

LOSING OUT IN EUROPE?
Bush Tries to Shore Up NATO

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The 8th Grade Wonder

Tennis Superstar
Jennifer Capriati



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A New Era of Punishment

Community service is a controversial alternative to jail

Escorted by her eighth husband, the Prince Frederick Von Anhalt, she wore a suede riding jacket over a leopard-print Dior blouse and an Anne Klein sarong. Her gold eye shadow and quarry-size diamond earrings competed in the glare of the morning sky. Yet, despite such glamour and the rapt spectators and the live television camera, this wasn't exactly a talk-show appearance for Zsa Zsa Gabor.

In the dock in Beverly Hills Municipal Court last week, defendant #8904895 once again faced the not-so-stiff arm of American criminal justice. In October the former Miss Hungary was convicted of slapping a cop who had pulled over her Rolls-Royce for expired plates. Judge Charles Rubin sentenced her to three days in jail, plus \$13,000 in fines and 120 hours of community service at a local shelter for homeless women. Gabor's contribution during the past six months turned out to be beauty tips to the ladies, 100 turkeys at Thanksgiving, along with fund raising and publicity appearances on behalf of the homeless. The shelter approved, but not so the prosecutor or the court. At last week's hearing, Rubin found her in violation of probation and ordered her to perform 60 more hours on top of the 85½ she still owes. After pronouncing sentence, Rubin asked if Gabor understood and agreed. "What else can I do?" she lamented. "Go to jail," replied the judge. "Son-of-a-bitch," Gabor was then heard to mutter.

Its comedic value notwithstanding, Zsa Zsa's case illustrates the paradox of community service—a criminal sanction that is growing almost as fast as the nation's jail population. Who but the hardest-nosed retributivist would argue that this quite harmless actress belongs in the pokey—particularly at a time when there isn't even room for all the felons? But is doing a few chores at the local homeless shelter *real* punishment, or is it just preferential treatment for the Dior collared? "The conflict," says H. Lee Sarokin, a federal judge in Newark, N.J., "is that what's good for the defendant may run contrary to such goals as deterrence and sending a message that certain conduct is not permitted."



TRAPPER—SYGMA

Beauty tips and holiday turkeys: Zsa Zsa gets one more shot at helping the homeless

Gabor's crime is trivial enough, but what of other more serious transgressors for whom community service constitutes the heart of their punishment? Consider presidential aide turned felon Oliver North, convicted last July for his role in Iran-contra and sentenced to 1,200 hours of community service for a Washington youth organization. Or Michael Deaver, who perjured himself before Congress and got 1,500 hours doing drug and alcohol counseling. Or Exxon Valdez skipper Joseph Hazelwood, consigned to scrub Alaska's black beaches for 1,000 hours. Or landlady Leona Helmsley, actor Rob Lowe and computer hacker Robert Morris Jr. Beyond these celebrities are the everyday offenders who

make up the overwhelming majority of defendants sentenced to service: the drunk driver in North Carolina, the shoplifter in San Francisco, the vandals of Brooklyn. Altogether, depending on who's counting, there are between 200,000 and 500,000 offenders now doing community service in most of the 50 states. In Washington state, for example, service is being imposed in a third of all felony convictions. "Community service is the fastest-growing industry in the criminal-justice system," says Prof. Alan Harland of Temple University, who's conducted a survey of 200 programs.

Community service began in the 1960s (in Alameda County, Calif.) chiefly to permit traffic offenders who couldn't afford

finer to work off their debt. The concept then took off in England before gaining acceptance here. Today, service is still typically given as part of an overall penal package—which can include imprisonment, “boot camp,” house arrest, work release, probation and fines—but it is motivated by a wider range of political and economic rationales, according to the Rand Corp.’s Joan Petersilia. There is the obvious crisis of jail space; in 1989 alone, 16 states instituted emergency-release programs to relieve overcrowding. There is also great fiscal appeal to community service, since administering it—even with the high cost of supervision and enforcement—is cheaper than building or maintaining prisons.

There is a widespread public perception that community service serves only as a substitute for jail and thus is soft punishment. In many areas, though, it’s used to toughen sanctions—added to probation in cases that wouldn’t result in incarceration anyway. “It’s an extra dollop of punishment that makes judges feel better about putting offenders on probation,” says Bill Burrell, chief of supervision services for the New Jersey probation division. Burrell notes that most of the 28,000 offenders sentenced in his state in 1989 were “routine street criminals” like muggers and car thieves rather than middle-class fat cats; they clean animal cages at the humane society, maintain Little League fields and do chores at the American Cancer Society—work that wouldn’t get done any other way. Other analysts deny that community work is cushier than doing time. “It can be rigorous punishment,” notes Mark Corrigan, director of the National Institute for Sentencing Alternatives at Brandeis University. “If you go to jail today, you’ll see that most offenders are sitting idle, lifting weights or playing basketball.” In an unusual project, New York City’s privately run Vera Institute of Justice created a pro-

WALLY McNAMEE—NEWSWEEK



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Instead of a cell, a useful task: *Cleaning up a New York City neighborhood*

gram that targets about 1,600 chronic property offenders who would otherwise wind up behind bars; participants do 70 hours of intensive unpaid labor reminiscent of old-style work gangs, and rehabilitation is not the main goal. The work is to be “first and foremost a punishment,” says Douglas McDonald, who wrote a book on the Vera plan.

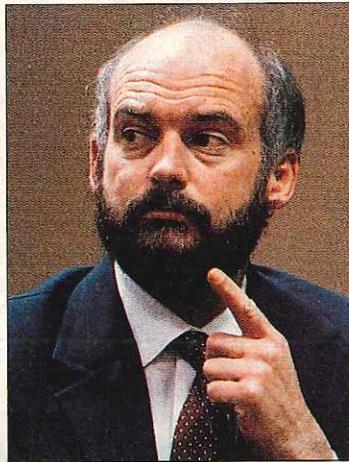
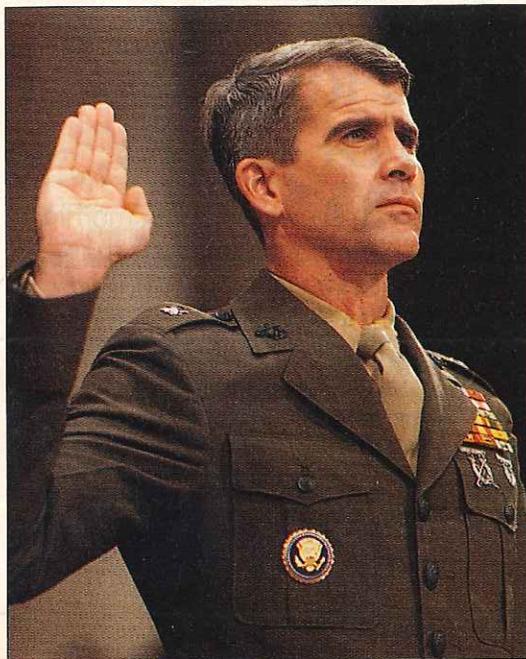
Critics of community service nonetheless argue that it trivializes any legitimate notion of punishment because it so often is applied in the wrong cases. Micky Sadoff, president of Mothers Against Drunk Driving, offers the case of Kevin Tunell of Fairfax, Va., convicted in 1982 of manslaughter for the death of his date, Susan Herzog. He was sentenced to a year of lecturing on the evils of driving and drinking. “He deserved some time in jail,” Sadoff says. “By only giving him community service, the judge did not send the right message that this is a violent crime similar to rape and murder.” At the very least, she says offenders

like these should be forced to work in emergency rooms where they can see their homicidal highway handiwork. (In fact, such “matching” of punishments to crimes exists—in the exquisite tradition of Dumas—as with the slumlord sentenced to live in his firetrap.)

Bar none: The criminals themselves preach the gospel of community service. Deaver, having clocked 500 hours so far at a Washington shelter-clinic, says it’s “the most rewarding thing I’ve ever done in my life, bar none, even the White House.” North has appealed his conviction and \$150,000 fine but graciously consented to begin his desk-jockey penitence at the Alliance to Save America’s Future. His critics suspect that North is trying to reap the public relations of doing good works; he says that he’s truly concerned about “our wounded cities” and the pain of poverty.

The advent of community service is important because it changes the terms of the traditional American debate over punishment. The problem with rethinking our system, says Douglas McDonald, has been “that the 200-year-old definition of punishment is doing time”; nowhere is that more obvious than in the federal courts, where community service may actually be declining because of tough new sentencing rules, especially in drug cases, which limit the discretion of judges. But if scrubbing floors, trimming hedges or sweeping shelters can be a kind of punishment, then taxpayers need bankrupt themselves no longer in the elusive search for a bit more public safety. The only risk is that it will give honest labor a bad name: cleaning ladies shouldn’t be tainted by their association with celebrities. Zsa Zsa should only be so lucky.

DAVID A. KAPLAN and CLARA BINGHAM with bureau reports



JACK SMITH—AP

Do they belong in the pokey? *North (left) and Hazelwood*