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TREATMENT OF CRIMINALS IN THE COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK¹

CORNELIUS F. COLLINS²

I.

In criminal courts of record, after conviction of a defendant by the verdict of a jury or by a plea of guilty, we are confronted with a problem of great individual and social significance. Accepting as a theoretical base Dean Pound's definition of law as a "social control, through the systematic application of the force of politically organized society," the administration of criminal justice may be divided into two distinct processes: The first has to do with all the elements preceding conviction, which include legislative enactment, executive and administrative action; apprehension of the defendant, action of the police, the magistrate, the district attorney, the grand jury and the trial before judge and jury, the plea and the verdict. The second process has to do with the elements after conviction, including statutory fiat, the disposition of the criminal by sentence to a prison, a reformatory, or otherwise, and the method of control through systematic procedure or penal agencies, probation, parole boards, or prison associations, pending or after the final court action.

A great deal has been said and written about the first process; too little, and that not always constructive, about the second. Yet it is a mistake, in coping with crime, to lose sight of or to underestimate the vast importance of this second branch of judicial administration; and my remarks bear particularly on this phase of practical jurisprudence.

Up to the time of conviction, the declaratory, the directory and the remedial elements of proclaimed law are in operation through statutory regulation, judicial decisions, rules and procedure designed to treat cases in general, with relatively little emphasis on individual differences and needs. After conviction, however, a different point of view controls the proceedings. The Court has a relatively wide *discretion*. Whereas, in the first part of the procedure the judge

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acts according to more or less fixed, positive rules and standards of law, in the second, the principles governing his action are far less concrete though no less socially important. Here the Court bears the heavy responsibility of applying its wisdom as best it may, not only to the task of further remedial action but to the obligation of sustaining the all important element of all laws, its "sanction" or vindictory component, by the rendition of judgment or sentence. Without this element all criminal laws would lose their force, defiance would prevail, and the cohesive bonds of society dissolve.

What is the aim of the judgment or sentence? From a sociological point of view the purpose of judgment is to safeguard society through the protection of the individual—his life, his personal safety, his liberty, and his property—against unlawful encroachment.

I have spoken of the vindictory component in law; by that I do *not* mean *vindictiveness*. In applying the principle of social and individual protection, our advanced civilization and social policy dictate that punishment shall not register vindictiveness, passion or vengeance, but, while retaining as much as possible of the deterrent feature, it should aim at constructive results through the rehabilitation of those who have transgressed our laws. Let me spell this out in detail: In accordance with present-day thought, the imposition of the penalty is intended:

- I. To check the criminal.
- II. To deter the criminal and to deter others from the commission of crime, and by such example, to prevent crime—and
- III. To reform the offender—to strive to readjust him socially by curbing and curing his anti-social tendencies and to assist in his rehabilitation, not only from the dictates of intelligent mercy, or common humanity, but also from the standpoint of the safety and well-being of society in rendering him less potent of evil on his restoration to liberty than he was before.

What progress has been made along this triple road? In my opinion, great strides have been made in recent times in coping with crime and with the criminal after conviction.

Time was, not very long ago, when courts were compelled to act, in imposing sentence, on very meagre or misleading information, and with very little assistance from any source. The result was that misguided action, error and injustice were of frequent occurrence.

The difficulties which confronted jurists of little more than a quarter of a century ago were so great that the practicing criminal judge of today can hardly understand how his brethren of an earlier generation carried on as well as they did.

Not so long ago the Court imposed sentence after very little delay for the purpose of investigation; in fact, judges sometimes resented all efforts made on behalf of a defendant which might entitle him to favorable consideration of any kind. This was associated with the fact that the judge of the past did not, in imposing sentence, regard his act as related in any way to the subsequent treatment or fate of the defendant; he conceived his job as merely directing the convict's incarceration for the period customarily fixed in the statutes.

Happily we have traveled in the direction of progress. Today the information received by the Court from various sources, and the judge's comments and reasons for imposing the sentence, are not only available to the social agencies functioning within the Court, but are filed with the commitment papers, for the guidance and action of the institution to which the defendant is sentenced and for the use of the paroling authorities when considering the release of a prisoner under an indeterminate sentence.

Today the Court is so much a part of the general administration of justice both before and after conviction, that it may be said to be the hub around which revolves the whole administration of the criminal laws and the efforts made by society in the dispensing of justice and the conviction and correction of the criminal.

In brief, today, especially as the practice prevails in the Court of General Sessions of New York, marked progress has been achieved. The separation of criminal justice into the two divisions indicated above, namely, the procedure before and the procedure after conviction, is particularly appropriate today, at least so far as the more progressive courts are concerned.

It is of great importance to stress one weighty reason for the recent progress in the field of criminal justice. The improved methods employed by courts in the treatment of defendants after conviction, including their subsequent control either under supervision or in a prison or reformatory, have developed in large measure *through utilizing social sciences other than law to assist in the administration of justice*. Of course a number of the social sciences have always served as disciplines in and of judicial procedure, notably medical jurisprudence; but I have in mind as particularly relating to the crime problem after conviction, medicine, psychiatry, psychology,

criminology, penology, and social work such as is included in probation and parole.

To better illustrate their application and utility, I shall explain the present practice in the New York Court of General Sessions.

II.

After a conviction of any person in the Court of General Sessions, either by plea or verdict, the case is forthwith referred to the Probation Department for investigation and report, and to the psychiatric clinic of the Court for examination and report. The words "Probation Department" are not comprehensive enough to convey the extent of the functioning of that body. The word "probation" usually conveys only the idea of the supervision of persons on whom sentence has been suspended; the work of our department is, however, much more extensive. Hence, in considering the offices or duties of probation organizations in criminal courts, I prefer to use the term "Probation System" as being more accurately descriptive.

Permit me to define the probation system in accordance with my conception. Probation is a scheme of social service practiced in criminal courts in an effort to cope with the crime problem and assist in the administration of justice. It employs trained social workers (a) to *investigate* persons convicted of crime, preliminary to sentence, and (b) to *supervise* the behavior of those on whom sentence is suspended during a prescribed period of "probation." The person formally "placed on probation" is under conditional release and is thus afforded an opportunity to prove whether he is adaptable to normal social adjustment without the necessity of imprisonment either for reformation or social safeguard. Let me analyze these concepts.

(1) *Investigation* is an inquiry conducted after conviction, for the double purpose of informing the Court in determining sentence and aiding in comprehending the social problems of the individual defendant. A report is made of the details of the crime and of the defendant's personal history, particularly his general behavior and environment, and his mental, moral, physical and economic condition.

(2) *Supervision* is an oversight or watchfulness over the conduct and general behavior of an individual placed on probation, to insure his observance of the conditions imposed by the court, to assist, as far as practicable, in his cure or rehabilitation, in any direction necessary and, finally, to advise and aid him in acquiring, and persevering in the maintenance of, normal social standards.

III.

How are these objectives of the probation system achieved? Let us take a look at the structure and functions of our court: First let us consider the organization of probation in the Court of General Sessions. (a) We have a committee of judges who constitute a "Probation Plan and Scope Committee," which includes Judge Koenig, Judge Nott, and myself, of which committee I have the honor to be chairman. The functions of this committee are adequately described in its title. (b) Our Probation Department has an executive division, a bureau of supervision, a bureau of investigation, a bureau of accounts and finances and a bureau of research. We have a probation department staff of 91 employees. Between forty and fifty of these are probation officers actively in the field at all times. More than half of the officers are devoted exclusively to supervising persons placed on probation, the remainder exclusively to making investigations. This procedure promotes efficiency and expertness in each field. Irving W. Halpern, an executive who has seen long and rigorous service in the cause of probation, is the Chief Probation Officer and is in full charge of all the administrative conduct of this department, under the supervision of the court. We take especial pride in emphasizing the fact that, unlike the situation in most adult criminal courts, the professional staff of our probation department are college-trained men and women. The majority were recruited to this work from the field of social work.

IV.

Let us now examine the two major divisions of probation work in detail:

Investigation: I have said that *investigation* forms a significant element of the duties of the probation department. The value of this method of inquiry, and its importance in assisting the Court in the intelligent imposition of sentence, cannot be over-estimated. It is the difference between groping in the dark and throwing the searchlight on the problems the judge and the probation staff have to solve. As stated, a comprehensive report is made covering the offender's previous criminal record, if any, the details of the instant crime, the mitigating or aggravating circumstances, his personal history, family and neighborhood conditions, his general behavior and environment and his mental and physical condition and economic status. In determining the defendant's mental, moral and physical condition, we

have the great helpfulness of a psychiatric clinic. We have a professional medical staff assigned from the New York City system of Hospitals, under the supervision and direction of Dr. Menas Gregory, Director of the Psychiatric Division of the system of hospitals. The psychiatric staff also includes psychologists and other employees.

The investigation report covering the details previously referred to as related to behavior and the like, and any further information that may be desired, are furnished by the probation staff to the psychiatric clinic; so that at the time of the examination of the person referred to, the clinic is in possession of all the information obtainable. When the clinic report is made, it informs the Court exhaustively as to the physical condition of the defendant and his mental condition, advising the Court as to whether or not there are any gross mental imperfections, such as insanity or mental defectiveness. But the clinic goes farther than this, thereby accomplishing a service that few courts in this country can boast of. Not only the generally recognized forms of "insanity" and "feeble-mindedness" are noted, but also the *general* mental capacity in the degree that it falls short of "normal" even though not sufficiently abnormal or subnormal to absolve the defendant from responsibility under the technical rules of the criminal law. This report of the clinic is furnished to the Court at the same time that the probation investigation report is presented. A sufficient period of time has been allowed to conduct these two investigations, and at the time of sentence the Court possesses all the facts necessary and useful in the wise imposition of judgment.

The Court is now not only in possession of information on the nature of the crime committed, but is well informed in relation to all angles of the case. It can impose sentence in the light of a full report prepared with a view to considering the elements of social demand as involved in the theory of punishment, as well as from the standpoint of consideration for the individual criminal and his treatment, reformation and rehabilitation.

If the defendant is to be committed to a penal institution, whether a reformatory or a prison, this report aids the Court in determining the type of institution; and if to a prison, it helps to decide the severity of the sentence—based upon the crime committed, the degree of turpitude, and the measure of responsibility of the defendant. If the defendant is sentenced to a reformatory or prison, copies of the probation and psychiatric reports follow him. They serve the institution to which he is committed as a guide in control

and treatment throughout the period of incarceration. The probation report, with the Court's comments on the sentence, at once gives a picture of the individual himself and the nature of his crime. In former years it was most difficult for prison authorities to secure the psychiatric report of his exact condition. Now, a vast amount of information is furnished by the Court in the manner stated. Both reports aid in determining the nature and type of prison treatment to which the convict shall be subjected, the prisons conducting a scheme of so-called vocational or labor therapy during the period of imprisonment.

When the time arrives that the individual convict is eligible for release on parole, all the information as to the investigation and examination is available to a parole commission, or to other proper authorities, to assist in determining the wisdom of parole and the methods necessary to employ in the rehabilitation of the convict, to the end that he shall not become a recidivist.

Supervision: If the Court is satisfied that the reports of the probation officer and psychiatric clinic, considered in conjunction with the circumstances involved in the commission of the crime, warrants placing an offender on probation, then the Court, in *proper cases*, may suspend sentence and place the offender on probation for a time up to the extent of the maximum period for which he might have been sentenced to an institution. The Court imposes certain conditions of probation, and our probation staff then supervises the defendant's behavior throughout the period of probation, seeing to it that he observes the conditions imposed by the court and actively advising and aiding him so far as practicable, in his rehabilitation in any direction necessary. The probationer is required to report to the Department at fixed intervals, and is visited by his probation officer from time to time at his home (or elsewhere when deemed advisable).

The supervision staff have available for their use the psychiatric clinic report in the event that the probationer needs medical assistance, and means are at the disposal of our Department to have him treated when necessary.

The supervision work is characterized by thoroughness of effort and cooperativeness of endeavor. All social agencies are called upon to assist the Department in its work with probationers. Employment is secured wherever necessary and obtainable. Educational development is assisted and vocational aptitude is directed wherever practicable. In fact, the Department extends every assistance that

can be rendered to the defendant, and aids in any necessary adjustment of his family conditions. As an indication of the humane and far-sighted method of approach, let me say that with the assistance and cooperation of other social agencies, the Probation Department, when necessary, secures emergency family relief and even recreational opportunities and summer camp facilities for children of probationers.

If, in spite of all the efforts made towards his readjustment, the probationer fails, the probation officer applies to the Court for a Bench Warrant. The probationer is thereupon again apprehended and presented to the Court for violation of the conditions of probation. At this time he may either be sentenced as he could have been in the first instance when placed on probation, or his probation may be continued, added precautions being taken to guard against future violation. Thus, society loses nothing by its experiment: the worthy offender is given a chance at rehabilitation; the unworthy one, when proved to be so, is incarcerated for the social protection.

An important practical feature of probation work is the handling of certain funds of probationers with a view to seeing that they meet their lawful obligations. On this point I quote from a recent report of the Chief Probation Officer:

"The Bureau of Finances of the Probation Department collects and disburses money paid in restitution and family support by men who have been placed on probation instead of being committed to prison. During the six year period, up to December 31, 1932, that the Probation Department has been in existence, this bureau has collected and disbursed the sum of \$512,787.28. The collection and disbursement of this money has served a two-fold purpose. It has helped in some measure to restore to complainants the losses which they suffered, and has served also as an excellent disciplinary measure, for it has taught probationers that property and personal rights must be respected. Restitution invariably is collected from the weekly earnings of probationers usually over a long period."

The large proportions of the task of the Court of General Sessions may be inferred from the following figures: During the year 1932, the Probation Department conducted 2,863 preliminary investigations. This means that approximately that number were likewise examined by the psychiatric clinic of this Court. At the close of the year 1932, there were 1,400 cases under the active probationary oversight of the Probation Department of our Court.

Let me emphasize a feature of the social utility of a probation staff like ours, which is too little appreciated. The Court can render great help in supplying a foundation of original information to the paroling authorities of a state, which at the time of passing

upon eligibility for parole will be equipped not only with this information, but with the story of the prisoner's behavior during imprisonment. The New York State Parole Commission, as constituted at present, has an opportunity for great social service in the solution of the crime problem, in so far as the rehabilitation of the offender is concerned, and in guarding against the danger of recidivism. The present State Department was created by a law proposed by a Commission appointed by President Roosevelt, then Governor of this State. This law is generally accepted as being the last word in social progress towards the establishment of parole with legal resources sufficient to cope effectively with the formidable problem presented on the restoration of convicted persons as free men in our social group. In New York, the General Sessions Probation service and the state parole authorities work hand in hand, in a common endeavor.

Despite the almost insuperable handicaps with which probation departments are confronted in these trying days, it is gratifying to note that 89% of the charges of the Probation Department in the Court of General Sessions successfully completed their terms of supervision in 1932. This percentage marks an increase of 7% over the five-year period from 1927 to 1931.

V.

I have mentioned the high qualifications of our officers. But native equipment is not enough for effective probation work. The many duties required and the various demands made upon our probation officers render it necessary that they be given practical training in order to sustain their capability and efficiency. The ordinary methods of training preliminary to appointment as a probation officer are not sufficient to mould him to the full versatile performance of his duties in the Court of General Sessions. Moreover, probation officers need to be constantly stimulated by the progress made by, and the views of, leaders in the correctional field. We have therefore taken the lead in establishing in our Court "Institutes in Probation." These comprise a course of lectures held on each Saturday throughout the active court year, commencing with the first Saturday in October after the opening of the October Term, and continuing until the last Saturday in June.

These Institutes are maintained on a high standard. On two Saturdays a month lectures are delivered by outstanding sociologists and medical authorities, and two Saturdays each month are controlled by the probation staff themselves, in conference and in the presenta-

tion of papers relating to the many angles of their duties. All of these sessions are open not only to the probation officers of the Court of General Sessions, but to those of all courts and to other social workers. During the last year lectures have been delivered by such authorities as Dr. Israel T. Broadwin, Psychiatrist, Jewish Board of Guardians; Dr. Bernard Glueck, Medical Director, Stony Lodge and Psychiatrist at the Montefiore Hospital; Dr. Sheldon Glueck, Professor of Criminology at the Harvard Law School; Dr. Leon W. Goldrich, Director, Board of Education Child Guidance Clinic of New York; Rev. Bryan J. McEntegart, Director, Division of Children, Catholic Charities; Dr. George K. Pratt, Medical Director, New York City and National Committees on Mental Hygiene; Dr. W. D. Shoenfeld, Adjunct-Psychiatrist of Mount Sinai Hospital; Dr. Harry M. Shulman, Research Director of the New York State Crime Commission, and Dr. Israel Strauss, Attending Neurologist at the Mount Sinai Hospital.

The experience we have had with psychiatry and clinics has demonstrated unquestionably the practical capacity of their success in this field of endeavor. The Academy of Medicine has by resolution approved the Institutes and volunteered the necessary aid in their conduct, which insures obtaining outstanding lecturers from the medical profession.

All of the chief probation officers in this judicial district have participated in these lectures as have members of the general staff who are equipped as specialists in many phases of the work.

With such a force and general staff and methods to rely upon, we are in a fair position to test the degree to which probation and psychiatry are useful to the Court. The general method includes, of course, thought and action along the lines of criminology and penology; criminology, not in the nature of shape of face or formation of body, but rather from the standpoint of crime causation and therapy and the peno-correctional features of an intelligent treatment of the offender after conviction, not only by the Court but as already mentioned, in the prisons and in the administration of parole.

VI.

Progress in the administration of justice along the lines of the social sciences has been slow, but sure. As has been the story with all endeavor of this kind, progress had to be made in the face of many embarrassments. The carping critic can never be avoided. He is always present in the line of march in the advancement of social

institutions. Of course criticism should be made when necessary; should be emphasized when justified; but mere destructive criticism without suggested remedy is cheap and easy of utterance, and must be guarded against. This seems to me the primary test: Is the institution we are attempting to establish and employ *sound in principle*? If it is, it should be encouraged and given an opportunity to prove itself, and all efforts should be made to help it succeed.

Although in its infancy, Probation, if properly carried out, is replete with great possibilities of usefulness. It is, moreover, economical, a consideration not to be scoffed at, particularly in these hard times. Compared with the service rendered, the cost is negligible. In estimating such cost, care should be taken to deduct that which is charged to investigation—a function absolutely necessary to the proper action of a Court in rendering judgment—from that devoted to purely supervisory treatment. Our General Sessions report shows that the annual cost of supervising one offender placed on probation is only \$81.30. But quite aside from the consideration of cost, the great possibility of probation in human salvage and social well-being is inestimable.

If the probation department of any Court is insufficiently equipped, or if the duties are improperly performed, the remedy is not to abolish probation, but rather to cure the existing defects and establish an efficient force. In many courts, through inadequacy of equipment and appropriation, a sound probation service cannot be rendered. It must be conceded that inefficient probation service, instead of being a help to the object it seeks to subserve, may be positively injurious. What has been said of probation may be said with equal truth of parole. If the staff is not highly efficient, failure must result.

In the opinions and judgments of the authorities in this country who largely shape the thought of those engaged in the promotion of sociological usefulness to the Court, the institutions referred to *have come to stay*. Their utility has been successfully tested and proved. Of course we must guard against the errors of the over-zealous and against fantastic experiments in the administration of justice.

VII.

Many persons trained in jurisprudence are unalterably opposed to transferring the sentencing power now vested in the Courts to a Board of Parole or other laymen. Advocates of such a course of action have frequently fallen into the error associated with bureaucracy, and have reached out for power, sincerely impelled, perhaps, but

largely controlled by the misconception of their usefulness in dealing with the *whole* problem.

So too, those in favor of limiting the Court to the imposition of a minimum sentence of one year, and enabling other substituted authorities to fix the period of imprisonment, are actuated solely by criminological and penological ideas which relate to the offender exclusively as an *individual*, and consider the principal question to be, "Is he reformed?" But this view is one-sided. While we recognize the wisdom of treating the individual offender, the welfare of the group must not be lost sight of. The primary function of law is to protect society. As I have pointed out, the reformation of the offender is but one element in the theory of punishment. Those who advocate limiting the power of the courts to sentence, lose sight altogether of the sociological background developed in dealing with crime through the ages, and likewise lose sight of the necessity for checking the criminal and deterring him and others from the commission of crime. The *deterrent* element in the punishment of crime seems to be entirely overlooked, or at least too greatly minimized, by the advocates of taking the sentencing power from the court.

I fancy I can hear Warden Lawes say: "The extent of the probable prison penalty does not operate as a pre-deterrent; I know it from a large percentage of the men I have in Sing Sing."

It is true it did not deter them—that is why they are there; but while the number it does deter can only be conjectured, the conclusion that it is so vast as to be countless is absolutely sound both in theory and in fact.

While reformation of the individual offender is greatly to be desired, that of itself is not sufficient in dealing with crime. The offender might have shown, immediately subsequent to his criminal act, a complete remorse and repentance, and in so far as reformation is concerned, the horror of his crime, dawning upon him in its fullness, has by the law of nature worked a reformation to the extent that he could be depended upon not to transgress again. But mere wailing and gnashing of teeth on the part of the offender after the crime is committed, is not enough for the protection of society, and a maudlin sentimentality in dealing with the offender in view of the crime could not but work to the detriment of society.

Let us go forward on the highway of further progress in utilizing apposite social sciences in coping with crime as a social problem.