

The Federal Probation System: The Second 25 Years, 1950-1975

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MY BRIEF IS to survey the Federal Probation System in its second quarter century, 1950-1975. So much has happened that this article can capture but a fraction of events.

In 1950, Henry P. Chandler, then director of the Administrative Office of the United States Courts, was courageous enough to try to predict the pattern of the next 25 years of Federal probation. Happily, retrospection is more reliable than prediction and my task is easier. Mr. Chandler wrote:

It does not seem likely that there will be any substantial change in the present functions of federal probation officers in the next 25 years. These functions are principally presentence investigation and the supervision of persons on probation and parole.¹

In a formal sense, this statement still identifies the principal functions of the Federal probation officer, but there have been many dramatic changes which elude Henry Chandler's prevision.

There has been a remarkable growth in the use of probation, and what was a minority

disposition has become the most common sentence. There has also been a whole series of conceptual changes about the nature of probation and parole, both moving from a jurisprudence of unfettered judicial and parole board discretions towards systems of judicial and administrative rights permeated by due process controls. The energetic intercession of the courts in the definition of certain due process and civil rights of prisoners has flowed over into the areas of parole and probation. The controversy over disclosure versus confidentiality of presentence reports, the emerging trends in criminal pretrial procedures encompassing plea bargaining, bail selection, deferred prosecution or judgment, and a series of rules and practices circumscribing the imposition and nature of probation and parole conditions and defining the procedures to be adhered to in probation and parole revocations, have both complicated and altered probation and parole practices.

From a qualitative service point of view, the past two decades have seen the addition of a remarkable array of new resources and programs. Of major significance has been the expansion of sentencing alternatives available to the Federal judges. Prior to the decade of the fifties, except for juveniles, the alternatives were either a flat sentence or probation. Now, a series of indeterminate and mixed dispositions are available, including a complex set of sentencing procedures for narcotic law violators.

Other important changes have followed passage of the Criminal Justice Act (1966), which laid the foundation for the Federal Defenders program; The Prisoners' Rehabilitation Act which authorized work release, emergency furloughs and the establishment of "residential treatment centers" by the Federal Bureau of Prisons; and the act establishing the Federal magistrates and the subsequent increase in misdemeanor probation. In addition, the availability of Employment Placement Personnel, and the movement of Vocational Rehabilitation services into the correctional field, have modified probation and parole practice.

With these trends has come a maturing and professionalizing of the Federal Probation System. A strong tradition of in-service training, combined with sound education qualifications which became mandatory by action of the Judicial Conference of the United States in 1961 and which became effective with implementation of the Judiciary Salary Plan in 1964, has created an outstanding service. Contributing to this professionalization has been an active goal-oriented Federal Probation Officers Association, which has worked closely with the Division of Probation and the Judicial Conference Committee on the Administration of the Probation System.

Concepts of professionalism were advocated by the earliest leaders in the Federal Probation System and were strongly supported by Mr. Chandler, the first director of

¹ Henry P. Chandler, "The Future of Federal Probation," *Federal Probation*, June 1950.

the Administrative Office. In 1943 the Judicial Conference recommended standards which culminated in the mandatory qualifications approved by it in 1961. Since that time, the appointment of officers meeting the requirements of a college degree and 2 years of prior professional experience has become standard, with 41 percent of the applicants entering the service in fiscal year 1974 having completed the master's degree.² This is in rather dramatic contrast to the fact that only 58 percent of the officers appointed during the period from 1943 to 1949 met the qualifications desired.³

The Training Tradition

As Mr. Evjen has noted in the preceding article, the tradition of in-service training for Federal probation officers commenced in the 1930s through periodic regional institutes. In 1949 the idea for an ongoing training center in Chicago grew out of a conference between Richard A. Chappell, chief of the Division of Probation, Judge William J. Campbell of the U.S. District Court for the Northern District of Illinois, and the late Frank T. Flynn of the faculty of the School of Social Service Administration at the University of Chicago. With strong support from Judge Campbell and the University of Chicago, the Judicial Conference authorized the opening of the Center in 1950.⁴ Thus commenced a program of training and research at Chicago which was to last for the next 20 years.

Although it will remain for others to assess the ultimate value of the Chicago Training

Center, it seemed to me that during the period from 1950 to 1970, in addition to its training value, the Center in Chicago provided a highly unifying and coordinating influence. The selection of officers to attend the sessions was entirely in the hands of the Division of Probation in Washington, and, through a well-planned mix of officers from district courts everywhere, the Center served as a common meeting ground for personnel from around the country. Much of the earlier provincialism and preoccupation with local concerns disappeared as officers discovered that the problems of working with probationers and parolees, whether from Atlanta, Boston, San Antonio, or Seattle, were identical. The Chicago Center also served a major administrative function, as it provided the opportunity for members of the Probation Division of the Administrative Office, the U.S. Board of Parole, the Federal Bureau of Prisons, and staff members of the military correctional programs to meet and discuss administrative and policy developments with field officers.⁵

In 1970, with the advent of the Federal Judicial Center and the availability of funds and staff to carry on a much more comprehensive training program geared to the entire personnel of the courts, the Chicago Center had fulfilled its mission and the training function was gradually transferred to the Center in Washington.

Federal Judicial Center

The benchmark in the training tradition of the Federal judiciary was reached with the passage in 1967 of Public Law 90-219⁶ establishing the Federal Judicial Center (FJC), now located in the handsome facilities of the Dolley Madison House.

Under the leadership of the first director, Associate Justice of the Supreme Court Tom Clark, his successor, Senior Circuit Judge

Alfred P. Murrah, and the present director, Senior Judge Walter E. Hoffman, a wide spectrum of training and research programs has developed.⁷

One of the first research and demonstration projects sponsored jointly by the Federal Judicial Center, the National Institute of Mental Health, and the University of Chicago Law School Center for Studies in Criminal Justice headed by Professor Norval Morris was designed to evaluate the role and potential usefulness of nonprofessional case aides.⁸ The action phase of this research involved the employment of up to 40 part-time probation officer case aides on the staff of the probation office of the Northern District of Illinois, Chicago, Illinois.

These aides, largely blue collar, were recruited from among residents—including ex-offenders—of the neighborhoods involved in the study. This project demonstrated the usefulness of such assistants and led to the creation by the Judicial Conference of a paraprofessional position, probation officer assistant, within the hierarchy of Federal Probation System positions. Twenty such positions were authorized in 1973.⁹

Other research projects carried out in a variety of probation offices reflect a desire to test and evaluate traditional practice. In his account of the Federal Probation System,

⁷ The 1974 Annual Report, Federal Judicial Center (pp. 28-29) is a comprehensive multisection report on a wide variety of research studies, conferences, and training activities at all levels of the Federal judiciary. All together, some 1,731 members of the judicial branch attended conferences and seminars sponsored by the Center. Included were 10 orientation seminars for 333 newly appointed probation officers, six refresher courses attended by 197 probation officers, a management institute for chiefs, deputy chiefs, and supervising officers, one regional conference and a special invitational seminar for 68 probation officers held in conjunction with the Seventh Circuit Judicial Conference, Milwaukee, Wis., May 1974.

⁸ Donald W. Beless, William Pilcher, and Ellen Jo Ryan, "Use of Indigenous Nonprofessionals in Probation and Parole," *Federal Probation* 16 (March 1972). See also: R. D. Clements, *Para-Professionals in Probation and Parole: A Manual*, Center for Studies in Criminal Justice, U. of C. Law School (1972) and *Final Report: Phase I and Phase II, Probation Officer Case Aide Project*, CSCJ, U. of C. Law School (1973).

⁹ Annual Report of the Director of the Administrative Office of the U.S. Courts, 1973, p. 271. Currently, under an extension of the NIMH funding, a study is being made of the way in which these aides are being utilized in six offices: Chicago, New York City, Washington, D.C., San Francisco, Los Angeles, and Pine Ridge, S.D.

² In addition to meeting the academic standards, 75 percent of the 345 officers appointed in fiscal year 1974 had an average of 4 1/2 years of prior experience in probation or parole work. (Div. of Prob., Admin. Office U.S. Courts: Memorandum to all Fed. Probation Officers, November 7, 1974).

³ Henry P. Chandler, "The Future of Federal Probation," *Federal Probation*, June 1950. Note: During the ensuing decade, the pressure for qualified appointments continued and in the year 1960, 18 new probation officers were appointed to fill vacancies. Of the 18, all had college degrees and 10 had master's degrees. Annual Report, Administrative Office of the U.S. Courts.

⁴ Annual Report, Administrative Office of the U.S. Courts, 1949. For a detailed description, see Ben S. Meeker, "The Federal Probation Service Training Center," *Federal Probation*, December 1951. To further the work of the Center, the Judicial Conference in 1956 authorized three additional positions: a deputy director of training, a training officer and a secretary. The late Wayne L. Keyser was appointed to the position of deputy director, and was subsequently succeeded by Harry W. Schloetter, who is now chief probation officer of the San Francisco office.

⁵ It is important to keep in mind that throughout this period the Division of Probation continued to sponsor regional institutes which fulfilled an important supplemental function to the work of the Chicago Center. In the far-flung Federal Probation System regionalization is vital, and periodic regional institutes serve a valuable function as they afford opportunities for district officers to get to know one another and share in the discussion of interdistrict concerns. The recent rapid expansion in the number of officers has precipitated some logistic problems in the scheduling of regional institutes. It is the hope of many in the Service, however, that the Federal Judicial Center will find a way to preserve the tradition of regional institutes.

⁶ Public Law 90-219, December 20, 1967, Title 28 USC, Ch. 42 Sec. 62L-629, "Federal Judicial Center."

Merrill Smith has characterized the recent past as “a decade of innovation.”¹⁰ An experiment in the District of Columbia probation office with group counseling techniques demonstrated a useful new procedure.¹¹ In California, a project known as “The San Francisco Project” conducted a research demonstration program designed to evaluate optimum caseloads.¹² A major research demonstration project sponsored jointly by the Social and Rehabilitation Services of the U.S. Department of Health, Education, and Welfare and the Federal Probation System to evaluate the intensified use of vocational rehabilitation resources, conducted in eight probation districts, is another example of such research.¹³

Administrative Developments

After nearly 17 years of leadership as the pioneer director of the Administrative Office, Henry P. Chandler retired in 1956. Thanks to his foresight and deep conviction about the importance of probation and parole, these aspects of the Federal system of justice gained a firm foundation.

Mr. Warren Olney III, a former Assistant Attorney General of the United States, was subsequently named director. Observing certain needs in the probation arm, he urged the establishment of a Judicial Conference committee on the administration of probation. This committee was created in 1963. Judge Luther W. Youngdahl of the District of Columbia was appointed chairman.

Judicial Conference Committee on the Administration of the Probation System.—The importance of this Committee cannot

be overstated. Prior to its creation, although various committees of the Judicial Conference gave assistance to probation, no one committee was devoted exclusively to the support and improvement of the Federal Probation System.

From the outset, the Probation Committee sought counsel from the Division of Probation and the Federal Probation Officers Association on the needs of the Federal Probation System. Support for training and research, refinements in presentence investigation procedures, an evaluation of deferred prosecution, an extension of field consultation to district probation offices, and support for the existing administrative structure of Federal probation and parole services, are among the activities undertaken by the Committee. In 1963 a subcommittee of the Probation Committee under mandate of the Judicial Conference, undertook a revision of *The Presentence Investigation Report* (1943) which had given yeoman service for over 20 years. With assistance from representatives of the Probation Division, the Bureau of Prisons, outside experts, and field personnel, a comprehensive review was completed and adopted by the Probation Committee in February 1965. These new standards were issued as Publication 103, *The Presentence Investigation Report*.

One of the more dramatic areas in which the cooperative efforts of the Federal Probation Officers Association and the Probation Committee were effective related to a series of bills proposed by the Attorney General, to transfer the Federal Probation System from the Federal judiciary to the Department of Justice. This proposal, which surfaced in the spring of 1965, came without warning to the district courts and probation offices, and aroused immediate opposition. Studies of the proposal by a subcommittee of the Committee on the Administration of the Probation System and by the Board of the Federal Probation Officers Association (FPOA) reinforced the opposition. The Judicial Conference, at its March 10-11 meeting in 1966, accepted the report of its Probation Committee and adopted a resolution opposing the proposed transfer of the Probation System to the Justice Department.¹⁴

¹⁴ The Board of Directors of the FPOA, reflecting the opinion of its membership-at-large, issued a position paper on June 1, 1965, opposing the transfer and listing what it had identified as the major needs of the service, the prime one being manpower rather than reorganization. (*Some Observations on the Needs of the Federal Probation—Parole Service*, Mimeo. June 1, 1965 - Archives FPOA.) See also, Albert Wahl, “Federal Probation Belongs with the

During subsequent sessions of Congress, similar bills were introduced, but died in Committee.¹⁵ Note should also be made that the Federal Probation Officers Association presented the issue to the American Bar Association, which registered official opposition to the bills at its annual meeting in 1966.

Administrative Office Stability Reflected in Probation Division Continuity.—Unlike many agencies of the government, where top officials, for political and other reasons, come and go with great frequency, the Administrative Office of the United States Courts has been a remarkably stable and nonpolitical agency. Thus, through its nearly 36-year history, there have been only four directors. Following Mr. Olney’s resignation in 1967, Mr. Ernest C. Friesen, Jr., who had been an Assistant Attorney General in the Justice Department, was named director. In February 1970 he left to direct the Institute for Court Management, University of Denver School of Law, and on July 1, 1970, Mr. Rowland F. Kirks was appointed director of the Administrative Office.¹⁶

Director Kirks’ interest in probation was immediately evident, as he made it a point to attend and talk with probation officers at each of the Regional Training Institutes then being held. He was quick to assess the needs of the Federal Probation System, particularly in the area of manpower, and let it be known

Courts” *Crime and Delinquency*, Vol. 12, No. 4, October 1966, p. 371. The Subcommittee of the Judicial Conference Probation Committee under chairmanship of Judge William Herlands of the Southern District of New York prepared a comprehensive report on the legal history and background of the Federal Probation System and concluded that a conflict of interest could develop were the Probation System placed under the office of the chief prosecutor of the government. (*Report of the Proceedings of the Judicial Conference*, 1966).

¹⁵ A review of the annual reports of the Judicial Conference Committee on the Administration of the Probation System indicates that the Conference reaffirmed its opposition to such transfer in March 1967, February 1968, March 1969, March 1970, and again as recently as September 1973.

As an alternative, the Judicial Conference of the United States and the Federal Probation Officers Association had gone on record in support of a bill to expand the Advisory Corrections Council established by 18 USC 5002.

¹⁶ At the time of his appointment to the Administrative Office, he was Commanding General of the 97th U.S. Reserve Command and had also been a board member of a number of organizations, including the District of Columbia Board of Education and the Advisory Board of the Salvation Army.

¹⁰ Merrill A. Smith, As a Matter of Fact: An Introduction to Federal Probation. The Federal Judicial Center, Washington, D.C., 1973, P. 76.

¹¹ Herbert Vogt, “An Invitation to Group Counseling,” *Federal Probation*, September 1971.

¹² Robinson, Wilkins, Carter, and Wahl, The San Francisco Project. See also —Final Report 73 (1969). See also, Adams, Chandler, and Neithercutt, “The San Francisco Project: A Critique,” *Federal Probation*, December 1971.

¹³ Proceedings of the Judicial Conference of the United States, 1963. Other members were: Judge William B. Herlands, Southern District of New York; Chief Judge Walter E. Hoffman, Eastern District of Virginia; Judge Frank M. Johnson, Jr., Middle District of Alabama; Chief Judge Thomas M. Madden, District of New Jersey; Judge John W. Oliver, Western District of Missouri; Judge James B. Parsons, Northern District of Illinois; Judge Francis L. Van Dusen, Eastern District of Pennsylvania; Judge Albert C. Wollenberg, Northern District of California.

throughout the service that he would aggressively support budget proposals to enlarge the staff complement of probation officers to meet recognized standards.

The Division of Probation.—During this time the Division of Probation had been characterized by stability in purpose and leadership. Under the team direction of Chief Chappell and Assistant Chiefs Evjen and Louis J. Sharp¹⁷ the Federal Probation System moved forward. In 1956 after nearly 20 years of distinguished probation leadership, Mr. Chappell resigned to accept appointment as a member of the U.S. Board of Parole. Meantime, Mr. Evjen's talents as editor of *Federal Probation*, which was now recognized worldwide, had placed that quarterly in the forefront of correctional journals. Mr. Evjen continued to serve as editor of the journal as well as assistant chief until his retirement in 1972. At that time, *Federal Probation* had a circulation of 35,000 and was being distributed to 50 foreign countries.

Continuing the tradition of promoting career officers from the districts to leadership positions in Washington, Mr. Sharp, originally of the St. Louis Federal probation office, followed Mr. Chappell as chief. Upon Mr. Sharp's retirement, Merrill A. Smith, who had come to Washington in 1954 as an assistant chief from the Los Angeles office, was named chief of the Probation Division in June 1966.

After 31 years in Federal probation service, Mr. Smith retired in 1972. At that time Wayne P. Jackson, who had been promoted from the Chicago office to an assistant chief's position in the Division of Probation, was appointed chief.¹⁸

¹⁷ Mr. Louis J. Sharp was promoted from the Federal probation office in St. Louis to an assistant chief's position in Washington in January 1944.

¹⁸ It is significant to note that since the creation of the Division of Probation in 1940, all administrative appointments to that Division have been made from within the Federal Probation System. All appointments have been made on a merit basis via promotions. Currently, the two senior assistant chiefs are William A. Cohan, Jr., formerly of the Federal probation office in Cleveland, and Donald L. Chamlee, now editor of *Federal Probation*, who came from the Federal probation office in Sacramento, Calif. The six other assistant chiefs, each of whom covers a regional area, are Michael J. Keenan, formerly of the Cleveland office, Guy Willetts, formerly of the Raleigh, N.C., office, Hubert L. Robinson, formerly of the New York City office, Frederick R. Pivarnik, formerly of the Hartford, Conn., office, Thomas J. Weadock, Jr., formerly of the San Francisco office, and Joseph C. Butner, formerly of the Las Vegas office. These men came to the central office with backgrounds of solid field experience, which has added much to the

One of the most significant developments during this period was the expansion of the Probation Division staff. The Federal Probation Officers Association had been urging this move for several years in order to provide field consultation services to district probation officers throughout the Nation. In 1965 the Judicial Conference Committee on the Administration of the Probation System gave support to this proposal, and an experimental project employing the services of a regional consultant was instituted. This project proved successful and led to the present operation in which regional areas are assigned to five Probation Division assistants. These regions coincide with those of the U.S. Board of Parole and Federal Bureau of Prisons which will greatly facilitate improved communication at the district level.

Caseload Expansion

During the last 25 years the caseload of the efficiency and stability of the system.

Federal Probation System has expanded dramatically. On June 30, 1951, there were 29,367 persons under the supervision of Federal probation officers. On June 30, 1974, that total had more than doubled as 59,534 persons were under supervision.¹⁹

During this same time span, the investigative caseload increased at an even higher rate. In fiscal 1951, 25,443 investigative reports were statistically tabulated, including 8,367 civil and military preparole investigations. In contrast to this total, during fiscal 1974, the probation service completed 77,146 investigations (see tables 1 and 2).

The marked growth of responsibility for Federal probation officers ought not to be measured quantitatively alone, but qualitatively, in relation to the increased types of treatment and rehabilitative programs developed during this period. Among the most significant was the dramatic increase in the

¹⁹ Annual Reports, Adm. Office, U.S. Courts, 1951, p. 174 and 1974, p. VI 11-5. Note: As we go to press, the total under supervision exceeds 61,000.

TABLE 1.
Persons under supervision fiscal years ending June 1951 and 1974

	1951	1975
Total	29,367	59,534
Probation	21,413	40,306
Parole	4,258	12,353
Conditional release	2,873	1,909
Military parole	823	270
Deferred prosecution	¹	1,058
Magistrate's probation	²	3,638

¹ Not reported

² Not applicable

TABLE 2.
Investigations completed during fiscal year ending 1974¹

Total	77,146
Limited presentence investigations	1,943
Collateral investigations	9,203
Preliminary investigations for U.S. attorney	862
Postsentence, Bureau of Prisons	658
Pretransfer investigations	8,603
Alleged violation investigations	6,630
Preparole and other prerelease investigations	6,965
Special investigations (persons in confinement)	4,628
Furlough and work release investigations	1,140
Parole supervision reports	5,895
Parole revocation hearing reports	1,127

¹ In 1963 a change in statistical reporting procedures made exact comparisons difficult between the 25,443 investigations in 1951 and the 77,146 investigations made in 1974.

number of sentencing alternatives made available to the courts and the impact of these new procedures on probation. New duties also developed as a result of more definitive probation and parole supervision guidelines and more complex revocation procedures.

Investigation and Supervision of Military Offenders.—In his article, Mr. Evjen has recounted the 1946 agreement of the Federal Probation System to conduct military preparole investigations and handle supervision of military parolees for the Departments of the Army and Air Force.²⁰ Typically, this was done without additional personnel, and caseloads continued to grow without comparable increase in probation officer positions until the 1956-57 fiscal years when 165 new probation officer positions were funded.²¹ This brought the caseload averages, which had been running between 95 and 100 per officer, down to 70 (1957).

These figures did not, however, take into consideration the presentence, preparole and other investigations which were increasing at a steady pace. These pressures and the addition of a variety of new responsibilities, were requiring officers to spread themselves much too thinly. Some of these added responsibilities merit more detailed review.

Impact of Sentencing Alternatives

Youth Corrections Act.—In the early 1950s came the Youth Corrections Act (18 USC 5005-5026), providing for study and observation of youthful offenders referred to the Bureau of Prisons, and requiring special supervision progress reports on youthful and young adult offenders.

Indeterminate Sentencing Act: Adults.—In 1958, an indeterminate sentencing act was passed (18 USC 5208-5209), which included a provision for the study and observation of adult offenders by the Bureau of Prisons. Courts again turned to probation officers for assistance in evaluation and selection of offenders for such study.

Then came such important congressional legislative enactments as the Criminal Justice Act (1964) and the Prisoner Rehabilitation Act (1965). Under these acts, home furloughs, work release programs, community treatment centers (halfway houses) and other resources were added and field officers soon found themselves involved in verifying home furlough plans, evaluating work release proposals, and cooperating closely with the Bureau of Prisons in these community programs. Subsequently Public Law 91-492 amended 18 USC 3651 to authorize residence in a residential community treatment center as a condition of probation, parole, or mandatory release. The use of such facilities involved a new set of relationships and an important investment of time.

The Narcotic Addict Rehabilitation Act of 1966.—Title I of this Act provided for civil commitment of selected narcotic addicts to the Surgeon General of the United States for treatment at a U.S. Public Health Service Hospital or a private facility under contract. The Act provided for aftercare supervision, and again the Federal Probation System was designated as a primary supervision resource.

Title 11 of the NARA involved the Federal Probation System more intensively as section 4251 related to convicted addicts committed to the custody of the Attorney General for treatment at public health or privately contracted clinics. Release procedures were set by the U.S. Board of Parole, but overall responsibility for aftercare devolved upon probation officers. In most metropolitan districts one or more teams of probation officers specialize in handling these cases.²²

²² Periodic urinalysis tests are required of all addict parolees, and although these tests are usually contracted out to local medical clinics, the administrative management of this program has required a significant investment of probation service time.

Another act (P.L. 92-293) amended 18 USC, 3651-4203, expanding the eligibility definition to include users of "controlled substances" such as marihuana, barbiturates, amphetamines and hallucinogens, and authorized probationers, parolees, and mandatory releasees to be referred for treatment. Managing these caseloads and keeping in touch with the various public and private drug-abuse resources is a time-consuming duty.

Expansion of Probation Officer Positions

During the fifties and sixties there were dramatic increases in the size of caseloads as well as in the complexities and pressures attendant upon the district probation officer's job. Each year the Division of Probation offered sound documentation of the need for both central and district staff expansion, but, as noted above, except for the years 1956 and 1957, budget requests for sufficient numbers of district probation officers to approach the recommended standards of 35 to 50 cases per officer were not approved. However, as a result of a combination of fortuitous circumstances the bottleneck was finally broken, and major probation officer staff expansion was begun in 1973.

In 1972 an opportunity developed for direct testimony to be given to two key congressional committees on the needs of the Federal Probation System. These committees—the "Kastenmeier Committee" (Subcommittee No. 3 of the House Committee on the Judiciary), chaired by Congressman William Kastenmeier of Wisconsin and the "Burdick Committee" (Subcommittee on Penitentiaries of the Senate Committee of the Judiciary), chaired by Senator Quentin Burdick of North Dakota—were both holding hearings on proposed legislation to improve Federal corrections. In March 1972 an invitation was extended to members of the Division of Probation of the Administrative Office, to testify before the Kastenmeier Committee on the needs of the Federal Probation System. As chief of the Chicago office, which was then involved in a research project of interest to the Subcommittee, I was also invited to testify.²³ At that time I was also president of the Federal Probation Officers Association, and at the hearing suggested that the Subcommittee might like to hear from other members of the FPOA Board. Subsequently, I received word that Congressman Kastenmeier and members of his Subcommittee would welcome an opportunity to meet informally with members of the Board of Directors of the Association. This invitation was accepted and on April 11, 1972, all 10 members of the Board

²³ My invitation on that occasion was prompted by the Subcommittee's interest in a research project on the use of probation officer case aides being conducted in the Chicago District. Accompanying me to present testimony were the project action director, William Pilcher, now chief probation officer in Chicago, and David Dixon, a probation aide who is now a full-time probation officer assistant in the Chicago Office.

²⁰ Victor H. Evjen, "The Federal Probation System: The Struggle to Achieve It and Its First Twenty-five Years," *Federal Probation*, June 1975.

²¹ It is of interest to note that although the Division of Probation had been pressing for additional funds, congressional appropriations were not forthcoming until Senate Report No. 61 (March 14, 1955), 84th Congress, was published. This was a report of the Juvenile Delinquency Subcommittee of the Senate Committee on the Judiciary, which in the course of its work reviewed the operation of the Federal Probation System. The Subcommittee found the caseloads excessive and officers' salaries below par. The Subcommittee strongly recommended that compensation be increased and field staff expanded. Following this report Judge William J. Campbell, chairman of the Judicial Conference Committee on the Budget, succeeded in gaining House and Senate Appropriations Committee support of a 2-year budget expansion raising the total complement of officers from 316 in 1955 to 481 in 1957.

and our Association Newsletter editor met with Congressman Kastenmeier and members of his Subcommittee. In this unprecedented meeting each of us representing different regions of the country was invited to comment on the problems and²⁴ needs of the Federal Probation System as well as on the Subcommittee's proposed legislation.

Among the members of the Subcommittee who questioned us closely were Representatives Abner Mikva and Thomas Railsback of Illinois. Ultimately this testimony proved to be crucial as the House Appropriations Subcommittee reviewed and severely cut the budget request for new probation officer positions. However, when that budget cut came to the floor of the House for what was expected to be routine approval, Representative Mikva moved for restoration and approval of the full budget. Although his motion was defeated, there was spirited debate on the issue and the needs of the Federal Probation System received wide attention. At the next session of Congress, the House Appropriations Subcommittee again cut in half the budget request which was for 340 new probation officer positions, but when this reduced budget item came up for action by the full House, Representative Railsback moved for restoration of the 170 officer positions. His motion was supported by other congressmen, and the final vote that day approved the full budget. Thus was the 1973 budget request for 340 positions approved and a major breakthrough made in the log-jam which had held the Federal Probation System back for so many years.²⁵

²⁴ The annual meeting of the FPOA Board was planned coincidental with this informal meeting with the Subcommittee. FPOA Board members present were: Walter Evans (vice president, Portland, Oreg.), Bertha Payak (secretary-treasurer, Toledo, Ohio), Kenneth Beighle (Tyler, Texas), Henry Long (Alexandria, Va.), Ezra Nash (Birmingham, Ala.), Roosevelt Paley (Los Angeles, Calif.), Logan Webster (Pittsburgh, Pa.), Guy Willetts (Raleigh, N.C.), Ted Wisner (Grand Rapids, Mich.), Edward Coventry (Seattle, Wash.—Newsletter editor), and myself. Later that year, in July 1972, Judge F.L. Van Dusen of the U.S. Court of Appeals for the 3rd Circuit and chairman of the Judicial Conference Committee on Probation, Merrill Smith, chief of the Division of Probation of the Administrative Office, and I were invited to testify before Senator Burdick's Subcommittee on Penitentiaries. That occasion provided another opportunity to document the problems and personnel needs of the Federal Probation System.

²⁵ In accordance with standard procedures the budget as approved by the House was then reviewed by a Senate-House Committee and the Senate approved the full budget. The testimony before the

To illustrate the importance of this action, one need but compare the number of probation officer positions and caseload averages during the fifties and sixties with the recent figures. Table 3 reflects the expansion in probation officer positions from 303 in 1950 to 1,148 in 1974, and the consequent reduction in average supervision caseloads from 99 to 52. (The number of probation officer positions in 1975 is 1,468.)

Federal Probation Officers Association

Contributing to the improvement and professionalization of the probation service during the past two decades has been the Federal Probation Officers Association (FPOA). The need for such an organization had been recognized and informally proposed in 1950. At a Great Lakes Regional meeting in Madison, Wisconsin, in 1953, an interim ad hoc prototype of the Association was formed.²⁶ Within a year widespread support had developed and a slate of officers was nominated. The Association came into being on January 1, 1955, with the service-wide election of Richard A. Doyle, chief probation officer for the Eastern District of Michigan at Detroit, as president. Mr. Doyle's leadership had been widely recognized, and, with support from an active Board of Directors representing all the regional probation areas, a new force in the history of Federal probation was created.²⁷

Burdick Subcommittee is believed to have been helpful here.

²⁶ At that meeting a tentative constitution and bylaws were adopted, and chief probation officers Marshall McKinney (East St. Louis), Richard Johnson (Kansas City, Mo.) and myself (Chicago) were elected interim officers.

²⁷ The membership rate among both rank-and-file

The basic objectives of the Association as a professional standard setting organization were set forth in a brochure distributed throughout the service. These objectives have remained as the basic guides to the purpose and role of the Association. One of the first activities in which the Association rendered a real service occurred in 1956 when the U.S. Civil Service Commission questioned the eligibility of Federal probation officers for retirement under the hazardous occupation provisions of the Civil Service Retirement Act. Although the Probation Division had submitted excellent documentation supporting the eligibility of probation officers, no action was forthcoming and it became evident that additional support was needed. The FPOA thereupon employed legal counsel to prepare and submit a strong case for continuing the previous retirement program. This action proved effective, and the Civil Service Commission reinstituted the policy of approving retirement applications of probation officers under the hazardous occupation clause.

Early in its history the Association gave strong support to the development of mandatory professional qualifications for appointment to the position of Federal probation officer. It also provided input to the Division of Probation in developing the standard salary and promotion schedule for probation officers implemented in 1964.

From the outset the Association has conscientiously strived to balance a strong supportive role to the work of the Division of Probation and the Judicial Conference

and administrative Federal probation officers has been high, averaging 85 to 90 percent of the total officer complement. Minutes of the Fall Meeting, FPOA Board of Directors, 1972 and 1973.

TABLE 3.
Size of staff and supervision caseload¹

Fiscal year ending June 30	Number of officers supervision	Number Average ending June	Probation under caseload per officer
1950	303	30,087	99
1955	316	30,074	95
1960	506	34,343	68
1965	522	39,332	75
1970	614	38,409	63
1973	808	54,346	67
1974	1,148	59,534	52

¹ These supervision caseload averages do not reflect the heavy volume of presentence and other investigations conducted by Federal probation officers. In 1974 over 77,000 investigations of all types were completed by probation officers, or an average of 67 investigations per officer. (Annual Report, Administrative Office of the U.S. Courts, 1974, P. V111-3.)

Committee on the Administration of the Probation System with an independent capacity for inquiry and constructive criticism. The work of the Association is done through its Board of Directors, its active standing committees, and a series of ad hoc committees. The Board meets twice a year, once in Washington, D.C., and once regionally moving from area to area each year.

At the annual meeting each year in Washington, D.C., the Board schedules separate meeting sessions with representatives of the Board of Parole, the Bureau of Prisons, the Division of Probation, the director, the legal counsel, and other members of the Administrative Office of the United States Courts. These sessions have proved most valuable as frank and open discussions of problems and various program plans are reviewed.

The board and committees of the Association have been concerned with professional standards; manpower needs (clerical and professional); upgrading of salaries, equipment and space; a variety of projects related to legislative proposals; coordination of goals and activities of other national associations such as the American Correctional Association, of which the FPOA is an affiliate member, and the National Council on Crime and Delinquency.

The Association also publishes a quarterly Newsletter and bestows an engraved plaque, known as the "Doyle Award" on an outstanding officer each year. The activities of the Association in meeting with members of a key congressional committee, and in urging retention of the current well-tested decentralized court administration of probation have been reported above.

Service to the Federal Parole Board

During the past 25 years the responsibility of the probation officer as official agent of the U.S. Board of Parole has been fully accepted. Preparole investigations and parole supervision services are so standard that the effective coordination of probation and parole has become one of the hallmarks of the Federal Probation System.

In recent years, release planning has been assisted by the employment placement specialists assigned to the districts by the Bureau of Prisons. To assist in the management of heavy caseloads, various systems of case classification have been attempted. In January 1971 a set of proposed parole supervision

guidelines was distributed by the Board of Parole throughout the Federal probation service, with a request for experimentation with the guidelines. District offices were also asked to estimate the staff numbers required to fully implement the guidelines. Specific criteria for classifying caseloads as to the need for maximum, medium, or minimum supervision were included. It immediately became evident that to place these standards in operation would require a major increase in the manhours devoted to parole supervision. The recent breakthroughs in probation officer manpower made it possible to implement these guidelines in 1974.

This expansion of manpower is also timely as the civil rights movement of our times has had a marked effect on parole and probation procedures. Perhaps nowhere is this more evident than in the procedure related to revocation of probation or parole. Following the widely reported *Hyser decision*²⁸ which spelled out certain minimum due process protections to which an alleged parole violator is entitled, Federal probation officers were designated preliminary interviewing agents of the Board of Parole and well defined steps in the subsequent revocation procedures were outlined.²⁹ These procedures, while legally desirable, are time-consuming. Some have suggested that U.S. magistrates be assigned these duties.

Pressured by court decisions and influenced by its own research findings the Board of Parole has initiated a series of procedural and organizational changes. Of particular interest is the Board's decentralization which provides for five regional boards in areas coterminous with the Bureau of Prisons regions and those served by the Probation Division regional staff. Regionalization along these lines places the Board in closer touch with the field probation and parole services.

The Board has also taken a bold step toward the development of principles to guide selection in the grant or denial of parole. These new rules serve to further clarify the rights of parole applicants, as do new procedures for appeal of adverse parole decisions.

²⁸ *Hyser v. Reed*, 318 F.2d (D.C. Cir. 1963).

²⁹ Under these new rules, parolees were afforded an opportunity to elect to have a full-dress parole revocation hearing at the point of the alleged violation before a parole examiner or parole board member. The new rules also afforded the parolee the right to have counsel, request witness, and respond to the allegations contained in the parole violation warrant.

Sentencing Institutes

Accompanying the discovery that prisoners, too, have civil rights has been a growing concern over disparity in sentencing. In the early 1950s, James V. Bennett, director of the Federal Bureau of Prisons, called attention to the undue disparity among sentences imposed on similar offenders for similar crimes. Concern over this issue developed in the Federal judiciary and among members of Congress, and in 1958 Congress enacted a joint resolution, "authorizing the Judicial Conference of the United States to establish institutes and joint councils on sentencing, to provide additional methods of sentencing and for other purposes."³⁰

The first Sentencing Institute was held in Boulder, Colorado, in July 1959, and it is significant to note that one of the principles agreed upon stated that, "probation should generally be utilized unless commitment appears advisable as a deterrent, or for the protection of the public, or because no hope of rehabilitation is evident."

At a Sentencing Institute held at Highland Park, Illinois, October 1961 for judges from the 6th, 7th and 8th Judicial Circuits, while consensus was not achieved, there was substantial support for the Denver proposition that probation should receive preferential consideration and efforts should be made to reduce undue disparity.³¹ Participating as consultants at this institute were probation officers, U.S. Board of Parole members, and Bureau of Prisons staff representatives. Sets of presentence reports on actual cases were distributed for sentencing discussion. Participating probation officers were observed to be far from unanimous in their opinions on these cases.³²

In the Federal Court in Detroit a study of disparity in presentence recommendations of probation officers revealed the need for more consistency. One remedy there is to provide a form on which the supervisor of the officer preparing the presentence report and the chief probation officer record their

³⁰ Public Law 85-752, August 25, 1958, amending 28 USC 334.

³¹ At that Institute note was taken that over a 5-year period—1956-1961—the use of probation varied from 15.7 percent of all convicted defendants in one district to 64.5 percent in another.

³² It is of interest to note that at this and subsequent Sentencing Institutes tabulations made of the disparities among probation officers' recommendations reflected about the same degree of difference as among judges!

recommendations so the sentencing judge has three opinions to consider.

Obviously there is continuing need for research in this area and as Federal Judge Marvin E. Frankel and others have said, a need to develop a codified jurisprudence of sentencing.³³ Such research should examine probation officer evaluations in presentence reports as disparity among probation officers' recommendations in similar cases probably contributes to disparity in sentencing.

Sentencing Councils.—Another approach to the goal of sentencing consistency is to be found in the limited but significant emergence of sentencing councils. The first such council in the Federal system was established in Detroit when Chief Probation Officer Richard A. Doyle suggested the idea to the late Chief Judge Theodore Levin of that court. Judge Levin saw merit in the suggestion and the council came into being in 1960.³⁴ In essence, the procedure provided for a team or committee of judges to serve in an informal but regularly scheduled advisory capacity to their peers on sentencing. The chief probation officer or other member of the probation staff is available for consultation.

In 1962 Chief Judge William J. Campbell sponsored the establishment of a sentencing council in Chicago patterned after the Detroit Council. I served as secretary of this council for over 10 years and observed that the council deliberation contributed to greater equality in sentencing. New judges particularly valued the counsel of experienced colleagues. The vital importance of adequate presentence reports was also dramatically evident in the deliberations of the council.³⁵

³³ Marvin E. Frankel, *Criminal Sentences—Law Without Order*. New York: Hill and Wang, 1972, p. 113. For an additional excellent reference, see Hogarth, *Sentencing as a Human Process*, University of Toronto Press, 1971.

³⁴ Subsequently, in April 1961, Mr. Doyle was invited to address the meeting of the Sixth Circuit Judicial Conference, on the pioneer work of the District Council. See Richard A. Doyle, "A Sentencing Council in Operation," *Federal Probation*, September 1961; and Talbot A. Smith, "The Sentencing Council and the Problem of Disproportionate Sentences," *Federal Probation*, June 1963. See also Charles T. Hosner, "Group Procedures in Sentencing: A Decade of Practice," *Federal Probation*, December 1970.

³⁵ In Chicago the procedure called for delivery of duplicate copies of presentence reports to each judge sitting on the council 3 days before the weekly meeting. At the council meeting each judge reported his recommendation on each case up for sentencing the following week. If there was

Trends

None of us can predict with certainty, but as we look about, it is evident that new duties will continue to challenge the Federal Probation System. The heart of the work will center on presentence investigations and field supervision services but new modes are on the horizon.

Close upon the heels of the 1965 revision of The Presentence Investigation Report came a movement to experiment with a shorter presentence report. "Selective" presentence reporting became the goal, and under auspices of the Committee on the Administration of the Probation System, a subcommittee prepared a supplemental guide containing criteria for abbreviated reports in less serious cases.³⁶ The disclosure of presentence reports is moving even closer as the latest proposed amendment to Rule 32 of the Federal Rules of Criminal Procedure provides for limited mandatory disclosure. Although in the past many of us resisted this move, no dire consequences seem to have developed where disclosure is already in effect.

In some districts plea bargaining has involved probation officers in a new short-term interviewing role. The recent emphasis on pretrial diversion by the Department of Justice may expand this area of service. Of particular interest is Title II, of the new Speedy Trial Act of 1974, which sets up a pretrial services officer to perform a host of services in connection with bond supervision and other pretrial referrals. In five pilot jurisdictions this role will be filled by a probation officer.

The decentralization of the U.S. Board of Parole and Federal Bureau of Prisons operations will ensure a greater sharing of information and skills at the community level.

wide disparity among the judges, discussion would ensue. All suggestions are just that, as the ultimate sentencing responsibility rests with the judge to whom the case has been assigned, and he remains completely free to accept or reject the suggestions of his colleagues.

Although the operation of formally constituted sentencing councils has not gained widespread use, there is currently increased interest in this procedure as a possible alternative to appellate review of sentencing.

³⁶ Selective Presentence Investigation Report, Publication No. 104, Division of Probation, Administrative Office of the U.S. Courts, February 1974.

As the Federal Judicial Center moves ahead with its systems research and greatly expanded training, new avenues of service and more efficient management techniques will evolve.

Conclusion

On a broader level perhaps a jurisprudence of sentencing will ultimately evolve and as my colleague Professor Norval Morris suggests, the criminal justice system will move toward a "principled sentencing program" in which "the least restrictive sanction necessary to achieve defined social purposes" may be imposed.³⁷

Thus, while recognizing the utility of imprisonment, Professor Morris reaffirms the general trend enunciated by the American Bar Association Committee on Standards for Criminal Justice, the American Law Institute, and the National Institute on Crime and Delinquency that a presumption in favor of probation should be the norm.

None can gainsay the social utility and economy of probation when the costs of imprisonment are over \$6,000 per prisoner per year while probation incurs but a 12th of that cost.³⁸ Nor does this measure the social and economic values of the wage earning probationer. For years the Division of Probation recorded average annual earnings of Federal probationers and during the decade of the fifties, the reported earnings varied from \$30 million in 1950 to \$50 million in 1960. Today it is estimated that the earnings of Federal probationers approach the \$80 million mark. Who can estimate the far more important social values which flow from the maintenance of intact family structures supported by the assistance and encouragement of a Federal probation officer?

³⁷ Norval Morris, *The Future of Imprisonment*. Chicago: University of Chicago Press, 1974, p. 59.

³⁸ *Annual Report*, Administrative Office of the U.S. Courts, 1974, p. VII-4 shows cost of probation \$480.57 per probationer per year.