1953

Probation and the Law

Angelo J. Gagliardo

Probation and the Law

*by Angelo J. Gagliardo**

PROBATION, THE MOST MODERN CONCEPT in the administration of criminal justice, has been characterized as the correctional procedure most worthy of a democracy because it recognizes basic human values. As such, it constitutes a democratic faith in the ability of the average offender to solve his difficulties within the framework of our democracy. While the aim of any probation system is to protect society, it has become apparent that society can best be protected by efforts which are aimed at conserving its human resources. Advances in the understanding of human behavior and motivation have provided new and challenging principles of operation. The community has come to recognize that the so-called "criminal" is a person in conflict. He may be in conflict with himself, his environment, or with both, and this conflict must be resolved if the individual is to become a full participating member of the community in which he lives. The offense must be recognized as merely a symptom of a larger and more basic problem of adjustment directly related to the personality of the offender. The causes of criminal behavior in any single individual are often diverse and complex. The criminal behavior may be symptomatic of some underlying hereditary or biological defect; of poverty and slums; of broken homes, of inadequate and improper education; of lack of recreation; of emotional conflicts; or of disturbed personal or familial relationships.

The National Conference of Law Observance and Enforcement in its 1931 report on probation and parole, defined probation as "a process of treatment prescribed by the court for persons convicted of offenses against the law during which the individual on probation lives in the community and regulates his own life under conditions imposed by the court and subject to the supervision of the probation officer." The great significance of this definition is that it recognizes probation as a treatment process undertaken cooperatively by the offender and the court, as represented by the probation officer, through the medium of supervision which is aimed at effecting a readjustment, within

* Mr. Gagliardo is Chief Probation Officer, Cleveland Municipal Court and Assistant Professor of Law, Cleveland-Marshall Law School.

the community setting, of the attitudes, habits, and behavior of the offender.

Probation is a peculiarly American institution and was first established in Boston, Massachusetts, in 1878, when an humble cobbler, John Augustus, who was in the habit of observing the proceedings in the Criminal Court, one day requested the judge, prior to sentencing of an offender, to place him in his custody. He assured the court, that if the court would do so, it would never see said offender again. John Augustus made good on his promise and out of this humanitarian impulse grew our modern probation system.

In its early day, the granting of probation was based on the supposedly common-law right of the court to suspend sentence during good behavior. It is now generally accepted that trial courts of general jurisdiction have no inherent power to suspend execution of sentence in criminal cases in the absence of statutory provision. Early Federal Probation was invalidated in 1916, when the Supreme Court of the United States in the famous *Killits* case, *Ex Parte U. S.*, 242 U. S. 27, held that the Federal Courts had no power in the absence of statutes to suspend execution of sentence indefinitely, but it was not until 1925 that the Federal Statutes on Probation were passed and a Federal Probation System established.[1] The Ohio Supreme Court in *Madjorous vs. State,* 24 Ohio App. 146 (1924) held that the trial courts of Ohio had no inherent power, in the absence of statute, to suspend execution of sentence in a criminal case. In *Toledo vs. State, ex rel. Platter,* 126 O. S. 103 (1935) the court said, "The trial courts of this state do not have the inherent power to suspend execution of sentence in a criminal case and may order such suspension only as authorized by statute."

Probation's legal development has been principally statutory and all of the probation systems in the United States are established and regulated by statutory enactment. In Ohio the power to grant probation flows from the following statutes:

> R. C. 2947.13 (G. C. 13451-8b)—*Remission of suspension of sentence.* Any court sentencing a person for misdemeanor may, at the time of sentence, remit or suspend such sentence in whole or in part, upon such terms as the court may impose.

---

[1] U. S. C. Title 18 § 3651 et seq.

R. C. 2951-02 (G. C. 13452-1)—*Defendant on probation.* Where the defendant has pleaded guilty, or has been found guilty and it appears to the satisfaction of the judge or magistrate that the character of the defendant and the circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and the public good does not demand or require that he be immediately sentenced, such judge or magistrate may suspend the imposition of the sentence and place the defendant on probation upon such terms as such judge or magistrate determines. This Section does not apply to juvenile delinquents.

While generally, the granting or denial of probation is within the sound discretion of the court pursuant to the statutes cited *supra,* Ohio Rev. C. 2951.04 (G. C. 13452-2) prohibits the granting of probation to persons convicted of murder, arson, burglary of an inhabited dwelling house, incest, sodomy, rape without consent, assault with intent to rape, or administering poison. Such limitations are arbitrary and unrealistic and inconsistent with the modern concepts of criminology. They exist only when probation is considered as a lenient form of punishment rather than a treatment process aimed at effecting the rehabilitation of the offender. It defines probation on the basis of the type of crime committed rather than the possibilities inherent for readjustments within the offender, and operates to bind the hands of the court and to make commitment to a penal institution mandatory.

Before a person convicted of a felony in Ohio may be placed on probation, the provision of Ohio Rev. C. 2951.03 (G. C. 13452-1a) must be met. This statute provides that: "No person who has pleaded guilty of or has been convicted of a felony shall be placed on probation until a *written* report of investigation by a probation officer shall have been considered by the court. The probation officer shall inquire as to the circumstances of the offense, criminal record, social history, and present condition of the defendant. Whenever the probation officer considers it advisable, such investigation may include a physical and mental examination of the defendant. If a defendant is committed to any institution, the report of such investigation shall be sent to the institution with the entry of commitment." The statute is silent as to the procedure to be followed in granting probation to a defendant guilty of a misdemeanor. It is the practice in Ohio Municipal Courts having probation departments to give the court an *oral* report except in those cases where a psychiatric examina-

tion has been made under the provisions of the statute. The primary purpose of a presentence report is to provide the court with the factual information necessary to meet the requirements of Ohio Rev. C. 2951.02 (G. C. 13452-1), and Ohio Rev. C. 2947.13 (13451-8b). If the court knows the defendant's previous conduct and present circumstances and the personality of the offender, it is in a better position to protect both the interests of society and of the offender. The presentence report also serves as a basis for probation supervision in those instances where the defendant is granted probation by the court. In Ohio, all offenses punishable by death, or by imprisonment in the penitentiary are defined as felonies and all other offenses are termed misdemeanors.[2]

The presentence report, prepared by the probation department, does not confirm to strict rules of evidence or meet the test of due process of law. In *Williams vs. the People of the State of New York,* 337 U. S. 241 (1949) the United States Supreme Court upheld a New York statute analogous to the Ohio statute which provided for a presentence report to the court, based on information given by persons who were not confronted by the defendant nor subject to cross-examination. In sentencing the defendant to death, the judge, in open court, stated that "the evidence of guilt has been considered in the light of additional information obtained through the court's probation department and other sources." The defendant claimed the statute was in violation of the due process clause of the Fourteenth Amendment of the U. S. Constitution "in that the sentence of death was based upon information supplied by witnesses with whom the accused had not been confronted and whom he had no opportunity for cross-examination or rebuttal." The court, after reviewing the historical and practical basis for different evidentiary rules governing trial and sentencing procedures, goes on to say on page 249 of the opinion, "Under the practice of individualizing punishments, investigational techniques have been given an important role. Probation workers making reports of their investigations have not been trained to prosecute but to aid offenders. To deprive sentencing judges of this kind of information would undermine modern penological procedure policies. Most of the information now relied upon by judges to guide them in the intelligent imposition of sentences would be unavailable if information were

[2] Ohio Rev. C. 1.06 (G. C. 12372).

restricted to that given in open court by witnesses subject to cross-examination. And the modern probation report draws on information concerning every aspect of a defendant's life. The type and extent of this information make totally impractical, if not impossible, open court testimony with cross-examination. Such a procedure could endlessly delay criminal administration in a retrial of collateral issues."

In 1952, the Ohio General Assembly enacted Ohio R. C. 2317.39 (G. C. 11521-1) which provides generally that reports of any investigation into any civil or criminal case pending before any court must be made available to all parties to the case and their attorneys before submission to the judge. All parties to the case and their attorneys must be notified in writing five days before such a report is to be brought to the attention of the judge that a report has been submitted and that the contents are available for examination. All reports to be submitted orally must be reduced to writing and submitted to all parties to the case in the same manner as written reports. This statute by its terms applies not only to the use of such reports as testimony, but prevents any judge from familiarizing himself with any report unless the procedure outlined in the statute has been followed. This statute if literally enforced would seriously impede the work of all the courts and in effect would reverse the progress made in probation and parole immeasurably. It must be remembered that the reports prepared by probation officers are prepared in an effort to determine the feasibility of effecting the rehabilitation of the offender and are actually prepared in the interest of the offender. They are not considered in the determination of innocence or guilt. The statute is an unwarranted legislative invasion of the judiciary and it is certainly in conflict with the statutes on probation and inconsistent with the intent of these statutes. The provisions of this statute are not being followed, at least in the Cuyahoga County Courts. No lawyer has raised any question or demanded that the court follow the procedure set down in this statute. If the statute should be tested, it would appear to this writer that in the light of the historical and the statutory development of probation, the Ohio Supreme Court would find some basis to declare the statute invalid.

The aim of the presentence interview is to develop an understanding of the offender's personality, background, and social situation. It is essential that the report be so developed that it

can be used as a yardstick in the determination of what disposition to make of the offender consistent with the protection of the community.

Offenders are a heterogeneous and varied group. Their only common denominator is the fact that they have transgressed against society in that they have violated some rule of law. The offenders appearing in any court usually can be classified within four major groups. One large segment of offenders is comprised of the mentally ill, the mentally retarded, the narcotic addict, the alcoholic, the sex offender, the immature or unstable individual who may be neurotic or suffer from sociopathic personality disturbance, and prostitutes. While prostitution is often believed to be primarily a socio-economic problem, studies have revealed that large numbers of prostitutes are mental defectives or are mentally ill. A second group consists of individuals whose past behavior has been relatively acceptable and who are considered normal people. They have become involved with the law in an accidental or careless manner through bad associations, indifference or lack of knowledge of the law. A third group is made up of the so-called professional offenders. The criminal activity of this group is organized on a business level and arrest and incarceration are deemed ordinary business risks. Most of them may be well-integrated personalities who have consciously chosen a way of life inconsistent with the community mores. They are well satisfied with their "profession" and see no need for change. The main problem is that they have almost deliberately chosen to live outside the "pale of the law." The last major group contains the white-collar or political offender whose difficulties stem from serious intellectual and emotional commitments to a way of life contrary to that of our American Society. In this group are found Communists or other subversives, businessmen who continue outlawed business practices and individuals who deliberately challenge established codes.

Experience has taught that the granting of probation to either the professional or political offender is of little avail. They have usually no desire to alter their way of life, perfunctorily meet the conditions of probation and usually continue their activity while under probation supervision. In a large urban community it is physically impossible, even if it might be socially desirable, to keep many persons under surveillance. The offender who is suffering from personality disturbances which lead to addiction to

alcoholism or drugs, who is mentally ill, or whose offense represents a response to an inner maladjustment can be helped while on probation, directly by the skillful use of social casework techniques or indirectly by referral to a psychiatric resource or special facility such as Alcoholics Anonymous for the alcoholic, or the U. S. Public Health Facility at Lexington, Kentucky, for the narcotic addict. A large percentage of this group needs specialized treatment which cannot be provided by the probation department except through a referral process. Probation can and does play a major role in the treatment of the occasional or accidental offender. Usually these offenders have been, prior to the present offense, stable, mature and fairly well-adjusted individuals. They are concerned about their behavior, are eager to avoid future conflict with the law and welcome the opportunity to increase their understanding of themselves and the community in which they live. Wise counselling and guidance by skilled probation officers enables them to accept and conform to community mores and the law.

No group of offenders has caused more concern or received greater publicity than the sex offender. The community is shocked by the occasional brutal slaying or ravishing of a young girl by a hideously warped and sadistic criminal and draw erroneous conclusions regarding the problem. They tend to consider the sex offenders as a homogeneous group who progress from minor to major sex offenses and draw no distinctions between the relatively inoffensive, mild offender who exposes himself, or steals women's clothes from a clothesline, and the rapist who forces himself upon females through use of violence. Sex offenders are believed to be recidivists while actually the 1951 Uniform Crime Report, prepared by the Federal Bureau of Investigation, placed rape twenty-fourth and other sex offenses twenty-fifth out of twenty-six offenses listed by percentage of recidivism.

In reality sex offenders comprise a small percentage of the total population of offenders (1.8% in Cleveland Municipal Court in 1952). Psychiatric studies have indicated that as a group they are not "over-sexed" but are actually underdeveloped and immature emotionally and sexually. Basically, they suffer from the same varying symptoms of underlying difficulties as other offenders. It is important to recognize that some individuals who commit sex offenses are not true sex deviates. Some have poorly organized personalities which tend to break down under pres-

sures or the influence of alcohol or the occurrence of some personal catastrophe. Others are confused adolescents who are overwhelmed by the sudden forces of sexual drives.

Since sexual misconduct is often rooted in emotionally twisted childhood and in many instances the sexual offense is merely an expression of an underlying mental illness, it is essential that a psychiatric examination and report to the court be made prior to the sentencing of these offenders.

In 1945, Ohio adopted the Ascherman Act,[3] which attempts to deal with the problem of the so-called sexual psychopath. The Act makes it mandatory that any individual who pleads or is found guilty of felonious assault, rape, incest, or sodomy be referred for psychiatric examination prior to sentencing. It also makes permissive the referral for psychiatric examination of any person convicted of a felony, except murder in the first degree where mercy has not been recommended, and of any person convicted of a misdemeanor involving a sex offense or in which abnormal sexual tendencies have been exhibited. This report must be furnished in writing to the offender or his counsel and a hearing to determine whether the offender falls within the purview of the act must be held not earlier than ten days nor later than thirty days after the rendering of said report. If upon hearing the court finds the offender is either mentally ill, mentally deficient or is a psychopathic personality, it shall impose the appropriate sentence for the offense. At the same time the court shall commit the offender for an indefinite period to the State Department of Welfare for treatment in a mental institution. The law defines a psychopath as one who evidences such traits or characteristics inconsistent with his age, as emotional immaturity and instability, impulsive, irresponsible, reckless and unruly acts, excessively self-centered attitudes, deficient powers of self-discipline, lack of normal capacity to learn from experience, marked deficiency of moral sense or control.

In the case of a person convicted of a misdemeanor and adjudged a mentally ill, mentally deficient or psychopathic offender, the court may postpone indefinitely the commitment of the person under such terms as the court deems suitable. If at any time during the period of the postponement of commitment, it appears to the court that the person is no longer likely to be a menace

---

[3] Ohio Rev. C. 2947.24 to 2947.29 (G. C. 13451-19 to G. C. 13451-22).

to the welfare and safety of the community, the judge may adjudge the person no longer a mentally ill, mentally deficient, or psychopathic offender and order his release.

Whenever a person committed, under the Ascherman Act, to the appropriate state facility has recovered or his condition appears to have improved to such an extent that he no longer needs the special custodial care or treatment of such institution, further examination of such person may be ordered, and if the person has recovered or is sufficiently improved to justify such action, and has been confined for a period less than the maximum sentence for the offense of which he was convicted, the sentence which was suspended shall go into effect and the person shall be transferred to appropriate penal or reformatory institution. The time spent under the order of indefinite commitment shall be counted as time served with good behavior under the applicable sentence. If the person has been confined for a period equalling or exceeding the maximum sentence for the offense of which he was convicted, the order shall provide that the person be placed on trial visit under supervision. If after a suitable period of supervision on trial visit the Director of Public Welfare is satisfied with the recommendation of the Commissioner of Mental Hygiene, that the person no longer requires supervision, the person shall be discharged from legal control and custody.

In 1952, the Common Pleas Court of Cuyahoga County referred approximately fifty convicted offenders for psychiatric examination pursuant to the provisions of the Ascherman Act. Examination indicated that about 20% of this group were in need of commitment for treatment. Because of the lack of facilities, it has not been possible to commit misdemeanants. Unfortunately, because of lack of adequate psychiatric staff within the mental institutions, little intensive treatment has been rendered in these cases.

The court may in its sound discretion grant probation. Under Ohio Revised Code 2301.30 (G. C. 1554-5) provision is made for the control and supervision of the probationer by the probation department which is required to furnish to each person under its supervision a written statement of the conditions of probation and instruct him regarding the same. The probation department is charged with the responsibility for keeping informed concerning the conduct and condition of each probationer by visiting, requiring probationer to report and to use all suitable methods

not inconsistent with the conditions of probation to aid and encourage such probationer and to bring about improvement in his conduct and condition. Pursuant to this legal authority, probationers are advised during the term of probation set down in the original order which may not exceed a period of five years.

Ideally, no individual should be granted probation unless (1) he can be permitted to remain at large without endangering the community; (2) the individual must be concerned about the conduct that has brought him to the attention of the court and aware that this conduct cannot be tolerated; and (3) he must have the mental and the emotional capacity to profit from his experiences and to participate and effectively utilize guidance and supervision aimed at helping him control his behavior.

The objectives of probation supervision are to enforce the conditions of probation in order that the community may be protected against further depredations or injury and to effect the rehabilitation of the probationer by assisting him to make a satisfactory adjustment to the community. Society may be protected in two ways. One involves the imposition of restrictions on the conduct and activity of the probationer, and if wisely used has real value. The second method aims at the rehabilitation of the offender through a process of re-education and redirection. The latter is more subtle and indirect but offers the best hope for effecting a permanent change in the attitudes and behavior of the probationer. During this period of supervision, the probation officer must develop a relationship which is able to direct the activities of the probationer into constructive and satisfying channels.

The probation officer must acquire certain basic skills in order to be able to successfully handle problems of the probationer and so discharge his responsibility to the community. He must develop an understanding of the physical, mental, and emotional life of the probationer and the meaning of family life to him. He must understand the basic personality of the probationer and the environmental conditions affecting him. The probation officer must be intelligent, unprejudiced and well-balanced and he must exercise good judgment and common sense. He must have a real affection for people and be able to accept differences in them. He must be "shockproof" and nonmoralistic in his approach and must realize his job is to treat and to help, not to judge. There is no magic which can be used to adjust probation-

ers. The influencing or changing of human behavior is a very difficult and delicate task and requires a broad capacity for understanding human personalities and behavior and the organizational structure of society.

In order for the probation system to achieve its goals of reformation, deterrent and restraint, it is essential that a well-qualified staff, skilled in the disciplines of the social sciences, sympathetic yet understanding, firm yet not punitive, tolerant while not condoning, free from political interference, able to control its own biases and prejudices so as not to color both their understanding and handling of the individual, be provided. In 1945, the National Probation and Parole Association adopted the following minimum requirements for staff personnel: (1) A Bachelor's Degree from a college or university of recognized standing, or its educational equivalent, with courses in the Social Sciences, and (2) one year of paid full-time experience under competent supervision in an approved social agency or related field; or one year in an accredited School of Social Work with field work practice provided. The latter requirement may be waived if the probation department provides in-service training under adequate supervision. Unfortunately, in too many courts these standards are either unknown or ignored and appointments are still dictated by political influences. Salaries paid are low and inadequate and fail to attract qualified personnel. The Cleveland Municipal Court has in substance adopted the personnel standards established by the National Probation and Parole Association and efforts to raise salaries so that they may be commensurate with the qualifications and the responsibilities of the position are being made. The county probation departments in Ohio are required to appoint personnel under Civil Service regulations[4] and generally the qualifications set up in these examinations approximate the minimum standards.

Once probation has been granted, under what conditions may it be revoked? Can it be revoked summarily or must notice and hearing be provided? Many courts, including the U. S. Supreme Court,[5] have held that the right to notice and hearing rests solely on statutory grounds and whatever the statute requires meets the test of the due process clauses of State and

[4] Ohio Rev. C. 2301.27 (G. C. 1554-1).

[5] Escoe v. Zerbst, 295 U. S. 490 (1935).

Federal Constitutions. It has been held that probation is an act of grace which confers no vested right but only a privilege which can be withdrawn at the discretion of the granting authority. Probation is in the nature of a contract between the defendant and the judge, which the defendant is free to reject or accept, the terms of which may include a provision for summary or Ex Parte revocation.

In Ohio the defendant is entitled to a "judicial hearing" on a charge that he has violated the terms of his probation.

> R. C. 2951.09 (13452-7) provides in part: "When the defendant on probation is brought before the judge or magistrate * * * such judge or magistrate shall immediately inquire into the conduct of the defendant, and may terminate the probation and impose any sentence which might have originally been imposed or continue the probation and remand the defendant to the custody of the probation authority, at any time during the probationary period. When the ends of justice will be served and the good conduct of the person so held warrants it, the judge or magistrate may terminate the period of probation."

In *State vs. Skypeck,* 77 Ohio App. 225, 65 N. E. 2d 75, decided in 1945, the Court of Appeals for Cuyahoga County held that the right of a defendant who has been convicted of, or has pleaded guilty to a criminal offense, and who has been afforded probation, to continue as a probationer is within the sound discretion of the court. Before the court may terminate an order of probation and sentence defendant, he is entitled to be heard upon "judicial inquiry" in open court on question of whether he has failed to meet the conditions of the order of probation. The defendant must be afforded a reasonable opportunity to be heard. This does not require the formality of a trial, but it does require the presentation of facts in open court so that the court, in the exercise of sound discretion, may deal justly with the defendant.

In *State vs. Nowak,* 91 Ohio App. 401, 108 N. E. 2d 377 (1949), all the court had before it was the unilateral report of the investigation made by the chief probation officer of the probation department. This report was informal and rested mainly on hearsay. Several matters brought to the court's attention tended to show that the defendant may have engaged directly or indirectly in unlawful acts of a similar character to those charged in the indictment to which he had pled guilty. The defendant

was in court and represented by counsel. The trial court refused to permit counsel for the defendant to cross-examine the probation officer. The defendant did not testify and offered no evidence to meet the somewhat incriminating statements of the probation officer. At the conclusion of the hearing, the court vacated the probation and sentenced the defendant to the Ohio Penitentiary. The defendant appealed, claiming that he had not violated the terms of his probation; that the order of probation was not vacated upon judicial inquiry in open court; and that the court had abused its discretion in revoking the order of probation and imposing sentence. In sustaining the trial court, the Court of Appeals for Lucas County held, "A trial court has broad discretion in entering an order of probation, in extending the period (not to exceed five years), and in vacating an order previously made. When the defendant in a felony case is released on probation, the procedural provisions of the statutes and the rules and regulations of the probation department, together with the conditions in the order of probation constitute the terms upon which defendant's probation rests, and when default is made by defendant, the order of probation, upon a judicial inquiry, may be vacated. The minimum requirements of a judicial inquiry include a public hearing in open court with timely notice to defendant; that defendant is entitled to be present, represented by counsel and be advised of the nature of the accusation against him; that the defendant be given an opportunity to be heard and to submit evidence in his own behalf; and, generally, that defendant be accorded reasonable opportunity to bring to the court's attention, as far as he is able, such facts and circumstances as tend to contradict or explain the alleged violation of the probation order."

On Page 406 of its opinion, the court stated, "If the record disclosed that defendant had been denied the right to testify or had been denied the right to offer competent evidence tending to meet or explain the charges made against him, the proceedings would have been lacking in an elementary ingredient of a judicial inquiry." An appeal on constitutional grounds in that the procedure violated Sections 1 and 10, Article I, of the Ohio Constitution, was dismissed without opinion in 157 O. S. 525.

The Court of Appeals for Cuyahoga County rendered an opinion on this matter of revocation on September 28, 1953, in the cases of *City of Cleveland vs. John Hutcherson,* No. 22914 and

No. 22915. In these cases the defendant, through his attorney, had requested a thirty-day continuance for the purpose of conducting an independent investigation relative to the matters presented to the court in the report of the probation department, which request was denied. In reversing the trial court, the Appellate Court, per Skeel, *J.*, after reviewing the authorities and statutes on probation, stated, "One who has been granted probation under the foregoing provisions of criminal procedure, is entitled to a 'Judicial Inquiry' as to any claim that the defendant has violated the terms of his probation. This does not mean that he is entitled to a full-scale trial of such question. Certainly the court would have a right to hear from its probation officer as to the results of his contact with the defendant and any conclusions reached by him upon proper investigation of the defendant's conduct. The judicial inquiry required by the statute must, however, be broad enough to require the court to hear the statement of witnesses offered by defendant, material in determining whether the defendant's conduct in fact was in violation of the terms of his probation. Conduct prior to the order of probation clearly within the knowledge of the court, as of the date of such order, cannot be considered. After the court exercised the power of suspending sentence at the time of its imposition, in each case now being considered, and ordering the defendant on probation, any attempt thereafter to vacate the order in each case and enforce the original sentence must be done as provided by statute, that is, after making a 'Judicial Inquiry' to determine whether or not the defendant has broken the terms of his probation and only in the event the court so finds can such order of probation be set aside."

No branch of the law presents a greater challenge than that bearing on the treatment of offenders after conviction. In this area, as in so many other areas, the lawyer, while playing a vital part, cannot stand alone nor can this problem be solved by legal wisdom alone. The wide knowledge and experience offered by many other disciplines and occupations concerned with the effort to control behavior, such as psychiatry, criminology, sociology, social work and probation must be accepted by the lawyer. While the lawyer cannot necessarily be an expert in each of these fields, he must, if he is to discharge his professional responsibility, have at least a speaking acquaintance with these disciplines. It is encouraging to note that at the present time the American Law

Institute, assisted by a grant from the Rockefeller Foundation, is engaged in a project to draft a model code of criminal law.

Another indication of the interest and concern of lawyers and judges is the formation of the National Probation and Parole Association's Advisory Council of Judges. This group, composed of thirty-five eminent jurists under the leadership of Owen J. Roberts, former Associate Justice of the Supreme Court of the United States, has adopted a program designed to foster a broad program of education and to enlist active citizen participation in support of courts dealing with offenders. It plans to work in liaison with the various bar associations in an extensive evaluation of the entire sentencing process including development of a criterion for determining whether or not probation should be granted. The law of crime calls for sustained critical examination with attention both to legal problems and to the contributions other social sciences dealing with human behavior and motivation can and are making to the problem. Our democratic strength is based on the rule of law constantly adapting itself to changing social conditions. The sound administration of criminal justice demands adherence to this basic truth.