THE PROBATION LAW

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I. ORIGIN OF PROBATION

The history of probation started at Boston in 1841 when John Augustus, a cobbler stood bail for a drunkard. The drunkard, while under Augustus' supervision was taught the art of shoe making and started to show signs of reform. This prompted Augustus to extend the project. In fact he supervised close to 2,000 persons during the following years of his life. In the course of his dealings with the offenders, he developed several features some of which, as will be seen later, became standard practices of probation. These features included selectivity of screening, supervision of the activities of the offenders, use of community resources, the provision of a place for the offenders' dependents, submission of progress reports to the court, and the maintenance of the record filing system.[1]

Augustus' work was carried on by Rufus R. Cook, Chaplain of the County Jail and Representative of the Boston Children's Aid Society and Matthew David XIV of Birmingham, England. The same procedure as developed by Augustus was used. However, investigations were scanty, probation periods short, and plans of treatment and supervision were not much in evidence.[2]

Probation became firmly established during the second half of the 19th century when in 1878, the State of Massachusetts started the first paid probation officer for the courts of Criminal Jurisdiction in the City of Boston.[3]

On March 4, 1925, through the efforts of Charles Lionel Chute, the First Federal Probation Act of the United States was approved.[4]

II. HISTORY OF ADULT PROBATION IN THE PHILIPPINES

A. *The Philippine Probation Act of 1935*

[1] MEETING THE CHALLENGE OF CRIMES REPORT OF THE PHILIPPINE DELEGATION TO THE 5th UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND TREATMENT OF OFFENDERS 109 (1975).
[2] *Ibid.*, p. 110.
[3] *Ibid.*, p. 111.
[4] *Ibid.*

Act No. 4221, otherwise known as the Philippine Probation Act of 1935 was enacted to permit the "individualization of punishment," the adjustment of the penalty to the character of the criminal and the circumstances of his particular case. It provided a period of grace in order to aid in the rehabilitation of a penitent offender. It was believed that in many cases, convicts may be reformed and their development into hardened criminals aborted. It therefore took advantage of an opportunity for the reformation and avoidance of imprisonment so long as the convict gave promise of reform. The welfare of society was its chief end and aim. The benefit to the individual convict was merely incidental.[5]

But while the Philippine Probation Act of 1935 was commendable as a system, the law was set aside because of repugnancy to the fundamental law.

In the case of *People v. Vera*,[6] the said Probation Law was declared unconstitutional because it made an undue delegation of legislative power to the provincial boards and it contravened the equal protection of the laws clause.

Section 11, the fatal provision of the Act, provided that "This Act shall apply only in those provinces in which the respective provincial boards have provided for the salary of a probation officer...."

The Court held that the Probation Act did not, by the force of any of its provinces, fix and impose upon the provincial boards any *standard* or guide in the exercise of their discretionary power. What was granted was a "roving commission" which enabled the provincial boards to exercise arbitrary discretion. By Section 11 of the Act, the legislature did seemingly on its own authority extend the benefits of the Act to the provinces but in reality left the entire matter for the various provincial boards to determine for themselves whether the Probation Law should apply to their provinces or not at all. The applicability and application of the Act was entirely placed in the hands of the provincial boards. If a provincial board did not wish to have the Act applied in its province, all it had to do was to decline to appropriate the needed amount for the salary of a probation officer without even stating the reason therefore. The plain language of Section 11 was not susceptible of any other interpretation. This was a virtual surrender of legislative power to the provincial boards.[7]

B. *The National Strategy to Reduce Crimes*

The declaration of unconstitutionality of the Probation Act of 1935 created a gap in the criminal justice system in the Philippines. The criminal

[5] People v. Vera, 65 Phil. 56 (1937).
[6] *Ibid.*
[7] *Ibid.*, p. 70.

justice system is the machinery which society uses in the prevention and control of crimes. Its components are the police, the courts, the penal institutions, the *probation* and the parole systems The components are *highly dependent* upon one another. The *failure* of one can *destroy* the effectiveness of all the others within the system.[8]

In order to heighten the awareness of interdependency and cooperation among the components of the criminal justice system, as well as to improve judicial process and to reduce the level of criminality, the National Police Commission created an Inter-Disciplinary Committee in 1974 to prepare a National Crime Prevention Program. On July 24, 1976, a "National Strategy to Reduce Crimes" was finalized and presented to the President of the Philippines. The Strategy proposed a two-pronged attack to reduce crime in the country, namely: (1) to give emphasis on the prevention and control of high-fear and economic crimes by implementing a number of *priorities of actions*; and (2) to improve the quality of the criminal justice system by facilitating teamwork among its interdependent components.[9]

The following priorities of action were recommended:

(1) Improvement of the quality of the criminal justice system among its interdependent components;

(2) Improvement of the management skills of law enforcement;

(3) Reducing the delays in the criminal justice processes;

(4) Making *corrections* more attuned to its role of *rehabilitating* law offenders; and

(5) Increasing the community participation in crime prevention.[10]

There were a number of projects recommended under each of these priorities of action, among which was the establishment of an adult PROBATION SYSTEM. It was a priority action under (4).[11]

The rationale for recommending priority consideration to the establishment of a probation system is clearly apparent. First, the penal system in the country is characterized by substandard treatment of prisoners. To try to train lawbreakers to obey the law in a substandard system is self-defeating.

Secondly, the deterrent potentiality of the prisons is grossly exaggerated. No one has ever proved that the threat of severe punishment actually deters crime.

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[8] Pacencio S. Magtibay, "The Probation Administration and Its Linkages with the Pillars of the Criminal Justice System", 3 (1977). Mimeographed.
[9] *Ibid.*, p. 4.
[10] *Ibid.*, pp. 4-5.
[11] *Ibid.*

Third, prisons heighten the offenders' weaknesses and erode their capacity for responsibility and sociability.

Lastly, the maintenance of penal institutions is costly on the part of the government.[12]

In view of these considerations, an alternative to institutionalization for certain types of offenders was proposed. Such proposal was subsequently translated into a law on July 24, 1976, which is now known as the "PROBATION LAW OF 1976" or Presidential Decree No. 968.

C. *Basic Differences Between P.D. 968 and the Probation Act of 1935*

With the promulgation of Presidential Decree No. 968, the discriminatory effect of Section 11 of the old Probation Law was totally removed.

Section 23 of the new Probation Law expressly and explicitly provides that "There shall be at least one probation officer in each province and city who shall be appointed by the Secretary of Justice upon recommendation of the Administrator and in accordance with civil service law and rules."

"The Provincial or City Probation Officer shall receive an annual salary of at least eighteen thousand four hundred pesos.

The salary of the probation officer in each province or city is thus now provided for by law, no longer subject to the discretion of the respective provincial boards. The Probation Law divests the provincial boards of the power to determine whether or not salary of a probation officer in their respective provinces would be appropriated. The Probation Law now applies to *all* provinces and cities, uniformly and without discrimination.

The new Probation Law not only did away with Section 11 of the old Law.

Section 10 of the new Law providing for the conditions of Probation makes it mandatory for the Court to issue a probation order containing specific conditions for the probationer to fulfill, unlike in Section 3 of the old Probation Act wherein the imposition of the said conditions on the probationer was merely discretionary on the part of the Court issuing the probation order.

Furthermore, under the same Section 3 of the old Probation Act, "reparation or restitution by the probationer to the aggrieved parties for actual damages or losses caused by his offense", was deleted in Section 10 of the new Law.

As to the period of probation, Section 7 of the old Probation Act provided that the period of probation of a probationer found guilty of

[12] *Ibid.*

"any other offense" did not exceed twice the maximum time of imprisonment to which he might be sentenced unlike in the new Probation Law which provides in Section 14 that "in all other cases, the probation period shall not exceed 6 years." The new law, therefore, provides for a definite and shorter probation period.

Another major change introduced by the new Law is found in Section 4 thereof which provides: "An order granting or denying probation shall not be appealable." Nowhere in the old Probation Law can there be found a provision to this effect. Whether this substantial change would have a great bearing on the implementation of the new Probation Law still remains to be seen.

Furthermore, Section 8 of the old Probation Act gave an enumeration of the offenses not covered by the Act. This enumeration *specified* the crimes not covered. These were "homicide, treason, misprison of treason, sedition or espionage, conspiracy or proposal to commit treason, piracy, brigandage, arson, robbery in band, robbery with violence on persons when it was found that they displayed a deadly weapon and corruption of minors."

However, Section 9 of the new Probation Law contains a *general* enumeration, as contrasted to the specified crimes provided by the old law.

Section 9 provides that "The benefits of this Decree shall not be extended to those:

(a) sentenced to serve a maximum term of imprisonment of more than 6 years;

(b) convicted of any offense against the security of the State;

(c) who have *previously* been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or fine of not less than two hundred pesos;

(d) who have been once on probation under the provisions of this Decree;

(e) who are *already serving sentence* at the time the substantive provisions of this Decree became applicable. . . ."

Thus, besides a general enumeration of the offense not covered, the said Section further *broadened* the scope of the inapplicability of the Law. Additional exemption from coverage can be found in the offenses enumerated under Section 9 (a, c, d and e) abovementioned.

As regards the modification or revision of the conditions of probation, Presidential Decree No. 968, Section 12 provides in part, that "During the period of probation, the court *may, upon application* of either the probationer or the probation officer, revise or modify the conditions or period of probation. . . ."

Section 3 of the repealed Probation Act provided that "The Court *may*, at any time, revise, modify or enlarge the conditions or period of probation."

Contrasting the two Sections, it is evident that under the new law, application of either the probationer or the probation officer is needed in order that the Court may exercise its discretion to revise or modify the conditions or period of probation whereas the old law granted to the Court the exclusive discretionary power of revision and modification without need of prior application by the probationer or the probation officer concerned.

It is clear therefore, that under the new law, the Court relies heavily upon the probation officer and places great faith in him.

Lastly, the new Law did away with the Probation Office and substituted in its place the Probation Administration which shall have "the general supervision over all probationers" as per Section 18 thereof. The Chief Probation Officer who was the Head of the Probation Office under the old Law in its Section 10 was replaced instead by the Probation Administrator as "the Executive Officer of the Probation Administration" by virtue of Section 19 of Presidential Decree No. 968.

III. PHILOSOPHY AND CONCEPT OF PROBATION

A. *Probation Defined*

In the case of *Frad v. Kelly*,[13] "Probation is a system of tutelage under the supervision and control of the court which has jurisdiction over the convicted defendant, has the record of his conviction and sentence, the records and reports as to his compliance with the conditions of his probation, and the aid of the local probation officer, under whose supervision the defendant is placed." It consists of the conditional suspension of punishment while the offender is placed under personal supervision and is given individual guidance or treatment.

The basic purpose of probation is to provide an individualized program offering a young or unhardened offender an opportunity to rehabilitate himself without institutional confinement, under the tutelage of a probation official and under the continuing power of the court to impose institutional punishment for his original offense in the event that he abuse such opportunity, and courts have a wide discretion to accomplish such purpose.[14]

The Philippine Probation Law of 1976, as enacted by Presidential Decree No. 968, defines probation as, "a disposition under which a defendant, after conviction and sentence, is released subject to conditions

[13] 302 U.S. 312, 58 S.Ct. 188, 82 L.Ed. 282 (1937).
[14] Roberts v. U.S., 320 U.S. 264, 64 S.Ct. 113, 88 L.Ed. 41 (1942).

imposed by the court and to the supervision of a probation officer."[15] This decree will take effect on January 2, 1978.

B. *Essential Elements of the Probation System under Presidential Decree No. 968*

The probation system established in the Philippines has at least three important features that make it different from the systems in other parts of the world.[16]

First, it is a "single or one-time" affair, meaning that a convicted person can only take advantage of a probation once in his lifetime. If he is convicted again, such person can no longer avail himself of another probation. In Western countries, a person can avail of probation as many times as he is convicted.

Secondly, our probation system is highly selective. Probation is made available only to those convicted of certain crimes. Crimes against national security, like rebellion and insurrection, are excluded. Those who are sentenced to prison terms of more than six years are also excluded from the probation privilege.

Lastly, persons under probation retain their civil rights, like the right to vote, or practice one's profession, or exercise parental or marital authority. In most Western countries, in order that a person who had undergone probation may be restored his civil rights, he must initiate separate court proceedings.

It is relevant to note that Presidential Decree No. 968 is a legal framework which will serve as basis for the implementation of the probation system in the country. With regard to the experience factor, we have had very little, if at all, since the abrogation of the first probation law in the Philippines, in 1937.[17] There is no substantive and procedural jurisprudence, and therefore we would have to be guided by pertinent U.S. law and decisions, and apply them according to our need and goals. Largely, therefore our Probation Law will be what we want it to be in its early years.

C. *Distinctions*

1. Probation and Parole —

These two concepts are sometimes used interchangeably, but there are substantial differences between the two. Parole is a conditional release from actual confinement under sentence of imprisonment, contingent upon future conduct with respect to terms of parole, and the parolee is subject to future confinement for the unserved portion of sentence in the event he violates

[15] Sec. 3(a).
[16] Teodulo Natividad, "Probation System: History, Philosophy and Development" (1977). Mimeographed.
[17] People v. Vera, *supra*, note 5.

provisions of parole.[18] While probation relates to action taken before prison door is closed, and before final conviction, parole relates to action taken after the prison door has been closed, and partakes of the nature of pardon, for it suspends execution of penalty already imposed.[19]

An order placing a defendant on probation is not a final judgment, but is rather an "interlocutory judgment" in the nature of a conditional order placing the defendant under the supervision of the court for his reformation, to be followed by a final judgment of discharge, if the conditions of probation are complied with, or by a final judgment of sentence if the conditions are violated.[20]

2. Probation and Suspension of Sentence —

A suspension of sentence postpones execution of sentence for a definite time, while probation suspends sentence during good behavior.

D. *Principles, Goals and Objectives of Probation*

It is the considered opinion of most correctional authorities that probation is one of the most effective and economical tools which society now has available for the care, treatment and rehabilitation of certain adult and juvenile offenders against the law.[21] Presidential Decree No. 968 otherwise known as the Probation Law of 1976 recognizes such trend. However, the Decree *separates* adult probation from juvenile probation for it expressly excludes those entitled to the benefits under the provisions of Presidential Decree No. 603, known as the Child and Youth Welfare Code, and similar laws.[22]

Statements of the principles, goals and objectives of the Probation Law are found in its Preamble. The Preamble indicates six essential goals, to wit:

1. An enlightened and humane correctional system;
2. The reformation of offenders;
3. The reduction of the incidence of recidivism;
4. To extend to offenders individualized and community-based treatment programs instead of imprisonment;
5. It is limited only to offenders who are likely to respond to probation favorably; and
6. It is economical or less costly than confinement to prisons and other institutions with rehabilitation programs.

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[18] Nibert v. Carroll Trucking Company, 82 S.E. 2d 455, 448 (1954).
[19] *Ex parte* Anderson, 229 P. 2d 633. 639 (1951).
[20] Commonwealth v. Smith, 198 A. 812 (1938).
[21] LAUREL, LAUREL REPORT ON PENAL REFORMS (THE STATE OF PHILIPPINE PENAL INSTITUTIONS AND PENOLOGY 164 (1969), citing *Probation in Germany*, 8 HOW. J. 62 (1952).
[22] Sec. 1.

The purpose of the Probation Law as stated in Section 2 thereof, reiterates the above-mentioned characteristics and vests in them the mandate of law. It provides that the purpose of the Decree is to: (a) promote the correction and rehabilitation of an offender by providing him with individualized treatment; (b) provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and, (c) prevent the commission of offenses.

1. As an individual and community-based treatment —

Section 2(a) connotes a *personal relationship* between the offender and a probation officer, the latter exercising supervision over the former. This relationship assumes the willingness of the offender to be on probation. On the other hand, supervision implies a systematic guidance and assistance of the probation officer for personalized treatment which may be educational, rehabilitative or therapeutic. This constitutes the probationary treatment. A community-based treatment underlines the goal of re-integrating the probationer into the mainstream of society. Such community support partakes of the nature of manpower development, recreation, education and other treatment and prevention programs aimed at reducing the alienation of the probationer from the community.

2. As an opportunity for reformation —

Section 2(b) expresses the concept of probation as an opportunity for reformation. The basis for such assertion is the idea that probation is a humane correctional treatment of offenders. Inherently, the concept recognizes the lesser probability of reformation if a duly convicted and sentenced offender is incarcerated thereby directly causing disruption of his normal family and social relationships. The opportunity to reform and assume a normal life is greatly enhanced when the offender is released, after conviction and sentence, to the custodial supervision of a probation officer. At this juncture, it must be noted that only offenders who are likely to respond to individualized and community-based treatment programs can avail of probation. It is the ultimate goal of probation that probationers be productive members of the society thereby assuming family as well as community responsibilities.

3. To prevent the commission of offense —

Probation is an alternative to incarceration. It represents an enlightened and humane correction system. Recognizing the likelihood that crime is an outgrowth of a situation such as family problem or unemployment [23] or the likelihood that the crime is significantly related to other condition such as when the offender is suffering from a mental illness or psychological abnormality which is related to the crime and for which treatment is

[23] SMITH, IMPACT OF PROBATION ON THE SOCIAL STRUCTURE OF THE SOCIETY 7 (1976).

available,[24] probation seeks to correct archaic belief that incarceration deters commission of crimes. The means to achieve such is through individualized and community-based treatment. Moreover, long term imprisonment tends to erode the offender's capacity for responsibility and capability to assume a respectable social life. The objective of probation therefore, is for the protection and welfare of the society through prevention of the commission of crime.

E. *The Concept of Probation*

The basic legal conception of probation in the Decree are twofold: First, as a conditional suspension of the execution of sentence; and, second, as a personal care or treatment and supervision over the probationer. The former denotes that the *court* assumes a primary role because a grant of probation is judicially dispensed and controlled. The latter indicates the *administrative* aspect of probation through the supervision of a probation officer and from the point of view of social workers, a social casework treatment.

As a court function

In the Probation Law, the court assumes a dual role. First, when it acts in accordance with the jurisdiction it acquires over the accused and proceeds to determine his guilt. Assuming an affirmative finding of the offender's guilt beyond reasonable doubt, the court would convict and sentence said offender. Second, when the court determines whether or not to grant probation upon application of the offender. Sections 3(a) and 4 of the Decree clearly shows this dichotomy.

The Decree defines probation in Section 3 as "a disposition under which the defendant, *after conviction and sentence*, is released subject to the conditions imposed by the court and to the supervision of a probation officer.[25] It is evident from this provision that an offender will be released on probation only after conviction and sentence. Furthermore, Section 4 underlines the necessity of filing an application with the trial court before the suspension of the execution of the court's judgment. The petition for probation may be filed by a petitioner directly with the trial court which exercises jurisdiction over his case.[26] If the court finds that the petition is in due form and that the petitioner is not disqualified from the grant of probation it shall refer the same to the Provincial or City Probation Officer within its jurisdiction as the case may be. The court shall order the Provincial or City Probation Office to conduct a post-sentence investigation of the petitioner.[27] Only upon the filing of an application for probation after conviction and sentence and a determination that the offender does

[24] *Ibid.*, p. 8.
[25] Sec. 3(a).
[26] Rules on Probation Methods and Procedure, sec. 4.
[27] Pres. Decree No. 968 (1976), sec. 6.

not fall under any of the disqualifications set forth in the Decree may the court suspend the execution of sentence.

The Post-Sentence Investigation is an indispensable requisite to a grant of probation. The Probation Law provides: "No person shall be placed on probation except upon prior investigation by the probation officer and a determination by the court that the ends of justice and the best interest of the public as well as that of the defendant will be served thereby."[28]

The scope of the investigation must be consistent with the purposes of probation. In general, it is a fact finding inquiry into all information relative to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources.[29] Upon the termination of the Post-Sentence Investigation, the probation officer shall submit to the court the investigation report on a defendant not later than sixty days from receipt of the order of said court to conduct the investigation.[30] The purpose of the report is to assist the court in determining whether or not the ends of justice and the best interest of the public as well as that of the defendant will be served thereby.[31] The recommendation contained in the report is merely *persuasive* and is in no way binding upon the court.[32] Considering the foregoing, and compliance therewith, the court will promulgate a probation order.

Probation is a privilege and, as such, its grant rests solely upon the discretion of the court. The grant of probation results in the release of the petitioner subject to the terms and conditions imposed by the court, and to the supervision of the Probation Office.[33] As to the conditions to be imposed by the court, they are enumerated in Section 10 of the Presidential Decree No. 968.

The jurisdiction and control of the court which arises from an imposed sentence, remains with the court even after a grant of probation. This is evident in Sections 32 and 40 of the Rules On Probation Methods and Procedures. Section 32 provides: "During the period of probation the court, *motu proprio,* or on motion of the probation officer or of the probationer, may revise or modify the conditions or terms of the probation order." In case of violation of the terms and conditions imposed by the court, Section 40 provides "if the violation is established, the court may revoke or continue his probation and modify the conditions thereof. If revoked, the court shall order the probationer to serve the sentence originally imposed and shall commit the probationer." This power of the court underlines the non-punitive and non-repressive aspect of probation. Such

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[28] Pres. Decree No. 968 (1976), sec. 5.
[29] Pres. Decree No. 968 (1976), sec. 8.
[30] Pres. Decree No. 968 (1976), sec. 7.
[31] Rules on Probation Methods and Procedures, sec. 16.
[32] *Ibid.*, sec. 18.
[33] *Ibid.*, sec. 20.

constitutes a sufficient threat to the probationer to fulfill all terms and conditions imposed by the court.

As an Administrative Process

Once the court has granted probation to an offender and has duly imposed the terms and conditions of the probation, the probation officer has the bounden duty to see to it that the probationer observes all terms and conditions imposed by the court. Probation supervision is then a primarily an administrative process.

The primary purposes of probation supervision are:

(a) to carry out the conditions set forth in the probation order;
(b) to ascertain whether the probationer is following said conditions; and
(c) to bring about the rehabilitation of the probationer and his reintegration into the community.[34]

To carry out these purposes the Probation Law upon its approval carried with it the establishment of a Probation Administration an agency under the Department of Justice, which shall exercise general supervision over all probationers.[35] The Administration shall have regional offices organized in accordance with the field service area pattern established under the Integrated Reorganization Plan.[36] There shall be at least one probation officer in each province and city who shall be appointed by the Secretary of Justice upon recommendation of the Administrator and in accordance with civil service law and rules.[37]

At this juncture, it is to be emphasized that in spite of the fact that the Probation Administration is an executive agency, control of the courts over the probationer is not lost. The basis for such is the first paragraph of Section 13 of the Decree which provides that "the probationer and his probation program shall be under the control of the court who placed him on probation subject to actual supervision and visitation by a probation officer."

G. *The Benefits and Advantages of Probation*

The implementation of the Probation Law will confer benefits and advantages not only to society in general but more so on the part of the offender and the government.

1. To society — A crime, though we may call it an anti-social act, is still an act within society, an act that calls for a social re-action, punitive and remedial and this is where there emerges the positive factor in the

[34] *Ibid.*, sec. 27.
[35] Pres. Decree No. 968 (1976), sec. 18.
[36] Pres. Decree No. 968 (1976), sec. 22.
[37] Pres. Decree No. 968 (1976), sec. 23.

challenge that is crime. This is where the quality, humaneness and resourcefulness of a civilization are made manifest. For if a society's reaction to a crime is over-punitive and under-remedial, then the society not only suffers the primary hurt of the crime itself, but suffers also an attrition of its powers of compassion and self-scrutiny. There can be no greater task in today's society, no keener prober of the nature and quality of a civilization, than determining the cause and cure, the proper punishment and/or appropriate remedy for crime. Because crime is a two-way business. It is a maiming of society by the criminal, but it may also be a maiming of an essentially innocent human being by society.[38]

The philosophy of probation is that the community is responsible for crime and its causation, that individuals can change and deserve a second chance, and that it is for the greater good of society that offenders not be summarily eliminated from productive life but brought back to its fold in the quickest and least traumatic way possible.[39]

Concretely, society is benefited by the probation system owing to the continued presence therein of erring individuals who, notwithstanding a previous error, are expected to have turned from their errors and to continue serving the society. A different situation would result in the incarceration of valuable human resources.

2. To the offender — In the absence of any provision for the use of probation as an alternative to incarceration, a convicted offender would accumulative suffer the loss not only of family contacts and job, but also, with the mass treatment in prison, loss of privacy or any privileges requiring exercise of personal freedom of choice. In addition to stigmatization, disruption of normal familial and other meaningful relationship, such removal from productive participation in the labor force results in deprivations for the loved ones and innocent associates of the convict.[40]

Since the victim is not incarcerated, he can continue in his employment—granting that his employer has not lost trust and confidence on him—and thus his family does not have to look for an alternative breadwinner, if such be the case. Essentially, therefore, the probationer's life goes on as usual.

The probationer is freed of concrete physical constraints. He is returned to society and given his civil rights. He is officially supervised occasionally.

3. To the government — The whereases of Presidential Decree No. 968 state, *inter alia,* that the confinement of all offenders in prisons and other

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[38] Faulkner, "A Layman's View of Probation for the Seminar on Probation", (1977) p. 6 Mimeographed.

[39] Pres. Ferdinand E. Marcos' speech on the opening of the Regional Seminar on Probation, BULLETIN TODAY, August 2, 1977.

[40] Faulkner, *op. cit., supra,* note 38.

institutions with rehabilitation programs constitutes an onerous drain on the financial resources of the country. Probation is thus a less costly alternative to the imprisonment of offenders.

Adoption of the system which humanizes criminal law and penology also demonstrates the government's adherence to the principle of human rights.

One other tangible benefit of probation is that it would help relieve congestion in our jails which, specially at the Muntinlupa penitentiary, has often resulted in bloody riots among the inmates. Not only will the system ease overcrowding but it would also reduce government expenses in prison maintenance.

Justice Abad Santos has said that if 10,000 offenders are placed every year on probation, the government would save ₱46,760. Thus, it renders the offender productive by maintaining his status as a taxpayer instead of reducing him into a tax eater.

V. PROBLEM AREAS OF THE PROBATION LAW

A. *On the coverage and scope of the law*

1. Presidential Decree No. 968 will cover civilians tried and convicted by military tribunals. Section 1 provides: "it shall apply to all offenders except those entitled to the benefits under the provisions of Presidential Decree No. 603 and similar laws." Section 9 on disqualified offenders does not include those convicted by military tribunals.

What are the "similar laws" referred to in Section 1? Two can readily be mentioned—The Dangerous Drugs Act of 1972 [41] and the Articles of War.[42]

1. The cut-off point at six years imprisonment for extending the benefits of probation refers to the sentence actually imposed, not that prescribed by law for the offense committed.

The probation law does not disqualify one who has been convicted of an offense penalized by *destierro,* such as that of killing or inflicting serious physical injuries under the exceptional circumstances in Article 247 of the Revised Penal Code or concubinage insofar as the concubine is concerned in Article 334, of the same.

Unlike Section 9(a), Section 9(c) has reference to the penalty imposed by law.

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[41] Rep. Act No. 6425 (1972), as amended.
[42] Com. Act No. 408 (1938), as amended.
[43] Act No. 3203 (1924).

Under Section 9(d), one who has been on probation only under the Juvenile Delinquency Act of 1924,[43] Article 80 of the Revised Penal Code, or the Child and Youth Welfare Code[44] will not be disqualified.

3. Under disqualification (e), those who will serve sentence after the substantive provisions of the Decree shall become operative will be permitted to do so, according to one view. The reason given is that otherwise it would have been unnecessary for the law to specify the time at which the offender concerned should be serving his sentence.

Another view, however, points to the principle of separation of powers. Probation, it is argued, as laid out by the Decree is primarily a judicial function, while the service or execution of sentence is an executive one. When the convict is delivered to the hands of the prison authorities, to subsequently allow the judiciary to reach him by suspending the further service of his sentence and placing him on probation would constitute an intrusion into the prerogatives of the executive to whom belongs the exclusive power to grant reprieves, commutations and pardons and remit fines and forfeitures.[45] Therefore, according to this view, offenders who are already serving sentence, no matter when they start or may be found to be serving sentence, are not qualified for the benefits of the Decree.

4. Related with the above issue is the question of when the application for probation should be made. It cannot be made at any time after conviction and sentence, but rather extends only up to the actual commitment of the defendant to prison for the service of his sentence, and not thereafter.

5. The defendant may apply for probation in case of appeal from a judgment of conviction. He may apply for probation as long as he has not begun serving his sentence, and obviously this does not happen if the sentence has not become final and executory, such as during the pendency of an appeal.

6. The rule of automatic withdrawal of pending appeal applies in case the application for probation is made when the appellate court has already rendered its decision, there being no indication in the probation law to the contrary, and the operation of such rule being in accordance with the maxim that laws should be liberally construed in favor of the accused.

7. The application for probation may be in any form, whether written or oral. While Section 4 of the Decree states that the application shall be filed with the court, this does not necessarily mean that it should be in writing, even if a written form would definitely be more convenient to the court. A liberal construction of the law beneficial to the accused would not consider the use of the term 'filed' by the law, as impliedly requiring a written form.

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[44] Pres. Decree No. 603 (1975).
[45] CONST., Art IX, sec. 14.

8. Defendant is not entitled as a matter of right to the assistance of counsel in the investigation. The probation law does not have a provision guaranteeing the right to counsel in such investigation. The constitutional guarantee that in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel [46] and that any person under investigation for the commission of an offense shall have the right to counsel,[47] would not seem to apply because the investigation by the probation officer is neither prosecutory nor accusatory in character. It is merely a fact-finding inquiry.

9. Neither is the constitutional guarantee against self-incrimination that no person shall be compelled to be a witness against himself,[48] available in the investigation. The said guarantee does not depend upon the nature of the proceedings in which it is invoked, of course, and it may be availed of as long as the questions objected to would incriminate the person who is asked to answer the same. But it is an established doctrine that where the answer to a question, however self-incriminating, may not be used as evidence of criminal liability of the respondent because there is a law prohibiting its use for that purpose, then the privilege against self-incrimination may not be validly invoked to justify refusal to answer the question. Section 17 of the Probation Law provides that the investigation report and the supervision history of the probationer obtained under this decree shall be privileged, i.e., it may not legally be used as evidence of liability.

We raise one question, though. The same Section 17 itself provides that "the investigation report and the supervision history x x x shall be privileged and shall not be disclosed directly or indirectly to anyone other than the Probation Administration or the court concerned x x x." If the defendant can not invoke the privilege against self-incrimination during the investigation, would not the incriminating answers given prejudice the court in deciding whether it will grant probation or not?

10. Pending submission of the investigation report and the resolution of the petition for probation, the defendant may be allowed on temporary liberty under his bail filed in the criminal case, or on recognizance.

11. While the grant or denial of probation is not appealable, certiorari will lie, under the general law on certiorari. This is not appeal for he does not question the findings of fact of the trial court but only the reasonableness of the order based thereon and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceeding as the law requires of such tribunal, board or officer. The petition shall be accompanied by a certified

[46] CONST., Art.I V, sec. 19.
[47] CONST., Art. IV, sec. 20.
[48] CONST., Art. IV, sec. 20.

true copy of the judgment or order subject thereof, together with copies of all pleadings and documents relevant and pertinent thereto.

12. The grant of probation does not erase, modify or otherwise affect the offender's civil liability. Probation is a substitute for imprisonment and other criminal penalties, not a mode of discharging the civil liability, which is owed not to the State but to the offended party. The sentence, which is suspended from execution, means only the imposition of the criminal penalties, not the civil liability. If it were otherwise, the offended party would have to file a separate civil action thereby creating multiplicity of suits, contrary to public policy. In fact, civil indemnification might be imposed as a condition for probation under Section 10(k) of the Probation Law. Indeed, under Article 112 in relation to Article 113, of the Revised Penal Code, except in case of extinction of his civil liability in accordance with the provisions of the civil law, the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, even if he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of service, or any other reason.

13. Distinction between probation under Presidential Decree No. 603 and under Presidential Decree No. 968.

Presidential Decree No. 603 applies to youthful offenders, i.e., those who are over 9 years but under 21 years of age at the time of the commission of the offense. It states, "if after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached 21 years of age, or for a shorter period as the court may deem proper.

Under Presidential Decree No. 603 the youthful offender is neither convicted nor sentenced although the court finding him guilty determines the imposable penalty and orders his commitment as a matter of course to any of the trustees for his correction and rehabilitation, even without his asking for it and without any prior investigation.

In contrast, under Presidential Decree No. 968, the offender is convicted and sentenced. Section 3 defines probation as a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer. The probationer is not committed to any institution but is set free

under the constructive custody of the court which heard his application for probation. Section 4 of the Probation Decree requires that defendant should apply for probation.

V. CONCLUSION AND RECOMMENDATION

The Probation Law of 1976 provides the legal framework for the re-adjustment of our criminal justice system according to more humane and civilized standard.

Probation, as it will be introduced in the Philippines will not have an easy or assured birth. It will be more exploratory and innovative in its early years; and will demand of the government and of the Filipino society, imagination, understanding and cooperation.

Much has been said of the beneficial effects of a probation system. As President Ferdinand E. Marcos himself said, "it is for the greater good of society that offenders not be summarily eliminated from productive life, but brought back to its fold in the quickest and least traumatic way possible for an individual can change and deserve a second chance. Thus, the implementation of the Probation Law must be guided by the spirit, and not the letter of the law."[49]

[49] Pres. Marcos' speech, *op. cit., supra,* note 39.