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All phases of preventive and correctional activities in delinquency and crime come within the fields of interest of FEDERAL PROBATION. The Quarterly wishes to share with its readers all constructively worthwhile points of view and welcomes the contributions of those engaged in the study of juvenile and adult offenders. Federal, state, and local organizations, institutions, and agencies—both public and private—are invited to submit any significant experience and findings related to the prevention and control of delinquency and crime.

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This Issue in Brief

Can Corrections Be Rehabilitated?—During the last 30 years much progress has been made toward dissolving the barriers of hostility that generated violence and distrust between correctional staffs and prisoners. Because of forthcoming budgetary stringencies, rapidly increasing populations, and a vast increase in the level and frequence of violence, much of that progress is in danger of reversal. Author John Conrad feels it is urgently necessary to reduce prison intake by making maximum use of community-based corrections. He proposes a new model of sanctions that will be more severe than the present community corrections without resort to incarceration.

"It Only Gets Worse When It's Better."—This article by W. Clifford of the Australian Institute of Criminology, and the following article by Professor López-Rey of Cambridge, England, present two differing perspectives on world corrections. Mr. Clifford states that in the past 10 years regimes have changed or been overthrown, ideologies have been transformed, but corrections throughout the world has not changed all that much. Some of the older and outdated systems are yet 10 years more behind the times. In fact, he adds, corrections in its old form has a remarkable facility for surviving all kinds of revolutions and looking much the same afterwards.

Crime, Criminal Justice, and Criminology: An Inventory.—This article by Professor Manuel López-Rey attempts to demonstrate that crime is not an ensemble of behavioral problems but a sociopolitical phenomenon, that criminology should overcome excessive professional aims, and that criminal justice is increasingly unable everywhere to cope with the problem of crime, even within the limits of common crime.

Adopting National Standards for Correctional Reform.—The concept of correctional accreditation, according to Dale Sechrest and Ernest Reimer, is built on the foundation of humanitarian reform of prison conditions through the application of standards of performance. A Commission on Accreditation for Corrections was formed in 1974. The Commission, using trained professionals, has accredited over 250 correctional agencies including 80 prisons, having a total involvement of over 500 correctional facilities and programs of all types.

Volunteers in Criminal Justice: How Effective?—The acceptance or rejection of the use of volunteers in justice settings has been based primarily on personal belief rather than on sound empirical evidence, assert authors Sigler and

CONTENTS

Leenhouts. While many volunteer programs have been evaluated, the results are questionable because of methodological errors. Two methodologically correct professional evaluations have indicated that volunteeers are successful in working with justice system clients.

Volunteers in Corrections: Do They Make a Meaningful Contribution?—This article by Peter C. Kratcoski examines the roles of volunteers in corrections in the past, the advantages and problems associated with using volunteers in a correctional setting, correctional agency administrators' and staff members' attitudes toward them, and the motivations and satisfactions of the volunteers. The findings of a study of the characteristics and motivations of a national sample of volunteers in probation are reported.

A Delphi Assessment of the Effects of a Declining Economy on Crime and the Criminal Justice System.—The research discussed in Professor Kevin Wright's article utilized the Delphi method of forecasting in order to obtain an initial and expedient answer to the question of what effect economic adversity will have on the incidence of crime and on the criminal justice system. Certain types of crime are expected to increase; however, an uncontrolled outbreak of crime is not predicted. Specific economic factors are identified as the primary producers of fluctuations in the incidence of crime. Some elements of the criminal justice system are expected to be burdened by economic decline.

Presumptive Parole Dates: The Federal Approach.—The procedure adopted by the United States Parole Commission to avoid unnecessary indeterminacy in making its determinations relative to prison confinement, while at the same time allowing for consideration of significant changes in circumstances, is the focus of this article by Drs. Barbara Stone-Meierhoefer and Peter Hoffman. The presumptive parole date procedure implemented by the Parole Commission is described, and its relationship to the Commission's system of explicit guidelines for parole decision-making is discussed.

Court—Prosecutor—Probation Officer: When Is Discretion Disparity in the Criminal Justice System?—There is not yet in America any clear, consistent, rational policy regarding whether to pursue a correctional philosophy of rehabilitation or one of retribution. Former emphasis on treatment is being replaced by emphasis on punishment and uniformity of sentence. Supervising Probation Officer Robert L. Thomas believes traditional definitions of discretion and disparity are being prostituted to cover up the belated realization that after-the-fact solutions to crime do not work. What is really needed, he insists, is more realistic alternatives to traditional dispositions and a clearer understanding of who should or should not go to prison.

Rekindling the Flame.—The syndrome of burnout is a symptom of the crisis presently affecting the social service professions, asserts James O. Smith of the Pennsylvania Board of Probation and Parole. As such, the phenomenon presents both the danger of poorer quality services and, paradoxically, the opportunity for enhancement of services. Using as a general framework Maslow's heirarchy of human needs, this article maintains that through the medium of a comprehensive, in-service training program an organization can positively affect the "esteem needs" of its staff. The outcome of this relationship, as it is suggested, is higher quality service with less staff burnout.

84123

Court—Prosecutor—Probation Officer: When Is Discretion Disparity in the Criminal Justice System?

BY ROBERT L. THOMAS

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THE INTENT of this article is to examine those less obvious factors which affect the probation officer's decisionmaking process leading to a recommendation to assist the court in sentencing a criminal defendant. Current research does not directly speak to the issue. There is abundant literature on the discretion—disparity question, but as it relates to prosecutors, judges, parole commissions, legislators, and, to a lesser degree, an ambivalent public, overcrowded correctional system, confused media and a disorganized criminal justice system (Harris, 1975).

All the above affect the probation officer in the performance of statutory responsibilities. The officer is part of the system and subject to the same pressures, myths and misconceptions surrounding the sentencing disparity controversy.

Absence of Unified Correctional Philosophy

There is not yet in America any clear, consistent, rational policy regarding whether to pursue a correctional philosophy of rehabilitation or one of retribution. Criminologists, legislators and correction officials operate at cross purposes; some perceive criminals to be accountable for their misdeeds and emphasize retribution; others see offenders in need of rehabilitation or therapy since their behavior is the product of external forces and not the result of free and responsible choice. Some scholars hold a "nothing works" doctrine, arguing neither rehabilitation nor retribution lowers recidivism rates. Proponents of this third view have pushed for a correctional philosophy of humane incapacitation. Incapacitation without

therapy comes down to a variant of punishment; hence, the "nothing works" doctrine results pragmatically in a punitive approach. This means one is left with a choice between some form of retributive correctional philosophy and some form of rehabilitative theory.

Not only is there wide disagreement regarding what should be done in corrections, there is no consensus as to what is currently being practiced.

Schrader-Frechette (1978) argues that rather than attempt the impossible and try to develop a correctional policy which admits the importance of both retribution and therapy—because the offender is both responsible and, in some sense, not responsible—there is another course of action open. This is to recognize that after-the-fact solutions to crime do not work but, prevention might. Prevention is much more difficult because it challenges a societal system of values and not just the adequacy of human skills or financial resources. As Friday (1976) noted, crime prevention is successful only to the extent every individual is essentially a community-oriented person. It is simplistic but, nevertheless, correct to point out that correctional institutions cannot be expected to compensate for the many ways in which we all fail to be, and expect others to be, socially responsible.

One reason we have failed to become (and to teach our children to become) socially responsible is that we in America have valued our constitutional freedoms highly. American liberal traditions have created, to an extreme degree, a "cult of personal liberation." Consequently, neither the offender nor the nonoffender has developed a true social conscience. Realistically, the persistence and the acceleration of the crime rate is testimony to more than the absence of social responsibility; rather, in a positive but often extreme sense, our current correctional problems, of which disparity is but one, bear testimony to the success of a far-reaching system of civil liberties. Without such liberties, crime prevention would be easy. Correctional officials have the difficult task of maintaining one while achieving the other.

Disparity: A Traditional Definition

The former emphasis on treatment or rehabilitation is being replaced by an emphasis on certain punishment; the indeterminate sentence is being replaced by determinate sentences designed to achieve equal treatment and certainty of punishment. Dickey (1979) points out that regardless of which sentencing option is used, an effective decision requires knowledge of facts, whether those facts relate to characteristics of the defendant, which might indicate responsiveness to treatment, or to the facts of the offense, upon which a judgment as to suitable punishment should be based.

At the very center of the concept of rehabilitation has been individualized sentencing—the belief that a sentence should fit the offender and the circumstances of the case rather than being determined solely by the nature of the offense. This practice has been implemented by providing discretion at various points in the criminal justice system. Discretion is given to judges in choosing the type and length of sentence, and to parole agencies who can reduce the length of time served based on assessment of inmate institutional progress.

To individualize sentences means that different people who commit the same crime may receive different sentences. To reformers this is traditionally referred to as "sentencing disparity." This so-called disparity may be completely appropriate since crimes can and do vary widely in their circumstances. No crime can be viewed realistically without a consideration of its circumstances and consequences.

There are currently a number of legislative and administrative proposals designed to limit or eliminate discretion previously given judges and others. Unfortunately, many of these proposals do not provide any alternative method of tailoring sentences to circumstances. To the extent they limit discretion, they limit the possibility of individualizing sentences. It can be dramatically unfair to give the same or similar sentences to two persons convicted of identical crimes when the circumstances of those crimes were extremely different.

The Court: Scapegoat or Villain?

The protection of society is the ultimate objective of all criminal laws and it should be so of criminal sentence. According to Boldt (1963), this objective may be sought through punishment of the offender, incapacitation by confinement, rehabilitation through treatment, or by deterring others from committing similar offenses.

Evans and Gilbert (1975) describe the criminal court's two basic functions as establishing innocence or guilt and imposing judgment. In the latter area a void of guiding law and expertise exists. Sentencing options available to judges are too often neither fully understood nor do they address the specific needs of individual offenders. Criminal courts have not been imaginative in the area of sentencing alternatives, and new judges are well trained in the social sciences. Most courts

labor under the burden of inadequate time and staff necessary to satisfy the important task of sentencing. As expected, critics attack sentencing variations and statistical studies reflect a wide range of dispositions for "identical offenses."

Morris & Hawkins (1970) note that inherent within the goal of achieving a higher level of quality in judicial sentencing is not only the desire to reduce unwarranted "disparity" but, the need to work toward a more rational approach to the entire correctional process. This involves a diligent search for more realistic alternatives to the traditional dispositions of criminal cases and a clearer understanding of who should not go to prison.

Evans and Gilbert (1977) believe judicial discretion is essential. The court is the institution to which society brings its ills for treatment and resolution. To the extent the court is limited in its discretion, it is prevented from achieving the goal of justice. It is simply not possible to legislate specific solutions for all peculiarities and outcroppings of mankind's social problems.

The potential for abused discretion is nurtured by legislators, law enforcement, prosecutors, releasing authorities, the public, scholars, and courts. Should the court's discretion be singled out for substantial contraction?

Constraint upon the courts will merely transfer the responsibility to other nonjudicial components of government. Plea bargaining has already placed substantial limitations upon judicial discretion; as a result, present imperfections of our justice process frequently dictate a disposition beyond the court's control.

Prosecutors: Plea Bargaining Justice

Plea bargaining pervades the administration of criminal justice. Plea bargaining is supported by those directly involved in the middle of the justice process: judges, prosecutors, and defense counsel. Agencies at the beginning and end of the justice continuum, police and probation, are the most critical. Job tasks explain the difference in attitude. According to Parnas (1980), judicial, prosecutorial, and defense support for plea bargaining can arguably be construed as partially colored by personal considerations. The police and probation view might be looked upon as more objective although, less knowledgeable because of their limited involvement.

Prosecutors have, in practice, a greater influence on sentencing than the other agencies; the knee-jerk reaction for sentencing reform has largely ignored this extensive prosecutorial power. Alschuler (1977) holds that fixed and presumptive sentencing schemes are unlikely to achieve their objectives if they leave the prosecutor's power to formulate charges and bargain for guilty pleas unchecked. Indeed, this method of reform is likely to produce its antithesis—to yield a system every bit as flawed as the current sentencing regime and one in which discretion is concentrated in an inappropriate agency and in which the benefits of this discretion are made available only to defendants who sacrifice their constitutional rights.

As judicial discretion, the discretion of the prosecutor lends itself to inequalities and disparities based on disagreements concerning issues of sentencing policy; it permits the occasional dominance of illegitimate considerations such as race and personal or political influence; it may lead to a general perception of arbitrariness and uncertainty, contribute to a sense of unfairness, and even undercut the deterrent force of criminal law. The exercise of prosecutorial discretion is more frequently made contingent upon a waiver of constitutional rights; it is generally exercised less openly, it is more likely to be influenced by considerations of friendship and by reciprocal favors of a dubious character; it is commonly exercised for the purpose of obtaining convictions in cases in which guilt could not be proven at trial; it is usually exercised by people of less experience and less objectivity than judges; it is commonly exercised on the basis of less information than judges possess; and, its exercise may depend less upon consideration of desert, deterrence, and reformation than upon a desire to avoid the hard work of preparing and trying cases. The discretion of American prosecutors, in short, has the same faults as the discretion of American judges and more.

Probation Officer: A Leveling Influence?

The probation system did not, according to Imlay and Reid (1975), autogenously emerge like mushrooms after a rain. It originated as part of antithetical reaction to older theories of retributive punishment, and in response to the newer premise that a person's actions are socially determined rather than the result of "free will." A corollary of this assumption is that the logical social response to crime and punishment should be to attempt to reinstate the errant individual as a functioning unit of society.

The notion of rehabilitation finds countervailing influences in the law which, in its primary emphasis on maximum prison terms in defining each enumerated crime, assumes that punishment should serve as a social dissuader rather than as a

method of individual rehabilitation. The law is founded on morality; its remedies have been traditionally looked upon by its high priests not as tools of social engineering but, as retribution for moral derelictions. The law abhors social relativism. It deals with the clear cut: guilty-not guilty, sane-insane. The notion that, in the process of sentencing, two criminals committing the same crime should be dealt with differently because of existing circumstances, runs afoul of the grain of traditional legal thinking.

Based on the retributive or exemplary theories of punishment, all sentences should be equal; based on the theory of rehabilitation all sentences should be individually tailored to insure that those who are most likely to reassimilate receive lighter sentences or probation. The hue and cry today is for uniformity in sentencing sanctions. Uniformity in sentencing is antithetical to the humanistic notion of individualized rehabilitation.

The Supreme Court in 1949 (*Williams* v. *People of New York*) announced: "Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become the important goals of criminal jurisprudence."

Notwithstanding this pronouncement, a critical public cannot readily comprehend a system of justice which treats one offender differently than another. The public demand is for equal punishment for any given offense; retributive punishment is still a dominant public objective.

Our present law-making procedure insures that sentencing provisions will emphasize the expeditious rather than the rehabilitative goals of sentencing. For this reason, probation officers must have assuasive roles in the sentencing process to offset the vocal demands that punishment should fit the crime rather than the individual.

Czajkoski (1973) argues that as judges shed more and more of their judicial functions, the role of the probation officer undergoes sympathetic change. Under circumstances where judicial and administrative powers become increasingly blurred, the probation officer seems more and more in a quasi-judicial role. Questions are raised to the propriety of the probation officer achieving judicial effect without judicial process.

Abdication of judicial sentencing responsibility to the plea bargaining system leaves the probation officer in an even more peculiar position than it leaves the judge.

Theoretically, the probation officer is supposed to make sentencing recommendations based on a professional estimate of the defendant's rehabilitation potential. Whether or not a defendant is sentenced to probation probably depends more now on success in plea bargaining than on any promise of reformation. How does the probation officer fit into a scheme of extensive plea bargaining?

Blumberg (1967) says the probation officer serves to "cool the mark" in the production-oriented and confidence game-like system of expeditiously moving defendants through the court by means of plea bargaining. Like the judge's role, Blumberg sees the probation officer's role in sentencing diminishing. It has become the judicial role to simply certify the plea bargaining process, thus the probation officer's role is quasi-judicial in that he/she does the same. It is admittedly a peculiar argument, as Imlay (1975) notes, but where the probation officer does a perfunctory presentence report and aims the recommendation toward the predetermined plea bargained sentence, the officer is indeed playing out a de facto judicial role.

It has long been argued the probation officer's role in sentencing is a quasi-judicial one, especially where the judge more or less automatically imposes the officer-recommended sentence. Empirical studies have shown a very high correlation between officer recommendation and court disposition. Carter and Wilkins (1967) pointed out that judges follow probation officer recommendations in better than 95 percent of the cases. Among the factors which might explain the high level of agreement it was postulated that officers make recommendations in anticipation of judicial preference. Today it is more likely the prosecutor has communicated the plea bargaining agreement to the officer and the officer responds with an appropriate offering. Insofar as it firmly determines sentence, the plea bargaining process clearly undermines the probation officer's professional role. It is now more appropriate for the officer to counsel the prosecutor on rehabilitation potential than the judge. The prosecutor occasionally uses the officer's professional estimate in the plea bargaining. Probation officers now conduct "prepleading" investigations which are used by both judge and prosecutor to decide plea matters.

The probation officer's role is multi-faceted. Many of the facets are not easily recognized, particularly in the areas of setting the conditions of probation, initiating violations procedures or enforcing the conditions of community release. It is difficult to say whether the officer's quasi-judicial role is increasing. It is still very closely tied to the judge but, the judge seems to be giving up more of the judicial role. If the probation officer ties in more with the prosecutor, the quasi-judicial function may paradoxically increase because of judicial aggrandizement of the prosecutor's office through plea bargaining and pretrial diversion.

Regardless of role perception, probation officers make decisions affecting defendants, communities, and the total justice system. The majority of these decisions become apparent in the presentence investigation report. Reports are also used as a guide for supervision and a basis for classification and treatment by institutions. Parole authorities use the report when considering individual release eligibility. Obviously, the importance of the data collected relates to the use it is put. While some of the data collected and recorded may not have significant or immediate use in the sentencing, the probation officer is in the best position to develop information which may be of significance in the total correctional process.

Within the probation officer's role the potential for misuse or abuse of statutory discretion is apparent. But, is the reported disparity critical or simply judgmental use of discretion similar to that afforded police in the decision to arrest; the prosecutor to under or over charge; the court with its sentencing options; or, the parole authorities in exercising release guidelines?

The majority of articles discussing disparity are in reality an attack on lack of uniformity in sentencing. Researchers examine more the mechanical outcome rather than what caused the discovered difference in specific cases. Proper use of discretion is a legitimate correctional tool. The misuse or abuse by agency or individual is more the fault of that agency or individual than in the concept. Is lack of uniformity evidence of disparity or only that which must be expected in a system offering such a wide range of alternatives and outcomes while attempting to resolve, prevent, or contain human weakness as manifest in behavior termed "criminal" or "illegal"?

For the probation officer, it is at the investigation level and formulation of a sentencing recommendation that the problem of "disparity" is greatest. Bernard (1976) noted that sentencing disparity is based on entirely inappropriate criteria such as race of the defendant or personality of the sentencing judge. "Disparity is unjustified if the rationale for these differences cannot be traced to relevant distinctions of character or behavior which bear a certain known relationship to the aims of punishment." It is this unfair and inappropriate disparity which has compromised the effectiveness of the entire criminal justice system and not discretion.

The real problem goes beyond Bernard's description of disparity to include individual affective learning and resultant behavior. The literature is inconclusive, or at best, confused in defining statements of affective objectives. Bloom (1956) uses the term "primative." Learning experiences generally determine the direction of growth in the affective domain and components form a continuum ranging from simple awareness of a phenomenon to complete internalization, becoming a part of the individual (bias or prejudice) and forming value judgments which determine ultimate conduct toward others whether conscious or unconscious.

Thus, "disparity" is deciding to arrest, prosecute, sentence, release or revoke an individual because of race, color, creed, political beliefs or a multitude of other internalized factors and not because of a crime's seriousness or potential for individual rehabilitation. All else is a matter of discretionary judgment, the resolve of which requires an entirely different approach, be it legislative or administrative in scope.

Probation officers as a work group universally pride themselves on objective case investigation and recommendation. However, certain offenders, offender attitudes and offenses lend themselves to unacceptable and unprofessional breaks in decisionmaking objectivity. It is against these tendencies a probation officer must guard. Examples can be advanced to support the contention that probation officers, like all other actors in the justice system contribute to disparity.

Carter (1966), in his article "It Is Respectfully Recommended," started out examining the relationship between the probation officer's recommendation and the court's disposition. He offered that one of the more important areas upon which attention should be focused was the internal factors—the officer's experience, age, ethnic background, culture, academic training, prejudices, and personality—all which contribute to a court recommendation.

What specific biases or prejudices are displayed by probation officers and directed toward the alcoholic, addict, homosexual, or certain racial or ethnic group? Are reports "slanted" to a specific judge? Why is there such a high relationship between recommendations and dispositions? Is it because there is a large number of individual cases who are obviously probation or prison cases; a matter of complete trust and faith by the court in its probation staff; the product of "knowing" the court and its views on certain matters? How much of the information collected during the course of the presentence investigation is genuinely important in helping the officer formulate a recommendation? At what point in the fact-gathering process

does the officer decide on the recommendation? If a decision is made early in the collection process, does the officer then seek out other factors which will support the conclusion? Does this, then, lead to the preparation of a disparate biography?

The current literature does not delve into these questions with any degree of authority or resolve. There is realization of good and evil within any group of practitioners, be they doctors, lawyers, merchants, or probation officers. The path to objectivity is paved with good intentions, but more than one well meaning probation officer has taken an occasional detour to disparity. The question remains: How does one empirically examine disparity as defined here? What methodological approach is best? How valid or reliable will the findings be beyond a specific sample at a given time and place? No one has the answer. Maybe there is not one—only generalizations, inferences, supposition, conjecture, and suspicion.

The best source of information to answer the questions may be the probation officer. Bartoo (1963), informally investigated nine identified factors that directly or indirectly affect the officer's recommendation. He examined areas involving the officer's tendency to avoid problems for personal convenience; to what extent community interest or public opinion influenced the recommendation; how do the officer's moral standards, code of ethics, and attitudes affect decisionmaking; and, what influence is exerted by the nature and magnitude of the offense or attitude of the offender. The outcome of this limited investigation found that disparity resulting from internalized attitudes and behavior did, in fact, color judgments; however, it was also discovered that generally the probation officer is aware of the problem and conscientiously works to evaluate each offender objectively.

To this writer's knowledge, little has been done to prove or disprove Bartoo's conclusions. There has been much said about the universal problem of abused discretion; but, for probation officers it is a wide open avenue of investigation affecting a very large and important segment of the justice system.

Conclusion

There is in all of this a substantial need for research to expose the problem and training to correct deficiencies. As the trend continues for the probation officer's earlier involvement in the criminal prosecution process through pretrial diversion and bail release investigation, it becomes important to insure that officer objectivity is paramount and that decisionmaking, while acknowledging statutory discretion, is not perverted or faulty due to disparity. Disparity is real. Attempts to identify, correct and eliminate it are, at this point, within this role, not on the horizon.

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