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CRIME AND CRIMINAL JUSTICE

E. RAY STEVENS¹

What I want to present is not a hairbrained theory, but a conviction that has become deepseated, arising out of my experience of nearly a quarter of a century in sentencing and dealing with convicted persons. I feel that we have too often dealt with the offender as if he were a machine made product that could be graded and given mass treatment, like the product of a factory. While the fact is, as has been pointed out in the chairman's address, these offenders need individual consideration and treatment.

My experience leads me to have confidence in the jury system. I think that juries are the best means yet found for the determination of guilt or innocence. But I am equally certain that when guilt or innocence has been determined, the responsibility of the trial judge should cease. From then on the convicted person should be dealt with by some body with power to ascertain the past record of the offender, to observe his progress from day to day, and with power to make the punishment fit the needs of each individual case in order to carry out the dual purpose of reforming the offender and of protecting society.

It has often seemed to me that the problem presented to the trial judge is not unlike that presented to the physician, who is required to outline an entire course of treatment in advance, with the opportunity to see his patient only once and with no power to change the treatment as the disease progresses. He might well say to his patient: "My judgment is that you are coming down with an attack of typhoid fever. I am not going to see you again, but prescribe treatment on the assumption that you are going to have typhoid fever. I am going to prescribe this kind of medicine at this time, that kind to be taken a little later on, and that kind for the next period, and at the end of six weeks I am going to ask you to leave the sick room. You may still have fever at that time, you may be unable to walk unaided, but that makes no difference. At the end of six weeks you must go out into the world and care for yourself." I realize that the analogies between the physician and the trial judge are not perfect. But the analogy

¹Late Justice of the Supreme Court, Madison, Wis. Deceased, August, 1930.

is such as to present the great disadvantage under which the trial judge acts in imposing sentence.

The majority of the offenders that came before me were strangers in the community. The district attorney and the sheriff usually knew nothing of their record. But even if they had all known them from the time they were children, the trial judge would not be able to forecast what his reaction to the punishment prescribed would be. But the trial judge is constantly called upon to make the guess in advance as to what should be done in order to protect society, and to help make of the offender the sort of man that can take his place in society. The trial judge is acting under as great a handicap as is the physician who was called upon to prescribe an entire course of treatment in advance. If the treatment by the doctors had the same elements of chance as those involved in sentences imposed by judges, there would be a very much smaller percentage of recoveries than there is at the present time.

The difficulties that confront the trial judge may be illustrated by taking a page from my own experience. A man had been arrested for burglary in the night time. Like most experienced offenders who are caught red handed, he pleaded guilty. I took this man into my chambers and tried to get the story of his life. He told me that he was a man with a family; that the factory in which he had worked had closed down; that he had gone to the Dakota harvest fields to get work; that to save money he was beating his way back home; that he fell in with a group of hoboes, who learned that he had money and took it away from him; that he was put off a freight train; that wandering about the town in the night he saw this store window with food in it, and having eaten nothing for twenty-four hours, he could not resist the temptation to get something to eat. I believed he was telling the truth, and believed that he was a first offender. I sent him to the Green Bay Reformatory for the shortest term I could impose. Later I saw the superintendent who took from his pocket a packet of cards, each of which contained the record of the confinement of this man in some prison or reformatory. This illustrates the helplessness of the trial judge. Had this prisoner been turned over to some body with power to ascertain his record he would have been given the longer sentence which should have been imposed.

On the other hand, I feel certain that I have sentenced to terms of imprisonment persons who ought never to have been confined. Again may I take a page from my own experience. A woman who had sunk as low as woman can go was brought before me. I asked

the police matron to interview her. She was one who had a broad sympathy and a genuine desire to help such unfortunates as this woman. But she reported that she could find no good in this woman, and that she ought to be segregated from society for the longest sentence that the law allowed. I took the woman to my chambers, and found that as a young girl she had been married to a man older than herself who had compelled her to support herself and him as a woman of the street. Then when the life he compelled her to lead had robbed her of her power to attract men, he left her with nothing but her reputation as a woman of the street. All doors that led to a decent life were closed to her. She sank lower and lower until finally she committed the serious crime that led to her arrest and conviction. I was satisfied that there was good in her and that she ought to be given a chance to reestablish herself as a law-abiding and self respecting member of society. With the cooperation of the Board of Control and a woman probation officer in an adjoining state, she was sent to that state, where among strangers she demonstrated her ability to rebuild herself into a decent woman. She is today married to a worthy man and is living a self-respecting law-abiding life. That case shows what can be done by individual treatment. Such cases present one of the reasons why I believe that we will never solve the problems connected with the convicted person until we provide for individual treatment for every offender.

What I should like to see done is to have the trial judge relieved of this responsibility of determining what should be done with convicted persons. I should like to see these persons committed to some qualified board who would treat these convicted individuals as the doctor treats his patients. We have demonstrated by probation and parol what we can do toward rebuilding men and women so that they shall no longer be a source of danger to the state.

I had occasion some years ago to make careful computation of what it cost Wisconsin to care for its defective, delinquent and criminal classes. I found that we are spending every year as much for the care of these classes as it cost the state to build the new capitol building. If the taxpayers of the state were called on to build a new capitol every year, careful consideration would be given to the question of reducing that heavy tax burden. We should give as careful consideration to the question of reducing the cost of caring for these wards of the state. We must expend large sums to meet the emergency that now exists in providing adequate facilities to care for these classes that now overcrowd all out state institutions. But we should at the

same time consider what we may do to cut down the constantly increasing demands which these classes make upon the public treasury.

It will cost less to rebuild men and women by giving offenders the individual treatment which they should have than to build with stone and iron bars to give them the mass treatment that has been to so large an extent, accorded to them in the past. We have demonstrated by the use of probation and parol that we can care for offenders much more cheaply outside of prison walls than within such walls. But we must be ready to expend whatever sums may be necessary to secure the best talent that can be found in the nation, if this newer and saner method of dealing with these classes is to produce the results which we desire. By securing such assistance the state will save thousands of dollars each year in the cost of operating its penal institutions, and it will aid in reestablishing such offenders as are capable of reformation as law-abiding citizens who will no longer be a menace and a source of expense to the state.

It may be objected that this plan of giving some qualified board the power to determine the length of sentence and the character of punishment to be imposed is vesting an absolute power in this board. But that is the power now vested in the trial judge who is required to exercise it without the opportunity to study the offender and to make the punishment fit the needs of the individual and of society. The legislature may fix the limits within which such board may act, just as it now fixes the limits within which the trial judge may act.

Again it may be objected that the power to sentence is a judicial power which may not be vested in any body other than a court. This is a question which one occupying a judicial position will not attempt to determine in advance of the time that it is presented to the court. We are concerned here only with the wisdom of the plan. If it is wise to adopt it, the constitution can be amended, if necessary, in order to put it into effect. But it should be noted that the legislature has always exercised a large degree of control over matters pertaining to the sentence of offenders by prescribing maximum and minimum sentences, by fixing good time allowances and by providing for indeterminate sentences.

More important than the saving of the very large capital expenditure needed to build prisons and reformatories and the large saving in the operation of these institutions will be the fact that such a board as I have suggested will have time and opportunity to give individual treatment to offenders to the end that hardened criminals shall be found and not let off with light sentences that should be given

only to first offenders. Such a board will be able to discover the spark of good which is in offenders capable of reformation, and they will be able to fan that spark into a flame that shall burn out the evil and give the good that is within them a chance to rebuild offenders into individuals who will be an asset rather than a liability to the state, and a menace to society.