The Federal Probation System: The Struggle To Achieve It and Its First 25 Years

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THE FIRST PROBATION law in the United States was enacted by the Massachusetts legislature April 26, 1878. But it was not until 1925, when 30 states and at least 12 countries already had probation laws for adults, that a federal probation law was enacted. Through a suspended sentence United States district courts had used a form of probation for nearly a century. But the use of the suspended sentence was met with mounting disapproval by the Department of Justice, which considered suspension of sentence an infringement on executive pardoning power and therefore unconstitutional. The reaction of many judges ranged from "strong disapproval to open defiance." It was apparent the controversy had to be settled by the Supreme Court.

In 1915 Attorney General T. W. Gregory selected a case from the Northern District of Ohio where Judge John M. Killits suspended "during the good behavior of the defendant" the execution of a sentence of 5 years and ordered the court term to remain open for that period. The defendant, a first offender and a young man of reputable background, had pleaded guilty to embezzling $4,700 by falsifying entries in the books of a Toledo bank. He had made full restitution and the bank's officers did not wish to prosecute. The Government moved that Judge Killits' order be vacated as being "beyond the powers of the court." The motion was denied by Judge Killits. A petition for writ of mandamus was prepared and filed with the Supreme Court on June 1, 1915. Judge Killits, as respondent, filed his answer October 14, 1915. He pointed out that the power to suspend sentence had been exercised continuously by federal judges, that the Department of Justice had acquiesced in it for many years, and that it was the only amelioration possible as there was no federal probation system. In one circuit, incidentally, it was admitted the practice of suspending sentences had in substance existed for "probably sixty years."

On December 4, 1916, the Supreme Court handed down its decision (Ex parte United States, 242 U.S. 27). The unanimous opinion, delivered by Chief Justice Edward D. White, held that federal courts had no inherent power to suspend sentence indefinitely and that there was no reason nor right "to continue a practice which is inconsistent with the Constitution since its exercise in the very nature of things amounts to a refusal by the judicial power to perform a duty resting upon it and, as a consequence thereof, to an interference with both the legislative and executive authority as fixed by the Constitution." Probation legislation was suggested as a remedy. Until enactment of a probation law, district courts, as a result of the *Killits* ruling, would be deprived of the power to suspend sentence or to use any form of probation.

At least 60 districts in 39 states were suspending sentences at the time of the *Killits* case and more than 2,000 persons were at large on suspended sentences. Following the *Killits* decision two proclamations were signed by President Wilson on June 14, 1917, and August 21, 1917, respectively, granting amnesty and pardon to certain classes of cases under suspended sentences (see Department of Justice Circular No. 705, dated July 12, 1917).

Efforts To Achieve a Probation Law

The efforts to enact a probation law were fraught with difficulties the proponents of probation never anticipated. It was difficult to obtain agreement on a nationwide plan. As far back as 1890 attorneys general and their assistants expressed strong opposition not only to the suspended sentence but to probation as well. Attorney General George W. Wickersham was one exception. In 1909 he recommended enactment of a suspension of sentence law and in 1912 supported in principle a probation bill before a Senate committee.

The first bills for a Federal probation law were introduced in 1909. One of the bills provided for a suspension of sentence and probation and compensation of $5 per diem for probation officers. The bill was greeted with indifference by some and considerable opposition by others.

At the time of the *Killits* decision several bills had been pending before the House Judiciary Committee. At the request of the Committee, Congressman Carl Hayden of Arizona introduced a bill which provided for a suspended sentence and probation, except for serious offenses and second felonies, but made no provision for probation officers. Despite its limitations, the bill passed both the House and the Senate and was sent to President Wilson on February 28, 1917. On advice of his attorney general, he allowed the bill to die by "pocket veto."

It should be mentioned at this point that one of the prime movers for a Federal probation law and prominently in the forefront throughout the entire crusade for a Federal Probation Act was Charles L. Chute who was active in the early days with the New York State Probation Commission and from 1921 to 1948 was general secretary of the National Probation Association (now the NCCD) .

Many members of Congress were unfamiliar with probation. Some judges confused probation with parole, several using the term "parole" when sending to Mr. Chute their opinions about probation. When Federal judges were first circularized in 1916 for their views, about half were opposed to probation, regarding it as a form of leniency. Some favored probation for juveniles, but not for adults. Some were satisfied to continue suspending sentences and others believed the suspended sentence was beyond the powers of the court.

In 1919 Federal judges were asked again for their views as to a probation law. The responses were more favorable, but some still felt no need for probation, asserting that uniformity and severity of punishment would serve as a crime deterrent. Others continued to believe salaried probation officers were unnecessary and that United States marshals and volunteers could perform satisfactorily the functions of a probation officer.

In early 1920 Congressman Augustine Lonergan of Connecticut introduced a probation bill in the House resembling the New York State law; A companion bill was introduced in the Senate by Senator Calder of New York. This marked the beginning of a new effort to achieve a Federal probation law. A small but strong committee representing the National Probation Association in support of the bill wrote Attorney General A. Mitchell Palmer, hoping to obtain his endorsement of the bill. Of strict law and order inclinations, Palmer replied: ". . . after careful consideration I have felt compelled to reach the conclusion that, in view of the present parole law, the executive pardoning power and the supervision of the Attorney General over prosecutions generally, there exists no immediate need for the inauguration of a probation system." It was believed by the NPA committee that Palmer's reply was prepared by subordinates who had a longstanding opposition to probation.

On March 8, 1920, Mr. Chute succeeded in arranging a meeting with Palmer, bringing with him a team of Washington probation officers, staff members of the U.S. Children's Bureau, and others, including Edwin J. Cooley, chief probation officer of New York City's magistrates courts. Cooley, in particular, impressed the Attorney General who, the next morning, announced in Washington papers that he would use all the influence of his office to enact a probation law. He pointed out that under the existing law judges had no legal power to suspend sentences in any case nor to place even first offenders on probation. He said "federal judges can surely be trusted with the discretion of selecting cases for probation if state judges can," and added that probation had been successful in the states where it had been used the most and that a Federal probation system would in no way interfere with the Federal parole system (established in 1910).

The Volstead Act (Prohibition Amendment) passed by Congress in 1919 created difficulties in obtaining support of a probation law. Congressman Andrew J. Volstead of Minnesota, chairman of the Judiciary Committee, was opposed to any enactment which would interfere with the Act he authored. Any action to be taken on the bill thus depended to a large extent upon him. He, together with other prohibitionists then in control of the Congress, believed judges would place violators of the prohibition law on probation. In an effort to stem such action, the prohibitionists introduced a bill which provided for a prison sentence for every prohibition violator! They ignored the fact that there were overcrowded prison conditions.

Judges Voice Opposition to a Probation Law

Some judges continued to express opposition to probation in principle. Judge George W. English of the Eastern District of Illinois in a letter to Mr. Chute, dated July 10, 1919, said he was "unalterably and uncompromisingly opposed to any interference by outside parties, in determining who or what the qualifications of key appointees, as ministerial officers of my Court may be." He objected to Civil Service or the Department of Justice having anything to do with the appointment of probation officers.

Replying to a letter Mr. Chute wrote in December 1923 to a number of Federal judges seeking endorsement of a Federal Probation Act, Judge J. Foster Symes of the District of Colorado wrote:

> I have your letter of December 10th, asking my endorsement for a Federal probation act. Frankly, permit me to say that I do not favor any such law, except possibly in the case of juvenile offenders. My observation of probation laws is that it has been abused and has tended to weaken the enforcement of our criminal laws.
>
> 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.
>
> 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.

In response to Mr. Chute's letter Judge D.C. Westenhaver of the Northern District of Ohio wrote:

> Replying to your request for my opinion, I beg to say that I am opposed to the bill in its entirety. In my opinion, the power to suspend sentence and place offenders on parole should not be confided to the district judges nor anyone else ... In my opinion, the suspension, indeterminate sentence and parole systems wherever they exist, are one of the main causes contributing to the demoralization of the administration of criminal justice … I sincerely hope your organization will abandon this project. (12-14-23)

A letter from Judge John F. McGee of the District of Minnesota read, in part :

> I most sincerely hope that you will fail in your efforts, as I think they could not be more misdirected. The United States district courts have already been converted into police courts, and the efforts of your Association are directed towards converting them into juvenile courts also … In this country, due to the efforts of people like yourselves, the murderer has a cell bedecked with flowers and is surrounded by a lot of silly people. The criminal should understand when he violates the law that he is going to a penal institution and is going to stay there. Just such efforts as your organization is making are largely responsible for the crime wave that is passing over this country today and threatening to engulf our institutions … What we need in the administration of

> criminal laws in this country is celerity and severity. (12-19-23)

In his reply to Mr. Chute's letter, Judge Arthur J. Tuttle of Detroit wrote:

> There is a large element in our country today who are crying out against the power which the federal judges already have. If you add to this absolute power to let people walk out of court practically free who have violated the law, you are going to increase this sentiment against the federal judges … I don't think the bill ought to pass and I think this is the reason why you have failed in your past efforts. I am satisfied, however, that you are on the wrong track, that you are going to make a bad matter worse if you succeed in what you are trying to do … I think neither this bill nor any other bill similar to it ought to be enacted into law. (12-14-23)

It should be pointed out that Judge Tuttle later became an "enthusiastic booster" of probation. There also may have been a change in the attitude of the other three judges who are quoted as being opposed to a Federal probation law.

Notwithstanding the opposition of many judges to probation in the Federal courts, there were a number of judges, and also U.S. attorneys, who supported a probation law, referring to the proposed bill as "meeting a crying need," that it was "one of the most meritorious pieces of legislation that has been proposed in recent years," and that "it will remedy a most vital defect in the administration of the federal criminal laws."

Objections Raised by the Department of Justice

Opposition to probation, however, prevailed in the Department of Justice. One of the assistants to new Attorney General Harry M. Daugherty was convinced the Department should stand firmly against probation, commenting: "I thoroughly agree with Judge McGee and hope that no such mushy policy will be indulged in as Congress turning courts into maudlin reform associations … The place to do reforming is inside the walls and not with the law-breakers running loose in society."

In a 1924 memorandum to the Attorney General, a staff assistant wrote :

> It [probation] is all a part of a wave of maudlin rot of misplaced sympathy for criminals that is going over the country. It would be a crime, however, if a probation system is established in the federal courts. Heaven knows they are losing in prestige fast enough … for the sake of preserving the dignity and maintaining what is left of wholesome fear for the United States tribunal … this Department should certainly go on record against a probation system being installed in federal courts.

Even the Department's superintendent of prisons in 1924 referred to probation as "part of maudlin sympathy for criminals." (Note how "maudlin" has been used in the three statements quoted above—maudlin reform, maudlin rot, maudlin sympathy.)

On December 12, 1923, Senator Royal S. Copeland of New York, a strong advocate of social legislation, introduced in the Senate a new bill (S. 1042) which removed some of the recurring objections of the Department of Justice and some members of Congress, particularly the costs required to administer a probation law. The bill was sponsored in the House (H.R. 5195) by Representative George S. Graham of Pennsylvania, new chairman of the Judiciary Committee. The bill limited one probation officer to each judge. There was no objection to this limitation, but there was divided opinion on the civil service provision.

On March 5, 1924, Attorney General Daugherty wrote to Chairman Graham commenting on his bill:

> … we all know that our country is crime-ridden and that our criminal laws and procedure protect the criminal class to such an extent that the paramount welfare of the whole people is disregarded and disrespect for law encouraged. If it were practicable to devise a humanitarian but wise probation system whereby first offenders against federal laws could be reformed without imprisonment and same could be administered uniformly, justly, and economically, without encouraging crime and disrespect for federal laws, I would favor same. The proposed bill does not seem to provide such a system.

Daugherty stated further there were approximately 125 Federal judges who undoubtedly would insist on at least one probation officer and that salaries, clerical assistants, travel costs, etc., would amount to an estimated $500,000 per annum—a large amount at that time. He doubted, moreover, the feasibility of placing salaried probation officers under civil service and concluded by stating "the present need for a probation system does not seem to be sufficiently urgent to necessitate its creation at this time."

It should be pointed out that there was a growing understanding and appreciation of the value of probation as a form of individualized treatment. The prison system was unable to handle the increasing number of commitments. A high proportion of offenders were being sent to prison for the first time—63 percent during the fiscal year 1923. There also was a growing realization of the economic advantages of probation.

Probation Bill Becomes Law

The bills introduced by Senator Copeland (S. 1042) and Representative Graham (H.R. 5195) were reported favorably in the Senate and the House, unamended. On May 24, 1924, Senator Copeland called his bill on third reading: The Senate passed it unanimously. But in the House there were misgivings and opposition. The bill was brought before the House six times by Graham, only to receive bitter attacks by a few in opposition. One prohibitionist said all the "wets" were supporting the bill and that the bill would permit judges to place all bootleggers on probation! Another congressman believed there should be a provision limiting probation to first offenders.

An intensive effort was made among House members by the National Probation Association to overcome objections to the bill. On February 16, 1925, the bill was brought up again in the House and on March 2 for the sixth and last time. Despite continued opposition by some of the "drys" as well as "wets," the bill was passed by a vote of 170 to 49 and sent to President Coolidge, As former governor of Massachusetts he was familiar with the functioning of probation and on March 4, 1925, approved the bill. Thus, 47 years after the enactment of the first probation law in the United States, the Federal courts now had a probation law. It is interesting to note that approximately 34 bills were introduced between 1909 and 1925 to establish a Federal probation law.

For a more detailed account of the struggle to enact a Federal probation law, the reader is encouraged to read chapter 6, "The Campaign for a Federal Act," in *Crime, Courts, and*

Probation by Charles L. Chute and Marjorie Bell of the National Probation and Parole Association (now NCCD).

Provisions of the Probation Act

The Act to provide for the establishment of a probation system in the United States courts, except in the District of Columbia,[1] (chapter 521, 43 Statutes at Large, 1260, 1261) gave the court, after conviction or after a plea of guilty or nolo contendere for any crime or offense not punishable by death or life imprisonment, the power to suspend the imposition or execution of sentence and place the defendant upon probation for such period and upon such terms and conditions it deemed best, and to revoke or modify any condition of probation or change the period of probation, provided the period of probation, together with any extension thereof, did not exceed 5 years. A fine, restitution, or reparation could be made a condition of probation as well as the support of those for whom the probationer was legally responsible. The probation officer was to report to the court on the conduct of each probationer. The court could discharge the probationer from further supervision, or terminate the proceedings against him, or extend the period of probation.

The probation officer was given the power to arrest a probationer without a warrant. At any time after the probation period, but within the maximum period for which the defendant might originally have been sentenced, the court could issue a warrant, have the defendant brought before it, revoke probation or the suspension of sentence, and impose any sentence which might originally have been imposed.

The Act authorized the judge to appoint one or more persons to serve as probation officers without compensation and to appoint one probation officer with salary, the salary to be approved by the Attorney General. A civil service competitive examination was required of probation officers who were to receive salaries. The judge, in his discretion, was empowered to remove any probation officer serving his court. Actual expenses incurred in the performance of probation duties were allowed by the Act.

[1] On August 2, 1949, the probation office of the U.S. District Court for the District of Columbia was transferred to the Administrative Office for budgetary and administrative purposes and on June 20, 1958, the Federal Probation Act became applicable to the District of Columbia (Public Law 85-463, 85th Congress).

It was the duty of the probation officer to investigate any case referred to him by the court and to furnish each person on probation with a written statement of the conditions while under supervision. The Act provided that the probation officer use all suitable methods, not inconsistent with the conditions imposed by the court, to aid persons on probation and to bring about improvement in their conduct and condition. Each probation officer was to keep records of his work and an accurate and complete account of all moneys collected from probationers. He was to make such reports to the Attorney General as he required and to perform such other duties as the court directed.

Civil Service Selection

It was not until August 4, 1926, that the U.S. Civil Service Commission announced an open competitive examination for probation officers, paying an entrance salary of $2,400 a year. After a probation period of 6 months, salaries could be advanced up to a maximum of $3,000 a year. In requesting certification of eligibles, the appointing officer had the right to specify the sex. Applicants had to be high school graduates or have at least 14 credits for college entrance. If the applicant did not meet these requirements, but was otherwise qualified, he could take a 1 1/4-hour noncompetitive "mental test."

The experience requirements were (a) at least 1 year in paid probation work; or (b) at least 3 years in paid systematic and organized social work with an established social agency (1 year of college work could be substituted for each year lacking of this experience with courses in the social sciences, or 1 year in a recognized school of social work). The age requirement was 21 through 54. Retirement age was 70. An oral examination was required, unless waived, for all eligible applicants.

Early Years of the Probation System

Civil Service examinations had to be conducted throughout the country. Lists of eligibles were not ready until January 1927. Thus it was not until April 1927, 2 years after enactment of the Federal Probation Act, that the first salaried probation officer was appointed. Two more were appointed in the fiscal year 1927, three in 1928, and two in 1929. The $50,000 appropriation recommended by the Bureau of the Budget for 1927 was reduced to $30,000 because the full appropriation of the preceding year had not been drawn upon except for expenses of volunteers. The appropriation for 1928, 1929, and 1930 was $25,000. It was increased to $200,000 in 1931. By June 30, 1931, 62 salaried probation officers and 11 clerk-stenographers served 54 districts.

Caseloads were excessive. In 1932 the average caseload for the 63 salaried probation officers was 400 ! But despite unrealistic caseloads, the salaried officers demonstrated that they filled a long-felt need. They assumed supervision of those probationers released to volunteers who had offered little or nothing in the way of help.

In August 1933, 133 judges were asked for their views as to salaried probation officers. Of the 90 judges responding, 34 expressed no need for salaried officers. Seventy-five were opposed to civil service appointments. At least 700 volunteers were being used as probation officers. Among them were deputy marshals, narcotic agents, assistant U.S. attorneys, lawyers, and even relatives. In a few instances clerks of court and marshals combined probation supervision with their other duties.

Probation Act Is Amended

There was dissatisfaction among judges with the original Probation Act. An attempt was made in 1928 to amend it by doing away with the civil service provisions and giving judges the power to appoint more than one probation officer. The Act, moreover, made no provisions for a probation director for the entire system. Until the appointment of a supervisor of probation in 1930, following an amendment to the original law, the probation system was administered by the superintendent of prisons who also was in charge of the prison industries and parole. There were no uniform probation practices nor statistics.

On June 6, 1930, President Hoover signed an act amending the original probation law, 46 U.S. Statutes at Large 503-4 (1930). The amended section 3 removed the appointment of probation officers from civil service and permitted more than one salaried probation officer for each judge. When more than one officer was appointed, provision was made for the judge to designate one as chief probation officer who would direct the work of all probation officers serving in the court or courts. Appointments were made by the court, but the salaries were fixed by the Attorney General who also provided for the necessary expenses of probation officers, including clerical service and expenses for travel when approved by the court.

Section 4, as amended, provided that the probation officer perform such duties with

respect to parole, including field supervision, as the Attorney General may request. Provision also was made for the Attorney General to investigate the work of probation officers, to make recommendations to the court concerning their work, to have access to all probation records, to collect for publication statistical and other information concerning the work of probation officers, to prescribe record forms and statistics, to formulate general rules for the conduct of probation work, to promote the efficient administration of the probation system and the enforcement of probation laws in all courts, and to incorporate in his annual report a statement concerning the operation of the probation system. The Attorney General delegated these functions to the director of the Bureau of Prisons.

Supervisor of Probation Appointed

In December 1929 Sanford Bates, newly appointed superintendent of Federal prisons (title changed by law in 1930 to Director, Bureau of Prisons), asked Colonel Joel R. Moore to be the first supervisor of probation. Colonel Moore, who had been employed with the Recorders Court of Detroit for 10 years, accepted the challenge and entered on duty June 18, 1930.

Colonel Moore's first assignment was to sell judges on the appointment of probation officers, to establish policies and uniform practices, and to locate office facilities for probation officers. In July 1930, on recommendation of Colonel Moore and Mr. Bates, the following appointment standards were announced by the Department of Justice:

1. Age: the ideal age of a probation officer is 30 to 45; it is improbable that persons under 25 will have acquired the kind of experience essential for success in probation work.
2. Experience: (a) high school plus 1 year of paid experience in probation work, or (b) high school plus 1 year in college, or (c) high school plus 2 years successful experience (unpaid) in a probation or other social agency where instruction and guidance have been offered by qualified administrators.
3. Personal qualifications: maturity plus high native intelligence, moral character, understanding and sympathy, courtesy and discretion, patience and mental and physical energy. (D. of J. Circular No. 2116, 7-5-30, p. 1)

Since the Attorney General had no means of enforcing the qualifications established by the Department of Justice, appointments to a large extent were of a political nature. Among those appointed as probation officers in the early years were deputy clerks, prohibition agents, tax collectors, policemen, deputy marshals, deputy sheriffs, salesmen, a streetcar conductor, a farmer, a prison guard, and a retired vaudeville entertainer! Relatives of the judge were among them. A master's thesis study by Edwin B. Zeigler in 1931 revealed that 14 of the 60 probation officers in service at that time had not completed high school, 14 were high school graduates, 11 had some college work, 11 had graduated from college, and 9 had taken some type of graduate work.

The 1930 personnel standards were in effect until January 1938 when efforts were made by the Attorney General to improve them. The new standards included (1) a degree from a college or university of recognized standing or equivalent training in an allied field (1 year of study in a recognized school of social work could be substituted for 2 years of college training); (2) at least 2 years of full-time experience in an accredited professional family or other casework agency, or equivalent experience in an allied field; (3) a maximum age limit of 53; (4) a pleasing personality and a good reputation; and (5) sufficient physical fitness to meet the standards prescribed by the U.S. Public Health Service.

When Colonel Moore entered on duty he was confronted with the task of how to utilize most advantageously the $200,000 appropriated for the fiscal year 1931 when, as already stated, there were 62 probation officers and 11 clerk-stenographers. Quarters and facilities for probation services were meager. The officer in Mobile kept office hours between sessions of court at a table for counsel in the court room. The Los Angeles officer held down the end of a table in the reception room of the marshal's quarters. In Macon, Georgia, the probation officer was given space, without charge in the law office of a retired lawyer friend. The officer for the Middle District of Pennsylvania had his office at his residence.

"Neither the courts nor the Department of Justice had exercised paternal responsibilities for the probation officer's needs," Colonel Moore recalled. "He (the probation officer) had to shift pretty much for himself. Only a fervent spirit and a dogged determination to do their work gave those new probation officers the incentive to carry on."

In the depression days it was difficult to obtain sufficient funds for travel costs. Probation travel was new to the Budget Bureau. "We had to fight for every increase in travel expenses for our continually growing service," said Colonel Moore.

Restricted in both time and travel funds, Colonel Moore had to maintain most of his field contacts through correspondence. In October 1930 a mimeographed News Letter was prepared for probation personnel. In July 1931 it became *Ye News Letter*, an issue of 17 pages. In Colonel Moore's words, "It served as a morale builder and a source of inspiration, instruction, and as an incentive to greater efforts. Its chatty personal-mention columns, its travel notes, and reporting of interesting situations helped to unify aims and to build coherence in activities."

Inservice training conferences were conducted in the early years as a regular practice. The first such conference met in October 1930 with the American Prison Congress. Thirty-two officers attended. A second conference, attended by 62 officers, was held in June 1931 in conjunction with the National Conference of Social Workers. Training conferences continued throughout the early years in various parts of the country, often on college and university campuses.

When Colonel Moore left the Federal probation service in 1937 to become warden of the State Prison of Southern Michigan, there were 171 salaried probation officers with an average caseload of 175 per officer. Commenting on Colonel Moore's 7 years as probation supervisor, Sanford Bates said: "The vigor and effectiveness of the federal probation system in its early years were in large part due to his vision and perseverance."

Expansion Phase

Following the resignation of Colonel Moore, Richard A. Chappell, who was appointed a Federal probation officer in 1928 and named chief probation officer for the Northern District of Georgia in 1930, was called to Washington in 1937 to be supervisor of probation in the Bureau of Prisons. In 1939 he was named chief of probation and parole services, succeeding Dr. F. Lovell Bixby when he was appointed warden of the Federal Reformatory at Chillicothe, Ohio.

On August 7, 1939, a bill to establish the Administrative Office of the United States Courts was approved by President Roosevelt, the statute to take effect November 6. On that date Elmore Whitehurst, clerk of the House Judiciary Committee, was appointed assistant director. On November 22, Henry P. Chandler,

a Chicago attorney and past president of the Chicago Bar Association, was named director by the Supreme Court and entered on duty December 1. He served as director for 19 years until his retirement in October 1956.

Probation officers were excluded from the Act establishing the Administrative Office and like United States attorneys and marshals were subject to the Department of Justice. The Department argued that the supervision of probationers, like that of parolees, was an executive function and should remain with the Department. On January 6, 1940, Mr. Chandler brought the matter in writing to Chief Justice Hughes who believed that probation officers, being appointed by the courts and subject to their direction, were a part of the judicial establishment and that the law for the Administrative Office in the form enacted contemplated that probation officers should come under it. Later in January the Judicial Conference adopted that view and settled the question.

In meeting with James V. Bennett, director of the Bureau of Prisons, Mr. Chandler stated that if he assumed supervision of the probation service he would make every effort to build upon the values that had been developed under the Department and "to coordinate the administration of probation still with the correctional methods that remain in the Department of Justice." The Judicial Conference instructed Mr. Chandler to undertake his duties in relation to probation "in a spirit of full cooperation with the Attorney General and the Director of the Bureau of Prisons."

When steps were taken to arrange for transfer of the appropriation for the probation service to the Administrative Office there was objection from the House Appropriations Committee which believed there would be a relaxing of the appointment qualifications for probation officers and that probation officers would pay little attention to the supervision of parolees who were a responsibility of the Department of Justice. The Committee reluctantly agreed to the transfer of the appropriations but did so with this warning from Congressman Louis C. Rabaut:

> We have agreed to this change with "our tongues in our cheek," so to speak, hopeful that the dual problem of probation and parole can be successfully handled under this new set-up. If proper attention is not given by probation officers to the matter of paroled convicts, however, you may expect a move to be made by me and other members of the committee to place this probation service back under the Department of Justice.

On July 1, 1940, general supervision of the probation service came under the Administrative Office. On recommendation of Mr. Bennett, Mr. Chappell was appointed chief of probation by Mr. Chandler, and on the recommendation of Mr. Chappell, Victor H. Evjen, who had been a probation officer with the Chicago Juvenile Court and the United States District Court for the Northern District of Illinois, was appointed assistant chief of probation. These two constituted the headquarters professional staff until 1948 when Louis J. Sharp, Federal probation officer at St. Louis, was appointed as a second assistant chief of probation.

In all of their contacts with judges and probation officers Mr. Chandler and his Probation Division staff emphasized that the duties to supervise persons on probation and parole were equal and that parole services were in no way to be subordinated. He made it clear that he would not cease to appeal to judges to appoint only qualified officers who would perform efficiently and serve the public interests. In reporting the appropriation bill for 1942 Congressman Rabaut said: "It is with considerable pleasure and interest that the committee has observed that, in the matter of recent appointments of probation officers, there has apparently been no compromise whatever with the standards which were previously employed, when this unit was in the Department of Justice, as to the character or type of applicants appointed."

Judicial Conference Establishes Appointment Qualifications

At its October 1940 meeting the Judicial Conference expressed its conviction "that in view of the responsibility and volume of their work, probation officers should be appointed solely on the basis of merit without regard to political considerations, and that training, experience, and traits of character appropriate to the specialized work of a probation officer should in every instance be deemed essential qualifications." No more specific qualifications were formulated at that time, but pursuant to a resolution of the Judicial Conference at its September 1941 session the Chief Justice appointed a Committee on Standards of Qualifications of Probation Officers to determine whether it would be advisable to supplement the 1940 statement of principle by recommending definite qualifications for the appointment of probation officers and, if so, what the qualifications should be. To assist the work of the Committee, Mr. Chappell corresponded with 30 recognized probation leaders throughout the country, requesting their views as to qualifications for probation officers. He also conferred with the U.S. Civil Service Commission.

In its report[2] the Committee recommended the following requisite qualifications :

> (1) Exemplary character; (2) Good health and vigor; (3) An age at the time of appointment within the range of 24 to 45 years inclusive; (4) A liberal education of not less than collegiate grade, evidenced by a bachelor's degree (B.A. or B.S.) from a college of recognized standing, or its equivalent; and (5) Experience in personnel work for the welfare of others of not less than 2 years of specific training for welfare work (a) in a school of social service of recognized standing, or (b) in a professional course of a college or university of recognized standing.

The Committee recommended that future appointments of officers be for a probation period of 6 months, and that district courts be encouraged to call on the Administrative Office for help in assessing the qualifications of applicants and conducting competitive examinations if desired by the court. The report of the Committee was unanimously approved and adopted by the Judicial Conference at its September 1942 meeting.

Although most of the probation leaders with whom Mr. Chappell corresponded favored selection by civil service, the Committee stated in its report that this method had been tried before with results not altogether satisfactory. The Committee did not consider whether it was desirable to return to the civil service system.

It should be brought out that neither the Administrative Office nor the Judicial Conference could go beyond persuasion since there was no legal limitation of the power of appointment in the district courts. The standards of qualification were not readily accepted by all judges, some of them relying upon the term "equivalent" as a loophole.

[2] See *Federal Probation*, October-December 1942, pp. 3-7.

During the 10-year period following the October 1940 Judicial Conference statement as to the essential qualifications of probation officers and the 1942 requisite qualifications (see footnote 2), 161 appointments were made. Of that number, 94, or 58.4 percent, met the requirements of both education and experience (compared with 39.7 percent prior to 1940), 16.1 percent met the requirement of education only, 11.2 percent met only the experience requirement, and 14.3 percent met neither requirement. Appointments since 1950, however, were in increasing compliance with the Conference standards.[3]

Inservice Training

Institutes.—Mention has been made of the training conferences held by Colonel Moore during the early years of the probation service. Inservice training institutes of 3- and 4-day duration continued throughout the thirties and forties to be a helpful means of keeping probation officers abreast of the latest thinking in the overall correctional field, acquiring new insights, skills, and knowledge, and utilizing specialized training and experience to their fullest potential. Institutes were held in five regions of the country at 2-year intervals. They consisted of work sessions, small group meetings, formal papers by correctional and social work leaders, and discussions of day-to-day problems. They generally were held in cooperation with universities, with members of their sociology, social work, psychology, and education departments and school of law serving as lecturers. Representatives of the Bureau of Prisons central office and its institutions, the U.S. Board of Parole, and the U.S. Public Health Service addressed the institutes and participated in forum discussions.

Training Center.—In November 1949 the Administrative Office in cooperation with the U.S. District Court for the Northern District of Illinois established a training center at Chicago for the Federal probation service. Under the direction of Ben S. Meeker, chief probation officer at Chicago, the training center sought and obtained the cooperation of the University of Chicago in developing courses of instruction. Recognized leaders in the correctional and related fields served on the Center's faculty. An indoctrination course was offered for newly appointed officers shortly following their entrance on duty and periodic refresher courses for all officers.

Monographs.—In 1943 the Probation Division published a monograph, The *Presentence Investigation Report* (revised in 1965) to serve as a guideline for conducting investigations and writing reports. In 1952 *The Case Record and Case Recording* was prepared in an effort to establish uniform case file procedures.

Manual.—In 1949 a 325-page Probation Officers Manual, prepared principally by Mr. Sharp, was distributed to the field. Prior to this time probation policies, methods, and procedures had been disseminated largely through bulletins and memoranda.

Periodical.—Federal Probation, published quarterly by the Administrative Office in cooperation with the Federal Bureau of Prisons, was another source of training through its articles on all phases of the prevention and control of delinquency and crime, book reviews, and digests of professional journals. As previously mentioned, the Quarterly had its beginning in 1930 as a mimeographed *News Letter*. In September 1937, after acquiring the format of a professional periodical, its title was changed to *Federal Probation* and was edited by Eugene S. Zemans. It made its first appearance in printed form in February 1939 with Mr. Chappell, then supervisor of probation in the Bureau of Prisons, as editor until 1953 when he was appointed a member, and later chairman, of the U.S. Board of Parole. When the Federal Probation System was transferred to the Administrative Office in 1940, Mr. Chappell, in addition to his responsibilities as chief of probation, continued as editor.

The quality of articles in the journal attracted the attention of college and university libraries and a wide range of persons in the correctional, judicial, law enforcement, educational, welfare, and crime prevention fields. It was mailed upon request, without charge. In 1950 the controlled circulation was approximately 4,500 and included 25 countries.[4]

Since 1940 the journal has been published jointly by the Administrative Office and the Bureau of Prisons. It was first printed at the U.S. Penitentiary at Fort Leavenworth, Kansas, and later by the Federal Reformatory at El Reno, Oklahoma, in their respective printshops operated by the Federal Prison Industries, Inc. Approximately 98 percent of the inmates assigned to the printing plant had no prior experience in printshop activities.

Investigation and Supervision

The investigative and supervisory functions of the Federal Probation System throughout its first 25 years were substantially the same as they are today. It has worked continuously in close association with the Bureau of Prisons and since 1930 also with the Board of Parole when the amendment to the original probation act provided that probation officers would perform such duties relating to parole as the Attorney General shall request. It cooperated with the two narcotic hospitals of the U.S. Public Health Service at that time, transmitting to them copies of presentence reports on addicts committed as a condition of probation, keeping in touch with the families of addict patients, and supervising them following their release.

Probation officers worked cooperatively with Federal law enforcement agencies (Federal Bureau of Investigation, Secret Service, Narcotic Bureau, Alcohol Tax Unit; Post Office Inspection Service, Immigration Service, Securities and Exchange Commission, Intelligence Unit of the Internal Revenue, and the Military Police and Shore Patrol), obtaining from them arrest data, sharing information about defendants, and notifying each other of violations of probation and parole. Community institutions and agencies were called on for assistance in helping probationers and parolees to become productive, responsible, law-abiding persons.

In 1944 the Federal Probation System was asked by the Army and the Air Force to supervise military prisoners released from disciplinary barracks.

Investigations.—Although it is a long-standing and well established principle that probation cannot succeed unless special care is exercised by the court in selecting persons for probation, presentence reports in the early years were perfunctory in many instances, some consisting of a single paragraph based on limited knowledge and even on biases and hunches! In 1930 a 4-page printed presentence worksheet served as the basis for a report to the court. The filled-in worksheet frequently comprised the report. It contained a limited space under each of the following headings: (1) Complaint, (2) Statement of Defendants

[3] After implementation of the Judiciary Salary Plan, adopted by the Judicial Conference in 1961, all but one of the probation officers appointed through December 1974 met the minimum requirements, including a bachelor's degree. Approximately 38 percent had a master's degree. Only one officer was not a college graduate. He had 16 years' prior experience as a Federal probation officer and was reappointed after an interim period of 7 years as a municipal court probation officer.

[4] As of December 31, 1974 the circulation was 38,500 and included more than 50 countries.

and Others, (3) Physical Condition, (4) Mental Condition, (5) Personal and Family History, (6) Habits, Associates, and Spare-Time Activities, (7) Employment History, (8) Home and Neighborhood Conditions, (9) Religious and Social Affiliations, (10) Social Agencies, Institutions, and Individuals Interested, (11) Analytical Summary, and (12) Plan, In Brief, Proposed. These were the outline headings generally followed at the time by juvenile courts and progressive adult courts and continued to be those recommended for use by Federal probation officers until 1941 when the Probation Division, with the assistance of the Bureau of Prisons and a small committee of chief probation officers, prepared a mimeographed guideline which set forth a standard outline, some investigation methods and procedures, and suggestions for writing the report. In 1943 the guidelines were broadened in scope and reproduced in the printed monograph, *The Presentence Investigation Report* (revised in 1965). This monograph contributed to uniformity in the format and content of reports across the country. Uniformity was essential then as today inasmuch as officers called on the network of offices in other cities for verification of data and information to complete their reports. In some instances data requested made up the larger part of a report. Uniform reports, as today, were also helpful to the Bureau of Prisons in commitment cases and to the Board of Parole in its parole considerations.

In the early years some judges did not require presentence reports, relying, in the disposition of their cases, on the report of the U.S. attorney, the arrest record, and the defendant's reputation locally. In other courts investigations were made in a relatively low proportion of cases. A few courts required investigations in virtually all criminal cases.

Rule 32-c of the *Federal Rules of Criminal Procedure* (1933) prescribed that the probation service of the court shall make a presentence investigation report to the court before the imposition of sentence or the granting of probation unless the court directed otherwise. Although it was anticipated this was to be the normal and expected procedure, some courts required no investigation unless requested by the judge. It was argued that either way, the same ends were being achieved.

Reliable statistics on the number of defendants receiving presentence investigations were not maintained during the first 25-year period. What constituted a completely developed presentence report had not been defined. A partial report touching on only a few areas of what was considered to be a full-blown report was counted as a full report. Moreover, when two or three officers contributed data to the presentence report in its final form, each officer often would report a presentence investigation. This resulted in more investigations than defendants! It is estimated that in the forties between 50 and 60 percent of the defendants before the court received presentence investigations.

In addition to presentence investigations, probation officers conducted postsentence investigations, special investigations for the U.S. attorney on juveniles and youth offenders, investigations requested by Bureau of Prisons institutions, and also prerelease, violation, and transfer investigations on parolees, persons on conditional release, and military parolees.

Supervision.—As already stated, Federal probation officers supervised only probationers until 1930 when the 1910 Parole Act was amended, giving them, in addition, responsibility for the field supervision of parolees. In 1932 the Parole Act was further amended, providing for the release of prisoners prior to the expiration of their maximum term by earned "good time." They were released "as if on parole" and were known as being on conditional release (now referred to as mandatory release). They became an additional supervision responsibility of the probation officer.

As previously mentioned, the Federal Probation System, in response to a request from the Army and the Air Force in 1946, offered its facilities for the supervision of military parolees. And in 1947 the Judicial Conference recommended that courts be encouraged to use "deferred prosecution" in worthy cases of juveniles (under 18), and that they be under the informal supervision of probation officers. Under this procedure, which still prevails, the U.S. attorney deferred prosecution of carefully selected juveniles and placed them under supervision of a probation officer for a definite period. On satisfactory completion of the term the U.S. attorney could dismiss the case or, in instances of subsequent delinquencies, process the original complaint forthwith. Thus the Federal probation officer supervised five categories of offenders: probationers, parolees, persons on conditional release, military offenders, and juveniles under deferred prosecution.

Mention should be made of the Federal Juvenile Delinquency Act (18 U.S.C. 5031-5037), enacted June 16, 1938, which gave recognition to the long-established principle that juvenile offenders need specialized care and treatment. The Act defined a juvenile as a person under 18 and provided that he should be proceeded against as a juvenile delinquent unless the Attorney General directed otherwise. He could be placed on probation for a period not to exceed his minority or committed to the custody of the Attorney General for a like period.

Attention should also be called to the Federal Youth Corrections Act (18 U.S.C. 5005-5026), enacted September 30, 1950. The Act established a specialized procedure for dealing with youthful offenders 18 and over, but under the age of 22 at the time of conviction, who were considered tractable. The Act provided for a flexible institutional treatment plan for those committed under it. Where the offense and record of previous delinquencies indicated a need for a longer period of correctional treatment than was possible under the Federal Juvenile Delinquency Act, a juvenile, with approval of the Attorney General, could be prosecuted as a youth offender.

The probation officer played a prominent role in the detention pending disposition, investigation, diversion,[5] hearing (or criminal proceeding), and supervision of the juvenile and the youth offender.

The number of juveniles coming to the attention of probation officers, including those not heard under the Act, reached a high of 3,891 in 1946, followed by a decline through 1950 when there were 1,999 juveniles. Those heard under the Act ranged from a low of 43 percent of all juveniles in 1939, the first year the Act was operative, to a high of 69.6 percent in 1946, or an average of approximately 66 percent for the period 1939 through 1950.

In 1939, 41 percent of the juveniles were proceeded against under regular criminal statutes compared with a low of 1.5 percent in 1944. For the period 1944 through 1950 the proportion heard under criminal procedure averaged slightly less than 3 percent and the proportion handled without court action (diverted or dismissed) was approximately 30 percent.

Table 1 gives the supervision caseload from 1930 to 1950:

Violation rates.—In any assessment of violation rates it should be kept in mind

[5] Where it was agreed upon by the U.S. Attorney to be in the best interests of the Government and the juvenile or youth offender, every effort was made to divert him to local jurisdictions under the provisions of 18 U.S.C. 5001, enacted June 11, 1932.

they seldom are comparable from district to district. Officers with heavy workloads, for example, may not be as responsive to violations as those with smaller workloads. A court which is more selective in its grant of probation may be expected to have a lower proportion of violations. A "when to revoke" policy may differ among probation officers and among judges, even in the same district. Some courts may revoke probation for a technical infraction of the probation conditions while others do so only for violation of law. An efficient police department or sheriff's office may bring to the probation officer's attention a greater proportion of arrests. Varying conditions and circumstances from district to district and from one year to another, such as unemployment, social unrest, changes in criminal statutes, etc., would preclude comparable data and valid comparisons. But despite these variables, violation rates for probationers, interestingly, changed but little from 1932, when violation figures were first available, to 1950.

Violation rates maintained by the Administrative Office from 1940 to 1948 were computed on the same basis as that adopted before the probation service was transferred from the Department of Justice, viz, the proportion of all persons under supervision during the year who violated. Although this method was used by a number of nonfederal probation services, the late Ronald H. Beattie, chief statistician for the Administrative Office, believed a more realistic measure would be a rate based on the number removed from supervision during the year and the number who committed violations. Beginning with 1948, violation rates were computed on this basis. Under this method the violation rate for probationers that year, for example, was 11.8 percent instead of 3.9 percent under the method used in previous years. The average violation rate for the 10-year period from 1941 to 1950 was 11.5 percent for probationers, 14.1 percent for parolees, 14.4 percent for persons on conditional release, and 3.3 percent for military parolees.

In 1959 probation officers were requested to submit to the Administrative Office reports on all violations, whether or not probation was revoked. Prior to this the practice had been to report only violations in those instances where probation had been revoked. This improved procedure helped to achieve uniformity in reporting violations.[6]

Postprobation adjustment studies.— Starting in 1948 a postprobation study of 403 probationers known to the Federal probation office for the Northern District of Alabama was conducted by the sociology department at the University of Alabama. These probationers' supervision had terminated successfully during the period July 1, 1937, to December 31, 1942. They were interviewed by probation officers in the districts where they resided at the time of the study and their records were cleared with the Federal Bureau of Investigation, local courts, and local law-enforcement offices. During a postprobation median period of 7 1/2 years, 83.6 percent had no subsequent convictions of any kind (see *Federal Probation*, June 1951, pp. 3-11).

In 1951 the sociology department at the University of Pennsylvania conducted a similar evaluative study of 500 probationers whose supervision under the probation office for the Eastern District of Pennsylvania had been completed during the period 1939 to 1944. The study, which covered a 5-year period for each probationer, found that 82.3 percent had no subsequent conviction. In an effort to assure a high degree of comparability between

TABLE 1.
Supervision caseload from 1930 to 1950

FY ended June 30	# of Probation officers	Number under supervision	Average caseload per officer[1]
1930	8	x[2]	x
1931	62	x	x
1932	63	25,213	400
1933	92	34,109	371
1934	110	26,028	237
1935	119	20,133	169
1936	142	25,401	179
1937	171	29,862	175
1938	172	27,467	185
1939	206	28,325	160
1940	233	34,562	148
1941	239	35,187	147
1942	251	34,359	137
1943	265	30,974	117
1944	269	30,153	112
1945	274	30,194	110
1946	280	30,618	109
1947	280	32,321	115
1948	285	32,613	114
1949	287	29,726	103
1950	303[3]	30,087	100

[1] *In 1956 the Probation Division adopted a weighted figure to reflect the workload of an officer. The new method of computation included presentence investigations in addition to supervision cases. A value of 4 units was given to each presentence investigation completed per month and 1 unit for each supervision case. Thus, if an officer completed 6 investigations per month and supervised 51 persons, his workload was 75 (24 plus 51). This method was continued until 1969 when the weighted figure was discontinued. Instead, the average number of presentence investigations, respectively, were shown for each officer.*

[2] *No figures available.*

[3] *On December 31, 1974, there were 1,468 probation officers.*

[6] In 1963 another step was taken to obtain greater uniformity in reporting and also an understanding of the nature of the violations reported. Violation rates were determined for three types of violations— technical, minor, and major. A technical violation was an infraction of the conditions of probation, excluding a conviction for a new offense. A minor violation resulted from a conviction of a new offense where the period of imprisonment was less than 90 days, or where any probation granted on the new offense did not exceed 1 year. A major violation occurred when the violator had been convicted of a new offense and had been committed to imprisonment for 90 days or more, placed on probation for over 1 year, or had absconded with a felony charge outstanding. This method of reporting violations continues today.

the two studies, the sampling procedures in both studies were reported to be virtually identical (see *Federal Probation*, September 1955, pp. 10-16).

Probation and the War

This account of the first 25 years of the Federal Probation System would not be complete without commenting on the significant work performed by probation officers during World War Il. They were engaged in many activities related to the war effort such as helping selective service boards determine the acceptability of persons with convictions, dealing with violators of the Selective Service Act, assisting war industries in determining which persons convicted of offenses might be considered for employment, cooperating with the Army in determining the suitability of persons with convictions who had been recruited or inducted, and supervising military parolees. Together with the Bureau of Prisons the Administrative Office succeeded in removing barriers to employment of persons considered good risks despite criminal records. The U.S. Civil Service Commission relaxed its rules, permitting, on recommendation of the probation officer, employment of probationers in government with the exception of certain classified positions. These activities relating to the prosecution of the war were performed by probation officers in addition to their regular supervisory and investigative duties. The supervision caseload during the war years averaged 119 per officer—with a high of 137 in 1942.

In the summer of 1946, as previously mentioned, the Administrative Office, at the request of the Department of the Army, agreed to have probation officers investigate parole plans of Army and Air Force prisoners and supervise them following release on parole from disciplinary barracks. Probation officers worked in close conjunction with The Adjutant General's Office and the commandants of the 16 disciplinary barracks at that time. The service rendered by probation officers was expressed by military authorities as "of inestimable value to the Army and Air Force" in the operation of their parole programs. The success of their parole program, they said, "may be attributed largely to the keen human interest and thorough professional guidance which the officers of the federal probation service extend to each parolee under their supervision, even under conditions which have taxed their facilities."

The number of supervised military parolees reached its peak at the close of fiscal year 1948 when there were 2,447 under supervision. The following year the number dropped to 1,064, and in 1950 to 927.

Through September 1946 a total of 8,313 probationers had entered the armed services through induction or enlistment and maintained contact throughout their service with their probation officers. Only 61, or less than 1 percent, were known to have been dishonorably discharged.

During the war 76 probation officers, or approximately 28 percent of all probation officer positions in 1945, entered military service. The chief and assistant chief of probation also entered service. During their absence Lewis J. Grout, chief probation officer at Kansas City, Missouri, served as chief, and Louis J. Sharp, probation officer at St. Louis, Missouri, was assistant chief.

Here ends a capsule history of the struggle for a Federal Probation Act which began as far back as 1909, and some of the highlights of the Federal Probation System during its first quarter century of operation.

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