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Reinventing Probation From The DOWRE

A Look At Leadership

By Mario A. Paporozzi

Much has been said recently in professional circles about the need to reinvent probation. The discussions, for the most part, focus on the need to change the traditional paradigm for doing business. The paradigm shift that is called for would move probation from a bureaucratic, process-oriented function to a publicly relevant and results-driven enterprise. Many, if not most, practitioners are embracing the new paradigm. Yet, one of the major concerns expressed by practitioners at the line staff level can be summed up by a frequently heard comment: "This all sounds great; now who is going to sell my judge on it?"

Judges often are the CEOs of locally administered probation departments. Even when they are not the CEOs, as is generally the case in probation departments administered by executive branches of government, they frequently establish policies that reflect their views on probation services. Because of the role judges play in setting the tone and creating policy for line staff, they serve as the fulcrum of the day-to-day practices of probation agents. Ultimately, these practices provide the basis for public assessment of the usefulness of probation as a sentencing option and correctional strategy.

It follows, then, that it is essential to take extreme care when selecting individuals to assume CEO functions in probation organizations. The importance of leadership as an antidote to irrelevant bureaucratic processes was discussed extensively in a 1998 article by the author. Leaders ultimately are responsible for the quality of service provided by probation departments. A good point of reference on this issue is J.Q. Wilson's book, *What Governments Do and Why They Do It*.

While it is relatively easy to talk about reinvention at the street level, it is difficult to talk about reinvention at the leadership level. For example, the manner in which judges who lead probation departments are selected — through popular election or gubernatorial appointment, as opposed to relevant values, skills and credentials — generally is treated as a forbidden topic of conversation. No serious reinvention effort can succeed, however, without a professional willingness to discuss all the key components that go into shaping the public relevance or irrelevance of probation services — there simply cannot be any sacred cows.

This is not to deny that there are excellent judges currently serving in leadership positions who are guiding their

probation organizations in ways that are pertinent to public desires. However, the current method for choosing leadership at the judicial level is haphazard rather than directive. The result is that, although there are judges whose main thrust is to increase the public relevance of probation, there also are judges who have little knowledge or interest in probation services.

Defining Public Relevance

Judicial and correctional systems often are administered without regard for the specific value sets or knowledge bases that are necessary at the leadership level for effective functioning. Of course, the entire matter of "effective functioning" cannot be adequately conceptualized without a definition. Once determined, however, it is clear that individuals who possess particular values and knowledge are in a better position to administer publicly relevant judicial and correctional services.

It is a hallmark of judicial and correctional history that key policy leaders — including judges, parole board members and correctional administrators — come from a variety of backgrounds. As evidenced by the many judicial leaders of innovative probation departments, in some instances, there is an appropriate match between the values and knowledge of the individuals selected and their positions. In other instances, the mismatch is apparent and often has unfortunate consequences. In the final analysis, the question that must be answered is: Can just anyone set an appropriate course for the probation profession?

Market Analysis and Application Of Business Principles

What does the public expect from the judicial processing of offenders? A brief review of public opinion research in 1991 by J. Doble et al., revealed that the public expects some punishment; short-term public safety; long-term public safety; incapacitation (in custodial and community settings); reparation or restoration; and prevention (slowing down the criminal feeder system).

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Public expectations of the criminal justice system are the equivalent to the business world's conceptualization of profit. The extent to which the profit equivalents are achieved, in the case of public sector organizations, or actual profit in the business sector, marks the success or failure of the enterprise.

With this in mind, the criminal justice system can begin producing what the public seeks. In terms of business principles, information learned from public opinion research is akin to market analysis. Before producing services, we first must determine if there is a market for them.

The lack of adherence for producing results that matter to the customer, which, in the case of the justice system is the public, permits a wide variety of irrational practices to ensue. If a corporation did not care about making a profit, it also would not pay much attention to who occupies leadership positions within the company. Obviously, for the profit-making world, this would be viewed as preposterous.

The role of appropriate leadership in both the general business and correctional settings has been well-documented. It is essential that careful attention be paid to who is selected to occupy key roles. The selection process cannot be left to chance, political elections or patronage appointments if we are serious about administering an enterprise that produces results that are important to the public. In fact, no serious business enterprise or highly regarded profession would conduct its affairs in this man-

ner. The selection of CEOs in business settings is treated as a matter of the utmost consequence.

Selection of Leaders

One does not have to be an accomplished capitalist to conclude that not just anyone can run any business. In criminal justice, however, beliefs seem to run to the contrary. In an exploratory study by the author between 1997 and 1999 of the makeup of parole board members across the United States, it was found that often the relationship between an individual's previous work experience, educational background and the position the person occupies is best characterized as a non sequitur. The work experience and educational credentials of individuals holding these key positions often are irrelevant to the tasks they are charged to perform and, ultimately, to the results expected. The varied background of judges also has been well-documented for quite some time, most notably by Martin Levin's research in the 1970s. The disconnect between desired sentencing outcomes and public expectations has perhaps been best demonstrated by concerns expressed by the victims' movement during the past 20 years.

A strong case can be made that the genesis of judicial sentencing guidelines is the result of the disparate sentencing decisions made by judges with expansive variability in their values regarding offenders and victims, differences in work experience and their educational backgrounds. Sentencing guidelines, however, are a poor substitute for

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well-used discretion, especially discretion exercised by qualified individuals. Sentencing guidelines are a Band-Aid approach that addresses the symptom of a more profound underlying problem — the need to match qualified individuals to the jobs they must perform.

Knowledge about the criminal justice system today is much more extensive than it was 30 years ago, and criminal justice is more a science today than it ever has been. While it is true that the "art" of the administration of justice still has relevance, it no longer can be assumed that anyone can do the job. The case for justice to be administered rationally by the best leaders available turns on the fact that criminal justice is an enterprise that has serious public health consequences. When the system is administered poorly, too many people are victimized in numerous ways.

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It is likely that, as we move into the next millennium, there will be increased efforts to comprehensively examine the relationships between the types of individuals who administer justice and the results achieved. Until such quantitative studies are conducted, probation professionals must rely on intuition and qualitative examples.

The analysis that follows does not necessarily require the reader to conclude that the example is always the rule — indeed, it is not. However, there are compelling reasons to think about criminal justice as a profession that requires leaders, policy-makers and practitioners to possess specific values, work experience and educational backgrounds.

Case Study

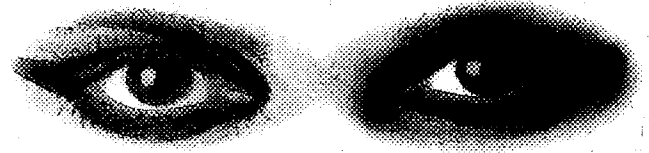
On Aug. 8, 1999, The *Denver Rocky Mountain News* reported that Charles Shane Brooks, 28, was resentenced from his initial sentence of 10 years in a Colorado state prison to 10 years probation for the forcible sexual assault of a 12-year-old girl.

When Brooks was initially sentenced to state prison, Judge R. Brooke Jackson noted that the harm caused to the victim justified the sentence he handed down. Some seven months later, however, Jackson revisited his initial sentence at the request of Brooks' defense counsel. The request for reconsideration of sentence was based on the argument that Brooks, who is partially deaf, needed specialized sex offender therapy with a qualified interpreter for the hearing impaired.

Defense counsel argued that the state prison system does not offer an appropriate program of treatment for Brooks. The prosecuting attorney disagreed, stating that such programs are available. Defense counsel prevailed, and Jackson changed the initial sentence from 10 years in prison to 10 years probation, with two years to be served

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in the county jail while Brooks was visited by an appropriate therapist.

The prosecuting attorney, the sheriff's department and the victim's father pleaded with Jackson to adhere to the original sentence. Stating that he wanted to do what was right for the offense and the offender, Jackson would not go into detail about his deliberations prior to imposing sentence. He stated that he is called upon, by virtue of his judgeship, to do what is right, even if unpopular.

Jackson, newly appointed after spending 25 years with a prominent law firm — mostly handling corporate matters — stated that he struggled to craft a sentence that was "right" in both the initial sentence and subsequent resentencing.

At the time of the initial state prison sentence, Jackson stated that the crime was particularly brutal in terms of the emotional harm to the victim. He said to Brooks, "Fortunately, you did not injure this young woman physically." It is an oxymoron, at the very least, to say there is no physical harm in a forcible sexual assault — especially from the victim's perspective. A modicum of professional and/or practical experience with rape victims tells us so. The judge expressed concern, if not disgust, that the perpetrator expressed no verbal or other signs of remorse for his crime.

Decisions such as Jackson's, both at the initial and subsequent sentencing proceedings, miss the entire point of the U.S. justice system — justice, safety, compassion for victims and, ultimately, for the offenders, as well. The crucial points are as follows: First, Brooks is a child rapist and needs to be punished in order to satisfy the emotional rage of the individual victim, her family and the community. Second, once the legitimate thirst for punishment has been quenched, the rapist needs to be safely incapacitated in a correctional program while treatment occurs. The forms of safe incapacitation range from custodial to credible community-based correctional options, such as strict and accountable probation. Third, Brooks needs to be subjected to the best treatment available so that upon his return to the community, the likelihood of future victims will be lessened. These three points provide the basis for correctional applications, including probation, that the American public seeks.

Experienced criminal justice professionals know that a term of imprisonment alone would not, in and of itself, change Brooks from a rapist to a law-abiding citizen — that is why treatment is essential. Moreover, it would be wasteful to apply treatment in the first few years of a 10-year prison term only to have the potential benefit washed away by the passage of time.

The timing of the treatment, however, should not compel a judge to wipe out a legitimate punitive term of incarceration. It would have been appropriate for Brooks to serve his state prison term and to receive treatment toward the end of the term, as he prepares to re-enter society. Jackson should not have rushed the return of a rapist to the community, if for no other reason than that his community — the customer — wanted something else.

Judges like Jackson act as if punishment and public safety through offender rehabilitation are mutually exclusive. In fact, offender sentences do not have to be, nor should they be, such "either-or" propositions. The needs of the

victim, the community and the offender must be taken into account simultaneously for true community justice and public safety to occur.

In short, we should think sequentially: We can administer punishment and when the punishment is complete, the offender rehabilitation process can begin. An appropriate punishment for Brooks, based upon the sentencing practices of Jackson's judicial colleagues in Jefferson County, Colo., would have been about 10 years in prison. There is no experiential basis for Jackson to have reasoned that his community — the ultimate owners of American justice — would be satisfied with virtually no hard time in a state prison for Brooks. The judge's final sentence disrespects the victim, her family and the community at large.

Conclusion

Perhaps more attention should be paid to the judicial selection process. It should not be presumed that the possession of a law degree qualifies one to administer criminal justice in America. It is not enough to be a well-intentioned lawyer trying to do "what is right" when it comes to understanding the nuances of criminal behavior, the administration of justice and the restorative needs of individuals and communities.

Treating any lawyer as if he or she is qualified to serve as a criminal court judge is analogous to the notion that a general medical practitioner could easily perform the specialized functions of a heart surgeon or psychiatrist. No one would want the general practitioner to learn by doing without first having garnered a sufficient educational and experiential background to perform in specialized areas.

It is time to stop acting as if anyone can do the work required of probation — not to mention other important criminal justice functions. Given the abundance of people with specialized education and training, there is no reason to do so. It is ludicrous to think, for example, that yesterday's real estate attorney can suddenly emerge as a criminal justice guru by virtue of his or her donning a black robe as the result of a gubernatorial appointment or political election. The unfortunate meeting between Jackson and Brooks is yet one more testament to this alarming state of affairs.

The ultimate question for probation is: Are we willing to reinvent ourselves? The answer will determine the viability of probation in the eyes of the public.

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