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SENTENCING ALTERNATIVES FOR VIRGINIA GENERAL DISTRICT COURTS

Hon. Jose R. Davila, Jr.*

Robert L. Mordhorst**

INTRODUCTION

The endless parade of humanity that passes before the benches of Virginia's general district courts accused of minor offenses presents to those charged with deciding these cases one of the most challenging judicial tasks of our day. The challenge in addition to deciding guilt or innocence is also determining what to do with those judged guilty. Those decisions influence to one degree or another the direction of peoples' lives for their own and society's good or ill. Most of the offenders appearing before these courts are young people, often first offenders. The behavior patterns of their lives are not yet firmly set. The introduction of a positive influence at this stage

Editor's Note:

In the fall of 1974 the Honorable Jose R. Davila, Jr., a judge in the General District Court of Richmond, met Mr. Robert L. Mordhorst, the director of Offender Aid and Restoration (OAR) of Richmond to discuss the possibility of OAR of Richmond expanding its volunteer correctional service operation in the Richmond city jail to include services to the general district court for persons placed on probation by the court. By the fall of 1974, OAR of Richmond had already served over two hundred misdemeanants committed to the city jail by assigning them a citizen volunteer who had agreed, after careful screening, orientation and training, to work closely at least one hour per week with an offender before and after release. The goal of these relationships was to help the offender find a more positive, constructive lifestyle. Impressed by the results of this creative use of volunteers and the positive results (dramatically lowered recidivism among OAR clients), Judge Davila saw in such volunteers the potential for a more constructive use of probation for misdemeanants.

Approximately nine months after that first meeting between Judge Davila and Mr. Mordhorst, the OAR Court Program was launched with funds for a professional supervisory staff of two and normal operating expenses obtained from a private foundation and an office in the Richmond Courts Building provided by the City of Richmond.

It should be noted that there are numerous volunteer programs throughout Virginia. The State Office of Volunteerism has listed over 600 programs involving volunteers in the criminal justice system in its *Directory for Volunteers in Virginia's Criminal Justice System* (1976). For further information on setting up a program or finding out about existing programs, this office should be contacted at 205 North Fourth Street, Richmond, Virginia.

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of their lives still has the potential for shaping attitudes and behavior toward constructive, law-abiding lifestyles.

For most general district courts the sentencing alternatives available are indeed meager. The convicted person may be sent to jail, where in an often crowded, degrading setting he may sit and nurture an already hostile attitude toward society while having ample access to instruction in crime from fellow inmates. On the other hand, he may be given a fine and returned to the street faced with the same problems that more often than not contribute to his committing an offense—problems such as inadequate education, lack of marketable skills and lack of self-confidence. He may be released on probation, again with little hope of receiving help with the problems that contributed to his offense. This is so, because few district courts have available for their use professional probation services. In Virginia, where those services are technically available under existing law, there is the realization of overburdened services which must give priority to the more serious felony probation and parole cases.

Faced with these limited correctional alternatives, judges in district courts often agonize over the revolving door of recidivism that deposits all-too-familiar faces before their benches. The challenge, then, is to find creative alternative responses to misdemeanants that offer the prospect of introducing that potentially positive influence for good while communicating society's displeasure with their deviant behavior. With this attitude in mind, one general district court in Richmond, Virginia, has developed sentencing alternatives for misdemeanants by calling on a private, non-profit, community-based correctional agency, Offender Aid and Restoration (OAR) of Richmond, to develop services that will offer a greater range of sentencing alternatives.¹

At the outset, the court confined the use of the OAR Court Program services to persons placed on probation under deferred judgment who were charged with first-offense drug (primarily possession

1. The Attorney General was requested to review the proposed use of private volunteers in order to determine whether such individuals could be empowered to assist the court in helping defendants. The Attorney General studied the proposed program and responded that such a program could be implemented by the district court without presenting any legal complications. See 1974-75 OP. VA. ATT'Y GEN. 305.

of marijuana) offenses. As the program progressed and both staff and volunteers showed themselves competent and conscientious, referrals were made to the OAR Court Program for those convicted of other misdemeanors such as trespassing, prostitution and simple assault.

During the first year of operation (May, 1975 through April, 1976), the OAR Court Program served 253 offenders referred by the court. Of these, eighty-one were given suspended sentences and 172 were placed under deferred judgment.² Eighty-one were assigned volunteers and the rest were assisted by the staff directly. The period of probation set by the court ranged from six to twelve months. By the end of the first year, thirteen had recidivated, four from the deferred judgment cases and nine from the suspended sentence cases. Two had been removed from the program for violation of conditions of probation.

As the program proved its worth, other general district court judges in Richmond began referring cases to the OAR Court Program. More recently the judges of the Regional Juvenile and Domestic Relations Court in Richmond have been referring non-support cases to the program for assistance.

OAR has attempted, at the request of Richmond's criminal trial judges, to develop yet another dimension to its existing program: alternative service opportunities for selected misdemeanants in lieu of jail. In concert with the Voluntary Action Center of the United Way of Greater Richmond, OAR is developing a wide range of volunteer service tasks with helping agencies as a constructive alternative to incarceration. This service is modeled after a very successful program operated in the courts of Portland, Oregon, and should be available to Richmond-area courts soon.

Likewise, a halfway house established by OAR in 1974 for post-release transitional services has recently added the capacity to receive persons placed on probation by the court. Hospitality House,

2. The Supreme Court of Virginia has construed section 53-272 of the Code of Virginia (1950) to allow a court to suspend the imposition or execution of a sentence. *Dyke v. Commonwealth*, 194 Va. 478, 63 S.E.2d 483 (1952). The court went on to say that the trial court had the power to impose any reasonable terms on the defendant during this suspension which it felt was proper.

as it is known, provides a structured and disciplined environment together with counseling and job placement services.

Taken together, the programs developed by OAR of Richmond offer the general district courts a range of sentencing alternatives. Through the intense contact and concern of citizen volunteers in all of these alternatives, OAR offers that positive influence that is often the turning point for a youthful offender.³ What follows is a more detailed description of the correctional service offered to the general district courts of Richmond.

THE OAR COURT PROGRAM

The OAR Court Program offers services to the criminal courts and the juvenile and domestic relations courts of Richmond. While the program's chief focus is on misdemeanor offenders, OAR is prepared to respond in special cases to requests for services to selected felons. In this program the court suspends imposition of sentence on the condition that a defendant agrees to cooperate with the OAR staff and volunteers. Staff and volunteers, in turn, serve the court by providing supportive services to defendants who are technically on unsupervised probation. Where it is deemed important to have access to educational, medical or other background information, release of information waivers are obtained from the defendant⁴ and a follow-up interview is scheduled for two to three days later.

The Court Program employs two full-time staff persons with backgrounds in the behavioral sciences and the administration of justice and public safety. In addition, nearly one hundred volunteers, carefully screened and trained by OAR, are available for assignment to offenders on a one-to-one basis for a period of up to one year. Volunteers are obligated to spend a minimum of one hour per week with an assigned offender. It is this intensity of contact by a concerned person that has made such volunteer services so successful in Richmond.

3. The use of volunteers by the courts throughout the country is slowly becoming more widespread. Indeed, in the last seven years over 2500 programs have been instituted throughout the country whereby individuals assist courts, jails and other such institutions without any pay. *Richmond Times-Dispatch*, April 19, 1975, at 16, col. 1.

4. See Appendix A for a sample copy of a legally approved form. City and state record checks are routinely conducted on behalf of the court, and in the case of deferred judgment cases, prior records are brought to the attention of the court.

Volunteers working in the Court Program are carefully supervised. Each volunteer is assigned to a small team of volunteers of fifteen or less headed by a team leader who is a veteran volunteer of proven ability and is specially trained to supervise and assist team members. The team leader is available at all times to team members for advice and counsel. The team leaders, in turn, have the support of a professional with experience in probation services and social services casework. Team leaders are obligated to a minimum of one contact per month with each volunteer to offer guidance and gather a monthly status report for the staff. These reports are kept on file in the Court Program office and are available to the committing judge upon request. The committing judge is notified immediately of any violations of law, special conditions of probation stipulated by the court or other serious problems.

The normal procedure for placing an offender in the OAR Court Program begins once a defendant has been found guilty and the imposition of sentence is suspended. In deferred judgment cases, of course, judgment is deferred and the defendant is referred immediately to the program. After the initial intake interview,⁵ the OAR professional staff person verifies all information given by the offender as well as conducting any necessary record checks requested by the court.⁶ The offender is then given a follow-up interview no later than one week after the initial interview.

On the basis of the gathered data an analysis is made by the staff of the offender's needs. A determination is made whether to assign a volunteer to the offender to have him or her report directly to the OAR Court Program office. If special conditions such as participation in a drug or alcohol treatment program are deemed advisable, a recommendation is made to the committing judge to impose the conditions.⁷ Matching of offenders and volunteers is done carefully, by taking into consideration many factors. If the committing judge so desires, he may review for approval the decisions of the Court Program staff.

5. See Appendix B for a sample form used for the intake interview.

6. As noted before, a form authorizing the release of information must first be obtained. See note 4 *supra*.

7. See Appendix C for a sample of standard conditions.

Upon successful completion of the program, the offender will be notified when to report to the court for formal release from the program. Where a volunteer is involved, he or she is invited to attend this session, and the court is encouraged to give recognition and commendation to the volunteer.

ALTERNATE SERVICE

As mentioned earlier, the Alternative Service Program slated for operation by early fall 1976 is simply an added dimension to the OAR Court Program and offers the court yet another sentencing option for selected misdemeanants. Offenders selected for this program are referred to the OAR Court Program office for an intake interview which is followed by routine record checks and information verification. A subsequent interview is conducted a week to ten days after the initial interview where the offender is given the opportunity to consider the type of service he or she is best suited to render. Phone contact is then made with the Voluntary Action Center of the United Way of Greater Richmond (VAC) to obtain an available volunteer assignment in one of the participating service agencies.

The OAR staff member next contacts the agency liaison and future on-site supervisor to make an appointment for the offender to work out the details for serving the sentence imposed by the court. The Portland, Oregon, program has found sentences between twenty and eighty hours to be the most effective. The offender meets with the agency liaison person bearing a work contract already signed by him and by the OAR Court Program supervisor. Details regarding type of service, times and deadline for serving the sentence are entered in the contract and the agency liaison person then signs. One copy is kept by the agency liaison, one is returned to the OAR Court Program office and one copy is mailed to the VAC to verify placement of the offender volunteer. The agency liaison person keeps the record of service on the designated place on the contract. Failure to abide by the conditions is reported by the agency liaison to the Program supervisor who then notifies the committing judge.

Upon successful completion of a sentence, the agency liaison returns the completed contract with initialed record of service to the Program office for notification to the committing judge to obtain

official release from court supervision. The committing judge may call the offender before the bench for official release from supervision.

PRE-SENTENCE INVESTIGATION SERVICES

On occasion, the court may wish background information before sentencing a misdemeanor. The professional staff of the OAR Court Program is equipped to provide this service upon request. While these reports are not as extensive as the three written on convicted felons, the judges who have requested them have found them adequate and helpful in making a sentencing decision. The fact is that OAR Court Program staff do the equivalent of a presentence investigation on each case referred to them, so they are well-practiced in the skills required to produce such a report for the court.

JOB DEVELOPMENT AND PLACEMENT SERVICES

A vital component of OAR is its job development and placement services. This component consists of two VISTA volunteers who service the clients of OAR's Jail, Court and Hospitality House Programs in addition to walk-in clients.

The VISTA volunteers are two retired men who spend their time developing resources and placing clients referred to them by the three programs. These job specialists have an excellent record for placing clients in jobs.

The OAR job development and placement specialists cooperate with and utilize other manpower development agencies and programs in the Richmond area.

THE HOSPITALITY HOUSE

When it opened in September, 1974, OAR's Hospitality House, often referred to as the "halfway house," was strictly a post-release transitional residence, providing temporary room and board, counseling and job placement services to ex-offenders. More recently, the potential of this residence as a halfway-in or probation house has been emphasized by OAR. Used as a halfway-in house, OAR's Hospitality House offers the court an alternative for sentencing incarceration at the city jail on the one hand and standard probation on

the other. Such an alternative is well-suited for the defendant deemed by the court to be in need of a structured environment during the initial phase of his probation. Normally, OAR considers ninety days to be the maximum length of stay at the Hospitality House. However, periods of residence in excess of ninety days are possible under special circumstances.

While at the Hospitality House, a resident is provided with a wholesome, well-ordered environment and balanced meals professionally prepared. He is given assistance in finding a job and/or enrolling in school. Professional staff members are on duty twenty-four hours a day. Emphasis is placed on self-discipline and a sense of responsibility toward the members of the House "family." House counselors are assigned to specific residents for whom they are made especially responsible. A plan with vocational, financial and social goals is established for each resident, and counselors support in helping residents achieve their goals.

Attitude and behavioral change is pursued by guided group interaction both informally and formally through weekly group sessions led by the House director and his staff. Residents earn privileges and are expected to contribute to the maintenance of the physical plant in general as well as their own assigned quarters. All residents are required to obtain approval from a staff person to leave the House during leisure hours between seven o'clock and the curfew hour of eleven o'clock and during specific hours on weekends. A log is kept on residents listing sign-out time, destinations and sign-in time. Residents assigned to the House who fail to abide by the rules and discipline of the House are reported to the court through OAR Court Program staff.

THE OAR JAIL PROGRAM

The oldest of OAR's services is its Jail Program. OAR staff members stationed at the jail are provided office space by Richmond's City Sergeant, where they interview committed misdemeanants after arrival to explain the services available through OAR. Offenders desiring the services of a citizen volunteer are screened and carefully matched with a volunteer.

The volunteer visits his or her "friend" weekly for at least one hour, responding to immediate needs and crises, and also helping

the offender plan for release day and the future. After release the volunteer helps the offender get solidly established by assisting in finding employment, housing, counseling services and so forth. The volunteer continues to meet weekly with the ex-offender for moral support and guidance until such time as both parties agree that the relationship is no longer necessary for the ex-offender to succeed.

INDIVIDUALIZED SENTENCING POSSIBILITIES

Reflection on services outlined in previous sections indicates that the courts now have available sentencing alternatives heretofore unavailable, allowing for a range of individualized sentences that take into account the community's best interest and the offender's correctional needs. Taken together with other existing correctional programs in the area, the courts have several combinations of sentencing alternatives. The following possibilities will serve as examples:

- (1) An offender may be sent to jail for a pre-determined period and then placed in the OAR Court Program or Hospitality House for the duration of the sentence.
- (2) An offender may be committed to the jail work-release program, and after demonstrating motivation to do well, be transferred to Hospitality House to finish the sentence.
- (3) An offender may be placed in the alternative service program and assigned a volunteer as well.
- (4) An offender may be placed in Hospitality House for the first sixty to ninety days of his probation and assigned a volunteer for the full probation period of from six to eight months.
- (5) An offender may be placed in Hospitality House and assigned to weekend alternative service (particularly applicable for an offender still in school).

These are just a few of the possibilities available to the courts. Having the various services under one coordinated administration assures accountability and continuity. All records are readily accessible to the court through the OAR Court Program office, and the transfer and maintenance of records from one program to another is simplified since all OAR programs use the same forms and records-keeping system.

CONCLUSION

There is little doubt that the sentencing alternatives available under the OAR programs have contributed greatly to the over-all administration of justice in the General District Court of Richmond. The offender is given the benefit of a well-organized program of treatment while at the same time he is made aware of the fact that he has broken the law. In this way society as a whole is better served by the court since the offender does not get off, yet he is actively helped by the court rather than merely being punished and sent on his way. The success of the program is evident by the low rate of recidivism as well as by the welcomed assistance given by local governmental agencies.⁸

8. *See, e.g.*, Memorandum of Andrew J. Winston, City Sergeant (June 4, 1975).

APPENDIX A

CONSENT

I, _____, authorize the OAR Court
(client)

Program to release to Richmond General District Court, Richmond Circuit Court and/or Treatment Programs for the purpose of revocation hearings, hearings/meetings for consideration for early release, extension of tenure to discuss non-adherence to the conditions of the OAR Court Program, pre-sentence reports, treatment, other, the following information: record checks, progress reports, results of evaluations and tests, suggested treatment plans.

If at the time of giving the above consent I am so situated that the disposition or status of any criminal proceedings against me, or the execution or suspension of any sentence imposed upon me, is conditioned upon my participation in the above program, I understand that:

1. I may revoke such consent until there has been a formal and effective termination or revocation of such release from supervision.
2. Nevertheless, the above consent shall expire sixty days after it is given by me or when there is substantial change in my status, whichever last occurs.
 - (a) A substantial change in my status shall be deemed to have occurred if (1) I at the time of giving this consent was brought to trial and thereafter am acquitted, or if (2) I at the time of giving this consent was sentenced and thereafter supervision ceases.

If at the time of giving the above consent, I am not so situated that the disposition or status of any criminal proceedings against me, or the execution of any sentence imposed upon me, is conditioned upon my participation in the above program, then the above, relating to revocation and termination of my consent, shall be deemed to be applicable to me.

If I hereinabove have authorized disclosure to the Richmond General District Court, Circuit and/or Treatment Programs, I further authorize the Richmond General District Court, Circuit Court and/or Treatment Programs to redisclose to the OAR Court Program for the purpose of treatment referral and rehabilitation, the above information and information I may give the OAR Court Program. I understand in giving the consent for disclosure and for redisclosure referred to in this paragraph that this consent is subject to revocation by me at any time except to the extent that action has been taken in reliance thereon, unless as in this form otherwise provided. My consent for disclosure and for such redisclosure referred to in this paragraph, however, will expire without express revocation when I owe no further obligation as a result of being tried for the crime of _____ unless as in this Form otherwise provided.

Date: _____

 Signature of Client

Date: _____

 Signature of person authorized to sign in lieu of client

 Title

Date: _____

 Signature of person(s) who must sign in addition to client

Copies: Client, Program, File, Court

APPENDIX B
OFFENDER AID AND RESTORATION
of RICHMOND
INTAKE

Tier_____

Volunteer Assigned_____Date_____

Date Assigned_____ Interviewer_____

IDENTIFYING DATA

Name_____ Alias_____

Date of Birth_____ S.S. No. _____ Drivers' Lic. No._____

In the community (yrs./mos.)_____ Planning to stay_____

Present

Last Address_____ Phone No._____ Home

Permanent

With whom do you live?_____ Work

Mailing Address _____

Sex_____ Race_____ Height_____ Weight_____ Eyes_____ Hair_____

SOCIAL DATA

Closest Living Relative _____

Name

Relation

Address

Phone No.

Permission to Contact_____

Marital status: _____Married _____Never Married _____Widowed

_____Divorced _____Separated

No. of Children _____

Relatives or friends who can be of help:

				permission to
name	address	phone	relationship	contact

MEDICAL DATA

Medical problems (eyes, ears, dental, alcohol, etc.) _____

Use of drugs Yes_____ No_____ If yes, what kind_____ Degree_____

Past involvement with drug or alcohol rehabilitation _____

Confined in a mental institution?_____ Where_____ Dates_____

Presently under medication?_____ What kind?_____

CRIMINAL DATA

Juvenile Record: (waiver must be obtained for record verification)

Date of Arrest	Offense	Disposition
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Adult Record:

Editor's note: The individual's educational record and employment record are also added to the above information as well as the individual's religious preference and spare time activities. The interviewer may also add additional comments.

APPENDIX C
OAR COURT PROGRAM

CONDITIONS OF PARTICIPATION UNDER THE OAR COURT PROGRAM

TO: _____

Under order of the Richmond General District Court - Criminal Division, Judge J. R. Davila presiding, you have been placed in the OAR Court Program for the period from _____ to _____.

During your participation in this program, you are subject to the conditions listed below. While you are in the program, the Court may revoke or extend your tenure in the program, and you are subject to arrest for failure to meet the conditions stated below.

Your minimum date of release from the program is _____, but you will remain in this program until you receive a final release from the Court. The Court released you to this program because it is believed that you will be sincere in your efforts to live up to the following conditions and thus benefit yourself as well as the community.

Your general conditions are:

1. I will obey all Municipal, County, State and Federal laws and ordinances. I will report any arrests or citations within 3 days to the OAR Supervisor.
2. I will maintain regular employment and support myself and legal dependents to the best of my ability. I will notify the OAR Supervisor promptly of any changes in my employment.
3. I will obtain the written permission of the OAR Supervisor before buying or operating a motor vehicle.
4. I will submit a written report at the end of each month to the OAR Supervisor on forms furnished by her and will report as otherwise instructed.

- 5. I will permit the OAR Supervisor to visit my home or place of employment.
- 6. I will cooperate fully with the OAR Supervisor.
- 7. I will not use alcoholic beverages to excess. The excessive use of alcohol here is understood to mean that the effects disrupt or interfere with my domestic life, employment or orderly conduct.
- 8. I will not illegally use, possess or distribute narcotics, dangerous drugs, controlled substances or related paraphernalia.
- 9. I will not use, own, possess, transport or carry a firearm without written permission of the Court.
- 10. I will not change my residence without the permission of the Court. I will not leave the State of Virginia or travel outside the Richmond Metropolitan Area without permission of the Court.

Special conditions ordered by the Court are :

You will report as follows :

I have read or had explained to me the above conditions and by my signature or mark below acknowledge receipt of the Court's order that I participate in this program and agree to the conditions set forth.

Signed _____

Client	OAR Supervisor
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Date: _____