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TRAINING PROGRAMS FOR JUVENILE OFFENDERS

THEODORE B. KNUDSON

The author is Judge of the District Court, Fourth Judicial District in Minnesota. He had served as Assistant County Attorney for Hennepin County, and Judge of the Municipal Court in Minneapolis before he became District Judge in 1950. He is a member of the Executive Committee of the Governor's Advisory Council on Children and Youth, of the Committee on Sentencing, Probation and Parole of the Section of Criminal Law in the A.B.A., and of the Sections Committee on Juvenile Delinquency, also. He was Chairman of the state-wide Probation and Parole Survey for Minnesota, 1950-1951, and Chairman of the Minnesota State Bar Association Committee on Youth Conservation for three terms. He is a member of Advisory Council of Judges of the National Probation and Parole Association.

The article below was read before the Criminal Law Section of the A.B.A. in Chicago in August, 1954.—EDITOR.

The problems that face the judge and lawyer, following conviction or adjudication of a delinquent haven't received much attention from our law schools or, for that matter, from the organized bar.

"Punishment to fit the crime" has been the philosophy of the criminal law for as long as history records. Notwithstanding the creation of the first juvenile court in the city of Chicago in 1899 and its spread throughout the country, punishment continues to be the dominant purpose of most courts, training schools, industrial schools, reformatories and prisons. Many who give lip service to the juvenile court's concept of treatment none the less practice the philosophy of "punishment to fit the crime." It finds support in editorial columns of our newspapers, in the Congress, legislative halls of our different states and with a surprisingly large number of our people. Crimes committed by probationers or parolees appear as feature stories and even some responsible people are heard to urge the return of the whipping post or other forms of retributive punishment.

The American Bar is to be congratulated on its vision and wisdom in appointing a Committee on Juvenile Delinquency to make a study of this problem and to evaluate the factors involved. By so doing and in throwing the prestige of this great organization behind such study and findings, much of the misunderstanding can be corrected and many of the misgivings dissipated.

In what I say here I am expressing only my personal opinions, and not necessarily those of the committee except as what I may say coincides with the report which our committee has made to the Criminal Law section of the American Bar Association.

WHAT DOES PUNISHMENT AVAIL

History clearly teaches us that retributive punishment does not change attitudes or behavior except for the worse. Lessons that jail usually teaches the offending youth is that society has cast him out as "no good" and that he might as well learn the criminal skills and the depraved habits of his more hardened and experienced companions. The record leaves no doubt that police brutality, jails, prisons and punitive training schools have contributed to delinquency and crime by hardening and debauching delinquent children and young offenders. This is still true of all jails and of most correctional institutions.

This is no argument against society's right to insist on acceptable behavior. It is not an argument against punishment. Some youngsters whose backgrounds have given them wrong concepts of themselves and of their duties to society need to be brought up short, but the jail and the counter aggression of the slap, the curse and the isolation cell only tend to drive them into permanent defiance.

It would make sense to resort to such types of punitive measures if they protected society by working a reform in the offender, so that he would not offend again. Instead, the ordinary correctional school and reformatory usually does just the reverse. Sooner or later more than 95 percent of all those imprisoned return to the community. Most of them come out more dangerous than they went in, hardened and embittered by their experience, better trained for crime and bearing the fatal stamp of "delinquent" or "convict."

John Clay, the great English criminologist, in 1836 said: "It was once a truth so fully realized as to become proverbial that a criminal came out of prison worse than when he went in." Almost one hundred years later in 1931, the National Commission on Law Observance and Enforcement, commonly known as the Wickersham Commission, concluded: "The prison does not reform the criminal. It fails to protect society."

The failure of such practices to reform can be seen where it most hurts society—that is among youth. Follow up studies of graduates of industrial schools and reformatories in Massachusetts, Illinois and California have shown that from 69 to 80 out of every 100 boys were known to have committed new crimes within five years of their release. In California this was before the implementation of their Youth Authority Act. It seems absurd to spend millions on the indiscriminate mass imprisonment of youngsters in order to build up an army of habitual criminals.

Arrest, hearing, the stigma of delinquency, uprooting from the family and the deprivation of liberty will always constitute the harshest possible punishment to a child. It is the duty and self interest of society and of the law to see that these measures are taken only where indispensable for the welfare of the child and of the public, and that within this punitive framework the relationships and experiences of the child help him to grow up emotionally and to understand himself and not to make him worse and more dangerous.

I commend to your reading the report of our committee on Juvenile Delinquency to the Section on Criminal Law of this association. In my humble opinion it should be read by every judge, lawyer and thinking layman in America.

The argument for more punishment and the return of the lash, for more punitive

measures in training schools and reformatories may be heard in many quarters, especially since the Korean War. The war crop of babes has now begun to reach the juvenile court age and by 1960 there will be 42 percent more youngsters between the ages of ten and seventeen than there were in 1950 and, in our country by 1964 there will be more than 120 percent more than in 1950. Does that mean that we should get tougher, now?

History shows that harsher sentences increase the danger to the public. Brutality begets brutality. "In England in the 18th century", Barnes and Teeters report, "there were more than 200 capital crimes, but crime increased to an alarming degree during this very period." Until early in the 19th century, English law punished pick-pockets by hanging in the public square. The law had to make the hangings private in order to protect the public, who crowded to see the hangings, from the very pocket-picking thieves whom it had intended to deter and who found it a ripe harvest.

Of course, organized society must have rules and must provide penalties for breaking the rules. Few of us could be trusted to observe traffic laws were it not for the traffic officer or the traffic court. The fear of punishment rarely deters people who are ready to commit crimes, but fear does deter the rest of us and especially fear of exposure and public disapproval.

Effective law enforcement requires good police work. It has been demonstrated over and over again that the certainty of arrest and conviction, that is, being found out and exposed and not the threat of a long sentence, reduces law breaking. To the individual who can be deterred by fear of the consequences, the shock, shame and humiliation of arrest, trial and conviction are more effective than the whipping post.

As for children, Dr. James S. Plant finds the fear of punishment is a potent influence to keep many children out of bad company and prohibited activities. But it appears to have little or no effect on a child who is mentally and emotionally ready for delinquency. Thus, Dr. William Healy has shown that at the time just preceding a delinquency the thought of punishment which might be involved does not enter a child's mind.

Society must protect itself from crime, no matter what the cause or how great its own responsibility, just as it must protect itself from a dangerous encroaching foreign power, from typhoid carriers, or from the dangerous mentally ill. The ideal behind modern treatment of the mentally ill gives us the clue to the aims and methods we must sooner or later adopt in the treatment of delinquents and criminals. Criminal justice may require the segregation of the professional criminal of the Al Capone type for life in order to protect society. It may have to put a desperate and intractable youngster in solitary confinement for a time. Nothing is gained by ignoring the need to deal with a percentage of offenders who are as dangerous as the violently mentally ill. But the aim and the purpose of all procedures of criminal justice must be not punishment in and of itself but rehabilitation, cure, salvage, and, if that is impossible, confinement to protect society and under conditions in which such incurables will not infect the curable. Punishment for revenge must go. It lies at the heart of the ineffectiveness of the administration of criminal justice. Without a change in purpose, spirit and philosophy, new procedures and institutions are just words—new names for the same old methods.

THE JUDGE'S PART

After conviction or adjudication the problem of disposition becomes a heavy one for the judge. It is a simple matter to be guided entirely by what the offender did. If that would solve the problem, we would have no worries. The symptoms, the results of the misbehavior are obvious. The serious question is, however, what are the causes of these symptoms, the misbehavior, which brought the youngster to court? Unless the causes are identified and are known to the judge he cannot make an intelligent disposition of the case.

At this point a pre-sentence investigation, or pre-hearing investigation becomes indispensable. In many cases basic causes can be found and reported to the judge in a sound pre-disposition report. In many other cases much more is needed in the nature of a complete diagnostic study. For such services, if not available to the court, which appears to be the regrettable state of affairs in all but a few courts in this country, a state system is needed to provide such diagnostic services. In our state we have taken long strides to provide such services on a state-wide basis through the adoption of the model act of the American Law Institute in a modified form, known in Minnesota, as the Youth Conservation Act.

In cases where the judge considers the local services inadequate, or the youngster as not a proper subject for probation, he must commit to the Youth Conservation Commission. The youngster is transported to a reception and diagnostic center. There a physical examination is given to determine whether there are any physical defects which may have been the cause of his behavior pattern. That physical defects may have causal relationships to behavior is illustrated by the dramatic case of a youngster from a neighboring state who had an offensive body odor. His buddies in school called him "Stinky." He was rejected by his own peers, his buddies, and, to find status and recognition with at least some of the youngsters, he started truanting; then it was petty thefts. In this way he at least obtained recognition from a few. Like any youngster he wanted to achieve and be recognized for his achievements, just as you and I. He wanted to be accepted and approved by his peers, just as you and I. Failing in this he quickly developed a reputation for persistent truancy, fighting, trouble making and destructiveness. His teachers disliked him, other children ran from him holding their noses derisively and shouting "Stinky stinks". At fourteen years of age he was caught tossing lighted matches into piles of waste paper in a school basement.

The police jumped to the conclusion that he had committed a series of unsolved acts of destruction in the neighborhood. They locked him in a dark and filthy basement cell and told him they would keep him there for life unless he confessed. "Yeah", he said, "you and who else"? An officer slapped him down and called him a stinking little rat. The boy screamed in rage and fought back but he could not be forced to talk. The officer finally gave up. The youngster gripped the cell bars and spat through them as an indication of his self-considered toughness. He was committed to an industrial school. There he caused so much disturbance that the school authorities referred him to the state psychiatrist. One interview convinced the latter that the clue to his belligerence lay in his offensive body odor.

The psychiatrist enlisted the aid of medical men who found that the youngster's

condition resulted from a glandular dysfunction which they were able to correct. The psychiatrist gave the boy a great deal of personal attention to win his confidence and to help him gain an insight into the reasons for his own behavior. Freed of his body odor he showed a pathetic eagerness to be accepted as a normal human being. He was returned to his home community and immediately fitted into a normal behavior pattern.

I told the Optimist Club of Minneapolis about this incident. Following the meeting a gentleman who was a guest of a member came up to say that he had known this boy ever since he was a child and that everything I had said was true.

Another example occurred in our own county where a youngster 13 years of age had a long history of destructive behavior. He had a violent temper. Everything had been tried short of commitment. He was finally committed to the Youth Conservation Commission where a psychiatric social worker became convinced that he had a deep-seated problem which needed psychiatric attention. He was referred to one of our state hospitals and was studied by our former Health Commissioner of Minnesota, who had purchased an electro-encephalogram with his own money—the first one in our state. He did an electro-encephalograph on this boy and found that he had a brain lesion as the result of encephalitis following a children's infectious disease. The doctor prescribed a mild drug known as dilantin and the youngster's behavior changed drastically. The tensions were gone. Can you imagine what the lash would have done to this boy? Instead, a long treatment of reorientation, slow changing of attitudes was begun. I am glad to report that he is doing well.

Dr. A. B. Baker, the great neurologist, has said that in one-half of one percent of our children's infectious diseases we have secondary infections—encephalitis being one; that the behavior pattern of children in numerous cases which he has studied, has changed following such secondary infections, beginning often with drowsiness, followed by fibbing, cheating, a falling off of school grades and, ultimately, truanting and thievery.

Obviously in the vast majority of cases the cause is not traceable to a physical defect. In most cases it is more complex than that. It is in such cases that the other diagnostic services are brought into play. We have to recognize that each individual youngster is different from others, that he has a distinctive I.Q., distinctive aptitudes, and that the combination of underlying factors which precipitated his trouble likewise is distinctive. The clinical psychologist, a member of the diagnostic team, attempts to determine his mental horsepower. A battery of psychological tests must be given which help to determine whether he is psychotic, near psychotic, psychopathic, or socio-pathic as they now say and, last, but not least, it is important to know his abilities, his aptitudes and his interests, so that in the end a course of treatment can be prescribed to meet the needs of the individual youth. In roughly 20 to 25 percent of the cases psychiatric services are needed.

One wouldn't expect the same performance from a 60 horsepower automobile that he would expect from a 160 horsepower car. So it is with youngsters. It is recognized that every youngster needs to achieve and it is important to find out his aptitudes and interests so that they may be encouraged, stimulated and developed to provide the greatest possible progress for his capabilities.

Another step in this diagnostic study is to investigate the background of the youngster, his family, his home, school and community relationships, to learn whether there are factors in his social history, which will account for his behavior. When the complete diagnostic study is done, the court which has such services has sufficient information concerning the individual before it to be able to mete out individualized justice. Where such facilities are not available to individual courts but are provided by the state as in the states having the Youth Authority program, they are made available to the commission or board which is responsible for making the determination of the kind of treatment program best suited for the individual offender.

The implementation of the recommended program for the individual youngster may involve return to his own home under a family counselling and supervision program which is designed to correct any conditions contributing to the youngster's delinquent behavior. It may require removal from his own home to a foster home. It may necessitate psychiatric treatment. It may mean training in an industrial or vocational school, farm or forestry camp.

If treatment calls for placement in an institution it should be in a small facility to avoid regimentation and where competent professional staff members can exercise their skills in helping the youngster to change his attitudes and behavior. This will mean an effort to re-direct the youngster's thinking and to develop habits of thought and action that will make for acceptable behavior.

Naturally, in many cases, these wrong habits and attitudes have developed over many years and it may take much time and patience and many disappointments before favorable results are forthcoming.

Large mass-custody institutions do not lend themselves to such individualized treatment. We should learn from the experiences of the English Borstal system and those of Sweden that it is only through small, individualized facilities that you can develop the interpersonal relationship between staff and youngster that makes for a change in attitudes and behavior.

Thus it is in Sweden that the facilities for delinquent children average no more than 40 youngsters. They are thus able to provide a multiplicity of training units under a personalized program, enabling the grouping of youngsters of similar ages, and in accordance with their individual needs.

As I have already indicated, in Minnesota, if the Courts do not see fit to grant probation or utilize a local resource, they must commit to the Youth Conservation Commission. From the time the act went into effect in 1948, March, through June 30, 1953, the Youth Conservation Commission placed approximately one-third of all the youngsters committed to it on probation. The most obvious probation cases, of course, had already been granted by the local courts. Notwithstanding, of the girls granted probation following the period of diagnostic study, only 11.61 percent violated their probation. Of the boys, 24 percent violated probation and of the young men between 18 and 21, only 17.8 percent violated their probation, and of the young women between the ages of 18 and 21, there were no violations. The total violations were 19.45 percent. Of the juvenile boys, 29.09 percent violated their paroles from the State Training School after their period of diagnostic study; 23.9 percent of the girls violated their paroles; 33.3 percent of the young women violated; 28.2 percent

of the young men between the ages of 18 and 21 who were committed to the State Reformatory violated; and 9.09 percent of those committed to our Forestry Camp violated their paroles, making a total of 29.29 percent who violated parole.

It should be noted in this connection that every violation of probation or parole known to the Commission has been counted, whether handled by the Courts of Minnesota, the Federal Courts, or the courts of other states, as well as revocations by the commission; and a revocation of probation or parole by the commission often does not mean that there has been a technical violation of the law. Violation records show that only 20 percent of all of the violations required further court action.

While these results appear extraordinarily good compared to accurate reports from most other states, much of the treatment still is treatment in name only. Let there be no illusions about the difficulty of developing a rehabilitative program. It took the leadership and prestige of the Minnesota State Bar Association to educate the State to the need for the adoption of the Youth Conservation Act in Minnesota. But it took a great deal more. It took the sterling leadership of a great governor, who made the Act a principal part of his program, and who fought for it to the end. I was most honored to have him introduce me today, our former governor, Luther Youngdahl, now Judge of the District Court of the District of Columbia.

As I have said, there is grave danger that the treatment process in most cases is one of treatment in name only. We hear of the failures of probation and parole. We do not hear of the successes. Too often we have probation and parole in name only; what might be termed a reporting system. To do an effective job, one must have professionally trained counselors. If attitudes are to be changed the counselling personnel must be qualified to deal with the behavior problem whatever its nature, which means intensive work with the individual. This obviously is not possible where case loads far exceed what the best qualified officer can possibly handle effectively. When case loads range up to 150 as they do for one probation officer under the Y. C. C. program in Minnesota, a reporting system only is possible and this cannot possibly be called probation supervision. Likewise, in our training schools and correctional institutions generally, lack of enough competent well trained personnel too often means a treatment program in name only. To provide the essential services, to salvage the curable of your youthful offenders, a great opportunity is presented the organized Bar to take the lead in getting adequate "appropriations". In the long run this is the best kind of dollars and cents economy and the only hope for real human conservation.

While I have referred to the Minnesota system, I want to call attention to the outstanding experience of California. It was my privilege to observe the operation of the California Youth Authority for a period of one week during the year 1946. I observed at first hand the results of the superb leadership of the then Governor of California, now our distinguished Chief Justice of the United States Supreme Court. In addition, the leadership of such men as Karl Holton, Heman G. Stark, and Judge William B. McKesson of that state is known throughout the nation to people who have been interested in this field.

The National Probation and Parole Association has worked most devotedly in California, Minnesota, Wisconsin and many of the other states to develop sound

systems of probation and parole which are essential if we are to deal effectively with our behavior problems. Its advisory council of judges under the leadership of Judge Bolitha J. Laws is working with genuine devotion to the establishment of sound standards for probation and parole. These standards will greatly help the courts and parole boards in the determination of proper subjects for either probation or parole. More than that, the advisory council is developing a public relations program to inform our citizens of the capacities of a treatment program to protect the public from the overwhelming burden of crime and, at the same time to salvage the curables and restore them to good citizenship. In that connection it cannot be pointed out too often that the cost of good probation or parole supervision of an offender is \$150 a year compared to costs of \$1,000 to \$3,000 per prisoner in an institution.

Another bright spot on the treatment horizon is the far reaching training program for delinquency control that has been established at the University of Minnesota, referred to in our report. This was made possible through the wise leadership of Maynard Pirsig, Dean of the Law School of the University of Minnesota, the President of our great University, several major foundations and the excellent counsel and guidance of John R. Ellingston, former special advisor on criminal justice for youth to the American Law Institute, now a professor of law at our University, who has served as consultant to our committee on juvenile delinquency of this association and to whom we are all indebted.

The social sciences have developed the insights which enable us to conduct a sound treatment program. With properly trained and adequate probation, parole and institutional staffs and an understanding public, tremendous strides will be made in the treatment field in the next decade. The leadership of the organized bar in our several states and on a federal level can serve to accelerate that tremendously. It is the kind of service the organized bar is equipped to render and it is the kind of service that will redound to its credit as unselfish public service. It is a challenge which the Minnesota State Bar has met and is meeting. It is one which others might seriously consider.