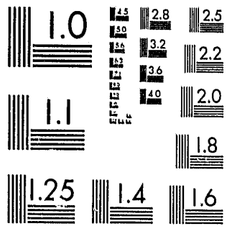

Federal Probation

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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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Federal Probation

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This Issue in Brief

The Evolution of Probation: The Historical Contributions of the Volunteer.—In the second of a series of four articles on the evolution of probation, Lindner and Savarese trace the volunteer/professional conflict which emerged shortly after the birth of probation. The authors reveal that volunteers provided the courts with probation-like services even before the existence of statutory probation. Volunteers were also primarily responsible for the enactment of early probation laws. With the appointment of salaried officers, however, a movement towards professionalism emerged, signaling the end of volunteerism as a significant force in probation.

Don't throw the Parole Baby Out With the Justice Bath Water.—Allen Breed, former director of the National Institute of Corrections, reviews the question of parole abolition in light of the experience with determinate sentencing legislation in California, the current crisis of prison overcrowding, and the improvements that have been made in parole procedures in recent years. He concludes that the parole board—while it may currently not be politically fashionable—serves important "safety net" functions and retention of parole provides the fairest, most humane, and most cost-effective way of managing the convicted offender that is protective of public safety.

LEAA's Impact on a Nonurban County.—LEAA provided funds for the purpose of improving the justice system for 15 years. To date, relatively little effort has been made to evaluate the impact of LEAA on the delivery of justice. In this article, Professor Robert Sigler and Police Officer Rick Singleton evaluate the impact of LEAA funds on one nonurban county in Northwestern Alabama. Distribution of funds, retention and impact are assessed. While no attempt has been made to assess the dollar value of the change, the data indicate that the more than one million dollars spent in Lauderdale County did change the system.

Developments in Shock Probation.—Focusing on a widely used and frequently researched probation program, this paper by Professor Gennaro Vito examines research findings in an attempt to clearly identify the policy implications surrounding its continued use.

Family Therapy and the Drug-Using Offender: The Organization of Disability and Treatment in

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out to John that he should carefully evaluate his present situation and its influence on his personal future. In stressing the present, the counselor has the professional obligation to inform John that there is nothing that can be done about the past. The inability of the the wife to be sexually active because of her illness is certainly unfortuate but this can be no excuse for him to rape over 20 women. He must accept the responsibility for his own behavior. He has freely chosen his actions regardless of past experiences. To use an unresolved Oedipus complex, his wife's inability to sexually respond, or a variety of other excuses, are treated as simply that, excuses. The therapy session takes on the character of informing John that it is of no concern about the past; nothing can be done to change it. In addition, John must be willing to accept responsibility for his free-will action, and he must initiate a present-oriented plan of action which will lead him to personal fulfillment, a fulfillment not predicated upon the expense of others.

From Punishment to Habilitation

The correctional philosophy of reintegration reinforces a need to move away from punishment and from the notion that offenders are by nature "sick" and can be treated effectively only by members of the "medical team." The reintegration focus emphasizes that effective personal change can occur utilizing a wide range of people with no special training in the role of the unconscious. They must have skills. There is no denying this, but the essential requirement centers around their ability to care for others and willingness to help. This counselor recognizes that cooperation between society and the offender can only benefit both. Conditions must be created by both the counselor and the client whereby the latter will view law-abiding behavior as a viable alternative to continuing in his criminality (O'Leary and Duffee).

What has traditionally been considered a "divine right" of the therapist must be rejected. What may be more important is an examination of the conscious determinants of behavior. An unresolved Oedipus Complex or sibling rivalry may appear to be relevant and suitable topics for intellectual discourse, but there are no data to support direct relationships between them and criminality.

In practical counseling, the therapist must be in a position to make the client aware that both the present and the future should dominate his time-frame reference. The past is done, and nothing can be done to change that. In the humanistic model there is a directive toward an awareness of the present and future as vitally important. The present and the future are truly realities which a person can do something about. Utilizing them to gain an ideal state, that which the client would like to be, is the goal of the client. That is the striving for fulfillment.

One criticism by humanistic counselors is that traditional therapies have given birth to "learned helplessness." Those who are addicted to "learned helplessness" are the "professional askers," dedicated to the script of inferiority and wanting things done "to" them, "for" them (McCormick). To avoid this criticism, the humanistic counselor is one who believes in the "fact" that the correctional client is the person who owns the problem, and the role of the therapist is to practically arrange the social conditions for the betterment of the client and the society. The ownership for responsible change must rest with the client, and only by responsible change initiated on a conscious level with all alternatives known and freely chosen can fulfillment be realized and actualization be a reality. By recognizing that people become addicted to life's scripts which are many times counterproductive to a prosocial lifestyle, the client must be convinced that (1) he has an ability to change his lifestyle, (2) he has several rewarding options for change, and (3) what the payoffs for the various options will be. Stressing the present and the future, being aware of societal constraints and opportunties, and realizing the importance of self-actualization as happiness-producing, the benefits realized by a nontraditional therapy form may be more valuable and viable than many treatment modalities of the past.

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Victim Services on a Shoestring

By Robert M. Smith

District Manager, Vermont Department of Corrections, Burlington

There is at this time a subtle change occurring within the criminal/juvenile justice system in both the United States and Canada. Some would agree that it is long overdue. Police, prosecutors, judges and corrections officials are starting to pay more attention to the victims of crime. In addition, legislators, lobbyists, and civic groups are recognizing the problem and attempting to deal with it. Statutory changes, victim compensation bills, services for battered women and sexual assault victims are examples which come to mind.

It is my contention that corrections has an important role to play with regard to victims of crime, even though we often do not become involved with an offender until long after the crime has been committed. Furthermore, in the absence of additional recources, there are avenues to pursue beyond the added increase in restitution payments and inclusion of victim impact statements in presentence investigation reports which seem to be the most frequent changes to date. While this article will primarily deal with probation and parole, the choice of the word "corrections" is a deliberate one as I believe we will witness victim service programs within institutions as well as the community in the future. Several months ago, a factual TV drama entitled "In the Face of Rage" portrayed the bringing together of sex offenders and sexual assault victims behind prison walls in the State of Washington. The findings at that time were encouraging but inconclusive according to the film credits.

Most jurisdictions are trying to justify level funded budgets, much less justify increased resources for the development of victim service programs.[1] Much can be done, however, in reorganizing existing staff resources and more fundamentally, by reassessing policies and creating new attitudes towards victims of crime. This article attempts to illustrate some of these new initiatives.

The fundamental reason for a corrections agency to involve itself in victim services is that it makes correctional sense to "return the offender to the scene of the crime." Many believe this to be important so as not to allow the offender to perpetuate a denial system in which the offender excuses himself from responsibility or, worse, projects blame on someone else, oftentimes the very person who was victimized.

Victim-Offender Reconciliation

Too often we become unnecessarily influenced by the environment in which we live, or for our purposes, the one in which we work. The criminal justice system is adversarial. The assumption, and it's a fundamentally sound one, is that the effective management of conflict will produce justice. Each of us has a role and a unique perspective, according to our profession. The net result is a decision which accounts for these perspectives and is hopefully fair. If you are thinking of adversity, it is often difficult to think of accommodation. The Victim-Offender Reconciliation Program (VORP) of Valparaiso, Indiana, is challenging the assumption that victims of crime should be "protected" from their offenders.[2] At the discretion of the victim, a meeting is arranged with the offender which is supervised by a third party. Surprisingly, many victims desire such a meeting. Restitution determination may be discussed, but often questions such as "why did you choose my home to burglarize?" or "what were you thinking about?" are common. Such a meeting often DE-MYSTIFIES the offender in the mind of the victim. Somehow, he doesn't seem quite as predatory as the stereotype portrays him, and these nagging questions are answered. The offender, on the other hand, is often more fearful about meeting the victim than the victim is in meeting the offender.

In our probation and parole office, we have had a number of brokered meetings between the offender and his victim, usually under the pretext of determining restitution. In *every* instance, the victim and the offender have expressed satisfaction. While this may not hold true over time, the results to date have caused many of the officers who supervised such meetings to express surprise and satisfaction themselves.

In one case, a shopkeeper was mugged and his money was taken. One of the two defendants expressed remorse during the presentence investigation. He subsequently was incarcerated. Some six months later, he was eligible for work release and was reminded of his stated remorse and desire to pay restitution at the time of the PSI. His assigned probation and parole offic[illegible]ook him to the shop and

[1] The State of Minnesota is one apparent exception. Their legislature in 1978 allocated funds which, when combined with private sources, enabled them to operate three victim service centers on a pilot basis. See "Crime Victim Crisis Centers 1981 Legislation Report," published by the Minnesota Department of Corrections, February 1981.

[2] For information, contact PACT Institute of Justice, 106 N. Franklin, Valparaiso, Indiana 46383. See also, "Victim Offender Reconciliation: An Incarceration Substitute?," Howard Zehr, Ph.D., and mark Umbreit, *Federal Probation*, December 1983.

after some ice-breaking, there followed a conversation of "some 20 minutes" during which the restitution was paid, the offender talked about what he was doing in jail, and the victim encouraged him to earn the GED for which the offender was studying. According to the officer, "the kid was on cloud-nine and the old man had some genuinely nice things to say about the Department of Corrections." Interestingly, the offender was not legally required to pay restitution in this case.

In another case, a young man burglarized the warehouse of his employer. The latter was noticeably upset during the presentence investigation interview, mostly because of a voiced frustration that nothing would result from prosecution. The officer (somewhat boldly) suggested that the best way to ensure restitution would be to hire the offender back and garnish his wages until the restitution was paid. The defendant agreed in return for a probation recommendation from the prosecutor. The employer agreed with the understanding that he could rely upon the probation and parole office for assistance if anything went wrong. The amount of restitution was substantial; after several months, the supervising officer received a letter from the employer. The probationer paid the amount in full. The employer noted that his attitude was remarkably improved. The employer further noted that he was able to teach the offender to use the company's computer, a skill which he thought would assist in future jobs. The letter closed: "We did it!"

I'd like to mention a final case: A large retail warehouse was burglarized. Again, the loss was substantial. The officer took the young man to meet with the three owners. The probationer was described as very hostile towards the officer prior to the meeting. Some of the goods were returned during the meeting. A camera, the personal property of one of the owners, was among the items. The owner thought it had been lost, not stolen, and was overjoyed for its return. Another owner, himself having had a few "brushes with the law when younger," gave the young man some fatherly advice. The probationer, tense and rigid prior to the meeting, became animated and relaxed afterward. The restitution for items not recovered was paid rapidly from subsequent earnings. The same probationer was on juvenile probation with another agency and had not paid restitution for a previous offense for some two years. That restitution was paid promptly as well. While there are cases where a meeting between a victim and offender should not occur, it should be standard practice to ask the victim if (s)he desires such. This can be asked during the presentence investigation but only after some degree of rapport has been established, is it recommended.

Information and Referral

In the previously mentioned case of Minnesota, 96 percent of the victims surveyed expressed satisfaction with the services rendered them.[3] While some of the services were cost items (e.g. helping to repair vandalism) and many seeking services did so shortly after the crime had occurred, most responses could be characterized as information and advocacy. While it takes time to provide information and more time to advocate on behalf of crime victims, we typically deal with "significant others" such as spouses, employers, and so on in our supervision of offenders, so why not victims?

In the absence of more time, volunteers can be most helpful. We are currently training volunteers to assist in restitution determination, even where there is controversy between the victim and the offender. Volunteers also can survey community services which are available to victims. As we continue to receive more inquiries from victims, information, referral, and advocacy are areas where we expect to see more involvement by volunteers and staff.

It has been our experience that questions often remain in the mind of the victim by the time there is finally disposition. Furthermore, many questions the victim has cannot be answered *until* there is disposition. Again, I attribute this to the adversarial nature of prosecution and defense. This only further adds to the argument that there is a role for probation in victim services.

For example, there was a recent sexual assault in our county which received a lot of press. The defendant was apprehended soon after the crime occurred. The victim was a very articulate woman who sought out the newsprint media while maintaining her anonymity. She very much wanted to publicize the horror of being a victim of sexual assault. She was frustrated at feeling powerless because many of her questions to the police and prosecutors could not be answered. As part of the presentence investigation, two probation officers spent considerable time with her, indicating the probable length of sentence, "good time," where the man would likely be sent and what would be happening during his incarceration. The officers also arranged through the prosecutor's office an opportunity for the woman to testify at the sentence hearing in addition to incorporating a lengthy written statement in the PSI report. It became apparent that what mattered most to her couldn't be achieved until a conviction occurred.

As a footnote to the above, prosecutors would do well to develop a victim advocacy unit in their offices, even

[3] *Ibid.*, Minnesota, Department of Corrections, p. 35.

if additional funds are not available. Pre-law students, former victims, or law clerks can be trained to be advocates. In our experience, the mere act of listening is an important part of the healing process. The prosecutor's focus is on the establishment of fact as is that of the police officer. Nonetheless, information and listening are fundamental in our opinion in all segments of the criminal justice system.

Restitution and Reparation

In most jurisdictions of Canada and the United States, the collection of restitution has increased dramatically in the last 5 years. In spite of this, problems remain. Most states still require that the judge assess the defendant's ability to pay. Ability to pay is also a matter for the probation officer to assess during the length of supervision.

We have used the Financial and Income Statement adopted by the Uniform Reciprocal Enforcement of Support Act (URESA) that states use in the determination of child support. While the penalty of perjury does not apply as it would in the case of child support, we nonetheless have found it to be credible when we have introduced it at hearings for violation of probation.

Understandably, a probationer's financial status may change during the course of supervision. In our experience, victims are satisfied when they receive regular payments of restitution, regardless of any changes in the amounts from month to month. In the few times they have called, an explanation that the probationer has just lost a job or is experiencing other justifiable financial difficulties is usually sufficient. Therefore, we strive to impress upon the probationer that consistent payments are important unless a lump sum payment can be made within a short period of time.

We try to be progressive in our discipline when probationers fail to comply with payment contracts. In general, when a probationer initiates an explanation for nonpayment, we accept any excuse given and take that opportunity to advise the person that future noncompliance requires verification. If we must initiate contact for nonpayment, there is a demand for sufficient payment to make up the arrearage. As a final step, a citation is issued for a month in advance. If the arrearage is covered within that time, the violation of probation petition is rescinded. If we must go through with the violation, we will ask that the judge specify a time by which the restitution must be paid and recommend a reparation fee inasmuch as the victim has again suffered as a result of tardy payments.

What may seem to some readers to be an elaborate system of enforcing restitution payments is a necessity in our State because, if probation is revoked, restitution is no longer applicable.[4]

Whenever a person under supervision absconds and there is a victim who is owed restitution, an officer is required to inform the victim that a warrant has been issued for the probationer's arrest.

Restitution in the form of direct service is still untested. In limited cases, we can foresee the possibility that the offender will compensate the victim by performing repairs. In the few cases we have attempted, we have discovered that it works best when the job can be completed in the course of a day. This would apply in minor offenses for the most part.

The matter of reparation is also a difficult area. As opposed to restitution, we define reparation to be compensation for trauma or inconvenience. We have and will continue to use it in violation proceedings on restitution arrearage, but when we have attempted to use it elsewhere through presentence reports, we have found that some judges are receptive but others avoid ordering our recommendations. This may be because reparation is harder to assess as oftentimes it pertains to crimes against persons. Our guess is that most judges regard reparation as a matter for civil court suit. In one case, an officer recommended $700 reparation the victim of a DWI accident. It was clear that the expected loss of income due to the injury would be uncertain because the time of healing was uncertain as well. The officer argued that the reparation order should not be regarded as a total, rather as a payment which would assist the victim and be deducted from any future judgment through civil court. The judge agreed with our recommendation in this case.

Summary

It would be very worthwhile in my opinion that there at least be a national effort to explore victim needs which may be met through the criminal and juvenile justice systems. Canada has done such and many procedures have been standardized throughout their provinces.[5] A recent conference at the National Training Center for Judges in Reno, Nevada, resulted in a number of resolutions specifically intended to involve victims of crime in the *entire* criminal justice process.[6] It would be my hope that the National Institute of Corrections have a partnership role with other organizations which are now addressing this concern. Unmistakably, it will remain an important focus throughout the eighties.

[4] In our correspondence, we discovered only one state, Colorado, that authorizes its parole board to order restitution, although other jurisdictions which did not respond may have such a statute.

[5] See "Canadian Federal-Provincial Task Force on Justice for Victims of Crime," Canadian Government Publishing Centre, Ottawa, Canada K1A 0S9. Purchase price $12 payable to the Receiver General for Canada.

[6] Published information is unavailable as of this writing.

On the other hand, there is the danger that we could become too fragmented in our roles with respect to victims of crime. I wouldn't want the crime victim to feel caught in a bureaucratic maze. To the extent we talk among ourselves and recognize common goals, this may not occur. Perhaps that's the next step: a common reference. We need to see the problem differently than we have to date.

Medical Services in the Prisons

A Discriminatory Practice and Alternatives*

BY JAMES T. ZIEGENFUSS, JR., PH.D.**

THE PURPOSES of this paper are to consider the problem of the quality and quantity of prison medical care and the increasing involvement of litigation in the system. The paper identifies the legal system/service system conflict, including pressures for change in system structures and processes. Two examples of change directions are identified: provision of care by community organizations and an internal complaint mechanism.

There has long been a dispute over whether prison medical care is adequate and, if not, what to do about it. The discussion here includes general medical care as it actually is in prisons; i.e., inclusive of mental and addictions care—two common and much needed components of prison medical service. Both the courts and various citizen groups have been drawn into the dispute over service adequacy. For the courts, the question of involvement is a most difficult one, particularly as greater attention is paid to the civil rights of inmates. For example, in *United States ex rel. Yaris* v. *Shaughnessy*[1] the dilemma of the courts in the matter [of prison medical services] was outlined:

> It is hard to believe that persons . . . convicted of crime are at the mercy of the executive department and yet is unthinkable that the judiciary should take over the operation of the . . . prisons. There must be middle ground between these extremes. The courts have proceeded very slowly toward defining it.

The courts are now overcoming their reluctance and are beginning to exercise some control.

A related instititional case (a class action suit against the mental hospitals and institutions for the retarded of the State of Alabama) defined the need for a specified number of professionals to assure at least minimum staffing standards in institutions for the mentally disabled.[2] This precedent, defining some of the conditions of treatment, moved the judicial branch of government actively into organizational operations. Some commentators agree with Barr and Zounin[3] recommending that the administration of prisons be by the judiciary rather than the executive branch of government.

As the courts begin to hear more cases and to increase involvement, the legal basis will be further elaborated. Zalman[4] and others have discussed the prisoner's right to medical care with some writers indicating that lack of care may be discrimination. A special focus is on the separate but *unequal* services. However, the conflict in law may be avoided with the use of existing community services and an internal complaint mechanism. A brief note about the history and nature of the prison medical care problem is relevant.

Prison Medical Services—Problem Recognition

The English recognized the problem as early as 1922. In regard to medical services in English prisons, the Prison System Enquiry Committee[5] responding to the question of service adequacy stated that: "We must make the comment that only in an insignificant number of cases have ex-prisoners borne out the view that adequate medical attention is given . . ." In addition, the Committee listed at that time two principal defects as:

> 1—Medical officers of good calibre are rarely attracted to the prison service. The medical attention is frequently hurried and callous, and suspicion of malingering is very prevalent, and
> 2—The medical staff is not large enough to enable individual psychological study and treatment to be undertaken. Nor is it, as a general rule, competent for such duties.[6]

*This paper was first developed as a result of a tour of British programs at the invitation of the Department of Health and Social Security. Dr. Allen Sippert organized the tour, for which appreciation is extended. The author would like to thank David I. Lasky, Ph.D., Robert Little, M.D., Susan McGuire, Esq., and Violet Plantz, M.S.W., for reading the manuscript. Preparation of this paper was supported in part by a grant from the Pennsylvania Governor's Council on Drug and Alcohol Abuse, Contract Number ME-1904. The opinions expressed are solely those of the author.

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[1] *United States ex rel. Yaris* v. *Shaughnessy,* Vol. 112 F. Supp. p. 144 (S.D.N.Y. 1953).

[2] *Wyatt* v. *Stickney,* 344 F. Supp. 313, 379 (M.D.Ala. 1972).

[3] Barr, N. and Zounin, L., "Campus Prisons, Community Prisons and Judicial Administration." In L.M. Irvine and T.B. Brelje (Eds.) *Law Psychiatry and the Mentally Disturbed Offender,* Springfield, Ill., Charles Thomas, 1973.

[4] Zalman, Marvin. "Prisoners' Rights to Medical Care." *The J. of Criminal Law, Criminology and Police Science,* Vol. 63: 185-199, 1972.

[5] Prison System Enquiry Committee, *English Prisoners Today.* Stephen Hobhouse & Fenner, Brockway (Eds.), New York: Longmans, Green & Co., 1922, p. 261.

[6] *Ibid* p. 262.

END