

A Proactive Response To Court-Ordered Community Service

Katherine H. Noyes

While a fair amount of material has been written on the concept of community service as a sentencing option, virtually nothing has addressed the specific impact of this trend on the agencies and organizations at which these offenders are placed. In an effort to shed some light on this particular aspect of the subject, the Virginia Department of Volunteerism sent questionnaires and letters to programs around the country which had experience in utilizing court-referred "volunteers."

The response was substantial, indicating a high level of interest among leaders of volunteer programs. Information was received from a wide diversity of sources—small community centers, groups involving both adults and juveniles—all representing different settings, structures and geographical areas. In addition, material was gathered from the American Bar Association, Offender Aid and Restoration (OAR), Virginia's Community Diversion Incentive (CDI) program, and from several other experts who have knowledge pertaining to this subject. Many of the corrections and criminal justice officials interviewed were intrigued by the interest in this particular perspective and agreed that more work is needed to explore the full dimensions of this alternative.

The results of this research are presented in a guidebook entitled, Opportunity or Dilemma: Court-Referred Community Service Workers. It contains general factual information, specific how-to-do-it suggestions, and material about key resources which may be of assistance to volunteer program leaders. The following article is based on this guidebook.

HISTORY AND DEFINITION

The idea of community service as a sentencing option began in Great Britain in the late 1960's as the British penal system was investigating ways to alleviate prison crowding. After an experimental program

was introduced in six counties, application of the community service practice throughout the United Kingdom was authorized in 1975. This sentencing option has since grown to a point that on a given Saturday 800-850 offenders perform court-ordered community services in London alone. The tasks they perform typically include: answering the phones in a community center; constructing adventure playgrounds; planting trees; tutoring; reading to blind persons; and working on reclamation projects.

Expansion of this concept in the United States proceeded rather slowly at first. Only a few judges utilized community service as more than an occasional sentencing alternative and most of these sentences were imposed on middle or upper income offenders who had special skills (such as doctors or lawyers) that the judge believed could be put to use for the good of the community. More recently, however, more and more courts in this country have imposed such sentences on a broader basis. In 1984, for example, more than 15,000 New Jersey residents performed more than one million hours of community service, ranging from picking up litter to computer programming. Although no precise figures are available on the number of persons performing community service on a nationwide basis, officials agree that the popularity of these programs has increased sharply in recent years. This is due in part to general frustration with the idleness and violence within prison, the overcrowding of correctional institutions, and the desire to prove to the public that offenders do pay for their offenses.

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Whatever the reasons, experts say (it) is changing sentencing patterns throughout the criminal justice system. Locally and elsewhere, a greater proportion of first-time offenders are working off their sentences by stuffing envelopes for the American Cancer Society, caring for children in Head Start centers, becoming Big Brothers, sorting clothes for charities, and maintaining public roads and parks . . . It is a part of life unknown to the public. For the most part, few realize that some of the people shelving books at the public library or working at Special Olympics track meets are fulfilling obligations to a court. —The Washington Post, November 6, 1983

While the trend in community service alternative sentencing has grown steadily, there is still great variation in how and when it is being applied. Some states, such as California, have a statewide community service system with fairly consistent guidelines and sentencing policies in place. Other states, such as North Carolina, have established sentences for specific offenses (e.g., Driving Under the Influence) and have created a statewide network to implement them. Still other states, like Virginia, are acting on a much more random basis. Each judge and court district operate independently, utilizing the sentencing option in whatever way they see fit.

Because of these inconsistencies it is difficult to make generalizations which apply to all localities. However, the following provides some additional clarification about the nature and scope of court-ordered community service as it is usually implemented in this country:

- Community Service programs operate under a variety of titles including *court referral*, *volunteer work*, *service restitution*, or *symbolic restitution* programs. Those individuals ordered to perform the community work are referred to variously as *offenders*, *volunteers*, *clients*, *court-referred workers*, *community service workers*, and other similar titles.
- By definition, a community service program places offenders in unpaid positions with nonprofit or tax-supported (governmental) agencies to perform a specified number of hours

of work or service within a given time limit.

- Community service is used at every stage of the criminal justice process. It may be used as *part of pre-trial diversion* in order to avoid formal prosecution of persons accused of crimes. It may appear as a *condition of deferred prosecution*, where charges will be dismissed if the order is successfully completed. It may also be imposed as *an alternative to, or as part of, any sentence* given upon conviction (i.e., probation, suspension of license, fine, incarceration, etc.).
- Potential benefits for the offender include: avoiding the hardships of incarceration or fines; relief from guilt about an offense and an opportunity to make amends; increased awareness of the needs of other people; new skills and work experience; avoiding stigmatizing and demeaning treatment often associated with other parts of the criminal justice system.
- Potential benefits for the justice system include: reduced populations in institutions; a less costly dispositional option that is intermediate in its severity; improved community relations.
- Potential benefits for society include: additional useful community service; the introduction of new persons to the volunteer network, ones who might otherwise never be inclined to involve themselves freely; reduced criminal justice costs; a decrease in public stereotypes about offenders; increased public involvement in and awareness of the criminal justice system.

In short, court-ordered community service is a mixed bag of complex dichotomies, appearing in diverse forms according to those who utilize it and participate in it.

THE GREAT DEBATE

There are many conflicting opinions about how this legal practice fits into the current definitions of volunteering and how it changes the functions of agency

staff and program managers. There are those who say: "YES, these people are volunteers—unpaid workers doing community service willingly . . . Our responsibility is to help them . . . It is a good way to benefit the agency, the community and the individual who owes society a debt . . . Their motives do not matter." There are others who will argue just as vehemently: "NO, they are not volunteers . . . How can they be uncoerced when they are given the choice between going to jail or helping the nursing home . . . I'm not trained to supervise criminals or enforce a judge's order."

The field of volunteer administration itself has been growing during the last decade and is still undergoing some self-definition. Add to this the evolving factor of court-ordered community service and it is no wonder that the answers are somewhat fuzzy! The ramifications of this type of government action have not yet been fully studied and there is little evaluative data on which to base future decisions. Among the issues still to be resolved are these:

- Involuntary service: Is participation in these programs truly voluntary? Or do these orders violate the 13th Amendment to the Constitution that prohibits involuntary servitude? Is the concept justified as one of many criminal sanctions, all of which limit the offender's freedom in some way?
- Discrimination: If this practice is applied unfairly, the danger exists that it will help perpetuate the inconsistencies of jail-for-the-poor and alternatives-for-the-rich. Is it fair to allow a well-paid person to pay the \$200 fine while requiring hours of unpaid service from a person who cannot easily pay the fine?
- Disparity: The same lack of consistency that has plagued the system's sentencing practices now seems to threaten community service as well. One offender may be offered the option while another is not; similar offenders can receive very different community service sentences for the same offense from the same judge. Are standards and uniform guidelines needed here as well?

- Expansion of social control: The tendency has been to use these alternatives as additions to, rather than replacements for, preexisting sanctions. A kind of "more is better" philosophy is developing, resulting in escalated sentences for even minor offenses. Is the state becoming too controlling over these individuals? Will community service lose its value as a means of punishment for more serious offenses because it is overdone?

Philosophically, the answers are by no means easy. In addition, this trend has raised urgent questions about more practical matters such as insurance coverage, accessibility to criminal records, and staff resistance. Discussion and debate are healthy, and legal and criminal justice professionals—as well as those in volunteer administration—must continue to grapple with all these concerns.

A PROACTIVE RESPONSE

Yet beneath all the controversy, the fact remains that *these offenders are nonpaid workers who frequently become our responsibility*. How then can we, the leaders of community groups, volunteer programs and government agencies best cope with this present-day phenomenon? There are three basic choices available to us:

- 1) We can choose not to become involved and ignore it;
- 2) We can cooperate in a passive way, initiating action only when we are forced to deal with a related problem;
- 3) We can actively work toward the creation of guidelines and policies that will be mutually beneficial to everyone involved.

While the third choice is probably the most difficult to pursue, research suggests that court-ordered community service is most successful when community leaders respond with assertiveness.

Efforts to approach this subject proactively are often hampered, however, by the fact that there is a two-sided information gap. On the one hand, there is a lack of knowledge by court personnel about volunteer programs. Many judges have seized the idea of community service sen-

tencing as one viable solution for improving the effectiveness of our justice system. Yet they tend to see its implementation as fairly simple and do not fully appreciate the complexity of the job of managing such "volunteers." Many probation officers and others who make referrals to community agencies do not understand the role of volunteer program coordinators and the policies by which these agency programs operate.

Similarly, leaders of volunteer programs often possess little or no knowledge about the justice system that sends them the offender. Much of the terminology and jargon used by the courts is unfamiliar and confusing. In addition, social service staff and administrators may be unprepared for the bureaucratic processes and paperwork which confront them and thus feel powerless in the face of a judge's order. While this situation clearly needs remedying from several different angles, it can be greatly improved by taking deliberate action *before* accepting court-ordered community service workers. Here are some key steps to include when making an agency decision to utilize these "volunteers":

Assess your present program to decide exactly how or if court-ordered "volunteers" will fit in. Examine the types of jobs volunteers now do, potential new short-term assignments, the availability of staff supervision time, and the degree to which program hours of operation are flexible. These and other considerations will help you to determine a policy for the type of offender you think you can handle effectively. Many programs stipulate restrictions based on the types of clients they serve. For example: a hospital will not take offenders who have been involved with controlled substances or alcohol; or Meals on Wheels will not take anyone with a record of driving offenses or who has a history of theft or burglary and might be likely to victimize clients.

In addition, you may be willing to consider a felon or parolee on a case-by-case basis. Remember, as with any volunteer, you always have the right of refusal. The most important thing is that you and your agency establish a comfortable and reasonable policy that will serve as a basis for future referrals and placements

(recognizing, of course, that the "ideal offender" will be rare).

Ask questions of any potential referral source. Invite the staff to visit your agency so that they can better understand what the volunteers do. Make sure you understand what type of clients are handled by the source before you agree to be a placement site. The referral process will be more accurate and will waste less time for everyone if information can be shared early on.

Make your expectations clear. Create a "Memo of Agreement" that stipulates who will do what. (Some referral sources provide this type of contract, but it still may be helpful to create your own.) Include responsibilities of the referring agency or program, responsibilities of the offender, and responsibilities of your agency as placement site. It is also useful to indicate how many offenders you can handle at any given time. All of this helps to avoid confusion and misunderstanding and gives you confidence in the referral source with which you are working.

Think about "non-compliance." Officially, this is defined as: the participant's deliberate violation of any points set forth in the program agreement. But what does this mean when applied to your particular volunteer program? How do you want problems handled if they should arise? How many chances are you willing to give the offender before you call it "non-compliance?" Are you prepared to send an offender back to court before he/she has successfully completed the assigned number of hours? If the offender "fails" at completing the hours ordered, will you feel that you have "failed" in your job? Again, these questions need to be discussed and incorporated into program policy before a problem arises and you are faced with feelings of guilt and frustration.

Consider a new definition. Initiate an agency-wide discussion of viewing the volunteer program as a "Nonpaid Personnel Department." What are the pros and cons of such a shift in philosophy? Does such a change eliminate some of the debate about the "volunteer" status of court-ordered workers? Does it help simplify practical issues of recordkeeping, insurance, and supervision responsibilities?

How do administrators, co-workers, and volunteers feel about the volunteer program coordinator functioning as a "Director of Nonpaid Personnel"?

CONCLUSION

In short, it is up to us to advocate for ourselves and our programs. In order to do this we must keep sharing information and learning from each other's experiences. We must help educate the judiciary and other court personnel about how our end of the process works—what happens to our volunteers when they participate in our programs, what types of sentences and time-frames are workable, what kind of communication we need, etc. At the same time we must educate ourselves about the system we are addressing, digging for answers in a professional

manner without clinging to old stereotypes and myths about the criminal justice organization. Only by taking such a proactive stance can we impact future decisions and eliminate much of the confusion now facing us.

Ironically, such battles are not new to the field of volunteer administration. We have had to fight for other things—competitive salaries, professional status, adequate budgets, appropriate insurance, etc. What makes this issue any different? By opening channels of communication, seeking new definitions, and establishing workable guidelines and policies we can help to shape the notion of court-ordered community service into a valuable opportunity rather than a frustrating dilemma.

Appendix A

The following "Position Paper" is an example of how one group of volunteer program managers in Oregon responded proactively. It is a clear statement of philosophy, conveying strength of conviction based on a sound knowledge of what will make the idea of court-ordered community service work successfully. It serves as a useful model for other local groups who wish to establish a constructive relationship with court programs and personnel.

Multnomah County Volunteer Program Managers Association Position Paper Re: Community Service/Court Referred Placements

INTRODUCTION

The Multnomah County Volunteer Program Managers' Association (MCPVMA) is committed to providing opportunities for all citizens to volunteer in their community. Most volunteers come to our programs through a desire to be involved. These people may also wish to meet people, be useful or keep busy; but they have selected volunteerism as a way to meet their needs. Another category of volunteers have not volunteered at all. These people have been directed to "volunteer" for community service as restitution for anti-social behavior. Providing a positive experience for such volunteers can be a challenge so great that it detracts from the volunteer manager's primary program. MCPVMA takes the position that when a volunteer manager's efforts to accommodate a referring agency's needs actually diminish the primary program the entire community suffers. This is an issue we wish to address.

ISSUE

It is the philosophy of MCPVMA that volunteer placement should be positive for the volunteer, the program, and the public which the program serves. To successfully accomplish this goal, program managers must carefully screen potential volunteers, give serious consideration to their motivation, interest and abilities, and then place a volunteer in a position best suited for achievement in the interests of both the volunteer and the program. This is generally possible because the needs of the volunteers are usually compatible with the needs of the volunteer program.

The goals and objectives of the community's volunteer based agencies are not, however, always compatible with the goals and objectives of the judges or agencies who refer clients for community service placement. It is the intent of MCPVMA to identify our concerns, clarify our needs and affirm our desire for a successful cooperation between volunteer programs and community service referral agencies which will assure maximum benefits to the publics we serve.

In this statement we address five general areas of concern with the hope of building a more solid base of cooperation on which to build mutual success.

AREAS OF CONCERN

1. IMPACT OF COMMUNITY SERVICE REFERRALS ON VOLUNTEER PROGRAMS

Volunteer programs cost money. The offer of "free help" comes with inherent costs to the agency, including significant amounts of staff time, phone calls, and letters. Because of these costs, the volunteer program managers must decide the cost-benefits of accepting a referral. Accepting a volunteer for a short amount of time, for example 20 hours or less, causes an impact on the program which may not be worth the time involved. Volunteer based programs are not prepared to accept placements for which the costs are disproportionate or even penalizing.

Individual volunteer program managers may choose to negotiate agreements with referring agencies to deal with this question. Such agreements may define the types

of placements available, the types of clients considered appropriate for referral or even a specific limited capacity of community service volunteers it can manage at one time.

2. UNREALISTIC EXPECTATIONS

Community Service volunteers are often under the impression that the volunteer agency a) is expecting them; b) will place them immediately; or c) has an obligation to place them. This is a three-strikes misunderstanding that immediately diminishes the possibilities for a successful experience. For a successful community referral service, MCVPMA recommends that the referring individual be familiar with the needs of the volunteer agency; that they contact the manager BEFORE making the referral; and that the referring individual be responsible for explaining to the client that the avenue of restitution through community service is an option in which the client has full responsibility for initiation and follow-through. It is essential that referring agencies and referred clients understand that the volunteer program and its priorities must be the volunteer manager's primary concern.

3. LACK OF COMMUNICATION

Lack of communication with the referring agency is a concern apart from the issue of resolving misunderstanding. If community service volunteerism is to work successfully, referring and accepting agencies must work as partners. Communication is vital to achieving a placement which suits the needs of all parties. The nature of the client's offense, former record, time available, and attitude are invaluable pieces of information for placement and cannot be easily obtained in the normal intake process. There is no question that court referred and community service placements are often unsuccessful; but MCVPMA believes that a much higher rate of success is possible through better communication between the referring agency and the accepting agency PRIOR to a placement.

4. THE INTERVIEW

Once the referring and accepting agencies have an appropriate volunteer community service placement opportunity, volunteers will be expected to participate in the accepting agency's normal intake process. This process will typically include an interview in which the volunteer and the supervisor will define the volunteer's work, schedule, and duties. The volunteer must be able to negotiate this process independently and otherwise fulfill the terms of placement. If counseling is needed to get the volunteer through the intake process, it is expected that this will be provided by the referring agency.

5. VOLUNTEER MOTIVATION

Referring agencies should carefully consider a client's strength of motivation when considering community service as an option. Volunteer programs are not equipped to work with poorly motivated volunteers. Before a volunteer is referred, counselors should be sure that the individual is willing, under the circumstances, to choose volunteerism as an alternative. Most organizations that utilize volunteers do not have the staff for one-on-one supervision and certainly cannot provide counseling or parole officer duties. In many cases, volunteer program managers have no additional staff and are solely responsible for supervision of their volunteers.

Volunteer agencies are not equipped to go out of their way to track and monitor the performance of community service workers. It is obvious that an unmotivated volunteer in an unsupervised placement will offer a dubious contribution to the community. Such volunteers, in fact, detract from the volunteer program. MCVPMA recommends that unmotivated community service volunteer referrals should not be knowingly directed to volunteer agencies.

CONCLUSION

Members of MCVPMA are willing to work with referring agencies who wish to place individuals in community service programs for the purpose of social restitution. Members of MCVPMA are *not* willing to accept significantly greater responsibility for these placements and certainly are not willing to accept placements which will detract from our primary program either through demands on personnel or program. MCVPMA believes that the burden of initial screening for such placements is the responsibility of the referring agency working with the volunteer agency.

In summary, volunteer managers are pleased to see their programs serve wider social goals as long as the goals of their own programs are also being served. But when referring agencies place community service volunteers whom they expect to fail, they sabotage the volunteer manager's efforts as well as the general purpose of the community service program itself. Our objective in identifying these issues is to provide a framework in which both volunteer agencies and referring agencies can work toward mutual goals with some assurance of success.

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