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Questions and Answers

QUESTIONS AND ANSWERS

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Under the leadership of Dr. David Geeting Monroe, this section for Questions and Answers, in approximately two years, has become a very useful feature of the Journal. Great labor is involved in preparing the copy. It is expected that occasionally a guest Editor will take over responsibility for a single number. In this manner readers may be assured that a variety of fields of interest will be represented in the section. We hope that readers will continue to ply us liberally with questions.

Mr. Charles H. Z. Meyer, a member of our Editorial Board, and United States Probation and Parole Officer, United States District Court in Chicago, is the Guest Editor of the section in the present number. Several counties in northern Illinois comprise the district in which Mr. Meyer operates.—R. H. G.

Question 1: When was Probation first used?
Answer:

Probation as a new method of treating offenders came into usage simultaneously during 1841 in two places: Boston, Massachusetts and Birmingham, England. It was in the nature of an experiment then, and not until thirty-seven years later was it made into a law. In 1878 the word "probation" was first written into the statute by the state of Massachusetts. The following year it became a law in England, differing somewhat from the American practice, but in time the American procedure was universally adopted. The movement reached its zenith with the enactment of the Illinois Juvenile Court law of 1899.

Question 2: Where did the concept of Probation originate?
Answer:

Probation had its origin in three ancient practices. First, there was the common-law practice of the judge to "suspend sentence" to make it easier for the defendant to appeal his case to a higher court. This power of the judge has been exercised from time immemorial, but it was not probation then because there was no supervision prescribed for the person released under judgment.

The second forerunner was a sixteenth century practice of placing a person under obligation or recognizance for keeping the peace and good behavior. Justices used it to prevent violence or misbehavior, but it was not probation because there was no power of punishment for failure to perform.

The third antecedent was an early practice by benevolent persons and charitable societies to give friendly supervision and guidance to delinquents. This supervised freedom however could not be replaced by punishment. The criterion of probation is the possibility of applying punishment.

It was the combination of these three practices plus a potential penalty for non-performance that gave rise to probation. (cf. *One Hundred Years of Probation,* by N. S. Timasheff).

Question 3: What are the qualifications of a probation officer?
Answer:

The requirements for a probation officer vary with the personnel standards of the several states. Certain interested organizations like the National Probation Association, and Schools of Social Work suggest a general minimum standard of attainment for probation officers. In September 1942, the judiciary conference of the Senior United States Circuit Judges specified the following qualifications: 1. Exemplary character; 2. Good health; 3. An age at the time of appointment within the range of 24 to 45 inclusive; 4. Liberal education not less than collegiate grade evidenced by a Bachelor's degree, B.S. or B.A., from a college of recognized standing or its equivalent; 5. Experience in personal work for the welfare of others of not less than two years, or two years of specific training in welfare work in a school of social service of recognized standing, or in a professional college or university of recognized standing.

Question 4: How are probation officers appointed?
Answer:

This varies according to the practices in the different states. Sometimes the selections are made through civil service examinations, sometimes through a voluntary merit system supervised by a citizens' committee; but generally by the judges themselves. In the Federal System, the appointments are made by the United States District judges, subject to the approval of the Director of the Administrative office of the U. S. Courts, Washington, D. C.

Question 5: What are the functions of a probation officer?
Answer:

The duties of a probation officer fall into two general classifications: investigatory and supervisory. The first function consists of conducting investigation of offenders awaiting sentence, and supplying written reports to the courts which are called presentence investigation reports. These reports cover the offense, mitigating circumstances, defendant's explanation, his prior criminal record, his social and family background, his personal history, such as date and place of birth, citizenship, residence, education, religion, health, habits and interests, activities and associates, martial history, economic and employment history, results of psychological, psychiatric, vocational tests, evaluation and plan of treatment. Recommendations may or may not be made as preferred by the court. The reports must be in good form, readable and concise.

The supervisory functions consist of following through on a plan of treatment with the offender, visiting regularly his home, place of employment and collateral interests, keeping fully advised of his activities, requiring him to report at regular intervals, exercising a permissive rather than a restrictive role over him, always with the end in view of helping him to help himself and re-establish himself as a useful citizen. Depending upon the degree of his adequacy this may require routine or intensive work, such as contacting employers, employing agencies, schools, hospitals, charitable institutions or any number of social agencies, close cooperation by and with the police and enforcement agencies and civic authorities.

Question 6: When should a probation officer begin his investigation?
Answer:

Ordinarily, a presentence investigation should not be instituted until

after conviction, either by verdict or plea of guilty. However, there is no reason why, if the defendant consents, the court should not authorize the probation officer to begin his investigation earlier in the court proceedings. As a matter of administrative expediency and to avoid the opportunity for controversy or criticism, consent from the defendant should be secured in writing before commencing the preliminary interview. Some probation officers practice making investigations immediately after the defendant's arrest. This has advantages and disadvantages. One advantage is that it allows for more time to make more thorough investigations than when waiting until the court calendar is crowded with pleas. This is true especially where the court does not sit continuously in one place. Also at the time of the plea and hearing the case, a report or considerable information is immediately available for the court before disposing of the case. A disadvantage is that a lot of time and motion is frequently lost on a case that is either dismissed or found not guilty. Then, too, resistance to giving information is greater before than after a court hearing.

Question 7: When may the court receive a presentence report, before, during, or after trial?

Answer:

Until the defendant has been convicted, either by a plea of guilty, *nolo contendere,* or finding of guilty, the court should not have any facts bearing on the case, other than those brought out in evidence in open court. Therefore it is not proper for a probation officer to present a presentence report before or during a trial. A presentence report is not for the purpose of determining guilt or innocence, but for the purpose of aiding the court to decide upon the punishment or treatment after a defendant has been convicted.

Question 8: How and when did Federal Probation become a law?

Answer:

Since about 1850 it has been the practice of the U. S. District judges to suspend the execution of sentence indefinitely in some cases. This method was called "laying a case on file," or, "sentence deferred until further order of the court." In 1916 about two thousand persons were at large on such indefinitely suspended sentences. Then came the famous "Killets" case, in which the Supreme Court decided on December 4, 1916, that the practice of deferring sentence indefinitely was unconstitutional, and that the judge had no such power. It suggested that probation legislation be enacted. The President thereupon issued pardons to all individuals affected. As a result of this decision, almost ten years later, Congress finally enacted the "Probation Act" in 1925. The Act was immediately challenged but in all cases its constitutionality was upheld.

Question 9: What are some of the grounds for probation?

Answer:

There are none. Mr. Chief Justice Hughes in *Burns vs. United States, 287 U. S. 216,* stated that probation is a matter of grace and not of right. No defendant can demand the privilege. "It is a matter of favor, not contract."

Accordingly, old age, insolvency, hardship on family, ill health, the infamy of imprisonment, recommendations of leniency by the jury, are not grounds for probation.