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THE RIGHT SELECTION OF PROBATION CASES¹

JOHN W. HOUSTON²

It may be presumptuous of me to tell this Society who should or should not be admitted to probation, but after some years of experience in the trial of criminal cases, sitting as the presiding judge in two different courts, and after more than ten years of experience in the City of Chicago, handling the *Adult* Probation Department of all the courts of Cook County, I feel that my judgment may be worth something. The views here given are with reference to adult probation and do not apply to juveniles.

I presume I could in a very few words cover the whole ground, but I am going to take this occasion to say something more than just to specify the cases that should be admitted to probation. My experience has all been in Illinois and Cook County, and therefore any criticism I may make will apply only to what I know of conditions, laws and the administration of justice in Chicago and Cook County.

The real basis of all criticism of probation in Chicago is the fact that the probation law is a limited one. In order that you may understand what I mean I will say that in larceny and embezzlement probation is allowed only in cases where not to exceed \$200.00 in value is taken or embezzled. Under the law you cannot put a man on probation for burglary of an inhabited dwelling house, nor for murder, manslaughter, rape, kidnapping, perjury, subornation of perjury, arson, incest, or any offense against the election law. With such a limited law you cannot expect the best results, and you will find that prosecuting attorneys and courts are constantly finding ways to avoid the strict letter of the law; therefore the criticism.

We are a peculiar people. We elect a man judge of a court, presumably because of his judgment, honesty, integrity and ability. We give him the power over the life and liberty of the defendants who come before him, and yet we put a limited probation law on the statute books and say to the judge that you can discharge this man or you can convict him, but you cannot take a middle course and put him on probation.

The judges of Cook County are constantly being criticized because they violate the probation law by putting people on probation who are

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technically not entitled to it. It is my judgment that the proper kind of a probation law should give the judge full power to punish, put on probation or discharge the defendant, *irrespective of the crime committed*. A judge is not worthy of the name if he does not take into consideration not only the crime but the circumstances under which it was committed. After guilt is established the sole requirement of the probation law should be that the judge should take into consideration the probability of the defendant's reformation and the interest of society, and if he is satisfied on these points the law should give the power to him to admit to probation just the same as it gives him the power to acquit or convict. If you are afraid to trust the judge with that power, then you should not elect him. Such are my views of what the law should be, but I have very definite views also with respect to the kind of people that should be put on probation by the judge.

"Probation is a judicial system by which an offender against penal law, instead of being punished by a sentence, is given an opportunity to reform himself under supervision, and subject to conditions imposed by the court, with the end in view that if he shows evidence of being reformed, no penalty for this offense will be imposed."

If the persons who exercise the power of admitting defendants to probation would follow that definition and keep in mind the interest of society as well as the interest of the defendant and his relatives, there would be little difficulty in getting good results and much less criticism.

You will notice that the defendant himself is required to effect his own reformation—the law gives him the chance and the probation officer gives him advice and help. If the offender does not intend to reform and is still defiant it is useless to try to give him a chance. He must be brought to a normal state of mind before good results can be obtained. That is stating it generally, but I am going to be more specific and tell the particular kind of cases that I believe should not be given the benefit of the law.

I do not believe that a defendant should be put on probation if he has heretofore been convicted of a felony. It is possible that I might modify that view if there was a long period of time between the two offenses and during the period the man had been a good citizen, or if he were only technically guilty of the second offense.

I am not favorable to the probationing of a defendant who has committed a *vicious* crime because I find it is revolting to the public to have such a person given leniency by our criminal courts, and it is dangerous to have such a man at large. A term in an institution will give him time to think and time to recover a normal condition of mind.

I do not believe in granting the benefit of the probation law to a person who is a *constant violator* of the minor laws of our city or state. My reason for that is because that kind of an offender has no respect for any law and his condition of mind is such that he imagines he is smarter than other offenders and can get away with anything. He manifests no intent to reform.

No offense should be changed from a greater to a lesser *solely* for the purpose of admitting a defendant to probation. In other words, the law, whatever it is, should be strictly followed by the judge. Our courts should not violate the law or wink at its violation.

No person should ever be put on probation until a *full investigation* has been made by a probation officer of his home, family conditions, work record, criminal record if any, and the general reputation he bears in the neighborhood in which he lives. Courts are fallible and are very often imposed upon. The defendant, being ashamed of his offense, rarely gives his correct name or address and seldom admits a criminal record. He is many times backed up in this by his lawyer and the friends and relatives who appear with him before the bar of the court. The relatives usually aid him to do this in order to protect the name of the family.

If the probation department does not have the correct address it causes them a tremendous lot of work with no results because they rarely find him, and so far as the benefits of probation are concerned there are none.

His work record will show whether he is a loafer or a worker, and if he has only recently left school, the school record will give you a line on his industry and mentality.

The criminal record should also be known before the judge grants the benefit of the probation law. The probation officer is the best person to get this because he has access not only to the police records but to the records of the probation department, which cover all kinds of offenses.

Of course I know that you cannot always cover records of a defendant in other states, but that is done so far as possible.

In larceny and embezzlement cases when the value of the goods taken is large and restitution is ordered by the court, it is my judgment that the restitution ordered should be reasonable. I find that when a larceny or embezzlement is committed the culprit has spent the money in some foolish way, and when he is called upon to pay it back he finds himself in the position of being unable to do so, because as a rule he is less able to earn money and finds it difficult to resist indulgence in

extravagant tastes and to satisfy his desire for constant excitement. This is illustrated by the case of the young man who secured \$45,000 by the robbery of the Standard Oil Company in Chicago. He spent the money in buying aeroplanes and fast automobiles. This money of course never could be repaid because he never could in a lifetime save so much out of his earnings.

The ordering of large restitution puts a tremendous burden on the probation department, and they are seldom able to get the full amount ordered. If, as one of the conditions of probation, large restitution is required the friends or relatives of the defendant should guarantee it or pay it in advance, but there should be a sum left which the defendant is required to pay by the week or the month in order that he may be constantly reminded of the fact not only that he has committed an offense against the law and is paying the penalty, but that he has injured his fellow man and is expected to do all in his power to make amends before he can fully reclaim his proper status as a respectable citizen.

Nearly all of the people who are put on probation are poor people and they are nearly always in the condition, after committing a crime, of having more money than they ever had in their life, and very naturally waste it.

I do not believe that the mentally defective should be admitted to probation because such persons are responsible neither to God nor man for what they do and the probation department cannot get any good results. Border line cases might, however, be given the benefit of probation if the officer knows of the mental condition and is given the doctor's findings.

Sentimental leniency is not probation.

You cannot get results by admitting a defendant to probation because you are sorry for him.

Nor should he be given the benefit of the law *simply because his family will suffer* if he is sent to jail. The family and friends of an offender always suffer more than the culprit himself.

A defendant should not be admitted to probation *simply because* the stolen property has been returned or the loss to the prosecuting witness made good. The payment of the loss shows the proper spirit, but is not of *itself* sufficient to justify probation.

Occasionally we hear of some judges being under the impression that they are compelled to grant probation in any case coming within the statute when an application is made for probation by the defendant. Of course this is due to misunderstanding. It is not obligatory

upon any judge under the Illinois Probation Law to grant any defendant the benefits of that law. It is not only proper but perfectly legal for a judge to use his discretion and grant or refuse probation as he may believe it is in the interest of society and of the defendant.

In the past we had experiences with the use of the writ of "habeas corpus ad testificandum" for the purpose of bringing a man out of a penal institution into court and then turning him loose on an order for probation. Such orders are without authority of law and leave the department without power over the probationer. The legal effect, it seems to me, is that he is an "escape" and can be picked up and taken back by an officer without any further court order. Fortunately, I believe our judges now realize that the doing of such things makes a mockery of criminal justice and causes unjust criticism of the probation department.

Perhaps I have used too many "don't's," but you will find that you *can* follow these suggestions and still give the department more than it can do. We do not want quantity but quality, and by quality I mean the kind of cases that will yield to probation treatment.

Close adherence to the law, good judgment in the selection of cases, and imposition only of conditions which are reasonable will guarantee a satisfactory administration of the probation law in any community.