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Max Raskin

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COMMENTARY

VOLUNTEER PROBATION COUNSELORS: A NEW DIMENSION IN SENTENCING YOUTHFUL OFFENDERS

MAX RASKIN*

One of the grimmest aspects of the rapidly increasing crime rate in America is the correspondingly large number of recidivists in our penal institutions. Statistics indicate that two-thirds of the inmates of federal and state prisons have been in prison before; 72 per cent are persons under 20 years of age and 60 per cent of all offenders are arrested again within five years after their release from custody.¹

Virtually all correctional experts agree that incarceration obstructs rehabilitation. The environment by necessity restricts offenders to association with fellow offenders and thereby enforces antisocial values, attitudes, and behavior.

The interests of society are not served by a penal system designed only in terms of retribution and deterrence and which pays little or no attention to rehabilitation, for the end product inevitably is better criminals rather than rehabilitated and useful citizens.

A prison atmosphere generates a criminal culture in opposition to authority.² Instead of being institutions of rehabilitation, our prisons have often become nothing more than schools for crime.

It was with these alarming statistics and conditions in mind that Bernard G. Segal, before retiring as President of the American Bar Association, instituted the Commission on Correctional Facilities and Service in March of this year. The goal of the Commission is to improve the administration of justice by formulating and sponsoring positive projects which will eliminate the "revolving door" syndrome that exists in our prison today. One such recommended project is the use of volunteer-assisted probation programs. Probation in criminal adjudications of both felonies and misdemeanors has been used increasingly by sentencing judges in appropriate cases partly because of the overpopulated condition of prisons and the high financial cost to taxpayers.

* Judge, Circuit Court, Milwaukee County. LL.B., Marquette Law School, 1926. Attended National College of State Trial Judges, Reno, Nevada—1966 and post graduate—1970. Former City Attorney, Milwaukee, 1932-36. Member, American Bar Association, Wisconsin Bar Association, Milwaukee County Bar Association, American State and County Bar Association, American Judicature Society.

¹ Segal, President's Page, 56 A.B.A.J. 507 (1970).

² J. Benjamin, Mr. Freedman, and E. Lynton, *Pros and Cons: New Roles for Nonprofessionals in Corrections* at 79 (1966).

In 1909, the legislature of Wisconsin passed an adult probation law³ empowering the state courts to place on probation first offenders where the maximum penalty would not exceed 10 years in the state penitentiary. Under the provisions of this enactment, offenders were placed in custody of probation officers for guidance instead of being confined to a cell. The rationale underlying the provision then as it is today was the belief that taking a man out of society may not be the best way to help him live in society. The purpose of the legislation was to offer the sentencing judge an alternative to the usual pattern of fine, incarceration, or both. Significantly, the present probation statute⁴ is not limited to first offenders or crimes which carry a period of confinement of less than 10 years. The legislative intent was to permit the court to decide on a case-by-case basis whether probation is appropriate.

Being a privilege rather than a right, probation is extended only if the judge feels that the defendant before him is not likely to violate the law again.⁵ It is only used in selective cases where background, character, or mitigating circumstances seem to indicate a probability of success under controlled supervision as opposed to confinement. Surveillance is provided to insure the protection of society, which is given the highest priority.

Rather than being an economic burden on society the offender continues to contribute to the tax coffers, and also supports and maintains himself and his family as a unit. Payment of the monetary debt to society is provided by requiring the offender to make restitution for any damage caused or property misappropriated and by requiring the payment of court costs as a condition of probation.⁶

The desirability of probation as a method of affirmatively promoting the rehabilitation of the offender has become well accepted. The 1970 Tentative Draft of the American Bar Association's Project on Standards for Criminal Justice outlines the criteria which should be used by the courts in ascertaining whether probation is advisable and appropriate in a given case:

§ 1.3 Criteria for granting probation.

- (a) The probation decision should not turn upon generalizations about types of offense or the existence of a prior criminal

³ Wis. Laws 1909, ch. 541, § 4734.

⁴ Wis. STATS. § 57.01 (1967).

⁵ Wis. STATS. § 57.01 (1) (1967): "When a person is convicted of a felony . . . and it appears to the court from his character and the circumstances of the case that he is not likely again to commit crime and that the public welfare does not require that he shall suffer the penalty of the law, the court may, by order, withhold sentence or impose sentence and stay its execution and in either case place him on probation to the department for a stated period, stating in the order the reasons therefor; and may impose as a condition of such order or of continuing it in effect that he shall make restitution or pay the cost of prosecution or do both. . . ."

⁶ *Id.*

record, but should be rooted in the facts and circumstances of each case. The court should consider the nature and circumstances of the crime, and history and character of the offender, and available institutional and community resources. Probation should be the sentence unless the sentencing court finds that:

- (i) confinement is necessary to protect the public from further criminal activity by the offender; or
 - (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
 - (iii) it would unduly depreciate the seriousness of the offense if a sentence of probation were imposed.
- (b) Whether the defendant pleads guilty, pleads not guilty or intends to appeal is not relevant to the issue of whether probation is an appropriate sentence.

What is of striking importance in the recommendation is the realization that probation *should* be utilized in sentencing offenders *unless* (1) the gravity of the crime dictates confinement for the protection of society, or (2) effective correctional treatment can best be supplied in the institution, or (3) a sentence of probation would diminish the seriousness of the crime.

While much can be said for probation as a method of sentencing criminal offenders, its weaknesses are also readily apparent. Effectiveness is largely dependent upon the professional probation officer. He must not only have the ability and desire to communicate with the probationer, but he must also be able to expend a certain amount of time on an individual basis. Due to large case loads and administrative burdens, the task has become more difficult and oftentimes impossible to perform.

The Wisconsin Council on Criminal Justice in its recent report said that rising case loads and increasing tasks of a perfunctory nature have placed great demands on professional probation officers resulting in a crisis in the field.⁷

The United States Department of Health, Education and Welfare takes even a grimmer view of the present administration of probation.

"Understaffed, underpaid and overburdened probation departments are unintentionally undermining the rehabilitative efforts of courts and correctional agencies."⁸

⁷ State Criminal Justice Improvement Plan (April, 1970) at 348.

⁸ FLA. STAT. §947.081 (1968)

947.081 Department of community services.

(1) The parole and probation commission shall establish a department of community services which shall:

(a) Organize and train local committees of selected volunteer citizens to advise and assist field supervisors of probationers and parolees, with special reference to adult education, vocational-technical education and work-study preparation;

In an effort to overcome the problem, courts throughout the country have instituted volunteer probation programs. This recent and forward-looking development in the probation field is now being used in the courts of over 125 cities; in fact, one state, Florida, has adopted by legislative enactment⁸ a similar program to assist the state parole agencies.

Since the purpose of the volunteer program is not to supplant the professional probation officer but rather to complement and supplement the commendable efforts of the professional, no reason exists to support the notion that the program is likely to prove an economic threat to the professional staff.¹⁰

Impressed by the success of the Royal Oak, Michigan and Denver, Colorado volunteer programs, the writer, assigned by Chief Justice E. Harold Hallows to preside in criminal cases for a limited period, launched a pilot volunteer probation project in Milwaukee. Since then the Wisconsin Council on Criminal Justice has urged similar programs.¹¹

Such a program has long been needed in Milwaukee County. At present there are over 5,000 offenders on probation, 1,846 from the Circuit Court, which adjudicates felonies, and 3,329 from the County Court, with jurisdiction over misdemeanants. Of the total, it is estimated that 44 per cent of the probationers are between the ages of 18 and 26. The average case load for a probation officer is in excess of 200. In comparison, the President's Commission on Crime recommends an optimum caseload of 35 per probation officer.¹²

It is also noteworthy that the Commission recommended that probation and parole services include volunteers in their regular program.¹³

Pesently there are 9 volunteers in the Milwaukee experimental project. Volunteers have been chosen with the aid of the Salvation

(b) Maintain liaison with all appropriate municipal, county, state, and federal agencies whose services aid in the reintegration of offenders into a free society; and

(c) Stimulate community programs relating to persons released under probation, parole, and mandatory release supervision.

(2) The parole and probation commission may employ a director of the department of community services and deputy directors for the seven (7) organizational areas of the commission.

Added Laws 1968, Ex. Sess., c. 68-36, § 1, eff. July 1, 1968.

⁹ U.S. Dept. HEW J. D. Pub. No. 147 (1969).

¹⁰ *Id.*

¹¹ "The lack of sufficient manpower to provide correctional services is evident. There is a need for undertaking pilot projects to investigate the desirability of using volunteer lay persons . . . in the various phases in the correctional and rehabilitative programs. . . ." State Criminal Justice Improvement Plan (April, 1970) at p. 177.

¹² The Challenge of Crime in a Free Society, a Report by the President's Commission on Law Enforcement and Administration of Justice 167 (1967). [Hereinafter cited as President's Commission].

¹² President's Commission, *supra*, note 8, at 168.

¹³ Burnett, *The Volunteer Probation Counselor*, 7 JUDICATURE 285-287 (1969).

Army, whose Advisory Board sponsors the program. Each volunteer is required to attend orientation sessions conducted by Dr. Samuel Stellman, Chairman of the Department of Social Work at the University of Wisconsin-Milwaukee-Extension. The cost of these sessions is financed by the Daniel W. Hoan Foundation. It consists of three three-hour sessions in which the volunteers are instructed in general criminal court procedures, the problems and decisions the court and probation officer faces, and the problems of the offenders and how the volunteers can help. Volunteers are also made aware of available community and private agencies which can be of particular assistance in certain cases. Upon completion of the orientation, a volunteer is ready to be assigned a probationer on a one-to-one basis. The individual attention thus afforded is the key to the success of the volunteer program.

THE ROLE OF THE VOLUNTEER

Volunteerism is nothing new to the American way of life; 50 million Americans are involved in some form of volunteer work on behalf of political, social and charitable organizations.¹⁴

While the use of volunteers in a court setting is an innovation, the concept is rapidly receiving recognition from court and law makers alike.

The new Wisconsin Criminal Procedure Code, which became effective July 1, 1970, acknowledges the usefulness of volunteers in offering a judge an alternative to bail. It provides that a judge may release a person charged with a felony and place him in the custody of a designated person or organization which agrees to supervise him.¹⁵

Chief Justice Warren Burger in his article "No Man is an Island,"¹⁶ said that:

"We have the basic tradition of doing great work through volunteers. We must channel and harness this kind of manpower and give it direction."¹⁷

The good will generated by such a program is as important as the direct services of the volunteers.

"In a sentence, the goal of volunteer programs is the promotion of public relations at a new level of community involvement which bridges the gap between the court and the community."¹⁸

¹⁴ WIS. STATS. § 969.03 (1969).

969.03 BAIL IN FELONIES. (1) A defendant charged with a felony may be released by the judge upon the execution of an unsecured appearance bond or the judge may in addition thereto or in lieu thereof impose one or more of the following conditions which will assure his appearance for that trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him.

¹⁵ 56 A.B.A.J., at 327 (1970).

¹⁶ *Using Volunteers in Court Settings* U.S. Dept. HEW J. D. Pub. No. 147 (1969).

¹⁷ See Ch. 3 of President's Commission, *supra*, note 8, at pp.

The utilization of volunteers within the court framework is a venture in collective action in which the court builds a constituency for social action in its own community. Its beneficial influence on the criminal justice system thus becomes apparent.

The volunteer probation program in Milwaukee exemplifies the favorable interest which citizens have shown for this type of program and their willingness to serve the community as well. Volunteers who are drawn from the local citizenry commit themselves to spend one hour per week with their probationer. Often times, because of a sincere desire to help, the volunteer will spend many more hours. Periodic written reports are submitted to the sentencing judge informing him of the probationers' progress. The contingent of volunteers, well screened and selected, includes professional, business, laboring people and housewives from all walks of life who are interested in curbing cancerous growth of crime in the community.

Many offenders at the time of their initial offense are already failures in home, school, work and even leisure time activities. Once they become officially labeled "criminal" or "delinquent" their estrangement from these primary activities increases and their sense of powerlessness to succeed in legitimate ways is accentuated. Frequently society reacts to their criminality by blocking them off from the help they need most if they are to turn away from a life of crime.¹⁷ Volunteers can be a link between the offender and community activities, a mediator when there is trouble on the job or in school, and an advocate of the offender where bureaucratic policies act irrationally to screen him out. Successful rehabilitation must involve a more direct relationship between offenders and persons who can help them find success in lawful ways.

The volunteer is a citizen who is interested in his fellow man and is willing to commit his time and energies to helping others make a successful adjustment in society. He is a friend, a helper, a sounding board, a constructive critic. He may open doors to opportunities, break down prejudicial attitudes in the community, help the probationer make decisions or just listen to him with understanding and compassion. The volunteer must be able to convey to the probationer that he believes in him as a person with considerable potential for self-direction and ultimate success in society. These are the necessary attributes and characteristics of a volunteer probation counselor and account for the remarkable success of volunteer probation programs.

THE ROLE OF THE COURT

Essential to the optimum success of the volunteer probation program is a court with a motivation, philosophy and a set of attitudes which favors rehabilitation in the community, a reluctance to incarcerate until

all other avenues have been explored, and the belief in the value of lay volunteers.¹⁸

It is imperative that the court and its staff establish a good working relationship with the volunteers. At the outset this entails a certain degree of work and time, but the use of volunteers is an "investment" by the judiciary and not the acceptance of an outright gift. The investment is in terms of planning and policy-setting, time and effort. As the program progresses and volunteer leadership develops, the time required of a judge and his staff will diminish proportionately.

The major obstacle which has beset the Milwaukee program is the evident reluctance of the local judiciary to accept citizen volunteers as a valuable tool in rehabilitating offenders. Some of the volunteers have been waiting months to be assigned their first probationer.

Resistance to change accompanies all new programs and the volunteer program is no exception. Courts must become willing and able to fit their operations into stricter experimental designs.¹⁹ When one examines the costly alternative, the choice should be apparent.

Chief Justice Warren Burger has urged that judges not become so engrossed with procedures and techniques of the trial of a criminal case as to lose sight of the purposes of a system of justice.

"I see two basic purposes—the first, to protect society; the second, to correct the wrongdoer. If this is correct, we should stop thinking of criminal justice that begins with an arrest and ends with a final judgment of guilt. We must see it as embracing the entire spectrum including that crucial period which begins when the litigation is over and the sentence is being carried out. It is here that the success or failure of our society will make itself known."²⁰

The court provides the necessary supervision and performs administrative duties which cannot be performed by volunteers. The impact on the court structure and personnel is minimal. Fears of staff members of being displaced are unjustified since replacement is not the function of the volunteer.

ADVANTAGES OF A VOLUNTEER PROBATION PROGRAM

When one realizes that seven out of ten crimes in the United States are committed by persons under twenty-five years of age and that the majority of crimes of violence are committed by persons who have previously appeared in court for misdemeanors, it becomes apparent that if a campaign against crime is to be launched, it must be directed at

¹⁸ Dr. Gordon H. Barker, *Volunteer Probation Officer Manual*, Hershfeld Press, Denver, Col. (1969) at 10.

¹⁹ *Using Volunteers in Court Settings* U.S. Dept. HEW J. D. Pub. No. 147, at 477. (1969).

²⁰ 56 A.B.A.J., at 326 (1970).

the young offender. He is at a turning point in his life, and unless he receives direction and supervision he will revert to criminality. Volunteer probation programs, therefore, are primarily concerned with the youthful offender. It is felt that the key to rehabilitation is to insert inspirational personalities—via the volunteer—into the lives of impressionable offenders. Each volunteer is assigned one probationer. The particular skills and interests of an individual probationer and volunteer can be given special consideration, and the merger of interest between the volunteer and probationer creates a rapport which is oftentimes lacking between the probationer and the professional.

The probationer is also more apt to accept a volunteer because he is unpaid and his interest cannot be passed off as just doing his job. In the eyes of the probationer the volunteer is thought of more as a friend and less as a policeman. This is a distinct advantage in gaining the trust of the probationer. Once the barrier is broken down there is a good chance of success. The attainment of the goals of probation can be more readily achieved through volunteers because the probationer is more willing to listen and respond to the advice of the volunteer.

Another important advantage of the volunteer program is the ability of the volunteer to assist in locating employment for the probationer. A recent national survey²¹ of volunteers indicates that the volunteers are better educated and have higher incomes than the general public. Accordingly, they are more likely to be influential people, leaders in the community, who can act as spokesmen for the probationer in finding employment. They can also act as spokesmen for the program itself and impress upon the local citizenry the need for such a program. Businessmen and employers are far more receptive to a volunteer in creating opportunities for job openings than they are to a state or local probation department.

Besides reducing the workload of the professional staff, the volunteer also assists the court by bringing the probationer into closer and more frequent contact with it. The monthly reports to the sentencing judge provide a method of continuous court supervision during the term of probation. The volunteer acts as the eyes and ears of the court by being in constant touch with the court and its personnel. The volunteer can be not only a source of additional information but can often supply a different viewpoint and opinion of the offender.

The economic advantages of an effective probation program are abundant. The cost of confining an offender varies depending on the size of the institution, the services offered, and the amount of supervision required. For example, the per capita cost per month to confine an

²¹ Louis Harris, *Volunteers Look at Corrections*, Report of a Survey for the Joint Commission on Correctional Manpower and Training (1969).

offender at the Wisconsin State Prison is \$295, at the Wisconsin State Reformatory \$326, and at the Wisconsin Home for Women \$718.²²

In contrast the per capita cost for probation is less than \$200 annually. The volunteer probation program offers an effective alternative to confinement at a greatly reduced cost to the taxpayers.

Volunteers offer a fresh approach and new insight into the rehabilitation of young offenders. Through a unified effort and by sharing the responsibilities of the lives of others with citizen volunteers a great deal can be accomplished in the area of crime prevention. A comparison study was made of offenders in the Royal Oak, Michigan volunteer program and another comparable court not utilizing volunteers. The offenders were tested for hostility and anti-social attitudes at the time they appeared before the court and eighteen months later. In the Royal Oak program three out of four showed improvement, while less than one out of five showed improvement in the other court. Less than one out of eight in Royal Oak regressed while one out of two regressed in the other tested group. The statistics speak well of the volunteers.²³

By utilizing the collective professional abilities and the know-how of concerned citizens, a new army of citizen probation officers can be organized to improve the educational and vocational achievements of the offender. So effective have the volunteer programs been that Judge Keith Leenhouts, founder of the Royal Oak program and the person most responsible for the current interest in citizen volunteers, has said, "This may well be more than *an* answer to the crime problem, it may be *the* answer."

²² State of Wisconsin Financial Report, Dept. of Health and Social Services, 75-79 (1968).

²³ *Supra*, note 13.