The Campaign for Federal Probation

Charles L. Chute
National Probation and Parole Association, New York City

In 2025, the federal probation and pretrial services system will be celebrating its 100th anniversary. President Calvin Coolidge signed the Probation Act on March 4, 1925. In 2025 we will devote an entire issue to this anniversary of our system, but meanwhile, in this issue we are reprinting an article on the complicated ins and outs that led to the 1925 Probation Act. The following article was published in the June 1950 issue of Federal Probation, *which commemo-rated the 25th anniversary of our system.*

"WITH THE PASSING of the theory that the only important factor in dealing with a person charged with a crime is that of establishing his guilt and inflicting punishment, there came into existence a doctrine to the effect that a study of the transgressor himself is as impor-tant to society, in the interest of social justice and welfare, as the act of the offender and his punishment. It was through the force of this doctrine that probation originated. Formalism was almost wholly discarded and a genuine interest in the adjustment of the offender to normal social relations was substituted for the emotion of hate and vengeance."[1]

Contrast this statement of a judge who has long been a leader in social court reform with that of one of the United States district judges in a letter to the writer during the early days of the campaign for a federal probation law:

> I have your letter asking my endorsement for a federal probation act. Frankly, permit me to say that I do not favor any such law. My observation of probation laws is that they have been abused and tend to weaken the enforcement of our criminal laws.
>
> I believe that one reason why the federal laws are respected more than the state laws is the feeling among the criminal classes that there is a greater certainty of punishment. What we need in this country is not a movement such as you advocate, to create new officials with resulting expense, but a movement to make the enforcement of our criminal laws more certain and swift.

This was typical of the letters of approximately half of the federal judges when I first circularized them in 1916 with a copy of the then pending Owen-Hayden bill, first introduced on behalf of the National Probation Association in 1909. It also expressed the general attitude of successive Attorneys General and federal prison officials throughout the campaign—or rather series of campaigns—which were carried on during every session of Congress from 1916 to the final victory in 1925.

But our efforts, becoming increasingly intensive and national in scope, were at least educational. Through the many hearings before congressional committees, personal interviews, and numerous letters from constituents, the message of probation and individual justice brought enlightenment to many congressmen. Even the judges were "educated," and let no man say this is impossible. Subsequent circularization in 1919 and 1923 indicated increasing support; but the United States Department of Justice gave no approval or assistance until, under new and progressive leadership, several years after the law had been passed, it adopted the modern concept of individual scientific treatment which it has ever since maintained. I have been asked to give highlights and personal glimpses of the hard fought campaign to secure the first law and the subsequent battles after 1925 to set up the system and save the appropriation for the first federal probation officers, and finally to strengthen the law, culminating in the amended act of 1930. Although many years have passed, most of the important events are still clear in mind, but a study of 17 large folders of correspondence, bills, pamphlets, newspaper clippings, printed hearings, and congressional reports, now in the office of the National Probation and Parole Association, have vividly recalled many of the interesting events.

The First Action

In the year of grace 1916, with the world war raging in Europe and the United States about to be drawn in, a significant movement for human betterment got under way in this country. The National Probation Association had for some years consisted chiefly of a small annual gathering of probation enthusiasts at the National Conference of Social Work. It had been rescued from threatened oblivion by the leaders of the New York State Probation Commission, the official body to develop and supervise probation in all courts of New York State. Earlier its able president, Homer Folks, and its first secretary, Arthur W. Towne, had been active in developing the national

[1] Judge Charles W. Hoffman. "Trends of Probation," *1930 Yearbook*. New York; National Probation and Parole Association, p. 76, 3.

meetings which had as one of their projects the sponsorship of a bill in Congress to meet the obvious need of federal courts to follow those in progressive states in establishing a probation system. At our revived national conference in Baltimore in 1915, Frank E. Wade, a lawyer of Buffalo and a member of the New York State Commission, was elected president of the National Probation Association, and the writer who, as secretary of the New York State Commission, had made all arrangements for the meeting, was elected secretary-treasurer. Thus I inherited at one fell swoop not only the task of developing a national service agency but also the campaign for a probation law in the United States courts.

This last effort had gotten nowhere, although Senator Robert L. Owen of Oklahoma had introduced our bill at each session of Congress since 1909. A visit to Washington early in 1916 and interviews with Senator Owen and Representative Carl Hayden of Arizona, who had introduced the bill in the House, revived interest and led to a hearing before a subcommittee of the Senate Committee on the Judiciary on March 25.

Of the seven Congressional Committee hearings I was privileged to organize, I always remember the first as the most satisfactory. We only had one man, Senator Thomas J. Walsh of Montana, to convince. He was a great lawyer, but knew nothing about probation from practical experience. His bearing was judicial and under his stern face and beetling eyebrows he showed a kindly interest in the unfortunates we hoped to serve.

I had brought Frank E. Wade down for this hearing and the Massachusetts State Probation Commission sent James P. Ramsay, chief probation officer of Middlesex county, a colorful and effective speaker. George A. Heaney, chief probation officer of the District of Columbia Police Court, and Dr. A. J. McKelway of the National Child Labor Committee came in from Washington. We all spoke and the Senator asked searching questions. I filed a brief and afterwards sent a further statement requested by the Senator on the methods and results of probation work on New York State and on the laws of the 26 states and the District of Columbia then having adult probation laws. Both were published in the report of the hearing. There is no doubt that Jim Ramsay, sturdy, kindly, sandy-headed Scotsman, with a great sense of humor and long years of practical experience as a probation officer in the superior courts of Massachusetts, contributed the note of human interest that greatly appealed to the Senator. Mr. Ramsay told of some of his successful cases, argued effectively for the discipline and deterrence that is in probation, as well as its individual salvage and reclamation, and ended up with a quotation from Robert Burns which was most effective:

> Then gently scan your fellow man, Still gentler sister woman;
> Though they may gang a kennin' wrang,
> To step aside is human:
> Then at the balance let's be mute We never can adjust it;
> What's done we partly may compute,
> But know not what's resisted.

Senator Walsh reported the bill out with only one amendment which we had agreed upon, namely (in order to avoid too great an expense at the start), that each federal judge should be authorized to appoint *one* paid probation officer at $5.00 per diem and expenses. But objections arose on the Senate floor and it was lost for that session. Evidently we hadn't yet interested enough senators in our cause.

Meantime, over in the House we had had a hearing on the companion Hayden bill, before the full Judiciary Committee. I had a strong supporting cast, full of enthusiasm, brought to Washington direct from our annual conference in Indianapolis where federal probation needs were discussed and resolutions passed. Participating at the hearing were Mr. Wade, Herbert C. Parsons, deputy commissioner of probation of Massachusetts, Albert J. Sargent, chief probation officer of Municipal Court, Boston, Mr. Ramsay and Mr. Heaney. The same facts and endorsements were presented but the going was rough. Our speakers were constantly heckled by questions and objections from congressmen who hailed from eight different states. The objections related largely to the costs involved. It was felt that the number of convictions in federal courts did not justify even one paid probation officer to the court, that all judges would appoint officers, and the costs would be excessive. Among the objectors was one Andrew J. Volstead of Minnesota who afterward became chairman of the committee and father of the national prohibition law.

A Weak Bill Passes

Another bill had been introduced by Congressman Isaac Siegel providing for the appointment of United States marshals as probation officers without additional compensation. This we strongly opposed.

On December 4, 1916 the United States Supreme Court announced its decision in the famous *Killits* case.[2] This amounted to an injunction forbidding the further use of suspended or deferred sentences in all federal courts. This brought action from the House Committee, but not the action we had hoped for. Mr. Hayden introduced another bill, at the committee's request, which was in effect only a limited suspension of sentence measure. It provided for "probation," except for serious offenses and second felonies, but made no provision whatever for probation officers. This bill was promptly reported to the floor and passed under unanimous consent rules. We did not oppose this subterfuge, and afterward felt this was a mistake. We had hoped that the Owen bill could be passed, with its essential provision for paid officers, and then substituted for the House bill but, alas, the limited Hayden bill was rushed over to the Senate, reported by the Judiciary Committee, passed the Senate, and sent to President Wilson on February 28, 1917.

But we were saved from our error which might have delayed the coming of real probation for many more years. It was near the end of the session and President Wilson allowed the bill to die by "pocket veto." We were reliably informed that he did so on the recommendation of Attorney General Thomas W. Gregory who indicated later that he too didn't like, among other things, the omission of all machinery for enforcement.

A New and Model Bill Is Introduced

The defeat in 1917, which we afterward regarded as a disguised blessing, held up progress. Then came the entry of the United States into World War I and the preoccupation of Congress with war measures, among other things *prohibition* (not probation). And that reminds me of an incident that had occurred a few years earlier in Albany. One of our commissioners, when asked by a state senator, a wet, what he was working for, said, "Probation." "Oh," said the senator, "It's bound to come, either that or local option!" And it *did* come with a vengeance and more than doubled the criminal cases in the federal courts. At the same time other laws were increasing the criminal work of the courts, bringing in many more minor and youthful offenders. A United States Children's Bureau study at the time revealed more than one

[2] *Ex parte United States,* 242 U.S. 27.

thousand children's cases a year dealt with in federal courts without probation.

The judges were circularized again in 1919 with much more favorable results. There were still those who felt as before that salaried probation officers were unnecessary evils. They could get along all right with volunteers. But nearly all the judges, suffering from the restrictions enjoined by the *Killits* case, were now in favor of a probation law. One judge wrote:

> The subject is one in which I am deeply interested and long experience has taught me the necessity for legislation of this kind. Unless some such legislation is enacted, the enforcement of Federal Statutes, without the power in the courts to suspend judgments, will work great injustice and produce a public sentiment which will make it difficult in many cases to secure convictions.
>
> I am at this time, and have been for the past two months, trying large criminal dockets for violations of the liquor laws, in which I have every grade of offenses from technical to the aggravated form. I find myself seriously embarrassed in knowing how to deal with them under the Federal Statutes and the decision of the Supreme Court in the *Killits* case. I have boys from 17 to 21 years of age, living in the country, ignorant of the law, present at stills, with no connection whatever with their operation but technically guilty of aiding and abetting. I have old men suffering with long standing complaints, accustomed to the moderate use of liquor, without which they feel and think they cannot live. I have every type and form of so called criminals. If we had this probation law, numbers of them could be dealt with intelligently and successfully.
>
> In view of the enlarged sphere of Federal Penal Statutes, legislation of this character is essential to the successful administration of the law. I sincerely hope that you may succeed in securing the enactment of the bill and, when introduced, it will give me pleasure to write strong letters to the senators and representatives of this state with whom I have heretofore had correspondence and conversation upon this subject.[3]

[3] Letter from Judge H. G. Connor of the United States District Court for the Eastern District of North Carolina, June 5, 1919.

A new champion now arose. Representative Augustine Lonergan of Connecticut wrote me at Albany requesting a new and as near as possible model bill for probation in the federal courts. Such a bill was prepared and sent him. It followed closely the New York State Law. It differed from the original Owen bill in the following main points:

1. A judge or the judges of each court were authorized to appoint probation officers and to fix their salaries, the salaries to be subject to the approval of the Attorney General in each case.
2. All paid probation officers were to be appointed after competitive examinations by the United States Civil Service Commission.
3. All offenses were made subject to probation except those punishable by death or life imprisonment.
4. Payment of fines, restitution, or family support as a condition of probation were authorized. The bill was similar in all respects to the law finally enacted in 1925 with one exception: It was found necessary to limit the final bill to no more than one paid probation officer for each federal judge.

At a hearing arranged by Mr. Lonergan before the House Judiciary Committee on March 9, 1920 he ably defended the bill, presenting numerous letters from federal judges supporting the measure. Only a few die-hards opposed the measure but a number of judges expressed opposition to the civil service feature. However, most of the judges in New York, New Jersey, and in other states where state officers were appointed under civil service strongly supported the proposal.

Among the able proponents assembled for the hearing were Edwin J. Cooley, dynamic champion of probation, at that time chief probation officer of the Court of General Sessions of New York City and president of the National Probation Association; Maude E. Miner, secretary of the New York Probation and Protective Association, active in developing the National Association; Louis N. Robinson, chief probation officer, Municipal Court, Philadelphia; and Amos A. Steele, probation officer of the Supreme Court of the District of Columbia (now the District Court). Each witness presented a strong argument for the bill but there was ill-concealed opposition—especially as to the salary feature—from committee members, especially the chairman, none other than Mr. Volstead, author of the Prohibition Act.

We Beard the Lion

A strong committee on federal probation had been appointed to support the bill. The chairman was Judge Edwin L. Garvin of the United States District Court at Brooklyn. Another member was Judge Augustus N. Hand of the United States District Court at New York. Many other leaders in probation work were members. The committee decided that to get the bill through we must make a determined effort to secure the endorsement of the then Attorney General, A. Mitchell Palmer of Pennsylvania. We had secured a copy of a letter he had written some months before to Congressman Siegel repeating the familiar pattern of opposition to any probation bill. It closed with the judicious statement: "On the whole, I incline to the view that in the proper administration of the federal criminal law there is at least no immediate need for a probationary system." We had reason to believe that this letter had been prepared by subordinates in the department who had all along opposed probation. We decided to "beard the lion in his den" and after several attempts arranged for a conference with Mr. Palmer in person at the Department of Justice.

At 10 o'clock on a bright sunny morning, March 8, 1920, a little group of embattled committee members, Washington probation officers, representatives of the Children's Bureau, and others whom I had corralled, were ushered into a commodious office and disposed in a semicircle of chairs about the massive desk. We had just time to agree on the order of exercises when the Attorney General entered. A large, handsome man, he greeted us with a pleasant though somewhat quizzical smile. I undertook to introduce the group all around, stated our mission, and then called on Edwin J. Cooley for the principal argument. He was followed by Louis N. Robinson, Maude E. Miner, and Miss Katharine Lenroot of the Children's Bureau. No opposition was expressed and few questions were asked. Our arguments seemed to have taken effect. Mr. Palmer then and there announced his support of federal probation and his approval of the bill. He had only one suggestion to make as we were breaking up and that was to take our team, *"especially that man"* (pointing to the dynamic Edwin Cooley), over to work upon Congress.

Later that same day Mr. Palmer issued a statement which appeared in the Washington papers the next morning, the very day of our hearing before the House committee. The *Washington Herald* of that date reported as follows:

Attorney General Palmer announced yesterday that he will use all the influence of the Department of Justice to have enacted the bill providing for the probationing and paroling of Federal convicts now pending before the House.

A delegation of probation officers from various cities of the country called today on the Attorney General to express encouragement of his efforts in behalf of prisoners convicted under Federal laws. They were led by Dr. Louis N. Robinson, of the municipal court of Philadelphia and Edwin J. Cooley, chief probation officer of the magistrate's courts of New York City.

Under the present laws district judges have no legal power to suspend sentences in any case, nor to place even first offenders under probation.

After the interview the Attorney General made the following statement:

Federal judges can surely be trusted with the discretion of selecting cases for probation if state judges can. The probation system has been very successful in the States where it has been used most. Twenty-two thousand persons were placed on probation last year in New York State alone. Of these, 79 percent made good. The probation system, if established in the United States courts, would in no way interfere with the parole system now applying to Federal prisoners.

Another Try with Siegel

In the same Congress, the 66th, in which we sponsored the model Lonergan bill, interest in probation was such that three other bills were introduced in the House and two in the Senate. One of these was the Siegel bill which provided for volunteer probation officers only. It was favorably reported by the Judiciary Committee with the statement in the committee report that the bill "does not entail any expense whatever." I am afraid that this was the bill which, despite our efforts, the Attorney General had in mind. The bill was never brought up for passage. All of the bills were introduced in the succeeding Congress but all died in committee. We appeared in support of the Siegel bill in 1921.

Some of our committee thought that to get through such a limited bill, to be amended later, would be a step in the right direction; others, like myself, hoped that the volunteer bill, if reported, might be amended on the floor or, better, that the Senate bill, with paid probation officers provided, might be passed and substituted in conference for the limited House bill. Letters from the more progressive judges at this time urged that we hold out for paid officers, pointing out the futility of a system with volunteers only.

Interview with Volstead

One of the reasons for lack of action at this time was renewed opposition by the Department of Justice under Attorney General Harry M. Daugherty. Also, we began to suspect that the extreme prohibitionists were on our trail. Some of them believed that probation would be resorted to by the judges to release all violators of the prohibition laws. Some actually had proposed a bill to send every violator to prison. As it proved later on, probation, sometimes with an added fine, became a very useful weapon of law enforcement, encouraging pleas of guilty and helping to clear greatly overcrowded calendars.

Congressman Volstead was still chairman of the Judiciary Committee and we were convinced that no progress could be made without his consent. So we decided to go see him. Taking along Herbert Parsons of Boston, a persuasive counselor and my most helpful collaborator in Washington, Judge Kathryn Sellers, and Joseph W. Sanford of the Juvenile Court in Washington, we interviewed the greatest prohibitionist of them all on January 6, 1923. Volstead looked the part. He was austere and dressed in a suit of the severest black. However, he heard our argument for probation as an aid, rather than a hindrance, in the enforcement of his law. But our efforts were in vain. He said frankly that he had committed himself to oppose any measure which might possibly interfere with strict enforcement of the Volstead act. Another factor was that he was at the end of his term, a so-called "lame-duck."

The Final Campaign— New Friends and a New Bill

The next Congress was expected to be more progressive than the last and we girded ourselves for a new effort. A new and somewhat improved bill was introduced in December 1923 by Senator Royal S. Copeland of New York, whose support was secured by Judge Edwin L. Garvin. I persuaded George S. Graham of Pennsylvania, new chairman of the Judiciary Committee, to sponsor the bill in the House. Hearings were held before both Senate and House Committees on February 21, 1924. We had an all-star cast. Mr. Parsons, Judge J. Hoge Ricks of Richmond, president of the National Probation Association, Katharine Lenroot, Francis Fisher Kane, former U.S. Attorney at Philadelphia, Dr. Hastings H. Hart of the Russell Sage Foundation, and Dr. Charles Platt of Philadelphia appeared with me. In the Senate hearing we encountered Senator Samuel M. Shortridge of California, a dignified gentleman of the old school, courteous, friendly and well-informed on probation. He listened to all the speakers and asked few questions. The attitude of the House committee was entirely changed, compared with the previous hearings, though several of the old members were still there. The need for paid officers was hardly questioned but considerable debate arose regarding civil service. A brief was filed with new letters from many federal judges. The vast majority supported our bill, civil service and all.

The bills were reported favorably in both houses, unamended. On May 22, Senator Copeland called it up in the Senate on third reading. There was no debate and it passed the Senate unanimously.

In the House it was a far different story. Mr. Graham brought the bill up four times, and it was thoroughly debated before it finally passed. Each time it was bitterly attacked by a few opponents, especially Thomas L. Blanton of Texas, a chronic objector. One time on the unanimous consent calendar it was objected to by a Congressman who had it in for Representative Graham on account of the latter's opposition to an entirely different bill. In the meantime a personal campaign among the Congressmen was carried on to overcome the objections. Numerous trips to Washington were required. Early in February 1925 I reported as follows to our committee on federal probation:

> Our bill was reached on the unanimous consent calendar on January 5, but three objections tabled it-I had the able assistance of Herbert C. Parsons for 3 days in Washington in January. We saw all of the House leaders, the General Counsel of the Anti-Saloon League, Assistant Attorney General William J. Donovan and the President. We feel that much of the opposition of the drys has been removed . . . 96 members of the House have pledged their support or have committed themselves to the bill in writing. We are carrying on a campaign to reach every member.

Our membership throughout the country had been circularized repeatedly, asking help in interviews, letters, and telegrams. We were pulling all the strings. We called on Wayne B. Wheeler, General Counsel and Legislative Superintendent of the Anti-Saloon League of America in Washington. We found him friendly, intelligent, and easy to convince of the value of probation even in enforcing prohibition. His word was law among the drys. He told us just whom to see. On January 28 I received this letter from Mr. Wheeler: "I am very glad to know you had a conference with Louis C. Cramton of Michigan, Earl C. Michener of Michigan and William D. Upshaw of Georgia. I have been passing the word along to our friends, regarding the Probation bill and will gladly do anything I can to help you in this matter."

It was a fight to the finish. On March 2, I was alone in the House gallery when Mr. Graham called up the bill under suspension of rules, two-thirds vote being necessary. Mr. Parsons was not there but I was in touch with him on the progress made. He wrote me as follows a few days before the bill passed: "I am following you with the keenest interest all these days and wondering about the fortunes of our bill. I should be glad if there were something I could do to help you on in your good fight. I seem only to be able to pray you win." Without his kindly encouragement and assistance and that of other staunch friends of probation it would have been hard to carry the campaign to its successful conclusion.

When the bill came up Mr. Blanton led the fight but he was almost alone. He objected, called for a quorum, and held the floor. Mr. Upshaw of Georgia had been expected to help him as before but to the chagrin of Blanton announced that friends from back home had persuaded him the measure was for the welfare of humanity. Blanton asked for the "yeas" and "nays" and failing that called for a division. The bill passed 170 to 49 and went to President Coolidge. He secured a written endorsement from James M. Black, acting Attorney General, and the act was signed March 4, 1925.

Postcampaign Efforts

Space prevents more than the briefest outline of the subsequent campaigns. The passage of the probation law was no more than a beginning in developing the service. Efforts were now directed toward securing the co-operation of the Department of Justice, the Civil Service Commission, and later the Congress in maintaining the appropriation and improving the law. Through the efforts of William J. Donovan, Assistant to the Attorney General, our first real friend in the Department of Justice, and later A.H. Conner, Superintendent of Prisons, $50,000 was appropriated for the ensuing year. No paid probation officers were appointed the first year due to delays in the Department of Justice and the slowness of the Civil Service Commission in conducting examinations, although 28 judges had asked for them. However, the lukewarm interest displayed by the representative of the Department of Justice who appeared before the House Appropriations subcommittee, resulted in the item being cut out entirely from the appropriations bill as it passed the House. Learning this I asked for a hearing before the Senate subcommittee in January 1927 and succeeded, with the help of strong letters from some of the judges—especially Judge A. N. Hand of New York—in getting the appropriation put back, but the House reduced it to $30,000.

I must mention the heroic qualities of the first probation officers who were appointed after civil service examinations. They stood alone in a new field, without adequate facilities. All of them were soon swamped with cases, some waiting for them on arrival. But they were men of caliber and made good under difficulties with the help of most of the judges.

We had the complete co-operation of the Civil Service Commission as soon as they were permitted to hold the examinations. I prepared the examinations, following the New York State system, rated the papers, and was sent out as a special representative to conduct the oral examinations in New York, Pennsylvania, West Virginia, Kentucky, Georgia, Illinois, and California. The first officer was appointed April 25, 1927.

Experience with the probation law brought a constantly mounting demand for paid probation officers from the judges. This and the entirely inadequate appropriations, together with the lack of power and personnel in the Department of Justice to supervise the growing work, made certain amendments to the law imperative. We prepared a bill in 1928, in close co-operation with Captain A. H. Conner, Superintendent of Prisons in the Department, with the following principal changes:

1. Removing the limitations of one paid probation officer to a judge and providing for district probation officers with a chief, where more than one officer is allowed, requiring the Attorney General to fix all salaries and expenses. Already the large districts like Southern New York and Massachusetts were clamoring for more than one officer.
2. Adding a specific provision that the officers shall serve as parole officers at the Attorney General's request. This was first suggested to me by Captain Conner, Superintendent of Prisons.
3. Most important of all, giving the Department of Justice, hitherto lacking in interest and special personnel for the task, the duty of supervising and developing the efficient administration of probation throughout the country. The bill was introduced by Senator Shortridge and Representative Graham. Mr. Parsons and I appeared in its support at a hearing presided over by Representative Charles A. Christopherson of South Dakota, chairman of the subcommittee of the House Judiciary Committee. The bill was reported favorably but the committee added a further amendment eliminating the civil service provision. This was done at the request of the Department of Justice, supported by objections to civil service from many judges. Some of these objections were justified, due to the delay in getting out the lists. Others, it must be admitted, were based on misunderstanding and lack of experience with civil service. A few quite definitely sprang from the desire of certain judges to make personal and more or less "political" appointments. The bill finally passed and became law on June 6, 1930.

Sanford Bates had already been appointed to the Bureau of Prisons by President Herbert Hoover and Joel R. Moore, experienced probation chief from Michigan, thereafter was appointed supervisor of probation. The National Probation and Parole Association enjoyed close co-operation with him and with his able successor, after the probation service was taken over by the Administrative Office of the United States Courts in 1940. A greatly increased appropriation for probation was secured and the federal probation system was on its way to the successful nation-wide expansion that has followed.