Federal Probation

MARCH 1987

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LI MARCH 1987 NUMBER 1

This Issue in Brief

Community Service: A Review of the Basic Issues.—Triggered by the Federal Comprehensive Crime Control Act of 1984, the evolution of community service as a formal condition of probation has caused judges and probation officers to pay increased attention to the requirements of community service programs. Authors Robert M. Carter, Jack Cocks, and Daniel Glaser state that as various options are considered, basic issues must be identified, related to a system of judicial and correctional philosophy, and implemented in an atmosphere in which citizens have ambiguous feelings about community service as a sentencing option. In this article, the authors attempt to identify the basic issues and to place them in a frame of reference for practitioners.

The Alcoholic, the Probation Officer, and AA: A Viable Team Approach to Supervision.—Probation officers are encountering increasing numbers of problem drinkers and alcoholics on their caseloads. Most officers are not specifically trained to work with the alcoholic, and author Edward M. Read advances a practical treatment model for use in the probation supervision setting. The author stresses the necessity for an important re-education process which includes full acceptance of the disease model of alcoholism and an accompanying renunciation of several damaging myths still all too prevalent. Several techniques of countering the alcoholic denial system are discussed, and the author highlights the appropriate use of Alcoholics Anonymous in the supervision process.

The Perceptions and Attitudes of Judges and Attorneys Toward Intensive Probation Supervision.—In recent years the spectrum of criminal justice sanctions has widened to accommodate an intermediate sentencing alternative known as intensive probation supervision (IPS). In his study of the perceptions and attitudes of court personnel toward IPS in Cook County, Illinois, author Arthur J. Lurigio found that, overall, judges and public defenders viewed IPS favorably, whereas state's attorneys were essentially unwilling to accept IPS as a viable option to prison. According to the author, the success of IPS programs often hinges on developing effective strategies to promote the program so that it appeals to the various elements in the criminal justice system.

The Role of Defense Counsel at Sentencing.—This article establishes the duties and obligations of defense

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BY JOHN P. CONRAD
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The Guiding Lines

SAN QUENTIN on a summer's day in the late 1940's. The Adult Authority has completed its monthly hearings and left the prison. By rule and custom it is now permissible to distribute to the convicts whose fates have been settled on this month's calendar the slips of paper informing them of the decisions made during that week of tension.

Mingling in the yard, I am accosted by an old acquaintance, a chronic check-writer with a long string of priors. "How'd the Board treat you?" I ask.

"Denied again. Those bastards are hard to figure. I guess they can't figure themselves out. Look at that sonofabitch over there, they gave him a date, and he'll be on the streets next November. You know what he'll do. He'll get himself a gun and you've had it if you don't turn over your watch and wallet when he sticks that gun into your gut. Me—if you don't cash my check I might get so pissed off that I'd squirt my fountain pen all over your shirt. But you can't tell that to the Adult Authority."

We don't lock up as many check-writers as we used to, but the inequities of sentencing are still frequent and a cause for general concern on many counts. In addition to our national insistence on fairness in the administration of justice, we know that obvious disparities are at their most obvious in prison yards. We also know that too severe a sentence for one convict will be a needless expense to the state, as well as needless pain to him and his family, whereas too mild a sentence for another will be a needless risk to the public. In addition to all that, we like to think that proportionality in sentencing denounces the crime and deters the persons who might be inclined to commit it.

Until the last 10 years or so, our system of law has left sentencing decisions to human hands with very general guidance from the legislature. Judges and parole boards (where the latter are still functioning) have been expected to decide the proportionally proper sentence to impose on criminals. In an ideal system of justice, this is the way it ought to be. No matter how comprehensive the method of prediction, it cannot capture all the intangibles of the crime, the forces that caused the criminal to commit it, or the influences that may or may not cause him to do it again. A wise and perceptive judge, working with a penal code that allows him the latitude, may discover some of the intangibles by interactions with the convicted person and from other nonquantifiable information—as well as the specific evidence supporting the charge against the offender. He can make decisions that will maintain the public's confidence in criminal justice by doing justice with every sentence he pronounces.

Unfortunately, such judges are in extremely short supply. The mistakes made by lesser mortals on the criminal benches of the nation crowd the prisons and evade probation officers throughout the land. Even graver mistakes are made by legislatures determined to show the public how tough they can be on crime and the persons who commit it. Mandatory sentences are written into the law that force judges to make Procrustean decisions—all persons convicted of certain charges must serve long and flat terms regardless of aggravating or mitigating circumstances.

There has to be a better way. So far, that way seems to be the shaping of sentences by guidelines. The idea is not old and is easily traced to an original source, the publication in 1978 of the Gottfredson-Wilkins-Hoffman monograph on *Guidelines for Parole and Sentencing.*[1] The simple matrix combining graded severity of offense and estimated risk of recidivism on which these guidelines depended has been subjected to further development. The adaptation developed by Minnesota has been the object of a good deal of admiring comment.[2] For penologists, its most admirable feature has been the statutory requirement that in addition to the maintenance of equity in sentencing the guidelines are to be drawn in such a way as to keep a balance between prison capacity and prison populations. To accomplish this mandate, a Sentencing Guidelines Commission was established in 1980. Its success is statistically palpable; unlike almost every other prison system in the land, Minnesota has beds for rent to states with an excess of convicts. The guidelines model for sentencing has yet to sweep the nation's criminal justice systems, but its value for institutionalizing common sense in the administration of justice is clearly established.

Without undue fanfare, the Federal system is about to take the guidelines idea several giant steps further. In this contribution I'll present the essence of the new guidelines drafted by the United States Sentencing Commission as the proposed model affects us in prison and probation administration.[3]

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[1] Lexington, Massachusetts: D.C. Heath, (Lexington Books), 1978.

[2] Alfred Blumstein et al., *Research on Sentencing: The Search for Reform.* (Washington, D.C., The National Academy Press, 1983), Vol. I, pp. 135-137; Vol. II, pp. 275-284.

[3] I shall draw on the *Preliminary Draft of Sentencing Guidelines*, published by the United States Sentencing Commission, September 1986. The final draft will be submitted to the Congress on 13 April 1987 and will deserve study by all correctional administrators.

What's New?

The Sentencing Commission got its charge from the Congress in 1984 in the enactment of Public Law 98-473, otherwise known as the Comprehensive Crime Control Act, which, among other radical changes in the Federal system of criminal justice, sent parole and the Commission that administered it into the sunset.

That having been done, the whole structure of sentencing had to be overhauled. Too technical a job for a congressional committee, and too large for a task force of bureaucrats on Pennsylvania Avenue, the preparation of a new sentencing model was assigned to a special commission. This group consists of seven presidential appointees who are voting members and two *ex officio* non-voting members. The professional identity of none of these individuals is disclosed in the published Preliminary Draft. Having observed them at a hearing, I infer that most of them, especially the most articulate, are lawyers. Benjamin Baer, member *ex officio,* is a career penal administrator. The draft also refers to a research staff, the members of which are anonymous and their qualifications unstated.

We are told that many field contacts and studies were made. Public hearings were conducted, and the Preliminary Draft which I am considering here was published in time to solicit opinion from the professional publics concerned. We are looking at the fruit of about 2 years of labor and cogitation. Its impact on the penal end of Federal criminal justice will be very great. To judge from attendance and comment at the San Francisco hearing that I attended, judges, prosecutors, and the criminal defense bar are deeply concerned with the effect of the guidelines on the courtroom procedures and the decisionmaking processes. I was the only penological witness, and so far as I could see, the only person in the courtroom full of observers with such interests.

The new guidelines as they now stand will seriously affect the negotiations between counsel that precede sentencing, the facts that may be considered by the court in arriving at a judgment, and the standards of proof required for establishing the facts. One lawyer was outspoken: in her opinion the new guidelines are "incomprehensible and unworkable." I thought they were easy enough to understand, but it remains to be seen whether they are workable. More important, it also remains to be seen what effect they will have on the Bureau of Prisons and the Federal probation service. That final judgment will have to be deferred for several years experience.

The novelties in the guidelines begin with three structural features summarized in the introduction. The first of these innovations is called "modified real offense sentencing." The convicted offender in the new system will be "sentenced on the basis of the conduct...involved in the offense of conviction, plus the conduct done in the furtherance of the offense of conviction and any injuries resulting from such conduct." (p. 5) More about this change presently. Let's go on to the second feature.

This is the use of generic offense descriptions. The jungle of Federal criminal statutes, abounding with "scores of theft provisions [and]...a dozen or more homicide statutes," is to be cleared out by grouping similar offense behaviors. A homicide is a homicide is a homicide and a theft is a theft is a theft. Sentences will be comparable within each category.

The third feature introduces the concept of *"offense units."* The draftsmen of the guidelines see the units as a "narrative format" reflecting the "thought process judges employ in making sentencing decisions." All offensive behaviors are assigned units according to their seriousness on a scale of 1-360. To clarify this notion, the Commission provides this simple example:

> ...if an offender robs a bank, [he] is given a certain number of offense units for the robbery. If [he] uses a weapon, more units are added. If [he] injures someone, the judge is referred to the Assault and Battery section, where more specific units are added. A reference is also made to the property table, where more units are assessed on the basis of the amount of money or the value of the property stolen...
>
> When all relevant offense characteristics have been identified and the corresponding offense values totaled the score is adjusted up or down...by offender characteristics such as criminal history, role in the offense, acceptance of responsibility, and cooperation. Adjusting the total offense values by offender characteristics provides the total number of sanction units...(p. 6)

Is that clear? I think I see a role for a mainframe computer. Whether the United States Code will thereby more closely approach perfect justice depends on whether the thought processes of sentencing judges can best be expressed in numbers.

From Offense Units to Sanction Units

The best way to elucidate the Commission's thought is to run through the process to which it leads. I'll take a convicted robber, about to be sentenced, and put him through the numbers. Because he has committed a robbery, the base offense value is **36.** He had a gun, so we add **60** to the sum against him. He had an accomplice and tried to take a hostage, and that adds **60** more points to the score. The hold-up took place at a national bank, so we add **24** more points. The amount stolen was $10,000, and there are **12** more points. The offense now adds to **192** points, and we haven't considered the scores for offender characteristics.

Because our robber was the lead man in the offense, directing his accomplice to watch for the police and to keep the getaway car ready for quick escape, we multiply the offense score by **1.2**, bringing the offense

value up to **230.4.** (The court finds that the accomplice played a minor role in this robbery, and *his* offense value is multiplied by **.5,** giving him a total of **96** points). He's a recidivist with three prior prison terms, each term for 4 years. That's 4 points for each term, or **12** to be added to his total so far. He now has **242.4** points against him.[4]

Our robber is not such a bad fellow after all. He has pangs of conscience about the harm he has done. He goes to the FBI office of his own accord to surrender and to restore the $10,000 he has made away with. The judge may, if she chooses, reduce the offense value so far charged against him by **20 percent,** and that brings the point total down to **193.92.** Our thug is also a cooperative chap who knows on which side his bread is buttered, so he sings melodiously to the police about uncleared bank robberies that his mates have committed. So impressed is the District Attorney with the information thus supplied that he certifies that "exceptional assistance" has been rendered to the law enforcement authorities. That entitles the judge to multiply the offense value by a factor of **.6,** bringing the score down to **116.352.** If his assistance had been less than exceptional, i.e., merely "truthful" or "active," the multipliers would have been .8 or .7 respectively.

Having gone through this exercise, the court is now ready to go to the Guideline Table (p. 140). We find that with **116** units the guideline range is **108-134** months, or 9 to 11 years, 2 months, to be served in prison.[5] In commenting on the table, the Commission suggests that this is only one approach to the conversion of sanction units to terms of incarceration. A milder approach would be to allow that a convict serving a sentence for a crime against the person would do 90 percent of his or her time in prison. whereas an offender guilty of a property crime would be confined for only 50 percent of his or her time. The Commission would like to have comment on these options. I have no difficulty in recommending the milder version; we fill too many of our prison cells with property offenders who can be managed without being sent off to the joint. Indeed, a good deal of flexibility that is not apparent in the basic structure should be built into these guidelines. Fifty percent of the guideline range may be a lot too much for some kinds of property offenders.

Note that the guidelines call for a range of months for each total of sanction units. If the total is less than 14, the court may impose a community sentence. If more than 14, some prison time will have to be served. Several options are presented for satisfying the range of months to be served by any given sanction unit total (pp. 142-143). That gets into more complications than I can summarize here, but the problem deserves attention. The choices will seem abstract to judges and lawyers, but the effects on person-years in prison or on probation will vary from draconian to reasonable.

Probation and supervised release are both provided for. Under the United States Code, Class A and Class B felons are ineligible for probation. The guidelines provide that any other felon must serve at least 1 but not more than 5 years on probation. Nothing is said about intensive probation; the discussion of the terms of probation do not indicate that any practice other than current standards is envisaged. As a certified believer in intensive probation, I would urge that provision for this alternative sanction should be explicitly built into the guidelines.

Supervised release to follow imprisonment is provided for in any situation where in the court's judgment it should be imposed. Three such situations are specified:

- Where a sentence of 1 year or more has been served for an offense involving violence or drugs.
- Where the court determines that supervision will be necessary to enforce a restitution order or to assure payment of a fine.
- Where supervision is considered necessary in the interest of the offender's successful readjustment to society.

Depending on the commitment offense the period of supervision will be no less than 1 but no more than 3 years. The condition required are identical with those applying to probationers.

What's Next?

What I have tried to encapsulate here is the preliminary draft of a system that has had a great deal of consideration by able and experienced Commissioners and their staff. It is reasonable to expect that something resembling this draft will be presented to Congress and approved. Some serious issues remain to be solved as to evidentiary requirements to support the aggravating and mitigating factors to be applied to the offense values, and these difficulties are candidly discussed in the draft. I leave them to the lawyers; the due process implications are obvious and no doubt will be debated and litigated for years to come.

What concerns this penologist is the impact of a fairly rigid looking sentence structure on a costly and overburdened prison system. Not nearly enough consideration has been given to the use of surveillance systems in the community. The table of sanctions, even the flex-

[4] But if there has been a 10-year lapse since the last prison sentence, these three terms wouldn't count. (p. 129: "Decay Factor for Prior Sentences).

[5] The accomplice, with 96 points against him, will serve a sentence in the range of 84-104 months.

ibility allowed in some of the options, will be hard to adjust to individual situations. Nothing is said in the draft to discourage experiments, but I suspect that the complexity of this system will not be hospitable to conceptual changes.

Nevertheless, with all my prejudices against computerized justice showing, the guidelines are steps in the direction of fairness and adequate protection of the community. Before they are enshrined in the United States Code, I hope that two simple arithmetical experiments will be performed and the results made public. (For all I know, the staff has already done what I am about to propose. If so, we should see a report of the findings.)

First, we should have a comparison of the sentences served under the present system, offense by offense, and offender characteristic by offender characteristic, with the sentences to be served under the guidelines. A reasonable sample of the present Federal caseload, both in prison and on probation, should be enough to reassure us that the guidelines are not going to lead to a population explosion.

Second, with this experiment completed, it should be possible to make a projection of future caseloads for the next 5 years. If more prisons and more Federal probation officers will be needed, the Sentencing Commission has a responsibility to make this finding known and to justify it. When I testified in San Francisco, I was assured that the Commission had planned for such studies. They should be completed and made public *before* the final draft is adopted by Congress.

In the preliminary draft's concluding statement, the Commission recognizes that the process it has initiated must be a continuing enterprise: "greater knowledge and experience can only improve the guidelines over time. . . . Reason, analysis, actual practice, and public comment all will be used to produce, over the years, a progressively more informed, just, and workable set of guidelines." (pp. 169-170) The Commission has already received a great deal of comment in its staff consultations and public hearings. I hope that this brief account of what it has done will inspire more comment from readers of *Federal Probation*. Clearly the lawyers have been heard from; I am not so sure that penologists are on record in sufficient numbers and weight.

The guidelines as they now stand represent one of the rather few practical contributions of American criminology to the improvement—if they will be an improvement—of the criminal justice system. The modest original study by Gottfredson, Wilkins, and Hoffman deserves a salute; criminology is at last maturing as a policy science.

Looking at the Law

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Running of Probation Period

IT IS axiomatic that the period of probation begins to run when the judge imposes sentence, unless the sentencing judge clearly indicates otherwise (*See Gaddis v. United States,* 280 F.2d 334 (6th Cir. 1960)), and generally runs uninterruptedly thereafter. This is true not only for the period of probation imposed by the court under 18 U.S.C. § 3651 (hereinafter referred to as the "probation period"), but also the 5-year maximum term of probation (hereinafter referred to as the "jurisdiction period"), during which time may be issued for the arrest of the probationer under the provisions of 18 U.S.C. § 3653.

Both the running of the probation period and the termination of the jurisdictional period, however, may be interrupted under certain circumstances. The issuance of an arrest warrant under the provisions of section 3653 has an important impact on the running of these terms. It is important for probation officers to know the effect of the issuance of the arrest warrant and the calculation of both types of terms in order to advise the court as to its options in connection with revocation.

A. Jurisdiction

Section 3653 provides that, at any time within the 5-year maximum probation period permitted by section 3651, the court may order the arrest of a probationer for alleged violations of probation occurring within the probation period. So long as it is issued within the 5-year jurisdiction period, and relates to the violation that occurred doing the probation period, the warrant may issue even after the termination of the probation period of the individual probationer. *See e.g., Gammarano v. United States,* 732 F.2d 273, 276-78 (2d Cir. 1984), and cases cited therein. The corollary to this principle, of course, is that, if the warrant is not issued within the jurisdiction period, the court loses jurisdiction over the probationer and may not revoke probation.

Case law, however, has established that the issuance of an arrest warrant within the 5-year jurisdiction probation period serves to preserve the court's jurisdiction to revoke probation, even if the revocation eventually takes place after the expiration of the jurisdiction period. For example, if the probationer is imprisoned for another offense or voluntarily absents himself from the jurisdiction and these circumstances make the execution of the warrant difficult or impossible, the execution of the warrant may be delayed and the court may defer revocation proceedings until the defendant is released from imprisonment or is located. *See e.g., Wickham v. United States,* 618 F.2d 1307, 1309-10 (9th Cir. 1979), and *Nicholas v. United States,* 527 F.2d 1160, 1161-62 (9th Cir. 1976), respectively.

This principle, however, is not without limitations. The issuance of a warrant does not preserve the court's jurisdiction indefinitely. As the court indicated in *United States v. Gernie,* 228 F. Supp. 329 (S.D. N.Y. 1964), "the warrant extends the jurisdiction of the court beyond the otherwise applicable time limit, but it does so for the sole purpose of affording the authorities an opportunity to apprehend the probationer." In *Gernie* the arrest warrant was not executed for 11 years even though the probationer was not incarcerated and his whereabouts were known or could have been known to the probation officer. The delay was deemed unreasonable, and it was held that the district court lacked jurisdiction to revoke.

Similarly, in *United States v. Hill,* 719 F.2d 1402 (9th Cir. 1983), the court of appeals held that a 4-year delay in the issuance and a further 2½-year delay in the execution of an arrest warrant was unreasonable in that the address of the probationer was known to the probation officer but no effort was made to serve the warrant. The revocation proceeding was commenced only after the probationer voluntarily surrendered himself after learning of the existence of the arrest warrant.

Nonetheless, it is likely that in most cases where due diligence is taken to locate and execute an arrest warrant, the court's jurisdiction should be preserved.

Finally, it should be noted that the issuance of an arrest warrant within the period is not the only means by which the court's jurisdiction period may be extended. A number of cases have indicated that where the probationer receives timely notice that the court intends to initiate revocation proceedings, the court will retain jurisdiction to conduct the revocation after the jurisdiction period is ended. In *United States v. Strada,* 503 F.2d 1081 (8th Cir. 1974), the probationer consented to appear before the district court within the 5-year jurisdiction period. The court of appeals held that, "the issuance of an arrest warrant within the five year period is not the *exclusive* means by which tolling of the period of revocation purposes can occur," (503 F.2d at 1083) and that Strada, by consenting to appear

before the court, effectively extended the jurisdiction period. A similar conclusion was reached in *United States v. Fontana,* 510 F. Supp. 158 (W.D. PA. 1981), *affirmed,* 673 F.2d 1303 (3d Cir. 1983), where the probationer was brought before the court, not pursuant to an arrest warrant, but under a writ of *habeas corpus ad prosequendum.*

In *United States v. Bozzano,* 712 F.2d 862 (3d Cir. 1983), the court of appeals held that section 3653 permitted the court to hold a revocation hearing after the end of the jurisdiction period, provided revocation proceedings were commenced by arrest warrant *or otherwise* within the 5-year period. This rationale would support the conclusion that the issuance and service of a summons within the jurisdiction period would constitute sufficient notice and would enable the court to retain jurisdiction to revoke probation after the expiration of the 5-year jurisdiction period.

B. Tolling of Probation

The question of preserving the court's jurisdiction to revoke must be contrasted with the tolling of the probation period. The first issue concerns the court's statutory authority to revoke probation; the second issue concerns the calculation of the amount of time in the maximum 5-year probation period which remains available to court for the reimposition of probation or the extension of probation.

The December 1979 *Federal Probation* "Looking at the Law" column contained an analysis of this issue and concluded that the probation period is tolled from the act which initiates the revocation proceeding (the issuance of the probation violation warrant) until the revocation process is completed, including any appeal. Although language in a number of appellate decisions supports that determination, a close examination of the decisions leads to the conclusion that the mere issuance of an arrest warrant may not be sufficient to toll the probation period.

There is, in fact, a line of cases in which the probation period was held to be tolled, but either there was no warrant, or the court did not deem the issuance of the warrant to be determinative of whether or not the period was tolled.

In *United States v. Gerson,* 192 F. Supp. 864 (E.D. Tenn. 1961), *affirmed* 302 F.2d 431 (6th Cir. 1962), a probationer challenged his sentence after revocation of probation on the grounds that it was imposed after the termination of his original 3-year term of probation and for violations not committed during his probation period. Shortly after the probation period began, the probationer was placed in state custody for an offense which occurred prior to Federal probation. The court held that the 3-year term had been tolled during the period of incarceration. The court cited the following rationale for tolling the probation period: "If a probationer, voluntarily or because of his wrongdoing, is not available to be under the control of the court and the supervision of the probation officer, the probation period is not running." 192 F. Supp. at 865.

Citing this rationale, the court in *United States v. Green,* 429 F. Supp. 1036 (W.D. Tex. 1977), found that the probation period was tolled during the time the probationer was in violation of the conditions of her probation by failing to report to her probation officer. The court added that, "It would be unreasonable to conclude that a probationer could violate conditions of probation and keep the clock running at the same time, thereby annulling both the principle and purpose of probation." 429 F. Supp. at 1038. *See also United States v. Gelb,* 175 F. Supp. 267 (S.D. N.Y.), *affirmed,* 269 F. 2d 675 (2d Cir.), *cert. denied,* 361 U.S. 822 (1959). Thus, a warrant is not required to toll the running of the probation period in some circumstances.

That a warrant may not be the determinative factor in the tolling of the probation period is also disclosed by a review of those cases in which a warrant was issued and in which the probationary period was tolled. In each case, besides the issuance of an arrest warrant, a factor was present that generally comported with the general principle stated by the district court in the *Gerson* case quoted above: the defendant, voluntarily or by his own wrongful act, made himself unavailable for probation supervision. In *United States v. Martin,* 786 F.2d 974 (10th Cir. 1986), and *Nicholas v. United States,* 527 F.2d 1160 (9th Cir. 1976), probation violator warrants were issued after probationers had absconded. In *United States v. Rodriguez,* 682 F.2d 827 (9th Cir. 1982); *United States v. Lancer,* 508 F.2d 711, 733-34 (3d Cir.), *cert. denied,* 421 U.S. 989 (1975); and *United States v. Bartholdi,* 453 F.2d 1225 (9th Cir. 1972), warrants were issued when probationers were incarcerated on other charges.

It appears, therefore, that the mere issuance of a probation violator's warrant may not toll the running of the probation period. Under circumstances in which the probationer is not under probation supervision because of his own wrongful acts, the issuance of an arrest warrant would very likely serve to precisely establish the time when toll begins. *See United States v. Martin,* 786 F.2d 974 (10th Cir. 1986)[1] In circumstances in which the probationer continues under probation supervision after the issuance of an arrest warrant, it is unclear whether the probation period would be tolled pending disposition of the revocation proceedings. It is suggested that, when in doubt and when tolling is appropriate and desirable, the issuance of the warrant be accompanied by a court order terminating proba-

tion supervision pending the disposition of the revocation proceedings.[2]

Although I have found no cases in which such an order, accompanied by a probation violator's warrant, was held to result in the tolling of the probationary period, I have found no decisions to the contrary[3] and the procedure certainly is consistent with the theory articulated by the courts in support of the tolling of the probationary period: the probation period should not run when the probationer is not being supervised because of his own wrongful act.

[1] *But see United States v. Workman*, 617 F.2d 48 (4th Cir. 1980), in which even revocation did not toll the probation period. There, the court revoked Workman's probation based upon evidence seized by local authorities. After it was determined that these seizures were unconstitutional, the court again held a revocation hearing and extended Workman's probation. This second hearing, however, was held more than 5 years after the original imposition of Workman's 5-year probation. The court of appeals held that even though Workman was not under supervision after the original revocation, this was not caused by his own legally wrongful act but because of an unconstitutionally obtained revocation. Consequently, probation was not tolled and the second revocation was overturned. There may be limitations, therefore, on the tolling of probation based simply on probationer's wrongful acts. But *Workman* involved constitutional limitations. Under circumstances in which there is a constitutionally valid revocation proceeding pending, it seems likely that probation would be tolled during periods of time when the probationer was not under supervision because of his own wrongful acts.

[2] As indicated above, a summons may serve to preserve the court's jurisdiction to revoke. A summons accompanied by an order terminating probation supervision may likewise result in the tolling of the probation period.

[3] In *United States v. Paden*, 558 F. Supp. 636 (D.D.C. 1983), the court held that probation was not tolled after the issuance of an arrest warrant even though probationer was not reporting to his probation officer. However, in that case, the violation for which the probation was ultimately revoked occurred outside the 5-year jurisdiction period. The warrant had been issued for a different violation, and the court held that there had been an unreasonable delay between its issuance and execution.