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United States Probation System

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units which are being developed in some cities under the local federations of social agencies. Only a few cities have such bureaus at the present time, but the number may be expected to increase during the next few years. Eventually such bureaus should become very well qualified to make evaluations of probation work, since the evaluation of social work activities in various fields will constitute one of their principal functions.

(3) Where neither of these plans is feasible, it may be possible to make a working arrangement with a school of social work or with certain social science departments of the universities, especially the departments of sociology and psychology, by which the school or department will assume the task of installing and conducting evaluation work. Under this plan social science instructors could frequently assign properly qualified graduate students to compile Progress Records and make statistical analyses. The students thus assigned would gain a valuable insight into probation work, which in many cases would help to qualify them later on to become professional probation officers or administrators.

(4) In a few states, the evaluation of probation work can be conducted by state central bureaus of research and statistics, covering either the special field of crime and delinquency or the broader field of social welfare work in general.

Let us now briefly summarize our findings. The question, "Why evaluate?", has been answered by pointing out, first, that evaluation should promote the extension of probation by proving its value more conclusively; second, that it will help to improve the quality of probation work, by scientifically testing its ef-

iciency; and third, that it will help toward crime prevention, by providing further evidence of the causes of delinquency.

In considering the question, "How evaluate?", three chief methods of evaluation have been discussed, namely, procedural studies, mass statistics, and intensive case studies. The case study method has been shown to be essential for truly scientific evaluation. As an effective device for use in case studies, the Progress Record has been suggested.

The third principal question, "Who should evaluate?" has been answered by showing that evaluation is primarily a task for the expert in social research, with the collaboration of probation administrators and other specialists. Several sources of the needed research personnel have been suggested.

In conclusion, I wish to emphasize my belief that the development and use of more effective methods of evaluation is today a vital need of probation. The effort to solve this evaluation problem offers to the National Probation Association a new opportunity for constructive leadership of the probation movement.

"THE UNITED STATES PROBATION SYSTEM"¹

JOEL R. MOORE².

On August 31st, 1931, the total number of prisoners in prisons and jails committed from U. S. Courts was 25,136; on the same date the reports from the 55 district

¹An address delivered before the Judges' Section of the American Bar Association.

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courts where they have organized systematic service of probation showed the total number on probation to be 14,148. In fourteen months the number of probationers under supervision by U. S. probation officers had increased from 4,222 to 14,148. During the same period, the number of penal inmates had decreased from 26,707 to 25,136.

These facts need not startle nor alarm. No one need fear that the Federal courts are doing the revolutionary in thus disposing of offenders; they are just getting a good start into the probation movement which long ago passed the experimental stages in state courts and has become a firmly established method of court procedure in disposing of carefully selected offenders.

In staid old Massachusetts who once upon a time burned her witches; used the stocks and whipping post; let men rot in jail for debt; and condemned to death for many offenses, this probation movement more than fifty years ago received the sanction of law. During the past three decades other states have imitated Massachusetts in the use of probation for both adults and juveniles. State systems have developed; strong county systems have perfected the work; municipal systems like New York, Boston, Detroit, Newark, Buffalo, Providence, Philadelphia, Baltimore, St. Louis, Minneapolis-St. Paul, Denver, San Francisco, Los Angeles, Portland, have set up high standards of probation service. In every state but one there is juvenile probation procedure; in 33 of the 48 states there is adult probation, with suspended sentence used as make-shift equivalent in several of the other fifteen states. Our Federal probation act passed in 1925 was just about twen-

ty years late in getting into the probation movement.

Our Federal government is now in the midst of a huge building problem of new prisons, reformatories, jails and prison camps to relieve the congestion of prison inmates and to provide proper penal treatment. Growth of population; increase of criminal statutes that make a multiplicity of acts and deeds criminal offenses punishable by imprisonment; resistance of large minorities, if not majorities, to the strict enforcement of sumptuary laws and laws curbing business methods; the breakdown of police control in the jungle cities of our land; inertia of rural agencies that in an age of fleeting machines by land and by air still maintain a horse-and-buggy type of organization even though equipped with automobiles; these and other conditions have made the building of more and bigger prisons inevitable; and the Federal Government has not until very recently swung into the probation movement.

Thousands of men and women and children have been committed to prison by Federal Courts that might just as well have been treated by the probation method.

Massachusetts has not built a prison in more than twenty-five years. In that state which has used probation since 1878 (even before that unofficially) at the present time there are in prisons and jails 6,032; and the same state judges have on probation 22,444 men, women and children under the skilled supervision of court officers.

In New York there are 18,418 prison and jail inmates; and there are 22,370 probationers. Governor Roosevelt recently said of his state of New York, "In our own state we have placed 250,000 offenders on

probation in the last 24 years. We are now placing more than 25,000 yearly, as our courts and our judges have become convinced of the value of the probation system in reducing crime."

California's San Quentin and other prisons and jails confine 7,520 while on probation are 8,739.

And how about England? How often we hang our heads when invidious comparison is made between our city and state and national crime rates and those of England and English cities. And we are informed by our own brightest legal minds that English criminal procedure in court and her penal institutional methods are superior to our own. Does England use probation? Yes, more universally and effectively than our country as a whole. Ten years ago an English commission came to this country to study our better city and county and state systems. In 1925, just the very year that our Federal government consented to allow Federal judges to experiment with probation, England set up a system that covers England and Wales with a complete probation service for every court; half the salaries of the court probation officers are borne by the Home office's Probation Bureau. And Parliament each year appropriates over \$200,000.

So we need not be alarmed over the fact that more offenders are on probation than are in confinement. Our Government finds good precedents in the probation procedure of the States and of England.

Indeed, if we were to analyze the statistics more closely we should find that we have a long way to go before we catch up in the probation movement. The average jail term for men serving Federal time is 85 days; the average probation term for them is a little less than two

years. In other words the probationer is under observation and supervision about eight times as long as the inmate of an institution. Thus the cumulation of probationers makes it appear that probation procedure has outdistanced the institution's penal treatment in numbers, which is not the fact. Proper statistics are not available to make comparison, but it is conservatively estimated that only about 18 or 20 per cent of offenders in State courts are granted probation. The figure for Federal courts is probably not half that.

At this point let me quote my chief, Sanford Bates, Director of the Bureau of Prisons, to whose vision and expert advice this U. S. Probation System is due:

"The need of wise probation treatment is further evident," he says, "when one considers that a large proportion of our present day crime involves no very great moral turpitude." This prison expert of international fame says further: "It would be unthinkable today if there were not some alternative to imprisonment, an alternative which would not turn the culprit free but would retain a measure of control and guidance for his benefit and the protection of society."

The probation alternative was made possible by the Act of Congress signed by President Coolidge, March 4, 1925. In 55 of the 84 districts of the U. S. Courts systematic service has gained more or less headway. It is still in the pioneering stage for during the past 14 months probation has been organized in 45 of those districts. Hesitancy on the part of the district courts to adopt the probation alternative—to use probationary supervision instead of jail and prison con-

finement, is due undoubtedly to the commendably jealous attitude of judges for the protective power of confinement.

Social fear and social revenge still predominate in our criminal court procedure. We smart under the charge that we suffer from more crimes than any other people in the world. It is not hard to convince our people that crime is on the increase. Newspapers dramatize with camera and word pictures; movies thrill and frighten us. Judges and public prosecutors only reflect social fear and social revenge when they say that to meet mounting crime waves we should build more and bigger prisons, mete out more and longer terms of penal servitude.

Yet down deep in the heart of American democracy lies buried the golden tenet of fair play—the desire to have our administration of justice protect the rights of the individual as well as the rights of society, to maintain what Dean Pound calls, “the difficult balance between general security and the individual life.”

Our people in this complex age are continuously dissatisfied with our administration of criminal justice. They accepted the accusing charge of William Howard Taft that it is a “disgrace to our civilization,” yet the people view with distrust any innovations to our archaic system of criminal justice. They stubbornly remember that the mitigating devices adopted by our courts in bygone times of tyranny and severity—death, mutilation and dying-by-inches for more than a hundred different offenses, still exist as mitigating devices, but “do not serve,” says Dean Pound, “the sort of person they are meant to serve but become simply counters in a game carried on by the habitual offender at

the expense of the general security.”

Probably probation today in spite of its demonstration of efficiency in certain states, counties and cities, is viewed with suspicion by the people because they fear it will go the way of previous mitigating devices and become the subterfuge of habitual criminals, a means of defeating the fundamental purpose of criminal justice which is to protect society as a whole without wronging the individual.

Here let me make a seeming digression and utter a sweeping remark that I assure you is made with all due respect for the learning, respect for the wisdom, respect for the sincerity and respect for the humanity of the judges, public prosecutors, legal scholars and practicing attorneys gathered here at this great American Bar Association meeting. You conservative, learned men go to great extremes in your effort to hold the scales of justice with meticulous care during the trial, the contest between society and the individual charged with crime. The punctuation of an indictment; the phraseology of a statute defining the crime or fixing penalty; the wording of a brief; the language of the charge to a jury; the failure to get into the record a question and answer upon a point obviously well known to all concerned, the reaching back into early frontier American decisions, musty legal scrolls of feudal England for a precedent, a rule, whereby to justify the exclusion of testimony of very practical and convincing nature—all this you do in the name of justice. Your great profession smoulders with fire of discontent but tolerates this “the great sporting theory of justice” for fear of danger attendant upon a revolution of criminal justice. And the public is mostly in-

articulate by reason of its choking cynicism. Why in the name of the supreme intellectual prestige and power which your profession enjoys do you not—judges, prosecutors, counsellors, scholars, law-givers, make the same meticulous, discerning, exhaustive study of the treatment for the offender as you do of the matter of guilt or innocence. Why spend many days perhaps weeks, in the preparation for and the trial of the individual and yet brush hastily over the sentencing. How unscientific, how unbusiness-like to execute thus lightly the most important part of the process of criminal justice. There, let me emphasize, is the crucial point in the process of protecting society without wronging the individual.

Society needs protection from crime. Yes. More wisely we should say it needs protection from individuals bent on committing crimes. We ought not to punish crimes but punish criminals. Oh, yes, it is the easiest way to open the statute book to the definition of the crime of which the offender is found guilty and read the penalty provided by law—the social revenge at the jurist's disposal. But social revenge, like private revenge, is short sighted. It is a dangerous weapon. Yes, you can grimly sentence with severity by the book, taking little or no time to study the character of the offender. He will pass on to the prison where in the mass he can suffer the social revenge he deserves to have applied to him along with thousands of others within the walls. If the same failure to study his character obtains there, out he will come some day still a criminal most likely embittered, emboldened, more menacing in many cases. The short sighted social revenge policy results in a temporary protection, yes, but

also to our sorrow in an increase of criminals in the long run.

So around the vicious circle we have been going—long sentences for first offenders and longer for repeaters; more prisons and more potential repeaters omitted from them; more long sentences and longer sentences and more and bigger prisons—round and round.

Please do not misunderstand me, this is not meant as argument for abandonment of the prison. It is rather a protest against the hasty misuse of the prison for mere social revenge. Prisons we must have—they can, and many do serve a useful purpose. I'm proud that the U. S. Probation System is part of the whole U. S. correctional plan headed by Sanford Bates, Director of the Bureau of Prisons. Probation, prison and parole are a three-horse team under his control given to him by the distinguished Attorney General, William D. Mitchell, whose stand on criminal prosecution and treatment of criminals has been both fearless and humane, and whose definition of the purpose of the prison of the future I follow instead of a social revenge definition. Mr. Mitchell has said, "The prison of the future should be at once a disciplinary school for those who can be reformed, a place of permanent segregation for the incorrigible and a laboratory for the study of the causes of crime."

At the time of sentence probation is an alternative to imprisonment if we have our probation, prison and parole on a sound penological basis. It can not be an alternative for a social revenge prison; it can be an alternative for prison reformation purpose; it cannot be an alternative for the Attorney General's prison as "a place of permanent segregation for the incorrigible"; it can be the

alternative for his "laboratory for the study of the causes of crime."

Yes, probation can be the alternative for carefully selected individuals. But it cannot be meted out hastily. It calls for a patient gathering of facts and a higher order of study and discernment to decide between prison and probation for an individual than it does to detect and prove his guilt. Why, let me ask again, should a court fail to avail itself of every fact and circumstance, of careful analysis of the individual's personality with its revealed attitudes and proclivities, its fixed habits for weal and woe, its redeeming qualities upon which or for want of which law abiding or criminal conduct respectively may be safely predicted for the future? That is the professional service which the probation officer impartially, indefatigably, confidentially offers the court. It is the production of a diagnosis by means of searching investigation into the personal characteristics and the social background and conditions of the individual. And more than that, if the judge so desires, it is a prognosis of treatment indicated by the facts and conditions as the studious and discerning probation officer draws conclusions and offers an alternative probation plan to prison treatment or gives reasons adverse to the use of probation, as the case may be.

Mrs. Anna L. Saylor, Director of the California Department of Social Welfare has well said:

"The probation system, even with its administrative weaknesses is without doubt the greatest forward step that has ever been taken in the name of social justice to the individual offender. The value of a well organized system administered by men and women whose lives are dedicated to human serv-

ice cannot be exaggerated and the opportunities for educating the public to a more practical understanding of modern scientific methods for dealing with offenders are endless."

We are hoping the United States Probation System may some day fulfill the hope and promise of the statement just quoted.

"Few people really comprehend what probation is," says Judge Harry G. Gram of Springfield, Ohio, "To many it means a program of coddling criminals. It is anything but a coddling process and is a substitute for that which has been lacking in the child's home. (Speaking of juveniles, he was, but it carries on into adult probation.) It is a process of social reconstruction" says the judge "under the guidance of the court. It is a means employed to make useful citizens instead of confirmed criminals."

Of course, this probation process is not intended for all offenders. It is for the selected ones—selected by the judge after painstaking and discerning investigation and study made by his probation officer and others—perhaps in not a few cases the psychiatrist.

As has been said by Winfred Overholser, M. D., Assistant Commissioner of Mental Diseases, Boston, Massachusetts: "Probation represents one very important aspect of the attempt to fit the penal treatment of the offender to that individual's need. . . . The probation service intends that the proper individual shall receive the sort of treatment which will enable him to rehabilitate himself in the community without segregation in an institution even for a short period. On the other hand, through its investigation functions, it in-

tends that the undesirable individual, the unreformable and incorrigible offender shall be segregated for a long if not wholly indeterminate period."

It is on this basis, a sound one we believe, that the United States Probation System moves forward. Our probation officers first function ideally—the objective toward which we move, is to bring to the aid of the district judge a complete, analytical set of facts and conclusions secured, often with the aid of physician and psychiatrist, pertaining to the individual offenders so that the judge may correctly select those offenders whom he deems proper subjects for probationary treatment. To reach our objective, to even approach the efficiency now enjoyed by many state, county and city courts, we have a long way to go. We must gain experience, develop professional technique and wisdom, we must have additional officers and facilities for the work, but we believe we are well started in the development of the system.

All important as this function of the probation office seems to be in the making of preliminary investigations, the second great function of the probation officer in undertaking the supervising of the conduct, the guiding, counselling, correcting, encouraging, inspiring of the individuals whom the judge has formally given into his charge, is one that weighs heavily upon his mind and heart and strength. To his individual charges it is exceedingly important, and to society which shall also profit by his efficiency, it is important, that he be capable of continuing the study of the individuals; resourceful in his ways and means of bringing forces to bear on them for good; alert and vigilant in warding off trouble; firm and vigorous

in correcting, of revoking the probation of those who weakly succumb or whose deception is discovered and their unworthiness proved by their conduct. Much like the teacher, the doctor, the missionary, he must have great faith; he must have keen imagination; he must have deep sympathy, withal not letting down ideals; he must exert the dominating personal influence of superior strength of mind and body and soul.

Time does not permit me to even begin discussion of this great function in any detail. It is a subject worthy of hours of discussion. Happy are the days I spend with the probation officers in the field at work. Their faces shine as they recount their victories, big or little, and cloud with the stories of defeat. Interesting and intensive as was our three day institute at Louisville, Kentucky, in October, and also at Minneapolis, in June, with the keen attention of those officers to the papers and problems and the discussion of technique, the happiest hours were those we spent in our hotel lobbies and rooms talking cases long into the night. Like lawyers, like doctors, or engineers, when two or three probation officers get together, they fall to discussion of principles and methods, and technique and problem cases. They are learning by doing and doing by learning. Study and practice; practice and study is the aim of the United States Probation Officer, like the professional fellows in state systems, so as to gain efficiency in their part of the system of criminal justice.

Already we hear rising from our probation officers a call for a correspondence course of study, which we are planning to meet. And the mere suggestion on our part that we are considering a short-term, inten-

sive school of instruction for probation officers, a few at a time, to go along with our Prison Bureau school of instruction for institutional guards and others, raises a cheer from probation officers. These men aspire to be real leaders. They move forward to meet the test stated so well by Dr. William Healy, of the Judge Baker Foundation, who has said:

"All this coordination, and indeed the whole development of better probation, as well as the chance for a better probation service, requires leadership—brave, intelligent leadership with courageous facing of facts given in a scientific and deeply humanitarian spirit. There is no reason to be discouraged by failure. The splendid profession of surgery started from a barber shop. Probation can and must develop into a profession."

Let me make bold to stand before you men of an honorable and ancient profession and assert that already within the passage of a half century a profession of probation service has arisen in this country. Here and there in many places in the land tower personalities who for character, wisdom, skill and proficiency in their special service to the courts and to their probationary charges and to society, are personalities highly valued and respected by men of other professions and are magnetic centers of their growing profession. Safely, I think I may risk mentioning the name of one such by telling you that last June, Harvard University conferred the rarely bestowed honorary degree of Master of Arts upon the Nestor of all probation officers, The Commissioner of Probation of the Commonwealth of Massachusetts, the Honorable Herbert C. Parsons. It

was indeed a recognition of the truly professional character of the study, the acquirement of wisdom, the breaking of paths, the development of scientific methods, technique and systematic probation service through the years.

Looking up to Herbert Parsons, learning from him and from others like him in the service, our United States Probation Officers along with the 4,000 others in state and county and city probation systems, move on toward professional proficiency.

Now let me deal briefly with the question that has been suspended in your minds probably during all your very courteous attention to the discussion so far of the prime importance of individualized treatment, the probation investigatory function; of the importance of trained supervisory probation work; of the fruitfulness of the growing professional spirit and technique among probation officers—that suspended question is: What happens to the deterrent effect of prosecution, conviction and imprisonment if probation affords a ready way out to the offenders in greater and greater numbers?

My answer I take in part from the lips of one of your own profession, a man whose work as judge has confounded his critics, won the admiration of those who know his work, and endeared him to the hearts of a great city. Judge Charles W. Hoffman, of Cincinnati, Ohio, says:

"Deterrence is an adjunct to punishment insofar as facts and science are concerned in an unknown quantity. . . . It is inconceivable, when viewed in its true light, that undertaking the reinstatement of a criminal as a godd law-abiding citizen immediately on conviction encourages or

increases crime. Insofar as the factor of deterrence is involved there can be no justification for delay or compromise in the inauguration of scientific systems or procedures for the treatment of criminals founded on facts rather than on preconceived opinions of the efficacy of retribution or the force of punishment as a deterrent."

Yet this deterrence concept which Judge Hoffman assails so sincerely, and on occasion can fairly riddle with barrage of facts, figures, cases, drawn from his long successful experience—this deterrence concept still clings with many jurists and the emotionally swayed public. Therefore, let us appeal to cold facts in the case for a moment. Let the statement of fact and inferences come from the lips of a man of your own profession who achieved well in his practice as a lawyer, rose to eminence in the state legislature in his native state of Massachusetts, accepted a Herculean clean-up job in a city penal institution, and found his life work in the study of criminals and their treatment. I refer to our hard as tacks but soundly humane Director of the Bureau of Prisons—a better builder of prisons but a staunch believer in probation. In a radio address last spring at a National Probation Association dinner in New York City, referring to the thoughtful persons who possess the deterrence mental conflict along with their acquiescence to individualized justice, he said:

"They will be uneasy lest a too liberal use of probation will weaken the sanctions of the law and remove that healthy fear of punishment which is believed to exert a deterrent effect upon our communities.

"To these persons the National Probation Association should publish the results of probation in Massachusetts where today there are nearly four times as many persons on probation as there are in prison and where, nevertheless, crime rates have been going down even while mounting in other parts of the country. For example, in 1915 the number of cases begun in the Criminal Courts of Massachusetts for offenses against the person and against property was 29,280. In 1928 this number had decreased to 21,625. It is a notable fact that during this period the population of penal institutions decreased and that the use of probation was materially increased. These figures, therefore, lend no proof to the proposition that the full exercise of probation lays the community open to an increase in crime.

"Again, in a study of homicides, made by the Prudential Life Insurance Company gathered not from the prisons or from the courts but from reports of recorded homicides in cities of Massachusetts appears at the bottom of the list. The city of Boston shows only a little over 3 homicides per 100,000 of population as against the percentage for other large cities in the country ranging from 6 to 65. Three Massachusetts cities of a size to bring them within this table had no recorded homicides during the year. Evidently in Massachusetts the full use of probation does not lead to murder.

"Again, two weeks ago the United States Census Bureau published its analysis of prisoners in penal institutions in the country. A table printed on page 4 of that document shows that the number

of prisoners per 100,000 of the general population in 1904 for the whole country was 68.5. By 1928 that had increased to 85.3 but for the State of Massachusetts in 1904 there were 64.5, which by 1928 had decreased to 43.7."

More could be said on this point. Resultant conclusions drawn from the severe self criticism of the long-run results of their work made by men eminent in the profession of probation, could be brought to support of the inference drawn by Sanford Bates. I give it as my sincere belief that if probation could be used properly, adequately and effectively we should witness a reduction in the absolute number of criminals.

Judge Herbert G. Cochran of Norfolk, Virginia, speaking on "Probation, Its Use and Potentialities," says:

"New York has found that 78% of its 250,000 adult offenders who have been placed on probation since 1907 have made good and have paid in fines, restitution, and support of dependents, \$23,000,000. . . . More than 80,000 persons are annually placed on probation in England with most satisfactory results," and the judge gives it as his studied opinion that "Probation is on the way to adoption in all our criminal courts as one of the surest aids in dealing with the problem of crime."

Let me again quote Mr. Bates:

"Probation, then, is not lenient but constructive. It is a salvaging process. It not only saves the expenditure of many hundreds of dollars for boarding our prisoners, but it salvages humanity as well. I believe it can be demonstrated that probation is an investment. It has been shown many times that an investment of \$1.00 in

good probation will return from \$2 to \$4 in fines collected, restitution made, and families supported. It is an investment in humanity. It encourages rather than embitters. It builds up rather than degrades. It saves an individual for future usefulness rather than incapacitates him for a life of industry and profit. It is an investment in community protection."

Let me use here the words of one of our nation's most noted students of social troubles, woe and want and crime, the gray-haired humanitarian of New York City, Homer Folks, who says: "If one-tenth of the funds now expended by our states upon the support of penitentiaries, jails and prisons, were intelligently used in providing for the employment, care and supervision of offenders on probation, the effects, as our experience already proves, would be of multiplied value, and by *preventing crime* would work a vast economy for the state."

During the past fiscal year the United States Probation System expended less than \$200,000 out of a total expenditure by the Department of Justice of over \$47,000,000. Just one of our law enforcement divisions, it is said by the Wickersham Commission, spent 68c out of every dollar expended by the Department of Justice for enforcement of one law; for the probation system less than half a cent out of each dollar expended by the Department of Justice went for the building up of our probation system.

Needless to say we are still in the pioneering stage. Progress in further extension of the United States Probation System to the 29 districts yet unprovided with probation officers—and what is more important,

progress in the development of complete and efficient service for all districts, calls for a vastly more generous and thoughtful appropriation of funds. Given 2 cents out of the Justice dollar, we can promise forward-march of the United States

Probation System. Eager, studious, earnest men seek to serve the United States District Courts in this probation enterprise for the protection of the public and the concurrent salvaging of selected offenders, at a saving to the taxpayers.