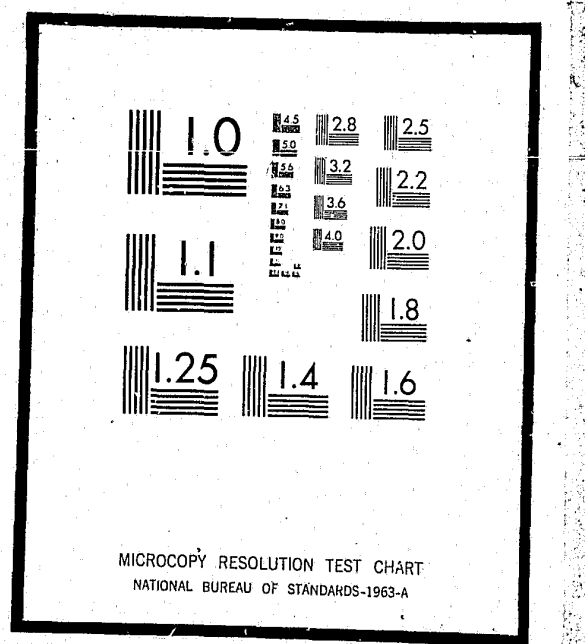


NCJRS

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

Date filmed

7/27/76

31347 Probation Revocation: The Law and The Decision An Aspect of Supervision Effectiveness Jerome K. Balcom

I. INTRODUCTORY STATEMENT

The Supervisory Probation Officer,¹ as a practitioner in the Criminal Justice System, has ample opportunity and responsibility to exercise discretion in the performance of his duties. Regardless of the statutory requirements, probation is not always automatically revoked upon a violation of the law or probation rules by an offender. Similar to the invocation of the criminal process (arrest) role of a police patrolman, the probation officer in effect decides whether or not to reinvoke criminal proceedings.

The primary factors warranting and often necessitating such discretion are the probation clientele, the institutional goals and demands, plus the probation officer's working environment. Politics and the community are also related and influential.

A probation officer's discretionary nature, as to performance of duty, is functionally related to equalized allocation of justice, negative law-making, systems maintenance, and the American Judiciary System.

II. A CRIMINAL JUSTICE DILEMMA

A central recommendation of the President's Commission on Law Enforcement and the Administration of Justice emphasizes the value of community-based treatment of offenders. The experts agree that, "The task of corrections therefore includes building or rebuilding solid ties between offender and community, integrating or reintegrating the offender into community life -- restoring family ties, obtaining employment and education, securing in the larger sense a place for the offender in the routine functioning of society."²

Only this consensus is recent however. The concept of community corrections in America has existed since the innovation of probation in 1841 and parole in 1876. The widespread use of probation and other community-based programs may be viewed as a dilemma. The public quite obviously does not see the role of corrections in the same vein as do the criminal justice experts.

The public, even though perhaps concerned about correcting offenders, demands and fears for its protection from criminals. Such an attitude is not unfounded. One must simply look up the recidivism rates or read most any daily newspaper. Especially people residing in urban areas are not unjustified in their apprehensions.

How is this dilemma of criminal correction and public protection resolved? Who is the client; the probationer or the community? It must be remembered that the probationer is a peace officer, as responsible to the maintenance of the law as is a police officer.³

The Federal Probation Officers' Association has endorsed the following two-fold function of the Probation and Parole Officer: "The primary objective is the protection of society through the rehabilitation of the offender."⁴ It can readily be seen that the probation officer is charged with the responsibility of protecting society and helping the offender. This is perhaps the most common rationale, yet it is not the only professional view. In a fairly recent study for the U.S. Department of Health, Education, and Welfare, the preceding ideal is regarded as "tired rhetoric." The probation officer is to serve as a social worker who is committed to an ideal of service to the offender. His function is to focus on the needs and problems of the probationer in an effort to help

the offender better understand and deal with himself and his troubles. The rationale here is that, "Service for the offender in the present is regarded as service to the community in the long run in that a socially and psychologically adjusted individual better assures a productive and law abiding citizen."⁵

Despite these professional ideals and standards, the probation officer in reality has a difficult task in providing service or protection for the individual offender and/or the community. This is so because of heavy caseloads in the probation field. The National Council on Crime and Delinquency has recommended that the caseload size be controlled at 50,⁶ yet in many jurisdictions the caseloads double and triple that figure. In 1966 the average size of probation caseloads was 103.8.⁷ As a consequence, most probation officers have time only for crisis intervention. Service most often depends upon the implied presence of the probation officer rather than actual supervision.⁸ This is very much akin the situation management role engaged in by policemen. The probationer, like John Q. Citizen, is aware of the implied presence. An officer, be he police or probation, can appear at any time, and this, at least theoretically, provides restraints on deviant behavior. For the probationer, this implied presence is helpful in either direction as it likewise offers supportive authority.⁹

Simply taking into consideration the probation officer's professional ideals and workload, one can determine that the officer functions under a significant amount of pressure in an often paradoxical situation. Ideals sometimes cannot be strictly maintained in reality settings. Bringing probationers and society into mutual accommodation under generally strenuous circumstances is not an easy matter. This task cannot be accomplished to the extent of effectively serving both the client and the community without responsible discretion of the probation officer in his performance of duty.

III. THE REVOCATION OF PROBATION

There are two sets of criteria upon which revocation of probation is initiated. If a probationer commits a new offense,¹⁰ revocation is warranted and is usually automatic.¹¹

Revocation can also be recommended by a probation officer when a probationer is out of control and violates his conditions. These conditions are rules set by the court in addition to the legal statutes. The professional ideal of differential treatment requires that these rules be tailored to the needs of the case and of the particular offender.¹² Often the procedure followed is judicial acceptance of the pre-sentence investigating probation officer's recommendation¹³ concerning the conditions which seem indicated in a specific case. Certain general guidelines are routinely imposed¹⁴ and are augmented by the specific rules.

Even though subjected to certain conditions in addition to the law, probationers are not without legal safeguards. In the majority of states, a hearing is mandatory or recommended before probation is revoked.¹⁵ Such is indeed the law in New York State.¹⁶ The U.S. Supreme Court decision in the case of Mempa vs. Rhay provides that the probationer must have counsel at the revocation hearing.¹⁷

In some jurisdictions the offender loses no civil rights if he is sentenced to probation. In others, if civil rights are lost, restoration is granted upon the successful completion of the term of probation.¹⁸

Actually, the question of the conditions that may properly be attached to supervision has been accorded relatively little attention by the courts. The requirements that a probationer should remain in the jurisdiction, retain employment, support his dependents, avoid associations with criminals, report to his officer, and obey the law all seem reasonable enough. Yet restrictions such as

a prohibition on marriage and installment purchases without the consent of the probation officer, total abstinence or of avoidance of places where alcoholic beverages are sold, of attendance at church and other unnecessary and excessive intrusions¹⁹ upon the probationer's private life may be unreasonable and undesirable. Such rules may be questionable as effective or beneficial correctional treatment. A final consideration of the validity of the probation rule is whether they are just in accordance with our society's concept of fair play.

The law does not stipulate that discretion be employed by probation officers regarding application of the law or probation rules. Probation officers have informed this student that the rules are to be used as a tool to help control and rehabilitate the offender.²⁰ The conditions of probation are not meant to be utilized as a threat or punishment. Rather, they serve a purpose similar to that of a policeman's arrest power. They are available for societal maintenance and situation management if the case so requires.

The implications of such an application thus presents us with a probation rules - law enforcement model like that designed and explained by Joseph Goldstein.²¹ As in police work, within an area of potential full enforcement (of the probation conditions), there is an area of no enforcement. To the extent that full enforcement is feasible, decisions are made not to enforce certain violations, leaving the subsequent rather small area of actual enforcement. Therefore, an outer limit of probation rules enforcement exists, and this depends largely upon the probation officer's visibility of his charges. The implied presence of the probation officer cannot insure law or rules enforcement. Consequently, behavior perhaps making revocation desirable often simply goes unseen by the probation officer.

IV. THE PROBATION OFFICER'S DISCRETION

Now that the rules and regulations governing the revocation of probation have been discussed, we can proceed to the more central issues of when and under what circumstances should probation be revoked. If we take but a few moments to consider the multitude of laws, plus often several special rules per client, and multiply this times a probation officer's caseload number, we can see the impossibility of supervision from an enforcement position. I again draw a parallel with the police; full enforcement of the law is unrealistic and in fact impossible. So too with the probation officer, who, in addition to seeing that his client obeys the laws and conditions of probation, must counsel on personal planning and assist with employment. The probation officer must work with the offender's family and usually in co-operation with other community services. Therefore, surveillance is not the primary function. Casework and counseling are the most important aspects of probation work.²²

Probation officers, as mentioned earlier, work on a crisis intervention²³ basis because of heavy caseloads. This fact also mandates the employment of discretion in most situations and cases.

What in effect influences this discretion and decision-making? This author suggests that it is more complex and consequential than it might seem. Mistakes in probation, as do errors in other criminal justice agencies, encourage criticism and even verbal abuse from the public and other authorities.

Insofar as we believe humans are unique individuals and deserve differential treatment, the foremost critical decision influences the entire probation relationship. Do we provide service to or control the client? Or do we attempt to provide a happy medium if such is feasible? This decision originally hinges on the probation officer's resolution of the problem of self-determinism in his work with

offenders. Extreme types of probation officers have been identified: the punitive officer and the "sympathetic slob."²⁴ The punitive officer is control oriented and has been referred to as a policeman. He protects society against the criminal and constructs an authoritarian relationship which demands overt respect from the probationer.²⁵ It can be seen that at this extreme the officer restricts interaction between himself and the offender to "areas specifically relevant to his supervisory objectives in controlling the offender's behavior."²⁶

At the other extreme, the "sympathetic slob" officer vehemently denounces the use of authority. This officer "passionately pleads the cause of client self-determinism and often, consciously or unconsciously, becomes a co-conspirator with the client against the sanctions of society. This officer fails to accept reality, which results in the blind leading the blind and both falling into the ditch."²⁷

Amid these two extremes is the elusive idea. Professionally defined as the Protective Agent,²⁸ this is an officer who is concerned with the quality of the relationship he establishes with the offender. At times he assumes the role of the policeman. At other times he takes the role of a friend, brother, or father and extends sympathy and help to a man in trouble.²⁹ The important aspect here is that the Protective Agent does not cling to one or another pole of activity. He is flexible and capable of joining sides with the client if the offender is in the right. He can also respond with discipline and disapproval if the probationer's behavior requires such. To sum up in terms of service to or control of the client, the discussed roles are ideal types (models). Each is as difficult to define as is what constitutes the average or typical probation officer. Yet these typologies are factors to be aware of when we evaluate any particular officer's behavior in a given case. Likewise, the importance of an officer's awareness of his own role definition should not be overlooked or understated.

Although generally not visible or of great concern to the public, a probation officer has institutional forces influencing his decisions. The working relationship that a probation officer maintains with other actors in the criminal justice system is vital to the successful completion of his assignment. George F. Cole has stressed the important notion that criminal justice is determined through bargains and exchanges among the practitioners in the criminal justice system.³⁰ The criminal justice professional bureaucracy is designed such that any particular practitioner, despite his ideals and ethics, cannot accomplish his goals without co-operation with other participants in the process. The police and probation agencies often depend upon each other in the gathering of information about an offender.³¹ At the prosecution stage, probation officers are very frequently part of the group decision in the plea bargaining transaction. Furthermore, as agents of the court, probation officers work closely with judges by recommending sentences of and conditions for probation. A breakdown in these relationships obviously hampers probation service. Beyond the courtroom, probation services work with both corrections and parole authorities by supplying reports and recommendations.³² Related to, but not part of the formal criminal justice structure, are the community social services. Co-operation is mandatory here as specialized service may be required in various cases (i.e. mental illness, welfare, juvenile, physically handicapped, among others). In short, a probation officer has to work with a professional caseload as well as a client caseload in order to achieve successful probation.

A related consideration to the above is the probation officer's role in systems maintenance. A probation agency needs clients. Probation officers recommend probation. Sentencing is the judges' discretion and responsibility. The probation officer who supervises clients must not make the system drag or fail because of excessive revocations. This tends to make the system look bad and might cause judges to demonstrate a decline in probation sentencing. To maintain probation itself as well as its role in the larger criminal justice system, cases must be worked through to a successful conclusion. Probation failures

invite criticism and non-legitimation of the system. Needless to say, the entire criminal justice process then suffers. Therefore, probation officers desire to preserve their jobs and status in addition to providing service to their clients and the community.

The equalized allocation of justice is and/or should be the purpose of every practitioner in the system. Probation officers must be aware of this ideal when deciding to initiate revocation proceedings. The professional supervision ideal again is differential treatment. In other words one offender's probation could be revoked for a given violation while another's is not. Clearly, it is here we have the most obvious situation in which discretion is employed. The other variables in the case, plus progress made to date serve as the major determinants of this decision. This notion of equal allocation of justice must be resolved by each officer as it must also be by the judges. Justice has no clear-cut defined guidelines that are applicable in every single case situation. In effect, it often comes down to the personal and professional ethics and conscience of the man making the decision. He pledges his allegiance to the system but at the same time must also be true unto himself.

In conclusion, the discretion of the probation officer turns on several variables. All are either consciously or unconsciously considered in the decision-making process. The sad fact may be that the institutional consideration carry greater weight in most circumstances than do the needs of the offender and the goal of his rehabilitation.

V. REVOCATION DECISION-MAKING

Probation, as do other agencies in the Criminal Justice System, employs decision-making guidelines. These ideal types are based on the popular public administration theories and models.³³ The bureaucratic administrative needs may be solved in addition to the making of solid personal decisions while in an organizational context.

For the most part, literature discussing decision-making in probation was relevant to the pre-sentence investigation and the decision as to whether to recommend probation for a particular offender. However, this writer's concern is with revocation decisions and little has apparently been written on this specific function.

In an article on probation revocation, a chief probation officer speaks about the disparities in revocation decisions.³⁴ Critical variables such as whether or not the violation was a minor infraction of the rules, a felony, or a misdemeanor are considered. The reality of the conditions of the probation as well as whether the violation was deliberate must be taken into account. The point is that revocation should serve a constructive purpose. To quote the article: "A plan should be formulated that is in the best interests of the probationer, his family, and the community. Little is gained where the court disposition is for the sake of punishment only."³⁵ To set forth criteria for determining when and under which circumstances to revoke probation, and to assist the officer in making recommendations to the court when a probationer has violated his trust, summary of the guidelines for revocation is presented.³⁶

Many items in a 1965 study³⁷ survey questionnaire are relevant to revocation decisions. This material was beneficial in that it concentrated on the desirable location of practice decisions in a probation agency. The advocates of these decision locations are executives, branch chiefs, supervisors, and training leaders in the New York City Office of Probation. Briefly, the study findings indicate

that in 70% of the practice situations and work relationships posed by the questionnaire items, a majority of respondents advocated that the probation officer be free to make case decisions in accord with his own judgment of the case situation. In 25% of the case situations the respondents advocated that the probation officer be bound primarily by the direction of his superiors or other officials, rather than his own case judgment. In only 5% of the case situations was there extreme disagreement among agency respondents on the appropriate location of case decisions.³⁸

The data from the above study along with other literature on probation decisions suggest that the probation officer enjoys a high degree of autonomy as a practitioner. The author's conclusion here is that, despite numerable influences and pressures on his working behavior, the individual probation officer's discretion is largely legitimated by the courts and the probation organizations themselves.

VI. CONCLUDING COMMENTS

The probation officer's discretionary function has a significant impact not only on the probationer, but the entire American Judiciary System as well. If and when a decision to revoke probation is made, the offender returns to the court. The police may be involved for custodial purposes or perhaps as initiators of the criminal process if new crimes were committed. The district attorney's office again becomes involved either to prosecute a new case or participate in the probation hearing. Eventually, the court, and the probation agency may pass the offender over to the responsibility of the corrections officials. Ultimately, the offender may have contact with the parole authorities.

Consider the implications of this potential impact. It need not be documented that penal facilities in America are full to overcrowded. Were not probation services functioning and achieving success, the housing of offenders would be a sheer impossibility. More than half of the adult offenders in correctional caseloads are on probation. In 1965, there were 684,088 (53%) persons on adult probation as compared with combined adult institutional and parole caseloads of 598,298 (47%).³⁹ Approximately 75% of all convictions result in probation.⁴⁰ It costs ten to thirteen times more to maintain a person in an institution than it does to supervise him in the community.⁴¹ The cost of probation here in New York State averages about \$600.00 per offender per year whereas incarceration in a penal institution costs in the vicinity of \$9,000.00. These figures alone demonstrate the vitality of sound decision-making in probation practice. Revocation may be the only choice an officer has in certain cases, but actually, as a practice, it defeats the purposes of probation. In short, a large amount of probation revocations would more effectively knot up the already congested courts and correctional facilities.

A second major observation that might be drawn from this paper is that probation officers, like policemen who overlook or decide not to arrest for a certain offense, engage in negative law-making. Each time an officer decides not to revoke probation even though the law or conditions have been violated, negative law-making occurs. This writer is not contending that this is improper behavior; only that it exists. In effect, the officer takes the law into his own hands, deciding what applies and what does not to a particular offender. This informal power is related to the American Judiciary System because, when it occurs, the probation officer is assuming the role of the policeman, the prosecutor, and the judge in addition to his own specified function.

Furthermore, the probation officer's revocation discretion reaches outside the formal Criminal Justice System. In addition to the exchange relationships and institutional needs within the system, politics are involved. It is here where funding gets appropriated for correctional services. Probation again costs about one-tenth that of incarceration. If probation works, costs are less, and the politicians have to answer less often to the public regarding taxation. In sum, revocations result in greater costs. Therefore, the politicians have a stake in probation other than their legislative responsibilities.

The community also is often subject to the impact of the probation officer's decision. It is true that there are situations when revocation benefits the community. Generally speaking, however, the total social situation can better be handled in the community. Working with the offender and his family is more easily accomplished here. Vernon Fox points out that it is more effective to work with social relationships than to sever them when the objective is to assist the offender to adjust to his social environment.⁴²

The ultimate conclusion drawn from researching this paper is that without the informal discretion availability and utilization on the part of the supervisory officer, probation could not effectively function. This student has little doubt in his mind that decisions not to revoke probation are responsible for its 60% plus success rate.⁴³

Even though probation has been said to be the most successful phase of the correctional process,⁴⁴ this author believes that in the final analysis, objective criteria for making revocation decisions are difficult to pinpoint and evaluate. Perhaps it all comes down to the rather simple matter of the probation officer deciding whether or not he thinks he can work with the particular offender. Notwithstanding all of the internal and external factors discussed, the human relationship may be the variable most crucial to the accomplishment of probation goals.

In view of all the above findings we must now question ourselves as to how we can best utilize and benefit from that information which has been gathered and digested. Are there innovations or implementations that may be feasible and productive for all parties involved with probation services?

This student believes that one of the answers lies with the recruiting of new personnel. Possession of a college degree or the capacity to pass a civil service examination do not necessarily guarantee that the prospective probation officer is a qualified, or capable of learning to become, a skilled decision-maker. It is respectfully suggested that methods of screening, testing, or other types of evaluation might be developed which could filter out candidates who appear to lack basic decision-making capabilities.

Beyond recruiting, perhaps the most realistic method of developing desirable probation officer ideals and attitudes would be via an initial and on-going training program. The existing in-service education, if necessary, could be restructured to include the role and responsibility of sound decision-making. The function and far reaching implications of discretion could be thoroughly stressed by the instructors and well understood by the trainees. The topic of revocation might also be accorded more regard than the available literature indicates it has been given in the past.

A further beneficial implementation might be a review of both exceptionally good and bad decision if criteria for determining such can be established. The whys and wherefores of significant decisions could be provided for all probation officers through printed materials from the training officer or relayed through discussions during staff meetings.

Finally, provisions for requesting up-to-date research would certainly be in order. Merely this brief study has demonstrated to this student that this topic has room for academic investigation which would likely yield additional rewards.

The above suggestions certainly do not constitute a program which would

eliminate mistakes of judgment and erroneous decisions. However, with an increased focus on these topics during training, along with practice, review, and research, it appears hopeful that probation officers can be upgraded and offer even better services to their client, community, and organization than currently exists.

APPENDIX I

UNITED STATES COURTS CONDITIONS OF PROBATION⁴⁵

It is the order of the Court that you shall comply with the following conditions of probation:

(1) You shall refrain from violation of any law (federal, state and local). You shall get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer.

(2) You shall associate only with law-abiding persons and maintain reasonable hours.

(3) You shall work regularly at a lawful occupation and support your legal dependants, if any, to the best of your ability. When out of work you shall notify your probation officer at once. You shall consult him prior to job changes.

(4) You shall not leave the judicial district without permission of the probation officer.

(5) You shall notify your probation officer immediately of any change in your place of residence.

(6) You shall follow the probation officer's instructions and advice.

(7) You shall report to the probation officer as directed.

The special conditions ordered by the Court are as follows:

APPENDIX II

COURTS OF NEW YORK CITY CONDITIONS OF PROBATION⁴⁶

A person on probation may be required to observe any one or more of the following terms and conditions:

- a. obey the lawful commands of his parents or other person legally responsible for his care;
- b. keep all appointments with his probation officer;
- c. attend school regularly or be suitably employed;
- d. be home at night by the hour set by his parents or other person legally

- responsible for his care;
- e. notify the probation officer immediately of any change in residence, school or employment;
- f. remain within the county of residence and obtain permission from the probation service of the Court for any absence from the county in excess of two weeks;
- g. answer all reasonable inquiries on the part of the probation officer;
- h. avoid known criminals and persons of known disreputable or harmful character;
- i. cooperate with the auxiliary services of the Court, including the probation service, in seeking and accepting medical/and/or psychiatric diagnosis and treatment, including family casework or child guidance;
- j. submit records and reports of earnings and expenses;
- k. contribute to his own support when financially able to do so;
- l. spend such part of the probation period as the Court may direct in a Division of Youth facility, or other facility suitable and available to the Court and authorized by law for such placement;
- m. attend a non-residential program of youth rehabilitation designated or approved by the Court or by the probation service;
- n. take clinic or similar treatment for narcotic addiction at a hospital or other facility where such treatment is available if there is a record, report or other evidence satisfactory to the Court that he is addicted to the use of drugs;
- o. refrain from driving a motor vehicle;
- p. abstain from the use of intoxicating liquors.

Other conditions:

VIOLATIONS OF ANY OF THESE CONDITIONS MAY RESULT IN YOUR RETURN TO THE COURT FOR FURTHER ACTION.

APPENDIX III

SUMMARY OF GUIDELINES FOR REVOCATION⁴⁷

1. Conditions of probation should be realistic and purposive and geared to help the probationer develop into a law-abiding, self-respecting person. They must be flexible in their application. Each case should be judged on its own merits - on the basis of the problems, needs, and capacity of the individual offender.

2. The probation officer should make certain that the probationer fully understands the limitations placed on him in the general and special conditions imposed by the court. Merely signing the "Conditions of Probation" form does not mean he has correctly interpreted each condition.

3. Violations of the conditions of probation do not necessarily reflect a poor probation adjustment. The conditions imposed may have been unrealistic. Perhaps too much was expected in requiring some probationers to live up to certain conditions. The customs, feelings, attitudes, habit patterns, and moral and social values of the cultural group of which a probationer is a part should be considered in assessing his nonconformity of the conditions. Probationers differ in their ability to comply or conform. It is entirely possible we are imposing a standard of conduct which is realistic for us but not for the probationer.

4. In offenses where a fine and/or restitution are being considered by the Court, the probation officer should explain in detail the defendant's financial obligations and resources in order that the fine or restitution imposed will be commensurate with the defendant's ability to pay. In too many instances an automatic fine or restitution is imposed without knowledge of the financial burden it places on the probationer and his family.

5. While I do not advocate revocation of probation merely for failure to keep appointments, to submit monthly reports, to observe a curfew, to remain within the district, I do believe that a generally unfavorable attitude and deliberate noncompliance with the conditions of probation and the instructions of the probation officer are grounds for revocation.

6. Although I believe that all convictions for new offenses should be brought to the Court's attention, it does not follow that probation should be automatically revoked. No violation should result in automatic revocation. It may be more beneficial to society, and also to the probationer and his family, to have him continue on probation than to sentence him to imprisonment.

7. Where a probationer is arrested on a new charge and is held in jail, I do not believe he should be regarded as a violator until he has been convicted. There is always the possibility of an acquittal. And we must keep in mind that in some local jurisdictions considerable time elapses between arrest and trial.

8. Lest the probation officer be guilty of usurping the power of the court, all unfilled conditions of probation - for example, not paying a fine or restitution in full by the terminal date - should be brought to the court's attention in advance of the termination date. Recommendations for a course of action should be included in the report.

9. To assist the Court at the revocation hearing, the probation officer should prepare a formal report containing details of the alleged violation, factors underlying the violation, the probationer's attitude toward his violation, a summary of his conduct during supervision, and his general attitude and outlook.

10. The probationer should be present at the revocation hearing. It would seem that the United States attorney and also counsel for the probationer should be present. But it must be remembered that the revocation hearing is not a new trial.

11. Where it is necessary to revoke probation, imprisonment should serve a constructive purpose and not be used merely for punishment's sake. In certain cases, particularly where an indifferent probationer deliberately fails to comply with the conditions of probation, it may be necessary to revoke probation so that the public - and other probationers too - will have a fuller appreciation for probation, and realize that the primary purpose of probation is the protection of the public, that the court means what it says, and that the conditions of probation are not to be flouted.

APPENDIX IV

STUDY QUESTIONNAIRE ITEMS AND FINDINGS⁴⁸

A. Advocacy of Autonomy for the Practitioner - 14 items

- Item #1 - How often the probation officer should have to take into account the intense feelings of the District Attorney when preparing a pre-sentence or revocation recommendation (Great Consensus - 74 of 87 respondents said "Never" or "Occasionally").
- #2 - How often the probation officer should have to seriously weigh the probable reaction of his supervisor before making a case decision, although he himself is convinced of what the case requires (Moderate Consensus - 63 of 87 respondents said "Never" or "Occasionally").
- #3 - How often the agency should encourage revocation in "borderline adjustment" cases when there is a good chance of publicity in the event of another offense (Great Consensus - 70 of 87 respondents said "Never" or "Occasionally").
- #5 - How often the frequency of case contacts should be determined by agency policy rather than the worker's conception of case needs (Moderate Consensus - 47 of 87 respondents said "Never" or "Occasionally").
- #6 - How often the worker's case plans should consider what the newspapers could make of the case if it should blow up (Great Consensus - 74 of 87 respondents said "Never" or "Occasionally").
- #8 - How often it is for the probation worker to find it necessary to get the opinion of his supervisor before making a touchy case decision so that he will be protected if anything happens (Moderate Consensus - 45 of 87 respondents said "Never" or "Occasionally").
- #10 - How often the probation worker should have to take into account the informal wishes of agency administration as he works out a case (Great Consensus - 70 of 87 respondents said "Never" or "Occasionally").
- #11 - How often the agency should expect that workers' decisions about a case be affected by the anticipated reaction of other probationers. (Great Consensus - 79 of 87 respondents said "Never" or "Occasionally").
- #12 - How often the probation agency should expect its workers to accommodate somewhat to the views of the Housing Authority on how a case should be handled when the Authority is involved (Great Consensus - 77 of 87 respondents said "Never" or "Occasionally").
- #14 - How often the strong demands of the police should have to be taken into account by the worker when he is considering the possible return of a probation case to court (Moderate Consensus - 59 of 87 respondents said "Never" or "Occasionally").
- #16 - How often the worker should be free to pursue that course of action which in his judgment is most likely to meet the probationer's needs even though the action may meet some opposition from community groups (Moderate Consensus - 54 of 87 respondents said "Always" or "Very Frequently").
- #17 - How often the worker should have to consider the effect of bad publicity on the governing body which appropriates money to his agency when he is making day-to-day decisions (Great Consensus - 67 of 87 respondents said "Never" or "Occasionally").

- #18 - How often the worker should have somewhat less freedom than usual to conduct the case as he thinks is appropriate when school authorities become involved in the case (Great Consensus - 83 of 87 respondents said "Never" or "Occasionally").
- #19 - How often the probation worker should be obliged by his agency to consider the reaction of institutional authorities while deciding whether or not to instigate commitment proceedings (Great Consensus - 72 of 87 respondents said "Never" or "Occasionally").

B. Advocacy to Restrict the Practitioner - 5 items

- Item #4 - How often the worker should be allowed the freedom to advise his clients to reject or stall the claims of creditors when the worker's judgment indicates that it is advisable to do so (Great Consensus - 83 of 87 respondents said "Never" or "Occasionally").
- #7 - How often the worker should be allowed to advise his client that, as far as the worker is concerned, the client is free to lie about his criminal background to a prospective employer if he chooses to do so - when the worker thinks the offender would have a better chance of getting and keeping a job (Great Consensus - 81 of 87 respondents said "Never" or "Occasionally").
- #9 - How often the worker's decisions with clients should be determined by the agency's rules of probation when these rules are pertinent to the case (Great Consensus - 81 of 87 respondents said "Always" or "Very Frequently").
- #15 - How often the probation worker should expect quite a bit of "heat" from his superiors if a sex or drug case blows up and the worker hasn't seen the client in two months (Moderate Consensus - 48 of 87 respondents said "Always" or "Very Frequently").
- #20 - How often the probation staff should find it necessary to carry out all the special rules laid down by the judge on a case, regardless of whether the staff thinks the rules are right or wrong (Moderate Consensus - 64 of 87 respondents said "Always" or "Very Frequently").

¹⁶See the State of New York, op. cit., 410.70/lab, p. 121.

¹⁷Mempa vs. Rhay, 389 U. S. 128 (1967).

¹⁸The American Correctional Association, Manual of Correctional Standards (Washington: The American Correctional Association, 1966), pp. 276-277.

¹⁹Such as the condition that the defendant donate a pint of blood to the Red Cross as in Springer vs. United States, 148 F. 2d 411 (9th Cir. 1845). See Judah Best and Paul I. Birzon, "Conditions of Probation: An Analysis" in Carter and Wilkens, op. cit., p. 430.

²⁰This student discovered no empirical evidence to support this contention. It is therefore suggested that such is reasonable informal practice.

²¹Joseph Goldstein, "Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice" in George F. Cole, Criminal Justice: Law and Politics (Belmont, California: Duxbury Press, 1972), pp. 59-80.

²²This is a probation institutional point of view. See Fox, op. cit., p. 111.

²³Supra, p. 4.

²⁴Charles C. Lee, "The Concept of Authority in the Field of Probation and Parole," American Journal of Correction, March-April 1966, pp. 26-27.

²⁵See Piven and Alcabes, op. cit., pp. 39-40.

²⁶Ibid.

²⁷See Lee, op. cit., p. 26.

²⁸See Piven and Alcabes, op. cit., p. 40.

²⁹Ibid.

³⁰See Cole, op. cit., p. vii.

³¹This is primarily the case of the pre-sentence investigation function of probation. The police request information about offenders on probation suspected of further criminal activity. There is an on-going controversy concerning whether probation files should be accessible to the police in revocation cases.

³²See Fox, op. cit., p. 110.

³³This student has applied public administration decision-making criteria to the probation decision-making suggestions for relevance. Source: Felix A. Nigro, Modern Public Administration, 2d ed., (New York: Harper and Row, 1970), pp. 169-185.

³⁴Eugene C. DiCerbo, "When Should Probation Be Revoked?" Federal Probation, June 1966, pp. 11-13.

³⁵Ibid.

³⁶Ibid., pp. 16-17. This summary is reprinted in Appendix III.

³⁷Herman Piven and Abraham Alcabes, A Structural Model for Decision-Making In A Probation Agency, New York, 1965. (Mimeographed).

³⁸Ibid., pp. 2-4. Since the majority of the questionnaire items are relevant to or indicative of revocation decisions, the author has reprinted them in Appendix IV.

³⁹See U. S. Task Force on Corrections, op. cit., p. 27. Of the number on probation, 257,755 were felons.

⁴⁰See Fox, op. cit., p. 104. Since probation is most frequently a one-time disposition and institutional caseloads are cumulative, with 63 to 68 percent repeaters in prisons, the actual count of the case load on probation at any given time would drop to about 53%.

⁴¹Ibid.

⁴²Ibid., pp 104-105.

⁴³Ibid., p. 105. Some jurisdictions claim up to a 90% success rate.

⁴⁴Ibid., p. 119.

⁴⁵United States Courts, "Conditions of Probation" in Carter and Wilkens, op. cit., p. 406.

⁴⁶Office of Probation for the Courts of New York City, Form 20-6, Conditions of Probation, Reporting Instructions, and Reporting Schedule. For comparative purposes, note that these conditions are set for juvenile probationers.

⁴⁷See DiCerbo, op. cit., pp. 16-17. This summary is a direct reprint from the article.

⁴⁸Herman Piven and Abraham Alcabes, A Structural Model For Decision-Making In a Probation Agency, New York, 1965, pp. 2-4, (mimeographed).

END