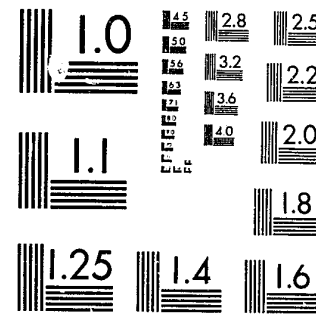


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6-8-83

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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.

Manuscripts (in duplicate), editorial matters, books, and communications should be addressed to FEDERAL PROBATION, Administrative Office of the United States Courts, Washington, D.C. 20544.

Subscriptions may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at an annual rate of \$9.00 (domestic) and \$11.25 (foreign). Single copies are available at \$3.50 (domestic) and \$4.40 (foreign).

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FEDERAL PROBATION QUARTERLY

Administrative Office of the United States Courts, Washington, D.C. 20544

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME XXXXVI

DECEMBER 1982

NUMBER 4

This Issue in Brief

Shadows of Substance: Organized Crime Reconsidered.—Authors Martens and Longfellow discuss contemporary perceptions of organized crime and how they affect public policy. Arguing that organized crime is neither parasitic nor exclusively functional to the maintenance of the social order, they suggest that organized crime must be perceived as a process. At historical times, organized crime is functional and at other times it is exploitive. The authors assert that contemporary research is empirically weak, ethnically biased, and inappropriately focused by a poor data collection methodology.

Organized Crime, RICO, and the Media: What We Think We Know.—RICO was legislated to combat Mafia-style organized crime. Authors Wynn and Anderson maintain, however, that the precise Congressional target is unclear. RICO provides a formal notion of organized crime whose key is the proof of a "pattern of racketeering activity." But this means only the commission of two predicate offenses within a 10-year period. One result is a body of cases whose only common denominator is unfettered prosecutorial discretion. In addition, Federal jurisdiction and surveillance powers are greatly increased.

Adolphe Quetelet: At the Beginning.—Professor Sawyer F. Sylvester of Bates College reveals that an empirical approach to the study of crime can be found in the history of criminology as early as 1831 in the writings of the Belgian statistician, Adolphe Quetelet. In his work, *Research on the Propensity for Crime at Different Ages*, Quetelet makes use of government statistics of crime to determine the influence of such things as education, climate, race, sex, and age on the incidence of criminal behavior. He not only establishes relationships between these factors and crime but, in so doing, develops a methodology for the social sciences which is still largely valid.

Behavioral Objectives in Probation and Parole: A New Approach to Staff Accountability.—Many

probation and parole agencies have initiated programs of risk and needs assessments for clients in an effort to manage caseloads more effectively,

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reports Dr. Alvin Cohn of Administration of Justice Services. By taking such programming one step further, namely by developing behaviorally anchored objectives, workers can maximize available resources in directing clients toward realistic and relevant outcomes, he states. Workers can thus be held accountable in the delivery of specific services.

The Use of "Third Sector" Organizations as Vehicles for Community Service Under a Condition of Probation.—The increasing use of community service as a condition of probation has provided probation officers with improved opportunities to use such assignments as a way of teaching responsible citizenship as well as achieving community improvement. This article, by Deputy Chief Probation Officer Jack Cocks of the U.S. District Court in Los Angeles, reflects some of the recent developments in formalizing service programs in public benefit "third sector" organizations designed to carry out new strategies of networking.

Not Without the Tools: The Task of Probation in the Eighties.—Traditionally, the role of the probation officer has been viewed as dichotomous with supervision involving maintaining surveillance and helping the clientele. This dilemma is likely to remain with us in the next decade as the field of probation faces the challenge of stiffer sentencing policies. Authors Marshall and Vito outline some of the difficulties to be faced by probation officers and suggest some methods of dealing with them.

Inside Supervision: A Thematic Analysis of Interviews With Probationers.—This article by Dr. John J. Gibbs of Rutgers University contains an analysis of taperecorded and transcribed interviews with 57 probationers in two New Jersey counties. The interviews were structured to elicit the clients' perceptions of probation and to explore their concerns. Each subject was asked to describe his probation experience, and to respond to an orally administered Self-Anchoring Striving Scale, a measure of satisfaction.

Writing for the Reader.—Nancy Hoffman and Glen Plutschak of the Maryland Division of Parole

and Probation discuss the pitfalls of the bureaucratic style of writing often developed by criminal justice professionals. Such writing is generally characterized by poor organization, extremely long sentences, over-used jargon and unnecessarily complex words. The results are documents which are difficult to read. The authors stress the importance of writing readable communications which are clear, concise, and to the point.

The Male Batterer: A Model Treatment Program for the Courts.—Authors Dreas, Ignatov, and Brennan examine the male batterer from the perspective of court-ordered treatment. A 30-week group treatment program is described in which various aspects of domestic violence are considered, with the ultimate goal being cessation of abusive behavior. Specific steps taken regarding program development and implementation are presented and a description of additional adjunct services is also provided.

Issues in Planning Jail Mental Health Services.—One impact of deinstitutionalization of state mental hospitals noted by many authors is an increased need for mental health services in local jails. Given current fiscal constraints and community attitudes, program development in the 3,493 jails in the United States is often very difficult. In this article, Messrs. McCarty, Steadman, and Morrissey assess the range and structure of mental health services in a national sample of 43 jails.

Victim Offender Reconciliation: An Incarceration Substitute?—Howard Zehr and Mark Umbreit describe the Victim Offender Reconciliation Program (VORP) operated by PACT in Indiana. The program allows for a face-to-face meeting between victim and offender in which facts and feelings are discussed and a restitution contract agreed upon. Trained community volunteers serve as mediators. VORP can serve as a partial or total substitute for jail or prison incarceration. Eighty-six percent of all cases represent felony offenses, with burglary and theft being the most common.

The Use of "Third Sector" Organizations as Vehicles for Community Service Under a Condition of Probation

BY JACK COCKS, D.P.A.

Deputy Chief Probation Officer, U.S. District Court, Los Angeles, California

CALIFORNIA'S Proposition 13 created a climate of consternation about actual and proposed cutbacks in public revenues, particularly in terms of the damaging effects of taxpayer revolt on criminal justice agencies and custodial facilities. Proposition 13 was followed by passage of a new determinate sentencing law causing prisoners to serve terms of fixed duration and reducing the amount of parole services upon release. At the same time these fiscal restrictions and economics drastically reduced funds for prison alternatives. Without regard to these factors, however, the California State Legislature every year since Proposition 13 passed has enacted new laws that have increased the number of prison terms or extended their duration. The result is that the State is, at an accelerating rate, imprisoning more people, for longer periods, in increasingly inadequate institutions.

On the national scene, since the announcements and budget proposals for significant cuts in the rate of Federal spending, both public and voluntary organizations have been concerned with the need to clarify the implications and to gauge their ability or inability to compensate for the cuts. A recent study by the Urban Institute¹ estimates that the proposed Federal budgets would make direct cuts in income to voluntary organizations of \$4.767 billion in fiscal 1982, \$9.802 billion in 1983, and \$12.677 billion in 1984, for a total of \$27.3 billion. Even so, this total is only approximately one-fifth of the grand total when proposed cuts in Federal governmental services are included. Since state and local governments are also cutting funds going to voluntary organizations to perform public services, the direct cutbacks to voluntary organizations are likely to be considerably higher. The problems of voluntary organizations will be further compounded by an almost certain increase in expectations for service and an anticipated

decrease in their personal, corporate or foundation donations and grants.

The significance of these awesome external forces is not lost on correctional administrators. Traditional budgets for community probation or parole services have *not* included sums for income assistance, social services, education or health; rather, staff members are told to "use the local network." In addition, the curtailment of government expenditures also has assaulted basic probation and parole services, with reductions in staff commonplace and with higher caseloads the inevitable consequence. Correctional managers today are faced with growing uncertainties about their traditional roles and services yet they must operate in an environment where fewer staff members must be increasingly accountable and "efficient." The great challenge to the correctional administrator is to find and use those old or new organizational, administrative or programmatic strategies which will get the job done at the lowest possible cost, and with maximum efficiency and effectiveness.

It is the purpose of this article to present a descriptive overview of the development and implementation of two new strategies by the U.S. Probation Office for the United States Court, Central District of California, Los Angeles. Before the presentation, however, it appears useful to develop perspective and context by reviewing the characteristics of the environment in which they were developed. Accordingly, the next section will review "third sector" and public benefit organizations. The section following that will deal with community service by offenders and will identify elements of social reparations administered as conditions of probation. The two new strategies will then be presented, followed by a section on probation and community advocacy. A brief section on implications for policy will conclude the article.

Third Sector and Public Benefit Organizations

According to Ginzberg and Vojta, a review of the structural transformation of our domestic

¹Salamon, Lester M. and Alan J. Abramson, "The Federal Government and the Non-Profit Sector: Implications of the Reagan Budget Proposals." Washington, D.C.: The Urban Institute, May 1981).

economy during the past 50 years shows a five-fold growth in the United States gross national product, expressed in constant dollars of purchasing power. The actual dollar change without allowance for inflation was from \$100 billion in 1929 to \$2,400 billion in 1980.

The profound changes in the structure of the economy that accompanied this growth are reflected in the distribution of the labor force and the gross national product. The data show that the provision of services has displaced the production of goods as the country's principal economic activity. Since much of this service activity is conducted by the Government and by private non-profit institutions, a vast not-for-profit sector, encompassing Government and non-profit institutions, has emerged.²

These authors further suggest that the actual dimensions of the Government sector can be comprehended only by counting the people employed on the public payroll *plus* the people in the private as well as the not-for-profit sector who are employed because of Government purchases from or grants to private and non-profit enterprises.

When the contribution of the private non-profit sector is added to that of Government, the not-for-profit sector accounts for more than a third of the total employment and nearly a third of the gross national product.³

Our concern here is with the development and emergence of some of these organizations—particularly community corrections organizations—which are called “third sector” and which combine elements and resources from both Government and the private or not-for-profit sectors. While evidence of such combinations can be identified in our history going back more than 100 years (when Congress, for example, gave some 131 million acres of public lands plus substantial loan guarantees to the railroad industry), it is only since the depression years that the Government has undertaken to secure the institutionalization of certain presumptively desirable “quasi-public” services through the creation of public corporations, loan guarantees, direct subsidies, tax incentives, or “set aside” features in Government purchase contracts. Regardless of the form such activities take, the result is to protect or shield the operation from market risks, at least for a while, in the furtherance of public purposes.

A review of the literature relating to third sector organizations reveals that analysis of this

phenomenon of such development has been neglected by public administration researchers, at least until the last decade.

Reviewers interested in attempts to define the third sector could learn from Theodore Levitt's book, *The Third Sector: New Tactics for a Responsive Society*,⁴ and an article by Amitai Etzioni “The Third Sector and Domestic Missions,”⁵ both of which appeared in 1973. A more comprehensive summary was presented by Michael E. McGill and Leland M. Wooton as editors of “A Symposium on Management in the Third Sector”⁶ in 1975. More recently, and perhaps of greater interest to Californians, the 1978 and 1979 State Legislature sessions created a new California Non-Profit Corporation Code, which became effective January 1, 1980.⁷ A major section of this law defines “Non-Profit Public Benefit Corporations” as those formed for charitable or public purposes (except those organized primarily or exclusively for religious purposes, even though such corporations may also carry out charitable activities; and those organized as non-profit mutual benefit corporations).

Efforts to identify third sector agencies whose goals and programs focus on community corrections yielded a much smaller list than was expected. Descriptive information concerning such programs is sparse and of uneven quality. Evaluative material on programs is even more rare, being primarily descriptive and illustrative rather than analytical in nature. For the most part these fall into two broad program categories: (1) restitutions, including services which emphasize concerns about victims, and, (2) community service by offenders. This arbitrary classification will be expanded in the sections which follow:

Restitution, Reparation, and Community Service

One of the fastest growing developments in community corrections which has become increasingly evident—yet essentially undocumented—is the growing use by the courts of conditions of probation requiring the use of restitution, reparation and community service. These conditions cause probation services to develop increasing reliance on non-correctional resources as well as closer ties with community agencies and service groups. Further, the conditions seem to fit neatly into the “justice” model of dealing with some offenders and seem to suggest the ongoing concern of the courts that private sector offenders (white collar or corporate) be dealt with in a manner that will assure remedial (non-repetitive) action in recompense for offenses against the general public welfare.

For purposes of definition, restitution is that condition of probation which requires payment of damages or other action to “. . . make the victim whole” where an identifiable individual is present and the amount of damages to him may objectively be ascertained. A summary of the conceptual and legal basis may be reviewed in a symposium report developed by Galaway and Hudson.⁸ The definition of restitution was agreed upon at the 1977 symposium meeting as “. . . a sanction imposed by an official of the criminal justice system requiring the offender to make a payment of money or service to either the direct or substitute crime victim.”⁹ Incidentally, this definition was regarded as broad enough to include programs involving community service requirements. Similarly, Bridges, et al., suggested that there was a growing interest in restitution because of the economics involved.¹⁰ Either fines or restitution represent a lower cost to society than incarceration, since incarceration reduces the total economic output of society by excluding most of the labor output of the offender, and by extracting that degree of society's resources needed to establish and operate prisons. According to these authors, restitution is also seen as a method of achieving rehabilitation:

... restitution can provide a low cost, middle ground approach for corrections which can satisfy society's demands for punishment as well as the offender's needs for rehabilitation. This approach would also recognize and serve the badly neglected victims of crime, as well.¹¹

In contrast to the references in the literature regarding restitution, citations which permit a definition of “reparation” are hard to locate. Although direct statutory authority exists in a number of jurisdictions, including Federal Probation law, clarification of legislative intent concerning the term is sparse. In addition, case law is similarly characterized by a paucity of trial court or appellate rulings. The Federal law permits one of five explicit conditions of probation to include “. . . payment of restitution or reparation,” but does not draw a distinction between the two

terms.¹² However, Federal trial courts are given discretion to impose other supplemental conditions of probation.

... when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, (may) . . . place the defendant on probation for such period and upon such terms as the court deems best.¹³

A review of the discretionary authority of Federal Courts in the fixing of probation conditions may be found in the analysis by Imlay and Glasheen, although this article is not particularly helpful in obtaining a clear definition of “reparation.”¹⁴ Another summary of out-of-ordinary conditions of probation does illustrate the use of the terms “restitution” and “reparation” as essentially synonymous as interpreted in an appellate case in the 10th Circuit in 1976. In the Clovis Retail Liquor Dealers Trade Association case the higher court overturned the trial judge's imposition of a condition that the dealers “pay certain sums as restitution and reparation” to a local council on alcoholism, on the basis that the Federal Probation Act makes “no provision for the payment of any community reparations.”¹⁵ The reviewing court pointed out that the restitution clause of that act specifically restricts the payment of restitution solely to “. . . aggrieved parties for actual damages or loss caused by the offense for which conviction was had.”¹⁶ This narrow construction, while applicable in the 10th Circuit, is currently being considered in a 9th Circuit case.¹⁷ In any event, for purposes of definition in this article, probation reparations orders are those including conditions of probation imposed by a court requiring an offender (often a corporation or corporate officer) to make a payment of money or to provide a service, or both, to the benefit of the general community.

The definition and purposes of community service by offenders can be found in the literature beginning about the time of the Vietnam conflict when a number of Federal judges who granted probation to Selective Service Act violators mandated that they perform “volunteer” work at some eleemosynary or public institution.¹⁸ In 1975 an Arizona Federal judge ordered five dairy executives convicted of price fixing “to serve the poor in charity dining halls in lieu of prison” and required their corporations “to contribute milk to charity in lieu of fines.”¹⁹ The performance of the gratis work was merely “suggested” by the trial court, not mandated by probation, since the judge deferred his final sentencing decision for 6 months with the admonition that the court would consider their charity work to be a mitigating circumstance at sentence time.

⁸Galaway, Burt and Joe Hudson, eds., *Offender Restitution in Theory and Action* (Lexington, Mass., D.C. Heath & Co., 1978), 212 pp.

⁹Id., note 11, p. 1.

¹⁰Bridges, James H., John D. Gandy, and James D. Jorsensen, “The Case for Creative Restitution in Corrections,” *Federal Probation*, Vol. 43, No. 3, September 1979, pp. 28-35.

¹¹Bridges, op. cit., p. 29.

¹²18 U.S.C. § 3651.

¹³Id.

¹⁴Imlay, Carl H. and Charles R. Glasheen, “See What Condition Your Conditions Are In,” *Federal Probation*, June 1971.

¹⁵Jaffe, Harry J., “Probation With a Flair: A Look at Some Out-of-the Ordinary Conditions,” *Federal Probation*, March 1979.

¹⁶18 U.S.C. § 3651.

¹⁷*United States v. Union Pacific Railroad; Burlington, Northern, Inc., and Mitsubishi International Corporation*.

¹⁸Jaffe, op. cit., p. 34.

¹⁹Id.

²Ginsberg, Eli and George J. Voja, “The Service Sector of the U. S. Economy,” March 1981, *Scientific American*, Vol. 244, No. 3, pp. 48-55.

³Ibid., p. 51.

⁴Levitt, Theodore, *The Third Sector: New Tactics for a Responsive Society*, (New York: Amacom Press, 1973).

⁵Etzioni, Amitai, “The Third Sector and Domestic Missions,” *Public Administration Review* (July/August 1973), pp. 314-327.

⁶McGill, Michael E. and Leland M. Wooton, “A Symposium on Management in the Third Sector,” *Public Administration Review* (Sept./Oct. 1975) pp. 443-477.

⁷See R. Bradbury Clark, *An Introduction to the New California Non-Profit Corporation Law as Applied to Charitable Corporations* (San Francisco: United Way of California, August 1979), 55 pp.

Also in 1975 eight Federal judges in the Central District of California required several meat packing companies to pay sums of money, in addition to substantial fines or as remission to ordered fines, to establish a remedial vocational training and job placement program in meat cutting to be approved and conducted by the Probation Office. Several corporate officers or owners were also required to complete several hundred hours of community service in support of the training program. (Report of these cases and subsequent development is in the section of this article "Industry—Corrections—Interface.")

In December 1977 Chief Judge Bailey Brown set forth a number of reasons for his use of community service as a condition of probation.²⁰ He saw the advantages to include: a therapeutic effect on the offender "since this would make him atone for his misdeed in a concrete and constructive way"; needed valuable services would be received by the involved public and charitable agencies; the imposition of the requirement of work without pay would make probation more acceptable to the public in that the public would be more likely to feel that justice had been done; the probation officer would "have an additional handle" on the probationer through reports from the designated agency; and some additional persons could justifiably be placed on probation through the existence of such a program thereby avoiding the costs and other disadvantages of incarceration. Judge Brown obtained a memorandum legal opinion from the General Counsel of the Administrative Office of the United States Courts which concluded as follows:

(1) The imposition of a special condition of work without pay would not violate the constitutional or statutory rights of the probationer provided that the condition was reasonably related to the rehabilitation of the probationer and to the protection of the public and that the probationer had reasonable notice of what was expected of him;

(2) If such conditions were met, there would be no denial of substantive or procedural due process,

no involuntary servitude, and no violation of minimum wage laws;

(3) Neither the Federal Government nor the judge imposing the condition of work without pay, nor the probation officer would be liable to a third party if the probationer should negligently cause injury while doing such work, nor would they be liable to the probationer for any injury he received while doing such work. (Whether the agency for which the probationer was working would be liable to such third parties or to the probationer would depend upon applicable State Law.)²¹

Again in the middle 1970's Judge Charles B. Renfrew, then U.S. District Judge in the Northern District of California, imposed sentences with innovative elements in cases of companies involved in the printing of paper labels and the packaging of merchandise.²² The landmark case proceedings was perhaps the *United States v. Atlantic Richfield Company*, at least in terms of definition of corporate responsibility for chemical and oil pollution and the remedial action which led to the creation of a foundation and a partnership with the State to clean up Delaware Bay.²³ Subsequently, judges in a number of districts have, generally upon recommendations from their probation staff, fashioned probation sentences to fit a variety of white collar, corporation or corporate officer offenders to provide community service requirements of reasonableness and propriety.²⁴

Taken together these instances of restitution, reparation, and community service clearly suggest that Federal courts have not regularly been restricted to the specific types of probation conditions enumerated in section 3651, 18 U.S.C. Moreover, the number of individual probation cases in the Federal system where community service is a condition of probation is now approximately 10 percent of the total caseload. In the Central District of California a recent survey identified 408 active cases where 248,681 hours of service had been ordered by 19 judges or magistrates.²⁵

Readers will note that this presentation has not addressed the state or local approaches to community service, nor the many similar court referral, diversion, pretrial intervention or pretrial services programs. Those interested in such information, or in establishing such programs, may wish to review the publication *Community Service by Offenders* prepared by the National Council on Crime and Delinquency and published in 1979 pursuant to a contract with the American Bar Association's BASICS (Bar Association Support to Improve Correctional Services) Program.

The section following includes a historical and anecdotal presentation of the two strategies evolving in the United States Probation Office in Los Angeles to combine the actual and potential resources of restitution, reparation, and community service into two service delivery models currently viewed as "third sector" agencies.

SERVICE DELIVERY MODELS

The events and activities briefly chronicled here probably justify better historical development than this space allows. However, for the introduction of organizational and programmatic concepts, the presentation should suffice.

Industry—Corrections—Interface

In 1978 two of the United States probation officers who had much to do with the creation and development described ICI as a "new horizon for ex-offender employment." The description which follows is largely adapted from their paper.²⁶

ICI Projects was established November 3, 1975, as a charitable non-profit organization to assist the Probation Office of the United States District Court in various projects and endeavors designed to facilitate the rehabilitation of offenders. ICI is an abbreviation for Industry-Corrections-Interface which reflects the cooperation of industry and the community with the field of corrections in providing comprehensive, substantive services to offenders to assist them in achieving meaningful, law-abiding and productive lives.

ICI Projects was initially established as a vehicle to implement innovative orders by various Judges in the United States District Court in the Central District of California, whereby local meat packers convicted of offering gratuities to USDA Graders were ordered to pay \$104,000.00 in reparation to fund a vocational training program in meat cutting for offenders. During planning for the training project, it was discovered that the formation of a non-profit corporation was necessary for legal and liability reasons. Although ICI Projects was initially established solely as a vehicle to implement the training program in the meat industry, it soon became apparent that the existence of a separate non-profit corporation could provide direct services to offenders supervised by the Probation Office of the United States District Court which would be unavailable through agency resources.

The implementation of the training program in the meat industry necessitated contacts with union leaders and officials of the United States Department of Agriculture. Generally, the training program was well received from all elements within the private sector, who also provided valuable assistance and cooperation.

A commitment of probation staff was felt to be necessary in order to facilitate the corporation in its initial phases and to act as a liaison to the program and community. The assignment of probation staff allows for the interface of training and employment with casework in a setting where individual growth and common goals are emphasized.

On November 17, 1975, ICI Projects launched a four-month pilot project as six Federal offenders began training in meat cutting. Trainees were carefully selected by the United States Probation Office for placement in the project which included intensive skills training and wholesale meat industry orientation, coupled with on-site counseling and casework by probation staff. A total of nine trainees were eventually selected by the United States Probation Office for placement in this pilot project. Referrals were solicited from United States Probation Officers and forms provided to allow them to list basic demographic data and summarize criminal history, employment background, and case problems. Upon receipt of referrals, probation case files were reviewed. In order to achieve and maintain stability in the training programs and to supply service to individuals who are most likely to take advantage of a career opportunity, the following exclusionary selection factors were used:

1. Recent or current substance abuse.
2. An established pattern of violence or hostile and aggressive behavior.
3. Pending criminal court proceedings.
4. Significant marketable skills in another trade.

By the end of the pilot project, most trainees had gained sufficient ability and confidence to perform in a satisfactory manner in industry. Satisfactory to good proficiency and performance were achieved in the utilization of knives and tools, practical application of skills and techniques, together with work habits. Perhaps of more importance, trainees appeared to have gained sufficient confidence in their skills to display a high level of motivation to succeed in careers in a variety of jobs within the meat industry.

Following the successful completion of the pilot project, on May 3, 1976, a demonstration project began under a different program model, whereby ICI Projects used the facility of an existing business for training purposes. Upon completion of the court-funded project in February 1977, 32 people participated in the ICI Projects Meat Industry Program, and 23 were placed in private industry at wages ranging from \$5.00 to \$8.00 an hour, plus benefits. One man was unable to continue the program due to a recurrence of an old injury, and eight people were unable to make the necessary adjustment and were terminated. ICI Projects' staff are maintaining ongoing contact and placement services for individuals who have completed the program.

In the 5-year period since the meat packer program was concluded, the U.S. Probation Office has continued to provide guidance and to sponsor ICI in its efforts to become a specialized community-based organization. Funding has come from the State and Los Angeles County CETA sources, and from additional Federal probation cases where corporate owners have provided jobs as well as limited administrative funds. ICI developed a unique "program income" formula within CETA guidelines to augment its budget and cover overhead and service expenses. In addition, it developed a drug screening and urinalysis testing service to assist in appropriate intake screening and continuing treatment of persons affected by substance abuse.

The U.S. Probation-ICI relationship has provided a model to illustrate how public and private sector organizations can work together in practical ways to meet specific needs and challenges. In this joint venture the Probation Office was in a posi-

²⁰Brown, Bailey, "Community Service as a Condition of Probation," *Federal Probation*, December 1977.

²¹Id., p. 7.

²²See, e.g., Renfrew, "The Paper Label Sentences: An Evaluation," and Baker, "The Paper Label Sentences: Critiques," both in Vol. 86 of the *Yale Law Journal*, pages 590 and 619 (1977).

²³*United States v. Atlantic Richfield Company*, 465 F.2d (7th Circuit, 1972).

²⁴See, e.g., "White Collar Justice: A BNA Special Report on White Collar Crime," 44 U.S.L.W., pt. II at 10, (April 13, 1974); *United States v. White*, No. CR 74-436-CBR (N.D. Cal., Nov. 22, 1974); *United States v. Armand Antunez*, No. CR 78-1025-F (C.D. Cal., March 12, 1979); *United States v. Handler*, et al., No. CR 78-148-RMT (C.D. Cal., Dec. 5, 1978); *United States v. White Stag Mfg. Co.*, No. CR 76-75-S (D.Or., Feb. 11, 1977); *United States v. Bronstein*, No. CR 79-16-RMT (W.D. Wash., Dec. 10, 1980). See Also, "Structural Crime and Institutional Rehabilitation: A New Approach to Corporate Sentencing," 89 *Yale L.J.* 353 (1980); "Criminal Law—The Application of the Federal Probation Act to the Corporate Entity," 3 *U. Balt. L. Rev.* 294 (1974); "The Crime at the Top in Fruehauf," *Fortune*, January 29, 1979.

²⁵Personal survey by the author, March 1, 1981.

²⁶Westman, Richard J. and Ronald J. McPherson, "Industry Corrections Interface: A New Horizon for Ex-Offender Employment," Internal Memorandum, U.S. Probation Office, Central District of California, 1978.

tion to suggest policy and articulate program characteristics while ICI could devote its energies and efforts toward the pursuit of these goals. It should not be assumed that this partnership was free of pitfalls, but both partners had substantial latitude and freedom generally not obtainable if the partners had been operating separately.

For a variety of reasons the ICI operation did not lend itself to be a vehicle for the utilization of the increasing number of white collar offenders being placed on probation with conditions of community service to be performed. The next section of this article will reflect the expansion steps set in motion to achieve a more widely based service organization with broad purposes to serve the community in an innovative and non-traditional manner.

Foundation for People, Inc.

Less than 6 months ago, after almost a year of developmental work, including the involvement of an "Industry Advisory Board" of four white collar offenders, the Foundation for People, Inc., was incorporated. Some of the conceptual work is described by a United States probation officer who first worked with the ICI program and subsequently broadened his concerns to encompass a more general application of community service orders to improve the sentencing alternatives available to the Court as well as to provide additional resources to meet a variety of probation and community needs.

We are proposing the establishment of a Community Service Program and/or Agency, which would help develop, monitor, promote, and perpetuate community service assignments arising out of Federal Court Ordered Conditions of Probation. This agency would service the Federal Court, United States Probation, and the community in a new and vital fashion. The program is intended by design primarily for white-collar offenders who not uncommonly are men and women with exemplary past histories, resourceful talents and community recognition, who, for a variety of reasons, committed crimes which may be incongruous with their past. We are focusing on this talent pool as an untapped resource for community service.

The recent history of community service programs arising in the Central District of California contains a number of exciting projects. In the case of Industry Corrections Interface (ICI), the meat packing program, we see the beginnings of the above concept. Here a number of companies, as well as owners and executives, were placed on probation; and as part of Probation conditions were required to establish, fund, and help implement a training program to train hard-core, unemployed ex-offenders as meat cutters and packers. The results are highly encouraging as a beginning effort. The operational concept was that of utilizing the socially beneficial talents and resources of people and corporations on probation for a non-profit organization which coordinated the implementation of the Court's intentions. Currently, ICI is a hybrid of the original meat packing program, operating now under new funding obtained from the Comprehensive

Employment Training Act, as well as Court ordered community service from additional industries. ICI is still applying the original lessons learned from the meat packing project.

The goal of this proposed community service program is to harness fully the potential for good work inherent in the people we occasionally see placed on probation for sophisticated forms of white-collar offenses. The creation and implementation of our proposal will require the hiring of professional staff, the participation of the Probation Office, the creation of an advisory board, and the eventual creation of an Honorary Board of Community Leaders in Government, the private sector, and the entertainment industry.

The combination of these varied talents will afford the assessment of community needs, the design of community service projects prior to sentencing, the monitoring of these projects, and conceivably the fund-raising for these projects through the program's own efforts as well as social reparation orders provided by the Court.

It is anticipated that the collective impact of the white-collar offenders, who are a part of this project, will be immeasurable and highly beneficial to the community. Their skills orchestrated and directed, as well as allied to other projects, can be significantly and substantively worthwhile. Their special skills, energy, and unique way of problem solving, blending with a professionally hired staff and the participation of the Probation Office, will develop unique projects which will become a resource for the community and an example for others to follow.

There are special benefits to such a program. White-collar probationers who help in the development of their community service projects, in concert with the Probation Office, will make available not only their special talents but also their personal contacts and resources in a fashion which will allow for a perpetuation of these relationships long after the probationer has left the program. Also, community service hours, as a measure of the probationer's performance, will become less critical and the emphasis may lead more toward community service goals and expectations. Although this program would not necessarily exclude the use of "hours" as a part of the measurement of performance, it would also add project description, time frame, and plans for implementation as a part of the measurement and also provide a staff to measure the client's performance.

For the Court a community service site involved in the design, monitoring, and development of community service projects for probationers may encourage judges to use this sentencing tool more frequently. Community service assignments will become an important social force. We have often heard criticism that, for want of talent, the money pumped into problem areas by society has simply disappeared without visible results. We will be able to provide this needed talent.

Another benefit to this community service project is the pooling together of the individual talents of the probationers and collectively develop programs otherwise impossible on an individual basis. The pooling and coordinating talents on a project or projects has not been done on a regular basis, with the exception of the meat packing program. The conceptual acceptance of this program by the Federal Court is the vital element in implementing this plan. The Court's leadership made possible such programs as the meat packing project.

We are recommending not a departure but rather a formalization and institutionalization of a process that has been existing in the probation system and the Court system for many years. The probation condition of community service for individuals as well as corporations, as a sentencing alternative, is becoming widely used and widely accepted. Community service has been viewed by the Court and the Probation system as punishment, rehabilitation, and as significantly beneficial to the community. Implicit in orders of community service is the assumption that the probationer is a

responsible and capable person who will be able to fulfill the Court's obligation without significant behavioral problems. We are recognizing increasingly that the white-collar offender can best repay society through community service which is not necessarily financial but with their non-monetary resources and abilities.

Methodology

Since this proposal is of an experimental nature, planning and development constitutes a crucial period. The planning must include criteria for selection of individuals as well as criteria for selection of projects. There must be a methodology developed for evaluating, monitoring, and perpetuating programs.

The initial planning and development will build around probationers who have training or abilities suitable for beneficial community service and whose history includes leadership and responsibility, and a desire to lend his or her talent to such a project. Courts may wish to require progress reports for community service ordered as a part of the sentence. This might allow the Court to become more informed in design and implementation. There are a number of practical steps to be taken:

1. Define the concept goals and criteria for this project.
2. Obtain the necessary authorization from the Court and the Probation Office.
3. Create an industrial advisory board to work with the Probation Office and other agencies to design the program.
4. Establish the program as a non-profit agency and raise the appropriate funds.
5. Build in opportunities for review by the Court and the Probation Office throughout the process.
6. As part of the original design, create the necessary groups of individuals who can lend their energies, talents, and information to the development of projects.

The goal is to create a socially relevant community service project which will be documented, credible, and a credit not only to the agency but to the individuals involved in its creation.²⁷

The foundation for People, Inc., was organized as a non-profit public benefit corporation "... to provide vocational training, employment opportunities, information and referral services to individuals who are on probation for the commission of criminal offenses and to individuals who are economically or socially disadvantaged." At this writing the Foundation has held its organization meeting and is pursuing tax exempt status with the Federal and State governments.

Probation and Community Advocacy

The development of non-profit private agencies or narrowly defined public benefit corporations can present a professional dilemma to many correctional practitioners. To assume such responsibility is, to say the least, a non-traditional role for most probation officers. Further, the institutionalization of such approaches in a sense "binds" the probation office to courses of action generally not provided in the budgeting of

resources or in staffing formulas. What, then, are the alternatives for the probation office which chooses not to deal with these matters except on a case-by-case basis, or which is precluded from doing so by reason of externally applied limitations such as administrative policy, budget, or court prohibition? Given an atmosphere that encourages cooperation between the probation office and the public and private sectors at least four alternatives can be described:

(1) Conduct a resource availability inventory of public agency services and a needs assessment of probation clients and attempt to arrange a matching process. While this process may be increasingly difficult, there is some evidence of responsiveness to articulated, legitimate requirements of the ex-offender group when presented to state employment or vocational rehabilitation agencies or to Private Industry Councils responsible for implementation of title VII of the Comprehensive Employment Assistance Act.

(2) Establish a "broker" or referral service to those private sector agencies established for community service purposes. In Los Angeles, for example, community service probation orders can be facilitated through the Volunteer Action Bureau, supported in part by the United Fund. Other community based agencies using funds from Federal or state sources may be required to accept ex-offenders as a stated percentage of their intake. Not to be overlooked also is the private-for-profit company which seeks to contract to provide needed services. For example, Community Corrections Services, Inc., of Eugene, Oregon, was a private corporation under contract with the State of Oregon Corrections Division through June 1981 to deliver \$1.3 million worth of services (presentence investigation, job development and enhanced supervision) in nine Oregon counties. The company was willing to allocate venture capital to develop and field test a prototype community service program for white collar offenders provided it could solicit foundation support in the form of an advance or a loan to be repaid over a period of several years from operating profits.²⁸

(3) Identify and support organizations whose mission is to provide needed programs and services and whose status is quasi-governmental or whose funding includes monies from governmental sources. The National Alliance of Business, for example, has contracts with the Department of Labor to assist in the development and operation of Private Industry Councils for prime sponsors seeking such aid. NAB has, over the past 2 years, jointly sponsored with the United States Proba-

²⁷Wishny, Stephen L., "Preliminary Concept Paper for Industrial Advisory Board," Internal Memorandum, U.S. Probation Office, Central District of California, April 22, 1981.

²⁸Personal communication and proposal to the author, June 23, 1980.

tion Service a coordinating program known as CAPE (Community Alliance Program for Ex-offenders). Now operating in Philadelphia, Portland, and San Jose, the emphasis is to utilize and coordinate the resources of CETA title VII with the capabilities of existing community-based organizations to provide ex-offenders with employment assessment, job training and/or job development and placement services.²⁹

(4) Look for joint venture or "trade-off" relationships with other correctional agencies. For example, at the urging of United States Probation, ICI Projects opened its intake to State Corrections, Youth Authority and local probation officers in 1978. This year, both state agencies are using budgeted funds to solicit proposals for the kind of services ICI has been providing. To the degree ICI is successful in competing for such monies, the United States Probation sustaining efforts may permit expansion of the number to be served or allow diversion of funds to meet other competing needs.

Implications for Policy

National manpower policy now seems to treat ex-offenders as part of a broader group of structurally unemployed or disadvantaged persons. Except for the Targeted Job Tax Credit program, ex-offenders are not seen as a target group of persons with unique problems. CETA regulations and instructions still use the same criteria for program evaluation of community-based organizations specializing in service to ex-offenders as are applied to those serving more heterogeneous groups. The National Alliance of Business has dropped its focus on target groups, including the ex-offender, and appears to be on the verge of withdrawing the

organizational and financial support for the CAPE program. These indicators, joined with austerity budgets, cuts in aid and assistance, and a contemporary political thrust toward greater punishment and more incarceration surely will maintain a climate in which criminal violence will continue to fester.

The local correctional administrator is hardly in a position to address these widening national economic and social gaps. His challenges, aided perhaps by the "Voluntary Initiative Program" of the national administration, will include finding useful answers in his community to the following (and similar) questions:

(1) How can we develop and maintain a vital and visible range of activities and cooperative efforts directed toward solving the specific problems faced by ex-offenders?

(2) How can we motivate private sector companies, including those directed as a condition of probation to perform community services, into honest responsiveness while avoiding the impression of "buying off" their obligations and influences?

(3) How can concepts of business efficiency and expertise be combined with the public interest to solve the problems of employment, housing, health and others associated with the stigma and status of the criminal?

(4) How can labor intensive and semiskilled industries, together with organized labor, be solicited for a more compassionate and responsible role in meeting the employment needs of the probationer or parolee?

(5) How can we find ways to accelerate the establishment or expansion of programs designed to strengthen volunteering, as well as individual, foundation or corporate giving, in order to strengthen public/private partnerships and coalitions?

²⁹The author, "Program Statement of the National Planning Committee on Ex-Offender Employment" (Washington, D.C., September 16, 1980).

END

DON'T ask the employer to give your referral any special consideration, but request that he give him the same consideration as any other qualified applicant who is not an ex-offender.

— DENNIS W. NEILSEN