Research

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
February 3, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close, at 9:00 a.m., Tuesday, February 3, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William H. Hernstadt
Senator William J. Raggio
Senator Sue Wagner

GUEST LEGISLATORS:

Senator Virgil M. Getto
Senator Lawrence Jacobsen
Senator Clifford E. McCorkle

STAFF MEMBERS PRESENT:

Iris Parraguirre, Committee Secretary

SENATE BILL NO. 71

Requires payment of medical expenses of victim by defendant.

Mr. Darrell Luce, representing the Christian Science Committee on Publication for the State of Nevada, called the committee's attention to the wording in S. B. No. 71 and suggested an amendment to the bill which would provide for the church people. See Exhibit C attached hereto.

Ms. Barbara Durbin, deputy Chief of Parole and Probation, stated they had the same concerns about S. B. No. 71 that they had about S. B. No. 12 and suggested that the bill be amended on line 14, page 2, where it required "The Court shall order ..." and reword it to read, "The Court may order ..." The same concerns they had on S. B. No. 12 are present in that victims simply cannot be contacted, they do not respond and they are unable to get the confidential data from the medical records necessary to ascertain the financial loss. She felt there would be more flexibility if the word "shall" was replaced with the word "may."

Senator Raggio asked Ms. Durbin if the change would not alter the complete thrust of the bill in making it permissive with the Court since the purpose of the bill was to require it. Ms. Durbin stated if it is legislatively required then something is being set into legislation that cannot be done if the information cannot be obtained.

Senator Raggio asked if it were permissive, in what percentage of cases would the courts in the state require it, in her opinion. Ms. Durbin stated about 80 percent of the court orders follow their recommendations and their recommendations always include that restitution be paid where there has been injury or even death benefits if it happens to be a factor in the case. Not only property loss but any medical bills that are a result of any crime are addressed in the presentence report; however, the Parole and Probation Department has limitations of not being able to obtain the required data.

Senator Raggio stated he did not feel the same adjustment was required on S. B. No. 71.

Senator Ford asked Ms. Durbin if, instead of making it permissive, they put in the qualification, "The Court shall order unless ..." and then include the qualifications at the end. There would have to be language which would include "unless there appears to be information unavailable," making it more positive.

Ms. Durbin stated from her experience in interviewing judges around the state, which she did about a year ago on a variety of issues, there is a mixture of their opinions as to whether they prefer to get involved in the restitution matter so this would at least standardize the judges approach. Ms. Durbin agreed with Senator Ford's suggestion.

Chairman Close referred to page 2, section 2, second paragraph, wherein the court has the authority for payment of medical treatment. He felt what the committee is doing if they adopt this amendment is mandating the court to order the

payment of medical expenses and making it permissive to make restitution, thus making it more stringent for one area than the other area. Chairman Close asked Ms. Durbin if there was some problem in conditioning probation or suspension of sentences on restitution where some can make it and some cannot.

Ms. Durbin stated they always address the ability to pay. Even if at the time of sentencing someone does not have the ability to pay, they still include the request to the court because they feel they are in a position to assist these people during the period of supervision to get into a position where they have the ability to pay. However, in rare cases where it comes close to the termination of probation supervision and there really is a hardship situation, they bring it to the attention of the court, the court order is either modified or the person gets a general discharge rather than an honorable discharge.

Senator Wagner stated that from the way she read the bill, particularly in the first section on page 1, the priority of paying the medical expenses would come before paying any kind of wages at the restitution center since on page 1, it mandates the director to subtract from the wages an amount calculated for the medical treatment.

Senator Raggio stated Section 1 deals with the inmate and his wages whereas Section 2 deals with the probationer.

Ms. Durbin pointed out the bill is vague as to whether it is medical treatment before sentencing or treatment that is to continue for years in some instances as a result of the criminal act.

Chairman Close asked Ms. Durbin whether the insurance proceeds which were received as a result of an injury would be offset against what the defendant is required to pay back. Ms. Durbin stated they pay back the insurance companies since they become the victims.

Senator McCorkle stated restitution right now is voluntary and it is one of the reasons the restitution centers in southern Nevada only had an average of two people in 1980 and eight people in northern Nevada in 1980. The capacity is from 25 to 30, therefore, they are badly underutilized. He stated he believes in the principal of restitution for medical bills.

Chairman Close asked how people could be encouraged to go to the restitution centers if it is mandated that all the money they earn first goes to pay back the victims and they keep none of it themselves.

Senator Raggio explained that additional work can be required as a condition for probation; however, individuals cannot be required to go to a restitution center.

Senator McCorkel stated he thought restitution centers could be utilized as a condition of probation anytime where a victim had incurred medical costs with some sort of repayment schedule being required, whether they utilize restitution centers or not.

Senator Hernstadt asked Ms. Durbin what percentage of offenders where there has been a violent crime involving medical expenses has made restitution. Ms. Durbin replied that in any case where there is restitution due a victim, it is included as a special condition of probation and recommended that the judge make the order that restitution be paid in a specific amount. She stated they always address medical expenses as well as property losses.

Senator Raggio asked Ms. Durbin whose obligation it would be to call to the attention of the court that an individual had not continued to make payments, had the ability to do so, and that his probation could be revoked. Ms. Durbin stated it was the Probation Department's responsibility and they do it regularly.

In reply to Senator Ford's question concerning the number of people making restitution, Ms. Durbin replied they had collected $46,000 in the last quarter of 1980.

Senator Hernstadt asked Ms. Durbin how many of those cases involved medical expenses. Ms. Durbin said it would be hard to say without doing a per case audit of each case that comes across their desk, maybe 350 sentencings a month.

Senator Hernstadt asked what it would do to the system if S. B. No. 71 were processed the way it is. Ms. Durbin replied that the way it is, it might make it difficult for them to comply and it would make it hard for the Court to comply if they do not have any data to give them, especially in cases where they have been unable to contact victims and where the confidentiality of medical records will not be released by the victim.

Senator McCorkel stated it may be accurate that the probation system is now taking care of restitution generally, but he felt it was important that medical costs be given priority over normal restitution because in degrees of justice, medical cost is perhaps the greatest injustice.

Senate Committee on Judiciary
February 3, 1981

SENATE BILL NO. 72

Provides additional exemption to provisions governing land sales.

Senator Virgil M. Getto stated he is the principal introducer of S. B. No. 72 and this bill was revised last session, however, there was an error in the bill. He stated if a developer purchased a section of land and then split the section into 40 acre parcels, there are many sections that have an odd 1/16 section which, according to the law, would have to come under the subdivision law. The amendment to this bill corrects the situation and makes it 1/16 of a section but not less than 35 acres.

Senator Ford explained it was S. B. No. 120 in the last session and that they had put the language in one part of the bill but not the other part.

Senator Raggio questioned what the significance would be on the last page of taking out the word "subdivision" and substituting "developer."

Jack Warnecke, chairman of the Carson River Basin Council of Governments, stated his organization had put together a package of things they felt should be addressed by the legislature and all of the 19 items were accepted by the Nevada Association of Counties. They also were concerned with subdividing sections into 40 acre parcels and having at least one section being less than a full 40 acres. They feel the law should be adjusted so they can still divide into 16 parcels. Senator Ford stated this is covered in the subdivision law or the parcel map law and deals with land sale only.

Mr. Bob Sullivan of the Carson River Basin Council stated the situation is such that very few Nevada sections are 640 acres square, and when they get down to the 40 acre threshhold, it triggers the disclosure mechanism in NRS 119 which deals with exemptions to that disclosure mechanism. He explained if a developer has any parcels that fall beneath 40 acres, the disclosure mechanism is triggered. More than likely that individual will seek to remonument, or resurvey, his parcel so all the parcels go above 40 acres, which is an extra expense to him. Also, every piece of paper in the county courthouse that was on the old monumenting system has to be redone. He stated the Real Estate Division has difficulty working with the nominal formats. Mr. Sullivan suggested that for the exemption, rather than using 40 acres, 1/16 of a section is used or the wording "not less than 35 acres" be used because 19 out of 20 would be splits of 40 acres.

Mr. Andrew Burnham stated they have experienced the problem of meeting the 40 acre definition in Douglas County and have remonumented very large areas in the county that commonly were referred to as the 1/16 breakdown. He explained that roadways and irrigation ditches are based on the 1/16 section breakdown.

Mr. Bryce Wilson, who represents the Nevada Association of Counties, read into the record a resolution adopted by the Association of Counties last November, a copy of which is attached hereto as Exhibit D.

SENATE BILL NO. 73

Provides for sentencing of misdemeanants to make restitution or perform certain work as alternative to punishment by fine or imprisonment.

Senator Getto stated this is a bill that would allow justice courts and lower courts to mandate restitution and felt it would be very effective in dealing with juveniles who destroy property or cause auto accidents that do bodily damage up to $500, which is a misdemeanor. Senator Getto referred to the report of Dennis A. Challeen, which is attached hereto as Exhibit E, and the report of the Council of State Governments, attached hereto as Exhibit F. He stated that, in his opinion, our penology system is a failure and we are just returning the criminals or rotating them because in the prisons, there is not any way for an individual to improve himself.

Senator Raggio questioned how a Justice Court could enforce restitution if it sentenced someone to a misdemeanor, fined them, gave them a county jail sentence or both and then imposed a choice of restitution and that person did not make restitution. He explained that in District Court, restitution can me made part of probation which can be revoked or enforced by civil judgment, which is not the case in Justice Courts. Senator Getto felt it could be covered by a resolution; however, Senator Hernstadt stated they would have to start over with a new resolution. He felt the Secretary of State should write a paragraph for the voters to highlight what the legislature is doing, explaining that it was necessary to effect a restitution program.

Mr. Bryce Wilson, representing the District Attorney in Douglas County, stated they would like to recommend, in consultation with the Justice of the Peace in Douglas County, that the bill should not preclude a combination of fines and work. The bill as written appears to be either/or. They felt they needed the flexibility of using one or two or three of the options and that the bill should not preclude a combination of fines, restitution and/or work. Mr. Wilson suggested amending line 8

to strike out "as an alternative" and to substitute "in addition.

Senator Raggio stated that the word "alternative" may make it enforceable.

Mr. Bob Lippold, correctional consultant, stated his main concern about the way S. B. No. 73 is written is that it indicates on line 11 "to perform supervised work for a fixed period of service in the community" and the question of who provides the supervision could present problems. In the event service clubs in a community would be acceptable to judges to provide the supervision, then he felt it would be fine. However, if the bill was written with the idea that it had to be some type of formal or governmental entity then the state Probation and Parole Department is not geared to provide that kind of supervision.

Senator Raggio stated he did not feel the bill required formal supervision. In reply to Senator Raggio's question as to whether he would endorse the bill if it did not require formal supervision, Mr. Lippold said they would. He also felt it would serve as an educational program for responsible people in the community as well and also would give a volunteer group the opportunity to work with the offender and give the offender the opportunity to work with the people who were supervising him. Mr. Lippold felt this would have some impact as far as dealing with the misdemeanant because there would be more of a chance of re-habilitating him before he gets involved in a felony.

Ms. Barbara Durbin, Deputy Chief of Parole and Probation stated she felt S. B. No. 73 covered the same comments as S. B. No. 13, however, it does not address the liability that S. B. No. 13 did. She felt it was more involved than what the bill purports and involved more than just supervision. She stated they are in agreement with Mr. Lippold's comments.

Bill McDonald, District Attorney of Humboldt County, stated he thought of the bill as giving the Justice of Peace and Municipal Judges additional tools on how to deal with the people who come before them. He said they have been using volunteer supervision for years. They also prefer not one or the other but having a combination of jail, fine, restitution or public service. Mr. McDonald wanted to know if there was some way of handling the restitution matter.

Senator Keith Ashworth stated that in misdemeanor situations, the amount involved is about $500; therefore, if the bill was changed from "as an alternative" to "in addition to" punishment, fine, or both, the judges would have options. He felt it should at least be tried.

Lynda Reid, representing the Voluntary Action Center of Washoe County, stated they had been involved in other programs that are operating. See Exhibit G attached hereto.

Mr. Larry Kitzenberger with the Las Vegas Metropolitan Police Department stated they have been forced to look at the alternatives available, and they would support some alternative programs for judges to be able to utilize for misdemeanants. He does not feel there would be any heavy impact but stated if they had to supervise all work groups then it would be a manpower impact.

SENATE BILL NO. 47

Provides for protection of agricultural activities from lawsuits.

Senator Getto stated he wanted to support S. B. No. 47. He said the grandfather clause does not protect the agricultural entities. If the farmer does something with his operation that is consistent and not radically different, he should be protected as long as he meets all of the codes and regulations of the state and counties.

Senator Wagner asked Senator Getto if this was a nationwide movement by farmers, and he indicated there were several states that have adopted this type of protection. Churchill County has adopted an ordinance in this respect. He stated it is a fairly new movement because of the awareness of the shrinking of agriculture.

Senator Hernstadt asked if there were any nuisance suits in the state of Nevada along this line. Senator Getto stated there was a case in Fallon but it was a different situation because the dairy was planning to build a new dairy and there was protest.

Mr. Jack Warnecke, Carson River Basin Council of Governments, stated he wanted to confirm their support of the testimony that Senator Getto gave. This bill was accepted by the Nevada Association of Counties.

Mr. Bob Sullivan stated the three sections S. B. No. 47 touches upon are NRS 40.140, which deals with actions and proceedings in particular cases concerning property, as well as actions for nuisance, waste and wilfull trespass. Section 2, NRS 202.450, deals with crimes against public health and safety and public nuisances. The third section is NRS 575.030 which deals with miscellaneous provisions concerning animals and dealing with shearing of sheep within cities and towns. What they proposed to Senator Getto was that pre-existing agriculture should not be considered a nuisance. The lawsuit situation, he stated, is not the big concern. The big concern is the complaints, the response to complaints and the subsequent farmer's attitude about how much longer he wants to remain in business.

Senator Hernstadt inquired whether Mr. Sullivan felt there should be some provision in the subdivision code for the real estate division, requiring notice to prospective home buyers of the pre-existing nuisances so that they are on notice.

Mr. Bjorn Selinder, Churchill County Manager, stated that in Churchill County they are experiencing a number of problems of this nature. With the open range situation, they have complaints of people being attacked by a bull, animals destroying gardens or lawns, etc. They have attempted to deal with this problem by adding a jurat to the map of the subdivision which calls to the attention of the people willing to go in and look at the map that, in fact, they are in an area that is open range and that there is no protection from this except to construct a fence of their own.

Senator Jacobsen stated he felt the bill was pretty self-explanatory. He stated that Alabama passed such a bill in 1978, North Carolina and Washington in 1979 and Delaware last year. He did not know whether there had been any case law involved in those states but that it is becoming a real problem for people in the agricultural business. He stated that agriculture is shrinking each year down to about nine or ten percent of our economy. The fast-growing areas are having a particularly hard time with it, even with the greenbelt laws. He felt if we are interested in something to eat, we must protect the agricultural interests, as long as they do not do things that are injurious to the health and safety of the people. He stated that in some rural areas, the subdivisions are not interested in being annexed to the cities because of the taxation problems, fire insurance and services unless it is to their benefit.

Mr. Chuck Wiseman of the Nevada Farm Bureau stated there are 11 states now that have a similar type of law concerning this subject.

Mr. Andrew Burnham of Douglas County stated they support S. B. No. 47. Senator Ford asked Mr. Burnham who will arbitrate disagreements. Mr. Burnham replied that in Douglas County, the Board of Commissioners hear the initial complaints in public hearings and they are arbitrated by the Board of Commissioners. After that point, it goes to court.

Senator Wagner asked Bob Erickson to provide some information on the number of states currently having such laws and any experiences they have had that he is aware of in terms of possible litigation. Mr. Erickson of Research Division stated he does have some information on this. See Exhibit H attached hereto.

Senator Raggio stated the present public nuisance law states that any act which affects the safety, health, comfort or repose of a

certain number of persons constitutes a public nuisance, NRS 202.450. This bill would limit nuisance to health and safety, as to any agricultural activity, unless it had a substantial adverse effect on public health and safety. Senator Raggio asked Mr. Erickson if any other nuisance other than safety and health would be actionable as a public nuisance.

Mr. Matt Benson, representing the Nevada Cattlemen's Association, stated that in general they favor S. B. No. 47, but he felt there were several items that had not been covered which pertain to the bill. He indicated their association is controlled by EPA, which is sometimes over-restrictive. He discussed the problems with irrigation ditches, especially those bordering on subdivisions, and who has the responsibility of keeping them cleaned, etc.

Bill McDonald, District Attorney of Humboldt County, stated he definitely supports the bill. He set forth a number of complaints that the District Attorney's office receives as a result of agricultural activities.

Mr. Bryce Wilson of the Nevada Association of Counties stated they adopted a resolution in support of S. B. No. 47, which is attached hereto as Exhibit I.

In response to Senator Ford's question concerning how much open range is in Nevada, Matt Benson stated he did not feel there was a definite law as to what was open range. Mr. Chuck White of the Nevada Farm Bureau stated the law is that you can fence an animal out but you do not have to fence an animal in.

There being no further testimony on S. B. No. 47, S. B. No. 71, S. B. No. 72 or S. B. No. 73, Chairman Close called the public meeting to a close.

The following Bill Draft Requests were presented and received committee introduction:

BDR NO. 16.303 (S.B. 182)

Allows one member of state board of parole commissioners to sit as referee.

BDR NO. 41.117 (S.B. 183)

Reestablished Nevada racing commission and reenacts and amends Nevada Racing Act.

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Bill Draft Request No. 19.137, "Requires notary publics to maintain record of official acts" was introduced by Senator Keith Ashworth and did not receive committee introduction. (S.B. 185)

There being no further business, the meeting adjourned at 10:55 a.m.

Respectfully submitted by:

Iris Parraguirre

Iris Parraguirre, Secretary

APPROVED BY:

Senator Melvin D. Close, Chairman

DATE: 2-10-81

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SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on Judiciary, Room 213.

Day Tuesday, Date February 3, Time 9:00 a.m.

S. B. 47--Provides for protection of agricultural activities from lawsuits.

S. B. 71--Requires payment of medical expenses of victim by defendant.

S. B. 72--Provides additional exemption to provisions governing land sales.

S. B. 73--Provides for sentencing of misdemeanants to make restitution or perform certain work as alternative to punishment by fine or imprisonment.

ATTENDANCE ROSTER FORM — COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY — EXHIBIT B

DATE: February 3, 1981

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Darrell LUCE	Christian Science Church	384-4155
Dennis Bennett	University Trustee	329-3057
[illegible]	[illegible]	[illegible]
Linda Reid	Volunteer Action Center	329-4030
John Barrigan	Intern + Regan	358-4478
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible] 5040
[illegible]	[illegible]	[illegible] 5040
Mary Benson	Nevada Catholic Women	784-2186
Andrew Burnham	Douglas Co. Planning Commission	782-5176
Chuck White	Nev. Farm Bureau	358-7737
Jane Dredale	Dir. of Real Estate	[illegible]
Jean Whitten	" "	" "
Jean Lessini	Real Estate	"
Richelle Stone	[illegible]	
[illegible] Curry	Nev. Taxpayers Assn.	[illegible]
Jean Neely	Washoe County School Dist.	
Stephanie Nebeker	Las Vegas Dev. Corp.	7349[illegible]

Christian Science Committee on Publication for Nevada

1717 East Charleston Boulevard
Las Vegas, Nevada 89104

Phone: (702) 384-4155
Night 385-2655

EXHIBIT C

PROPOSED AMENDMENT TO S. B. 71:

On page 1, line 16, I would change the wording to read:

"FOR ANY MEDICAL TREATMENT OR NONMEDICAL REMEDIAL CARE AND TREATMENT RENDERED IN ACCORDANCE WITH A RELIGIOUS METHOD OF HEALING NEEDED AS A RESULT OF HIS CRIME."

This would make the wording of this bill in accordance with NRS 217.200, where a victim of a crime may be awarded compensation by the State Board. The wording of NRS 217.200 is:

"The board may order the payment of compensation... for: (a) Medical expenses, and nonmedical remedial care and treatment rendered in accordance with a religious method of healing, actually and reasonably incurred as a result of the personal injury or death of the victim;...."

DAY 385-1331 NIGHT 385-2655

SB149

CHRISTIAN SCIENCE COMMITTEE
ON PUBLICATION
FOR THE STATE OF NEVADA

DARRELL D. LUCE
COMMITTEE

1717 EAST CHARLESTON BLVD.
LAS VEGAS, NEVADA 89104

SB 12

NEVADA ASSOCIATION OF COUNTIES

RESOLUTION 80-22 EXHIBIT D

RE: LARGE PARCELS -- MONUMENTING

WHEREAS, the U.S. Government's survey dividing Nevada into a network of Townships and Ranges is recognized uniformly in land mapping and managem nt activities; and

WHEREAS, not all Townships and Ranges create "sections" of one mile square and 640 acres; and

WHEREAS, in the division of a section to conform with uniform fractions of 320, 160, 80 and 40 acres, the practice of "nominal" (approximate) sizing has been used throughout the State; and

WHEREAS, existing land ownerships are recorded via survey monuments which are in turn based upon the existing "nominal" mechanism; and

WHEREAS, the use of nominal monumenting has proven satisfactory to developers and local units of government, but not to the State Real Estate Division's regulatory responsibilities; and

WHEREAS, any division of land below 40.00 acres must fall under the jurisdiction of the State's Land Sales Law administered by the Real Estate Division, prescribing a full disclosure statement from the marketer of such parcels; and

WHEREAS, to avoid the expense of the disclosure mechanism, it is often advantageous for the owner of lands destined to be divided into 40 acre (Large Parcel) units to remonument his lands toward the objective of creating parcels 40.00 acres or greater, thus causing alteration of all existing recorded documents and attendant operations;

NOW, THEREFORE, BE IT RESOLVED that the Nevada Association of Counties requests the 1981 State Legislature to direct the State Real Estate Division to work within the 40-acre nominal format by requiring disclosure only on parcels less than 1/16 of a section but not more than 35 acres.

PASSED AND ADOPTED this 15th day of November, 1980.

Jack R. Petitti
JACK R. PETITTI, PRESIDENT

ATTEST:

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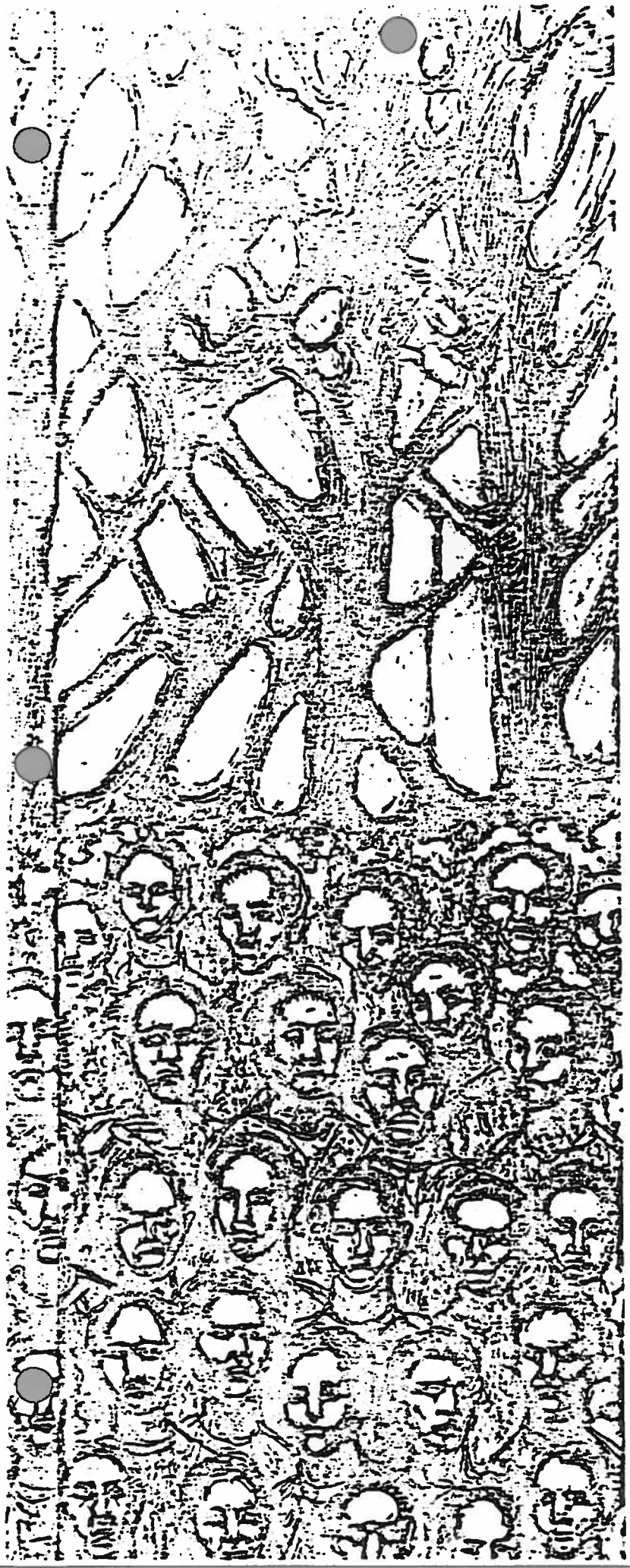
EXHIBIT E

An Interview with Dennis A. Challeen

At a time when many people believe that rehabilitation is dead, Judge Dennis A. Challeen has been proving that it isn't so through his creative restitution sentencing program in Winona, Minnesota. Judge Challeen extends the age-old concept of restitution sentencing in which the offender must repay the victim and the person harmed, to include self-restitution. The key to the program's success, according to Challeen, is to help the offender develop self-esteem through constructive accomplishment. Challeen emphasizes [illegible] accountable to themselves as well as to society. "A good sentence," he says, "should encourage offenders to make efforts toward self-improvement that will take them out of their [illegible] roles." The ideas for the following interview are based on a talk that Judge Challeen gave at one of last year's JAD annual meeting programs in Dallas.

Court imposed restitution is not seen as punishment but as a way of

Turning Society's Losers Into Winners



THE JUDGES' JOURNAL: When you addressed the National Conference of Special Court Judges in Dallas last summer, you mentioned that there are many myths in the criminal justice system that need rethinking. Would you explain?

JUDGE CHALLEEN: Probably the biggest myth subscribed to by the average citizen and some judges is that criminals are shrewd, methodical, scheming, plotting, and calculating degenerates as portrayed by television and movie actors.

With the exception of white-collar and professional criminals who rarely are prosecuted or convicted, the average criminals who appear before most American courts are largely life's losers, misfits, and chemically-dependent unemployables who commit crimes out of impulse rather than plan. The problem is that these losers, whose self-esteem is low, cover up in a cocky, belligerent, threatening manner that we call "fronting." Many judges respond to fronting with a natural impulse to punish. If criminals didn't front so much, we'd probably have more compassion for them as inadequate, miserable human beings. Moreover, their negative personalities make them easy targets for hate and, unfortunately, hate never has been a constructive force.

A second myth that many judges and the average citizen subscribe to is that harsher punishment of these losers will curtail crime. If the average citizen on the street corner were asked what should be done about crime, he probably would answer that judges should crack down harder on criminals and quit coddling them. That's a logical conclusion to the

Dennis Challeen is a county court judge in Winona, Minnesota. He is on the faculty at the National Judicial College

average person; he's sure that if he committed a crime and was punished severely, he never would stray from the straight and narrow again. And he's right—that's the difference between a loser and an achiever.

The problem is that criminals are not average and do not respond like achievers, who learn from past mistakes. Achievers rise in society by eliminating mistakes in their lives. Losers are at the bottom of society because they do everything wrong when it comes to succeeding at the game of life.

If tough judges are the obvious answer, then why haven't they been able to stop crime? There are more than 23,000 judges in America and they can't all be lenient. The theory of punishment as an answer to crime seemingly should be easily provable, but it isn't. Instead, statistics overwhelmingly prove that punishment fails completely as a rehabilitative device. Fifty to 70 percent of the offenders who leave our prisons return to a life of crime, although society spends $15,000-25,000 per inmate per year on their so-called rehabilitation. (If hospitals had a similar cure rate, they'd be closed down.) I've often said we could put a criminal through Harvard for much less.

The Judges' Journal: You often use the word "loser." Can you explain what you mean?

JUDGE CHALLEEN: Any judge who hears presentence investigations can put together a profile of a loser. The characteristic that constantly surfaces is a lack of self-worth. Criminals are frustrated and angry at themselves and the world; they are very defensive, anti-authoritarian, and feel put down by society. They are irresponsible, quit easily, and are untrustable. They blame others for their problems and avoid responsibility. They consistently lie, cheat, and manipulate to avoid confronting their inadequacies, and they lack a priority system in their lives. They feel little guilt and don't empathize with the people they have hurt. They consistently fail to learn from past mistakes and, because of their low self-esteem, they find it necessary to front with macho, cocky, socially unacceptable behavior and become alienated from normal society. They gravitate toward friends who feel as they do and those friends reinforce their negative feelings about themselves and others. They are neither loyal nor trustworthy and will exploit anyone who tries to be good to them or befriend them. In fact, exploitation becomes necessary for their survival. They turn into alcohol and drugs, because the only time they feel decent about themselves or others is when they are under the influence.

When we punish or incarcerate these people, we only reinforce the losing traits that make up their negative character. They become more angry and more frustrated. We further destroy their self-worth. We give them reasons to be more anti-authoritarian, and we take away all their responsibilities. We allow them to blame others, including the courts and the justice system. We lock them up in prisons where they lie, cheat, and manipulate each other on a daily basis, and where their only contact with equally [illegible] We give them no reality system, and we totally alienate them from our communities.

We make even bigger losers out of our losers. It's like the medieval doctors who bled people to cure them. Their motives were honorable, but we know [illegible]

We need to lock up violent offenders (about 5 percent of our inmates are violent) because they hurt, kill, and rape us, and we need protection from them. Violent criminals have forfeited their right to be free. But as judges, we are victimizing ourselves if we think we are doing society a favor by locking up most property criminals. We are clogging our prisons with them and the evidence clearly indicates that incarcerated criminals [illegible] often progressing to more violent crimes when released. Nor does the evidence indicate that longer incarceration improves chances for rehabilitation, only that it costs the taxpayer more and puts the criminal closer to the 30 to 70 percent figure.

The paradox is that punishment works well on achievers and fails on losers. But that's what makes people achievers; they learn from mistakes and respond to negative punishment by correcting their behavior. Losers look at punishment as just more bad luck—another kick from an unfair world. Judges and lawyers come from the achiever side of society and tend to judge others by their standards. It is difficult for achievers to understand why punishment doesn't seem to work on chronic criminals, when they know it works effectively on themselves.

A third myth is that punishment acts as a deterrent to others. Despite the fact that the National Cancer Society and the Heart Foundation bombard us daily with clear, convincing evidence that our smoking and eating habits are a death sentence, we convince ourselves that it won't happen to us and ignore the threat. If threats don't work on achievers who can project feelings and calculate risks, how can we expect threats to have much effect on losers whose character defects prevent them from learning from past mistakes, empathizing, and estimating probabilities? If a person doesn't care much about himself, a threat has little meaning.

"I don't think many judges have had people overpay their fines or overstay their jail terms."

[redacted] treatment program. [redacted] becomes [redacted] as natural as breathing, and naive do-gooders will be used everytime. [redacted]

THE JUDGES' JOURNAL: If punishment reinforces all the things that are wrong with a loser, [redacted]

JUDGE CHALLEEN: That's the dilemma of our present justice system. We certainly can't give them medals or make them heroes for their criminal conduct. Because most criminals are destitute, fines are unworkable, which leaves jail or probation under our present court system. Feeling sorry for criminals certainly isn't the answer either.

[redacted] when that's what normal people do anyway. They see probation as a silly, unsupervised game with rules that make it easy to cheat and invite mockery and exploitation.

[redacted]

THE JUDGES' JOURNAL: If what you say is true, aren't judges, like society, caught in a Catch-22 whereby they lose either way?

JUDGE CHALLEEN: [redacted] In many parts of the country, various [redacted] system are surfacing. [redacted]

THE JUDGES' JOURNAL: Can you give us some examples of this type of restitution sentencing?

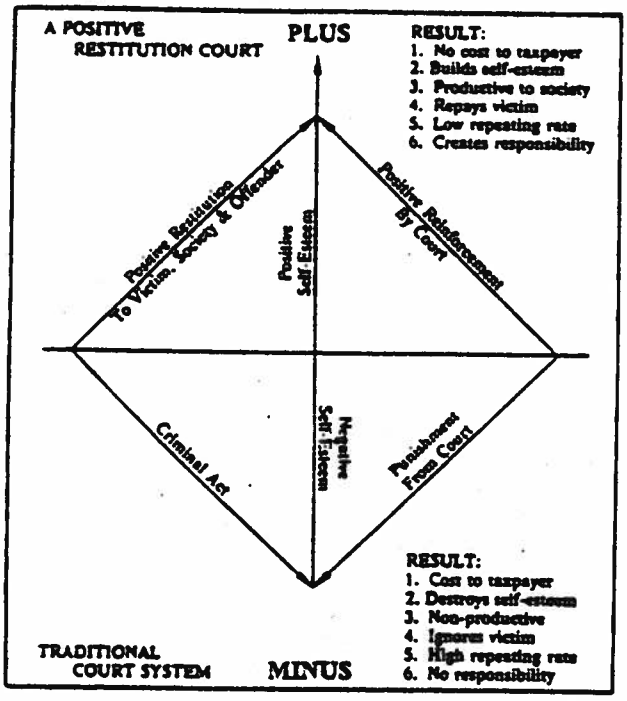
-65

JUDGE CHALLEEN: A good restitution sentence involves the victim, the community, and the offender. Sometimes it is neither possible nor necessary to involve all three components but the following are some examples.

A young High school dropout burglarized a junkyard. His sentence involved paying for the damages, volunteering work for a community service, and finishing high school.

A shoplifting woman for the store she stole from, worked in a home for the elderly, and joined a women's club.

A welfare fraud recipient [illegible] and turned over the produce to a charitable organization.



Young shoplifters shoveled walks for shut-ins.

A college fraternity arrested for disorderly conduct actually organized a bloodmobile drive.

A young thief who stole from a farmer raised a pig and a calf for the farmer as restitution.

A park vandal repaired the damage, contributed money to the park fund, and repaired damage done by other vandals.

A drunken driver with nine children changed and delivered firewood to charitable organizations and funded an alcohol treatment program.

A reckless driver cleaned the carpet in a church and another repaired stained glass in a public building.

A serious traffic violator organized a rummage sale and contributed the proceeds to an environmental cause.

An offender obtained a rhinoplasty on his nose and another attended speech therapy classes to overcome self-image problems.

Other offenders have coached little league, tutored students, worked on ecology projects, painted park benches, worked on projects for the Historical Society, worked with retarded children, restored abandoned cemeteries, repaired government buildings, erased graffiti, worked on spontaneous club wildlife projects, and numerous other constructive endeavors.

THE JUDGES' JOURNAL: What happens when offenders fail to complete a restitution sentence or don't cooperate?

JUDGE CHALLEEN: They simply are brought back to court and the jail sentence that originally was stayed is imposed, taking us right back to the traditional punitive court system. Nothing has been lost except time and efforts. We've experienced failure in only about one in 25 restitution sentences. More often, a surprising result of restitution sentencing is that offenders often overpay and do more than is required. I don't think many judges have had people overpay fines or overstay their jail terms. But after restitution sentencing, some offenders have been hired by the victims of their crimes and others have returned voluntarily to help other offenders.

THE JUDGES' JOURNAL: How do you tie transactional analysis into this sentencing philosophy?

JUDGE CHALLEEN: It's basic philosophy is that if you treat a person as a child, he will respond as a child with immature behavior. We insist that all court personnel, including the judge, treat offenders with respect, as one adult to another. Our aim is for the offenders to feel accountable and to address their problems as adults. Unfortunately, the structure of the criminal justice system often makes it paternal, and offenders automatically react as inferior children —with anger, manipulation, and game playing.

It's amazing how many judges react with rage anytime they feel threatened or put down. Yet, those same judges turn around and humiliate offenders and court personnel who work with them everyday, oblivious to the anger and resentment it creates. In transactional analysis, our total purpose is to improve offenders' self-esteem, to make them feel good about themselves and their communities, and to give them an opportunity to become responsible members of the society from which they are alienated. In so doing, it's essential that offenders earn their self-esteem themselves, through the work ethic and positive, humanitarian efforts—no one can give it to them.

Another principle is to call an offender's attention to the fact that he or she is not a bad person but that some of the things he does make us angry. People can accept being told they act like fools, but they respond with anger to being told they are fools. We must separate people's actions from the people themselves, or else we destroy what little self-worth they have. It's only common sense, but many judges consistently make this destructive mistake.

THE JUDGES' JOURNAL: How do you incorporate reality therapy?

JUDGE CHALLEEN: We reverse the roles of the traditional court system. Normally, courts react to criminal behavior with punishment and forced rehabilitation: "You wronged us; therefore, here is what we are going to do to you." We prefer to say, "You have wronged someone; therefore, what are you going to do to make it right?" The first statement requires no responsibility on the offender's part—it's only a question of the degree of punishment, and the offender's life is completely controlled by of the judge who imposes the sentence.

The second statement shifts the responsibility onto the offender where it belongs; it confronts him, and requests him to make amends for his wrongdoing. If he fails to make it right, he has failed to meet his responsibility, forcing us into the only response we have left: paternal, punitive sanctions. The result is that he must either put something back into society as a responsible adult or be treated as a negligent, irresponsible child. Once the restitution sentence is completed and society is paid back, the offender is immediately discharged from the system. Probation in the traditional sense is abolished. In fact, we feel that the word "probation" is a paternal put down that offenders resent as much as the general public does, and we removed the term from our vocabulary eight years ago.

THE JUDGES' JOURNAL: Does this mean that offenders are making up their own sentences?

JUDGE CHALLEEN: No, it simply means that they are actively participating and taking responsibility for righting their wrongs. The judge can reject any sentence that seems inappropriate, unfair, or does not measure up to his or the community's standards of responsibility. A good court service officer, working constantly with the judge and helping offenders put together sentences, soon learns the techniques of delivering sentences that will be fair and acceptable to both the judge and the offender.

THE JUDGES' JOURNAL: What about criminal acts that shock or outrage a community?

JUDGE CHALLEEN: Violent crimes such as murder, rape, armed robbery, and aggravated assault do not fit easily into restitution justice. Most judges agree that violent acts must be met with punishment simply to convey the fact that society should not have to and will not tolerate certain outrageous acts of violence.

However, jail does not have to be a totally negative experience. We introduce restitution principles to offset the negative effect of incarceration in less dangerous cases and call it "jailhouse restitution." The following are some examples:

• In a negligent homicide case involving an automobile accident, an offender worked out of the jail and turned over a specified amount of his earnings to the family of the victim. paid back the community with community service, and completed a long-term alcohol treatment program. Upon completion, he was discharged.

• A vandal who committed $2,000 worth of wanton vandalism to store windows was sentenced to jail and allowed to work out of jail and turn over his paycheck to the victims. When they were paid out of his earnings, he was discharged.

• A traffic offender, guilty of a high speed chase through a populated area, was sentenced to 30 days in jail and allowed out during the day to do community service work. For every eight hours he worked, a day was substracted from his sentence to gain an early release.

THE JUDGES' JOURNAL: If restitution is an age old concept, why don't more judges use it?

RESTITUTION TO PERSON WRONGED

Pay for damages
Repair damages
Work for wronged person

RESTITUTION TO COMMUNITY

Charitable agencies
Government
Educational institutions
Handicapped & elderly
Ecology
Church

RESTITUTION TO OFFENDERS

Alcohol & drug help
Vocational classes
Mental health aid
Marriage counseling
Vocational rehabilitation
Group therapy
Employment help

JUDGE CHALLEEN: Judges have used restitution for years but, unfortunately, it often has been negative in nature. Court ordered without offender input and largely what we call "kick ass" restitution. It's often the kind of restitution that puts down, embarrasses, and humiliates an offender. Restitution that destroys self-worth is probably worse than the degradation of incarceration from the standpoint of self-esteem. At least an offender who is jailed is not publicly humiliated. Public humiliation destroys self-esteem, creates anger, and further alienates the offender from society. Most restitution and community service sentences I have seen have been a put-down rather than a positive learning experience.

THE JUDGES' JOURNAL: What are the necessary elements of a good restitution program?

JUDGE CHALLEEN: Judge must eliminate a common disease which I call "judgitis," whereby they as-

(Please turn to page 48)

almost maximum capacity; its physical expansion is a necessity now.

The failure to educate our judiciary will soon become a national disaster. As lawyers, we have as great or greater a stake in the successful education and improvement in the judiciary than perhaps even judges.

Nowhere in our ABA programs have I found any emphasis or priority on educating judges. The ABA funds studies concerning computerized docketing, sentencing, and model configurations of courtrooms, but few, if any, studies on the background of sitting judges and their desires and needs for more education. The percentage of our Association's annual budget that is devoted directly to judicial education and its planning is an embarrassment.

The bars could help by providing meeting places—the judges can and will secure lecturers and instructors without fee on honoraria. The cost of judicial education is primarily for travel and lodging, and funds for these expenses are rare. Judges themselves are unable to bear the financial burden of providing society with a more skillful and knowledgeable judiciary.

Leaving a private practice to become a judge usually represents a financial sacrifice. Judges not only earn considerably less than most reasonably successful private practitioners, but ABA ethical canons prohibit them from making certain outside investments, from which they could expect additional incomes. It is no accident that judges drive older cars and wear their suits longer than most lawyers.

I am not complaining about judicial salaries, but merely recognizing the somewhat limited financial resources of judges. Many judges still on the bench served on the committees that drafted the codes which limit our financial opportunities, and I still approve of those codes, although we have not received correlative benefits to offset the sacrifices.

The ABA and state bar associations have led in the attempt to keep judicial salaries even with inflation, but those salaries rarely reflect the education, experience, and capability of the judiciary as compared to other public employees.

The most important goal of every lawyer, especially those who are active members of the organized bar associations, should be to demand and support every method available to the legal profession to create a better educated, more effective judiciary. We must start by devoting more of our resources to the education of the judges already serving our nation and must simultaneously find ways to improve the selection of future judges. Lawyers and judges must work together to attain these goals.

My dedication to and joy in working in the JAD's Conference of Administrative Law Judges comes from the fact that judges and lawyers can work together to promote the science of jurisprudence. Important reforms in the legal system happen only when lawyers and judges combine forces and goals. Much improvement has occurred when judges inspire lawyers to accomplish that which the judges alone are helpless to obtain.

The Lawyers Conference of the JAD is composed of lawyers who are interested in promoting the science of jurisprudence. They are dedicated to bringing about improvements which judges alone cannot accomplish. Each of us as judges—whether in a hall, lobby, bar meeting, at the end of a hearing, or even in chambers—must impress on the members of the Lawyers Conference (and the lawyers who should be members) the need for "carfare, bed, and grocery" money for the education of this nation's judges. Only when the lawyers who desire better judges impress on the city councils, county boards of control, state legislatures and the Congress the urgent need for funds to finance the education of judges, can we improve the quality of the people responsible for adjudicating our disputes and preserving the peace throughout the land.

Challeen

(Continued from page 9)

sume paternal, authoritarian, pompous, egotistical, and self-aggrandizing images. It's self-defeating. Judges have the last word anyway and it doesn't cost them anything to be human. They must treat people as responsible adults and not as wayward, rebellious, disrespectful children. For some judges, this requires an overhaul of their whole personalities and an examination of their own insecurities. Offenders appearing in court know who the judge is, yet many judges seem compelled to make sure that everyone realizes it.

The court service staff also must reflect a positive, constructive philosophy; they should quit acting like little judges and proxy authoritarians and begin to act as adults trying to help other adults become responsible. Many corrections personnel, due to their own insecurities, unconsciously take on a parental role. The offenders unconsciously react to that with childlike, negative game playing and irresponsibility.

An effort must be made to go out into the community to sell restitution and get community cooperation. People readily accept a return to old-fashioned justice that requires responsibility but they are turned off by new innovative programs. It's been my experience that restitution is accepted by the conservative elements of a community because it is productive, looks out for the victim, and saves tax dollars; liberals, on the other hand, see it as more humanitarian.

Offenders must be involved in their sentences as responsible adults. If offenders will meet the judge halfway, much can be accomplished. Forcing a sentence down their throats only reinforces the defensive resentment losers harbor and causes further alienation. Involvement gives them dignity. Degrading and negative restitution must be avoided. Making fools of offenders or making them feel like part of a chain gang

is counterproductive to creating self-esteem.

Supervision and follow-up are essential. Sentences must be clearly understood and the penalties for failure must be discussed, leaving no room for manipulation. Anyone who slips through the system weakens it and destroys its credibility.

Good accomplishments by an offender must be acknowledged and rewarded. A pat on the back and a handshake can do wonders for a loser's self-esteem.

THE JUDGES' JOURNAL: Why do you feel alternative restitution sentencing is superior to traditional sentencing?

JUDGE CHALLEEN: It's a way of treating the property criminal who are overcrowding our prisons and jails in a constructive manner. Its goal is to free corrections personnel so they can spend more of their time on the violent and more dangerous offenders and on chronic repeaters. Our present system neglects most inmates who simply do dead time with no benefit to themselves, their victims, or society. Restitution sentencing saves taxpayers money, it builds self-esteem, and it makes a productive individual out of the offender. It also repays victims and the community and, from all indications, has a much lower repetition rate. (A study of our court revealed a 2.7 percent repetition rate over a period of five years with restitution sentencing, compared to 27 percent for offenders jailed.) It makes the offender accountable to, instead of a burden on, society.

We also found that restitution sentencing reduces the adversary nature of the court system and opens up our trial calendar. Offenders opt to plead guilty if given an opportunity to become involved in a restitution sentence and to avoid degrading incarceration. Another by-product is that fewer court-appointed attorneys are requested or required. An unexpected phenomenon we noticed is that many offenders, after discharge, voluntarily return for counseling with our Court Service Department to discuss their problems and achievements.

THE JUDGES' JOURNAL: Why are judges reluctant to endorse many of these principles?

JUDGE CHALLEEN: Let's face it, most judges believe in the punishment system despite the statistics. If judges want to protect themselves and play it safe for the next election, the easy way out is the traditional court system that leans heavily on punishment. People expect it, want it, and can't understand why it doesn't work.

Furthermore, judges are lawyers trained in the adversary system where everything polarizes, squares off, and resolves itself down to a head-on clash of power within the punishment-leniency system. The alternative justice system that I'm speaking about attempts to remove itself from the adversary system with its negative nature and instead trys to be positive and constructive for the offender, the victim, and society without being lenient. The court takes a positive role in helping the offender right his or her wrong.

Judges, as graduates of the adversary system, have learned to play the role the system expects. The alternative restitution justice system requires a new way of thinking that abandons some of the myths to which we continue to pay homage although they have been proven ineffectual for chronic losers.

THE JUDGES' JOURNAL: In any concept there are advantages and disadvantages. What are some of the problems with restitution sentencing?

JUDGE CHALLEEN: It takes more supervision, and many judges simply do not have the personnel or staff to make a good restitution program works. There is also an unrealistic fear of liability for personal injury or Workmen's Compensation claims, but that's an excuse some judges use to avoid involvement. We haven't had a claim in seven years and, if we did, the county's liability insurance would cover it. As an added measure, Minnesota [1979 legislature] passed a statute [3.739] that gives the court immunity from suits arising out of restitution sentences, and any claims must be presented to the legislature. The paradox of the liability question is that most lawsuits result from injuries that occur during incarceration, yet most judges feel more secure imposing a jail sentence.

POSITIVE SENTENCING GUIDELINES

"It is not you we do not like, but it is the things you do sometimes that make us angry."

"The question is not what are we going to do to you; but rather, what are you going to do for us to make it right?"

Some judges are concerned that fine revenues will be cut back severely but this, once again, is a false fear. A quick study of most court records reveals that a vast majority of fines are paid by usually normal law-abiding citizens who make human mistakes such as minor traffic violations and who simply forfeit a fine.

Restitution sentencing is aimed at the small percentage of criminals for whom fines are not appropriate. This category includes the unemployed, chronic losers, welfare recipients, or dependent young offenders who show indications of heading for more serious trouble.

Another problem is that most communities fear working with offenders. These negative feelings take time and effort to overcome, but, with experience and

after overcoming their initial apprehensions, agencies begin to call the court for help.

Judges also fear that offenders, when doing community service, will embarrass the court by committing a theft or other criminal act. We have not experienced this problem directly, but we feel the risk greatly outweighs the benefits, particularly when compared to the statistically-proven reality of crime repetition with probation sentences.

Some judges have experienced what they feel is community resistance to restitution sentencing. Undoubtedly there are negative communities, but then the question becomes whether a negative community will lead the judge, or the judge lead the community?

[redacted]

JUDGE CHALLEEN: If we approach the problem from the low self-esteem standpoint, a loser needs a job the most. However, it's wishful thinking to expect the average unemployed person to be so benevolent or socially conscious. From a practical standpoint, obtaining jobs for losers is a difficult task. Employers naturally will choose an achiever over a loser because there is less potential for problems. Begging or creating jobs with government funds has not been the answer either.

[redacted]

Our dilemma is that we cannot duplicate it. Like a free-floating bubble we can look at and admire it, but if we try to touch it we will destroy it instantly. Its success depends upon the very fact it is independent and not part of our correction system. Somehow we must live in harmony with "Delancey Streets" and encourage their development, accepting that losers, given the right conditions to gain self-worth, can rehabilitate themselves better than we can.

[redacted]

JUDGE CHALLEEN: Because we approach sentencing with the philosophy that low self-esteem is the basic problem, age distinctions have little meaning. A juvenile delinquent is simply a young loser with self-worth problems. Older citizens also have self-esteem problems. In recent years, more senior citizens have appeared in our courts on petty theft charges than ever before. They are classic examples of how retirement leaves people without funds and with a sense of worthlessness. Community service is ideal for elderly offenders because it gives them some purpose and a sense of belonging.

[redacted]

THE JUDGES' JOURNAL: Your program uses court service officers to make it work. What can judges do when they have no staff to help them?

JUDGE CHALLEEN: The court can seek out volunteers such as housewives, retired senior citizens, retired military personnel, members of the clergy, community service clubs, and volunteer agencies or persons within charitable organizations who will cooperate with the judge on the supervision of offenders. If necessary, a separate independent restitution agency can be created that is funded or requires a small tuition charge to enter the program.

THE JUDGES' JOURNAL: You have done considerable lecturing around the country. What has been the response to your message?

JUDGE CHALLEEN: I find laymen and citizen groups are the most responsive. They are frustrated by crime and feel the criminal justice system just isn't working. They aren't nearly as punitive-minded as we judges are led to believe, but they have no respect for probation. Audiences of judges usually break down into a third who are extremely responsive and probably already use some aspects of restitution sentencing, another third who are apprehensive and hesitant about trying different approaches, and the remainder who become angry at the threat to the sentencing methods they have become comfortable with and are convinced work. Judges in the latter category refuse to accept the concept that punishment is effective for achievers and counterproductive for losers. I often say to these judges that trying to rehabilitate a loser in jail is like trying to rehabilitate an alcoholic in a tavern; the place just isn't conducive to positive, constructive thinking.

THE JUDGES' JOURNAL: What do you feel is the future of the alternative restitution justice system?

JUDGE CHALLEEN: We need the traditional punishment court system as a bottom line or backup for the restitution system. A small minority of offenders refuse to be responsible and continue to lie, cheat, and manipulate when given a restitution sentence. We call these offenders "slip sliders," and they force us into a corner where our only alternative is to meet their behavior with negative punishment. Overall, I feel restitution sentencing fits 10-25 percent of all offenders who appear in court. And this minority is responsible for the majority of crime.

Alternative restitution sentencing is growing rapidly.

Unfortunately, it is growing in two directions. One direction is concerned with the self-esteem concept as set forth in this article, and the other gravitates toward community service as just another method of additional punishment.

Discussion and exposure to alternative restitution sentencing concepts are necessary. At the National Judicial College's "Sentencing Misdemeanants" session, three class hours relate to developing restitution programs. We must define some of the goals of our criminal justice system in light of recent studies. Creating good restitution sentences is not simple, and each offender must be treated differently. This requires skills and team work that are not easily gained independently and, therefore, workshops should be developed across the country.

THE JUDGES' JOURNAL: Perhaps this type of sentencing philosophy may work in rural America, but what about the judge who must deal with inner-city crime problems?

JUDGE CHALLEEN: Judges in larger cities have been hesitant about restitution sentencing, apparently feeling that big cities are too impersonal for this type of sentencing to work. However, if community service is on a neighborhood basis, the problem can be avoided. One advantage of a large city restitution program is the existence of many more resources and agencies. Small rural courts often have to be much more creative in finding projects.

Inner-city offenders share with their rural counterparts the problem of developing self-esteem. A loser is a loser whether he's surrounded by tenement housing or cornstalks. The racism, welfare-dependence, and poverty of our large cities' slums and ghettos daily reinforce the hopelessness, anger, and frustrations of their inhabitants. That means that the cases are tougher to deal with and require more effort. In every human being there is a desire to be and to belong; except for the most criminally depraved, everyone wants the same satisfactions of self-esteem: warmth, love, dignity, decency, comradeship, health, security, and acceptance. We must work on that small, positive spark instead of trying to snuff it out as we have been doing with our negative punishment justice system.

THE JUDGES' JOURNAL: How can one isolated restitution sentence by any court change the character of an offender?

JUDGE CHALLEEN: It can't, it doesn't, and we don't pretend it does. We find there are good points and negative points in every offender. We were astonished one day to discover that one of the biggest losers we had in our court system quietly had been helping an invalid for years. Our purpose is to magnify the positive qualities in offenders and to call attention to their losing characteristics. We provide a means to act constructively and challenge the offender to become accountable. We find the ongoing relationship that develops between our Court Service Department and the offender on a voluntary basis to be the most effective way to bring about change.

I once played in a donkey basketball game for a charitable cause. I soon learned that when I tried to pull or push the donkey around the gymnasium we got absolutely nowhere, but if I let him move on his own with my guidance, we got around quite well. Maybe we judges can learn something from donkeys.

Abrams

(Continued from page 13)

government is hardly so consistently venal or the press so consistently able. But the scenario has happened, all too recently. And there is no reason to assume it will not happen again.

Thus, it is crucial that the roles of the players in the scenario be clear ones. "Your job," Secretary of State Dean Acheson wrote to James Reston "requires you to pry, and mine requires me to keep secret."[23] Acheson was right. It is, I suggest, as simple and as clear as that. And it is important that judges as well as journalists recognize this.

1. United States v. New York Times Co., 328 F. Supp. 324, 331 (S.D.N.Y.), *remanded*, 444 F.2d 544 (2d Cir.) (*en banc*), *rev'd*, 403 U.S. 713 (1971).
2. Miami Herald Pub. Co. v. Tornillo, 418 U.S. 241, 259 (White, J., concurring).
3. CBS v. Democratic National Committee, 412 U.S. 94, 124-25 (1972).
4. *E.g.*, Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976); New York Times Co. v. United States, 403 U.S. 713 (1971).
5. *Supra* note 2.
6. *Id.*
7. Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978).
8. Smith v. Daily Mail, 47 U.S.L.W. 4824 (U.S. 1979).
9. *See generally*, KNIGHTLEY, EVANS, POTTER & WALLACE, SUFFER THE CHILDREN: THE STORY OF THALIDOMIDE (1979).
10. 408 U.S 665 (1972).
11. *Id.* at 709 (Powell, J., concurring).
12. 436 U.S. 547 (1978).
13. *Id.* at 568 (Powell, J., concurring).
14. 98 S. Ct. 1635 (1979).
15. *Id.* at 1650 (Powell, J., concurring).
16. 73 F.R.D. 387, 396 (S.D.N.Y. 1977).
17. 47 U.S.L.W. 4902 (U.S. 1979).
18. *Id.* at 4910 (Powell, J., concurring).
19. Manning, *If Lawyers Were Angels: A Sermon in One Canon*, 60 A.B.A.J., 821, 822 (1974).
20. RTNDA COMMUNICATOR, July 1979 at 10.
21. NBC v. FCC, 516 F.2d 1101, 1153 (D.C. Cir. 1974) (Leventhal, J., concurring), *vacated on other grounds*, *id.* at 1180 (1975), *cert. denied*, 424 U.S. 910 (1976).
22. Greenberg v. CBS, Inc., N.Y.L.J., Aug. 8, 1979, at 1, 7.
23. DE TOCQUEVILLE, DEMOCRACY IN AMERICA, 174 (Arlington House ed.).
24. New York Times Co. v. United States, 403 U.S. at 717 (Black, J., concurring).
25. Quoted in J. HOCHENBERG, A CRISIS FOR THE AMERICAN PRESS, 47 (1978).

Table 2.54 Attitudes toward handling of juvenile offenders, by political philosophy, United States, 1977

NOTE: See NOTE, Table 2.6. The category "political philosophy" was ascribed on the basis of the respondent's answer to the question: "How would you describe your views on most political matters: liberal, moderate, or conservative?" Percents may not add to 100 because of rounding.

Question: "There are now different laws for handling juveniles who commit crimes and adults who commit crimes. Some people want to change this. Do you think that juveniles of, say age 15 or 16 who commit a crime should (READ LIST)?"

[Percent]

	Total	Liberal	Moderate	Conservative
Be tried in the same court as adult offenders or in juvenile court:				
Same	40	36	42	42
Juvenile	51	53	50	53
No opinion	9	11	8	6
Go to the same prison as adults or to separate prisons:				
Same	11	8	12	8
Separate	86	90	86	89
No opinion	3	1	2	3
Be given lighter prison sentences than adults or the same sentences:				
Lighter	44	46	43	47
Same	42	41	43	42
No opinion	14	13	14	11
Have their names kept out of the newspapers, or have their names made public:				
Out of papers	38	45	39	36
Made public	54	50	53	58
No opinion	8	4	9	5

Source: CBS News, "CBS News/New York Times Poll—Part II," New York, 1977. (Mimeographed). P. 11. Reprinted by permission.

Table 2.55 Juvenile and family court [illegible] agreeing with statements about restitution by juvenile offenders, by court use of restitution, United States, 1977

NOTE: Results of this survey are based on a systematic random sampling of 197 juvenile courts selected from all courts on the mailing list of the National Council of Juvenile and Family Court Judges. Completed questionnaires were obtained from a total of 133 courts for a response rate of 68 percent. [illegible] For survey purposes, restitution was defined as "any type of monetary or non-monetary payment that the youth is asked to make directly to the victim or indirectly through 'community services' or other similar activities" (Source, p. 46).

[Percent]

	Restitution court (N = 114)	Non-restitution court (N = 19)
[illegible] property [illegible]		72
Restitution reduces recidivism among offenders who have committed personal offenses	61	58
[illegible] property [illegible]		84
[illegible] personal offenses increases		77
Restitution would increase the victim's fear of future offenses	18	16
Restitution would increase the offender's sympathy (or empathy) with the victim	47	18
[illegible]	1	22
Restitution requirements would make victims less satisfied with the criminal justice system because they seldom receive the full amount they were supposed to receive	21	47
[illegible]	86	63
[illegible]	89	32
[illegible] offenders would enjoy support from juvenile court judges	81	63

Source: Peter R. Schneider, Anne L. Schneider, Paul D. Reiter, and Colleen M. Cleary, "Restitution Requirements for Juvenile Offenders: A Survey of the Practices in American Juvenile Courts," *Juvenile Justice* 28(November 1977), p. 51 Reprinted by permission.

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PROGRAM REVIEW

MISSISSIPPI RESTITUTION - CORRECTIONAL CENTER
P. O. BOX 427
(601) 762-1331

The Mississippi Restitution - Correctional Center at Pascagoula officially began its operation in July 1977, thus becoming the first correctional facility in this state to emphasize the concept of victim compensation. This community-based intervention program serves as a diversion of "marginal risk" offenders from incarceration at the state penitentiary.

Potential candidates are referred for consideration by the 19th Judicial District Court, and an extensive screening process is then undertaken to determine if the individual is an appropriate candidate.

In general, persons selected by center staff for Mississippi Restitution - Correctional Center placement have been adjudicated of felonious property crimes, are willing to participate in the program and do not have an extensive prior criminal record. Upon the recommendation of the center's staff, the Court alters the original sentence from incarceration to probation, with Mississippi Restitution - Correctional Center residency as a special condition.

Upon arrival at the center, a new resident is permitted a brief period of adjustment and orientation. During this initial period the counseling staff works closely with the new resident to establish goals which are expected to be achieved during his residency.

The primary emphasis of the program is placed on work, and each resident is assisted in obtaining full-time gainful employment in the community. Participants are required to develope and maintain a sufficient income to pay full monetary restitution of actual loss and/or damages incurred by the victim. The offender may be required to meet with the victim (with consent of victim) to determine the restitution amount. Once this figure is established, it becomes the basis of the restitution to be paid by the resident. Restitutions is not only made in monetary payment to specific victims, but also to society through community service work performed for public agencies and indigent persons.

Once a resident is actually employed, a good portion of his pay check is used to pay restitution. From the remainder of his salary he is required to pay the following: $35.00 per week to the Department of Corrections for room and baord; deposit a minimum of $5.00 in a holding account to be given to the resident upon his release; make payments toward court cost and any fines that may be imposed by Court; send money for family support; and he is permitted to keep $20.00 a week to arrange his transportation to and from work and any personal needs which he may have.

Residents are required to stay at the center except when they are working at gainful employment or have been given a pass to leave the center. The only other exception would be to attend one of the external programs in the community. Upon leaving the center, the resident is logged out and the time of his return is noted. Any deviation from the norm makes the resident subject to disciplinary action.

Treatment programs are designed to facilitate the resident's re-entry into society. They are both internal and external in nature--- some take place within the facility itself while others are conducted in the community. Although the majority of the programs are internal, the external programs which utilize the community resources are essential and play a vital role in the rehabilitation process.

The following is a list of programs available to all residents:

[1] Internal Programs
- [a] individual counseling
- [b] group conseling
- [c] personal adjustment & motivation
- [d] work ethics
- [e] religious programs (voluntary)
- [f] recreation

[2] External Programs
- [a] adult basic education
- [b] vocational training
- [c] alcohol & drug counseling
- [d] mental health counseling
- [e] religious services (voluntary)

A point "token economy" is used to reward participation in the Center's various programs. Points are given daily for proper behavior and deducted for improper behavior. Depending upon the total number of points earned each week, a resident may qualify for a 12, 24, or 48 hours pass to visit with his family. Visitation is allowed each Sunday for those residents who did not qualify for a pass. A designated number of points must be earned to qualify for release consideration. A Release Board, (composed of three Mississippi Department of Corrections field personnel, not involved in the Center's day to day operations), review the resident's file, interviews the resident, and makes recommendations to the Superintendent regarding conditions of release.

After release from the Center's custody, the offender is transferred to street probationary status. However, the Center's staff continues to monitor the offenders re-entry into the community, maintains liaison with the assigned probation field officer and hold periodic follow-up sessions with the offender.

Since its inception, the Mississippi Restitution - Correctional Center program has engendered active support and interest, both locally and statewide. It was the object of a nationally televised brief documentary of Columbia Broadcasting Systems (CBS) on November 17, 1978. The Mississippi Press, a local newspaper in Pascagoula has published several favorable articles and editorials regarding the Center's presence and operation. The Mississippi State Legislature, not only has insured the continuation of this Center's operation, but has appropriated funds for the immediate establishment and operation of three additional centers, based on the Pascagoula Center's design. The residential design and operational methodology of the Mississippi Restitution - Correctional Center lends itself to adaptation to virtually any area in the country. However, the most critical element in the design is its dependency upon the immediate community for the paid employment of the program's participants and this may restrict its application in some areas.

One special feature of this residential restitution design is its blend of traditional probation and centralized incarceration. While the resident is "free" for approximately 10 hours per day, he is required to reside at the Center and his behavior is closely monitored. The average

six month term of residency allows the offender to be released much sooner than he would have been if he had been sentenced to the state penitentiary. Although possessing a mild degree of restriction, the resident has the opportunity to remain in his local community as a tax payer, rather than a tax burden. In addition, he continues to contribute to the support of his family, thereby reducing the likelihood of the need for public assistance. He is able to develope community resources which will better enable him to successfully adjust to street probation upon release and avoid the trauma of post-incarceration transition. He has the opportunity to repay the victim of his crime and to establish patterns of personal, social and financial responsibility, which is the ultimate goal of all correctional efforts.

PROJECT REPAY:
Crime Costs, Restitution Repays

MULTNOMAH COUNTY DISTRICT ATTORNEY'S PROJECT REPAY REPORT 1978

HARL HAAS
DISTRICT ATTORNEY
MULTNOMAH COUNTY
ROOM 600 MULTNOMAH COUNTY COURTHOUSE
PORTLAND, OREGON 97204
(503) 248-3222

Dear Citizen:

We are very proud to be participating through Project Repay in the Law Enforcement Assistance Administration restitution initiative. This research action initiative provides a valuable opportunity to test and evaluate the concept of restitution and its impact on both victims and criminal offender.

Restitution puts the costs of crime where it belongs, in the offender's pocket. At the same time, the offender, through repaying his victim for the damages incurred, may become a more responsible member of society by realizing the expense and the consequences of the criminal act.

In the early 1970's in Multnomah County only some $30,000 of restitution from offenders to victims was ordered by the courts each year. The emphasis of restitution by Project Repay with our Judges' cooperation has resulted in yearly increases in the amount of restitution ordered to be repaid to crime victims to over $400,000 in 1977. The dedicated staff of the project and court's receptiveness to restitution as a sentence has been responsible for the return of funds to our victimized citizens.

It is hoped that our experiences and techniques will be shared with and adopted by other communities throughout Oregon.

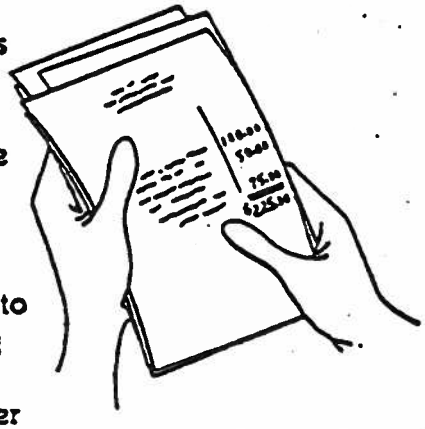
Sincerely,

Harl Haas,
Multnomah County District Attorney

"Too often an innocent victim has not only been brutalized and physically incapacitated, but has also suffered injury to the extent that he has had to bear huge hospital costs, medical costs . . . we find that many of these innocent victims have been the elderly and the poor who are within the geographical area where crime has been rampant and who are not able to bear the huge costs of insurance in order to compensate themselves . . ."

Judiciary Chairman, Peter W. Rodino, Jr.
Member of Congress, (Dem, New Jersey)

A person who is mugged, assaulted, or raped often needs medical treatment and counseling and may suffer loss of work time or permanent physical injury. Traditionally the victim has had to bear these costs which are often extraordinary. Since taking office in 1973, District Attorney Harl Haas has tried to resolve the inequities existing in the criminal justice system that have favored the offender and disregarded the victim. The office has made a major commitment to the concept of restitution where offenders repay their victims for the costs incurred due to the crime.



Initially, a policy required all deputy district attorneys to recommend repayment to the victim as a part of the offender's sentence whenever appropriate. This resulted in yearly increases in the amount of restitution being paid from $30,000 in fiscal year 1972-73 to over $40,000 in fiscal year 1973-74, and $62,000 in 1974-75.

With the start of our Victims Assistance Project in July of 1975, we discovered that a majority of crime victims were often best aided by restitution which would lessen the financial impact that the crime had upon their lives. The Victims' Assistance Project was able to document and have ordered by the courts a high of $494,000 in restitution from

July 1, 1975 through December 31, 1976.

The overwhelming success of the Victims' Assistance Project in utilizing restitution lead the office to apply for a grant to fund a special project to deal solely with restitution under the L.E.A.A. experiment in restitution initiative. Funds for the project were awarded in the fall of 1976 and the project began operation in November, 1976.

One of seven restitution projects across the nation funded for two years by L.E.A.A., Project Repay seeks court-ordered restitution from offenders to repay victims for their losses incurred due to the crime. The project reviews every felony case for possibilities of restitution and also documents losses in misdemeanor cases referred to them by deputy district attorneys. While reducing the financial impact of the crime upon the victim, restitution for these losses can also make the offenders realize the extent of damage that the criminal act had upon the victim. As a condition of sentencing, restitution allows the offender to engage in a constructive activity to make reparation for the injury.

OPERATION

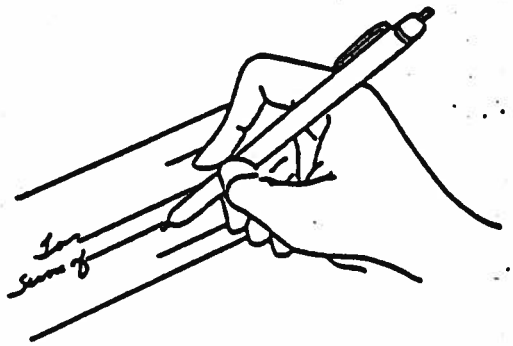
Since beginning, Project Repay has accepted 1,489 cases for restitution documentation. During this same time period, 1439 cases had restitution documentation completed and involved over 2,600 victims and almost as many offenders. During the past almost two years there was $1,364,248 of restitution recommended to the courts for sentences in these cases. Not all of these cases have been sentenced yet, but during two years $682,387 was ordered by the courts, most of it to be paid on time payments by the offenders. An all time high of $404,841 was paid into the Circuit Court restitution trust account by offenders to be disbursed to victims during Project Repay's two years of operation. Additional amounts were paid by misdemeanant offenders to their victims through District Court.

The project is headed by a project coordinator/restitution investigator, an assistant investigator and a deputy district

attorney who document victim losses and make recommendations to deputy district attorneys and the court about the amount of restitution that will be an appropriate sentence.

The staff attorney, in addition to investigating victim losses, is responsible for all of the legal work of the unit including court appearances, restitution and probation revocation hearings for failure to pay and developing legal forms and documents.

The Monitor ensures that offenders have reasonable payment schedules, and stick to those payments unless undue circumstances prevent them from doing so. The monitor's efforts have contributed to the high increase in the amount of restitution actually paid the past year. A legal clerk provides clerical duties for the project as well as screening all felony cases for acceptance by the project.



As Project Repay is an L.E.A.A. research evaluation project, the project has a full-time evaluation specialist on staff. The evaluator collects data on all aspects of Project Repay's evaluation for the Criminal Justice Research Center in Albany, New York which will produce an extensive evaluation of all the restitution projects as well as the concept of restitution.

Case files are screened by the project intake-clerk for presence of a tangible loss (property loss or damage, injury, lost wages, etc.); type of crime, (sexual assaults are handled by another unit); and likelihood of receiving probation (excluding career criminal, armed robbers, and particularly violent individuals who are expected to be incarcerated).

On cases that are accepted by the project, an investigator determines and documents the amount of the loss. This is

billings amounting to over $1,000 on their credit cards from department stores, gas companies and their VISA card. These charges were all in small amounts and made in a short period of time by someone other than the victims as the two had been confined to their nursing home. The cards had been stolen by an employee in the nursing home and used extensively before the couple noticed they were missing. Fortunately, the offender was apprehended and successfully prosecuted. That, when all the bills were in, use of the cards amounted to nearly $2,000, a loss the elderly couple would have to bear since the cards had not been reported stolen soon enough. The loss would have been a great hardship to repay as the victims were on Social Security and receiving assistance from their children in order to remain in the nursing home. Project Repay's documentation of the unauthorized use of the cards led deputy district attorney handling the case to recommend and the judge to order restitution along with the offender's term of probation.

VICTIM INVOLVEMENT

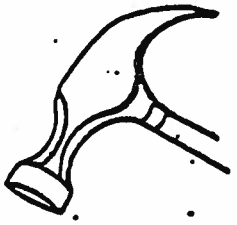
To enhance the citizen's understanding of the criminal justice system, Project Repay urges crime victims to attend sentencings. Often victims are called to testify upon the exact nature of their losses and verify the dollar amounts of restitution recommended by Project Repay. Project Repay or one of the other Victims Assistance Projects in the Multnomah County District Attorney's Office can arrange for victims to attend their necessary court appearances and for transportation, child care or other information and services.

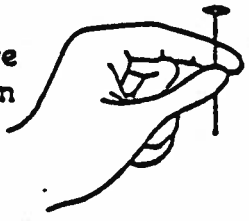
COMMUNITY SERVICE

Frequently an offender will not have sufficient funds to pay a high amount of restitution, in other cases the victims may have recovered all of their property or their losses have been covered entirely by insurance. In these cases Project Repay explores the use of community service as part of the sentence for the offender rather than monetary restitution.

Community service originated from the idea that a crime committed against a person is also a crime against society and that the offender should repay society.

When an offender is ordered to engage in community service as a portion of his sentence, a willing community service agency of some type (often related to the nature of the offender's crime) is located in which the offender volunteers service. For example, an offender convicted of arson may serve his community service hours in the burn unit of a local hospital. Sometimes it is feasible, if the victim is willing, for the offender to actually aid the victim in recovering from the damage due to the crime. This could involve the offender repairing a window broken during the burglary or providing other general services to his crime victim. Project Repay works closely with Multnomah County Probation Alternative Community Service Program in establishing work sites for these offenders. They also provide monitoring and progress reports on offenders in this program.





VICTIMS COMPENSATION

Multnomah County District Attorney's Office advocated and helped to pass the Victims Compensation legislation in 1977. This legislation went into effect on January 1, 1978 and provides state funded reimbursement to crime victims in certain cases. The program is operated as part of the Workers Compensation Board function and will cover any victim of a crime who suffers bodily injury or death and reports the crime to the appropriate policy agency. Losses are compensable up to $23,000, $10,000 in medical and $10,000 lost wages with $3,000 maximum in rehabilitation and/or a death benefit of $1,000. This program helps all

victims of crime whether or not their offender is apprehended. If a victim receives compensation and an offender is later ordered to pay restitution, then the restituion would be paid to reimburse the victims compensation fund.

Also, in 1977, a new restitution bill was passed by the Oregon Legislature which broadens the definition of the term victims and criminal activities so that now indirect victims such as next-of-kin can receive restitution.

This legislation also allows the State Board of Parole to set a payment schedule for restitution at the time of a prisoners release unless the court finds that the defendant has been asked to pay all or part of the restitution ordered at the time of sentencing. Previously, restitution was usually only feasible when the offender was sentenced to probation rather than being incarcerated. Project Repay is working closely with the Parole Board to develop a program where an offender with a short sentence of incarceration would be released early if he completed his restitution obligation.

COORDINATION

Of great importance to the success of the project has been the cooperation of other criminal justice agencies, the police and sheriff's offices who have apprehended the offenders; the county and state probation departments which have provided a substantial help to our office and the courts in insuring that restitution payments are made by the offender to the victim.

The Circuit Court and District Court judges have amply demonstrated their concern for the needs of crime victims in Multnomah County by ordering increasing amounts of restitution in the past years. Their willingness to accept the extensive documentation developed by the Project attests to its success.

Distributed for 10 April 24, 1980 ALRH Hearing

DELANCEY STREET FOUNDATION, INC.

2563 Divisadero San Francisco California 94115

January 16, 1980

TO: Senator Mc Corkle

FROM: Mimi Silbert, Ph.D., Executive Director

RE: Brief History and Description of Delancey Street Foundation

The Delancey Street Foundation, a self-help residential program for drug addicts, alcoholics, prostitutes, and criminal offenders, opened its doors on January 1, 1971, with four members. Since then, more than 3,000 people have come in from the streets or jails - over 60% on referrals from the courts or probation departments.

The population Delancey Street works with is the most difficult to treat. Nine out of ten have been addicts for an average of 7.4 years. Nine out of ten have arrest records. Five out of ten have never worked in any job for longer than one year prior to their entry.

Given the population and the fact that the stay at Delancey Street is voluntary, attrition rates are unexpectedly low. The overall attrition rate for the program is 35%. Of these, the majority left in the first few months of their stay, and a large number of these were in the first year of operation. Subsequently, this figure dropped significantly, and the retention rate in the program averages upward of 70%. The overall retention rate of those who stay the first three months is close to 80%.

Currently there are 360 people in Delancey Street, functioning constructively, completely drug and alcohol free. It is totally integrated with blacks, anglos, latinos; men and women; young and old. Despite long histories of violence common to its population, there has never been one incident of violence in the six years of Delancey Street's existence.

The treatment program itself is a unique combination of residential rehabilitation and community work designed to change the addict's customary patterns of interaction with his community. In order to break the cycle of poverty and drugs, it is not enough that the offender's personality be treated in isolation, nor that he simply be kept as a marginally functional member of society. These kinds of interruptions of drug abuse are tenuous at best. Both approaches leave untouched the basic problems of the addict's ability to interact with new inner-directed ways of living within his community.

Therefore, Delancey Street's program begins with a total break in the person's current patterns. He moves from an apparently criminogenic subculture into a tightly structured community where he begins a process of complete re-education. The process involves leaderless group sessions three times a week; in-house education consisting of daily seminars on everything from philosophy to law to etiquette; tutoring; on-the-job vocational training and formal education through regular community resources. It involves learning to live with and develop anti-criminal and anti-addictive values, attitudes and behavior. Protective in the beginning, Delancey Street's final goal is for the addict to achieve independence not only from his habit but also from the institution that rehabilitates him.

Despite the program's youth, it has impressive achievements to its credit already. Commenting on its part in a nationwide Study of Law and Justice sponsored by the Ford Foundation, Charles Silberman rates the Delancey Street Foundation as "the most important program we have come across so far".

Delancey Street has been the subject of wide coverage by the media in this country and abroad. Articles touting its success have appeared in the New York Times, Washington Post, Time Magazine, Jet Magazine, several issues of the Los Angeles Times, and in well over 100 articles in local publications (e.g., San Francisco Chronicle, Examiner, Pacific Sun, Progress, etc.). Foundation residents have appeared on such programs as Mike Wallace's Sixty Minutes, the Merv Griffin Show, the Johnny Carson Show, the Jim Dunbar Show, Rev. Cecil Williams' Show, Open Studio, the Tomorrow Show, Newsmakers; and a list of other radio and television productions, too numerous to mention, beamed to local and nationwide audiences.

Recently, Paramount Studios contracted with Delancey Street to film a 90-minute pilot movie for television based on Delancey Street's program.

Delancey Street receives no government grants and supports itself through numerous businesses which also serve to train residents in marketable skills: a restaurant and catering service; an automotive repair garage, a terrarium and plant business, a moving company, a construction and painting business, an advertising specialty sales company, a door-to-door Christmas tree and log sales company, a handcraft business specializing in redwood burl tables and monk furniture, an annual fund-raising drawing, and a business that manufactures and markets stereo components. Traditionally considered "unemployable" welfare cases, residents have started each of these businesses and run them so successfully that the program's primary source of working capital is the income they produce.

Members from Stanford Research Institute, Stanford Business School, and the California State University at San Francisco have surveyed these training-school-businesses and have stated that, "The results are little short of miraculous."

Graduates hold a diversity of jobs ranging from probation officer to butcher, from free-lance photographer to troubleshooter on the Alaskan pipeline.

Delancey Street has 100 residents enrolled in private schools and state colleges - including two recently awarded law degrees and now preparing to take the California bar exams. In addition, its own in-house education program offers a broad range of over sixty subjects.

A Delancey Street resident was the first ex-convict to receive a real estate license.

In September 1973, Delancey Street formed its own credit union. Chartered and insured by the Federal Government, it is the first such agency in the country to be owned by and designed for ex-convicts and ex-addicts.

Because of its belief that opportunity structures must be opened up in society for those traditionally "disenfranchised" Americans, Delancey Street is active in community work. Having campaigned tirelessly for passage of the local ruling granting ex-felons and felony probationers the right to vote, Delancey Street set about registering ex-convicts as well as prisoners in the local jails.

Delancey Street is sending its members to escort senior citizens to and from the bank.

Delancey Street has provided goods and services to other community groups and has helped well over 150 community projects.

During the summer months, Delancey Street provides field trips on their antique double decker bus for 50 children per day from various neighborhood groups. These trips include a tour of Alcatraz, a beach party and cookout, arts and crafts experiences, and drug and crime prevention counselling.

Numerous Delancey Street residents have been called by Commissioners of Corrections of several states (e.g., Massachusetts, Missouri) to mediate impending strikes and to organize prisoners and correctional officials into responsible action.

Delancey Street residents have been the key speakers at prison reform conferences throughout the country and are continually active in prison reform education.

Delancey Street staff have been sent to advise many programs on community mental health and corrections not only in this country but throughout the world.

The President of Delancey Street, by invitation of the French Ministry, represented the United States at an international conference on drug abuse held in Paris.

Delancey Street has designed and published a community newspaper which we are distributing to the doors of all San Francisco residents.

The success and ideas and initiative go on and on. These early statistics are, of course, suggestive rather than conclusive. One fact, however, emerges with incontrovertible clarity: Delancey Street has all the earmarks of being the kind of community-based alternative to the criminal justice system that everyone from the local wardens to the President's Commission on Crime is calling for. And Delancey Street is not a theoretical ideal. It is a working reality.

MRS:mhn

DELANCEY STREET FOUNDATION:

A PROCESS OF MUTUAL RESTITUTION*

By

Mimi H. Silbert

Deborah was 27 when she came to Delancey Street. A heroin addict at 12, a street prostitute at 13, she had been "cured" by over a dozen other programs and hospitals; she had spent five years in prison, and had lived through numerous horrors, like having her baby drown in the bathtub while she turned her back on him to take a fix; she had tried to kill herself three times. Deborah left school in the ninth grade, was unskilled, and stated that she felt good "only with men and drugs". She came to Delancey Street to "beat a prison case", promised (as all residents must) to stay two years, and intended (as all residents do), to stay only a few months to clean up and then leave.

Deborah stayed at Delancey Street out of fascination and manipulation: seeing people she knew as losers on the street, living in San Francisco's most exclusive residential area, well-groomed, well-dressed, she believed "there must be something 'dirty' going on at Delancey Street", and planned to stay long enough to get in on it. Before she realized it, she had internalized enough of the processes she had been "imitating", that she began to rethink her old values and attitudes. She worked long enough and hard enough in the tightly structured community to see herself gaining skills and work habits. She had been confronted about herself often enough by her peers that she had come to take responsibility for what she had done, and to exert some control over what she was doing now. In short, Deborah experienced something new: she saw a

* *Written for Gartner & Riessman, eds., Mental Health & the Self-Help Revolution, Human Science press, in press.*

small hope for herself. Instead of playing the "cure game" while knowing secretly that she would always stay a dope fiend, Deborah began to believe that she could - and would - change. And then she stayed at Delancey Street for the right reasons: to redo her life.

Three and one half years later, Deborah graduated from Delancey Street. She had an A.A. in Business and a well-paying job as a sales manager in a nationally known firm. She traveled for the firm, received supervisory training, and was a respected employee. Aside from her career and well-balanced personal life, Deborah set up a program for para-professional volunteers to work with adolescent girls returning to the community from mental hospitals. Deborah manages to come back to Delancey Street often to serve as a role model for the new women residents who are coming in, giving their word to stay two years, and privately planning to stay a few months, clean up, and leave...

Delancey Street Foundation is described as a residential treatment center for ex-addicts, alcoholics, convicts and prostitutes. The Foundation prefers to consider itself a re-cycling center, where those whom the system has defined, and who, indeed, have defined themselves as society's garbage, can live, work, and learn together to return to society as productive citizens. Delancey Street is a self-help center in the truest sense of the word. The Foundation receives no government funds, so that its financial support depends upon its residents. Delancey Street has no staff of experts, either professional psychologists or professional ex-drug addicts, so that its "therapy" also depends upon its residents. All too often, those of us involved in reform of one or another variety, define ourselves by our goals rather than by our

processes. While by goal, Delancey Street is defined as a drug/alcohol/crime treatment program, in its processes, Delancey Street has less in common with funded, staffed treatment programs, than it does with large families or small neighborhoods. In families and old-fashioned neighborhoods, as in Delancey Street, members are dependent upon one another as they grow to develop an identity and an independence which allow them to enter the world-at-large alone, while still maintaining a sense of continuity with the family and the old neighborhood. Delancey Street's self-help process of growth and change and interdependence is applicable to any group of varied goals who choose to pool their resources, rely on their own strengths, and help one another develop.

The residents of the Delancey Street Family, like Deborah, are the hardcore helpless: those traditionally considered by society to be "unamenable to treatment". Over 85 percent have been heroin addicts for an average of ten years; over 60 percent are polydrug abusers; over 40 percent are alcoholics.* The average resident at Delancey Street has served a mean of seven years in prison and has been returned to prison between three and four times. S/he comes from a poor family, reads and writes at the sixth grade level, is unskilled, and has never held a steady job for as long as a year. Given the population, the attrition rates are unexpectedly low. The overall attrition rate is 35%; of these, the majority leave in the first few months of their stay. Of those who leave, some return to Delancey Street and do well the second time. Some may survive well on the street; some go to prison; some die.

Begun in 1971 with four residents and a $1000 loan from

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* These statistics total over 100 percent because they reflect multiple abuse for each resident.

-90

a loan shark, Delancey Street currently has 350 residents earning their own way, living in several buildings in San Francisco, at no cost to the taxpayers. At a separate facility in northern New Mexico, started in 1977, there are about 65 residents living on a ranch located on the San Juan Pueblo. The population averages about one third Blacks, one third Latins, one third Anglos, with occasional small percentages of American Indians, Asians, and other racial and ethnic groups. Residents range in age from 18 to 70, with about one fourth to one third being women.

Over half of the people who come to Delancey Street are referred by the courts through pretrial diversion, as an alternative to prison, or as a condition of probation or parole. The others come in off the street. There is only one criterion for entry into Delancey Street: the person must ask for help him/herself. No payment is accepted. No requests from concerned parents or lawyers can substitute for the individual taking the first step of accepting the responsibility for his own life.

Social problems like drug addiction and crime are complex phenomena which involve the total <u>interaction</u> of individuals with the system. In our zeal for quick cures to these problems, however, we develop simple definitions. There are those of us who consider crime to be the result of an unjust and inequitable society. These people tend to "kiss the butts" of the poor misunderstood criminal. The result, unfortunately, is legions of junkies and criminals who carry more guilt for one more con, and who, because they are stripped from the responsibilities of their pasts, are equally removed from the control of their futures. Conversely, there are those who

consider crime solely the fault of the individual, be it through criminal inclination, biological defect, or psychological disease and personality disorder. These people tend to "kick the butts" of the criminal. But this response, while it engenders anger, bitterness and hatred, rather than manipulation and guilt, leaves the criminal as void of options as the other extreme. We place people in prison, where, however horrible or humane the conditions, the inmates are stripped of all interactions with society; they are also stripped of all responsibility, and are maintained at the taxpayer's expense. Thus, they emerge with no sense of responsibility or personal power.

Delancey Street cuts through this dichotomy to stress the interaction of the individual with the social system. Delancey Street's philosophy is that the individual must take the responsibility for his own actions so that he can exert some control over himself and create some viable options. Only from a position where the individual has some personal power over his or her life, can s/he move to demand his/her due from society or work to change the inequities of its system.

Hundreds of people have graduated from Delancey Street with an overwhelming rate of success. Over three fourths of the graduates are currently thriving in the community, with lifestyles and occupations ranging from a deputy sheriff, a mortician, real estate brokers, and advertising executives to contractors, truckers who own their own companies, engineers, medical and dental technicians, and lawyers.

The Foundation takes its name from the street in New York's Lower East Side where, at the turn of the century, Delancey Street came to symbolize the self-reliance of Old

World immigrants who worked and earned their way into the mainstream of American life. In fact, the Intake Department is called "Immigration", for the people who come to Delancey Street are like immigrants to the American system. They have never learned to live legitimately and successfully within that system, and that is what Delancey Street teaches them. While this generation has been labeled the narcissistic "me generation", where people struggle not to impose their own values on others, Delancey Street stresses traditional values: the work ethic, the importance of self-reliance and the dignity of earning one's own way in the world, and helping others as a central means to feeling good about one's self. Unlike other organizations which develop alternative principles and lifestyles, Delancey Street prepares its residents to live effectively in the dominant American social culture. To "choose" to reject a society which has rejected them is a meaningless protest, for there are few alternatives. But the decision to work to change a system in which they have numerous positive alternatives, is indeed a viable choice.

The philosophy of change at Delancey Street is based on what I call "mutual restitution". The residents gain the vocational, personal, interpersonal and social skills necessary to make restitution to the society from which they have taken illegally, consistently and often brutally, for most of their lives. In return Delancey Street demands from society access to the legitimate opportunities from which the majority of residents have been blocked for most of their lives. By living together and pooling resources, Delancey Street residents acquire enough strength and credibility that the demands to gain access to society's opportunities must be taken seriously. This process, of gaining the skills and

abilities and self-concept necessary to make and receive social restitution, minimally requires two years. The average stay, prior to graduation from Delancey Street, is three and a half years.

In order to accomplish this process of mutual restitution, there is a constant training and education process which begins the day the new resident arrives. The first area of re-education is "school learning". Everyone who comes to Delancey Street is tutored in basic skills: reading, writing, and math, until they receive a high school equivalency certificate. After that, residents can go on to various forms of education. There are currently over 100 residents in colleges and professional schools. One resident, soon to graduate, is now in his second year in medical school.

The second area is vocational training. Delancey Street maintains nine training schools which also serve as the businesses by which the Foundation earns its living. These training schools include a restaurant, a catering business, a moving and trucking school, terrarium and sand painting production and sales, furniture and woodwork production and sales, specialty advertising sales, antique car restoration, the operation of outdoor Christmas tree lots, and a print shop. Residents who have traditionally been unemployable welfare cases, have started, worked, and managed these training school businesses so successfully that they are the Foundation's primary source of working capital.

Vocational training is accomplished in three phases. The first is in-house training, where the residents are trained to perform skills simply within the Foundation. The stress here is not only on learning basic skills, but on

developing work habits and self-discipline. When residents have mastered the basic skills, they move on to testing these skills in work performed through a Delancey Street company for people in the community. After they've achieved a level of competence there, they are ready to move on to the third phase, which is to get a job or business in the community, where they must work successfully for six months prior to graduating from Delancey Street.

In the first few years of Delancey Street's growth, residents chose the area in which they wanted to be trained. However, the residents fell into the stereotyped job positions they assumed society held for them. The women chose paperwork jobs; the Blacks and Latins primarily chose physical labor; and the Anglo males picked sales. Now, every resident is briefly trained in one physical labor job; one sales-oriented job; and one paperwork job. After residents see they have abilities in areas beyond their stereotypic images, they can choose the field in which they want to make their careers.

Everyone in Delancey Street works, and no one, including the two presidents, receives an individual salary. Any money received is donated into the General Fund. That General Fund of the Foundation provides for the care of all residents: housing, food, clothing, entertainment.

Aside from the Co-Presidents, Mimi Silbert and John Maher, everyone working in the Foundation is a resident. It is paradoxical to attempt to confer self-reliance and self-respect on people by a staff of experts. Because there is no staff, there is no we-they division. The rules apply equally to everyone. For example, neither the presidents nor the newest resident can have any drugs or alcohol, or engage in

or threaten any physical violence. Everyone is both a giver and a receiver. This process is much like people mountain climbing in a chain, in which the person closest to the top is pulling for himself and the person whose hand he's holding for his own balance, as well as to pull the other along with him; and that person does the same for the person beneath him, and so on.

Despite long histories of violence common to its population, there has never been one incident of violence in the eight years of Delancey Street's existence. This is accomplished without any external controls, without the weapons needed in prisons, without the drugs utilized for control purposes in many hospitals, and without the humiliation and shame-oriented punishments in which some programs engage. It is accomplished primarily through peer pressure. Punishments for wrong-doing at Delancey Street involve extra work, or losing rewards. The most serious punishment is being asked to leave Delancey Street. Residents employ negative sanctions, as well as positive rewards and role modeling, with one another. This process of people working <u>with</u> one another rather than for or on one another, is critical to the family feeling of unity, as well as to the integrity of the model, and the ultimate success of the Foundation.

Residents are also trained in social survival skills. Every morning and every noon at a daily seminar, they study a vocabulary word of the day and a concept of the day (for example, Emerson's "Self-Reliance"); they learn the basics of money management and of our economic system; of civics; of archaeology and cultural anthropology; of etiquette; of clothing, fashion and style; of sources of energy; of consumer awareness; of ecology; of all the concepts and ideas

that provide us with the tools to build a well-rounded life. These sessions are conducted in seminar fashion, where each resident speaks for a few minutes on the subject being discussed. In this way residents learn not only the content of the subject matter but also the process of group speaking, of presenting an idea and connecting a theory to a personal experience.

One of the central areas of education in Delancey Street is interpersonal relations. The majority of residents have a very difficult time interacting with others. This learning process is accomplished informally twenty-four hours a day through communal living. For example, residents who were once members of racially-oriented gangs such as the Mexican Mafia, the Black Guerrilla Family, the Aryan Brotherhood, live together in Delancey Street in the same dorms; they must learn to fight the institutionalized racism of which they have been a part for so many years. Because residents work together, they must learn to accept authority and dispense authority to others. Developing friendships and sexual relationships are often painful and are always open to the scrutiny of others; feedback is constant at Delancey Street. While residents may become comfortable in relating with one another, it is most important that they develop skills in relating with those who are outside the Foundation. Delancey Street holds a constant open-house where everyone in the community, particularly "coat and tie" people, are encouraged to drop in and talk with residents on all facets of living. This open interaction with various elements in the community assures diversified opinions and buffers the intellectual hemophilia to which we are all prone if we reinforce our opinions by talking only with those who are just like us.

The formal method for learning interpersonal skills is the group process in which residents must participate three

times weekly for three to four hours each session. The stress of these groups (called "games") is not on the individual's problems but on his/her style of relating to others. Here residents explore their feelings for one another and their actions and behaviors toward one another. They learn how the impact of what they say can be brought into greater congruence with what they hope to communicate to others. These groups also allow for the release of hostilities verbally rather than physically. Perhaps most important, the games allow for the development of a sense of humor about one's self, one's life, and one's problems. Unlike the "games" of other therapeutic communities, which are generally attack-oriented, Delancey Street games stress fun, humor, and interpersonal communication skills. The threads of humor and fun run through Delancey Street's entire fabric, and their importance to its strength cannot be underestimated.

Perhaps one of the most difficult areas of education in Delancey Street has to do with educating the self. The majority of residents in Delancey Street have been labeled as "psychopaths" or "sociopaths", those who feel no remorse or guilt for their actions. In truth, Delancey Street residents are consumed and in fact paralyzed by guilt. For most of them, the horrors of life in which they have been involved are so great, that the need to obliterate these memories is a life-saving defense. To come to grips with some of the actions they have perpetrated against themselves and others before they have any positive experiences with which to mitigate the horrors could be a totally destructive process.

Residents are caught in an ever-downward spiral of self-destructive acts which destroy not only themselves but others; this leads to guilt, which leads to self-hatred; which leads

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to more self-destructive acts. In order to break the cycle, it is imperative to interrupt it with some positive experiences. In the tightly structured environment of Delancey Street, residents who follow the rules cannot help but succeed. They achieve successes at work; because others are counting on them, they achieve successes with helping others, particularly those newer than themselves; they succeed in caring more for themselves in their personal habits: their cleanliness and clothing, for example. Rather than enshroud the negative self-concept with responses of support from others, residents replace the self-hate with self-respect by acting in such a way as to earn it and earn as well positive reinforcements from others.

Every reward, from moving from a crowded dorm into a semi-private room; or moving up a notch in one's job; or taking the responsibility and authority for more and more of one's decisions, must be earned through self-discipline, hard work, and caring for others as well as one's self.

At about six months we assume that the resident has achieved enough success and positive experiences to look at the past for the first time in his/her stay at Delancey Street. This is accomplished in a weekend-long marathon session called a Dissipation, which is geared to dissipate the guilt of past behaviors. Here the newer residents, guided by older residents, in groups of fifteen, review their past histories, reliving every act they have committed in the past, until they are able to rid themselves of the tremendous guilt which dominates their lives. The weekend is concluded with the other residents showing the newer residents how, in these past six months, they have proven themselves to be

someone new, to be capable of something different. They now have a greater responsibility, because they've begun to see themselves for what they can be in the future.

The final area of education that Delancey Street stresses is one of the most critical: social or community training. Following the philosophy of restitution, Delancey Street residents, in addition to working, studying and playing games, are encouraged to help others in the community. Since Delancey Street opened, there have been large numbers of residents who have worked with senior citizens, escorting them to and from the bank, visiting homes, showing movies, presenting plays. Residents work with juveniles from poor areas, taking them on cookouts, on tours of the city, on tours of Alcatraz, and giving them crime and drug prevention seminars. By using their own experiences, by showing them that involvement with crime and drugs is by no means tough and glamorous, residents provide a realistic assessment and hence a viable diversion from crime.

Residents also do volunteer work with the handicapped and are engaged in police training. They help with fund raisers for the ballet and the opera. They are all encouraged to vote; and while, like any group, they don't accomplish full voting, several of the residents do go out and work for candidates or issues in which they believe. In essence, they work and donate time and energy to improve the quality of American life.

Social problems often follow the medical model, but too many of them reflect only one style of medical model: that of cancer, say, where the patient goes into the hospital, the

doctor operates and the patient is either a cure, if his disease is cut out successfully, or a failure if it isn't. The social problems of drug addiction and crime are more comparable to scarlet fever or malaria, where people are taken into a hospital. As soon as they have reached the point where they're able to stand on their feet, they take the sheets, boil them, and go down into the swamps because the disease is not one that lives inside the individual and can be cured within the individual. The disease breeds in the swamp and the swamp must be cleaned out or everyone will be reinfected. In our society, the uncared for old people, the social, economic and criminal injustices are all elements of the swamp. None of us is free until all of us have the choices and responsibilities which comprise real freedom. Who better to take responsibility for cleaning that swamp than those of us who seem to be most prey to fall victim to the disease?

Therefore at Delancey Street, although our statistics are extremely impressive, we consider it far more important to measure our success not simply by counting the number of individuals "cured", but by measuring the impact we have had on the swamp. Delancey Street, for example, started the first Federal Credit Union by and for ex-convicts, where poor people and those traditionally incapable of receiving loans from banks and other credit unions can get the money necessary to get started in some legitimate way in society. Delancey Street fought to get wine and beer licenses for ex-felons and for the right of ex-felons to practice law. Delancey Street fought to get ex-felons real estate licenses. Each of these has not only helped the individuals for whom Delancey Street secured the certificate, but has helped hundreds of ex-felons for whom these many more opportunities are now opened. Delancey Street has

worked with the handicapped in their fight for civil rights. Delancey Street has fought for the rights of labor groups as well as for their responsibility to integrate their membership.

Delancey Street has been the subject of wide coverage by the media in this country and abroad. Articles touting its success have appeared in the New York Times, the Los Angeles Times, People Magazine, Playboy, Playgirl, Time Magazine, and numerous others. Foundation residents have appeared on such programs as Mike Wallace's Sixty Minutes, the Merv Griffin Show, The Tonight Show with Johnny Carson, and others. Residents have been requested by Commissioners of Corrections of several states to mediate prison problems, and they have assisted hundreds of groups around this country and other countries in developing programs of their own.

Thus, while great numbers of people have succeeded in their task of no longer using drugs and no longer committing crime, we feel that our residents have succeeded in more important ways. They have demanded of themselves that they make restitution to society, that they care not only about their own financial success in life, but that they care about honesty, integrity and the values by which we remain more than a country of people living together: values which make us a society. They have pooled their resources together to demand from society the restitution which grants them access to the same opportunities the middle class and the upper class enjoy. Ultimately, then, the success of the residents of Delancey Street is more than the hundreds of success stories like Deborah's; it is the dent they have made and are continuing to make in cleaning up the swamp which threatens to reinfect them, and perhaps infect us all.

Proposal presented April 24, 1980 ACR 44 Meeting

[illegible]
[illegible] STREET
[illegible] 89701

WARNER BUILDING
1ST RAND AVE.
CARSON CITY, NEVADA 89710

DEPARTMENT OF PAROLE
AND PROBATION

A. A. CAMPOS, CHIEF
CAPITOL COMPLEX
502 N. CURRY STREET
CARSON CITY, NEVADA 89710

March 17, 1980

The Interim Committee on Prisons
and Alternatives to Imprisonment
Sue Wagner, Chairman

Dear Assemblyman Wagner:

Enclosed please find a proposal for two multi purpose residential centers. The final budget as prepared is higher than I originally anticipated. We have worked this budget down through to fine detail including anticipated operating supplies etc.

I believe that if we were to explore the possibility of contracting these services as opposed to having them directly operated by the State, substantial costs could be reduced for two primary reasons.

Many of the salary benefit costs would be reduced under the contract arrangement. However, even more importantly, an independent contractor could be expected to solicit substantial support from the community thereby reducing costs through active participation and local contributions.

It is my opinion that the Nevada correctional system should definitely consider going in the direction mentioned in these proposals prior to extensive additional prison expansion over and above what has been approved thus far.

Sincerely,

A. A. CAMPOS,
CHIEF

AAC:ck
Enclosrue

	RENO	LAS VEGAS	RENO	LAS VEGAS
PERSONNEL SERVICES	123,262.70	123,262.70	191,950.64	191,950.64
IN STATE TRAVEL	15,264.00	15,264.00	15,264.00	15,264.00
EQUIPMENT	34,838.00	34,838.00	-0-	-0-
DORMITORY EQUIP. & SUPPLIES	5,701.36	5,686.36	1,425.34	1,421.59
FOOD	22,000.00	22,000.00	48,400.00	48,400.00
DAILY SUPPLIES	2,972.72	2,972.72	3,093.25	3,093.25
PRINTING	1,500.00	1,500.00	1,500.00	1,500.00
COMMUNICATIONS	1,600.00	1,600.00	1,750.00	1,750.00
RENT	36,000.00	42,000.00	39,000.00	45,000.00
UTILITIES	17,400.00	17,400.00	18,000.00	18,000.00
REMODELING EXP.	15,000.00	15,000.00	-0-	-0-
TRAINING	9,984.00	9,984.00	300.00	300.00
DRUG TESTING	5,400.00	5,400.00	5,400.00	5,400.00
TOTAL	290,922.78	296,907.78	326,083.23	332,079.48
TOTAL BOTH HOUSES 1981-1982	587,830.56			
TOTAL BOTH HOUSES 1982-1983	658,162.71			

PERSONNEL SERVICES

	1981-82		1982-83	
	RENO	LAS VEGAS	RENO	LAS VEGAS
PROGRAM DIR. 2 36-04	19,697.15	19,697.15	20,626.52	20,626.52
CASE WORK SUP. 2 34-04	11,922.33	11,922.33	18,537.01	18,537.01
COOK II 2 25-04	7,969.76	7,969.76	12,377.08	12,377.08
MAN. ASSIST. I 2 23-04	11,032.16	11,032.16	11,515.95	11,515.95
CASE WORKERS 6 33-01	31,922.25	31,922.25	49,638.24	49,638.24
GRAVEYARD SUP. 2 28-04	9,095.79	9,095.79	14,141.48	14,141.48
	91,639.44	91,639.44	126,836.28	126,836.28
RAISE - 15% EA. YEAR	13,745.92	13,745.92	38,050.88	38,050.88
SHIFT DIFFERENTIAL	2,050.90	2,050.90	3,291.53	3,291.53
TOTAL SALARIES	107,436.26	107,436.26	168,178.69	168,178.69
RETIREMENT 8%	8,594.90	8,594.90	13,454.30	13,454.30
PERSONNEL ASSES.	913.21	913.21	1,429.52	1,429.52
INSURANCE	4,320.00	4,320.00	5,760.00	5,760.00
PAYROLL ASSESS.	376.03	376.03	588.63	588.63
UNEMP. COMP.	268.60	268.60	420.45	420.45
N.I.C.	1,353.70	1,353.70	2,119.05	2,119.05
TOTAL PERSONNEL COSTS	123,262.70	123,262.70	191,950.64	191,950.64

IN STATE TRAVEL

	1981-82		1982-83	
	RENO	LAS VEGAS	RENO	LAS VEGAS
2 VANS 240.00 PER MO. + 4,000 MILES @ .25 PER MILE	14,880.00	14,880.00	14,880.00	14,880.00
TONOPAH STAFF MEETING 3½ Days 6 PEOPLE	384.00	384.00	384.00	384.00
TOTAL	15,264.00	15,264.00	15,264.00	15,264.00

PROPOSAL FOR TWO (2) MULTI PURPOSE RESIDENTIAL CENTERS

I. IDENTIFICATION OF NEED

The Nevada Department of Parole and Probation has recognized the need of residential facilities, one in Reno and another in Las Vegas, for several years. The Department recognizes and identifies many parolees and probationers who need some structure provided by a supervised residential facility, but who do not require imprisonment.

It is not uncommon to identify a parolee who is not making a satisfactory adjustment on parole, perhaps because of family problems, employment difficulties, or a host of other problems. The lack of adjustment is not sufficiently severe to require reinstitutionalization, but nonetheless requires a closely supervised program in the community. The proposed multi purpose residential facilities would meet this need.

II. ADVANTAGES OF MULTI PURPOSE RESIDENTIAL FACILITIES

1. Will assist in the alleviation of overcrowded prison facilities.

The two (2) facilities, when at capacity, [redacted] grams are successful, and if alternatives to incarceration are expanded in Nevada, it is conceivable that such programs will eliminate the need, or certainly delay the need to construct expensive prisons.

2. Residential Centers provide realistic transition services to offenders.

Since about 98% of all prisoners are eventually released to the community, a decompression period of 90 to 120 days makes this transition helpful and meaningful to the releasees. A "cultural" shock exists for many persons released from prison back to the community, and residential centers, which provide a multitude of help, assist in this difficult transition period.

3. Residential Centers are less expensive than maintaining non-dangerous prisoners in prison.

[redacted] This does not include daily operational costs. Thus, [redacted]

4. Provides the Nevada Parole and Probation Department creative alternatives that do not now exist.

Presently there do not exist any viable programs in Nevada which provide an alternative service between the extremes of imprisonment and the relative freedom of parole and probation. Not all parolees and probationers need this narrow choice of programs...some need more than probation and some need less than imprisonment. Community residential centers provide a much needed "in-between" service to the probationers and parolees.

III. COST CONSIDERATIONS

The cost of maintaining a person in a community residential center is approximately $26.00 to $30.00 per day. The cost of maintaining a person in prison does not differ that much from the cost of community residential centers.

In addition, the resident will be expected to pay part of his way while in the program and when working. A $3.00 to $5.00 per day charge to the resident is realistic and will reduce the cost of the programs by an estimated $25,000.00 the first year and $90,000.00 the second and succeeding years.

A further bonus of the residential programs is the true assistance they provide in the resident's capacity to support his or her family. Since about 50% of the residents will have dependants, an employed parolee or probationer will be expected to support the family and, if on welfare or any kind of public assistance, will be removed from these rolls.

IV. PROGRAM CONTENT

The multi purpose residential centers will strive to meet many needs of many different residents. A few of the services shall include:

1. Employment Counseling
2. Employment referral and placement
3. Budgeting resources, both personal and financial
4. Resolving family conflicts and reconciliation of families
5. Handling personal crises in a positive way
6. Referrals to appropiate community resources for specialized services (dental, medical, training, etc.)
7. Individual and group counseling

[redacted]

Establishing residential centers is becoming more and more difficult and thus sufficient time must be allowed. The following schedule is anticipated, following the approval and release of funds:

Month 1 and Month 2

1. Identify area and facility within the community.
2. Begin education program to community on the program to be established.
3. Negotiate lease and renovation arrangements.

Month 3, Month 4 and Month 5

1. By end of 5th month renovation to be completed.
2. Accumulation and purchase of equipment and furniture for program.
3. Begin training of appointed staff.

Month 6

1. Complete training of staff.
2. Develop necessary forms and accountability systems.
3. Finalize facility needs.

Month 7

1. Begin to accept residents into the program.

SUMMARY

The establishment of two (2) multi purpose residential programs in Nevada, one (1) in Washoe County and one (1) in Clark County will provide the Department of Parole and Probation, the Courts and Parole Board with badly needed alternatives for parolees and probationers, alternatives which do not now exist.

The multi purpose centers are economically sound for the State of Nevada, are more realistic in the hopes for rehabilitation of offenders, and provide the Department of Parole and Probation with alternatives needed to carry on an effective parole and probation program. The programs, because they provide 24 hour a day supervision protect the community more than traditional parole and probation.

Distributed January 10, 11, 1980 NRE 44 Meeting

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STATE BUILDING
215 E. BONANZA STREET
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STATE BUILDING
946 IDAHO STREET
ELKO, NEVADA 89801

106 E. ADAMS, ROOM 206
CARSON CITY, NEVADA 89710

131 S. MAINE, ROOM 205
FALLON, NEVADA 89406

STATE OF NEVADA

ROBERT LIST
GOVERNOR

DEPARTMENT OF PAROLE AND PROBATION

A. A. CAMPOS, CHIEF
CAPITOL COMPLEX
308 N. CURRY STREET
CARSON CITY, NEVADA 89710
(702) 885-5040

December 24, 1979

Mr. Donald A Rhodes, Chief Deputy Research Director
Legislative Counsel Bureau
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Don:

You posed several questions in your correspondence of November 21, 1979. My responses to most of those questions would have to be somewhat general and opinionated as I certainly do not have solid data to address many of the questions.

I would also like to incorporate questions (1) and (5) as I think the answers to those questions are too closely interrelated to separate them.

1. The greatest alternative to incarceration is of course probation. Diversionary programs whether they be in the form of residential or community treatment centers, intensive supervision, or in any form, incorporates the wider use of probation.

The real question then is how can this be done without significantly increasing risk to the community.

Closely tied to this concept would be the necessity for making probation services more effective in order to handle more difficult cases and, even more importantly, in order to provide services which enhance the possibility of completing probation successfully.

Theoretically, more effective probation services, resulting in fewer violations, would reduce prison committments even without the expanded use of probation.

The increased use of probation would be tied directly with the increased capabilities of the Department of Parole and Probation and its other resources. For example, the following is a list of services and/or capabilities not currently available to the department.

a. Residential Centers

b. Program Development Capabilities

c. Formalized Volunteer Programs

d. Expanded training Capabilities

e. Case Service Money

[redacted] There are two primary types of committments which could be avoided if we had residential center capabilities. The first of these would be the borderline individual who is sentenced to prison because it is apparent that he or she needs some immediate structure which cannot be provided in the community. However that structure is normally of a short term nature. In other words, the individual is simply too unstable due to alcoholism, drugs, or other problems at the time of sentencing to release him to the community or to less sturctured community programs. Therefore, the individual is sentenced to prison and cannot be released until minimum eligibility has been served.

The second category would be those persons who are relatively good probation risks, but are sentenced to prison because some element of punishment is deemed necessary. Currently county jail sentences in conjuction with probation are utilized for this purpose to some extent. However, with the continuing overcrowding in the county jails, this is being discouraged more and more. Therefore, oftentimes an individual who could be handled in a community is sentenced to prison as a punitive factor. It is my belief that a court ordered stay in a residential center would suffice as a satisfactory measure in many cases. This of course would also reduce county jail committments for the above mentioned purposes.

[redacted] (Keep in mind that almost one third of all persons received at the prison are probation or parole violators).

Simply put, program developers are persons who work with employers, unions, etc., to develop avenues of employment for clients which have progressive promotional and career oportunities. It is not difficult to find employment for a person in Nevada. However, most of these jobs are of a low subsistance nature not conducive to enhance chances for rehabilitation. No one in the agency, at any level, has the time to spend in this type of enterprise on a continuing basis. Program developers also seek out community resources which will help the parole officer to channel the client into an appropriate program. Further, the program developer encourages development of community resources where they do not currently exist by pointing out offender needs and identifying the lack of resources.

Program developers would also service the needs of the residential centers.

Volunteer programs have proven to be relatively successful both in other areas of the country and in Nevada. At one time, this agency had a volunteer program via an L.E.A.A. grant and it was found that clients assigned to the volunteer program did have about a twenty-three percent lower recidivism rate. While the agency utilizes volunteer programs at this time, they are not formalized because we have no staff person assigned on a full time basis to organize a volunteer program. The use of volunteers is limited only by one's immagination. They are utilized on a one to one basis for counseling but, are also utilized, according to their individual skills and abilities, as counselors in all walks of life. Any extensive use of volunteers does call for an organized program as the recruiting, selection, training, assignment, and monitoring of volunteers is a full time responsibility.

Training needs are probably too extensive to go into in this correspondence. However, it should be pointed out that this agency which continually deals with people in crisis situations, which does long range planning and development for and with offenders, which conducts investigations and makes reports and recommendations to the court which can affect an individual's lifetime as well as affect the protection of the community, does not receive any money for training.

In addressing the concept of case service money, it is noted that parole officers are often faced with the dilemma of recognizing offender needs, but are unable to provide these services because no funds are available.

This could include the need for immediate assistance in housing, clothing, tools, job transportation and related areas. It could also include the need for some type of rehabilitative service which is not available as a free service, but could be purchased.

In your correspondence you asked about individuals who could be placed in a community setting while sentenced to state prison. I think this particular situation is relatively well addressed with the current restitution centers and the work experience programs being conducted by the Prison.

I think the Prison can speak much better to this, however it should be pointed out that if diversion programs were operative, the number of persons in prison who could be trusted in community programs would be significantly diminished. However, in my opinion, the most significant need in this category which is not currently addressed is the need for a pre-release program and/or service. There can be as many as thirty-five persons in a pre-release situation in an area the size of Las Vegas. Again the need for this is somewhat diminished if the restitution centers remain intact. Additionally, the Parole and Probation multi-purpose center could be used as a pre-release center and programs very easily initiated for that purpose. However, it would be inadvisable to place a person there while on inmate status. Rather, it would be utilized as a reintegration tool as a person was being released on parole.

If utilized in that manner, it would be my projection that between ten and fifteen persons in pre-release status would be housed in Las Vegas and approximately ten in the Reno area at any given time period.

2. Incarceration rate does seem to vary depending on what statistics are available. Right now, we would appear to rank seventh in the nation with a committment rate of one-hundred eighty seven per one-hundred thousand population.

3. (See Above)

4. I have no idea what the parole rate is for Nevada nor am I certain exactly what that means. The rate of parolees in our population here in Nevada is one-hundred and twenty-one parolees per one-hundred thousand population. There are four other states with a higher parole population.

5. (See No. 1)

I do not believe there would be any necessity for significant legislative changes. Most crimes are probationable and those that are not probably shouldn't be.

I think a "wish list" would follow those items mentioned in (a) through (e) in question number one.

The ultimate wish would be for the capability for actual crime prevention activity. This could be approached by staff capability for reaching out into the community and identifying those persons who were in danger of becoming involved in criminal activity or were currently involved in criminal activity but had not been arrested or charged and attempting to reorient these indiviuals to change their lifestyle.

To my knowledge this is not being done by any agency in the country but certainly would be the ultimate in this type of business.

7. Our presentence reports do recommend alternative sentences, specific programs etc. No changes in legislation are necessary.

8. I do not believe the recommendations of the PERMANENT TASK FORCE ON CORRECTIONS should be incorporated into Nevada Revised Statutes. I think their major use is to assist managers in formulation of program ideas, and directions they wish to take primarily dependant on the appropriateness of the recommendation and the availability of funds.

9. I believe there are significant differences between the rehabilitation affects of community based programs as compared with prison programs. Prison programs must function in an unnatural environment. There is no way to realistically analyze the progress of any indiviual in a prison program because the program behavior cannot be compared with current community behavior. Additionally, persons participating in prison programs are not those that necessarily need it the most. The prison is not in a position to coerce or otherwise place persons in programs in which they do not wish to participate. Community based programs on the other hand have the assistance of both the courts and the parole boards which can condition release upon participation and successful completion of programs.

Further, the prison program is burdened with being a part of an overall operation which must stress above all other things security and order. Community based programs on the other hand can devote their full attention in a non-competitive way, for the rehabilitation of the offender.

10. Shock probation, if utilized correctly, is a decided asset to the correctional system.

We have laws now which allow courts to sentence individuals to prison in a shock probation-like manner, primarily for evaluative purposes. It would be worthwhile to explore the possibility of extending that concept to allow the prison to refer individuals back to the court for probation consideration. That concept should be utilized for first offenders only as the primary advantage of such a concept is to release persons while they are still "scared to death" of the prison environment.

Professionals who have worked in the prison setting for any length of time can testify to the fact that on many occasions, first offenders who were probably not amenable to probation, were terrified by the prison setting for the first sixty to one-hundred and twenty days of their incarceration. The concept of releasing an individual while he is still in the state of fear of that environment would seem to be a valid experiment.

The individual feels frightened because he either feels he is being victimized, or is in fact being victimized by more sophisticated aggressive inmates.

The tragic part of surviving that particular phase of incarceration is that the transition from victim to victimizer in the prison setting is fairly rapid and the fear of incarceration is soon lost.

11. Intensive parole and probation supervision is fairly adequate in the state at this time. Expanding the concept would be addressed by simply requesting additional officers for that purpose. Conceptually there are additional ideas which should be explored such as assigning each unit of supervision intensive supervision unit capability. We do not have that at the present time in our Las Vegas office but rather utilize intensive supervision for those persons regarded as the greatest risk to the community at a particular time. This concept should probably be expanded to the exclusively probation case loads for those individuals needing special care and treatment.

If this were done, we would need a maximum of four officers for that purpose and a minimum of two officers.

12. Probably one of the most realistic diversionary approaches necessitating legislation would be (a) empowering the courts to reduce felonies to gross misdemeanors and gross misdemeanors to misdemeanors at the time of sentencing.

There are literally hundreds of "nuisance" offenders channeled through our system anually. These are persons who are not good probation risks, have very little motivation, and are not apt to change their lifestyle in the near future. Nevertheless, the processing of their crimes is far more costly to the taxpayer than the actual crimes themselves. Many transient drunks end up in our prison on felony charges of burglary for such things as entering an unlocked car, attempting to rifle the glove compartment, and falling asleep on the front seat of the vehicle. While that is perhaps an exaggerated type of situation, nevertheless many persons are sentenced to prison at extensive cost to the taxpayers for offenses like that, and similar to that in property offense areas.

The above concept is certainly not original, California has had this type of capability for at least the last thirty years.

While this is not per se a diversionary program, it certainly would reduce the cost of incarcerating many individuals who should probably be handled at the local level. In any event, the final decision would still be up to the court.

Another form of legislation which can be explored would be expanding the use of the current deferred judgement which is now applicable only to drug offenses. We have now had the deferred judgement capability in Nevada for approximately eight years and, in my opinion it has been extremely successful. It has in no way endangered the community and persons violating deferred judgement status face the same penalties as persons who are formally adjudicated.

I would certainly support extending the alternative of the deferred judgement to property offenders.

As it is now written, only those drug offenders who do not have prior proven involvement in drugs are eligible for the deferred judgement; the same concept could be used for property offenders.

13. Negative community reaction to community based correction programs is extremely difficult to deal with and on occasion impossible. Negative community reaction can and very often does result in the closing of programs. Therefore, the primary emphasis in dealing with the community is on prevention of negative reactions.

Studies have indicated that the two things the community is primarily concerned with are reduction in property values and increase in crime rate. Studies further indicate that both of these fears are erroneous. Careful planning for the education of the community must be completed long before a residential site is developed. Furthermore, local community feelings must be analyzed very closely prior to the selection of a site. It is neither practical nor desirable to attempt to force a center into a community which is not prepared to accept and to some extent support it. Community information programs, citizen and volunteer involvement, open houses etc. are all important aspects of prevention.

14. This agency is not planning on seeking a grant for a multi-purpose center.

The National Institute of Corrections is supplying us with a consultant for the planning of a center, however, no grant is being sought for this purpose.

Enclosed please find a portion of our correspondence to Mr. Mike McCartt, who is the consultant in this matter. This attachment will review briefly the concept of the two multi-purpose residential centers we are seeking.

Mr. McCartt will be in northern Nevada on January 10th and 11th, 1980 and will be available to the Committee.

Sincerely,

A. A. Campos
Chief

AAC:ck

Enclosures: 2

cc: Bill Bible
Charles Wolf
Barbara Durbin
A. W. Skidmore
Earl Des Armier

Population: We estimate we have approximately 200-300 who could use this facility during any one year. We plan that the facility serve anyone who comes under the jurisdiction of this department, male or female, which includes parolees, probationers, those being supervised on deferred judgement status, and anyone being supervised pursuant to the Interstate Compact. Guidelines for selection of residents are needed.

Placement: We visualize numerous conditions under which one would be placed in the facility including as a condition of probation, as a parole placement prior to establishing a firm program in the community, when needing some additional structure, while paying restitution, awaiting revocation, short term crisis resolutions, etc. We will need to address the possible problem of mixing parolees and probationers, the more serious offenders with first time offenders, and you indicated you have some data in this regard. We estimate a maximum stay of 120 days.

Staffing: The department will provide the full staffing of the facilities, but we need guidance in staff selection. Guidance regarding staff profiles which best function in a like setting, cohesive philosophies regarding treatment and some feedback regarding using student interns who live in and volunteers is requested. Additional resource personnel, not necessarily staffed, need also be discussed. Whether we need a "Board" needs to be addressed, and if so, discuss maintaining autonomy, and Board selection.

Programming: We are interested in concentrating to a degree in career development and planning. We wish to be able to utilize outside resources and affiliated community agencies to assist, such as Adult Education, Vocational Rehabilitation, local employer job banks, Employment Security, etc. We would need some idea of what is being done in other areas, and an evaluation of the programming being done. What value have other like programs had especially as it relates to violations, whether parolees or probationers. We are open to a range of suggestions as to the kinds of programming a facility like ours should have.

Goals: We lose too many clients too soon as they abscond. It is one of our contentions that a facility such as we propose will assist us in reducing the incidence of absconders by providing stable housing and career planning combined with structure and direction in life planning. We also wish to utilize the facility to reduce the number of those being imprisoned or re-imprisoned. Through the structure and programming we hope to address recidivism reduction, incidents of violations, assistance in complying with the terms of probation, and through prevention of further criminal acts.

Funding/Budget: We estimate that each facility will cost $250,000 each. We are presently in the process of obtaining comparables from both the North and the South to determine what local alcohol and drug programs are costing monthly in terms of housing and utilities alone. The Reno facility should house about 15-25 while the Las Vegas facility should be bigger, accomodating 20-35. We are soliciting information regarding the many and varied areas we must include in the preparation of a budget, everything from laundry costs to insurance to staffing and furnishings.

Legislation: We have no enabling legislation at the time. If you would have at your disposal any comparative legislation to cover our needs, we could utilize this data, however at the present time, this is our least priority.

The above constitutes a few of the areas in which we know we need consulting expertise. I am really looking forward to working with you and seeing our proposal take shape to a degree by which we can win over the Legislative Committee. We must have a tangible paper package by late February and we need to tell the Committee what they can expect of us by March, and if given the approval, what would follow in the fall.

We consider this a monumental undertaking, a project which will benefit the community, the offenders and the profile of the justice system here in Nevada. Please let me know what I can do from this end in preparation for your initial visit. I look forward to hearing from you.

Sincerely,

Barbara M. Durbin

Ms. Barbara M. Durbin
Deputy Chief
885-5040

BMD:ck
Enclosure: (1)

Distributed by Assembly staff at 1/10/80 & 1/11/80 Meeting of ACR 41 Subcommittee

STATE OF NEVADA RESTITUTION CENTERS PROGRESS REPORT

Southern Nevada Restitution Center

The Department of Prisons has leased a structure at 3444 Las Vegas Boulevard North, North Las Vegas. This structure was formerly used as the administrative and activities building for the American Campgrounds. It was found that some building modification is necessary including certain areas where security measures should be implemented. The major portion of building modification will be that of plumbing, electrical, painting and floor tile in the interior; in addition, there will be some changes in terms of door openings and windows for the interior portion of the building, as well as painting the entire interior. It has been noted there is some rough repair needed; other than that, the major project will be the construction of a concrete block barrier around the rear and sides of the facility. It is expected that approximately 50% of this work and modification to the facility will be done with inmate labor because of city and county code requirements and the lack of qualified professional staff within the Department of Prisons in Southern Nevada. It will be necessary to develop contracts with outside contractors for the major plumbing and electrical work that will be required within the building.

The Center Coordinator, Lt. Charles Benner, has been hired and further recruitment has been completed on the field supervisor. The remaining staff will not be recruited until a definite date for opening has been established. At the present time our delays will

be for developing bids for materials to do the modification of the facility and to get the necessary bids from contractors in order to award the work for the plumbing and electrical. We expect this process to take two to three months in order to handle the bids, obtain the materials and complete the work. If delays are noted above the time periods specified herein, it will be undoubtedly because of either not being able to obtain materials or contractors not being able to complete the work outlined above.

Northern Nevada Restitution Center

The Department leased a structure on South Virginia Street in Reno. The structure was formerly a motel. Inmates were assigned to the restitution program beginning in October of 1979. There are presently eleven (11) inmates assigned to the program. It is the objective to attain a range of 25 to 30 individuals by the end of the fiscal year. All staff authorized have been hired and are currently employed in the Northern Nevada Restitution Center.

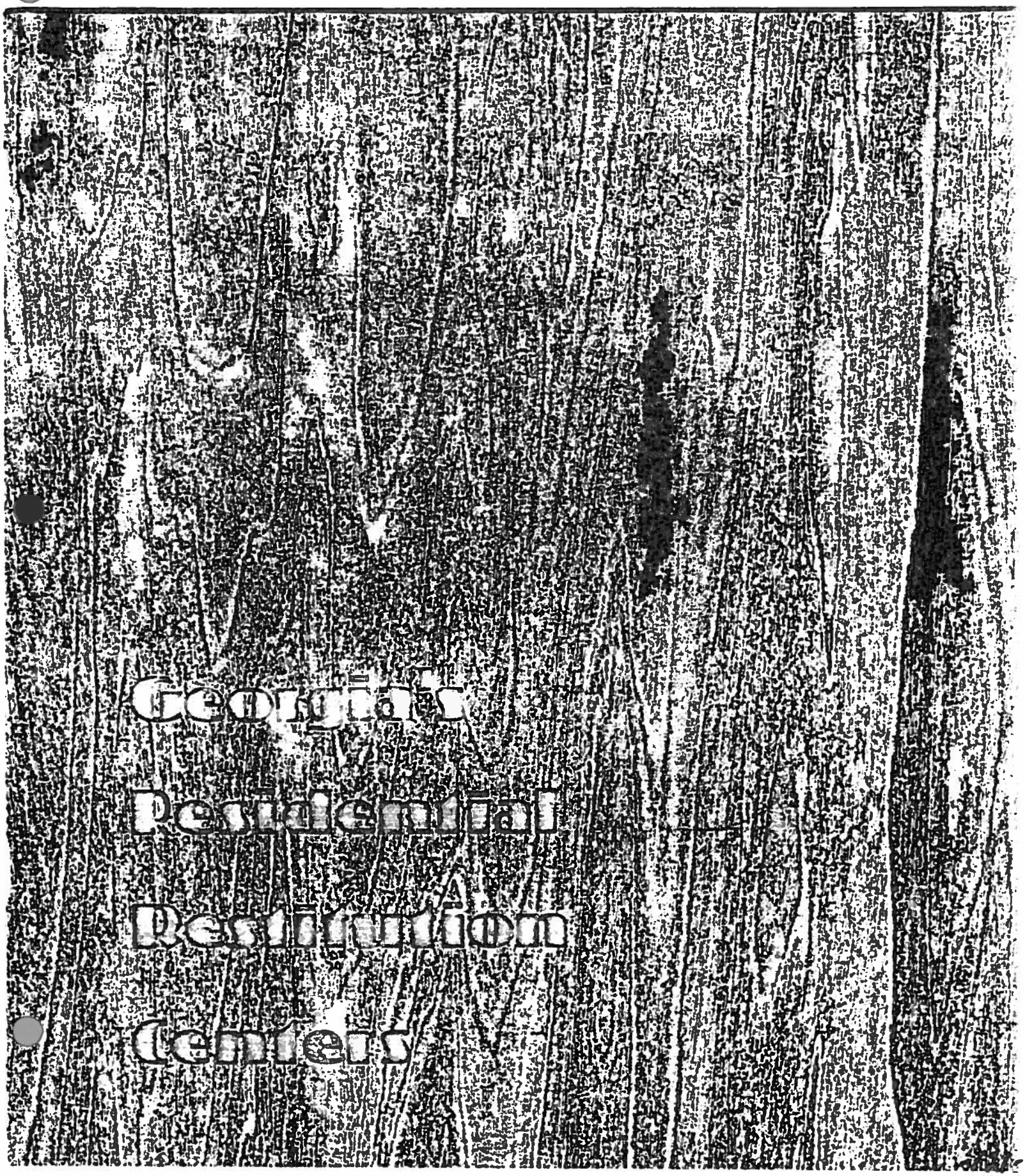
In evaluating the beginning of the program, it is felt that thus far we have been successful in achieving the initial goals. Jobs for inmates are generally in semi-skilled areas and include such skills as carpenters, warehousemen, counselors, auto mechanic, shoe repair, butcher trainee and house painter. Wages have ranged from $3.00 to $6.50 per hour and individual agreements are formulated between the inmate and the center administrator stipulating the amounts of restitution payment per diem costs and savings. Gross

earnings for December have totaled $7,976.43 with $1,545.61 going directly to restitution to victims. The amount of revenue that has been returned to the State as part of the operating budget for the restitution center is #2,607.00. A further review of statistics indicated that $1,090.43 was paid to income tax, $415.35 to FICA, family support amounted to $175.00, work tools and clothing amounted to $304.03 and the total number of hours worked as of the end of December was 1446 hours with an average of all workers at $5.04 per hour.

At this point, it is felt that the program has been developed in Northern Nevada in a manner in which the goals were set initially. The progress of the program will indicate what the capacity of the program will be, as well as the number of participants who are available to enter the program. Needless to say, this also is a voluntary program where inmates can particpate on the basis of making restitution to victims, and in compliance with the current legislation that was established in order to make this program available. Again, it should be stated that experience will dictate what tne full program expectations can be both in the Northern Nevada Restitution Center and Southern Nevada Restitution Center.

The Council of State Governments

EXHIBIT F



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Health Cost Containment: The Connecticut, Maryland, and New Jersey Responses, March 1976, 44 pp. (BPX, $3)

State Energy Management: The California Energy Resources Conservation and Development Commission, May 1976, 32 pp. (RM 580, $3)

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Incentives and Performance: Minnesota's Management Plan, February 1978, 12 pp. (BHO, $2)

GEORGIA'S RESIDENTIAL RESTITUTION CENTERS

By
J. Robert Weber

This report was prepared under a grant from the National Science Foundation (Grant No. ISR 75 21176). The contents do not necessarily reflect the views of the National Science Foundation.

May 1978
RM 636
$3.50

The Council of State Governments
P.O. Box 11910
Lexington, Kentucky 40578

CONTENTS

"It is one of the happy incidents of the Federal System that a single courageous state may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country."

Supreme Court Justice Louis D. Brandeis

CKNOWLEDGMENTS

In the state of Georgia, David C. Evans, Commissioner, Department of Corrections and Offender Rehabilitation; A. L. Dutton, Deputy Commissioner, Community Facilities, and Ron Cox, Administrative Assistant to the Deputy Commissioner, were extremely helpful in providing information and arranging for Council of State Governments' staff members to meet with the proper people.

Jimmy E. Hicks assisted in the information collection phase of the research project. Dick Howard, Director of the Council's Innovations Transfer Program, reviewed drafts of the report and made numerous helpful suggestions.

FOREWORD

The policy, management, and operations of state government require the application of constantly updated approaches to address changing needs and priorities. This necessity for self-renewal implies innovations in the institutions of state government, in their structure, policies, procedures, and personnel.

Many innovations have occurred in recent years in a number of fields at the state level. However, too little is known about some specific state activities because of the variety of laboratories in which they occur. The innovations process is further complicated by the fact that state government officials rarely have the time or opportunity to share such knowledge which may be applicable in other states. Under day-to-day pressures and constraints, professional administrators and technical experts lack the time to write up or share new approaches that they have developed.

The Council of State Governments, has provided a forum for such an exchange for many years and continues to expand efforts in this area. Georgia's Residential Restitution Centers program is one of many innovations being studied by the Council under a grant from the National Science Foundation.

The state programs studied were selected by a national advisory panel of state legislators and officials. The Council is grateful to these individuals for their assistance. Serving on the panel that selected this innovative program for study were:

Representative John Bragg, Tennessee
David Brandon, Deputy Director, Temporary State Commission on Management and Productivity, New York
Senator Anthony Derezinski, Michigan
Paul Essex, Special Assistant to the Governor, North Carolina
Representative Vera Katz, Oregon
Jason King, Assistant to the Governor, Washington
John Lattimer, Executive Director, Commission on Intergovernmental Cooperation, Illinois
J. Leon Sorenson, Director, Office of Legislative Research, Utah
Daniel W. Varin, Chief, Statewide Planning Programs, Rhode Island.

Lexington, Kentucky
May, 1978

Herbert L. Wiltsee
Executive Director
The Council of State Governments

EXECUTIVE SUMMARY

Restitution, both monetary and public service, is an age-old procedure widely used in a variety of ways by both juvenile court and criminal court judges. Restitution does not have to be combined with a residential program to be valid. Some offenders, however, can gain more benefits from a residential restitution program than from incarceration in a prison. From a cost point of view, restitution centers are in the state's interest because incarceration costs are usually less than for prisons.

The Georgia restitution centers are offender-focused rather than victim-focused. Thus, they differ from state victim compensation programs. Victim compensation refers to money or services provided to a victim by the state, whereas restitution refers to money or services provided to the victim by the offender.

In Georgia, 10 restitution centers serve designated judicial districts. The district court judge makes the decision to place an offender in a restitution center rather than a prison. The centers serve as an alternative to prison incarceration, not as an alternative to probation supervision. Georgia's restitution centers have relieved prison overcrowding.

The preferred method of intake, after an offender has been sentenced to a term of imprisonment, is for center staff members to interview offenders in the county jail while they await transportation to the state prison. If the offenders and center staff members believe a restitution center program would be appropriate, a recommendation is made to the sentencing judge who may then modify the original sentence to placement in a residential restitution center as a condition of probation.

The centers' programs operate 24 hours a day, seven days a week. Offenders are employed and relinquish their paychecks to center staff members for division according to a contract. Restitution includes monetary payment for damages and public service activities.

A typical participant in the program is a 19-year-old offender who was convicted of a property offense, and who has been on probation for an earlier offense. Average length of stay in the center is about four months.

A major cost benefit of Georgia's restitution centers program is the short-term leasing of center facilities. Uneconomical tourist courts located on state highways now bypassed by interstate highways are favorite lease locations.

The key to successful operation of a correctional residential restitution center is community acceptance. The restitution center needs to be viewed by community leaders as *their* program.

I. A SEARCH FOR ALTERNATIVES

The steadily rising crime rate during the past decade has prompted a variety of responses from all levels of government across the nation. Funding for criminal justice agencies has increased, and the federal Omnibus Crime Control and Safe Streets Act provided millions of grant-in-aid dollars to state and local agencies. Some state legislatures have enacted new laws that mandate determinate and sometimes longer prison terms for a variety of crimes. Many judges, responding to increased public agitation about crime, are issuing stiffer prison sentences.

Nationwide, the prison population has grown dramatically. In 1977 over 275,000 prisoners were incarcerated—an increase of 25,000 over 1976 (see Table 1). Various theories have been advanced to explain this increase in prison populations. The depressed state of the economy, longer prison sentences, better law enforcement and prosecution, and the "baby boom" are factors often cited for the increased prison population. Whatever the cause, rapid growth has placed enormous pressure on existing state correctional facilities. Lack of beds, proper sanitary facilities, and recreation areas are only a few of the conditions often found in overcrowded prisons. Conditions in some state prisons have become so bad that federal judges have issued orders preventing the state from accepting new inmates until conditions are improved.

Traditionally, state legislators have been reluctant to allocate funds for prison construction. But, the continued growth in prison population and the resultant overcrowding of old, outdated facilities have forced a number of states to initiate the planning and building of new facilities. The construction and maintenance of a new prison, however, is an expensive undertaking. The National Clearinghouse for Criminal Justice Planning and Architecture in 1977 calculated that the construction of a typical prison costs about $30,000 per cell. Add the initial capital expense to the Clearinghouse's estimated annual cost for operating a prison, usually between $1 million and $2 million for a 400-bed facility, and it readily becomes apparent that prisons are not cheap.

Most state officials recognize the need for prisons in order to protect society from habitually dangerous individuals, but many also realize that committing every individual convicted of a crime to prison is not economically feasible or socially desirable. Certain offenders, due to the nature and circumstance of their crime, could benefit from some form of punishment other than incarceration. While probation is an alternative for many offenders, its effectiveness sometimes is limited. Probation staffs are usually overloaded with cases, and the supervision they offer each individual is minimal. In cases where something more than probation is advisable as a criminal sanction, in many states the only alternative is incarceration.

An Alternative

Community-Based Correction

Growing skepticism among correctional administrators and elective officials about the likelihood of rehabilitating offenders in large, oppressive prisons, and the increasing costs of constructing and maintaining these institutions, have prompted state officials to search for alter-

Table 1

1977 *Corrections Magazine* Survey of Inmates in State and Federal Prisons

State	Number of Inmates 1/1/76	1/1/77	% Change
ALABAMA	4,420	3,096(2,300)**	+22***
ALASKA	349	543	+56
ARIZONA	2,712*	3,072	+13
ARKANSAS	2,338	2,445	+ 5
CALIFORNIA	20,007	20,914	+ 4
COLORADO	2,039*	2,324	+14
CONNECTICUT	3,060	3,186	+ 4
DELAWARE	701	953	+36
D.C.	2,330*	2,617	+12
FLORIDA	15,709	18,229(373)**	+16***
GEORGIA	11,067	11,423(533)**	+ 8***
HAWAII	366	413	+13
IDAHO	593	725	+22
ILLINOIS	8,110	10,002	+23
INDIANA	4,392	4,430	+ 1
IOWA	1,857	1,956	+ 1
KANSAS	1,696	2,126	+25
KENTUCKY	3,257	3,659	+12
LOUISIANA	4,774	4,695(1,714)**	+34***
MAINE	643	622	- 3
MARYLAND	6,606	6,860(1,070)**	+20***
MASSACHUSETTS	2,278	2,701	+19
MICHIGAN	10,882	12,462	+25
MINNESOTA	1,630*	1,684	+ 3
MISSISSIPPI	2,429	2,135(125)**	- 7***
MISSOURI	4,150	4,748	+14
MONTANA	377	500	+33
NEBRASKA	1,259	1,339	+ 6
NEVADA	893	953	+ 7
NEW HAMPSHIRE	302	297	- 1
NEW JERSEY	5,277	5,987(200)**	+17***
NEW MEXICO	1,118	1,359	+22
NEW YORK	16,056	17,791	+11
NORTH CAROLINA	12,486	13,261	+ 6
NORTH DAKOTA	205	242	+18
OHIO	11,451	12,626	+10
OKLAHOMA	3,435	4,106	+19
OREGON	2,442	2,848	+17
PENNSYLVANIA	7,054	7,584	+ 7
RHODE ISLAND	400*	544	+36
SOUTH CAROLINA	6,100	6,985	+14
SOUTH DAKOTA	372	521	+40
TENNESSEE	4,569	5,350	+17
TEXAS	18,934	20,708	+ 9
UTAH	696	827	+19
VERMONT	343*	386	+12
VIRGINIA	6,092	7,001(1,375)**	+11***
WASHINGTON	3,063	3,767	+23
WEST VIRGINIA	1,213	1,216	—
WISCONSIN	2,992*	3,340	+12
WYOMING	384	355	- 7
TOTAL STATES AND D.C.	225,908*	247,913(7,690)**	+12***
U.S. BUREAU OF PRISONS	24,134	27,665	+15
TOTAL U.S.	250,042*	275,578(7,690)**	+13***

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natives to institutionalization. One avenue being examined by various states is community-based correction. (For example, see Dick Howard and Mike Kannensohn: "A State-Supported Community Corrections System: The Minnesota Experience," The Council of State Governments. February 1977.) Community-based correction advocates stress that keeping offenders within the community increases the chances of re-orienting them to society's values. Continued residence in the community strengthens the offender's family ties, enhances vocational and educational opportunities and provides treatment for any psychological and emotional problems in a community setting.

Restitution

Corresponding with the interest in establishing community-based corrections programs has been an increased awareness of the plight of crime victims. This concern has led to legislation in a number of states which compensates or provides restitution to victims. While compensation and restitution often are used interchangeably, they do have different basic definitions. Victim compensation refers to money or services granted a victim by the state, whereas restitution refers to money or services provided to a victim by the offender.

Restitution is a sanction becoming increasingly a part of community corrections programs. Restitution most frequently is used by judges as a condition of probation, in connection with the use of a suspended sentence, or as a part of the program of community corrections centers. Restitution performed before sentencing is considered a mitigating circumstance in the final imposition of sentence by most courts. In some instances, restitution is used in pretrial diversion programs. Restitution is seldom used with offenders sentenced to security institutions. The limited opportunities for earning income because of low or nonexistent inmate wages in most security institutions generally preclude the use of monetary restitution in most jurisdictions.

Recently, several states have enacted statutes establishing standards and guidelines for restitution. In 1973, Iowa made restitution a condition of a deferred sentence or probation (Senate File 26, 65th General Assembly, 1973, State of Iowa). In 1976, Colorado permitted courts to order restitution in conjunction with fines, probation, imprisonment or parole. (Colorado Crime Victim Restitution Act, Second Regular Session, 50th General Assembly, 1976).

In Minnesota and Georgia, the idea of merging the concept of restitution with a community-based residential program has been implemented. The Minnesota Restitution Center Program was initiated in 1972. In 1975, Georgia instituted a community-based restitution program in four cities as an alternative to prison incarceration.[1] * Table 2 presents descriptive data on a number of restitution programs.

The Need for Change in Georgia

The condition of Georgia's correctional system was described by one state official as "bleak and disheartening." In 1975, the Georgia Department of Corrections and Offender Rehabilitation (DCOR) identified major problems as "over-crowded conditions, a high recidivism rate, a lack of adequately trained staff, a need for expanded, centralized coordination, and a lack of objective data for program planning and evaluation."[2] By 1977, Georgia's prison population was over 11,000 and was projected to reach 16,000 by 1980. The percentage of individ-

*See footnotes at end of report.

Table 2
A SURVEY OF SELECTED RESTITUTION PROGRAMS

Name of program	*Level of system*	*Clients*	*Type of program*
Albany Restitution Center Albany, Georgia	Probation and parole	Adults only	Residential
Arbitration as an Alternative to the Criminal Warrant New York, New York	Pretrial diversion	Usually adults only	Nonresidential
Atlanta Restitution Center Atlanta, Georgia	Probation and parole	Young adults (ages 17-25)	Residential
Community Accountability Program of the City of Seattle Seattle, Washington	Pretrial diversion and probation	Juveniles	Nonresidential
Community Arbitration Program Annapolis, Maryland	Pretrial diversion	Juveniles	Nonresidential
Macon Restitution Center Macon, Georgia	Probation and parole	Adults only	Residential
Minnesota Restitution Center Minneapolis, Minnesota	Parole	Adults only	Residential
Night Prosecutor's Program Columbus, Ohio	Pretrial diversion	Adults	Nonresidential
Pilot Alberta Restitution Center Calgary, Alberta	Pretrial and probation	Adults only	Nonresidential
Pima County Attorney's Adult Diversion Project Tucson, Arizona	Pretrial diversion	Adults	Nonresidential
Restitution and Effective Diversion from the Criminal Justice System Milwaukee, Wisconsin	Probation and parole	Adults	Nonresidential
Restitution in Probation Experiment Des Moines, Iowa	Probation	Adults	Residential and nonresidential components
Restitution Work Program Salt Lake City, Utah	Pretrial diversion and probation	Juveniles	Nonresidential
Rideau-Carlton Restitution Project Ottawa, Ontario	Provincial jails	Adults	Residential
Rome Restitution Center Rome, Georgia	Probation and parole	Adults	Residential
Seventh Circuit Court Victims' Assistance Program Rapid City, South Dakota	Pretrial diversion and probation	Adults and Juveniles	Nonresidential
Victims' Assistance Program Las Vegas, Nevada	Pretrial diversion and probation	Juveniles	Nonresidential
Victim-Offender Reconciliation Project Kitchener, Ontario	Pretrial diversion and probation	Juveniles and Adults	Nonresidential
Washington County Restitution Center Hillsboro, Oregon	Probation and parole	Adults	Residential

Source: Hudson, Galaway, and Chesney, "When Criminals Repay Their Victims: A Survey of Restitution Programs," *Judicature*, Vol. 60, No. 7, February 1977, p. 319.

uals 18-44 years of age in prison represents the highest per capita incarceration rate of all 50 states.[3]

The problems of a large prison population in overcrowded and inadequate facilities were compounded by the condition of the probation and parole programs. In 1976, the total probation/parole caseload was over 33,000 and the average caseload was 132 per counselor. (In 1977, parole supervision was removed from the DCOR and established in a separate and autonomous agency—the Parole Board. This, however, did not solve the problem of large caseloads; it just transferred the responsibility.) In the past five years, the probation/parole caseload has increased 83 percent. Due to the size of caseloads handled by counselors, judges became increasingly reluctant to place some offenders on probation. If an offender was not placed on probation, the only alternative a judge had was incarceration, but incarceration only exacerbated the overcrowding in state correctional facilities.

After identifying and examining the problems confronting the Georgia correctional system, the DCOR developed a long-range plan called Operation Performance which was designed to correct deficiencies in the system and to make offenders directly responsible for the consequences of their own behavior. One part of the plan was development of a network of community-based residential restitution centers.

II. ESTABLISHING COMMUNITY RESTITUTION CENTERS IN GEORGIA

The initiation of community restitution centers in Georgia followed the general reorganization of state government in 1972. An Executive Reorganization Plan created the Department of Corrections and Offender Rehabilitation (DCOR) and authorized it to "administer the supervision of parolees, probationers, and other offenders who are being treated outside correctional institutions." In addition, the Georgia Probation Act (1968) states: "The courts shall determine the terms and conditions of probation and may provide that the probationer shall remain within a specific location and shall make reparation or restitution to any aggrieved person for the damage or loss caused by his offense in an amount determined by the court. . ." (Ga. Laws 1968, p. 324).

On the basis of the above statutory language, in October 1975 the DCOR established the community resitution center program by making residence at a center and participation in the program a special condition of the probation order. Initially, four community restitution centers were established with financial support from the Law Enforcement Assistance Administration. In addition to the restitution centers, the state also was developing five community-based adjustment centers. These residential adjustment centers were used to house probationers, and the program design had a rehabilitation focus with a strong emphasis on counseling. The restitution centers influenced the adjustment centers. The adjustment centers began using restitution as the core of their program. As federal support of the restitution centers diminished, the two programs were merged and the state legislature voted to begin funding the restitution centers in the 1977 fiscal year in addition to the adjustment centers which were reprogrammed as restitution centers. Currently, there are 10 restitution centers in the state, the tenth having opened in early 1978 at Thomasville.

Organization of the Georgia Corrections System

The Georgia Department of Corrections and Offender Rehabilitation is composed of two administrative and three field divisions. The DCOR Community Facilities Division administers the residential restitution program and several other community-based programs (e.g., pre-release centers, transitional centers, work release centers).

Although the Community Facilities Division is responsible for the operation of the centers, the success of the program depends on the assistance of a number of individuals inside and outside the DCOR. The cooperation of judges, probation officers, local officials and community residents is necessary to establish and maintain a restitution center. Judges are responsible for selecting offenders who will reside at the center and for determining the amount of financial restitution. Many judges also monitor the performance of offenders they place in a center. Probation officers, who are DCOR employees, oversee the activities of an offender discharged from a center. Local officials advise the department in selecting a center location. Local officials and community residents sit on restitution center advisory boards and help locate and provide resources needed by the residents. The size of the boards varies

from one center to another. They perform a valuable function in advising the center director about problems and in conveying information to citizens in the community about the center. The boards provide both a public relations function and an advisory function to the center director. Some centers have a formalized community advisory board while others rely on ad-hoc arrangements according to need. Although forms, contracts, case folders, and other items are similar in content for all centers, they vary in format according to the style of the director.

Location of Restitution Centers

The 10 community restitution centers in Georgia are located in Albany, Athens, Atlanta (2), Augusta, Cobb County, Gainesville, Macon, Rome and Thomasville.

Eventually, the DCOR hopes to establish one community restitution center in each of the state's 42 judicial districts. Selecting the location and establishing management procedures for the first four centers, however, raised certain procedural and intergovernmental questions. The DCOR had no previous experience with a residential restitution program and there was a lack of information concerning methods and standards. In addition, the department had not determined the formal agency and governmental linkages required to maintain and operate a center. Consequently, the first year was a period of development and experimentation. Each center developed in its own way resulting in differences in operation. On the positive side, these differences reflected the uniqueness of the communities. From this experience, the DCOR was able to develop and standardize specific policies and procedures where increased uniformity was considered desirable.

In locating the first four facilities (Albany, Atlanta, Macon and Rome), the department selected judicial districts in which judges had expressed a strong interest in the restitution concept. Once a center was established in a judicial district, the center staff concentrated on serving the offenders from that district. Judicial and community support of the original centers prompted citizens and judges in other districts to seek the establishment of a restitution center in their communities. Presently, the demand for new centers is greater than the funds available to the DCOR for meeting the requests.

Center Size and Staff

All 10 restitution centers operate 24 hours a day, seven days a week. Maximum residential capacity ranges from 20 to 40 offenders, with an average capacity of about 36 (see Table 3). Because an offender usually resides at a center for only four or five months, each center can serve between 112 and 130 offenders per year. For fiscal year 1978, the legislature allocated $1,140,460 to operate eight centers. The other two centers are financed with federal funds. For fiscal year 1979, the DCOR is requesting $2 million for 10 facilities, an average of $200,000 per center.

All the facilities used to house the residents are leased by the department. Motels, vacant dormitories, and large houses are among the types of buildings that have been converted into restitution centers. The department has discovered that old, unprofitable motels on secondary highways offer excellent accommodations. Usually, only minimal alteration is required. In many cases a center is located in an area that is a mixture of residential and commercial or light industrial uses. While DCOR officials prefer a center that has central kitchen facilities, a few

centers are located in buildings that are not equipped to prepare meals. Alternate arrangements are made for food service.

State DCOR staff members vary from 8 to 13 per center. A typical staffing pattern would include one superintendent, one business manager, one clerk typist, one probation supervisor, one counselor and four counselor aides or correctional officers. Centers with kitchen facilities also employ a cook. The cook works on a split shift and prepares breakfast and a bag lunch for those who work during the day, and then returns to prepare dinner. Administrative staff work the 8 a.m. to 5 p.m. shift while most residents are at work. Counselors are available to provide education and counseling services in the afternoon and evenings. Security is supplied by a night duty correctional officer. Supervisory staff are present and share cooking responsibilities with the residents on the weekends.

In order to supplement the basic counseling staff, a number of centers use Comprehensive Employment and Training Act (CETA) employees, VISTA workers, student interns and citizen volunteers to provide supervision and program assistance. These individuals enable a center to provide additional educational and counseling services it is not financially able to provide. Community residents who volunteer to assist the center staff also form a valuable contact between the community and the center.

Table 3
OPERATING BUDGET AND CAPACITY OF RESTITUTION CENTERS

CENTER	OPERATING BUDGET FISCAL YEAR 1978	MAXIMUM CAPACITY
Albany Restitution Center	$135,775	28
Athens Adjustment/Restitution Center*	230,271	40
Atlanta Restitution Center	131,897	30
Augusta Restitution Center	222,722	40
Cobb Adjustment/Restitution Center*	241,963	40
Gainesville Adjustment Restitution Center	184,603	40
Gateway Adjustment Restitution Center (Also in Atlanta)	222,985	40
Macon Restitution Center	118,604	35
Rome Restitution Center	123,874	32
Total State and Federal	$1,612,694	325
Total State	$1,140,460	245

*These centers are financed with federal funds. In fiscal year 1979 the state will assume responsibility for funding the centers. The Thomasville Center opened in early 1978, thus figures are not included.

III. OPERATING A RESTITUTION CENTER

The procedure for selecting individuals to participate in the residential restitution program and the service provided to an offender vary to some degree from center to center. The DCOR has established operational standards and policies, but department officials recognize the need for each center to have a certain amount of flexibility. Staff capabilities, the needs of a constantly changing offender population, and the physical environment of a center all will have an impact on the type of program operated by a restitution center.

Selecting Participants

The requirements for admission to the residential restitution program vary slightly among the 10 centers. Most of these variations reflect the different conditions in the judicial districts where centers are located. One policy area in which they do not differ is that none of the centers accept offenders who have been convicted of committing a violent crime. In addition, due to the lack of facilities and drug treatment programs, a center will not admit an individual who has a history of drug addiction or alcohol abuse. A typical participant in the program is 19 years old, has been convicted of a property offense, and has been previously placed on probation for an earlier offense. The following are criteria used by the staff at many of the centers to identify offenders eligible to enter the program:

—Offender would have otherwise been incarcerated, had the program been unavailable,

—Offender has committed a property crime not involving the use of a weapon or any act of violence and has not been arrested for a violent crime for the preceding five years,

—Offender's crime involves the victim in a fashion whereby restitution can be made using a payment schedule compatible with the amount of restitution to be paid and the time he is to serve at the facility,

—Offender is 17 years of age or older,

—Offender is not regarded as a professional criminal (to be determined by his previous record of offenses),

—Offender's level of intelligence is not below a point (usually I.Q. 60) precluding employment and participation in the center's program, and

—Offender is willing to enter into a contract with the center establishing objectives which must be achieved before release.

In addition to the above criteria, center staff members employ several subjective indicators for screening out offenders who would not benefit from the restitution program or who would pose a threat to the community. At most district courts the screening process takes place between conviction and sentencing and is part of the pre-sentence investigation process conducted by probation personnel. Some offenders are eliminated from further consideration after this investigation because they do not meet the previously stated objective requirements of the center. Other cases may be excluded as inappropriate for the restitution program after discussion with the local district attorney and the

offender. The remaining cases are then presented to the court with a restitution recommendation and with a proposed restitution plan. The judge can accept, modify, or reject the restitution recommendation and levy another type of sentence. An offender who is sent to a restitution center is placed as a condition of probation and is under the jurisdiction of the court. If the offender fails to make satisfactory progress or repeatedly violates the center's rules, the offender can be returned to the court for probation revocation. In nearly every revocation case the offender is sent to a state prison.

In one judicial district, Cobb County, the selection process is slightly different, reflecting the preferences of the presiding judge. Program staff reviews the cases of all offenders after they have been sentenced to prison from the Cobb Judicial Circuit Court and while they are awaiting jail transportation to the prison. Based on an examination of the offender's record and interviews with the district attorney, defense attorney, probation personnel, family, employer, and the offender, the center staff members select for program participation the nondangerous offenders who can be safely supervised in a community facility environment. The judge is then asked to amend the sentence to probation conditional upon the offender successfully completing the Cobb Center program. This program has the added merit of insuring that restitution is used as a substitute for incarceration since participation is at the instigation of the DCOR, though the judge makes the final decision.

The Program Contract

Once accepted in a restitution center, the offender enters a two-week orientation period. During this time a contract is negotiated between the staff and the resident. The amount of restitution occasionally is determined between the prosecuting attorney and defense attorney and approved by the judge at the time of sentencing.

Rarely does a resident have a job prior to admittance to the restitution center. During orientation, obtaining a job is the primary task. Each center has access to daily job listings issued by the Georgia Department of Labor. In addition, each center has developed its own job bank from staff contacts with employers. The resident is referred to job openings. When accepted for employment, the amount of pay is determined. The contract that is developed between the staff and the resident addresses the division of the resident's paycheck. DCOR policy calls for the resident to pay $4 a day for room and board. This amount was set administratively in 1975 before the DCOR had any experience with the program. It has not been changed. It does not cover the cost of room and board. The contract determines the amount to be deducted from each paycheck for restitution. The contract includes an amount to be deducted for savings and an allowance for the resident's weekly expenses. The contract also designates the program activities the resident will participate in during his stay in the center.

All payments are turned over to center staff. The funds are divided according to the contract. Restitution dollars will accumulate until the offender completes the program. The amount of restitution collected is then submitted to the court for transfer to the victim. On occasion, there is face-to-face encounter between the offender and victim and payment is made direct. This is an exceptional practice, however, and is done only when deemed a therapeutic experience for both victim and offender.

Another aspect of the contract is public service restitution. The resident agrees to serve a specified number of hours in public service in

addition to the monetary restitution. During fiscal year 1977 most [illegible] hours were spent in public service restitution activities.

Some examples of community service activities in which offenders participate include: helping in mental hospitals and health centers, repairing the houses of elderly pensioners to prevent condemnation, maintaining the grounds for youth recreation groups, assisting civic and charity organizations in money-making projects, constructing playground equipment for church and neighborhood child care centers, collecting and repairing toys for needy children at Christmas, and conducting community clean-up projects.

Daily Life in the Center

The basic program in essentially the same for each center but there is variation. Some centers allow residents access to automobiles while others do not. The type of classes taught at the restitution centers generally depends on a center's access to volunteers.

A typical day for a resident begins with room cleaning. Breakfast is then served and the resident picks up a sack lunch. The resident will provide some service in the upkeep and maintenance of the center during the day. This might occur in the morning or after he returns from work. The resident them goes to work. In some centers residents drive their own automobiles to work; in others, the resident relies on public transportation. Upon return from the job, the resident may have some recreation time or may be assigned to a work detail. After the evening meal, the resident participates in an evening program of group discussion, counseling, classes, or tutorial sessions.

Evening classes may involve GED preparation, tutoring, or orientation to the world of work. The schedule for a particular resident is part of the negotiated contract.

A point system for reward and discipline also is employed in the centers. Points are received for room inspections, punctuality and attendance at assigned programs, and satisfactory completion of work details. Points are also earned by residents for meeting the obligations of their contracts. Points are deducted for disciplinary reasons, for not complying with contracts, or for an altercation with another resident. The points earned result in specified numbers of hours for weekend passes. Weekend passes range from 12 hours to an entire weekend. All residents on passes return to the center Sunday evenings. On an average, a resident will spend four months in the center before resuming regular probation supervision. Release to regular probation supervision is decided by the judge on the recommendation of center staff.

IV. ASSESSMENT

Importantly, citizens in the communities view the state-operated restitution centers as their own community programs. Judges see the centers as extensions of court services—a sentencing alternative to incarceration. Police have been cooperative and amicable. Even colleges see the center as a resource for intern learning experiences. Although the centers maintain low profiles, clearly center directors devote a good deal of time to cultivating and maintaining good relationships with key persons in the community. Many restitution centers view the judge as the key. "He can make us or break us," one center director said. Some centers serve more than one circuit court and in these instances, the director must maintain relationships with several judges. As noted earlier, the demand for new centers is greater than the funds available to the DCOR for this purpose.

Some centers maintain a structured community advisory group with quarterly meetings. This device provides information to the community and permits the center program to tap community resources.

State probation staff support the restitution centers, but some negative feelings by probation staff were reported. These persons criticized the centers for not keeping offenders long enough. When offenders return to regular probation supervision before restitution is fully paid, an additional assignment for the probation officer is to supervise the collection of restitution. Probation officers believe they have enough to do without these additional responsibilities.

How do you measure success? In general, the DCOR staff decided to reject the idea of recidivism, however defined, as a criteria of success.

The original goals for a residential restitution center were to:

(1) Reduce the projected increase in prison population by diverting eligible offenders to the restitution program,

(2) Involve citizen volunteers in the rehabilitation of offenders from their local community,

(3) Demonstrate various effective methods of offender restitution, and

(4) Determine the cost/benefit factors associated with a residential restitution program.

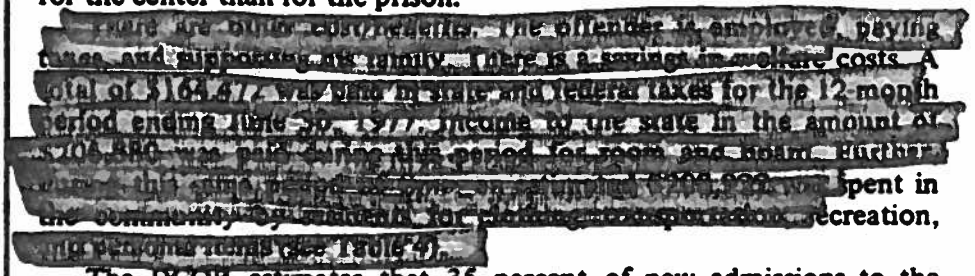
To a considerable extent, the objectives were met. In 1976, Georgia had the highest percentage of prison inmates in the 18-44 age bracket of all 50 states.[4] Over two-thirds of the admissions to the restitution centers successfully avoided prison incarceration. Although the prison population was not reduced, it would have increased even more without the centers. During the first year of operation, Cobb County, for example, reduced the number of prisoners sentenced to prison by 51 percent.

Volunteers were recruited, trained, and involved in center activities, but citizen involvement varied from one center to another.

During the 12-month period ending June 30, 1977, $128,437 in restitution was paid to victims. The other method of offender restitution used to date, community service, has resulted in 8,372 hours of work. It is difficult to put a value on this time, but at the minimum wage of $2.65, it totals $22,185.

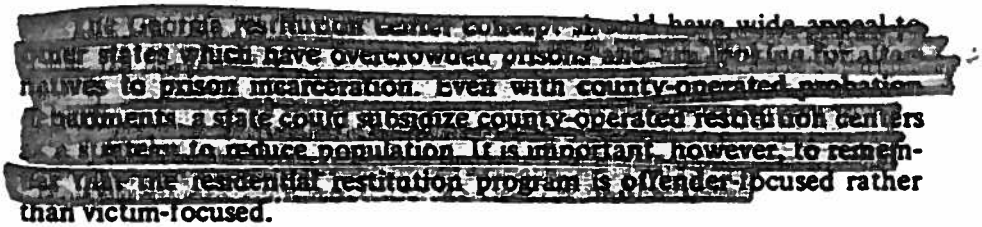
The cost/benefits are more difficult to assess. The per-diem cost of

prison incarceration and center residency is essentially the same, excluding capital construction costs for prisons and rental fees for the centers. If these figures were added to the per-diem cost, the centers would be considerably cheaper. Another cost factor is the turnover of population in a center compared to the turnover in a prison. In a center, the average stay is about four months. For similar offenses, prison stays are at least 12 months, and average closer to 15 months before parole. Thus, total costs of care per individual are much cheaper for the center than for the prison.



The DCOR estimates that 35 percent of new admissions to the Georgia prison system meet the objective criteria for entrance into a restitution center and the state does plan to expand the number of restitution centers.

Transferability



In the fall of 1977, the second National Restitution Symposium was held in St. Paul, Minnesota. Several speakers at this conference warned of the undesirable effect of "widening the nets" with restitution programs. Kenneth Schoen, Director of the Minnesota Department of Corrections, cautioned that "restitution may have the unintended effect of 'widening the net' of control by the system over the offender." In Georgia, if a resitution center is used as an alternative to a suspended sentence or probation, this would be an example of "widening the net" of control. Thus, of major importance in any state's consideration of restitution centers are built-in safeguards against inappropriate intake into a residential setting when alternative sanctions are less expensive and more appropriate to the offense.

The Georgia experience has illustrated that the best safeguard against inappropriate intake into restitution centers is an intake decision which is made after the judge has already sentenced the offender to a period of time of imprisonment. The Cobb County Restitution Center is illustrative of this practice. Sentenced prisoners in the county jail waiting to be picked up and transferred to the prison comprise a pool of potential residents for the restitution center. The center staff members interview prisoners, study case files with particular attention to the pre-sentence investigation report compiled by the probation staff, and, when deemed appropriate for entry into the restitution center, make recommendations to the judge who sentenced the prisoners. The judge rarely disagrees with such recommendations and new court orders are issued changing sentences to placement in the restitution center as a condition of probation. Again, Georgia's Cobb County pro-

TABLE 4
RESTITUTION CENTER OFFENDER CUMULATIVE EARNINGS AND DISBURSEMENTS*
July 1976 - June 1977

Center	Gross Earnings	Taxes and Other Deductions	Net Earnings	Room and Board Assessments	Food, Clothing, Medical, Personal Items, Transportation	Mandatory Savings	Financial Assistance to Families	Court Ordered Restitution Fines: Monetary Restitution and Fines	Court Ordered Restitution Fines: Compulsory Public Service (Hours)
Albany Restitution Center	$110,737	$15,789	$94,948	$12,526	$41,572	$4,597	$5,175	$33,882	410
Athens Adjustment /Restitution Center	108,667	18,902	89,764	26,891	15,671	9,149	3,417	8,178	2,178
Atlanta Restitution Center	60,165	10,154	50,011	20,783	10,675	2,730	3,728	3,809	1,650
Augusta Adjustment/ Restitution Center	116,429	24,405	92,024	27,459	27,959	22,399	5,663	8,844	12
Cobb Adjustment/ Restitution Center	128,350	19,798	108,552	34,735	15,796	5,775	25,707	16,433	1,240
Gainesville Adjustment Restitution Center	110,039	21,153	88,885	18,625	17,512	6,646	4,223	9,899	263
Gateway Adjustment/ Restitution Center	75,595	13,774	61,822	28,916	11,916	2,240	1,700	1,302	4
Macon Restitution Center	99,439	20,817	78,623	21,988	33,689	4,107	8,652	13,424	848
Rome Restitution Center	116,112	19,680	96,432	14,957	34,132	4,750	890	32,666	1,767
TOTAL	$925,533	$164,472	$761,061	$206,880	$208,922	$62,393	$59,155	$128,437	8,372

*Rounded to nearest dollar. No figures presently available for Thomasville.
Source: Georgia Department of Corrections and Offender Rehabilitation.

gram insures that judges do not use the restitution program as an alternative to probation. There is some indication that in some of the other districts offenders who would otherwise be placed on probation sometimes are placed in restitution centers. There are other economic reasons for insuring that restitution is not used as a substitute for probation. In a paper prepared two years ago, Bill Read of the General Services Division of the DCOR explained:

> The importance of diversion certainty for a residential diversion-from-incarceration program can easily be seen by considering a few basic cost figures. The annual cost of operating a 30-resident restitution center has proven to be approximately $116,000.* The annual cost of supervising 30 offenders on probation. . .($205/offender/year) is $6,150. The annual cost of incarcerating 30 offenders ($4,045/offender/year) is $121,350. It is, therefore, quite clear that a residential restitution center cannot be basically cost-effective if it serves offenders diverted from probation. For example, a restitution center serving 50 percent divertees from probation and 50 percent divertees from incarceration would have a basic comparative cost-effectiveness of $116,000 versus $63,750 ($3,075 for field supervision cost plus $60,675 for incarceration cost). In short, the restitution center would not be cost-effective. Therefore, a primary objective in diversion from incarceration programs is an offender selection method which guarantees 100 percent diversion certainty (i.e. post-sentence selection method using either a judicially amended sentence or a conditional parole).

One of the major cost savings of Georgia's restitution centers is the short-term leasing of facilities in contrast to capital cost outlays for purchasing or constructing a community residential facility. Uneconomical tourist courts located on state highways now bypassed by interstate highways are to be found in most communities of any size. The Georgia experience has demonstrated high utility of these tourist courts as well as downtown hotels.

Although per diem costs in Georgia between prisons and restitution centers are about the same, the shorter turnaround time of an individual offender in a restitution center also represents a cost savings in contrast to the longer amount of time an incarcerated offender spends in prison. Mr. Read also mentioned this aspect of restitution centers in his previously cited paper:

> The importance of the offender turnover rate can also be easily seen by again considering the previous basic cost figures. If we make the fair assumption that most property criminals who are sentenced to prison will normally serve a minimum of 12 months, it is clear that a restitution center can dramatically increase its basic cost-effectiveness by increasing its turnover rate. For example, since the annual cost of operating a 30-resident center will remain essentially constant, a center with an average turnover rate of six months can serve 60 offenders in 12 months at a cost of $116,000. However, assuming 100 percent diversion from incarceration, the comparative cost of incarcerating these 60 offenders for 12 months is $242,700. Likewise, comparative figures for a center with an average three-month turnover rate are $116,000 versus $485,400 for incar-

*Present restitution center costs are projected at $200,000 annually.

ceration. Obviously then, an increased turnover rate represents a substantial increase in cost-effectiveness. Thus, another primary objective of a residential restitution program is an offender selection method which allows program staff to be somewhat selective of referral eligibles. In this way, program staff can use priority selection criteria which would operate to increase the total percentage of offenders who could be stabilized relatively quickly and could finish making their restitution on a non-residential basis.

The Georgia restitution centers have been successful in attracting resources from other state and federal programs for both core services and supplemental resources supported by state appropriations. VISTA volunteers, CETA employees, and library services are just a few examples of some of these resources. Volunteers are valuable in the program. Service clubs are attracted to sponsor certain aspects of the restitution program. These resources also exist in other states.

The key to the successful operation of a correctional residential facility is community acceptance. Key community leaders, particularly judges, must be involved in the beginning stages of planning for a restitution center. The restitution center needs to be viewed by community leaders as *their* program. And by making the program voluntary, the state corrections agency avoids trying to implement a restitution center in a community where it is not wanted. Additionally, the public service restitution aspect of the program has large appeal to community agencies, organizations, and political leaders. The concept of restitution itself has appeal to persons with both conservative and liberal political views. The former like restitution as a means to secure justice for the victim; the latter also appreciate its quality as an alternative to incarceration. Although for different reasons, it would seem that in selling the concept of a restitution center to a community, the concept itself goes a long way toward selling itself. In Georgia, in several communities with restitution centers, there is now a demand for a center for women.

Another lesson learned from the Georgia experience is that the state agency must allow each center flexibility in its operations and procedures as each community differs, political structures vary, judges have different views as to how offenders should be treated, and job markets are not the same. For the center to be adopted by the community as its own, the center program must reflect the uniqueness of that particular community. The availability of employment opportunities is a key factor in deciding on a site location of the center. Without the income derived from employment, offenders' restitution to victims is not possible. Thus, placement of restitution centers in remote areas may not be advisable. Of course, if public transportation is not available, alternative transportation modes must be considered. Georgia officials restrict travel to jobs to within the metropolitan area where the center is located. In Atlanta, this sometimes means a distance of 15 miles; in smaller towns, much less.

The need to find jobs for offenders; the need to locate other community resources such as volunteers, assistance from service clubs, library services, counseling; and the need to work closely with community leaders, especially judges, are important considerations in staffing residential restitution centers. Georgia's experience suggests that the center directors should have community organization skills, and such skills are probably more important than penology/criminal justice expertise. In this connection, Georgia-type restitution center advisory boards can also be quite useful.

Obviously, a state interested in establishing restitution centers must

determine if enabling legislation is required or if existing statutes allow for establishment of restitution centers. In recent years, most states reviewing their criminal codes specifically have listed restitution as a legitimate sanction. Residential centers that emphasize restitution as a key component of their programs seldom are specified in the statute. Many of the statutes, however, are broadly conceived and can easily be construed to include a residential center.

Conclusions

Restitution is an increasingly popular concept both as a sole sanction and as a condition of probation. Residential centers are not necessary for a restitution program, but those states with prison overcrowding might consider this alternative. Residential centers are viewed as an alternative to incarceration and a cost-effective response in reducing prison population.

FOOTNOTES

1. Other states reporting restitution programs are: California, Colorado, Connecticut, Florida, Iowa, Minnesota, Mississippi, Ohio, Oklahoma, South Dakota, Tennessee, Utah, and Washington. For the most part, these restitution programs are not combined with residential programs. In the past year, three more states passed statutes allowing restitution--North Carolina, Texas, and Virginia.

2. *Operation Performance: Six Year Action Plan for Corrections* (Executive Summary), Georgia Department of Corrections and Offender Rehabilitation, July 1975, p. 2.

3. *Prison Population and Policy Choices*, Vol. I, ABT Associates, National Institute of Law Enforcement and Criminal Justice, 1977, p. 27.

4. Ibid.

5. A paper on the Georgia Restitution Center Program, prepared for the Southern Conference on Corrections, February 25-27, 1976, Tallahassee, Florida.

INTRODUCTION TO CLASP

Myrtle Keil
329-4630

The California League of Alternative Service Programs (CLASP), formerly known as the Association of California Court Referral Programs, is an association of locally based agencies in California which administer community service assignments imposed by the Courts or other justice system agencies. EXHIBIT G

CLASP is a statewide organization which has been meeting on an increasingly formal basis since August 1975. Meetings of CLASP are held monthly in Northern California and periodically throughout the year in Southern California. A monthly newsletter and an annual directory are published and distributed to members. The current 1979-1980 officers of CLASP are:

President - Linda Peluso
Voluntary Action Center of Santa Clara County
Vice-President
Northern - Tom Helman
Community Options of Santa Cruz
Southern - Phyllis Summers
Voluntary Action Center of Los Angeles
Secretary - Lazima Niyonu
Volunteer Bureau of Alameda County
Treasurer - Peg Meyer
Voluntary Action Center of Sonoma County

Program members of CLASP are representatives of those programs who have agreed to abide by and support the policies and goals of CLASP and whose programs conform to the definition of a Court referral or community service program:

> A program which refers persons designated by the Court or other justice system agencies to tax-supported or private non-profit agencies for performance of services which enhance the effectiveness of such agencies to the benefit of the public, while fulfilling the individual's obligation to the justice system and the community.

Despite differences in operational settings and funding bases, member programs provide: appropriate screening of individuals for placement purposes, task assignments made with regard for community needs and for the dignity and wishes of the individual assignee, training and assistance to staff of user agencies, monitoring of client progress, timely and accurate reports to the Courts, and collection and evaluation of statistical data.

The purpose of CLASP is to promote the development and improve the quality of alternative community service programs throughout California. Specific goals include communication networking, facilitation of intercounty referrals, review of administrative and service delivery standards, development of evaluation methodology, promotion of resource development and education in the community, consultation with interested community and agency representatives, and legislative and policy impact.

Sincerely,

Peg Meyer
CLASP Treasurer
Voluntary Action Center of Sonoma County

Clasp Member Programs

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Alameda County Community Service Program

I PROGRAM SYNOPSIS

In Alameda County judges offer selected offenders the option of performing a stipulated number of hours of community service in lieu of paying a fine or serving jail time. The court notifies the Volunteer Bureau when such a referral is made. The individual is then interviewed at the Bureau and placed in a non-profit or public agency. On or before the assigned completion date, project staff report to the court the outcome of the referral.

The Community Service Alternatives Program has been operating in Alameda County since 1966. In February 1972, this pilot project of the Volunteer Bureau received a grant for expansion and development. The third and final year of OCJP funding ended January 31, 1975. The Program is now well established, and is supported by the County of Alameda, through a contract with the Probation Department.

II PROGRESS REPORT, 1979 - 1980 OBJECTIVES

OBJECTIVE 1: Place no fewer than 3,500 and no more than 5,250 offenders in community service activities by 6/30/80.

PROGRESS: 3,792 were interviewed and placed between 7/1/79 and 6/30/80

OBJECTIVE 2: 78% of those interviewed will complete assignments during FY 1979-80.

PROGRESS: 72 % of participants whose cases are inactive completed their assignments (see table below)

STATUS OF 79 - 80 INTAKE AS OF AUGUST, 1980

	NUMBER	PERCENT
A. Proportion of Cases Closed		
Active (still working on assignment)	670	17.7
Inactive (court notified)	3122	82.3
TOTAL	3792	100%
B. Returned to Court Before Deadline for Some Other Disposition	142	4.8%
C. Inactive Case Outcomes:		
Completed required hours	1987	66.7
Gave extra hours beyond assignment or continuing to volunteer	150	5.0
Partially completed assignment at court-set deadline	324	10.9
Never worked at the agency assignment or no work was verifiable at deadline	519	17.4
TOTAL	2980	100%

Success rate of participants, defined as completing assigned hours within allotted time, has dropped each year since 1975. Without appropriate research, analysis of this trend can only be speculative.

It should be noted that a major factor affecting success is the feasibility of the deadline. Many "failures" do complete assigned work when re-referred by the courts with an extended time limit.

Certainly, risk of failure has increased as the client population changed. Those referred are now more typical of the offender population in earlier years, when participants were mostly traffic violators, there was, in effect, pre-screening for potential success. Every year the caseload includes more serious cases with substantial hours assigned.

We must be wary of comparing oranges and apples. Our method of presenting data does not distinguish between success in completing one or two day assignments as against twenty or thirty day sentences.

The proportions of clients doing no work at all and of those returned to court as inappropriate for community service continue to rise. This reflects, again, a change in the kinds of referrals being made to the program.

Excessive demands on staff time may also have affected the completion rate. There is insufficient time for the supportive follow-up work on placements which long-term assignments demand.

A study of factors influencing or determining success is much needed and will be undertaken should necessary research be obtained.

OBJECTIVE 3: Provide service to 500 community agencies over FY1979-80

PROGRESS: Approximately 600 different agencies use the services of court-referred volunteers.

A. TYPE OF AGENCY *(Note: many provide services which overlap the arbitrary categories below).*

HOSPITALS AND MEDICAL convalescent hospitals, rest homes, hospitals, free clinics, public health, etc.

EDUCATION - schools, colleges, adult education, tutoring

RECREATION - youth organizations, senior citizen centers, etc.

CULTURAL - libraries, art, music, radio TV

REHABILITATION & COUNSELLING SERVICE: (residential and day programs) emotional, physical, correctional, addictive programs

INFORMATION & REFERRAL consumer services, legal, housing, employment

CHILDCARE

MULTI-PURPOSE SOCIAL SERVICE AGENCIES - Red Cross, Volunteer Bureaus, settlement houses, emergency needs - food, shelter, clothing

ECOLOGY - environmental protection, animal care, recycling

HEALTH ASSOCIATIONS

MISCELLANEOUS - parks, city government, churches

B. TYPES OF WORK
Approximately 60% do maintenance or clerical work, much of it unskilled.

MAINTENANCE - skilled and unskilled; repairs, janitorial, household work, recycling, school watchman, animal care.

CLERICAL - skilled and unskilled; typing, filing, colating, addressing, etc.

STAFF AIDE - assisting professional staff, such as medical work, community organization, interviewing, counselling, planning, etc.

HOSPITAL AIDE AND FRIENDLY VISITOR - primarily convalescent hospitals and rest homes, and also individual shut-ins.

RECREATION AIDE

CHILD CARE, TUTOR, TEACHER AIDE

HANDICRAFTS/ARTISTIC - sewing for needy clients of local agencies, woodwork, scrapbooks, graphic work, murals, posters, etc.

AIDE TO DISABLED - direct service to retarded, blind, deaf, motor-impaired.

MISCELLANEOUS

Sacramento County

ALTERNATIVE SENTENCING PROGRAM

The Alternative Sentencing Program (ASP) provides constructive alternatives for sentencing. The program's staff and its volunteers assist individuals in appropriate and beneficial placements in various agencies and programs which provide community work opportunities.

Community service work is done in lieu of or in addition to fines and/or incarceration. The community service hours may also be included as a condition of a grant of formal probation.

ASP is designed to handle post-sentence misdemeanant and felony referrals from the Sacramento Municipal and Superior Courts. ASP is not designed as a pre-sentence referral agency or as an employment placement agency. In addition, program participants must be at least 18 years of age and not have a history of sex offenses. Juvenile offenders do not qualify for this program.

SUMMARY OF SERVICES

Program participants are generally ordered to perform community service work instead of serving a jail sentence or paying a fine. They will be assigned a specified number of work hours which must be completed by a date determined by the court.

Participants are to report to the Alternative Sentencing Program on their day of sentencing. The ASP office is located in the

Ping Yuen Center
458 I Street Court
(916) 446-5081 See attached map.

They will be interviewed and assigned to work in a non-profit health, welfare, governmental, educational, recreational, or civic agency. This placement will be designed to meet their needs, interests, skills, and available time. It will be at that agency where they are to fulfill their work obligation.

Transportation and child care will not be provided. In addition, changes of address or employment schedules should be reported to the ASP office immediately.

COMMUNITY WORK GUIDELINES

Program participants may arrange a work schedule with their placement agency that is convenient for them; however, they must follow these scheduling guidelines:

(1) If they are employed full-time, a minimum work schedule of 5 hours per week must be maintained; or,
(2) If they are unemployed or employed part-time, a minimum work schedule of 10 hours per week must be maintained.

Participants should always arrange work schedules that will ensure successful completion of their sentences. Completion deadlines assigned by the court may require work schedules over and above the minimum requirements listed above.

Furthermore, work progress, work quality, attendance, and attitude will be monitored and evaluated. Uncooperativeness, failure to maintain a regular and reasonable work schedule, and/or failure to complete sentences by the completion deadline will result in further court appearances for re-sentencing.

TYPES OF PLACEMENTS

The Alternative Sentencing Program currently has volunteer referral agreements with over 200 agencies in the greater Sacramento area. These placement agencies may be listed under the following categories:

(1) Health & Welfare: Convalescent hospitals, child care centers, receiving homes, skilled nursing facilities.
(2) Rehabilitative: Alcoholism programs, drug rehabilitative programs, recovery homes, half-way houses.
(3) Educational: High schools, colleges, skill development agencies, manpower agencies.
(4) Community-based: Churches, libraries, cultural groups, youth organizations.
(5) Recreational: Park & Recreation districts, sport programs, YMCA, YWCA.

TYPES OF PLACEMENTS (CONT'D)

(6) Clerical: Skilled and unskilled office work in governmental agencies, charitable agencies, informational groups.
(7) Maintenance: Indoor and outdoor custodial and building maintenance, construction, carpentry, painting.
(8) Community counseling: Crisis hot lines, runaway centers, suicide prevention, rape crisis, drug awareness, ethnic programs, women's organizations.

CLOSING CASES

When a program participant successfully completes his/her community service assignment, the case is closed at the ASP office, and no additional court appearances are required. A work record sheet signed by an agency supervisor provides documentation of a successful completion.

Unsuccessful completions require that participants return to court for re-sentencing. A certified letter, return receipt requested, is sent to unsuccessful participant, instructing him/her to appear in court. They will also be credited with any hours completed prior to their termination from this program.

If a participant is on formal probation, the supervising probation officer will be notified of completions by memorandums. Unsuccessful completions will be returned to probation for further action; additional court appearances must be initiated and scheduled by probation. Documentation of contacts and other pertinent factors will be made available upon request.

INQUIRIES

Inquiries regarding participants and program operations may be directed to

Kim J. King, Coordinator of Program Services

at the ASP office.

Los Angeles Times

Tuesday, December 23, 1980

Society Repaid

Service Jobs: Alternative to Prisons

By MARK A. STEIN
Times Staff Writer

A prominent Milwaukee child psychologist, convicted of bilking the Wisconsin Medicaid program of $13,285, is sentenced by a state circuit court judge to spend three years nursing sick children in India.

Meatpackers in Los Angeles who bribed federal inspectors to falsely grade poor cuts of meat are ordered by a federal judge to hire and train unemployed ex-convicts as meatcutters.

An unemployed Atlanta man, convicted of burglary, is sentenced to a "restitution center" where he volunteers in a local social service agency and gets help finding a job. He goes to work, pays the state for his room and board, then repays his victim for what he stole.

Faced with bulging prisons that appear to have little effect on the swelling crime rate, judges, prosecutors, probation officers and even defense attorneys across the country are turning increasingly to alternative ways to deal with nonviolent, first-time lawbreakers.

Ordered to Pay Back

Each month, thousands of adults convicted of crimes ranging from arson and manslaughter to jaywalking and traffic offenses are given "community service orders"—legal commands to somehow pay back society for breaking its rules.

Exactly how society is repaid is left to the imaginations of people in the criminal justice system—sometimes even to the imagination of the offender.

Such unusual sentences not only make criminals pay for breaking the law, but also keep offenders out of prison—a place that many experts believe is more likely to teach inmates to commit more serious crime than to rehabilitate or discourage them.

"With a lot of people, if you lock them up, you aren't doing a lot toward their rehabilitation," said Charles Mandsager, president of the Federal Probation Officers Assn. in Sioux Falls, S.D.

'It Makes Sense'

"Besides, locking people up is a very expensive proposition. And instead of hitting up the taxpayer, a lot of judges are beginning to ask, 'Why not try to get something back from these people for the wrong they imposed upon the community?' When you think about it, it makes a lot of sense."

Community service orders, regarded with skepticism when they appeared in 1966 in California's Alameda County, have become an everyday sentencing tool used by judges in many jurisdictions and at many levels.

Proponents say society benefits because instead of taking from the system (keeping an inmate in a maximum-security prison costs more than $20,000 a year, building a new prison costs $50,000 a bed), the offender is giving, either by repaying his victim or volunteering at a nonprofit social service agency.

Offenders benefit, proponents add, because the approach keeps them out of prison and allows them to keep their jobs and preserve their family lives. In addition, some offenders, while serving their community service orders, master skills well enough to begin working for a living instead of stealing.

"Why should someone convicted of a crime take (food and shelter in prison) from society in a way that will leave them worse off in the end?" asked Charles Schudson, an assistant district attorney in Milwaukee. "Why shouldn't they be ordered to help society in a way that will leave them able to work again in society when they're finished?"

Such "alternative sentences" are more attractive than fines, judges say, because they penalize rich and poor more equitably.

Almost universally, these orders are reserved for nonviolent and first-time criminals, most of them guilty of what one judge said is "acting dumb in public"—misdemeanor traffic violations, petty theft and vandalism.

Addition of Felons Urged

However, the National Council on Crime and Delinquency, in a recent study for the California Legislature, said that if the state is to avoid "an emerging crisis" in its overcrowded prison system—a problem shared by many states—it must, among other things, expand the use of community-service orders to include more felons.

A number of first-time swindlers, arsonists and other felons in California already receive alternative sentences, usually when judges and probation officers are convinced they pose no threat to the people they will be ordered to help.

Such alternative sentences are most common in California. On the average, more than 3,000 community service orders are handed down each month in municipal, Superior and federal courts in this state. Urban areas are the most active (Los Angeles County has eight separate programs that process about 800 offenders a month), but many rural counties also have embraced the practice.

John David Pevna, a staff member of the California League of Alternative Service Programs, estimated that between 10 and 15 million hours of volunteer work was done by court-referred volunteers last year in California alone. "I don't know how some nonprofit agencies would survive without this help," he said.

Most Involve Volunteer Work

Most alternative sentences in California consist of a guarantee of probation instead of jail or fine if certain conditions, usually a number of hours of volunteer service, are fulfilled.

Most volunteer for a city—cleaning parks, planting trees and so on—or for such nonprofit service agencies as the Cancer Society, the Red Cross, recycling centers and some hospitals.

In some jurisdictions, community service sentences are given only to those people who cannot afford to pay fines, but most believe that practice is discriminatory and use the sentences for everyone convicted of certain crimes.

Judges sometimes exploit any unusual abilities in assigning alternative sentences.

A former Chico, Calif., city treasurer, for example, was put to work raising money for the American Cancer Society after being convicted of land fraud. And a Chicago dentist, convicted of falsely billing an Illinois social service agency, was ordered to work one day a week for [illegible] filling the teeth of Cook County Jail inmates.

If the offender has no skill or little education, the problem of placement is harder but not impossible.

During the Hillside Strangler scare in Los Angeles in 1978, for example, judges wanted to clear the streets of prostitutes, who were potential victims. So prostitutes were rounded up by the score, convicted and sent to various volunteer agencies throughout the city.

"We had a whole parade of them around here for about a week," said Carolyn White, director of the Community Volunteer Office of the United Way of Los Angeles. "They turned out to be pretty good volunteers, too. Many of them weren't trained in any sort of skill, so we sent them to convalescent homes, where they would feed people, wheel them around, talk with them. They were very good at it."

Judge Jacqueline Taber credits "small country judges" with helping her develop the Alameda County program in the Municipal Court in 1966. She now is a Superior Court judge.

"There was nothing really new in the concept," she said. "Small country judges had been doing it for years—you know, they sent someone somewhere, then stopped by on the way home to make sure they showed up. But it wasn't used in big cities because it wasn't seen as practical."

Agencies Handle Sentences

What made it practical in her urban San Francisco Bay-area jurisdiction is the idea of using some agency to broker the sentence. The agency, usually the county probation department or a private volunteer bureau, takes the offender, determines his abilities, finds an appropriate nonprofit agency in need of a volunteer and arranges to make sure the work is done.

In the meantime, the offender keeps his regular job and is often ordered to pay part of his salary to his victim. If he was unemployed when he committed the crime, he usually is required to get a job.

Offenders are generally pleased with the program themselves, judges say.

Tommy Singleton, an unemployed truck driver who was ordered to work at Hollywood Presbyterian Hospital for 70 hours and attend an alcohol diversion program after being arrested for drunk driving, called the program "beautiful."

'Keeps People Trying'

"It's a beautiful thing because it gives a young man or a young lady a chance," said Singleton, 36, of Los Angeles. "It guides you in the right direction. This kind of program keeps people trying and looking up when they're going through a bad time; they don't get discouraged and give up."

When he agreed to work in the hospital's print shop, the drunk driving charge was dropped and Singleton, who says he is innocent, was able to keep his truck driving license. He doesn't plan to use it, however, because his co-workers, impressed with his performance as a volunteer, convinced the hospital to hire him permanently.

Singleton brushes aside worries that people may think he got off easy. "People should decide if I'm better off to society as an unemployed truck driver or working," he said.

He added that the court has done its job with him "because it taught me something. I'll never do that (break the law) again."

Best Interests Considered

Criminal-justice experts, aware of public sentiment to deal more harshly with criminals, are eager to point out that community work is used only when in the best interests of both the offender and the community.

"There still is some resistance to these programs because some people feel it amounts to coddling criminals," said Douglas Cunningham, director of the state Office of Criminal Justice Planning.

Cunningham, who said no one has yet studied whether alternative sentences are effective in reducing either the crime rate or prison populations, added that he be-

"We only now are beginning to think clearly about responding to certain types of criminal behavior with prison and certain other types with rehabilitation," he said. "Our old notion of prison was based on the pretense of rehabilitation for everyone—and it was just that, a pretense.

"Now that we have shifted our thinking to punishing the serious offender, we are starting to change our thinking about those people we can help, too."

'A Lot Harsher' Than Nothing

Adds Tim Fitzharris, executive director of the California Probation, Parole and Correction Assn.: "The public sees this sometimes as a slap on the hand, because they compare it to prison. Looking at it that way it is an easy sentence. But compared to nothing—and most of the people getting these sentences would have gotten straight probation in the past —it's a lot harsher."

Municipal Judge Eric Younger, who along with former Municipal Judge Joan Dempsey Klein introduced the idea of community service sentences to Los Angeles, says that in most cases in which alternative sentences are used, they are adequate punishment. "Candidly," he added, "80 or 100 hours of community service is not a light sentence; in fact, it may be harsher than normal."

Flashy sentences, such as banishment of the Milwaukee psychologist (now being appealed by the state attorney general as illegal because there is no way to make sure the sentence is carried out), are rare. Judges say they are reluctant to give such sentences because they are difficult to arrange, difficult to monitor, usually no more effective than more conventional volunteer service and tend to make community service sentencing appear gimmicky.

Younger said a classic example of poor sentencing is to order a drunk driver to work in a hospital emergency room to see first-hand the effects of automobile accidents. "That sounds flashy and looks good in the papers," he said, "but it just doesn't work . . . Besides, I think the people who work in emergency rooms probably have their own criteria for people they want working with them—criteria other than an ability to drink."

There are no standards to instruct judges—or to protect offenders—in community service sentencing matters and sometimes, as one probation officer said, the sentences "get a little wiggy."

One of the most colorful examples of a free-spirited judge using something other than jail or a fine to punish small-time lawbreakers is former Santa Monica Municipal Judge W. Blair Gibbens.

While presiding over the local traffic court in the early 1960s, Gibbens would occasionally order people to place stickers on their cars identifying themselves as traffic offenders, sweep streets and clean stop signs or to visit morgues, graveyards, accident scenes and hospitals.

Then there was the owner of a French Quarter carriage tour company in New Orleans who was ordered to shovel manure in city-owned horse stalls after he was found guilty of failing to keep his stalls clean.

Generally, however, judges simply order offenders to volunteer at a local agency, with the amount of time to be served based on the fine or jail term usually given for the crime committed. For example, eight hours of community service work may be the equivalent of $25 or $30 in fines (about minimum wage) or a day in jail.

If a defendant feels he is receiving an unfairly harsh community service sentence, he may refuse it. He will receive the standard fine or jail term. "These aren't chain gangs we're running," said one judge. "Everybody is free to refuse to work."

The lack of guidelines concerns some legal experts, among them John Coffee, a Columbia University law professor who helped draft the American Bar Assn. standards for criminal sentences.

"It's up to judges to do what they want," he said, "and judges are very independent, idiosyncratic people. They can be tough one month and soft the next, depending, perhaps, on how settled their stomach is or some other arbitrary reason as much as personal philosophies and judicial experience."

Judges are aware of their tremendous discretion.

"You spend time thinking, agonizing, worrying," said Warren Ferguson, a former federal district judge now on the 9th Circuit Court of Appeals in Los Angeles.

"Whenever I sentence someone, I need to consider the need to punish, the need to rehabilitate and the need to protect the public," said William P. Gray, a federal district judge in Los Angeles. "These are all things I try to crank into the sentencing equation—and I'm never altogether sure I'm doing it right."

Concern over the relatively unbridled discretion of judges in this area cuts both ways: Just as some worry that community service sentences may be too harsh, some also worry that the sentences may sometimes be too risky for the public.

Younger said such risks are inherent in an effective court system.

'You Are Taking a Chance'

"Anytime you give someone less than the maximum sentence, you are taking a chance on that person," he said. "But judges are paid for that. Sure, we're going to make mistakes, but we're human and that's the system.

"If you had a 100% record with these kinds of sentences (currently about 75% to 80% of community service sentences in the state are completed on time as ordered, statistics show)—if you only gave them to suburban housewives with their first driving-under-the-influence conviction and no prior history and no chance of ever getting in trouble again—you may look good, but you're not giving a lot of people a chance to change their behavior.

"And the purpose of the courts, after all, isn't to

throw people in jail or supply the Voluntary Action Center with volunteers, but to change the behavior of people convicted of crimes. I'm thoroughly convinced community service sentences do that."

In any case, said B. James George, professor at the New York Law School and chairman of the American Bar Assn. committee on criminal justice standards, judges are not likely to let certain criminals back on the street—no matter how good the volunteer program or how bad the prison.

"If you're talking about a violent crime," he said, "the offender is going to the slammer, overcrowded or not."

Many problems encountered in setting up the first few community service programs have been faced and resolved many times as counties set up individual programs. To help eliminate repeated problems, many local programs have formed the San Jose-based California League of Alternative Service Programs.

CLASP, which includes most of the state's 46 programs in 34 of 58 counties, is preparing a short course in community service sentencing for judges in areas without such programs. The organization says that unlike other aspects of the criminal justice system, alternative sentencing programs differ significantly from county to county.

Representatives of a number of court referral volunteer programs are drafting a bill to bring order to the state's hodgepodge of programs, said Phyllis Summers, director of the court referral program of the Los Angeles Voluntary Action Center.

Despite the lack of consistency, however, the system in California generally draws praise from those experts—and lawbreakers—familiar with it.

"I'm not saying this is a cure-all for everything, but it is certainly a very positive step in the right direction," said Ferguson.

"This is a very effective way to get across the message, 'You have harmed the community and now you are going to pay,'" said Jane Thomson, coordinator of the alternative sentences program for the Volunteer Action Center of Alameda County.

"It may be one of the best bargains in the history of the criminal justice system," said Younger, citing the $16 average cost to the county of each community service sentence in Los Angeles. "Even if you didn't care about anything but money, it's a very healthy program. Add in factors like rehabilitation and it can't be beat."

"I'd say that 99% of those who complete their assignments are very positive, even thankful, for the experience," Summers said.

'A Dose of Justice'

Most people who receive community service sentences in his court, Younger added, realize they are getting a fair, if somewhat stiff, "dose of justice."

"A lot of the people who come to court on petty theft and other small charges are good and sorry about it and are willing to pay for it," he said. "It occurs to them that it is fundamentally fair—even though it may sound corny—to repay society."

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
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EXHIBIT F

February 3, 1981

MEMORANDUM

TO: Senator Melvin D. Close, Chairman, and Members of the Senate Judiciary Committee

FROM: Robert E. Erickson, Senior Research Analyst

SUBJECT: Background Information on "Right to Farm" Legislation (S.B. 47)

In response to a request for additional information on "right to farm" legislation by Senator Wagner and other members of the judiciary committee, the following material is provided.

Mr. Chuck White of the Nevada Farm Bureau reported to the committee on February 3, 1981, that some 11 states have enacted legislation similar to that proposed in S.B. 47. Thus far, I have located statutes for the following states with dates of enactment in parenthesis: Alabama (1978); North Carolina (1979), Washington (1979); Florida (1979); Tennessee (1979); South Carolina (1980); Delaware (1980); Georgia (1980); and Missippi (1980). Copies of these laws are provided for your information in Attachment #1.

In Nevada, NRS 244.360 provides the procedure whereby complaints of nuisance, as defined in NRS 40.140, are initially heard and acted upon by boards of county commissioners. NRS 266.335 specifies that city councils may determine by ordinance what shall be deemed nuisances, and sets forth procedures for the abatement of such nuisances. These two laws are enclosed for your information (Attachment #2).

I am also enclosing the best and most comprehensive article I have found on "right to farm" legislation. This article, provided as Attachment #3, is entitled "'Right to Farm' Laws Examined" and was prepared by Edward Thompson, Jr.

Mr. Thompson is an attorney and serves as director of the Agricultural Lands Project for the National Association of Counties (NACo) Research Foundation. It is my opinion that NACo, other than being "pro-county" in basic philosophy, can be expected to produce high quality technical information. After comparing this article, the North Carolina law, and S.B. 47, it would appear that S.B. 47 is drafted in such a manner as to avoid most of the concerns outlined in Mr. Thompson's article.

Please let me know if there should be any additional information that you would like to receive.

REE:jlc
Encls.

ATTACHMENT #1

OTHER STATES' LEGISLATION

CODE OF ALABAMA

1975

1979 Cumulative Supplement

ANNOTATED

Prepared by

The Editorial Staff of the Publishers

Under the Direction of

D. P. Harriman. S. C. Willard. J. J. Watson
and J. L. Dudley

VOLUME 5

Including Acts of the 1979 Organizational Session, 1979 Extra Session and 1979 Regular Session and annotations taken through Southern Reporter, Second Series, Volume 371, Page 882

Place in Pocket of Corresponding Volume of Main Set. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

The Michie Company
Bobbs-Merrill Law Publishing
Law Publishers
Charlottesville, Virginia
1979

III. ILLUSTRATIVE CASES.

The noises of increased automobile traffic, the stopping, starting and shifting gears, incident to the rightful use of a public street, cannot be regarded in this day as substantial cause for injunctive relief which deprives the citizen of the use of his property. Fugazzoto v. Brookwood One, 295 Ala. 169, 325 So. 2d 161 (1976).

Although increased traffic may be one element of a nuisance action based upon an activity such as a truck terminal or a garage, increased traffic alone cannot be regarded as a substantial invasion of a property owner's right to the enjoyment of his property. Fugazzoto v. Brookwood One, 295 Ala. 169, 325 So. 2d 161 (1976).

§ 6-5-125. Injunction before completion.

And nuisance must be, etc.

In accord with fifth paragraph in bound volume. See Johnson v. Bryant, 350 So. 2d 433 (Ala. 1977).

Injunctive relief against nuisances should be cautiously given. Johnson v. Bryant, 350 So. 2d 433 (Ala. 1977).

Increased traffic alone insufficient basis for anticipatory injunction. — Plaintiffs' claim for anticipatory injunctive relief based upon an allegation that construction of a private access road would increase automobile traffic thereby constituting a nuisance was properly dismissed since increased traffic alone cannot be regarded as a substantial invasion of a property owner's right to the enjoyment of his property. Fugazzoto v. Brookwood One, 295 Ala. 161, 325 So. 2d 161 (1976).

Cited in Acker v. Protective Life Ins. Co., 353 So. 2d 1150 (Ala. 1977).

§ 6-5-127. When agricultural, manufacturing and industrial plants or establishments and farming operation facilities not deemed nuisances after operating one year; effect of section on municipal ordinances.

(a) No agricultural, manufacturing or other industrial plant or establishment, or any farming operation facility, any of its appurtenances or the operation thereof shall be or become a nuisance, private or public, by any changed conditions in and about the locality thereof after the same has been in operation for more than one year when such plant, facility or establishment, its appurtenances or the operation thereof was not a nuisance at the time the operation thereof began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such plant, establishment, or any farming operation facility, or any of its appurtenances.

(b) The provisions of subsection (a) of this section shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damage sustained by them on account of any pollution of, or change in the condition of, the waters of any stream or on account of any overflow of the lands of any person, firm or corporation.

(c) Any and all ordinances now or hereafter adopted by any municipal corporation in which such plant is located, operating to make the operation of any such plant, establishment or any farming operation facility or its appurtenances a nuisance or providing for an abatement thereof as a nuisance in the circumstances set forth in this section are, and shall be, null and void; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such plant, establishment or any farming operation facility or any of its appurtenances.

(d) This section shall not be construed to invalidate any contracts heretofore made, but, insofar as contracts are concerned, is only applicable to contracts and agreements to be made in the future. (Acts 1915, No. 691, p. 744; Code 1923, §§ 9277-9279; Code 1940, T. 7, §§ 1088-1090; Acts 1978, 2nd Ex. Sess., No. 79.)

The 1978 amendment, effective August 7, 1978, inserted "agricultural" near the beginning of subsection (a), substituted "such plant, facility or establishment" for "such plant or establishment" near the middle of subsection (a) and inserted "or any farming operation facility" in subsections (a), (b) and (c).

Division 2.

Lewdness, Assignation or Prostitution.

The Alabama Red Light Abatement Act may be used to enjoin permanently, as a nuisance, the exhibition of a particular motion picture found to be obscene, if the provisions of the act ensuring prompt judicial review of the question of obscenity and providing for a prompt hearing on the merits of the permanent injunction are followed. Trans-Lux Corp. v. State ex rel. Sweeton, 366 So. 2d 710 (Ala. 1979).

§ 6-5-140. Definitions.

"Lewdness" defined. — Within the meaning of Alabama Red Light Abatement Act, the term, "lewdness" includes the exhibition of an obscene motion picture in a public place such as an enclosed motion picture theater. Trans-Lux Corp. v. State ex rel. Sweeton, 366 So. 2d 710 (Ala. 1979).

"Obscene" defined. — A motion picture is "obscene" for purposes of Alabama Red Light Abatement Act, if it meets the definition of "obscene" contained in Alabama criminal statutes. Trans-Lux Corp. v. State ex rel. Sweeton, 366 So. 2d 710 (Ala. 1979).

Cited in Ellwest Stereo Theatres, Inc. v. State ex rel. Parsons, 371 So. 2d 1 (Ala. 1979).

Collateral references.

Massage parlor as nuisance. 80 ALR3d 1020.

§ 6-5-147. Closing place pending final decision — Order.

Cited in Trans-Lux Corp. v. State ex rel. Sweeton, 366 So. 2d 710 (Ala. 1979).

§ 6-5-149. Precedence of action over other cases; evidence; dismissal of action; continuance; costs; judgment.

Cited in Trans-Lux Corp. v. State ex rel. Sweeton, 366 So. 2d 710 (Ala. 1979).

§ 6-5-151. Order of abatement; sale of property.

Cited in Trans-Lux Corp. v. State ex rel. Sweeton, 366 So. 2d 710 (Ala. 1979).

THE GENERAL STATUTES OF NORTH CAROLINA

1979 SUPPLEMENT

Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of
D. P. HARRIMAN, S. C. WILLARD AND SYLVIA FAULKNER

Volume 3A, Part 1

1978 Replacement

Annotated through 297 N.C. 304 and 41 N.C. App. 192. For complete scope of annotations, see scope of volume page.

Place in Pocket of Corresponding Volume of Main Set.

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1979

ARTICLE 53.

Grain Dealers.

§ 106-605. Execution, terms and form of bond; action on bond. — (a) Such bond shall be signed by the grain dealer and by a company authorized to execute surety bonds in North Carolina and shall be made payable to the State of North Carolina. The bond shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this Article, and shall be for the use and benefit of any person from whom the grain dealer has purchased grain and who has not been paid by the grain dealer. The bond shall be given for the period for which the grain dealer's license is issued.

(b) Any person claiming to be injured by nonpayment, fraud, deceit, negligence or other misconduct of a grain dealer may institute a suit or suits against said grain dealer and his sureties upon the bond in the name of the State, without any assignment thereof. (1973, c. 665, s. 5; 1979, c. 589, s. 1.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 106-610. Grounds for refusal, suspension or revocation of license. — The Commissioner may refuse to grant or renew license, may suspend or may revoke any license upon a showing by substantial and competent evidence that:

(1) The dealer has suffered a final money judgment to be entered against him and such judgment remains unsatisfied; or

(2) The dealer has failed to promptly and properly account and pay for grain; or

(3) The dealer has failed to keep and maintain business records of his grain transactions as required herein; or

(4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer; or

(5) The dealer has failed to collect from a producer and remit to the Commissioner of Agriculture such assessments as have been approved by the producers and are required to be collected under the provisions of Article 50 of Chapter 106 of the General Statutes; or

(6) The dealer or applicant has been convicted, pled guilty or nolo contendere within three years in any state or federal court of a crime involving moral turpitude;

(7) The dealer has failed either to file the required bond or to keep such bond in force. (1973, c. 665, s. 10; 1979, c. 589, s. 2.)

Editor's Note. — The 1979 amendment added subdivision (7).

ARTICLE 57.

Nuisance Liability of Agricultural Operations.

§ 106-700. Legislative determination and declaration of policy. — It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm

improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. (1979, c. 202, § 1.)

Editor's Note. — Session Laws 1979, c. 202, ss. 2, 3, provide: "This act does not affect actions commenced prior to the effective date hereof.

If any provisions or clause of this Article or application thereof to any person or circumstances is held invalid such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable."

§ 106-701. When agricultural operation, etc., not constituted nuisance by changed conditions in locality. — (a) No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future. (1979, c. 202, s. 1.)

Article 1.

Administrati

Part 3. County Boards of

Sec.
108-7. Creation.
108-15. Duties and respons
108-15.1. Fees.

Part 4. County Director of

108-17. Appointment.
108-18. Salary.
108-19. Duties and respons

Article 2.

Programs of Public

108-23. Creation of progr
108-24. Definitions.

Part 1. Aid to the Aged

108-25 to 108-28. [Repealed.]

Part 2. Aid to Families
Children.

108-38. Eligibility requi
contributions t

Part 3. The Administration
with Dependent

108-40. Application for as
108-42. Granting or denial
108-43. Reconsideration of
108-44. Appeals.
108-45. Confidentiality of
108-48. Fraudulent misre
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Part 4. Financing of Pr
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108-54. Determination of
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§ 108-7. Creation.
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West's

REVISED CODE OF WASHINGTON ANNOTATED

Under Official Allocation and Numbering

Title 7

Chapters 7.36 to End

Title 8

Cumulative Annual Pocket Part

For Use In 1980-1981

Replacing prior Pocket Part in back of volume

Includes laws through the 1979 Regular and First Extraordinary Sessions

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by removing the said hedge and the bulkhead," brought defendants within this statute's prohibition against committing unnecessary injury, in action for damages from wilful trespass. Nystrand v O'Malley (1962) 60 Wn 2d 792, 375 P2d 863.

7.48.240 Certain places of resort declared nuisances

Houses of ill fame, kept for the purpose, where persons are employed for purposes of prostitution; all public houses or places of resort where gambling is carried on, or permitted; all houses or places within any city, town, or village, or upon any public road, or highway where drunkenness, gambling, fighting or breaches of the peace are carried on, or permitted; all opium dens, or houses, or places of resort where opium smoking is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge thereof, and persons carrying on such unlawful business shall be punished as provided in this chapter. [Amended by Laws 1st Ex Sess 1973 ch 154 § 18.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

7.48.250 Penalty—Abatement

1 Am Jur Pl and Pr Forms (Rev ed), Abatement, Form 51 (order sustaining plea in abatement).

7.48.300 Agricultural activities—Legislative findings and purpose

The legislature finds that agricultural activities conducted on farmland in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses. It is therefore the purpose of RCW 7.48.300 through 7.48.310 and 7.48.905 to provide that agricultural activities conducted on farmland be protected from nuisance lawsuits.
[Enacted Laws 1979 ch 122 § 1, effective June 7, 1979.]

CJS Nuisances §§ 20 et seq.
Key Number Digests: Nuisance ⇐41.

7.48.305 Agricultural activities—Presumed reasonable and not a nuisance—Exception

Notwithstanding any other provision of this chapter, agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.

If that agricultural activity is undertaken in conformity with federal, state, and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.
[Added by Laws 1979 ch 122 § 2, effective June 7, 1979.]

CJS Nuisances §§ 20 et seq.
Key Number Digests: Nuisances ⇐41.

7.48.310 Agricultural activities—Definitions

As used in RCW 7.48.305:

(1) "Agricultural activity" includes, but is not limited to, the growing or raising of horticultural and viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.

(2) "Farmland" means land devoted primarily to the production, for commercial purposes, of livestock or agricultural commodities.
[Enacted Laws 1979 ch 122 § 3, effective June 7, 1979.]

1980

CUMULATIVE SUPPLEMENT

TENNESSEE CODE ANNOTATED

The Compilation of the Public Acts through the 1980 Adjourned Session of the General Assembly

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Completely Annotated

VOLUME 9B

1977 REPLACEMENT

Prepared under the Supervision of the Tennessee Code Commission

RAY L. BROCK, JR., Chairman
JAMES A. CLODFELTER, Executive Secretary
WILLIAM J. HARBISON
WILLIAM MCMILLAN LEECH, JR.
CLETUS W. MCWILLIAMS

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CHARLOTTESVILLE, VIRGINIA

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expenses incurred in carrying out their duties as members of this committee. [Acts 1978 (Adj. S.), ch. 833, § 2.]

53-6603. Duties of department. — The department of public health shall have the following duties, among others, in order to care for persons suffering from epilepsy and other seizure disorders:

(a) Develop standards for determining eligibility for care and treatment under this program, with the advice of the epilepsy advisory committee.

(b) Assist in the development and expansion of programs for the care and treatment of persons suffering from epilepsy and other seizure disorders.

(c) Extend financial assistance to persons suffering from epilepsy and other seizure disorders in obtaining the medical, nursing, pharmaceutical, and technical services necessary in caring for such diseases.

(d) Institute and carry on an educational program among physicians, hospitals, public health departments, schools, police departments and the public concerning epilepsy and other seizure disorders, including the dissemination of information and the conducting of educational programs concerning the recognition, emergency care, and continuing treatment of persons suffering from these diseases.

(e) Promulgate all rules and regulations necessary to effectuate the purposes of this chapter.

(f) Employ personnel as positions are funded to implement the provisions of this chapter. [Acts 1978 (Adj. S.), ch. 833, § 3.]

Compiler's Notes. Section 4 of Acts 1978 (Adj. S.), ch. 833 read: "The provisions of this act do not constitute an appropriation of funds, and commencing with the fiscal year beginning July 1, 1978, no funds shall be expended under the provisions of this act unless such funds are specifically appropriated in the general appropriations bill pursuant to Tennessee Code Annotated, §§ 9-6-101 — 9-6-106, 9-6-108 — 9-6-114, or a specific amendment or supplement thereto."

CHAPTER 67

FEEDLOTS, DAIRY FARMS AND EGG PRODUCTION HOUSES

53-6701. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Dairy farm" means any place or premises where one or more cows are kept and from which a part or all of the milk or milk products is provided, sold or offered for sale to a milk plant, transfer station or receiving station.

(2) "Department" means the Tennessee department of public health and includes any officer, agency or designee of that department.

(3) "Egg production house" means any place or premises where chickens are kept for the production of eggs for resale to processors, wholesalers or retailers.

(4) "Established date of operation" means the date on which a feedlot, dairy farm or egg production house commenced operating. If the physical facilities of the feedlot, dairy farm or egg production house are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of this date of commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot, dairy farm or egg production house of a previously established date of operation.

(5) "Established date of ownership" means the date of the recording of an appropriate muniment of title establishing the ownership of realty.

(6) "Rule of the department" means a rule as defined in chapter 5 of title 4 which materially affects the operation of a feedlot, dairy farm, or egg production house and which has been adopted by the department. Nothing in this chapter shall be deemed to empower the department to make any rule.

(7) "Feedlot" means a lot, yard, corral or other area in which livestock are confined, primarily for the purposes of feeding, growing, raising, or birthing prior to slaughter. The term does not include areas which are used for the raising of crops or other vegetation upon which livestock are allowed to graze or feed.

(8) "Livestock" means cattle, sheep, swine, poultry and other animals or fowl, which are being produced primarily for use as food or food products for human consumption and horses.

(9) "Materially affects" means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste or similar products resulting from the operation or the location or use of buildings, machinery, vehicles, equipment or other real or personal property used in the operation of a livestock feedlot, dairy farm or egg production house.

(10) "Nuisance" means and includes public or private nuisance as defined either by statute or by the common law.

(11) "Nuisance action or proceeding" means and includes every action, claim or proceeding, whether brought at law, in equity or as an administrative proceeding, which is based on nuisance.

(12) "Owner or operator" means any person who owns, leases, operates, controls or supervises a feedlot.

(13) "Zoning requirement" means a regulation or ordinance which has been adopted by a city, county, township, school district, or any special-purpose district or authority, which materially affects the operation of a feedlot, dairy farm or egg production house. Nothing in this chapter shall be deemed to empower any agency described in this definition to make any regulation or ordinance.

(14) "Regulations" means a resolution by the county legislative body or an ordinance by the governing body of any municipality regulating or prohibiting the normal noises of animals or fowls, the noises in the operation of the equipment, the odors normally associated with any feedlot, dairy farm, or egg

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production house, or the preclusion of any animals or fowls from within the city or from within a defined area of the county. [Acts 1979, ch. 138, § 1.]

Effective Dates. Acts 1979, ch. 138, § 6. April 12, 1979.

53-6702. Nuisance action or proceeding against feedlot, dairy farm or egg production house. — (a) In any nuisance action or proceeding against a feedlot, dairy farm, or egg production house brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of such feedlot, dairy farm or egg production house, proof of compliance with §§ 53-6703 and 53-6704 shall be an absolute defense, provided that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with § 53-6703 or § 53-6704.

(b) In any nuisance action or proceeding against a feedlot, dairy farm or egg production house brought by or on behalf of a person whose date of ownership of realty precedes the established date of operation of such feedlot, dairy farm or egg production house, but whose actual or proposed use of such realty for residential or commercial purposes is subsequent to the established date of operation of such feedlot, dairy farm or egg production house, proof of compliance with §§ 53-6703 and 53-6704 shall be an absolute defense, provided, that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with § 53-6703 or § 53-6704.

(c) The normal noises of the animals or fowls, the noises in the operation of the equipment, or the odors normally associated with any feedlot, dairy farm or egg production house shall not constitute grounds for any nuisance action or proceeding against a feedlot, dairy farm or egg production house brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of such feedlot, dairy farm or egg production house. [Acts 1979, ch. 138, § 2.]

53-6703. Applicability of rules of department of public health. — (a) This section shall apply to the department's rules except for rules required for delegation of the national pollutant discharge elimination system permit program pursuant to the Federal Water Pollution Control Act, Section 402, Public Law 92-500, 33 U.S.C. 1342, as amended.

(b) The applicability of rules of the department other than those issued under the Tennessee Air Quality Act, chapter 34 of title 53, shall be as follows:

(1) A rule of the department in effect before April 12, 1979, shall apply to a feedlot, dairy farm or egg production house with an established date of operation prior to April 12, 1979.

(2) A rule of the department shall apply to a feedlot, dairy farm or egg production house with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department adopted after April 12, 1979, shall not apply to a feedlot, dairy farm or egg production house holding any department of public health permit and having an established date of operation prior to the effective date of the rule.

(4) A rule of the department adopted after April 12, 1979, shall not apply to a feedlot, dairy farm or egg production house not previously required to hold a department of public health permit and having an established date of operation prior to the effective date of the rule.

(c) The applicability of rules promulgated under the "Tennessee Air Quality Act," compiled in chapter 34 of title 53, shall be as follows:

(1) A rule of the department of public health or the air pollution control board in effect on April 12, 1979, shall apply to a feedlot, dairy farm or egg production house with an established date of operation prior to April 12, 1979.

(2) A rule of the department of public health or the air pollution control board shall apply to a feedlot, dairy farm or egg production house with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department of public health or the air pollution control board pertaining to a feedlot, dairy farm or egg production house adopted after April 12, 1979, shall not apply to any feedlot, dairy farm or egg production house having an established date of operation prior to the effective date of the rule. [Acts 1979, ch. 138, § 3.]

Section to Section References. This section is referred to in § 53-6702.

53-6704. Applicability of zoning requirements and regulations. — (a) The applicability of zoning requirements shall be as follows:

(1) A zoning requirement shall apply to a feedlot, dairy farm or egg production house with an established date of operation subsequent to the effective date of the zoning requirements.

(2) A zoning requirement shall not apply to a feedlot, dairy farm or egg production house with an established date of operation prior to the effective date of the zoning requirement.

(3) A zoning requirement which is in effect on April 12, 1979, shall apply to a feedlot, dairy farm or egg production house with an established date of operation prior to April 12, 1979.

(4) A zoning requirement adopted by a city shall not apply to a feedlot, dairy farm or egg production house which becomes located within an incorporated or unincorporated area subject to regulation by that city by virtue of an incorporation or annexation which takes effect after April 12, 1979.

(b) A person shall comply with this section as a matter of law where no zoning requirement exists.

(c) The applicability of regulations shall be as follows:

(1) A regulation shall apply to a feedlot, dairy farm or egg production house with an established date of operation subsequent to the effective date of such regulation.

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(3) A regulation which is in effect on April 12, 1979, shall apply to a feedlot, dairy farm or egg production house with an established date of operation prior to April 12, 1979.

(4) A regulation adopted by a city shall not apply to a feedlot, dairy farm or egg production house which becomes located within an incorporated or unincorporated area subject to regulation by such city by virtue of an incorporation or annexation which takes effect after April 12, 1979.

(d) A person shall comply with this section as a matter of law where no regulation exists. [Acts 1979, ch. 138, § 4.]

Effective Dates. Acts 1979, ch. 138, § 6. April 12, 1979.

Section to Section References. This section is referred to in § 53-6702.

CHAPTER 68

BOXING EXHIBITIONS

Amateur Exhibitions

53-6801. Rounds, number, duration and rest period — Gloves, minimum weight. — Scientific boxing exhibitions by lawfully chartered athletic or gymnasium clubs having a bona fide membership shall not consist of more than ten (10) rounds of not more than three (3) minutes each, with at least one (1) minute rest between each round, and the principals shall have their hands covered with properly padded gloves weighing not less than six (6) ounces. [Acts 1909, ch. 155, § 2; Shan., § 6674a1; Code 1932, § 11040; modified; T.C.A. (orig. ed.), § 66-301.]

Compiler's Notes. The provisions of this chapter formerly appeared as §§ 66-301 — 66-303.

West's
FLORIDA STATUTES ANNOTATED
Official Classification

Vol. 22A
§§ 810 to 842.

Cumulative Annual Pocket Part

For Use In 1980

Replacing prior Pocket Part in back of volume

Including Legislation Enacted Through The First Regular Session and A and B Special Sessions Of The Sixth Legislature (1979)

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-179

823.05 Places declared a nuisance; may be abated and enjoined

Supplementary Index to Notes

Scope of injunction 20.5

1. In general
Operators of health club were entitled to opportunity to demonstrate that they could operate legitimate business on premises without alleged lewdness which assertedly constituted a nuisance and, therefore, injunction sought by State, which would prohibit entire health club enterprise and not just particular acts alleged to constitute nuisance, was too broad. Health Clubs, Inc. v. State ex rel. Eagan, App., 333 So.2d 1324 (1976).

13. Miscellaneous nuisances
Masturbation for hire by a female of a male customer constitutes "lewdness" and is subject to being declared a nuisance under statute which provides in pertinent part that whoever establishes or maintains any house or place of "lewdness" shall be deemed guilty of maintaining a nuisance. Health Clubs, Inc. v. State ex rel. Eagan, App., 333 So.2d 1324 (1976).

18. Pleading
Assuming that there was no statutory prohibition against "body shampoos," where complaint alleged that defendants unlawfully maintained and operated a business for the purpose of lewdness in that they employed female attendants to perform services for male customers for monetary fees and further stated "These services consisted of so-called 'body shampoos' and/or consisted of so-called 'hand relief', wherein the female attendants masturbated the male customers," complaint alleged in effect that defendants violated law by innocent and/or wrongful acts and was, therefore, required to be dismissed. Health Clubs, Inc. v. State ex rel. Eagan, App., 333 So.2d 1324 (1976).

20.5 Scope of injunction
Where illegal conduct which has been decreed to constitute a public nuisance is separable from legal conduct within a business enterprise, only the illegal conduct may be enjoined. Health Clubs Inc. v. State ex rel. Eagan, App., 333 So.2d 1324 (1976).

823.12 Smoking in elevators unlawful

Cross References
Smoking in public buildings, see § 255.27.

823.13 Places where obscene materials are illegally kept, sold, or used declared a public nuisance; drive-in theaters, films visible from public streets or public places

(1) Any store, shop, warehouse, building, vehicle, ship, boat, vessel, aircraft, or any place whatever, which is visited by persons for the purpose of unlawfully purchasing or viewing any obscene material or performance as described in chapter 847, or which is used for the illegal keeping, selling, or delivering of the same, shall be deemed a public nuisance. No person shall keep or maintain such public nuisance or aid and abet another in keeping or maintaining such public nuisance.

(2) It shall be unlawful and is hereby declared a public nuisance for any ticket seller, ticket taker, usher, motion picture projection machine operator, manager, owner, or any other person connected with or employed by any drive-in theater in the state to knowingly exhibit, or aid or assist in exhibiting, any motion picture, slide, or other exhibit which depicts nudity which is harmful to minors as described in s. 847.013, if such motion picture, slide, or other exhibit is visible from any public street or public place, other than that place intended for the showing of such motion pictures, slides, or other exhibits.
Added by Laws 1973, c. 73-172, § 1, eff. Oct. 1, 1973.

Library References
Nuisance ⇨81.
C.J.S. Nuisances § 20 et seq.

823.14 Commercial agricultural or farming operations

No commercial agricultural or farming operation, place, establishment, or facility, or any of its appurtenances, or the operation thereof, shall be or shall become a nuisance as a result of changed conditions in or around the locality of such agricultural or farming operation, place, establishment, or facility if such agricultural or farming operation, place, establishment, or facility has been in operation for 1 year or more and if it was not a nuisance at the time it began operation. This section, however, shall not apply whenever a nuisance injurious to health, as defined in chapter 386, results from the operation of any such agricultural or farming operation, place, establishment, or facility or any of its appurtenances.
Laws 1979, c. 79-81, § 1, eff. May 18, 1979.

1980

Cumulative Supplement

To

CODE OF LAWS OF SOUTH CAROLINA 1976

Annotated

Containing Permanent General Statutes, Administrative Regulations, and Court Rules Enacted or Approved During the 1976 through 1980 Sessions of the General Assembly

Prepared under the supervision and direction of the Code Commissioner and the Legislative Council of the General Assembly of South Carolina

VOLUME 16

NOTICE

This pocket supplement is not official. At the direction of the Legislative Council, the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1976 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.

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coordination among the various agencies and organizations involved.

All financial support used to serve all or a portion of the migrant and seasonal farm worker community shall be channeled through the A-95 process of the Grants and Contracts Review Unit of the State Budget and Control Board where it shall then be reported to the Commission.

All requests for food stamps by migrant and seasonal farm workers or their families shall be reported to the Commission as soon as possible after the request has been made.

HISTORY: 1979 Act No. 151 § 3, eff July 2, 1979.

Effect of Amendments—
The 1979 amendment substantially rewrote the section which formerly required only that state agencies and departments cooperate with the Commission.

Chapter 45 [New]

Nuisance Suits Related to Agricultural Operations

Sec.
46–45–10. Legislative findings.
46–45–20. "Agricultural operation" defined.
46–45–30. Operations not to be deemed a nuisance due to changed conditions.
46–45–40. Liability for pollution and flooding.
46–45–50. Local ordinances to contrary null and void.

§ 46–45–10. Legislative findings.

The General Assembly finds that:

(1) The policy of the State is to conserve, protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products.

(2) When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits and as a result (a) agricultural operations are sometimes forced to cease and (b) many persons are discouraged from making investments in farm improvements.

(3) This chapter is enacted to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

HISTORY: 1980 Act No. 452, eff May 30, 1980.

§ 46–45–20. "Agricultural operation" defined.

For purposes of this chapter "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock or poultry products.

HISTORY: 1980 Act No. 452, eff May 30, 1980.

§ 46–45–30. Operations not to be deemed a nuisance due to changed conditions.

No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality of the operation after it has been in operation for more than one year when such operation was not a nuisance at the time it began. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

HISTORY: 1980 Act No. 452, eff May 30, 1980.

Research and Practice References—
58 Am Jur 2d, Nuisances §§ 40, 112, 228.
66 CJS, Nuisances §§ 15, 17.

§ 46–45–40. Liability for pollution and flooding.

The provisions of § 46–45–30 shall not affect or defeat the right of any person to recover damages for any injuries or damages sustained by him on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow on lands of any such person.

HISTORY: 1980 Act No. 452, eff May 30, 1980.

Cross references—
As to Pollution Control Act, see chapter 1 of title 48.

§ 46–45–50. Local ordinances to contrary null and void.

Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement as a nuisance in derogation of this chapter shall be null and void. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. The provisions of this section shall not apply whenever a nuisance results from an agricultural operation located within the corporate limits of any city.

HISTORY: 1980 Act No. 452, eff May 30, 1980.

Cross references—
As to ordinance power of municipality, see § 5–7–30.

CODE OF GEORGIA ANNOTATED

1980
Cumulative Pocket Part

Prepared by
The Editorial Staff of the Publisher

Insert in Pocket in Back of Book

BOOK 22 — 1973 Revision
Title 71 —Notaries Public and Commissioners of Deeds
Title 72 —Nuisances
Title 73 —Paints, Oils, Petroleum Products
Title 74 —Parent and Child
Title 75 —Partnership

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Section 3-1001 does not preclude recovery for any damages save those which were suffered more than 4 years prior to filing of suit. Id.

72-105 (4458) Right of alienee of property injured. Liability of alienee of property causing nuisance

ANNOTATIONS

Knowledge

There is no merit in appellee's contention that appellant is without standing to bring action since it purchased property with full knowledge of circumstances surrounding it. 230/646 (198 S. E. 2d 853).

72-107 Agricultural or farming operations; legislative determination and declaration of policy

It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this law [§§ 72-107, 72-108] to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

(Acts 1980, p. 1253, eff. March 31, 1980.)

72-108 Agricultural or farming operations; nuisances

No agricultural or farming operation, place, establishment, or facility, or any of its appurtenances, or the operation thereof, shall be or shall become a nuisance, either public or private, as a result of changed conditions in or around the locality of such agricultural or farming operation, place, establishment, or facility if such agricultural or farming operation, place, establishment, or facility has been in operation for one year or more.

(Acts 1980, pp. 1253, 1254, eff. March 31, 1980.)

CHAPTER 72-2. ABATEMENT

Sec.

72-201 (5329) Authorization and procedure for abatement of nuisances generally

Upon filing of a petition as provided in section 72-202, any nuisance

1980
CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September, 1980

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED DURING LEGISLATIVE SESSIONS
1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980
AND CUMULATIVE INDEX

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

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Volume 20

Annotations Close with OCT 16 1980

Lawyers' Edition, Second Series	Vol. 60
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ALR Annotations	98 ALR3d

By the Editorial Staff of the Publishers

THE HARRISON COMPANY - - - - - - - - - NORCROSS, GEORGIA
THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY, ROCHESTER, NEW YORK

Keeping bees as nuisance. 88 ALR3d 992.

§ 95-3-13. Trial—evidence—costs—permanent injunction.

ALR Annotations—
Modern status of rules as to balance of convenience or social utility as affecting relief from nuisance. 40 ALR3d 601.
"Coming to a nuisance" as a defense or estoppel. 42 ALR3d 344.

§ 95-3-23. Lease annulled for unlawful use.

ALR Annotations—
Fault as consideration in alimony, spousal support, or property division awards pursuant to no-fault divorce. 86 ALR3d 1116.

§ 95-3-29. Immunity of certain agricultural operations from nuisance actions.

(1) In any nuisance action, public or private, against an agricultural operation, proof that said agricultural operation has existed for one (1) year or more is an absolute defense to such action, if the conditions or circumstances alleged to constitute a nuisance have existed substantially unchanged since the established date of operation.

(2) The following words and phrases as used in this section shall have the meanings given them in this section:

(a) "Agricultural operation" includes, without limitation, any facility for the production and processing of crops, livestock, farm-raised fish and fish products, livestock products, and poultry or poultry products for commercial or industrial purposes.

(b) "Established date of operation" means the date on-which the agricultural operation commenced operation. If the physical facilities of the agricultural operation are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of the date of commencement of the expanded operation and the commencement of expanded operation shall not divest the agricultural operation of a previously established date of operation.

(3) This section shall not affect actions commenced prior to July 1, 1980.

SOURCES: Laws, 1980, ch. 374, eff from and after July 1, 1980.

Cross references—
As to exemption of land used for agricultural purposes from zoning regulations, see § 17-1-3.
As to exemption of farm buildings from building codes, see § 19-5-9.
As to animal and poultry by-products disposal or rendering plants, see §§ 41-51-1 et seq.

DELAWARE

SPONSOR: Sen. Adams

DELAWARE STATE SENATE

130TH GENERAL ASSEMBLY JUL 8 1980 62 347

SENATE BILL NO. 490 APR 1 1980

AN ACT TO AMEND TITLE 3, DELAWARE CODE RELATING TO AGRICULTURE AND FORESTAL OPERATIONS NOT BEING CONSIDERED NUISANCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 3, Delaware Code, by establishing a new Chapter to be designated as Chapter 14 to read as follows:

"CHAPTER 14. AGRICULTURE AND FORESTAL NUISANCES

§1401. Agricultural and Forestal Operations not Nuisances

No agricultural or forestal operation within this State which has been in operation for a period of more than one (1) year shall be considered a nuisance, either public or private, as the result of a changed condition in or about the locality where such agricultural or forestal operation is located. The provisions of this Section shall not apply when the nuisance is determined to exist as the result of the negligent or improper operation of any agricultural or forestal operation or when such operation is being operated in violation of State or Federal law or any local or county ordinance."

SYNOPSIS

Wherein a changed condition has occurred where a agricultural or forestal operation is located no nuisance suit can be brought if the agricultural or forestal operation has been located in the area for a period of more than one year. The provision does not prohibit nuisance suits being brought against such operations where there is negligence or improper operation of such facilities nor does it prohibit nuisance suits being brought against such operations when such operation is violating state, federal or local laws.

Author - Senator Adams

LC:McDTC:MJL
1950A

Nevada Revised Statutes

266.330 Public health: Power of council. The city council may:

1. Provide for safeguarding public health in the city.
2. Create a board of health and prescribe the powers and duties of such board.
3. Provide for the enforcement of all regulations and quarantines established by the board of health by imposing adequate penalties for violations thereof.

[Part 28:125:1907; RL § 794; NCL § 1128] + [28½:125:1907; added 1921, 85; NCL § 1129]—(NRS A 1971, 305)

266.335 Nuisances: Power of council. The city council may:

1. Determine by ordinance what shall be deemed nuisances.
2. Provide for the abatement, prevention and removal of such nuisances at the expense of the person creating, causing or committing such nuisances.
3. Provide that such expense of removal shall be a lien upon the property upon which the nuisance is located. Such lien shall:

(a) Be perfected by filing with the county recorder a statement by the city clerk of the amount of expenses due and unpaid and describing the property subject to the lien.

(b) Be coequal with the latest lien thereon to secure the payment of general taxes.

(c) Not be subject to extinguishment by the sale of any property on account of the nonpayment of general taxes.

(d) Be prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes.

4. Provide any other penalty or punishment of persons responsible for such nuisances.

[Part 28:125:1907; RL § 794; NCL § 1128] + [100½:125:1907; added 1945, 289; 1943 NCL § 1201.01]—(NRS A 1971, 306)

266.355 Licensing, regulation of lawful trades, businesses: Power of council.

1. Except as provided in subsection 3, the city council may:

(a) Regulate all businesses, trades and professions.

(b) Fix, impose and collect a license tax for revenue upon all businesses, trades and professions.

2. The city council may establish any equitable standard to be used in fixing license taxes required to be collected pursuant to this section.
3. The city council may license insurance agents, brokers, analysts, adjusters and managing general agents within the limitations and under the conditions prescribed in NRS 680B.020.

[Part 28:125:1907; RL § 794; NCL § 1128]—(NRS A 1961, 47; 1963, 402; 1971, 307, 1958)

266.366 Building regulations; construction, safety codes: Powers of council. Subject to the limitations contained in NRS 278.580 and 444.340 to 444.430, inclusive, the city council may:

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ATTACHMENT #2

NEVADA REVISED STATUTES

Nevada Revised Statutes

244.358 Dogs: Inoculation against rabies.

1. In order to control rabies and to protect the public health and welfare, the board of county commissioners of any county of this state may enact an ordinance requiring all dog owners to procure inoculation of their dogs against rabies.

2. Such ordinance may, in addition to such other provisions as may be appropriate to local conditions, contain any or all of the following provisions:

(a) Every dog owner shall, after his dog attains the age of 4 months and at such intervals as may be prescribed by rules and regulations of the state department of agriculture, procure the inoculation of each such dog by a licensed veterinarian with a canine antirabies vaccine approved by and in a manner prescribed by the state department of agriculture;

(b) All dogs under 4 months of age shall be confined to the premises of or kept under physical restraint by the owner, keeper or harborer, with full allowance for the sale or transportation of any such dog;

(c) Any violation of the ordinance or of such additional provisions as may be prescribed by the board of county commissioners shall result in the impounding of the dog in a manner as shall be provided by ordinance; and

(d) The board of county commissioners shall maintain or provide for the maintenance of a pound system and rabies control program for the purpose of carrying out and enforcing the provisions of the ordinance.

(Added to NRS by 1965, 1073)

244.359 Ordinances respecting control of animals authorized; applicability.

1. Each board of county commissioners may enact and enforce an ordinance or ordinances:

(a) Fixing, imposing and collecting an annual license fee on dogs and providing for the capture and disposal of all dogs on which the license fee is not paid.

(b) Regulating or prohibiting the running at large and disposal of all kinds of animals.

(c) Establishing a pound, appointing a poundkeeper and prescribing his duties.

(d) Prohibiting cruelty to animals.

2. Any ordinance or ordinances enacted pursuant to the provisions of paragraphs (a) and (b) of subsection 1 may apply throughout an entire county or govern only a limited area within the county which shall be specified in the ordinance or ordinances.

(Added to NRS by 1973, 558)

244.360 Abatement of nuisances: Complaint; notice; hearing; order; enforcement of order; costs; alternative procedures.

1. Whenever a written complaint is filed with the county clerk alleging the existence of a nuisance, as defined in NRS 40.140, within

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the county, the county clerk shall notify the board of county commissioners, who, except as otherwise provided by subsections 5 and 6 of this section, shall forthwith fix a date to hear the proof of the complainant and of the owner or occupant of the real property whereon the alleged nuisance is claimed to exist not less than 30 nor more than 40 days subsequent to the filing of the complaint.

2. At the time of fixing the hearing the board of county commissioners shall order and cause notice of the hearing to be published at least once a week for 2 weeks next preceding the date fixed for the hearing in a newspaper of general circulation published in the county and if none is so published in the county then in a newspaper having a general circulation in the county.

3. At the time fixed for hearing, the board of county commissioners shall proceed to hear the complaint and any opponents. The board may adjourn the hearing from time to time, not exceeding 14 days in all. At the hearing it shall receive the proofs offered to establish or controvert the facts set forth in the complaint, and on the final hearing of the complaint the board shall by resolution entered on its minutes determine whether or not a nuisance exists and, if one does exist, order the person or persons responsible for such nuisance to abate the same. If the order is not obeyed within 5 days after service of a copy upon the person or persons responsible for the nuisance, the board of county commissioners shall cause the abatement of the nuisance and make the cost of abatement a special assessment against the real property.

4. The special assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes shall be applicable to such special assessment.

5. As an alternative to the procedure set forth in subsections 1, 2, 3 and 4 of this section, the board of county commissioners, upon receipt from the county clerk of notice of the filing of a complaint alleging the existence of a nuisance, may direct the district attorney to notify the person responsible for such nuisance to abate it, and if such notice is not obeyed after service thereof, within a reasonable time under the circumstances, as specified by the board, to bring legal proceedings for abatement of the nuisance, and for recovery of compensatory and exemplary damages and costs of suit. Such proceedings shall be under the control of the board of county commissioners in the same manner as other suits to which the county is a party.

6. Notwithstanding the abatement procedures set forth in the preceding subsections, any board of county commissioners in this state may, by ordinance, direct the district attorney of the county in which the board has jurisdiction to bring all necessary civil actions on behalf of the county in any court of competent jurisdiction to enjoin, abate or restrain the continued violation of any ordinance, rule or regulation enacted, adopted, or passed by said board and having the effect of

law, the violation of which is designated as a nuisance in such ordinance, rule or regulation. If the board of county commissioners decides to direct the district attorney as herein provided, it shall enact an ordinance empowering the district attorney to file all necessary civil actions in the name of the county in any court of competent jurisdiction to enforce any such ordinance, rule or regulation of the board having the effect of law.

[1:29:1901; RL § 1562; NCL § 2043]—(NRS A 1971, 944; 1973, 215)

244.361 Regulation and control of smoke and air pollution.

1. Except as provided in subsection 2, the boards of county commissioners of the various counties of this state are granted the power and authority, by ordinance regularly enacted, to regulate, control and prohibit, as a public nuisance, the excessive emission of dense smoke and air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases within the boundaries of the county.

2. No existing compliance schedule, variance order or other enforcement action relating to air pollution by fossil fuel-fired steam generating facilities, with a capacity greater than 1,000 megawatts, may be enforced until July 1, 1977.

(Added to NRS by 1957, 149; A 1975, 1126)

244.363 Prevention of excessive noise. The boards of county commissioners in their respective counties may, by ordinance regularly enacted, regulate, control and prohibit, as a public nuisance, excessive noise which is injurious to health or which interferes unreasonably with the comfortable enjoyment of life or property within the boundaries of the county.

(Added to NRS by 1971, 944)

244.365 Prevention of stream pollution by sawdust; tax levy.

1. The board of county commissioners of any county is authorized and empowered to institute and maintain suits in any court of competent jurisdiction against any persons, firms, associations or corporations depositing sawdust in any river or stream the waters of which run partly or wholly in this state.

2. The boards of county commissioners of any and all counties are authorized and empowered to levy annually such tax as in their discretion may be necessary to carry out the provisions of this section.

[1:135:1887; C § 2145; RL § 4716; NCL § 8246] + [2:135:1887; C § 2146; RL § 4717; NCL § 8247]

244.366 Water and sewer facilities: Construction; acquisition; operation and maintenance. [Effective until date in 1980 when decennial census reported.]

1. The board of county commissioners of any county having a population of 200,000 or more as determined by the last preceding national census of the Bureau of the Census of the United States Department of

ATTACHMENT #3

"'RIGHT TO FARM' LAWS EXAMINED"

Agland Exchange

Agricultural Lands Project NOVEMBER-DECEMBER 1980 Vol. 2, No. 2

National Association of Counties Research Foundation, 1735 New York Ave. N.W. Washington, D.C. 20006

ANALYSIS

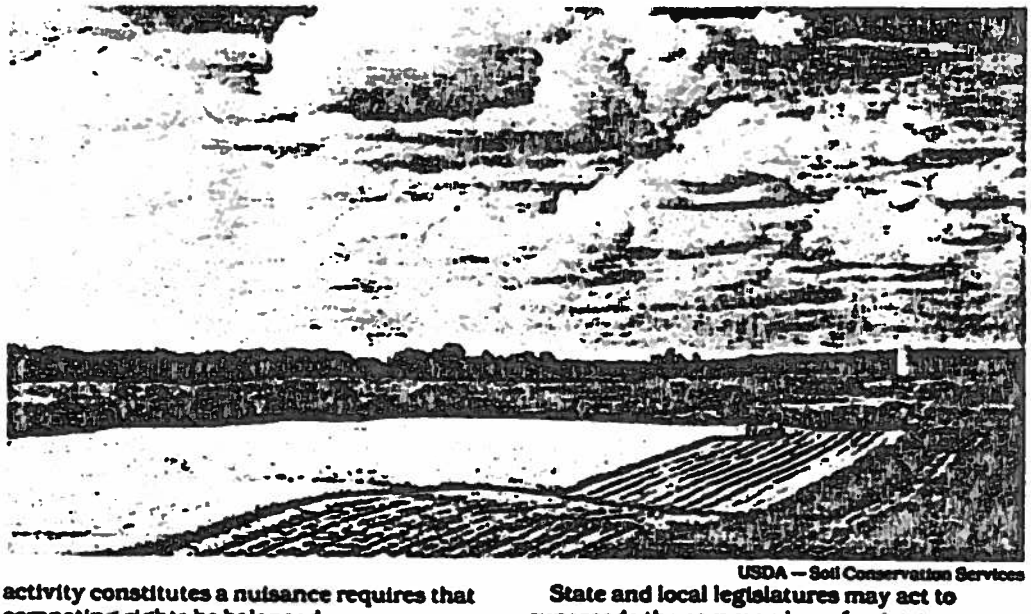
"Right to Farm" Laws Examined

by Edward Thompson, Jr.

The encroachment of residential development into agricultural areas — a leading cause of disappearing farmlands — is also responsible for growth in the number and severity of land use conflicts between farmers and suburbanites. Odors, dust, noise and chemical spray drift are normal byproducts of agriculture that are usually offensive to neighboring homeowners and can sometimes pose a threat to public health and safety. More and more homeowners, it seems, are turning to the courts to put an end to what they consider agricultural nuisances. (See. *Farming in the Shadow of Suburbia.* Publications Update p. 3.)

Recognizing that agriculture could hardly continue without its byproducts, a growing number of states have enacted laws that attempt to protect farmers against nuisance lawsuits which can result in financial liability or the suspension of agricultural operations. These state statutes are known as "right to farm" laws. But a close reading of these laws seems to indicate that they do not really offer much protection to farmers, and that amending them to provide real immunity from suit or nuisance liability would raise constitutional problems that could render the laws invalid.

Nuisance is a concept dating back to the English common law that was imported to America by the early colonists. The term nuisance describes any activity that unreasonably interferes with a person's right to use and enjoy his property. Since all property owners have such a right, determining whether a particular land use activity constitutes a nuisance requires that competing rights be balanced.



USDA — Soil Conservation Services

For instance, the farmer generally has a right to cultivate his land without interference from neighbors, while neighboring homeowners also have a right to live in peace without excessive agricultural noise. Where the balance is struck depends largely on the particular circumstances in each case. The U.S. Supreme Court has said that a nuisance is simply "the right thing in the wrong place, like a pig in a parlor instead of the barnyard."

State and local legislatures may act to supercede the common law of nuisance — as they have attempted to do by passing the "right to farm" statutes. In effect, these laws shift the balancing point to favor agricultural land uses over competing or conflicting residential land uses. But nuisance lawsuits are still decided by the courts on the basis of the facts of the particular case. And the balancing point cannot be shifted too far in one direction with risking judicial invalidation of the statute on constitutional

See "RIGHT TO FARM," page 2

REGIONAL REPORT

Mountain West Showdown

by Thomas Billet, NACoRF Intern

This is the first of a series of reports by the Agricultural Lands Project on the farmland conversion "hotspots" throughout the nation. Aggregate national statistics on farmland losses tend to obscure the severity of this problem on a local scale. What is at stake in literally hundreds of rural communities is the freedom to practice agriculture without interference from nearby residential development, a stable local agricultural economy, and a traditional way of life.

Viewing the problem of farmland conversion from the "top down" — which is the view that many academics in Washington take — makes it appear relatively insignificant, perhaps not significant enough to warrant national attention. But when this problem is viewed from the "bottom up" — the perspective that most citizens take — the number of communities in which it is becoming severe quickly adds up to the point where farmland conversion demands some kind of national action to assist localities with their struggle to reduce its impacts on people.

This first regional report focuses on farmland conversion "hotspots" in Utah, Colorado, Wyoming, Idaho, Arizona and New Mexico. The dimensions of the problem in Nevada and Montana remain somewhat mysterious. Aglands Exchange invites you to help fill in the blanks by bringing to our attention any local farmland conversion problems we have omitted from this report on the Mountain West.

See SHOWDOWN, page 6

NATIONAL AGRICULTURAL LANDS CONFERENCE SET!

The first national conference on agricultural lands, sponsored by the National Association of Counties and many other organizations, will be held on February 8-10, 1981, in Chicago, Illinois.

With something to appeal to everyone who has an interest in this timely issue, the conference will feature the announcement of the long-awaited conclusions of the National Agricultural Lands Study, addresses by prominent agricultural leaders, educational seminars, exhibits and events related to the future of agriculture and the land.

The co-sponsors hope to attract hundreds of their respective constituents and friends to this once-in-a-decade event that will help chart the future of American agriculture. Don't miss it!

Registration information inside.

Continued from page 1

"Right to Farm"

grounds. Thus, it will be in the courts that the "right to farm" laws will have to demonstrate their value as a protective measure for agriculture, and their validity in terms of fairness to nonfarmers.

The "right to farm" law of North Carolina, enacted in 1979, is typical of the breed of similar statutes passed by the legislatures of Delaware, Florida, Georgia, Mississippi, Tennessee and Washington, and now being considered by Kentucky and Virginia, among other states. An analysis of its provisions will illustrate why the "right to farm" laws are of questionable value as a means of protecting the farmer from nuisance suits that result from land use conflicts that, in turn, stem from the encroachment of residential development into agricultural areas.

The North Carolina law begins with a statement of its purpose:

> *It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this (law) to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance.*

This opening statement draws the appropriate connection between land use conflicts as nuisances and the loss of agricultural land. It thus sets the stage for the statutory language that has an actual effect on how agricultural nuisances are defined:

> *No agricultural operation or any of its appurtenances shall be or become a nuisance... by changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this (law) shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.*

This section of the law defines the circumstances under which a court, acting on a formal complaint by a nearby homeowner, may not declare an agricultural land use to be a nuisance and order it to cease. It does not immunize the farmer from being sued in the first place. A farmer may still be hauled into court by a neighbor who claims that his operation is creating a nuisance, and he may thereby be forced to take time away from his farm and to pay attorney's fees in the defense of his case.

Because, as we shall see, the "right to farm" law is unclear on a number of important questions related to the potential liability of the farmer, it is likely that many agricultural nuisance suits will be litigated before it does become clear, if at all, that such suits are worth the trouble of defending, instead of settling out of court.

Whether the "right to farm" laws will make a significant difference to the future security of agriculture remains to be seen.

The author, an attorney, is the director of the NACoRF Agricultural Lands Project.

While keeping farmers out of court entirely might look like a desirable objective, it is doubtful that this could be legally accomplished. Those neighboring property owners who have legitimate nuisance claims would thereby be denied the opportunity to have their day in court. This could amount to a denial of their constitutional right to due process of law, which requires the government to "play fair" with all citizens.

Once a lawsuit has been filed against the farmer, the court will examine the specific facts of the case to see whether the circumstances warrant declaring the agricultural operation a nuisance. Here is where the language of the "right to farm" statute operates to limit those circumstances. If *all* the following circumstances are found to exist, the farmer cannot be ruled to be creating a nuisance under the North Carolina law:

- The agricultural operation was not creating a nuisance when it began, and changing local conditions alone have given rise to the claim that the operation is a nuisance.
- The agricultural operation has been in operation for at least one year, and
- The agricultural operation is not being conducted negligently or improperly.

Let's look at these issues one at a time to see how much protection they actually offer the farmer.

The first issue is relatively straightforward and goes to the heart of the matter. Was the agricultural operation creating a nuisance before the neighbor who now complains about it moved next door and, thus, changed the local conditions under which the farmer is forced to operate? If none of the farmer's agricultural neighbors have complained in the past, it's a safe bet that his operation will not be found to have been a nuisance when it began. Of course, this provision of the law also prevents a farmer from continuing genuinely harmful agricultural practices — those that would amount to a common law nuisance — just because some poor sucker has moved next door.

Second, there is the issue of whether the agricultural operation has been going on for at least a year. This appears on its face to be simple enough, but the interpretation of this provision of the law is really more complicated. The one-year provision protects the homeowner from nuisances created by new agricultural operations by giving him a year to file a formal complaint or forever hold his peace. It also protects established farmers from new homeowners who complain that agricultural operations are creating a nuisance. Or does it?

The answer is cloudy because the North Carolina "right to farm" statute does not specifically define an agricultural operation, other than by reference to the commodities it produces. Such operations are not defined in terms of the agricultural practices being employed. Thus, it is not clear whether a change in the particular practices used by a farmer will transform a year-old operation into an entirely new one that is not protected by the law.

Keeping in mind that the statute is designed to prevent unfair surprises on both sides of the fence, let's consider the following situation: Farmer A has been in operation for over a year, using traditional cultivation methods for growing corn. Homeowner B later builds a house on a tract of land he bought from a neighboring farmer. Farmer A then decides to go to "no till" cultivation, dramatically increasing the dose of herbicide applied to his land, so as to reduce his tillage costs and increase his return from the corn crop. Homeowner B is alarmed when drifting chemical spray gets all over the bedsheets hanging on the washlines; he files suit against Farmer A, claiming that the agricultural spraying is interfering with his right as a homeowner to be free of chemical drift.

Certainly, if Farmer A had continued using traditional cultivation methods, his operation would be protected under the "right to farm" law (assuming no negligence on his part) from a claim that, for example, dust was soiling the neighbor's wash. But Farmer A has changed his operation to include practices quite unlike those he was using before Homeowner B came around. Has the agricultural operation changed sufficiently to make it, for purposes of the statute, a new operation that is less than one year old?

The answer to this and similar questions that could arise will depend upon a detailed inquiry into the specific facts of the case. The effect of this legal uncertainty is that the "right to farm" law offers much less protection to the farmer than appears at first glance. Indeed, if nuisances become a widespread problem in a given locality where residences are mixed in with the farms, the effect of the "right to farm" law might be to lock established farmers into their current agricultural practices, giving them little freedom — without risk of liability — to modify their operations to meet changing opportunities to increase production or reduce costs.

The uncertainty of the North Carolina law might be resolved in the farmer's favor by requiring new homeowners to assume the risk that an established farmer might

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substantially change his methods of operation. But this could be too much to ask from a legal standpoint — it could shift that balancing point too far. (Indeed, other "right to farm" statutes expressly reject this approach.) Here's why.

The one-year provision of the North Carolina law effectively restores the legal concept of "first in time, first in right" which used to, but no longer necessarily governs nuisance lawsuits. In the simple days gone by, when change came slowly, a person had a right to continue an existing land use regardless of changing conditions. If you were there first, you had a right to do what you wanted. This concept has fallen into disfavor with the courts because it began to produce some highly unfair results: things change more quickly now and the adoption of high technology in areas such as agriculture has expanded the potential consequences of land use beyond what was even imaginable in the old days.

Still, a return to this concept does not require the new homeowner to assume unreasonable risks, because the "right to farm" law serves notice that he must be prepared to put up with agricultural practices that were going on when he moved nearby. Fair enough. But asking the homeowner to assume all risk of injury from *future* agricultural practices — including some yet to be developed — would be adopting a new legal principle: "the farmer is first in right, even if he is later in time." Considering that changing agricultural practices could pose unimaginable risks to the health and safety of neighboring homeowners, there is a serious question whether a "right to farm" law based on this concept could withstand a legal challenge that it violates the "fair play" principle on which the constitutional right of due process of law is grounded.

The third issue raised by the North Carolina statute is whether the farmer is conducting his agricultural operation in a manner that is neither negligent nor "improper." If so, he is protected by the law, assuming that all other circumstances are found in his favor. Negligence is another common law concept designed to protect people from others' carelessness. The traditional standard of care that one must live up to is defined by what a "reasonable" person would do under the circumstances. (You can begin to see just how important circumstances are in the agricultural nuisance context.)

If a farmer conducts his operation in a manner that is so careless that even his fellow farmers would not tolerate it, the chances are good that he is acting negligently. This type of agricultural operation is not protected by the "right to farm" law, nor should it be. (Take note, too, that certain kinds of activities are considered dangerous enough — chemical spraying is an example — that the standard of care required by negligence law is higher, and the chances of being found negligent are greater.)

But it is the issue of what constitutes "improper" conduct under the law that is trickier still. Although some "right to farm" laws define proper conduct in terms of "good agricultural practices" or the standards established by environmental, health and safety regulations, the North Carolina statute is silent on this point. Perhaps the intent of the law was to treat "negligent" and "improper" as essentially the same thing, requiring the same standard of care on the part of the farmer. But if that were the case, the use of one of these terms, rather than both of them, would have sufficed. (The use of the disjunctive term "or" in the operative phrase of the statute suggests that it was not intended to be read as a whole, viz. "negligent and improper.") The formal rules of statutory interpretation compel the conclusion that the North Carolina law creates another exception — improper conduct of agricultural operations — to the "right to farm" protection given to farmers.

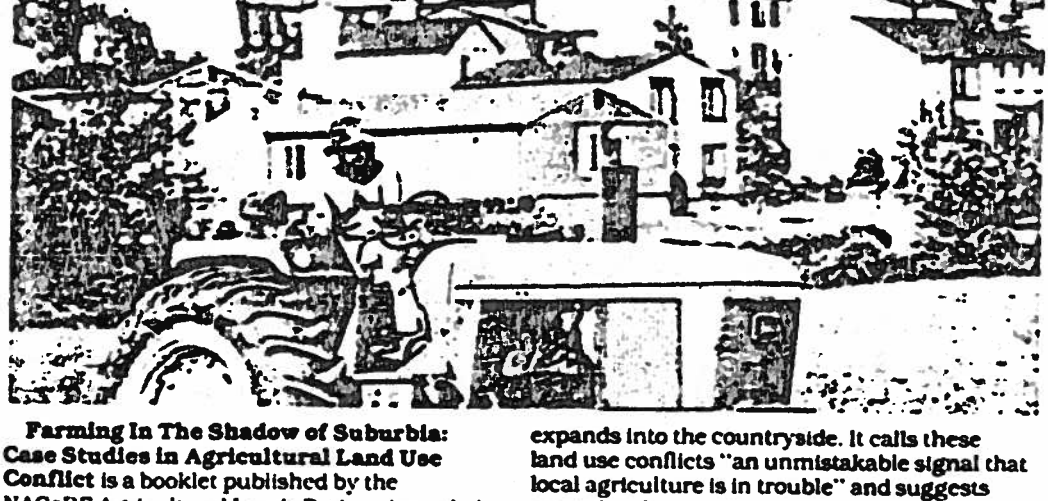
Given this further exception of undefined scope, it could be entirely possible that in a case where the circumstances (!) literally demand a decision against the farmer — don't forget that emotions are also part of the judicial decisionmaking process — an agricultural activity might be deemed "improper," and thus unprotected by the statute, simply because it is creating a very harmful nuisance. At this point, of course, the original purpose of the law would be completely frustrated. But that is just another way of saying that the intent of the North Carolina statute and its kin is not very clear to begin with. This vagueness could become the basis of an attack on the "right to farm" law as a violation of due process.

Finally, the North Carolina statute and others like it, including the agricultural district laws of New York and Virginia, declare that local ordinances, both now and in effect and those that may be enacted, are void if they are inconsistent with the protection offered farmers by the state "right to farm" laws. But because of the loopholes in these laws, as described above, creative legal draftsmanship by county and township commissions might very easily result in local ordinances which are entirely consistent with the "right to farm" laws, but which significantly restrict agricultural operations. An example would be a local ordinance declaring certain agricultural practices to be "improper," and thus outside the scope of the state law's protection.

In conclusion, the most that can be said for the "right to farm" laws based on the North Carolina model is that they offer just a bit more protection to the farmer than does the common law of nuisance. Whether this additional increment of protection makes a significant difference to the future security of agriculture remains to be seen. The worst that can be said about the "right to farm" laws is that, if indeed they are constitutional, they hold out to farmers a false promise of security that cannot be fulfilled. In this sense, they are a poor substitute for the one method of protecting agriculture from land use conflicts that offers real hope for its future security — discouraging residential development of agricultural areas in the first place.

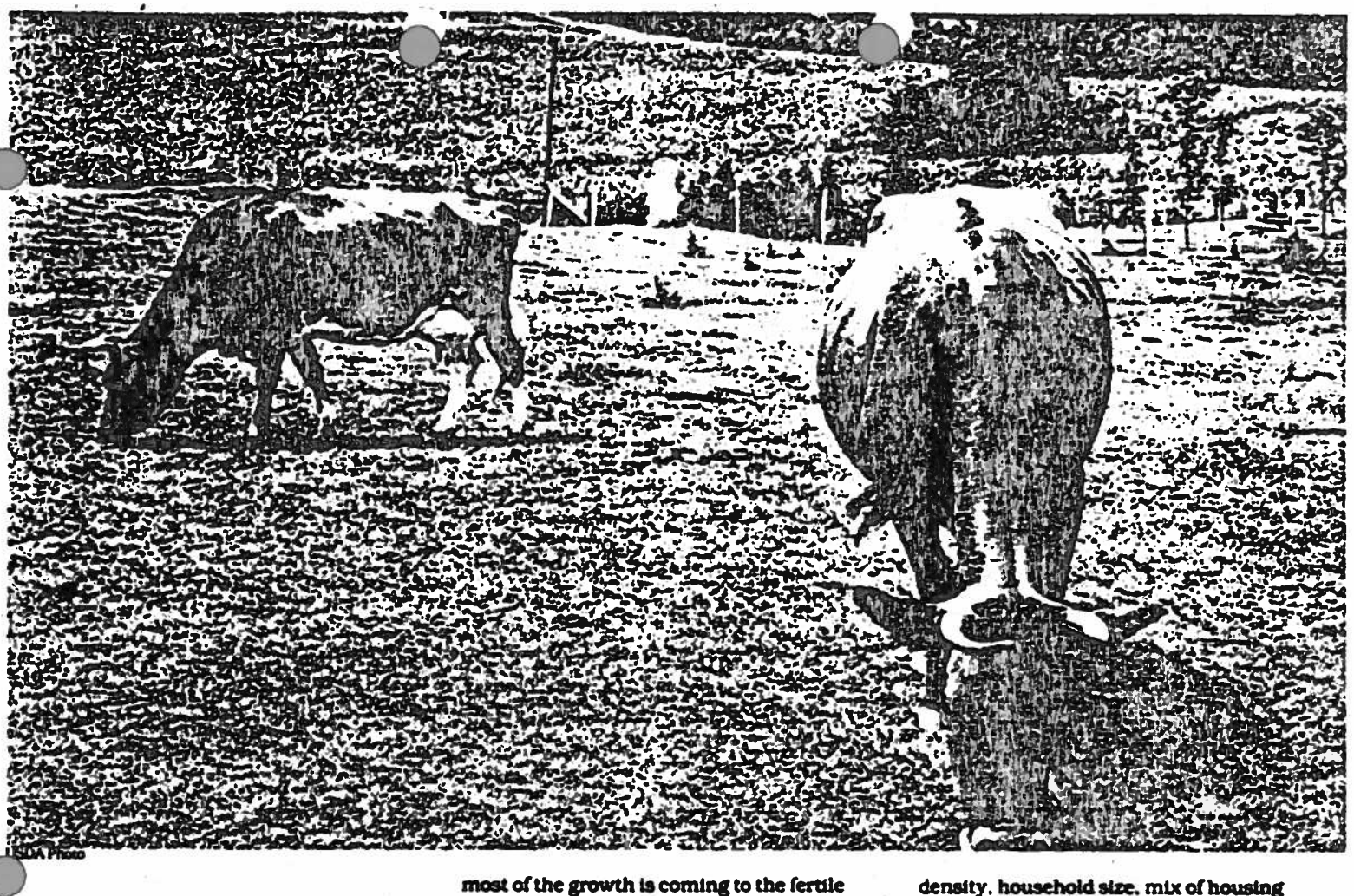
PUBLICATIONS UPDATE

Farming in the Shadow of Suburbia: Case Studies in Agricultural Land Use Conflict



Farming In The Shadow of Suburbia: Case Studies in Agricultural Land Use Conflict is a booklet published by the NACoRF Agricultural Lands Project, intended for distribution by farm and civic organizations and government agencies to their members, employees and constituents. The booklet is the result of a survey of hundreds of American farmers who tell in their own words about the bewildering variety of land use conflicts that have beset them as residential development expands into the countryside. It calls these land use conflicts "an unmistakable signal that local agriculture is in trouble" and suggests ways that farmers and other concerned citizens can help avoid such conflicts.

Orders of up to 100 copies are FREE. Additional copies are 5 cents apiece. To order write: "Agricultural Conflicts," c/o NACoRF, 1735 New York Avenue, N.W., Washington D.C. 20006. Please enclose payment.



USDA Photo

OREGON!

by Richard P. Benner,
Staff Attorney, 1000 Friends of Oregon

Urban and rural development is eating up three million acres of America's farmland each year. The number of farms is diminishing. Speculative pressures on farmland in the path of development are raising the cost of land beyond the farmer's reach.

Not so in Oregon. *Oregon Economic Indicators*, published by Oregon's leading bank, recently showed that Oregon farmers put an additional 77,000 acres into harvested cropland between 1974 and 1978, and 101,000 acres into grazing land, raising the state's total land in farms to 18.4 million acres. The value of Oregon farmland is increasing, but at only half the national rate. The number of farms increased from 26,753 to 34,875. According to the Department of Land Conservation and Development, Oregon's land-use agency, more than 90 percent of 18.4 million acres in farms will be protected under "exclusive farm zones" within 18 months (12.3 million acres are zoned EFU now).

Is this happening because people are moving out of Oregon? No. Oregon is the nation's eleventh fastest growing state, and most of the growth is coming to the fertile Willamette Valley, home of three-quarters of the state's present population. It's happening because of successful implementation by Oregon counties of the state agricultural land protection program, part of its overall land-use program.

There are two key elements to Oregon's agricultural lands program. First, the agricultural lands goal requires that farmland be placed in an "exclusive farm zone." Second, the urbanization goal requires cities to draw "urban growth boundaries" around land already developed or vacant, but needed for growth.

Growth Encouraged

The urban growth boundary (UGB) is the essential starting point; it determines where the agricultural land goal applies (immediately outside UGBs). More important, other goals in the program encourage and facilitate growth within the UGBs. This critical feature—removal of obstacles to needed growth inside UGBs—keeps the Oregon program politically afloat. In 1976, home builders helped finance an initiative to repeal the program; the initiative lost, 57 percent to 43 percent. But in 1978, the Portland Metro Home Builders, the state's most influential home builders group, made substantial contributions to defeat a similar initiative. This initiative lost, 61 percent to 39 percent.

Within an urban growth boundary, a city must include enough building land to accommodate residential, commercial and industrial growth needs. But, as a check on sprawl, the city must show a "need" for the amount it includes within the UGB. A city computes "need" by making reasoned assumptions about population growth, density, household size, mix of housing types and the like.

Agriculture Protected

Outside UGBs farmland must be protected with exclusive farm zones (EFU). The system, though strict, works because: the definition of agricultural land is clear and easily applied; use standards are objective; "safety valves" allow nonfarm use when land has no farm value; and farmland gets a tax break and freedom from interference.

The definition of agricultural land immediately distinguishes the Oregon program from other farmland programs around the country. The definition includes "prime" land—Class I and II on the Soil Conservation Serice scale. When the goal was adopted in 1974, farmers also insisted that "marginal land"—Class III and IV—be included as well. Many of Oregon's large grass-seed and grazing operations and the promising grape-growing industry take place on Class III and IV soil. Also, because Class III and IV soils are mixed with Class I and II, incompatible use on the former would interfere with farm practices on the latter.

This objective definition means county governing bodies don't have to sit for hours at land-use hearings, listening to experts argue whether land is or is not agricultural land. Farmers have an identifiable barrier against nonfarm use. And competitors for raw land know, by looking at soil maps, where the rules apply.

The heart of the farmlands program is the Goal 3 standards that limit land divisions and the uses permitted within EFU zones.

Divisions of farmland are all subject to county review and strictly limited. No - 198

NATIONAL AGRICULTURAL LANDS CONFERENCE

Hyatt Regency O'Hare Hotel
Chicago, Illinois
February 8-10, 1981

"Land and Agriculture" will be the theme of the first annual National Agricultural Lands Conference to be held in Chicago on February 8-10, 1981. The conference will feature the announcement of the long-awaited conclusions of the National Agricultural Lands Study by director Robert J. Gray and other experts who participated in this two-year investigation. A wide variety of educational seminars, instructional programs, exhibits and events put on by the cosponsoring organizations will round out the program.

The National Agricultural Lands Study is an examination of the future farmland needs of the nation, the extent of continuing farmland loss, the effects on local communities and many different approaches to farmland retention adopted by states and localities. Its conclusions will have a major impact on the future of American agriculture and everyone who depends on it—from farmers who grow our food, to city dwellers who buy it at the supermarket, to decision makers at every level of government. Those who attend the National Agricultural Lands Conference will be among the first to learn what the future holds for agriculture and the land on which it depends.

The organizations cosponsoring the National Agricultural Lands Conference include:

- American Farmland Trust
- American Land Forum
- Conservation Foundation
- Illinois Department of Agriculture
- National Association of Conservation Districts
- National Association of Counties
- National Conference of State Legislatures
- National Family Farm Education Project
- National Grange
- Natural Resources Defense Council
- Soil Conservation Society of America

The list of cosponsoring and supporting organizations is growing daily. All of these organizations believe that "Land and Agriculture" is a timely issue that is of vital interest to their members and affiliates.

The cosponsoring organizations will put on special educational programs that will appeal to the particular interests of their members. From soil conservation, to state and local farmland retention techniques, to "right to farm" legislation, to private land conservancies, these programs will give everyone who attends the National Agricultural Lands Conference a chance to participate and learn.

Join your friends, colleagues and hundreds of other interested citizens and officials at the first annual National Agricultural Lands Conference. It will be an event you won't want to miss!

Preliminary Program

Sunday, February 8, 1981

Arrival of Participants
6 P.M. Reception, films and exhibits

Monday, February 9, 1981

9 A.M. Opening General Session: Overview of the National Agricultural Lands Study
12 Noon Luncheon: Keynote Speaker to be Announced
2 P.M. Concurrent Educational Sessions: Details of the National Agricultural Lands Study
3:30 P.M. Concurrent Educational Sessions
5:30 P.M. Regional Receptions
Evening Additional educational programs and exhibits

Tuesday, February 10, 1981

9 A.M. General Session: Policy Recommendations of the National Agricultural Lands Study
10:45 A.M. Concurrent Educational Sessions
- Counties and Conservation Districts
- Future of the Family Farm
- Innovative State and Local Retention Programs
- "Right to Farm" Legislation
- Private Land Conservancies
- And many others!

12:15 P.M. Luncheon: Panel Discussions and Wrap-Up Speaker
2 P.M. Adjournment

REGISTRATION INFORMATION

Please read carefully before completing the registration forms.

Your conference registration fee must accompany this registration form by check, voucher or equivalent made payable to **National Agricultural Lands Conference.** Return completed form with payment, postmarked no later than January, 8, 1981, to the following address: **NACo Conference Registration Center,** 1735 New York Avenue, N.W., Washington, D.C. 20006. Attn: **Agricultural Lands**

Cancellation Policy: Refund of your conference registration fee will be made if cancellation is necessary, provided that written notice of cancellation is postmarked no later than February 5, 1981.

Registration Fee: The registration fee for the three-day National Agricultural Lands Conference is $120. A special **early registration fee of $90** applies to those whose registration forms are received by the Conference Registration Center postmarked no later than January 8, 1981. Register early and save! A conference program and educational packet will be mailed promptly to each registrant.

HOUSING INFORMATION

Participants in the National Agricultural Lands Conference must register for the conference to be eligible for specially-priced hotel accommodations. Special conference room rates will be available to all participants whose registration forms are received no later than January 8, 1981. To ensure receipt of confirmation from hotel, fill out all portions of this form and return it promptly to the Conference Registration Center.

Over

NATIONAL AGRICULTURAL LANDS CONFERENCE REGISTRATION FORM

Fill out this form completely

Name _____
Last First Initial

Address _____

City _____ State _____ Zip _____

Organization or Occupation _____

Telephone _____
Area Code Number

- ☐ Regular and On-Site Registration Fee $120
- ☐ Special Early Registration Fee $90 (Prior to January 8, 1981)

Please Enclose Payment

HOUSING RESERVATION FORM

Room Occupant _____

Co-Occupant _____

Arrival Date _____ Departure Date _____

Special Housing Requests* _____

Housing Disability Needs _____

*Suite information available from Conference Registration Center. Call (703) 471-6180.

Check the appropriate box:

- ☐ Hyatt Regency O'Hare—Single Room
- ☐ Hyatt Regency O'Hare—Double/twin Room
  Nightly Rate: $55 plus 9% tax (Single or Double)
- ☐ Holiday Inn Kennedy Expwy—Single Room
- ☐ Holiday Inn Kennedy Expwy—Double/Twin Room
  Nightly Rate: $48 plus 9% tax (Single or Double)

A deposit of one night's room charge plus tax is required before housing assignments can be made. Room deposits are credited at the hotel indicated on your official confirmation. These deposits are not transferable between hotels. Please enclose either check payable to **National Agricultural Lands Conference**, voucher, purchase order or credit card information:

Credit Card Name _____

Card Number _____ Expiration Date _____

"The NACo **Conference Registration Center** is authorized to use the above card to guarantee my housing for the National Agricultural Lands Conference. I understand that one night's room charge will be billed through this card if I fail to show up for my assigned housing at the confirmed arrival date **unless I have notified the hotel 24 hours in advance of my cancellation.**"

Card Holder's Signature _____

For further registration or housing information, call the NACo Conference Registration Center at (703) 471-6180. No registration or reservation can be accepted by phone.

For additional registration, please duplicate this form.

FOR OFFICE USE ONLY:

Check No. _____ Other Cat. _____

Check Amt. _____ Date Postmarked _____

Voucher No. _____ Date Received _____

J/C _____ Spec. Evt. _____

Prim. Cat. _____ Hsg. Dep. _____

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division can be approved unless the resulting lots are large enough to support an area's commercial agriculture. Counties take an inventory of their different kinds of commercial farming. They determine the amount of land necessary to support those types of commercial farming. Results of the inventory bind review of divisions.

For example, the Agricultural Extension C[illegible] in Douglas County, Oregon, says that commercial grazing in the area takes at least 250 acres. In grazing areas of the county, no new parcels can be less than 250 acres.

Objective use standards are set forth by state statute. Counties incorporate them into local ordinances. Farm uses are permitted outright. Some nonfarm uses (churches, schools, timber harvest) are also permitted outright. Counties review applications for farm dwellings to assure they occur on commercial farms only. Applications for other nonfarm uses are conditionally permitted. Applicants must show that the proposed use would take place on land generally unsuitable for farm use and would not interfere with operations on nearby farms.

Flexibility

Flexibility enters the farmlands program at two points: first, when counties develop their comprehensive plans (required by Oregon law), and, second, when counties daily apply their EFU zones. Here's how it works.

Counties take an inventory of their agricultural land (all land predominantly Class I-IV) outside urban growth boundaries. Nearly all of the two-million-acre Willamette Valley floor, for example, falls within Class I-IV soils. Some of this land, outside UGBs, was converted to various nonfarm uses by physical development years ago. Farming these lands is impossible, so it would be pointless, unfair, and perhaps unconstitutional to place them in an EFU zone. Counties can exempt these lands from the agricultural lands goal by showing that nonfarm development has impacted them to the point where farm management is no longer possible.

There is additional "play" in the system once agricultural land is placed in an exclusive farm zone. According to the definition, land is agricultural if it is *predominantly* Class I-IV. Clearly, some noncultivable land will be captured by this broad net. If a landowner can show that his land is noncultivable, or, by reason of size or shape, has no farm value (sale or lease), he is eligible for a nonfarm residence. He must also show the residence won't interfere with farm operations in the area. Every county has a conditional use procedure to provide for these adjustments.

Tax Benefits

Property tax assessment of land within an exclusive farm zone is set at farm value, so long as the land is in farm use, notwithstanding potential higher value in the marketplace. Farm value assessment plays a key role in keeping farm operations economic, especially on land surrounding fast-growing Portland, Salem and Eugene. For example, the difference between farm value assessment and market value assessment on farmland close to Portland is as much as $3,500 an acre. At a tax rate of $20/$1,000 of assessed value, the annual tax bill on a 100-acre farm is $360 rather than $7,360.

Summary

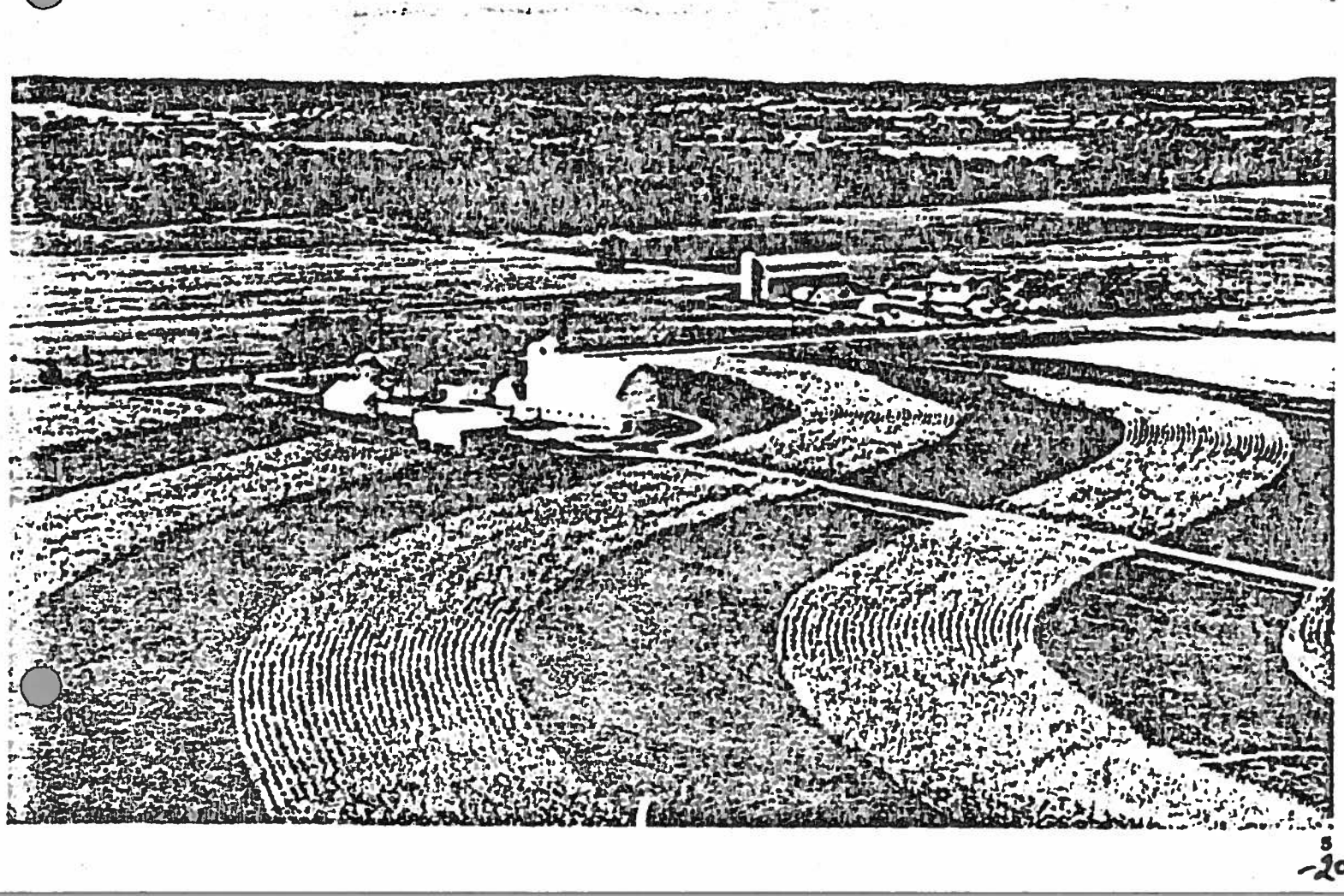
Experience has shown that voluntary farm value assessment programs do not protect the farmland most threatened by development — farmland on the urban fringe. Lower assessments just can't offset competitive pressures on the fringe.

Zoning, even in combination with farm value assessment, can't protect fringe farmland without some mechanism to encourage compact urban development and direct it away from the best farmland.

What makes the Oregon program successful is its combination of zoning, farm value assessment *and* a growth strategy that puts a line on a map to separate land needed for development from farmland. All the planning is done in the presence of clear standards against which decisions can be reviewed by a state agency.

For additional information, call or write: 1000 Friends of Oregon, 519 S.W. Third Avenue, Portland, Oregon 97204. 503/223-4396.

USDA Photo



Showdown

UTAH

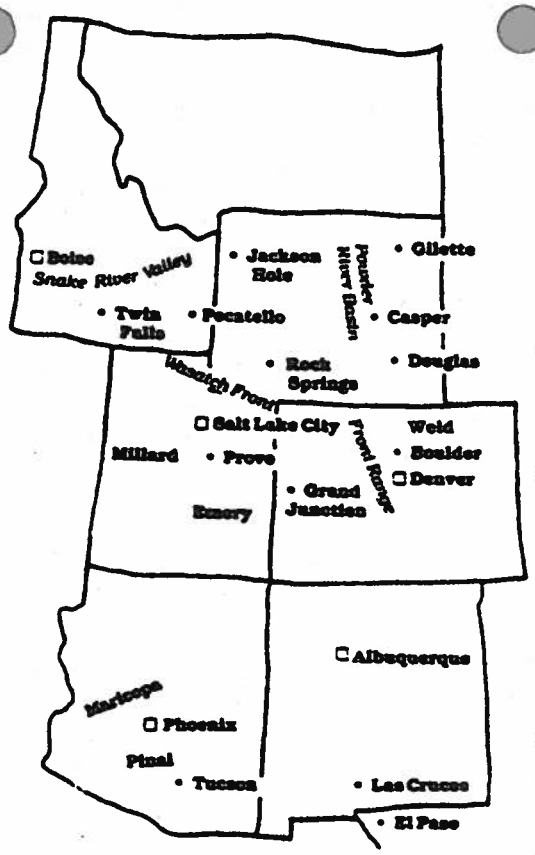
The problem of agricultural lands conversion in Utah is a significant one, considerably more multifaceted than the simple spread of housing developments. The energy exploration boom, increased power development, the impending construction of MX missile sites, and rapid housing subdivision are seriously threatening to upset Utah's agricultural economy. The Wasatch Front area in north central Utah is the most affected region because it is there, where 80 to 90 percent of Utah's population is located, that the state's best farmlands are also found.

Salt Lake, Weber, Davis and Utah counties, comprising the area surrounding Salt Lake City, contain most of Utah's prime cropland. Medium size (40 to 80 acres) vegetable farms produce high yields due to the use of irrigation and intensive farming methods. These prime lands, now being converted to housing developments, are historically unique. Several thousand years ago the entire area was covered by the vast Bonneville Lake, which left behind what are best described as benches in the valleys. These unusual lands, which are the prime source of vegetable crops in Utah, are now being irretrievably lost to housing development. John Schmidt of the state Soil Conservation Service estimates that 20 to 30 thousand acres per year, out of a total of some 200 thousand acres, are being converted to developmental purposes. Says Schmidt, "The suburbs are winning the battle: soon there will be no more primeland remaining in Salt Lake County or on the Wasatch Front."

Even for those farmers determined to hang tough and hold onto their farms, problems will multiply in the future. Specifically, land use conflicts will be an ever increasing irritant. Several cases have already been reported where smells from dairies have annoyed suburbanites, who, in turn, have complained and created difficulties for the farmers. Sometimes, these complaints can necessitate a change in agricultural methods, to the point of forcing farmers to use less cost efficient techniques designed to alleviate frictions with suburban dwellers.

Utah's agriculture is also coming under the threat of power and energy development. The western portion of the state is the focus of the energy boom. Substantial development projects in oil shale, tar, coal, and uranium are lending impetus to boom-town housing complexes and taking rangelands out of production.

Energy companies are impinging on farming in these and other ways. Many consortiums are buying up water rights for cooling process. The recent construction of large-scale power plants in the west central county of Millard, and the east central county of Emery, have already taken 15 to 25 thousand acres of rangeland out of production in each locality. Another such project is in the planning stages in the extreme southwestern county of Washington. The sale of water rights is forcing the conversion of prime irrigation cropland to dry rangelands in the Huntington and Ferron (Emery County) areas and the Delta (Millard County) area.



The country's newest nuclear weapons system, the MX missile program, also poses a threat to Utah's agriculture. Military technical maintenance facilities are expected to add 20 to 50 thousand jobs to the Salt Lake City area, thereby increasing developmental pressures.

The governor has established an "Action for the 80's" commission with a subcommittee on agriculture to develop a growth plan for the state. It is composed of both private and government representatives and its report is due in January 1981. It could be a critical turning point for Utah's agriculture and the state as a whole. Most people in Utah still have the rural ethic. But, if the population doubles in the next twenty years, as it is expected to do, the new residents will not be of pioneer stock. The ethic of the region may change, with people becoming less tolerant of farming. How Utah proposes to deal with these changes will be very important indeed.

COLORADO

Colorado has the most severe agricultural lands conversion problem in the region. The Denver area, and the Front Range in general, are growing at a frenetic pace as suburban development, spawned by the location of energy firms in the area, threatens the state's finest croplands. The agricultural potential of the state is well-defined by the dry climate and geography, with forest-covered mountains in the western half of the state and high plain rangelands in the eastern half. Only at the base of the Front Range of the Rocky Mountains, where the dry plains give way to extremely fertile irrigated cropland, and in relatively few valleys on the western slope of the Rockies, is agriculture a major industry.

Boulder, Adams, Jefferson and especially Weld counties, all directly north of the rapidly expanding city of Denver, contain most of Colorado's prime irrigated cropland. Vegetable farming is the most lucrative agricultural enterprise there, and 40 percent of the state's total farm production comes from this area. Expansive Weld County accounts for the third highest dollar volume of agricultural production in the nation.

On the western slope, around Grand Junction in Mesa County, apples and peaches are grown in small, pocket-like valleys. With only 10 thousand acres of such orchard land in the state, these prime and unique agricultural lands are one of Colorado's most precious resources.

The speedy development of Colorado's energy potential is the primary threat to the state's important agricultural industry for two major reasons. First, urban sprawl has consumed 1.3 million acres of irrigated cropland on the Front Range during the last 20 years. Thus, the overwhelming demand for new industrial and residential land, which is certain to increase as energy industries expand, poses the most direct threat to agriculture. Population expansion in the Denver area is a virtual certainty as the western slope oil shale reserves are developed.

The second, but no less important, threat is the avid competition for Colorado's limited water resources, necessitated both by the energy industry's ever increasing need for water in its refining processes, and the demands of a much larger population. This competition for water has both reduced the amount available for irrigation, and caused water prices to skyrocket — thus making it more profitable for some farmers to sell their rights to developers than to continue their irrigated agricultural operations. Additionally, as each farmer sells his rights, it becomes more difficult for other farmers to continue. Some farmers depend on a return flow from upstream users. As cities and communities buy up water rights, there is a proportionately smaller dependable supply for the farmers. Although not directly a land availability issue, the problem of water rights is so closely tied to agriculture in Colorado that any effort at farmland preservation without some guarantee of sufficient water for irrigation will be useless.

Land use conflicts are another serious problem on the Front Range. With the population expected to increase by 1.7 to 2 million by the year 2000, the problem can only worsen in the future. Boulder County officials have been swamped with complaints about the spraying of fertilizers and other chemicals. The Weld County government has heard protests over the odors coming from agricultural enterprises there. And Pueblo County farmers have experienced problems with trash being dumped in their irrigation ditches.

Several communities on the Front Range are taking action to preserve their tradition of primeland farming. Boulder County has adopted an open-space ordinance which encourages planned unit development: only 25 percent of any agricultural land which is sold can be converted to housing; 75 percent must stay in farming; and 75 percent of the water rights must be available for farming.

In addition, a statewide ordinance stipulates that any tract of land under 35 acres is subject to a subdivision review and regulation process. Yet, this is easily being bypassed by developers who persuade

farmers to sell just over that amount, say 40 acres, so as to avoid oversight regulation. Consequently, Weld County has adopted an ordinance whereby any subdivision on a tract of irrigated land under 80 acres, and on dryland that is under 160 acres, must be reviewed. This has been quite effective in channeling growth to areas contiguous to Greeley, the county's main city.

The forecast for Colorado's farming is clouded. Some people feel that farming will eventually be wiped out on the Front Range. This may be a bit apocalyptic. Mark Matulick of the Colorado Department of Agriculture says, "I think farming will be very viable in Weld County in the future. This may not be true in other counties. It depends on how effectively each county can cope with pressures in its area."

WYOMING

The energy exploration crunch has found its way to Wyoming, though the consequent loss of farmland there is not yet a critical problem. Strip mining, water problems, and, to a lesser extent, housing sprawl have contributed to an uneven growth around Wyoming's towns, leaving residents concerned.

Rangeland constitutes 90 percent of the state's agricultural land. It is this land which is going out of production in the Powder River Basin in the northeast section of the state. Strip coal mining, particularly on the eastern side of Gillette, is a growing concern throughout Campbell County. Irrigated hay land and dry wheat land are being forced to make way for new strip mines and the developments necessary to house their workers. The housing shortage in Gillette is so bad that some workers are living in tents on the outskirts of town. This is quite upsetting to longtime, local residents.

Water problems in the southeast and north central counties of Hot Springs, Washakie, and Big Horn are substantial. In the high valleys of these counties, the cost of pumping water is astronomically high, resulting in the unavailability of water for the potential expansion of good rangelands. The cost of the sophisticated technology necessary to bring these lands into production is out of reach for most farmers.

An even more serious problem has been the sale of water rights around the growing communities of Gillette, Casper, Rock Springs, and Douglas. There, developers are buying up ranchers' water rights for their subdivisions, taking rangeland out of production in the process. Many of the local residents, passionately committed to their rural way of life, are upset at seeing their communities grow in an offhand, unplanned matter.

The future of Wyoming rangeland is questionable. While there is room for expansion outward, most people want to preserve the rural character of their communities. Yet, continued population growth is expected statewide. (Casper alone has doubled in size during the last ten years.) Local farmers in the Powder River Basin are concerned. They are attending meetings to discuss how they can cope with prolonged growth in an orderly manner agreeable to all.

Finally, there is Jackson Hole, a broad valley through which the Snake River runs at the foot of the spectacular Teton Range, most of which is within Grand Teton National Park. But the southern end of the valley, near the town of Jackson and the rapidly growing ski resort of Teton Village, is composed of rich irrigated hay lands where ricks of cattle feed must be fenced for protection from an 8,000-head elk herd that has wintered in this place for centuries. Jackson Hole is one-of-a-kind. Its fertility seems to be surpassed only by its overwhelming scenic beauty and importance as a wildlife migration corridor to the highlands of nearby Yellowstone National Park. Jackson has grown at an annual rate of about 10 percent, due primarily to the booming ski industry and the residential and commercial development it has spawned. Consuming farmland as it expands, development in Jackson Hole has provoked controversy for years. Only now, however, does it genuinely threaten to destroy the unique agricultural, scenic and ecological resources found here.

IDAHO

Idaho is no stranger to the western growth and expansion boom of the 1970's. Feeling the pressure of a 35 percent population increase during the past ten years, Idaho's farming is no longer the unconstrained endeavor it once was. In this mountainous, semi-arid state, the only suitable agricultural lands run along the Snake River Plain, in the southern half of the state. Yet, this is also Idaho's most populous area, and, naturally, the region where development pressures are the heaviest.

The Boise, Caldwell, and Marsing areas in Idaho's southwest section have undergone sustained periods of economic growth, accompanied by a spread in housing developments. Land use conflicts are the name of the game there, as vandalism to crops is being accentuated by the interspersion of developments with farming areas. Odors from dairies have become a point of tension between farmers and suburbanites; so has the limited access to fields caused by leap-frog development outward. This type of pressure has the farmers feeling as if their days are numbered and is promoting a short-term approach to farming which is exploitative of the land.

The engineering and electronics industries have found Boise to be a hospitable business environment. Several companies have moved their national headquarters there. Hewitt Packard alone is adding more than 500 people per year to their city operation. Coupled with the spread in population and housing, the industrial expansion is threatening the specialty crops of the Boise area—mints, sugar beets, orchard products, and hops. Further agricultural expansion to compensate for the loss is difficult because the prime soils are limited to the valleys, which is exactly where growth pressures are increasing.

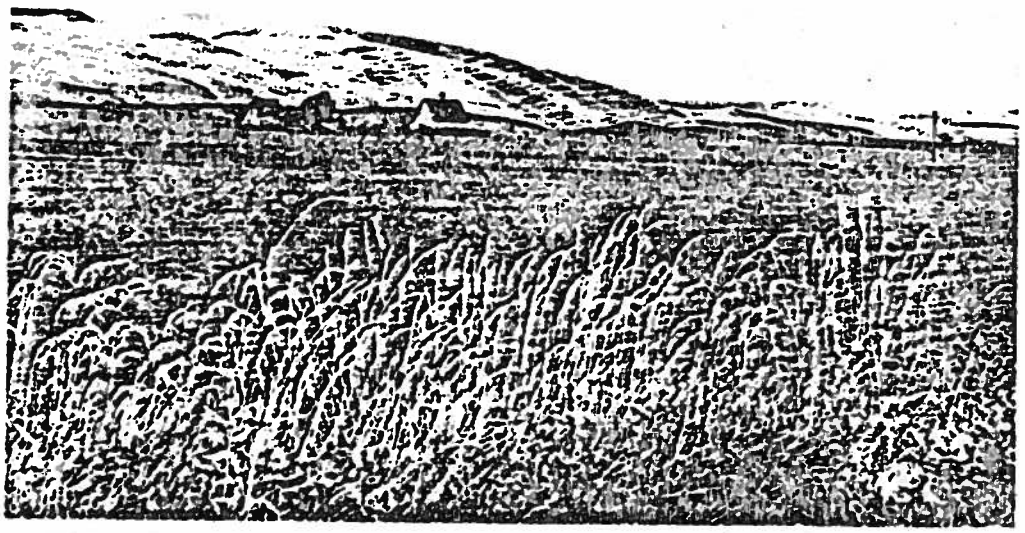
Stepped-up strip mining of minerals is reducing the agricultural bases of the Pocatello/American Falls area in southeast Idaho, and the Jerome/Twin Falls region in the south central section of the state. Significant cash crops of potatoes, alfalfa, beans, and sweet corn are being threatened in these localities.

The relatively small (100 acres) irrigated farms of the Snake River Plain are clearly going to come under more pressure for development, and will experience further land use conflicts in the future. Little has been done around the state to cope with these problems. The Ada County Planning Commission has adopted an agricultural zoning ordinance, but it has proved to be relatively ineffective due to the apparent ease with which developers can obtain changes and exceptions. There is legislation to limit the amount of subdivision allowed, yet this, too, has been easy to bypass. In the words of Amos Garrison of the Soil Conservation Service, "Nothing of any real long-term substance has been done, and while efforts have been made, they're simply not enough to be effective in the long run. Eventually, there will only be small pockets of agricultural lands left."

ARIZONA

Arizona is being confronted by tremendous growth pressures which have brought on the strains of extended housing development. Specifically, the Phoenix area in Maricopa County and the Tucson area in Pima County are undergoing large-scale farmland conversion. The medium size

See SHOWDOWN, page 8



USDA — Soil Conservation Service

Continued from page 7

Showdown

(400-500 acres) irrigated farms now producing cotton, vegetables, onions, citrus [illegible] and alfalfa in Maricopa county are leading the way with an annual loss of 30 to 35 thousand acres.

The population of Maricopa County, which has become a haven for high-technology firms, is expected to nearly double to 2.5 million people by the year 2000. Pima County is projected to increase its population by more than 50 percent during this time frame. This type of continued growth, in the only really active agricultural area of the state, has already begun to cause land use conflicts. Lawsuits over agricultural methods have become quite common. In one case, cattle feedlots were forced to shut down because of the odors they created. Another suit has forced some farmers near Scottsdale to cease spraying their fields with pesticides. Without some form of growth management, these types of cases will occur even more frequently.

The southern tier of Pima Cochise, and Pinal counties are experiencing some of the same types of water problems as other semi-arid regions. Obviously, in a desert state such as Arizona the availability of water for irrigation is a crucial element in farming. The high cost of pumping water in these counties is reducing the economic viability of some farms and forcing their owners to take prime land out of production.

The housing boom is clearly the main threat to farming in Arizona. To date, nothing has been done to cope with this problem. According to Dick Swensen of the Soil Conservation Service, "Unless there is some local, state, or federal action to preserve prime and unique farmlands, the conversion into other uses will continue at a pace that is commensurate with economic pressure."

NEW MEXICO

Sun Belt housing growth is the story of agricultural lands conversion in New Mexico. Spurred on by a rapid influx of new residents anxious to take advantage of the warm, dry climate, housing developers are winning the day in the Albuquerque and Las Cruces areas.

Albuquerque, surrounded by desert on three sides, has the highest density of irrigated cropland near any population center in New Mexico. Concentrated farming in small irrigated plots provides alfalfa, sweet corn, tomatoes, squash, and the high-income crop—chili peppers. It is precisely on these fertile soils, which are rare in this desert-covered state, that the New Mexico housing boom is taking place. Second homes and retirement villages are setting the standard in the Albuquerque area, forcing the conversion of some 23 thousand acres of prime cropland every year out of a remaining total of only 524 thousand prime acres.

The south central city of Las Cruces is under even more pressure from development. A semi-desert region, Dona Ana County is split by the irrigated cropland of the Rio Grande Valley, where vegetables, onions, lettuce, cotton and pecans are the main agricultural products.

The georgraphy of the area works against the Las Cruces farmers. Surrounding the valley are desert lands on the Mesa, which extend for several miles. Bordering the Mesa are public lands, administered by the Bureau of Land Management. Consequently, there is little room for development outside the valley, which is forcing the conversion of prime irrigated cropland in the river basin. Indeed, in the 1967-1978 period, fully 10 percent of Las Cruces' 48 thousand irrigated acres were converted to development.

Its proximity to El Paso, another boomtown, also poses problems for Las Cruces. Development between the two cities is springing up all the time. Some people in the area predict that one day the route between these cities will be developed.

Engineering, electronics and telecommunications industries are expanding due to the growth of the engineering school at New Mexico State University and the NASA test facility located in Las Cruces. Additionally, the White Sands Missile Range, a major army base, is only 20 miles away. All these factors have contributed to the growth of high-technology firms and government contractors.

The region is sure to be beset by water problems, as is the Albuquerque area. There is only so much water in New Mexico; as industry and population increase, the competition for water will also increase. Although there is much discussion of land availability and water rights issues, nothing has yet been done in New Mexico: farmland conversion is continuing unabated.

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SB 47

NEVADA ASSOCIATION OF COUNTIES

RESOLUTION 80-26 EXHIBIT I

RE: THE NUISANCE LIABILITY OF AGRICULTURE OPERATIONS

WHEREAS, there is an ever increasing conflict between agriculture and urban interests; and

WHEREAS, urbanizing areas and their residents, more often than not, are infringing upon pre-existing agriculture operations and their right to continue operations; and

WHEREAS, when non-agriculture land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits occasionally forcing agricultural operations to cease operations; and

WHEREAS, it should be the State's policy to conserve, protect and encourage the development and improvement of its agricultural land for the production of food, fiber and other agricultural products;

NOW, THEREFORE, BE IT RESOLVED that the Nevada Association of Counties request the 1981 Legislature to amend the Nevada Nuisance Statutes to specifically exempt agriculture when conducted in accordance with generally accepted agricultural practices; and

BE IT FURTHER RESOLVED that exemption of agriculture from the Nevada Nuisance Statutes will be specifically recognized as a "right to farm" and that whatever minor nuisance caused by such activities is more than offset by the benefits from farming to the neighborhood and community, and to society in general.

PASSED AND ADOPTED this 15th day of November, 1980.

Jack R. Petitti
JACK R. PETITTI, PRESIDENT

ATTEST:

Thalia M. Dondero
THALIA M. DONDERO, SECRETARY