized; so much so, however, that it created an obstacle to the "invention" of probation on the Continent.²⁰ The writers of the Enlightenment were all too familiar with the arbitrary and often unwarranted use made of judicial discretion under the rule of despotic leaders, and a distrust of such discretion developed and permeated their writings.²¹ "All individuals are absolutely equal" became the hue and cry, and equality of punishment for two individuals having committed the same offense was looked upon as a guarantee of liberty and equality. This attitude of extreme individualism sharply circumscribed the role of the judiciary and led to a mechanical and doctrinal application of the law,²² a position incompatible with the vast discretionary needs of probation and individualized justice. But at least the seeds for probation had been planted. Their incubation, however, was to be a matter for the New World.

As a chameleon assumes the color of the object upon which it is placed, likewise the development of probation in America reflected the color of its environment. Distrust of judicial discretion did not dominate America's thinking as it was never fettered by tradition as was the thought of the Old World. America's inhabitants consisted largely of immigrants in search of life's "second chance." Many were convicted criminals under a transportation sentence from England, a sanction which increased in use with the gradually decreasing use of the death penalty.²³

In these adventurous people, there was characteristically, a recognition that a single failure did not necessarily connote a complete failure. There may be some significance to the fact that one of the first types of legislation enacted by the people of the United States in the 19th century was a bankruptcy law. While this is by no means any sort of conclusive evidence, it does suggest that the attitude of this society toward the debtor may have a larger significance. What better recognition can we point to, than the fact that here in America, a man should be given a second chance? If society was willing to forgive its debtors, what was more reasonable than to expect that it was also ready and willing to look for a means of forgiving its sinners?²⁴

Courts in America seized upon English precedents for authority to sanction and develop the indefinite suspension of sentences.²⁵ Finally,

20. Timasheff, *op. cit. supra* note 13, at 295.

21. Sellin, *The Trial Judge's Dilemma: A Criminologist's View*, in PROBATION AND CRIMINAL JUSTICE 100-01 (S. Glueck ed. 1933).

22. *Ibid.*

23. Barnes, *op. cit. supra* note 18, at 103.

24. Webster, *The Evolution of Probation in American Law*, 1 BUFFALO L. REV. 249, 252 (1952).

25. ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES, *op. cit. supra* note 10 at 6.

in 1841, the new antidote to counteract crime and delinquency was born as the offer of the humble cobbler to bail and aid the "ragged and wretched looking man" not yet beyond all hope of reformation was met with approval.

III.

JUDGES AND PROBATION.

Fortunately and unfortunately, man is not yet an "assembly-line" product. Individuals react differently to the same stimuli. In the field of medicine, the cortisone that prolongs the life of patient X may quicken the death of patient Y. Wonder drugs must be discriminately administered lest the safety of society be endangered and the drug brought into disrepute and socially rejected. The same is true of probation. Its use must be circumscribed with cautions. It does not work with all types of offenders. Many delinquents are poor probation risks, particularly those who come from unhealthy home environments.²⁶ If it is to be a meaningful "drug" to the probationer, the public, and the profession, probation must be administered only to subjects fit for its theory. The personality, character, and history of the offender selected for probation should reveal the presence of factors that tend to insure his probable rehabilitation by this form of treatment as opposed to others. Probation should never be the product of ignorance or chance, or a sentimental disposition for first offenders.

Modern criminal laws vest a vast quantum of discretion in the judiciary. Generally, it is the judge upon whom falls the important task of determining which offenders are to receive probationary treatment.²⁷ It is imperative, therefore, that he be exceptionally qualified to meet the demands and challenge of individualized justice. Judges lacking the necessary knowledge and ability to meet this challenge or those not in sympathy with its philosophy can strip probation of its potential. This danger can be minimized through the proper education and selection of judges.

Legal Education — Two decades ago a survey on probation revealed that of 270 judges interviewed many ". . . were frank to criticize the lack of training and preparation of criminal court judges. . . . [And in addition asserted] . . . that it is just as important for a judge

26. See MONACHESI, PREDICTION FACTORS IN PROBATION 36 (1932). See also Cooley, *op. cit. supra* note 1, at 87-88; S. & E.T. GLUECK, ONE THOUSAND JUVENILE DELINQUENTS 75-76 (1934).

27. For a discussion of reallocating the disposition powers of courts to sentencing boards and its advantages and its disadvantages see TAPPAN, JUVENILE DELINQUENCY 274-286 (1949).

to have a thorough background in criminology, psychiatry, social case work, and social problems as it is for him to understand the rules of the criminal law."²⁸ Some freely admitted ". . . that their work on the criminal bench would be greatly improved if they had a background of some formal training in . . . [these disciplines]."²⁹ If this be true of criminal court judges, how even greater must this training need be for juvenile court judges who deal with offenders not yet past their plastic stage of development.

Yet, wittingly or unwittingly, law schools have in general remained unresponsive to this need. Criminal administration is still the "underdog" of legal education. A perusal of law school catalogues will disclose few courses in this field beyond the skeleton standard offering that teaches students the elements of a few selected crimes. It is sad to note that criminal procedure in many schools is an elective despite the presence of state laws that subject attorneys to the call of defending indigent criminals. Prospective criminal lawyers and judges continue to be graduated lacking in the social and psychological attitudes and vision needed for them to properly assume their professional roles. It is no wonder that in many instances the standard for selecting offenders for probation has been reduced to personal bias and prejudices, hunches, and other unscientific rationalizations.³⁰

Legal education must be radically overhauled. The need is apparent for law schools to include in their curricula courses in disciplines other than the law upon which the efficient administration of criminal justice largely depends. A few schools have taken steps in this direction.³¹ Law school admission standards should be raised. To the ex-

28. ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES, *op. cit. supra* note 10, at 436.

29. *Id.* at 416. "[T]he larger and broader man a judge is, the wider his knowledge of human nature and human life in all ranks of society, the greater his ability to see all sides of a human problem, the more competent he will be as a sentencing judge. There have been satisfactory judges in civil courts who were failures on the criminal side, because they knew little about human weaknesses and temptations. They thought of people as either white or black at heart, and recognized no bond of sympathy with the vast army of the somewhat discolored." LUMMUS, *THE TRIAL JUDGE* 54-55 (1937).

30. See ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES, *op. cit. supra* note 10, at 412-13.

31. *E.g.*, The following courses appear in the 1958-59 Law School catalogues of the following schools.

HARVARD: "*Juvenile Delinquency: Legal and Extralegal Aspects*. This seminar will deal with the legal, social and psychiatric problems pertaining to child delinquency and embryonic criminalism. Organization and functions of juvenile courts and clinics, examination of basic legal decisions, analysis of original researches into the causes of juvenile misconduct, predictive methods of detecting potential delinquents and forecasting results of various types of sentence as well as probable recidivism will be analyzed. Various methods of treatment and prevention will be considered.

"*Administration of Criminal Justice*. This seminar deals with the methods of the sentencing process, punishment and correction, in the light of modern researches

tent that an undergraduate degree is not required for admission the possibility that these disciplines will be learned before entering law school is minimized. A separate Bar should be created for individuals desirous of practicing criminal law, with admission limited to those who display ability and genuine interest in this regard. A criminal bar examination dealing with the many considerations and phases of criminal administration should have to be taken and passed as a pre-requisite to any appearances before the criminal bench. In addition to elevating this branch of the legal profession to the level of dignity it deserves, such an examination will induce law schools to assume a more liberal and expansive attitude toward the teaching of criminal law and its related fields.

While the use by judges of prognostic tables designed to mathematically forecast the probable outcome of any disposition in a given case³² will to some extent make up for their lack of training in the behavioral sciences, such tables can never be a substitute for this educational need. A blind adherence to their use will be a retreat from individualized justice. Lawyers, in order to successfully prosecute or defend any claim, cannot rely entirely upon precedent but must take into careful account the factual circumstances present in each case that sets it apart from all others. So too in the sentencing process are individual differences presented by each offender who, though he resembles previous offenders in many respects, is a unique being to be distinguished from the rest. To detect these peculiar differences and to set them in their proper perspective judges must rely upon their own experience and acumen.

Selection of Judges — It is paramount for any system of judicial selection to safeguard its bench from the poorly qualified and clothe it

into the causes of delinquency and crime and the results of peno-correctional programs. Theories of the penal law and practices of correctional establishments, probation services, parole boards, and crime prevention programs will be examined. . . ."

UNIVERSITY OF PENNSYLVANIA; "*Law, Prediction and Social Science*. With the assistance of visiting specialists in related disciplines, the course will examine selected legal problems from the viewpoint of the standards used in scientific methodology. Although other areas of the law will be included, primary emphasis will be placed upon a critical comparison of criminal sentencing and treatment policy, with the findings of psychiatric or social science, studies on deterrence, rehabilitation and the prediction of recidivism.

"*Law and Psychiatry*. A study of normal and abnormal mental behavior with emphasis on its relationship to selected areas, such as criminal and family law, and to the practice of law in general. Conducted jointly by a psychiatrist and a lawyer."

32. For a discussion regarding the use of prediction devices in aid of sentencing see S. Glueck, *Pre-Sentence Examination of Offenders to Aid in Choosing a Method of Treatment*, 41 J. CRIM. L. & CRIMINOLOGY 717 (1951); *Individualization and the Use of Prediction Devices*, 23 J. CRIM. L. & CRIMINOLOGY 67 (1932). For a debate in *re* the same see S. Glueck, *The Sentencing Problem*, 20 FED. PROB. 15 (Dec. 1956); Rubin, *Sentencing Goals: Real and Ideal*, 21 FED. PROB. 51 (June 1957); and S. Glueck, *Further Comments on the Sentencing Problem*, *id.* at 47 (Dec. 1957).

with the independence that assures judicial decision unfettered by fear or favor from outside influences. The conventional methods of election and appointment generally used in America to select juvenile court judges are not altogether satisfactory insulators against these dangers. It is not uncommon for "impartial" appointing officials to be motivated in their selection by political favoritism rather than by factors of fitness for judicial office. The elective system has received comment from Dean Pound.

Where judges are chosen . . . by popular election, the need of keeping in the public eye . . . has made the judicial Barnum a characteristic feature of the American bench. When judges were made elective, in the middle of the last century, every one could and probably did know the character and qualifications of the few conspicuous lawyers who were candidates for judicial office in the judicial district. . . . The more citizens that voted, the more intelligent the choice. But today the average city dweller can know the judges and lawyers only from the newspapers. Those whose names are most frequently in the papers are by no means the best qualified, and it is not unlikely that the greater the number of citizens who vote, the more unintelligent the choice. Those best qualified are likely to shrink from candidacy for judicial office in view of what it involves in the city of today.³³

Juvenile court judges are often required to serve on other courts, causing their selection to be affected by considerations which may detract from the special qualifications needed for the juvenile court role. Limited judicial tenure results in a politically conscious and dependent judiciary, an "off the record" factor that makes itself felt in the sentencing process even when able judges preside. Judicial attitudes toward the use of probation are often shaped by visions of re-appointment or re-election instead of the significant criterion.³⁴

It is apparent that if the juvenile court is ever to reach the high level of juristic development that its creators intended, its judges must be selected without regard to politics and provided with the tenure that lends dignity and prestige to their role. Selecting bodies should be limited in their choice of judges to nominees scrupulously screened and recommended by a non-partisan judicial commission whose composition should include members from the behavioral science professions. Objective "restraints" should guide the commission's considerations to

33. POUND, *CRIMINAL JUSTICE IN AMERICA* 191 (1930).

34. It was stated in *ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES*, *op. cit. supra* note 10, at 418 that "some . . . judges related that a frequent use of probation by them, even though every case was a deserving one, would jeopardize their positions at the next election."

assure competence and freedom from perhaps unrecognized bias and prejudices in their nominations. In this regard, the competitive judicial civil service examination originated in France and widely used in civil law countries has much to recommend it for arriving at a list of prospective nominees.³⁵ The background, personality, and techniques of judges who have distinguished themselves on the juvenile court bench should be carefully studied with a view toward constructing prognostic tables designed to scientifically forecast the probable competency of prospective nominees. Once chosen for office, judges should be afforded the opportunity of making the judiciary a career. Also, the practice of rotating judges, befitting of pioneer days when versatility was the by-word, should have no place in the mass-production society of today. Judicial maturation in understanding any one court's methods and needs is rendered improbable by rotation. In these delinquency-ridden days of unrest, juvenile court work is a full time job.³⁶ It deserves judges that can act with the assurance of specialists.

IV.

THE PROBLEM OF CASE LOAD.

The validity of probation as a cure for delinquency and crime is predicated upon a *carefully planned program of supervision* whereby close, regular, and personal attention is focused on the needs of the probationer in efforts to change the fundamental attitudes and behavior propensities that caused him to become involved in an act of delinquency or crime.³⁷ It has been stated that:

Adequate probation supervision must deal with all phases of the offender's life, including his family and the community in which he lives. . . . The physical and mental health, capacities, and limitations of the offender; his home and family; his leisure-

35. For an interesting article that discusses the French system of judicial selection and the methods of selection employed in various countries and regions of the world see Stason, *Judicial Selection Around the World* 41 J. AM. JUD. Soc'y 134 (1958).

36. In some rural areas local finances and/or a low incidence of delinquency do not permit the maintenance of a full time juvenile court judge. State-wide juvenile court systems should be considered with qualified judges assigned to specific areas within each state for the purpose of servicing the various counties as the work loads demand.

37. At this point it should be noted that probation laws should be amended to include provisions that require the progress of delinquents on probation to be periodically reviewed by juvenile court judges. Too often his contact with the probationer is limited to the beginning and the end of the probation period. If judges are made to partake more in the treatment process, greater confidence will be instilled in the attitudes of the delinquent and his family toward the validity of the *parens patriae* idea of the juvenile court. Also, judicial confidence in probation as a treatment device will be fostered.

time activities; his religious life; his education, vocational training; economic status, and industrial habits, as well as his capacity for discipline and self-control must all be considered by those who are attempting to remold him into a worthwhile citizen.³⁸

This gargantuan scope of responsibility to offenders and society imposed upon probation officers can only be accomplished if reasonable case loads are assigned them. A case load of not more than approximately fifty cases per month per officer is generally accepted as "ideal." In practice, however, this figure is as unreal as the "rainbow" of 1929. It is a common knowledge that in many counties of the United States case loads are oppressively out of proportion to this ideal, and that "supervision" has dwindled into nothing more than occasional telephone calls, weekly "checking in" by probationers, printed routine conditions to guide his behavior, and threats of institutional commitment for misconduct.³⁹ The end result is usually recidivism and an intensification of the already fixed public belief that probation is a lenient and unwise disposition of juvenile court cases which inadequately protects society from persons more dangerous than the generality of man. In short, probation has in many instances become a mere label on an empty bottle!

Legislative catering to a public uninformed and unconvinced of the generous promises of probation has blocked budgetary appropriations needed to augment probation staffs to a level of effectiveness.⁴⁰ Relief, however, for this sore spot in the treatment of juvenile offenders may be provided in a variety of ways.

Specialization In Case Assignments — The tides of specialization that have swept up industries and professions in America have bypassed the institution of probation and left it to be influenced by the American tradition of versatility so characteristic of the nation's early development. In practice, case load assignments generally conform to the idea that probation officers "should be capable of handling any case that comes along." "Specialization" seldom extends beyond that provided by sex, race, religion, and district.

It is suggested that the adeptness of a probation officer in handling one type of case over another be taken into greater consideration in the assignment of case loads. One who must continually handle a variety

38. ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES, *op. cit. supra* note 10, at 319.

39. See BARNES & TEETERS, *NEW HORIZONS IN CRIMINOLOGY* 769-70 (2d ed. 1951).

40. See Lo Bello, *Probation and the Newspapers*, 16 *FED. PROB.* 36, 37 (March 1952).

of new problems is not likely to work as quickly, efficiently, and with the same assurance as one whose case load centers chiefly around familiar obstacles and needs. Why should a probation officer whose personality, background, and techniques are prone to produce a high degree of success in handling drug addiction matters be saddled with a barrage of cases whose solutions are alien to the most efficient use of his ability? Greater strides should be made toward specialization in probation supervision according to the nature of the delinquent's problems. While this will not serve to reduce case loads it will render them less burdensome and time consuming, and will also minimize the need for additional probation personnel.

Delimiting Juvenile Court Jurisdiction — Broad jurisdictional provisions of juvenile court legislation should be seriously reconsidered with a view toward eliminating from the ambit of the court's "protection" children whose conduct has not offended any clear-cut social mores. Loosely woven statutory delinquency definitions that include children who smoke cigarettes, use intoxicating liquor, are incorrigible, ungovernable, or disorderly, or so deport themselves as to injure or endanger the morals, health, or general welfare of themselves or others,⁴¹ invariably invite a sizable influx of delinquency petitions against youngsters whose case histories do not reveal any serious delinquency indicators. Neglect and dependency cases, which are directed against inadequate parental guidance that threaten the welfare of a child not yet delinquent, are also handled by juvenile courts in almost all states.⁴² Such cases serve to encumber juvenile courts and their probation staffs with case loads that prevent them from effectively concentrating and treating more serious cases of delinquency. In addition, they serve to expose such children to the same dispositions as confirmed delinquents, thereby subjecting them to the risk of contamination from pre-and-post-adjudication commitment and the stigma associated with juvenile court referrals. It is suggested that a separate court be created with separate commitment facilities to handle these less serious "misdemeanor" type child welfare cases. Programs of supervision for those not committed should be administered by community welfare and social agencies sufficiently learned in casework techniques and

41. For a list of acts or conditions included in delinquency definitions or descriptions in the laws of the United States tabulated in decreasing order of frequency see SUSSMAN, *THE LAW OF JUVENILE DELINQUENCY* 20-21 (1950).

42. *Id.* at 27. In California during 1957 dependency cases consisted of approximately 38.6% of the total juvenile cases under probation supervision. BUREAU OF DIVISION OF CRIMINAL STATISTICS, STATE OF CALIFORNIA DEPT OF JUSTICE DIVISION OF CRIMINAL LAW AND ENFORCEMENT, *PROBATION AND DELINQUENCY IN CALIFORNIA*, at 40-41 (1957).

equipped with facilities to provide the needed treatment. This segregated method of handling the youngster in need will enhance his chances for adjustment and serve to bring the philosophy and aims of juvenile court legislation into sharper focus and favor to a public that now justifiably fails to understand why a neglected child, a truant, and one who has robbed the local grocer are all being subjected to the authoritarian setting of the *same* court and probation officer.

While to some extent the above suggestion is unofficially embodied in juvenile court procedures through the practice of intake,⁴³ some differences should be noted. Unofficial dispositions usually subject youngsters to authoritative measures thereby curtailing their rights *without a formal judicial hearing*. Unofficial probation is often carried on by police officials unskilled in case-work practices.⁴⁴ Also, should parents refuse to cooperate with this method of handling a filed petition, courts are forced to the sometimes unsatisfactory alternatives of subjecting the youngster to the aforesaid dangers of a juvenile court hearing or releasing him without supervision.

Pre-Sentence Investigation Reports — The pre-sentence investigation report serves many useful purposes. In addition to being an invaluable aid to juvenile court judges in determining which offenders to place on probation, it enables the probation officer to formulate a tentative plan of treatment for the delinquent. Some of the factors considered by the investigation are the mental and physical condition of the delinquent, his interests and activities, motives and attitudes, environmental and family influences, and the apparent causes of his past and present offenses.⁴⁵ A thorough report should point up the pivotal needs of the youngster and suggest measures of treatment that will best fulfill those needs and curb his trend toward criminalism.

Yet in most states the laws and practices subject the need for the pre-sentence inquiry to the discretion of the judge.⁴⁶ When reports are required or called for, the time allotted for their completion is often insufficient to spot the trouble areas in the emotional matrix of the delinquent.⁴⁷ Many courts lack their own or adequate examining facili-

43. "Intake in the court of juvenile jurisdiction is a process of examining and evaluating the circumstances of every case referred to the court. It is directed initially at ascertaining which cases require no action which require referral to other agencies, which can be benefited and adjusted by treatment without judicial action." NPPA, GUIDES FOR JUVENILE COURT JUDGES 34 (1957).

44. See COMPARATIVE SURVEY OF JUVENILE DELINQUENCY, *op. cit. supra* note 5, at 17.

45. A guide of inquiry for pre-sentence examination reports for juveniles is set forth in Tappan, *op. cit. supra* note 27, at 331. Also, many state laws deal with the content of the investigation report and its use, *e.g.*, N.Y. CODE CRIM. PROC. § 931.

46. Chute & Bell, *op. cit. supra* note 17, at 137.

47. See *id.* at 141-142.

ties. Interviewing is sometimes conducted by individuals inept at piercing the deeply-rooted sentiment of the offender that he is being victimized, leading to untruthful and misleading information.

Unless these obstacles are overcome and pre-sentence investigations and evaluations become a mandatory and properly executed part of juvenile court work, the law's good intentions will to a large extent be groping in the dark and the case load problem deprived of much needed relief. Probation staffs will continue to be burdened with "hopeless" cases of offenders released on probation that a pre-sentence investigation would have revealed to have been unfit subjects for this type of disposition.⁴⁸ And casework for the most part will be a formless and time consuming hit-and-miss method of supervision.

State Intervention — The local judicial unit in which probation emerged has remained in many areas the "patriarch" of its services.⁴⁹ The nature and extent of probation services available under this arrangement depends entirely upon local finances and administrators.⁵⁰ Staunch adherents of local control maintain that probation work is so intimately linked with community life that to vest control in an authority removed from the local setting — namely, the state — would diminish its correctional value.⁵¹ With due regard to this position the increasing tendency has been, however, toward state intervention in juvenile and criminal court matters.

State intervention must not be looked upon as an "all or nothing" proposition. Indeed, participation has assumed various forms and now varies from a limited advisory role to complete state control depending upon the dangers of local administration sought to be averted.⁵² Where local control governs, it is not unusual to discover the quality of a state's probation services differing sharply from county to county. The selection of probation personnel often becomes an instrument of political favor rather than a matter of professional consideration. Case loads per officer in one county are sometimes several times greater than those of its adjoining neighbor. Some local governments are financially unable to support an adequately staffed probation department while

48. In a postprobation study on recidivism it was stated that "most of the failures disclosed by this study would probably have been rejected as subjects for probation treatment, if medically studied before sentence." J.P. Murphy, *A Case Study To Test the Efficiency of Probation*, 5 CATHOLIC CHARITIES REV. 287, 293 (Nov. 1921).

49. SUTHERLAND, PRINCIPLES OF CRIMINOLOGY 426 (rev. by Cressey 5th ed. 1955).

50. Barnes & Teeters, *op. cit. supra* note 39 at 765.

51. Ferris, *Integrating Probation on A Statewide Basis*, NPPA, YEARBOOK 218 (1939). The article discusses various degrees of state intervention.

52. See Reinemann, *Probation and the Juvenile Delinquent*, 261 ANNALS 109, 110-11 (1949) reprinted in S. GLUECK, THE PROBLEM OF DELINQUENCY 610, 611 (1959).

others, though financially sound, find it unnecessary to operate at their authorized strength because of the low incidence of delinquency and crime in their particular communities.

Until local governments that have remained "bosses unto themselves" are made to pull together toward the common goal of crime and delinquency prevention through strong centralizing agencies, probation will continue to develop in many areas sporadically without the benefit of uniform and time saving procedures, and casework will continue to suffer from its usual ailments.

Volunteers — While at first glance volunteers seem to be an irresistible and silver platter solution to the problem of case load, unless their use is guided by precepts of caution it can be fraught with dangers.

Sometimes [volunteers] . . . are subjective and emotional, taking up the work out of curiosity or excitement or because they want to feel virtuous. They inject their own points of view and cannot attain the impersonal approach of the professional worker. Some are too indulgent, making gifts whether they are needed or not. Sometimes they feel the officer is too strict and try to do things against his wishes, thus running the danger of creating antagonism or disappointment. On the other hand they are sometimes too punitive in their attitudes and so suspicious that they watch every move of the offender, even to the point of spying on him; or they preach to him, citing their own virtues and his delinquency. They lack a sense of professional discretion and get so excited about cases that they gossip to their friends, repeating details which were told to them confidentially. They feel a vicarious thrill in knowing the exciting circumstances under which the offender has carried on his crimes and they enjoy the attention they receive when they recount his experiences.⁵³

Obviously, to expose probationers to contacts with volunteers displaying the above characteristics will not foster the aims of probation.

On the other hand, when volunteer aid is selectively accepted and the area and scope of its responsibility carefully defined, it can provide welcome relief to probation staffs. Assistance may range from the performance of minor routine tasks to the actual supervision of probationers. Supervisory work should be limited, however, to those volunteers endowed with "therapeutic" personalities capable of establishing the rapport needed for probation efficiency.⁵⁴ Volunteers who

53. PIGEON, PROBATION AND PAROLE IN THEORY AND PRACTICE 338-39 (1942).

54. Perhaps as good a "description" as any of the rapport needed for effective probation supervision is embodied in the following comment by a probationer quoted in BEARD, JUVENILE PROBATION 14 (1934): "Mr. White always pops up whenever I go over the Wall Street. He saw me just as I was starting in the Pool Room, and I was sure scared, for he told me last week he'd have to send me up if I didn't stay away from there. What do you think he did? He slaps me on

lack this magnetic gift to influence people can perform those duties which consume a probation officer's time but do not require his professional training, such as office work, arranging for medical examinations and interviews, and other minor details. This will enable probation officers to devote more time to their primary concern, casework.

Group Probation — The values of group work are manifold and are being increasingly exploited by probation departments to combat delinquency and crime.⁵⁵ In addition to increasing the low contact per probationer ratio that attends large case load assignments, group work offers other prognostic advantages not readily available in individual casework.

Group discussion of individual problems serves to lower a delinquent's resistance to treatment as he gains the "security" of knowing that others "are in the same boat." Organized group activities provide probationers with guidance in making constructive use of their leisure time.⁵⁶ Healthy group habits are formed through dynamic group experiences.⁵⁷

the arm like as if he was a pal and says, 'How about going swimming with me tonight?' There was something in the push of his voice that made me feel I'd be digging my own grave if I didn't go. But when I looked at him I see a smile that made me feel that swimming was the very thing I had been wanting to do all my life, and I was glad he thought of it. He's like that. He says things you never would 'a thought of alone, but the way he says 'em makes you think you had the idea first. And when you tell him about how it is at home and what a mess your family is in, he never laughs the way the gang does. When Pop was in jail he didn't act high hat and shocked. You would 'a thought his pop was in jail too, the way he understood and talked about it."

55. *E.g.*, Crossley, *Group Training for Predelinquents, Delinquents, and Their Parents*, 20 FED. PROB. 25 (June 1958) (Washington County Juvenile Court, Maryland); Poremba, *Group Probation: An experiment*, 19 FED. PROB. 22 (Sept. 1955) (Denver Juvenile Court); Wall & Ellis, *Group Treatment of Adolescent Males in a Juvenile Court Setting*, 21 FED. PROB. 18 (June 1957) (Orleans Parish Juvenile Court, New Orleans); Wollan, *The Citizenship Training Program of the Boston Juvenile Court*, NPPA YEARBOOK 379 (1941). Doctor Poremba is a psychologist attached to the Denver Juvenile Court and in making reference to his above article in a letter dated November 10, 1960 to the author stated ". . . I do feel that much has been done in terms of group probation if the correspondence I have had regarding this article is any indication." See also J.D. & M.Q. Grant, *A Group Dynamics Approach to the Treatment of Nonconformists in the Navy*, 322 ANNALS 126 (1959); Podair & Tabb, *Group Education with Parolees*, 18 FED. PROB. 33 (Sept. 1954); Rosenthal & Shimberg, *A Program of Group Therapy with Incarcerated Narcotic Addicts*, 49 J. CRIM. L., C. & P.S. 140 (1958); Shulman, *Group Psychotherapy in an Army Post Stockade*, 21 FED. PROB. 45 (March 1957).

56. In S. E. GLUECK, *ONE THOUSAND JUVENILE DELINQUENTS* 93 (1934) it was revealed that in 912 (93.4%) of the cases leisure time had been used harmfully. "Harmful use" was described as meaning ". . . pronounced bad habits and associations, and indulgence in any recreations which may lead to delinquency, such as hanging about the streets, gambling, and the like."

57. The importance of group membership has been forcefully stated by Professor Homans of Harvard in HOMANS, *THE HUMAN GROUP* 456-57 (1950). "Now all the evidence of psychiatry . . . shows that the membership in a group sustains a man, enables him to maintain his equilibrium under the ordinary shocks of life, and helps him to bring up children who will in turn be happy and resilient. If his group is shattered around him, if he finds no new group to which he can relate himself,

Group probation work, however, must proceed with caution. It is not a panacea. Unless a proper balance is struck in the personality types that compose the group, members may have destructive influence on one another. In order to realize the maximum worth of this form of probation supervision, clinical studies should be directed toward determining what combinations of personality components will constitute ideal groups.

Some "Exceptions" To The Rule — Not all probationers require intensive supervision to induce the desired changes in their behavior.⁵⁸ "There are . . . many other variables than 'social work' in a probation experience. The simple fact of being under surveillance (however cursory) is one; the 'shock' to a first offender of being publicly so branded is another; the threat of a suspended jail term is a third. . . ."⁵⁹ With probationers strongly affected by these variables, the mere *status* of probation may achieve its desired effects.

Also, many individuals during the course of their youth engage in the commission of one or two offenses without being caught, but through the process of normal social maturation voluntarily abandon these endeavors. To the extent that probation taps into this "self adjusting" segment of offenders it may be spared the task of supervision.

This is an era of "magic" prediction formulas.⁶⁰ A table of significant factors that will readily point up offenders falling within the above categories would enable probation staffs to concentrate their energies on those probationers in need of directed attention and guidance for readjustment.

V.

THE PUBLIC AND PROBATION.

One needs only to glance at the recent disturbing demonstrations against integration for conviction that humanitarian measures need structural support from society to achieve their intended level of well-

he will, under stress, develop disorders of thought, feeling, and behavior. His thinking will be obsessive, elaborated without sufficient reference to reality; he will be anxious or angry, destructive to himself or to others; his behavior will be compulsive, not controlled; and if the process of education that makes a man easily able to relate himself to others is itself social, he will, as a lonely man, bring up children who have a lowered capacity. The cycle is vicious; loss of group membership in one generation may make men less capable of group membership in the next."

58. See Diana, *Is Casework in Probation Necessary?*, 34 *Focus* 1 (January 1955); England, *What is Responsible for Satisfactory Probation and Post-Probation Outcome?*, 47 *J. CRIM. L., C. & P.S.* 667 (1957).

59. See England, *supra* note 58, at 674.

60. *E.g.*, BURGESS & COTTRELL, *PREDICTING SUCCESS OR FAILURE IN MARRIAGE* (1939); S. & E.T. GLUECK, *UNRAVELLING JUVENILE DELINQUENCY* (1950); LAUNE, *PREDICTING CRIMINALITY* (1936) (forecasting behavior on parole); MONACHESI, *PREDICTION FACTORS IN PROBATION* (1932).

being. Public ignorance, indifference, and prejudice frequently tend to nullify benefits the law intended to bestow. With probation, this problem is as old as it is new.⁶¹ The lay mind has vividly stereotyped delinquents and criminals as incorrigibles that threaten his safety and "belong in jail." As a consequence, public attitudes toward probation have been strewn with misconceptions. Probation is commonly regarded as "leniency"⁶² and "a back door for the politically favored." These attitudes have made themselves felt in a variety of ways. Legislatures have remained unresponsive to the monetary needs of probation for additional, adequate personnel⁶³ and improved community rehabilitative facilities. Their influence on the judiciary to use probation has already been noted.⁶⁴ Youngsters on probation continue to face communities deeply-wedged in attitudes of unsympathy in spite of the "non-stigmatic" *parens patriae* philosophy of the juvenile court and its euphemistic terminology. Employers refuse to take on "the kid who was picked up for stealing." "Confidential" delinquency adjudications sometimes become known to military service recruiters and taint enlistment applications. Probationers, already conflict-ridden, must be spared these "extra" hurdles to readjustment.

Perhaps as outstanding an example as any of the far-reaching beneficent consequences that can spring from public support is that provided by the marked accomplishments in the field of mental hygiene. Like probation, public ignorance and misconceived stereotypes impeded its development. At the turn of the century the needs of the mentally afflicted were given little financial and emotional public support. Attitudes of fear and horror prevailed regarding their condition.⁶⁵ Many looked upon them as hopeless incurables. The mental hospital was darkly cast as the lonely and isolated "big house on the hill." Conditions

61. To some extent, even John Augustus faced public opposition and misunderstanding. Some charged that he was financially profiting from those he bailed. Those financially affected by his goodwill, such as officers who received fees for escorting offenders to jail, were quick to express their displeasure. Moreland, *supra* note 14, at 9-11.

62. In adult probation, the attitude that probation is judicial leniency is reflected in the statutes of most states which arbitrarily preclude its being made available to offenders who have committed certain types of offenses specifically designated or carrying a penalty in excess of a stated term. Some states prohibit the use of probation by courts in cities or counties of less than a specified size. Sutherland, *op. cit. supra* note 49 at 424.

63. In many areas, because salaries are not commensurate to the standards for selection and the nature of the work to be performed, probation departments are still unable to attract personnel of the caliber needed to achieve the desired aims of probation. When able individuals are employed they soon leave as better paying opportunities present themselves. Salary scales must be increased to correspond with the importance of the position if these dangers are to be avoided and if probation work is to be raised to the long sought after status of a "profession."

64. See *supra* notes 33, 34 and accompanying text.

65. COLEMAN, *ABNORMAL PSYCHOLOGY AND MODERN LIFE* 40-41 (1950) (a well written introductory text).

of comfort were less than adequate and patients subjected to abuses hardly conducive to recovery.⁶⁶ Then in 1908, the stirring classic by Clifford Beers, *A Mind That Found Itself*,⁶⁷ by revealing Beers' shocking experiences, the "straightjacket" practices in the various institutions that attended him,⁶⁸ and of how he found eventual recovery in the home of an understanding and friendly attendant, jolted the profession into an acute awareness of the need for reforms and public support. The Mental Hygiene Movement was immediately founded to educate the public in an understanding of mental illness and its causes and needs. Eerie stereotypes that theretofore prevailed began to gradually disappear. In a few decades the movement became world-wide and many obstacles, similar to those that today still confront probation, were overcome to unlock the door that led to the many advances of modern psychiatry.⁶⁹

And what of probation? When shall it be unlocked from the cultural lag that binds its progress? A concerted effort must be made to marshal the confidence and support of the "man on the street." He must be made to understand the mechanics, merits, and philosophy of probation and that it is a community function. The need is apparent for a steady flow of carefully planned and timed publicity by probation departments together with community social welfare agencies. In this regard, countless media of communication can be exploited.⁷⁰ Probation has many "selling points." It serves to maintain social unity by keeping families intact. The cost of probation is far less than institutional care.⁷¹

66. *Ibid.*

67. Subsequent editions, printings, and translations of the book are numerous.

68. Beers relates on one occasion when he refused to obey an attendant's command that ". . . this brute not only cursed me with abandon, he deliberately spat upon me. I was a mental incompetent, but like many others in a similar position I was both by antecedents and by training a gentleman. Vitriol could not have seared my flesh more deeply than the venom of this human viper stung my soul! Yet, as I was rendered speechless by delusions, I could not offer so much as a word to protest. I trust that it is not now too late, however, to protest in behalf of the thousands of outraged patients in private and state hospitals whose mute submission to such indignities has never been recorded." BEERS, *A MIND THAT FOUND ITSELF* 43 (5th ed. 1921).

69. For a discussion of some of the many accomplishments of the National Committee for Mental Hygiene during the first twenty-five years of its work see *id.* at 403-11 (23rd ed. 1937) reprinted in AMERICAN FOUNDATION FOR MENTAL HYGIENE, *THE MENTAL HYGIENE MOVEMENT* 403-11 (1938). These accomplishments include pioneer surveys that led to advances in the administration of criminal justice such as the establishment of psychiatric services in many criminal courts, juvenile courts, penal and correctional institutions, throughout the country, and the establishment of the Sing Sing Classification Clinic for the psychiatric examination and study of all prisoners in New York State. *Id.* at 406-07 (both publications).

70. See, e.g., Carr, *Interpreting Probation and Parole through the Radio*, NPPA YEARBOOK 282 (1940); Consulich, *Probation and Parole Publicity in the Press*, *id.* at 271.

71. E.g., The average annual per capita cost reported by the State of Minnesota for 1954-56 for supervising probationers was \$137.50 as compared to \$1,249.60 for institutional maintenance costs. The Rhode Island State ratio for 1955-56 was

One writer stated, "we have a better chance of bringing about improvement in probation services by convincing the public that probation saves money than we have by convincing them that it saves souls."⁷² "Selling points," however, must not become "selling propaganda." One-sided publicity will only boomerang when failures are revealed and cause the wedge of resentment toward this form of disposition to be driven deeper. Social habits and attitudes are deeply-rooted and cannot be changed "overnight." Any attempt in haste to forcibly uproot them may kill the goose that has been brought us to lay golden eggs!

VI.

EVALUATING THE RESULTS OF PROBATION.

From its early beginning probation has so preoccupied itself with outlining its mechanics of application that it has seldom paused in retrospect on its past efforts to develop adequate scientific techniques to test the efficacy of its results. Success-failure inquiries have been few and for the most part delicate attempts at scientific appraisal lacking in intensity of effort, and accordance of method and measures of expectancy.

The most striking characteristic of probation appraisals has been the absence of agreement as to what criterion of accomplishment constitutes probation "success." Some studies have held it to reflect a satisfactory completion of the probation term.⁷³ The reliability of such a measure is open to question. Indeed, it is not unusual for offenders to "graduate" from probation who are unworthy of the "distinction." To free themselves from the reins of the juvenile court, offenders sometimes "purposely behave" during the probationary period though in essence their anti-social attitudes remain unchanged. Heavy case loads frequently prevent probation officers from keeping in sufficiently close contact with offenders to detect misconduct that would normally result in a revocation of probation. To reduce case loads to

\$460 to \$1,728. These figures were supplied by the National Probation and Parole Association in Letter From Sol Rubin, Legal Consultant of NPPA, to author, November 12, 1958. The use of probation over institutional commitment also results in increased tax revenues for governments and large savings in relief allotments. See Isaacs, *Blind Spots in Probation and Parole*, 33 FOCUS 173, 175 (1954).

72. MacCormick, *The Potential Value of Probation*, 19 FED. PROB. 3 (March 1955).

73. MONACHESI, PREDICTION FACTORS IN PROBATION (1932) (includes two studies: one of juveniles and other of adults); U.S. Dep't of Justice, Attorney General's Survey of Release Procedures, vol. II, at 353-409 (1939) (adults); Gillan & Hill, *Rural Aspects of Adult Probation in Wisconsin*, 5 RURAL SOCIOLOGY 314 (1940); Monachesi, *A Comparison of Predicted With Actual Results of Probation*, 10 AMERICAN SOCIOLOGICAL REV. 26 (1945) (juveniles — small number of cases studied).

more workable sizes early discharge is often recommended for subjects displaying the slightest surface indication of promise but who in fact are still basically in need of the court's attention and guidance. Though "success" cases may revert to crime shortly after their discharge from probation, they nevertheless appear as statistical "credits" on evaluative data sheets and lure probation staffs into a false sense of accomplishment.⁷⁴

It is apparent that the probationer's behavior *following* his discharge from probation is more important from the point of view of penal policy than his ability to survive the treatment period. However, even among follow-up studies⁷⁵ variance has marked the yardstick of "success." Several studies have held it to include all behavior short of a misdemeanor or felony *conviction*.⁷⁶ While this measure may have the virtue of being the least equivocal⁷⁷ it is wanting in completeness in that it eliminates from consideration the social habits, attitudes, and stability of ex-probationers other than as reflected by court records. Subjects who have reverted to crime and escaped detection or who have been apprehended but for some reason not prosecuted are gauged as "success" cases despite these marks of social maladjustment. A recent and exacting postprobation study assessed outcome against a more comprehensive and sociologically acceptable criterion.⁷⁸ Avoidance of a subsequent conviction was not alone determinative of success. This appraisal embraced the ex-probationer's ability to effectively

74. No study bent upon demonstrating the need for follow-up studies of juvenile court dispositions could have struck with more precise aim than the startling findings by Sheldon and Eleanor Glueck in their 1934 work, *ONE THOUSAND JUVENILE DELINQUENTS*. The intensive five-year post-treatment survey of Boston juvenile cases revealed a recidivism rate of 88.2% to cause nation-wide concern regarding the efficacy of juvenile court practices. A further follow-up study of the same group of cases by the same authors spanning two more five-year periods appears in *JUVENILE DELINQUENTS GROWN UP* (1940). See also S. & E.T. GLUECK, *500 CRIMINAL CAREERS* (1930).

75. Noted in parenthesis following each citation is the length (in years) of the after-period and the nature of the subjects studied. BEARD, *JUVENILE PROBATION* (1934) (5 to 7 — juveniles); HALPERN, *A DECADE OF PROBATION* 102-116 (1937) (5 — adults); RUMNEY & J.P. MURPHY, *PROBATION AND SOCIAL ADJUSTMENT* (1952) (juveniles and adults); Mass. Comm. on Probation, *Report of the Commission of Probation on an Inquiry into the Permanent Results of Probation*, MASS. S. DOC. NO. 431 (March 1924) (8 — juveniles and adults); Caldwell, *Preview of a New Type of Probation Made in Alabama*, 15 *FED. PROB.* 3 (June 1951) (5½ to 11½ — adults); Diana, *supra* note 58 (10 — juveniles); England, *A Study of Postprobation Recidivism Among Five Hundred Federal Offenders*, 19 *FED. PROB.* 10 (Sept. 1955) (6 — adults); Menkin, *Rehabilitation of the Morally Handicapped*, 15 *J. CRIM. L. & CRIMINOLOGY* 147 (1924) (not more than 2½ — adult women); J.P. Murphy, *A Case Study To Test the Efficiency of Probation Treatment*, 5 *CATHOLIC CHARITIES REV.* 287 (Nov. 1921) (average 2½ — adults).

76. Studies by Halpern, Mass. Comm. on Probation, Caldwell, Diana, and England, *supra* note 75.

77. Assuming, of course, that official records are complete, accurate, and available, which, unfortunately, is not always the case.

78. Rumney & J.P. Murphy, *op. cit. supra* note 75.

function as a member of society.⁷⁹ Four basic areas of social life — the familial, economic, physical, and mental — were examined in each case for indicia of social adjustment.⁸⁰

An even deeper question posed by postprobation evaluations concerns the *length* of the after-period to be studied.

Can it be demanded of probation that if positive results are to be credited to this correctional process, they must be permanent? A probationer as a human being may, long after his period of court care, be subjected to pressures from within and without, well nigh irresistible for a man of weak personality, which may drive him toward commission of another crime. Chance, circumstances, deprivations, deep-seated emotional tensions, all intangibles, are major influences in these as in other lives. We do not ask of medical science that a cure for one episode of disease should establish lasting immunity to later sickness or infection. Can we rightly insist, in rating probation as a device for social control, that the adjustment of the individual to good living must endure a lifetime? At some point may not a later act of lawbreaking be chargeable not to probation failure but to human failure?⁸¹

In fixing probation's after-period of responsibility the various studies have again been marked by differences.⁸²

If probation is to move forward as a dynamic rehabilitative force in our delinquency troubled society scientific techniques must be developed to guide its progress. Financial support to accomplish this end should be a matter of federal concern. During recent years the federal government has been expending considerable funds for Congressional inquiries into matters relating to the problem of delinquency control. For the most part, however, its efforts have resulted in reports and transcripts of testimony reiterating what has been said time and again by scholars in the field.⁸³ It is suggested that future allocations be partially diverted for the creation of a Federal Bureau of Research and Statistics designed specifically to fortify attacks on delinquency with a scientifically-oriented base. As is obvious from the

79. *Id.* at 84-93.

80. For example, a person was considered unadjusted economically if he was a vagrant or a panhandler, drifted from one low paid job to another, was a public charge, was heavily in debt in relation to his earning capacity, or obtained a livelihood by illegal or criminal means. One addicted to alcohol or drugs was considered mentally unadjusted. *Id.* at 87-88. In the Menkin study *supra* note 75 the satisfactory social adjustment criterion was employed and meant "living under good home conditions, steady employment, and healthful recreation."

81. CHUTE & BELL, *CRIME, COURTS, and PROBATION* 240-41 (1956).

82. Authorities cited *supra* note 75.

83. For a concise summary and critique of recent congressional hearings relating to juvenile delinquency see Myers, *A Critique of Recent Congressional Activity Relating to Juvenile Delinquency*, May 1959 (unpublished seminar paper in Harvard Law School Library).

studies discussed above a distinct need exists for an adequate *blueprint outlining what is to be reasonably expected of probation* against which actual results from this form of treatment could be measured. A blueprint comprehensively setting forth a *method for assembling data* is also needed.⁸⁴ Sole reliance upon official records should be discouraged as they are not always complete, accurate, and available. Information contained therein must be verified and supplemented. The ex-probationer should be personally interviewed. Also, inquiries should not be limited to seeking out simple averages of success and failure but must be bent upon *information having predictive force*. Success-failure outcome when related to factors in the background of the probationer and his experiences during the probationary period will enable probation staffs to manipulate their treatment practices to advantage. Research is the life-blood of progress. Without adequate blueprints for guidance, however, appraisals of probation may cause its growth to be ensnared in webs of delusion.

VII.

CONCLUSION.

Probation is one of the few arrows juvenile courts hold in their quiver to strike at the dark shadow of delinquency encircling our nation like a vulture does its prey. Unfortunately, the path of its flight is still beset with obstacles that prevent it from striking with the full impact of its promise at the rebellious attitudes that are becoming increasingly characteristic of American youth. The need for case load relief, judicial and public support, and scientific techniques to evaluate its progress have been discussed. Other needs as well seek fulfillment. The cry to raise probation work to the status of a "profession" must be answered if capable personnel are to be attracted to its mission. Probation departments must develop uniform and adequate systems of record-keeping. In-service training must be a routine facet of its program.

Probation represents an evolution in penology far more worthwhile than any other previous method of dealing with delinquents. It has had to overcome many obstacles along the way. Now, as it approaches the maturity of its development, it must not relax its efforts in meeting the above needs, for its theory is essentially sound and worthy of preservation.

84. A general criticism that could be directed to most studies relating to delinquency and crime is the failure to descriptively set forth in sufficient detail the methods employed in assembling the data upon which conclusions were based. The Gluecks have been one of the notable exceptions to this criticism.